Arbitration CAS 2014/A/3742 US Città di Palermo S.p.A. v. Goran Veljkovic, award of 7 April 2015

Panel: Mr Manfred Nan (The Netherlands), President; Mr Bernhard Welten (Switzerland); Mr Efraim Barak (Israel)

Football
Contract of agency
Applicable law
Validity of a contract of agency
Proportionality of the remuneration established for the services of the agent

1. **The FIFA Players' Agents Regulations (PAR) refers several times to the *"laws applicable in the territory of the association"* and that players' agents should act in compliance with such national laws. These national provisions therefore, in principle, form an integral part of the FIFA PAR. However, a distinction is to be made between the unlawful behaviour of a players' agent for which he could be disciplinarily sanctioned by a national association and the validity of an international contract that allegedly has been concluded in violation of such national provisions. With regard to the latter, national provisions other than Swiss law applicable subsidiarily to FIFA regulations should only be applied restrictively. Therefore, particularly based on article 23 of the FIFA PAR, players' agents should respect and adhere to the statutes, regulations, directives and decisions of the competent bodies of the licensing national association, as well as the laws governing job placement applicable in the territory of the association, but failure to respect such national provisions, in principle, has only national disciplinary consequences. However, to the extent necessary in respect of specific arguments put forward by a party based on national provisions, and if the CAS panel deems itself sufficiently well-informed in this respect, it can consider the direct applicability (or non-applicability) of such specific national provisions to a dispute regarding the validity of an international contract that allegedly has been concluded in violation of such national provisions.**

2. **A mandate drafted and signed by a club on its own letterhead, which complies with the form provided by articles 19(4) and 21 of the FIFA PAR and which avoids any conflict of interest as provided by article 19(8) of the FIFA PAR must be considered valid and binding on the club. Therefore, in accordance with the general principles of *bona fide* and *pacta sunt servanda,* in principle the club must fulfil its obligations pursuant to the mandate towards the agent.**

3. **There are no specific rules in the FIFA PAR on a maximum fee for a contract between a club and an agent, contrary to rules regarding the remuneration to be paid by a player to his agent. Therefore, where a club failed to provide any evidence allowing a CAS**

panel to consider the fee excessive, the remuneration established for the services of the agent must be considered as not excessive or disproportionate.

I. PARTIES

1. US Città di Palermo S.p.A. (hereinafter: the "Appellant" or the "Club") is a football club with its registered office in Palermo, Italy. The Club is registered with the Italian Football Federation (*Federazione Italiana Giuoco Calcio* – hereinafter: the "FIGC"), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: "FIFA").

2. Mr Goran Veljkovic (hereinafter: the "Respondent" or the "Agent") is a licenced players' agent of Serbian nationality.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings and the hearing. This background is set out for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be referred to, where relevant, in connection with the legal discussion.

4. On 15 November 2010, the Club and the Agent concluded an agreement (hereinafter: the "Mandate"), determining that *"*[the Club] *awards exclusive mandate to the Agent to take care Club's interests giving assistance on registration of player Mr. Milan Milanovic (31 03.1991)* [hereinafter: the "Player"]*"*. The Mandate contains, *inter alia*, the following terms:

> *"3. For his work the Agent will receive the following amounts:*
>
> *a. € 1.500.000,00 to be paid after 7 days to the receipt of International Transfer Certificate by [the Club] and after receipt of invoice and fiscal declarations from the Agent;*
>
> *b. € 500.000,00 to be paid after 60 (sixty) days from the player's 5th match in official competitions (Championship, Italian Cup, European Cups) during only the first season on which player will be registered for [the Club] and after receipt of invoice and fiscal declarations from the Agent;*
>
> *c. € 500.000,00 to be paid after 60 (sixty) days from the player's 15th match in official competitions (Championship, Italian Cup, European Cups) during only the second season on which player will be registered for [the Club] and after receipt of invoice and fiscal declarations from the Agent.*
>
> *(…)*

4. Agent declares not to have any type of relationship with the Player's Agent or representatives of [the Player] or with [the Player], raising [the Club] from every responsibility deriving from this circumstance".

