Arbitration CAS 2014/A/3659 & 3660 & 3661 KSV Cercle Brugge v. Clube Linda-A-Velha & Club Uniao Desportiva e Recreativa de Alges & Sport Club Praiense, award of 11 May 2015

Panel: Mr Patrick Lafranchi (Switzerland), Sole Arbitrator

Football
Training compensation
Conclusion of a high endowed professional contract after the ending of an amateur contract
Determination of the player's status
Amateur players and interpretation of the FIFA rules according to the principle of confidence
Flat-rate concerning football-related expenses of amateurs

1. **It is logical that the payments stipulated in a professional-contract are much higher than the one agreed on in an amateur-contract. Thereafter an amateur player only gets reimbursed for his football-related allowances while – during a professional-contract – additionally to its football-related expenses gets paid an actual salary. Depending on the performance of the player during the amateur-contract this salary can amount to a multiple of the allowances paid during the amateur-contract. Therefore, the conclusion of a high endowed professional contract after the ending of an amateur-contract is no indication in itself that parts of the salary of the professional contract constitute a postponed salary the player was already entitled to receive during the amateur-contract. Rather, other evidence would be required for such conclusion.**

2. **According to the consistent jurisprudence of the CAS, the only two relevant criteria for establishing if a player, in a certain period, has to be considered as a professional or as an amateur are (1) the question if the player was provided with a written contract; and (2) if the player received a salary and not only a reimbursement for his football-related expenses. Consequently, it is not necessary to determine whether the club benefited from the player's activity, as nothing in the Regulations on the Status and Transfer of Players (RSTP) indicates that the classification as a professional or amateur is subject to such a condition. Furthermore, it is irrelevant which status the competent national association gave to the player (in the player passport). Indeed, if the status of a player is disputed, the competent bodies – i.e. the DRC and afterwards the CAS – must determine the player's status without any reservation.**

3. **Under Swiss law, statutes are to be interpreted in the same way as declarations of intent. The interpretation of declarations of intent follow the principle of confidence. Thereafter, the relevant declaration has to be interpreted as it could and has to be understood by the addressee of the declaration, while considering the wording and all the relevant circumstances. The initial point of interpretation is therefore the wording. The wording of Art. 2 para. 2 RSTP speaks a clear language. Thereafter, an amateur-player can only receive payment for expenses that are effectively incurred. However, the wording is only the starting point of the interpretation. It has to be examined if the spirit**

and purpose of Art. 2 Para. 2 RSTP allow the clubs to pay their amateur players at flat rates in regard of their football-related expenses without demanding the effectively occurred costs to the players.

4. The allowance of flat-rate expenses is a broadly accepted concept in various fields of law, especially in tax law. Flat-rates are created for practicability reasons in order to minimize administrative costs. They are accepted as long as they reflect to a greater or lesser extent the effectively occurred costs. A flat-rate concerning football-related expenses of amateurs has to be accepted as long as the flat-rate broadly reflects the average expenses of an amateur football player. To represent a different opinion would mean that an amateur player would have to keep all his football-related receipts and that the club would have to control each of those quittances. Such an approach would not only generate a huge administrative effort for clubs not endowed with a lot of funds but also contradict common practice of amateur clubs all over the world. A flat-rate for football-related expenses therefore has to be admitted as long as it broadly reflects the average football related expenses of a player.

1. BACKGROUND

1.1 The Parties

1. KSV Cercle Brugge (hereinafter referred to as "KSV Cercle Brugge" or the "Appellant") is a Belgian football club with seat in Brugge, Belgium and affiliated to the Royal Belgian Football Association, which is a member of FIFA.

2. Clube Linda-A-Velha (hereinafter referred to as "Clube Linda-A-Velha" or the "First Respondent") is a Portuguese football club with seat in Linda-A-Velha, Portugal and affiliated to the Portuguese Football Federation, which is a member of the FIFA.

3. Club Uniao Desportiva e Recreativa de Alges (hereinafter referred to as "Club de Alges" or the "Second Respondent") is a Portuguese football club with seat in Alges, Portugal and affiliated to the Portuguese Football Federation, which is a member of the FIFA.

4. Sport Club Praiense (hereinafter referred to as "Sport Club Praiense" or the "Third Respondent") is a Portuguese football club with seat in Praia da Vitoria, Portugal and affiliated to the Portuguese Football Federation, which is a member of the FIFA.

1.2 Context of the Dispute

5. The football player C. (hereinafter referred to as "the Player"), born in 1989, played for the Portuguese Club de Alges from 8 October 2003 until 27 September 2004, for the Portuguese Clube Linda-A-Velha from 1 September 2008 until 13 August 2009, for the Portuguese Club

Praiense from 14 August 2009 until 30 August 2010 and for Portuguese Club Atletico Port from 31 August 2010 until 24 July 2011. On 1 August 2011, the Player started to play for KSV Cercle Brugge that is the Appellant.

6. The three Respondents, *i.e.* Club de Alges, Clube Linda-A-Velha and Club Praiense, now request the payment of a training compensation from the Appellant for the time the Player played in their respective teams. The Appellant disputes these claims for the reason that it contracted the player as an amateur until the age of 23 (emphasis added by the Sole Arbitrator). The core question of the present proceedings is therefore if the Appellant has to pay the three Respondents a training compensation for the time the Player was contracted by the Respondents.

2. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

7. On 18 July 2014, the Appellant filed three separate statements of appeal against three decisions passed by the Dispute Resolution Chamber of FIFA (hereafter referred to the "DRC"). The decisions were passed between the Appellant and each of the Respondents and issued on 27 February 2014. The challenged decisions ordered the Appellant was to pay Clube Linda-a-Velha a training compensation of EUR 32,082 plus interest, Club Uniao Desportiva e Recreativa de Alges a training compensation of EUR 10,000 plus interest and Sports Club Praiense a training compensation of EUR 35,000 plus interest.

8. On 25 July 2014, the CAS Court Office consolidated the procedures *CAS 2014/A/3659 KSV Cercle Brugge v. Clube Linda-A-Velha*, *CAS 2014/A/3660 KSV Cercle Brugge v. Club Uniao Desportiva e Recreativa de Alges* and *CAS 2014/A/3661 KSV Cercle Brugge v. Sport Club Praiense*.

9. On 15 August 2014, the Appellant filed its Appeal Brief concerning all three proceedings.

10. On 10 September 2014, Mr Nuno Faustino, representative of the three Respondents, filed a combined Answer for all three Respondents.

11. On 23 and 26 September 2014 the Appellant filed additional documents such as the Player's passport it had received some days before from the FIFA TMS Association Manager. In their letter issued on 30 September 2014, the Respondents contested the admission of those files.

12. By procedural order dated 22 October 2014, the Sole Arbitrator admitted the new documents produced based on exceptional circumstances.

13. On 2 December 2014, the Respondents filed their "report and request" submitted to FIFA on 24 November 2014. Therein, the Respondents asked FIFA to investigate on the modification of the Player's passport executed by the UBRSFA from professional to amateur for the season 2011/2012. The Respondents further requested FIFA to force the URBSFA to correct the Player's status in his passport from "amateur" to "professional" for the season 2011/2012.

14. On 9 December 2014, a hearing was held at the CAS Court Office in Lausanne, Switzerland.

On the same day the parties signed the Order of Procedure. Therein, they recognized the jurisdiction of CAS.

15. During the hearing, Celso Dias Antunes, on behalf of the Respondents, signed a declaration stating the following:

"*Whatever the result of our "report and request" lodged with FIFA on 24 November 2014 and also further request to FIFA will be, the three clubs (the "Respondents") accept that this will not have any influence on the CAS arbitral award rendered in the cases CAS 2014/A/3659 KSV Cercle Brugge v. Clube Linda-A-Velha, CAS 2014/A/3660 KSV Cercle Brugge v. Uniao Desportive e Recreativa de Alges and CAS 2014/A/3361 KSV Cercle Brugge v. Sport Club Praiense.*

Therefore, the Respondents will especially not initiate any further legal actions with the Court of Arbitration for Sport ("CAS") or the Swiss Federal Tribunal ("SFT") based on new FIFA decision".

16. At the end of the hearing the parties confirmed that they had no objection as to the composition of the Panel. Each party further - that is at the conclusion of the hearing and in response to the Sole Arbitrator's query - affirmed that it had received a full and fair hearing, that it was treated equally and that there were no additional matters or requests that it wished to raise.

3. POSITION OF THE PARTIES

17. The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Sole Arbitrator, indeed, has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

a. The Position of the Appellant

18. The Appellant request the Panel to:

"<u>On a principle basis:</u>

Declare the appeal admissible and well founded;

Substantially review the decision of the FIFA Dispute Resolution Chamber, passed on 27 February 2014 as follows;

Dismiss any claims of football club Sport Club Praiense, Clube Linda-A-Verha and Club Uniao Desportiva e Recreativa de Alges.

Order football clubs Sport Club Praiense, Clube Linda-A-Verha and Club Uniao Desportiva e Recreativa de Alges to pay all costs of the arbitration proceedings before the Court of Arbitration for Sport as well as the costs for defence incurred by football club KSV Cercle Brugge, estimated ex aequo et bono at an amount of € 5,000.00.

<u>On a subsidiary basis:</u>

Give Cercle Brugge the possibility to file additional documents concerning the player passport uploaded by the

URBSFA within the scope of the pertinent transfer instruction in the TMS.

<u>On a subsidiary basis:</u>

Establish the disproportionate nature of the training compensation determined by the FIFA Dispute Resolution Chamber, referring to article 5.4 Annex 4 of the FIFA Regulations on the Status and Transfer of Players.

Reduce the amount of the training compensation.

<u>On a subsidiary basis:</u>

Partially review the decision of the FIFA Dispute Resolution Chamber, passed on 27 February 2014, as follows:

Increase the amount of this training compensation by interests at a rate of 5% per year as from 31 August 2011 until full payment to football clubs Sport Club Praiense, Clube Linda-A-Verha and Club Uniao Desportiva e Recreativa de Alges;

Reduce the costs of the proceedings in the first instance, payable by football club KSV Cercle Brugge;

Order football clubs Sport Club Praiense, Clube Linda-A-Verha and Club Uniao Desportiva e Recreativa de Alges to pay all costs of the arbitration proceedings before the Court of Arbitration for Sport as well as the costs for defence incurred by football club KSV Cercle Brugge, estimated ex aequo et bono at an amount of € 5,000.00.