5. On 9 March 2011, the Player and the Club signed a preliminary employment contract for 5 football seasons, *i.e.* valid from 1 July 2011 until 30 June 2016.

6. On 1 July 2011, the FIGC introduced new regulations in respect of the registration of players from outside the EU, based on which the Club was allegedly incapable of definitely registering the Player immediately.

7. At the end of August 2011, the Player was transferred on loan basis from the Club to AC Siena, an Italian football club.

8. On 30 August 2011, the Club and the Agent concluded a supplementary agreement (hereinafter: the "Supplementary Agreement"), determining, *inter alia*, as follows:

"[The Club] *confirms its obligation to pay the agreed commission of € 1.500.000 pursuant to clause 3.1 of the* [Mandate] *(of 15th November 2010) to be paid within 7 days by the future registration of the* [Player] *with* [the Club] *and in this respect the Club undertook to seek an agreement with another Club with whom the player could be registered with in the future (to register again the player);*

"Referring to the bonus that [the Club] *should pay to the Agent according to clause b), c), d) and e) of the* [Mandate] *signed on 15th November 210 [sic], hereby the Parties change the following conditions in this way:*

"first season" is to be intended as "Second season"

"second season" is to be intended as "third season"

"third season" is to be intended as "fourth season"

"All the others conditions of the [Mandate] *signed on 15th November 2010 which are not expressly changed by the present Agreement are still perfectly valid".*

9. On 3 January 2012, the Player and the Club entered into a definitive employment contract, valid until 30 June 2016.

10. On 18 July 2012, the Club transferred the Agent a sum of EUR 250,000.

B. Proceedings before the Single Judge of the Players' Status Committee of FIFA

11. On 24 May 2013, the Agent lodged a claim with FIFA against the Club, arguing that, although the Player had signed an employment contract with the Club, the latter had failed to respect its contractual obligations towards him since it had only paid him the sum of EUR 250,000 out of the amount of EUR 1,500,000 stipulated in the Supplementary Agreement and that, therefore, the sum of EUR 1,250,000, plus 5% interest per year, was still outstanding.

12. On 9 August 2013, the Club admitted the conclusion of the Mandate and the Supplementary Agreement, but argued that the Agent also acted on behalf of the Player and that the agreements shall therefore be considered *"invalid for being executed"* and lodged a counterclaim, by which it requested the reimbursement of the amount of EUR 250,000 already paid.

13. On 23 April 2014, the Single Judge of the Players' Status Committee of FIFA (hereinafter: the "Single Judge") passed its decision (hereinafter: the "Appealed Decision"), with, *inter alia*, the following operative part:

> *"1. The claim of the* [Agent] *is accepted.*
>
> *2. The* [Club] *has to pay to the* [Agent]*, within 30 days as from the date of notification of this decision, the total amount of EUR 1,250,000 as well as 5% interest per year on the said amount from 18 March 2013 until the date of effective payment.*
>
> *3. The counter-claim lodged by the* [Club] *is rejected".*

14. On 19 August 2014, the grounds of the Appealed Decisions were communicated to the parties providing, *inter alia*, as follows:

- Taking into account the respective submissions of the parties and the documentary evidence adduced, the Single Judge considered the Club's complaint regarding the alleged conflict of interest of the Agent by allegedly representing the Player and the Club at the same time. In this respect, the Single Judge was *"keen to emphasise that art. 19 par. 8 of the Regulations, which provides inter alia that "[a] players' agent may only represent the interests of one party per transaction", was enacted, among other things, in order to ensure that a players' agent is not remunerated twice for the services he renders in a same transaction.*
- *In continuation, the Single Judge referred to the wording of the statement of the player dated 3 October 2013 and noted that the player himself had confirmed having never been represented by the* [Agent].
- *In view of the above, the Single Judge held that, according to the documentary evidence contained in the file, the* [Agent] *clearly appears to have never represented the* [Club] *and the player in the same transaction. In this context, and while referring to art. 12 par. 3 of the Procedural Rules, the Single Judge was keen to underline that the* [Club] *had not been able to provide any convincing documentary evidence demonstrating that the* [Agent] *was also representing the player in said transaction.*
- *Consequently, and in accordance with the general principle of pacta sunt servanda, the Single Judge decided that the* [Club] *must fulfil the obligation it voluntarily entered into with the* [Agent] *by means of the agreement signed between the parties, and therefore, the* [Club] *must pay the* [Agent] *for the services he rendered in connection with the transfer of the player to the* [Club].
- *In view of all the above, the Single Judge of the Players' Status Committee decided to accept the* [Agent's] *claim against the* [Club]*, to reject the counter-claim lodged by the* [Club] *and held that the* [Club] *has to pay to the* [Agent] *a total sum of EUR 1,250,000, plus 5% interest per year from 18 March 2013 until the date of effective payment".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 9 September 2014, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter: the "CAS"), pursuant to Article R48 of the CAS Code of Sports-related Arbitration (hereinafter: the "CAS Code"). In this submission, the Club requested the matter to be referred to a Sole Arbitrator.