19. The Appellant argues amongst others as follows to motivate its requests:

- The FIFA DRC did base its decision on documents the Appellant could not review. The Appellant in consequence claims a violation of its right to be heard.

- The contract signed on 31 July 2011 with the Player by the parties was qualified as a "scholarship contract".

- To compromise a "scholarship contract" with a young player that was never offered a professional contract cannot be considered as unusual in football business.

- The player could have disaffiliated the "scholarship contract" at all times.

- The monthly payments to the Player were only a reimbursement of expenses.

- According to these circumstances it is evident that the "scholarship contract" did not give the Player the status of a professional player but of an amateur.

- The Player was registered for the first time as a professional only on 1 July 2012 that is for the season 2012 – 2013. In this season the Player reached the age of 24 years. Therefore, the Appellant does not owe the Respondents any training compensation.

b. The Position of the Respondents

20. In its answer, the Respondents submitted the following requests:

a) The Appellant's appeal must be rejected due to the total lack of foundation and consequently be dismissed all the Appellant's requests, in both principal and subsidiary basis.

b) The three DRC's decisions dated 27 February 2014 must be entirely confirmed and Cercle Brugge KSV must be sentenced and ordered to pay to:

i. Uniao Desportiva e Recreativa de Algés the amount of EUR 10,000 plus interest at a rate of 5% p.a. on said amount as of 1 August 2011 until the date of effective payment;

ii. Sporting Clube Linda-a-Velha the amount of EUR 32,082 plus interest at a rate of 5% p.a. on said amount as of 1 August 2011 until the date of effective payment;

iii. Sport Club Praiense the amount of EUR 35,000 plus interest at a rate of 5% p.a. on said amount as of 1 August 2011 until the date of effective payment.

c) The Appellant must be confirmed as responsible for the total payment of the costs of the proceedings relative to the DRC decisions and ordered to pay the global costs of the arbitration proceedings before the Court of Arbitration for Sports.

21. In support of its requests, the Respondents presented *inter alia* the following arguments:

- The Player was registered by the Belgium Football Association as a professional during the duration of the "scholarship contract".

- It is questionable whether a 22 years old player in its season of his 23rd birthday and in his fourth season as senior could sign a scholarship agreement.

- During the season 2011/2012, the Player played 34 of the 41 official matches that Cercle Brugges' senior team played, being 31 times in the starting eleven and scoring 13 goals.

- The remuneration allegedly agreed between the parties on the "scholarship contract" prevented the Player from being under an amateur status, according with both Belgian Football Association and FIFA Regulations.

- Based on the "scholarship contract", third article, fourth paragraph, it can be concluded that there was no reimbursement but compensation, a payment or remuneration. The Appellant agreed to pay every month a fixes EUR 400, regardless of what were the player's real expenses.

- It is further far from being conceivable that a player from a professional senior team competing within the Belgian professional league had to pay from his own pocket for example his meals before and after the games or his own personal transport to away games.

- Therefore, the "scholarship contract" was a skilful artifice to try to hide the Player's remuneration. That was also the DRC's opinion.

– Additionally, according to the Belgian Football Association Rules (Article 528), the contract of a non-amateur player must not provide an annual remuneration inferior to EUR 2,047.60. The Player however earned annually EUR 4,800. Also out of this reason the Player should be considered as a professional.

– Further, it would be quite odd that a player who receives an annual salary of EUR 4,800 for the season 2011/2012 had an increase of five times that value in the same club, receiving for the seasons 2012/2013 and 2013/2014 an annual salary of EUR 24,000. Besides, the Player would have received a sign-on-fee in the amount of EUR 45,000 for the season 2012/2013 and in the amount of EUR 60,000 for the season 2013/2014.

– To summarize, the Player has to be considered as a professional already for the season 2011/2012 wherefore the Appellant owes the Respondent a training compensation.

c. The DRC-Decisions

22. As seen above, the Appellant challenged three decisions rendered by the DRC on 27 February 2014. Therein, the Appellant was condemned to pay Clube Linda-a-Velha a training compensation of EUR 32,082 plus interest, Club Uniao Desportiva e Recreativa de Alges a training compensation of EUR 10,000 plus interest and Sports Club Praiense a training compensation of EUR 35,000 plus interest.

– The DRC-Chamber formed the belief that the Player, during the span of the "scholarship contract", should already be considered as a professional in the sense of Art. 2 Para. 2 of the FIFA Regulation on the Status and Transfer of Players (hereafter referred to as "RSTP"). The DRC bases its decisions amongst other on the following considerations:

– The monthly amount of EUR 400 could not be considered, from the outset, as insufficient to cover the expenses incurred through a player's footballing activity in Belgium.

– Obviously, the Player and the Appellant signed the "scholarship contract" on 31 July 2011, *i.e.* only five months before the player turned 23. Further, during the season 2011/2012, the Player had participated in 34 out of the 41 official matches for the first team of the Appellant. Hence, in the sporting season 2011/2012, the Player had played a substantial number of matches with and was an important player for the Appellant. This fact was recognized by the Appellant itself. In the DCR's view, these sporting elements rather speak in favour of the Respondents' position that the Player should be qualified as a professional as from the beginning of the "scholarship contract".