16. On 18 September 2014, the Agent requested the matter to be referred to a Panel of three arbitrators.

17. On 19 September 2014, the President of the CAS Appeals Arbitration Division decided to submit the present matter to a Panel of three arbitrators.

18. On 23 September 2014, the Club nominated Mr Bernhard Welten, Attorney-at-law in Bern, Switzerland, as arbitrator.

19. On 24 September 2014, the Club filed its Appeal Brief, in accordance with Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. The Club challenged the Appealed Decision, submitting the following requests for relief:

> *"1. To accept the present appeal against the Challenged Decision;*
>
> *2. to set aside the Challenged Decision;*
>
> *3. to establish that the Respondent is breach of the Mandate, the FIFA Players' Agents Regulations and the FIGC Regulations on Players' Agents;*
>
> *4. to establish that the Appellant shall not pay any amounts to the Respondent;*
>
> *5. to order the Respondent to reimburse the amount of EUR 250,000 paid by the Appellant on 18 July 2012;*
>
> *6. to condemn the Respondent to the payment in favour of the Appellant of the legal expenses incurred;*
>
> *7. to establish that the costs of arbitration procedure shall be borne by the Respondent".*

20. On 26 September 2014, the Agent nominated Mr Efraim Barak, Attorney-at-law in Tel Aviv, Israel, as arbitrator.

21. On 20 October 2014, the Agent filed its Answer, in accordance with Article R55 of the CAS Code, whereby he requested the CAS to decide the following:

> *"- In a preliminary way, to verify if the Appellant has respected the time limits for its appeal, and, in case of delay, to declare inadmissible the appeal;*
>
> *- To dismiss the appeal presented by the Appellant;*
>
> *- To confirm the decision of the Single Judge of the FIFA Players' Status Committee dated 19th August 2014;*
>
> *- To burden on the appellant all costs and legal expenses of this procedure".*

22. On 31 October and 3 November 2014 respectively, the Club informed the CAS Court Office that it preferred a hearing, whereas the Agent informed the CAS Court Office that he did not deem it necessary for a hearing to be held.

23. On 4 November 2014, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:

- Mr Manfred Nan, Attorney-at-law in Arnhem, the Netherlands, as President;
- Mr Bernhard Welten, Attorney-at-law in Bern, Switzerland, and;
- Mr Efraim Barak, Attorney-at-law in Tel Aviv, Israel, as arbitrators

24. On 10 November 2014, following the Agent's objection to the admissibility of the appeal, the CAS Court Office informed the parties on behalf of the Panel that the Statement of Appeal was filed on 9 September 2014 by the Club and that it is therefore deemed admissible since the Appealed Decision was notified to the parties on 19 August 2014.

25. On 17 November and 1 December 2014 respectively, the Agent and the Club returned duly signed copies of the Order of Procedure.

26. On 4 December 2014, upon the request of the President of the Panel and pursuant to Article R57 of the CAS Code, FIFA produced a copy of its file related to the matter.

27. On 14 January 2015, a hearing was held in Lausanne, Switzerland. At the outset of the hearing both parties confirmed that they had no objection to the constitution and composition of the Panel.

28. In addition to the Panel and Mr Brent Nowicki, Counsel to the CAS, the following persons attended the hearing:

- For the Appellant: Ms Marina Tonkova, Counsel
- For the Respondent: Mr Luca Miranda, Counsel

29. No witnesses and experts were heard. The parties had ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.

30. Before the hearing was concluded, both parties expressly stated that they did not raise any objection to the procedure adopted by the Panel and that their right to be heard had been respected.