– Besides, to underline its position, the Chamber cited a DRC decision issued on 28 July 2005 wherein it was stipulated that *"(…) the nature of a contract between a player and a club is determined by the relevant association (…)"* and that *"the autonomy of the Association must be respected by the Dispute Resolution Chamber, and therefore, the status of the registration of such player at the Association shall be taken into consideration in order to determine whether the conditions stipulating the payment of training*

compensation have been fulfilled". The Chamber thereby pointed to the player passport which was uploaded by the URBSFA in connection with the subsequent transfer of the Player from the Respondent to the Spanish club, RC Deportivo de la Coruna. In the relevant player passport it was noted that the Player was registered as a professional already during the sporting season 2011/2012.

- Further, the Chamber recalled that during the duration of the "scholarship-contract" the Player received a monthly remuneration of EUR 400. The Chamber also pointed out that the professional contract to enter into force on the first day of the season of the player's 24th birthday (season 2012/2013) provided for a gross salary of approximately EUR 24,000 per year as well as a "sign-on-fee" of EUR 45,000. In this respect, the Chamber found it worthwhile to underline that the player's monthly remuneration not only was being multiplied by five as of 1 July 2012, but that a "sign-on-fee" amounting to almost twice the amount of the yearly salary is rather unusual in player contracts. Again, bearing in mind that the Player only received a monthly salary of EUR 400 before signing the contract for the 2012/2013 and 2013/2014 sporting seasons, the Chamber formed the belief that by suddenly being awarded with such a raise in salary and a considerably high "sign-on-fee" upon signature of the second contract, it could not be excluded that the player was also compensated for accepting a lower salary in the "scholarship contract" for the season 2011/2012 as an attempt to circumvent the possible obligation of paying training compensation to the player's former clubs.

- Consequently, the Chamber concurred in the conclusion that the aforementioned provided a further indication that the Player was already a professional during the season 2011/2012.

- Based on these considerations the DRC came to the conclusion that the Player should be qualified as a professional already for the football season 2011 / 2012.

4. APPLICABLE LEX ARBITRI AND JURISDICTION

23. According to Art. 176 Para. 1 of Switzerland's Federal Code on Private International Law (hereinafter referred to as "CPIL") the provisions of the articles 176 *et seq*. CPIL as *lex arbitri* apply if the seat of the arbitral tribunal is in Switzerland and if at least one of the parties at the time the arbitration agreement was concluded was neither domiciled nor habitually resident in Switzerland. The seat of the present arbitration is situated in Lausanne, Switzerland (R28 of the CAS Code of Sports-related Arbitration, hereafter referred to as "the Code"). None of the parties are domiciled or habitually resident in Switzerland. Hence the articles 176 *et seq*. CPIL apply in the present proceeding.

24. According to Art. 182 Para. 1 CPIL the parties may govern the procedure by reference to an arbitral code of procedure or by an agreement. However, if a procedural question is neither answered by the referenced procedural rule nor a parties' agreement the arbitral tribunal has to refer to a procedural code or an arbitral code of procedure to answer the question at stake (Art. 182 Para. 2 CPIL).

25. Presently, the jurisdiction of CAS is not disputed. In fact it derives from Arts 66 and 67 of the FIFA Statutes and Art. R47 of the Code. According to Art. 66 Para. 2 of the FIFA Statutes, the provisions of the Code shall apply to the proceedings.

26. The Appeals were further filed in due time, *i.e.* within the 21-daytime limit provided by Art. 67 Para. 1 of the FIFA Statutes. CAS is therefore competent to hear the present matter and the appeals are admissible.

5. FACTS OF THE CASE

27. Before treating the legal questions of the present proceedings the Sole Arbitrator is going to determine the legally relevant facts of the case.

5.1. Undisputed facts

28. First of all, it must be determined if a procedure of taking evidence is required in regard to undisputed facts. Neither the Code, nor an agreement signed by the parties answer this question. In order to resolve this issue, the Sole Arbitrator, based on Art. 182 Para. 2 CPIL, deems the applicability of the Swiss Procedural Code (hereafter referred to as "SPC") as appropriate.

29. Pursuant to Art. 150 SPC, evidence is required to prove facts that are legally relevant and disputed. *E contrario*, no evidence is required for undisputed facts. They do not have to be proven but are accepted as formally true (cf. amongst others HASENBÖHLER F. in: SUTTER-SOMM/HASENBÖHLER/LEUENBERGER (Hrsg.), Kommentar zur Schweizerischen Zivilprozessordnung (ZPO), 2013, N. 4 zu Art. 150 ZPO).

30. The question, if a factual circumstance not contested can be qualified as not disputed in the sense of Art. 150 Para. 1 SPC has to be decided in due consideration of the specific circumstances of the case, especially of the parties' procedural behaviour and their submissions. In regard of the principle of production of evidence ("*Verhandlungsmaxime*", cf. Art. R44.1 of the Code) evidence of not contested circumstances should only be demanded in exceptional cases (cf. HAUSHEER/WALTER, Berner Kommentar zum ZGB, 2012, N 58 to Art. 8 ZGB).

5.1.1 Player's background

31. The following facts are not disputed by the parties and are thus to be considered as formally true:

- The Player was born in 1989.
- The Player was registered with Club Uniao Desportiva e Recreativa de Algés as from 8 October 2003 until 27 September 2004 as an amateur player.