31. The Panel confirms that it carefully heard and took into account in its discussion and subsequent deliberations all of the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

32. The submissions of the Club, in essence, may be summarized as follows:

- The Club maintains that shortly after it paid the Agent the first instalment of EUR 250,000 on 18 July 2012, it found out that the Agent had represented the interests of both, the Player and the Club in the transfer of the Player to the Club, in particular, the Club maintains that it *"knew from the media that the Respondent appeared to be an agent of the Player while he arranged for transfer of the latter to the Appellant's club"* and had carried out an *"independent investigation and revealed that already at the time the Mandate had been executed, the Player and the* [Agent] *were cooperating with each other on a constant basis"*.
- Due to the fact that this double representation in one and the same transfer was in violation of the Mandate, the FIFA regulations, the Italian regulations and normal business practice and that it therefore considered the Mandate to be null and void. The Club referred to jurisprudence of the National Court of Arbitration for Sport, affiliated to the Italian Olympic Committee in this respect.
- By paying the Agent, the Club argues that it would cooperate in such illegal scheme which could even lead to criminal proceedings being instigated against it in Italy.
- The Club also maintains that the Mandate is null and void because the Mandate was signed in violation of the mandatory forms established for such types of contracts by the FIGC.
- With reference to article 19 of the Italian Regulations, the Club maintains that the Agent should have informed the Club of any situation of conflict of interest, even potential. The Club finds that because the Agent disrespected this provision it was entitled to terminate the Mandate and to conclude that no remuneration is due.
- Finally and subsidiarily, the Club finds that the remuneration established for the services of the Agent is totally disproportionate to the scope of the services rendered by him. Therefore, the Club requests the remuneration to be reduced.

33. The submissions of the Agent, in essence, may be summarized as follows:

- The Agent denies the allegations of the Club regarding the dual representation and conflict of interest. The Agent maintains that the Club did not submit exhibits or documents, nor a request of hearing witnesses, which can prove its allegations, whereas, with reference to article 12(3) of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: the "FIFA Procedural Rules"), article 8 of the Swiss Civil Code (hereinafter: the "SCC") and article 2697 of the Italian Civil Code (hereinafter: the "ICC"), the burden of proof lies with the Club.
- Whereas the Club refers to *"several sports mass media"* to corroborate its allegations, the Club did not attach any such media publications to its Appeal Brief. Even if such media publications would have been submitted, the Agent maintains, with reference to CAS jurisprudence, that such documents will not be able to prove the alleged accusation.

- As a natural corollary, the consequence of a party's failure to prove asserted facts is the inadmissibility of the same.
- On the contrary, the Agent was able to prove that the Club had an obligation to pay the commissions agreed upon because he rendered the services agreed upon in the Mandate, which was never contested by the Club. Therefore, based on the general legal principle of *pacta sunt servanda*, the Agent maintains that the Club has to pay the amounts agreed upon.
- As to the Club's arguments in respect of article 19(7) and (8) and article 20(2) and (6) of the Italian Regulations, the Agent maintains that the National Court of Arbitration for Sport, affiliated to the Italian Olympic Committee also maintains that there needs to be sufficient probative elements to conclude that an agent represented more than one party in the same transaction.
- As to the alleged violation of mandatory FIGC forms of representation contract, the Agent argues first of all that the agreements were made on the letterhead of the Club and were duly signed by the Agent. Furthermore, the Agent submits that the Mandate as well as the Supplementary Agreement fully comply with article 19(4) and (21) of the FIFA Regulations Players' Agents (Edition 2008) (hereinafter: the "FIFA PAR").
- Finally, as to the alleged disproportionality of the agency fees, the Agent first of all refers again to the general principle of *pacta sunt servanda* and that the Club cannot ask to determine, four years after conclusion of the Mandate, that the amounts contractually agreed upon are disproportionate. The only provision that could have been invoked by the Club was article 21 of the SCC, but this provision had to be invoked within one year of conclusion of the Mandate and is therefore now inadmissible due to prescription.