- The Player was registered with Sporting Clube Linda-a-Velha as from 1 September 2008 until 13 August 2009 as an amateur player.

- The Player was registered with Sport Club Praiense as from 13 August 2009 until 30 August 2010 as an amateur player.

- As from 31 August 2010 until 24 July 2011 the Player was registered for Atletico Port as an amateur player.

5.1.2 Conclusion of the "scholarship contract"

32. It is further undisputed that the Player and the Appellant, on 31 July 2011, concluded a written contract entitled with *"Opleidingscontract"* respectively *"Contrat de Formation"*, hereafter referred to as "scholarship contract". The "scholarship contract" was concluded with the following content:

Article Deuxième: De la Durée
Le présent contrat est conclu pour une durée déterminée de une saison sportive; il prendra cours le 1er août 2011 pour se terminer de plein droit le 30 juin 2012 et ce, sans préjudice pour le Joueur de se désaffilier conformément aux normes légales et réglementaires en vigueur.
Les parties conviennent de se rencontrer trois mois avant l'échéance du présent contrat pour décider de commun accord si elles poursuivent l'une et l'autre leur collaboration voire, le cas échéant, s'il est possible pour le Cercle et le Joueur de s'engager par un contrat de sportif rémunéré (à temps partiel ou à temps plein).

Article Troisième: Des Obligations du Cercle
Pendant la durée du contrat de formation, le Cercle s'engage, en fonction des moyens dont il dispose, à ce que:
...

4.
A indemniser le Joueur quant aux frais exposés par celui-ci pour pouvoir pratiquer le sport du football et à poursuivre dans les meilleures conditions sa formation technique et physique du sport du football.
Ces frais sont établis mensuellement comme suit:
€ 300 en frais de nourriture et diététique
€ 50 en frais de transport
€ 50 en frais de matériel sportif et frais d'entretien du matériel sportif.
En toute hypothèse, les frais susmentionnés sont propres au Cercle et ils ne constituent en aucun cas quelque rémunération au sens de la législation sociale en vigueur.

5.1.3 A payment of at least EUR 400 a month

33. Besides, it is undisputed that the Player, during the sporting season 2011/2012, at least received a monthly amount of EUR 400 from the Appellant (cf. amongst other cipher 22 of the appeal brief and cipher 80 of the answer).

5.2. Disputed Facts

34. The subsequently enumerated facts are to be considered as disputed. Neither the Code nor an agreement between the parties do regulate how to appreciate disputed facts. The Sole Arbitrator therefore deems the applicability of the SPC as appropriate to answer this question.

35. According to Art. 150 SPC evidence is required to prove facts that are legally relevant and disputed. Pursuant to Art. 157 SPC the court forms its opinion based on its free assessment of the evidence taken.

36. In the following considerations the Sole Arbitrator will in consequence evaluate the evidence produced by the parties in order to determine the legally relevant facts.

5.2.1 Effective claims of the Player during the season 2011/2012

37. The Respondents and the DRC, in its challenged decisions, bring forward that the Player – during the sporting season 2011/ 2012 – acquired claims on remuneration not listed in the "scholarship contract". The DRC amongst others pointed out the following (cf. cipher II/18 of the three DRC decisions):

> *"Again, bearing in mind that the player only received a salary of EUR 400 before signing the contract for the 2012/2013 and 2013/2014 seasons, the Chamber formed the belief that by suddenly being awarded such a raise in salary and considerably high "sign-on-fee" upon signature of the second contract, it could not be excluded that the player was also compensated for accepting a lower salary in the "scholarship contract" for the 2011/2012 season as an attempt to circumvent the possible obligation of paying training compensation to the player's former club(s)".*

38. The Respondents specified:

> *"Of course, this increased salary and the colossal and disproportional "sign-on-fees" could only exist in order to compensate the player for signing a fictitious scholarship contract with a lower remuneration than the one that the player would deserve and that was actually agreed between the parties (cipher 103 of the answer)".*
>
> *"It is manifest that this was a pour strategy from the Appellant to try to avoid paying training compensation, a strategy that failed and did not pass the careful scrutiny made by the DRC (cipher 104 of the answer)".*

39. To summarize, the DRC and the Respondents hold the point of view that the Player, during the "scholarship contract", acquired claims not listed in the "scholarship contract". Claims that would be settled during the subsequent professional contracts.

40. The Appellant on the other hand only implicitly takes position to the argument of the DRC and the Respondents, as can be seen in the following statement:

> *"As stressed before, the player didn't receive any remuneration. Only a reimbursement of his expenses (cf. cipher 22 of the appeal brief)".*

a) Burden of proof

41. In a first step, it has to be determined which party bears the burden of proof concerning the title the Player legally acquired during the sporting season 2011/2012.

42. Except an agreement that would provide otherwise, the burden of proof is determined according to the applicable *lex causae*, *i.e.* the applicable substantive law (Berger/Kellerhals, International und interne Schiedsgerichtsbarkeit in der Schweiz, N 1203).

43. As it will be considered subsequently, the applicable rules of law are primary the relevant FIFA Regulations, especially Art. 2 RSTP. However, neither the RSTP nor another *in casu* applicable regulations contain a rule on the burden of proof for the present case. In particular Art. 12 Para. 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber according to which "*Any party claiming a right on the basis of an alleged fact shall carry the burden of proof*". does not apply because, pursuant to Art. 1 Para. 1 of said regulation, it only applies to procedures of the Players' Status Committee and the DRC, however not with CAS.