V. ADMISSIBILITY

34. The appeal was filed within the deadline of 21 days set by article 67(1) FIFA Statutes (2013 edition). The appeal complied with all other requirements of article R48 of the CAS Code, including the payment of the CAS Court Office fees.

35. It follows that the appeal is admissible.

VI. JURISDICTION

36. The jurisdiction of CAS, which is not disputed, derives from article 67(1) of the FIFA Statutes, as it determines that *"*[a]*ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"* and article R47 of the CAS Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the parties.

37. It follows that CAS has jurisdiction to decide on the present dispute.

VII. APPLICABLE LAW

38. Article R58 of the CAS 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, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

39. The Club requests the application of the regulations of FIFA and the regulations adopted by the FIGC and that Swiss law shall apply complementarily. In requesting the application of the regulations of the FIGC, the Club specifically refers to article 2 of the FIFA PAR, determining that *"these regulations do not release a players' agent from his obligation to comply with the laws applicable in the territory of the association".*

40. The Agent however maintains not to be bound by the regulations of the FIGC, as he is registered as a players' agent in Serbia and is therefore subject to the regulations of the Serbian Football Association. As such, the Agent requests the primary application of the various regulations of FIFA, supplemented by Swiss law, if necessary.

41. The Panel observes that article 6 and 7 of the Mandate read as follows:

> *"6. Parties agree to adhere to the statutes, regulations, directives and decision of the competent bodies of FIFA, Confederations, and competent federations and compliance with existing laws relating to employment and any other applicable law in the territory of the federation, as the law and applicable international treaties.*
>
> *7. Any controversy related to the establishment, interpretation, execution and extinction of the relations envisaged in the present assignment, whether of a property or of a non-property nature, is devolved to the F.I.F.A. (..) bodies, competent for the resolution of controversies between Footballers' Agents and Football players (Players' Status Committee)".*

42. The Panel notes that although the parties in article 6 of the Mandate agreed to adhere to the statutes, regulations and directives of FIFA, it also refers to the statutes, regulations and directives of confederations and federations, as well as to existing laws relating to employment and any other applicable law in the territory of the federation, such as the law and applicable international treaties. As such, the parties did not specifically agree on the application of any rules and regulations or any national laws. However, in article 7 of the Mandate, the parties determined that in case a dispute would arise in relation to the Mandate, the parties would submit their dispute to the competent organs of FIFA.

43. The Panel finds that the parties, by agreeing to submit any dispute to the competent organs of FIFA, agreed on the application of the relevant rules and regulations of FIFA, including the FIFA Statutes.

44. Article 66(2) of the FIFA Statutes stipulates as 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".

45. In light of the above, the Panel is satisfied to accept the subsidiary application of Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA.

46. As to the application of the regulations adopted by the FIGC – as argued by the Club -, the Panel noted that the FIFA PAR refers several times to the *"laws applicable in the territory of the association"* and that players' agents should act in compliance with such national laws. These national provisions therefore, in principle, form an integral part of the FIFA PAR. However, the Panel finds that a distinction is to be made between the unlawful behaviour of a players' agent for which he could be disciplinarily sanctioned by a national association and the validity of an international contract that allegedly has been concluded in violation of such national provisions.

47. The Panel is hesitant to apply national provisions directly to the present dispute, in particular in respect of the (validity of the) Mandate, as the present dispute is of an international nature and the Mandate does not refer to a specific national law. Article 66(2) of the FIFA Statutes determines that CAS shall *"primarily apply the various regulations of FIFA and, additionally, Swiss Law"*. In a previous CAS Award, a CAS Panel considered that *"[w]ith this choice of law clause, the FIFA Statutes take into account an important characteristic of international sport. For, the latter is a global phenomenon which demands globally uniform standards. Only if the same terms and conditions apply to everyone who participates in organised sport, are the integrity and equal opportunity of sporting competition guaranteed"* (CAS 2006/A/1180, §7.9 with further reference to CAS 2005/A/983 & 984, §68). The Panel fully agrees with this point of view and finds that it should be restrictive in applying national provisions other than Swiss law.