44. Therefore, based on Art. 66 Para. 2 of the FIFA Statutes, Swiss law shall apply. Pursuant to Swiss law, Art. 8 of the Swiss Civil Code states the general evidence regulation. Thereafter, unless a provision provides otherwise, the burden of proving the existence of an alleged fact shall rest on the party who derives rights from that fact. For lack of a *lex specialis*, this rule shall presently apply for the determination of the burden of proof in the present proceedings.

b) Contentions of the Respondents

45. Presently the Respondents – at least implicitly - claim that the Appellant, for the season 2011/2012, promised the Player a salary, respectively a higher amount of money than stipulated in the "scholarship contract".

46. This allegation is the factual basis for the Respondents to claim their right for a training compensation based on Art. 2 Para. 2 RSTP in connection with Art. 20 RSTP. The Respondents in consequence bear the burden of proof for this alleged fact.

47. In order to prove their allegations, the Respondents bring forward that the sum stipulated in the contracts for the seasons 2012/2013 and 2013/2014 were up to five times higher than the one agreed on in the "scholarship contract". The same argumentation is opined by the DRC. For them, the Respondents and the DRC, it is thus obvious that the Player, in the seasons 2012/2013 and 2013/2014, in parts, received a salary owed for the season 2011/2012.

48. The Sole Arbitrator does not share this point of view. He bases his conclusion on the following considerations:

49. If a player is contracted on an amateur basis and therefore only gets reimbursed for his football-related expenses the goal of the player and the club is always the same: to substitute the amateur-

contract with a professional one. The condition of such a substitution is evident. The player has to satisfy or outperform the expectations of his club during his amateur-contract.

50. Consequently, it is clear that if an amateur-contract gets substituted by a professional one, the salary agreed on in the latter always constitutes a certain recompense for the player's performance during the amateur-contract. However, this fact does not mean that a player - during an amateur contract - already acquires a legally enforceable right on the conclusion of a professional contract and the remunerations promised therein.

51. It is also logical that the payments stipulated in a professional-contract are much higher than the one agreed on in an amateur-contract. Thereafter an amateur player only gets reimbursed for his football-related allowances while – during a professional-contract – additionally to its football-related expenses gets paid an actual salary. Depending on the performance of the player during the amateur-contract this salary can amount to a multiple of the allowances paid during the amateur-contract.

52. Hence, in the opinion of the Sole Arbitrator, the conclusion of a high endowed professional contract after the ending of an amateur-contract is no indication in itself that parts of the salary of the professional contract constitute a postponed salary the player was already entitled to receive during the amateur-contract. Rather, other evidence would be required for such conclusion. Such evidence however was not presented by the Respondents.

53. Moreover, also the fact that the Player, during the "scholarship contract", did not have any warranted right to substitute the "scholarship contract" with a professional-contract speaks against the version of the Respondents. If the Player would not have performed well during the "scholarship contract", he would obviously not have received a professional-contract offer. Also for this reason, the Sole Arbitrator comes to the conclusion that the Player, during the duration of the "scholarship contract", did not have any entitlement on parts of the salary agreed on in the subsequent professional-contracts.

54. To sum up, the Respondents were not able to present any satisfactory evidence for their allegation that the Player, during the "scholarship contract", would have acquired an entitlement to a sum of money greater than the one stipulated in the "scholarship contract". Therefore, their aforementioned assertion has to be considered as not existing. In consequence, the Player, during the sporting season 2011/2012, was only entitled to the payments stipulated in the "scholarship contract".

5.2.2 Effective football-related expenses of the Player during the season 2011/2012

55. In their answer, the Respondents' further question that the monthly expenses of EUR 400 paid to the Player during the season 2011/2012 actually constituted an expense allowance. They question the character of said payment due to the fact that the sum was fixed regardless of the Player's actual expenses. The Respondents also pointed out that the Appellant did not have any control over the way the Player spent the paid amounts (cf. cipher 80 f. of the answer).

56. In other words, the Respondents present the point of view that the monthly paid charges would not, or only in parts, constitute a remuneration for expenses for the reason that the Appellant did not provide CAS with the effective football-related expenses of the Player during the sporting season 2011/2012.

57. The Appellant, on the other hand, alleges that it would be non-credible to dispute the character of said payment as a compensation for expenses (cf. cipher 22 of the appeal brief).

58. While asserting that the monthly paid EUR 400 remuneration would only constitute an expense allowance, the Appellant tries to establish that it did not pay any salary to the Player and it therefore would not owe a training compensation to the Respondents. The Appellant therefore bears the burden of proof for the fact that the payments of EUR 400 only constituted a compensation for expenses and should not be characterised as a salary.

59. *In casu*, the Appellant effectively failed to establish the exact amount of football-related expenses that occurred to the Player during the sporting season 2011/2012. The specific football-related expenses of the Player can therefore not be established. The consequences of this state of non-proof will be considered in the legal considerations.

60. As it will be seen in the subsequent legal considerations, it must be emphasised that the monthly paid flat rate of EUR 400 approximately corresponded with the football-related expenses of the Player during the sporting season 2011/2012.

61. The Appellant split the paid amount of EUR 400 in the following categories:

- Nutrition and diet: EUR 300

- Travel expenses: EUR 50

- Equipment and maintenance of equipment: EUR 50

a) As to the nutrition and diet expenses

62. For the Sole Arbitrator, it is quite obvious that a football player of the Jupiler League at least spends a daily surplus amount of EUR 10 on nutrition and diet in comparison to a person that does not participate in such a football-activity but rather lives an average life. This conclusion results on the one hand out of the increased calories consumption of such a player. On the other hand, it derives of the fact that a well-balanced diet, as it is required from manna athlete, is more expensive than a usual one. A monthly remuneration of EUR 300 for nutrition and diet expenses therefore seems justified.

b) As to travel expenses

63. As rightly calculated by the Appellant the monthly amount of EUR 50 awarded to the Player for travel expenses implies that the Player could spend EUR 1.60 a day on commuting. In a city

like Brugge it is doubtable that EUR 1.60 a day is an amount enough to cover the Player's daily commuting expenses caused by his football activity. In consequence, the Sole Arbitrator also deems the daily amount of EUR 1.60 for football-related travel expenses as justified.

c) As to equipment and maintenance of equipment

64. Further, the Appellant paid the Player a monthly sum of EUR 50 for equipment and maintenance of equipment. In the opinion of the Sole Arbitrator, such amount is, based on general experience of life, in every regard a justifiable amount for equipment expenses occurring to a player of the highest Belgian football league.

d) Conclusion

65. In view of the above, according to the Sole Arbitrator, the monthly paid amount of EUR 400 seems to cover approximately the football-related expenses that occurred to the Player during the sporting season 2011/2012.

66. The question if this sum of EUR 400 could be qualified as expense allowance even though the exact expenses could not have been proven by the Appellant, or, in contrast, the sum has to be qualified as salary will be answered at a later stage of this award.

6. IN THE MERITS

6.1 Applicable Law

67. Art. R58 of the Code provides the following:

"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".

68. Art. 66 Para. 2 of the FIFA Statutes states what follows:

"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

69. Presently the parties did not make an explicit choice of law. Therefore, in the merits, the various FIFA regulations and additionally Swiss law shall apply.

70. Due to the fact that the contract at the centre of the present dispute, *i.e.* the "scholarship contract", was signed on 31 July 2011, the RSTP edition 2010 applies based on Art. 26 Para. 2 RSTP in connection with Art. 29 RSTP of the edition 2010.

6.2 The nature of the "scholarship contract"

6.2.1 Legal basis for the payment of a training compensation

71. The Respondents demand from the Appellant a training compensation. They base their claim on Art. 20 RSTP in connection Art. 2 RSTP. In the opinion of the Respondents, the "scholarship contract" was a professional one in the sense of Art. 2 RSTP in connection

72. Art. 20 RSTP states what follows:

"Training compensation shall be paid to a player's training club(s): (1) when a player signs his first contract as a professional and (2) each time a professional is transferred until the end of the season of his 23rd birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player's contract. The provisions concerning training compensation are set out in Annexe 4 of these regulations".

73. Art. 2 Para. 2 RSTP again defines the notion of a professional in the sense of Art. 20 RSTP:

"A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs".

74. According to the consistent jurisprudence of the CAS, the only two relevant criteria for establishing if a player, in a certain period, has to be considered as a professional or as an amateur are – pursuant to Art. 2 Para. 2 RSTP –

(1) the question if the player was provided with a written contract; and

(2) if the player received a salary and not only a reimbursement for his football-related expenses (cf. amongst others CAS 2010/A/2069 cipher 24; CAS 2006/A/1177 cipher 25).

75. Consequently, it is not necessary to determine whether the Club benefited from the player's activity, as nothing in the RSTP indicates that the classification as a professional or amateur is subject to such a condition (CAS 2006/A/1177 cipher 27).

76. Furthermore, it is also irrelevant which status the competent national association gave to the player (in the player passport). Indeed, if the status of a player is disputed, the competent bodies – *i.e.* the DRC and afterwards the CAS – must determine the player's status without any reservation (cf. amongst others CAS 2006/A/1177, cipher 28 and CAS 2005/A/838).

77. Last but not least, there is also no room for the application of national law or national definitions that define the status of a player. The only relevant criteria to define the status of a player are the ones defined in Art. 2 Para. 2 RSTP (cf. amongst others CAS 2009/A/1781 cipher 38).

6.2.2 Written contract

78. In the season 2011/2012 the Player was undoubtedly endowed with a written contract ("scholarship contract"). The first condition of Art. 2 Para. 2 RSTP is therefore met.

6.2.3 Qualification of the payment stipulated in the "scholarship contract"

79. It is established that the Player, during the season 2011/2012, did not receive any other payment or legal right on such payment than EUR 400 each month. Besides, it is clear that the effective football-related allowances of the Player were of a maximum of EUR 400 and that the effective football-related expenses of the Player during the sporting season 2011/2012 could not have been established.

80. First, it has to be examined if a player can only be qualified as an amateur if the money he receives covers his effectively occurred football-related expenses; or, on the other hand, if it is sufficient that the amount of money the player receives corresponds approximately with the average football-related expenses that occur to a football player of the country in question. In order to answer this question one has to interpret Art. 2 Para. 2 RSTP.

81. Under Swiss law, statutes are to be interpreted in the same way as declarations of intent (cf. amongst others RIEMER H.-M., Berner Kommentar to Art. 80-89bis ZGB, N. 76). The interpretation of declarations of intent follow the principle of confidence. Thereafter, the relevant declaration has to be interpreted as it could and has to be understood by the addressee of the declaration, while considering the wording and all the relevant circumstances (cf. amongst others BUCHER E., OR Allgemeiner Teil, p. 112 f.).

82. The initial point of interpretation is therefore the wording. The wording of Art. 2 Para. 2 RSTP speaks a clear language. Thereafter, an amateur-player can only receive payment for expenses that are effectively incurred. The Appellant failed to prove the effective, football-related expenses of the Player. In consequence, the facts of affairs would have to be regarded as if the Player did not have any football-related expenses during the season 2011/2012. After a semantic interpretation, the monthly paid EUR 400 thus would have to be qualified as a proper remuneration. The wording in consequence speaks for the fact that the player was already a professional during the season 2011/2012.

83. However, the wording is only the starting point of the interpretation. As seen, the relevant circumstances, respectively the spirit and the purpose of the relevant declaration also have to be taken into account. Presently, it has to be examined if the spirit and purpose of Art. 2 Para. 2 RSTP allow the clubs to pay their amateur players at flat rates in regard of their football-related expenses without demanding the effectively occurred costs to the players.

84. The allowance of flat-rate expenses is a broadly accepted concept in various fields of law, especially in tax law. Flat-rates are created for practicability reasons in order to minimize administrative costs. They are accepted as long as they reflect to a greater or lesser extent the effectively occurred costs (cf. amongst others decision 2C_77/2013 of the Federal Tribunal issued on 06.05.2013 with further references).

85. Presently, in the Sole Arbitrator's opinion, a flat-rate concerning football-related expenses of amateurs has to be accepted as long as the flat-rate broadly reflects the average expenses of an amateur football player. To represent a different opinion would mean that an amateur player

would have to keep all his football-related receipts and that the club would have to control each of those quittances. Such an approach would not only generate a huge administrative effort for clubs not endowed with a lot of funds but also contradict common practice of amateur clubs all over the world. Such practice would hence endanger the amateur status of thousands of football players. In consequence, a flat-rate for football-related expenses therefore has to be admitted as long as it broadly reflects the average football related expenses of a player.

86. *In casu*, the monthly flat-rate of EUR 400 reflects, as seen above, the average football-related costs of the Player in the season 2011 / 2012. Hence, the amount of EUR 400 does not constitute a salary or remuneration but only a refund for football-related costs.

6.2.4 Conclusion

87. Other criteria as the remuneration and the literality of the contract, such as the performance of the player, the qualification of the contract under Belgian football rules or laws or the classification of the contract and registration of the Player through the Royal Belgium Football Association do not affect the qualification of the contract as could be demonstrated above.

88. Last but not least, also the newly initiated FIFA procedure lodged with FIFA on 24 November 2014 by the Respondents or any further request to FIFA would not change the aforementioned conclusions. The CAS is not bound by FIFA decisions and the Respondents, during the hearing, explicitly declared that their "report and request" lodged with FIFA on 24 November 2014 and also any further request to FIFA will not have any influence on the present proceedings.

89. In consequence, the Player has to be considered as an amateur during the duration of the "scholarship contract".

6.2.5 No training compensation owed

90. In consequence, the Player concluded his first professional contract at the age of 24. Hence, the Appellant does not owe any training compensation to the Respondents. Therefore, the appeal of the Appellant is fully founded as the claims of football club Sport Club Praiense, Clube Linda-A-Verha and Club Uniao Desportiva e Recreativa de Alges should have been dismissed in the first instance, which means that the challenged FIFA decisions shall be set aside.

6.3 Violation of the right to be heard

91. The Appellant brings forward that the DRC seriously violated its right to be heard. The DCR would have based its award on documentation generated by the Royal Belgian Football Federation the Appellant never had access to.

92. Even though FIFA is a Swiss private association it has to observe certain general legal principles. That is certain criteria of procedure and certain basic substantive requirements. One of those procedural criteria to be taken into account is the parties' right to be heard (cf. DERUNGS V.,

Klub- und verbandsinternes Sanktionswesen, in: KLEINER et al. (Hrsg.), Sportrecht – Band I Schwerpunkte: Grundlagen, Ausgewählte Vertragsbeziehungen, Sportler und Club im Verband, Sport und Doping, Ausgewählte strafrechtliche Aspekte, 2013). Consequently, also FIFA as a private association had to respect the parties' right to be heard in the presently challenged procedures.

93. However, in view of the outcome of the present cases the Sole Arbitrator does not have to determine if the Appellant's right to be heard was violated during the precedent FIFA-procedures since the Appellant has to be considered as fully prevailing.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeals filed by KSV Cercle Brugge on 18 July 2014 against the decisions issued by the FIFA Dispute Resolution Chamber on 27 February 2014 are upheld.

2. The decisions rendered by the FIFA Dispute Resolution Chamber on 27 February 2014 are set aside.

(…)

5. All other prayers for relief are dismissed.