48. The Panel finds that, particularly based on article 23 of the FIFA PAR, players' agents should respect and adhere to the statutes, regulations, directives and decisions of the competent bodies of the licensing national association, as well as the laws governing job placement applicable in the territory of the association, but that failure to respect such national provisions, in principle, has only national disciplinary consequences.

49. However, to the extent necessary in respect of specific arguments put forward by the Club based on national provisions, and if the Panel deems itself sufficiently well-informed in this respect, the Panel will consider the direct applicability (or non-applicability) of such specific provisions to the present dispute in more detail below.

50. Consequently, the Panel will primarily apply the rules and regulations of FIFA, in particular the FIFA PAR, and subsidiarily Swiss law, should the need arise to fill a possible gap in the various regulations of FIFA. Italian or Serbian laws and regulations are in principle not applicable, however, insofar as the Club relies on provisions of the FIFA PAR that specifically refer to the applicability of national provisions, the Panel will consider such arguments in more detail below, if needed.

VIII. MERITS

A. The Main Issues

51. In view of the above, the main issues to be resolved by the Panel are:

a) Should the Mandate be declared invalid or not binding on the Club?

b) If not, is the remuneration established for the services of the Agent disproportionate/excessive?

a) Should the Mandate be declared invalid or not binding on the Club?

52. As its primary request for relief, the Club submits that the Mandate that was concluded with the Agent and signed on 15 November 2010 is null and void for several reasons. The Club finds that if an agency contract has been concluded in contravention of regulatory requirements, the contract is to be declared null and void and the agent will no longer be entitled to claim the agreed remuneration and may even be forced to reimburse any fees that have already been paid to him.

53. The Panel first turns its attention to the submission of the Club that *"the Mandate was signed in violation of the mandatory forms established for such types of contracts by the FIGC"*.

54. The Panel notes that the Club only points out *"that the Mandate had been executed in the arbitrary form inconsistent with proforma introduced by the FIGC. This omission of the Mandate makes it incapable of being recognized under Italian law and unenforceable within the legal framework"*, without any reference whatsoever which mandatory forms are violated and why the alleged omission of the Mandate *"makes it incapable of being recognized under Italian law and unenforceable within the legal framework"*. As a matter of fact, it not only remained undisputed that the Mandate was drafted and signed by the Club itself on its own letterhead, but the Club failed to submit any documents related to the alleged prescribed form and failed to provide the Panel with any evidence to support its position. In view of the above, the Panel does not consider it necessary to apply Italian laws and regulations. Moreover, the Panel observes that the Mandate as well as the Supplementary Agreement are in compliance with article 19(4) and 21 of the FIFA PAR. As such, the Panel dismisses this argument.

55. In continuation, the Panel turns its attention to the submissions of the Club alleging that, based on media information and an own investigation, it discovered in July 2012 that the Agent who was mandated to act for the Club was already cooperating with the Player on a constant basis at the time of signing the Mandate, which should have been disclosed by the Agent.

56. The Club maintains that this dual representation is explicitly forbidden in article 4 of the Mandate and one can infer from article 19(8) of the FIFA PAR and articles 16(8), 19(7) and 20 of the Italian Regulations that dual representation or conflict of interest is indeed explicitly

forbidden; a licensed agent may only represent the interests of one party (*i.e.* a player or a club) per transaction.

57. To support its allegations, the Club - during the proceedings at FIFA - provided the Single Judge with a copy of an internet publication from Mediagol.it dated 12 December 2010 in which is referred to an interview by the Agent to the newspaper "Dnevni Mitrovica". The undisputed English translation as provided by the Club provides as follows:

"Ag. MILANOVIC "that's when born with Palermo, Juve…".

Goran Vejkovic, Fifa agent Serbia and Agent of the player Milanovic, interviewed by the newspaper "Dnevi Mitrovica", explained to Serbia Press the negotiation about the transfer of the Lokomotiv Moska's defensor in the coming months.

Palermo' history was born six months ago. The first offer often is the best. I think that it can be an important solution for the player's career, said the agent of the Serbia player '91.

Juventus? It is the other club that was interested to Milanovic and to other young players of the same club, mainly like forward. But the transfer could not done because the player were NON-EU and they could not be registered in January. Mediagol – redazione – 12/12/2013 [sic] 15:59".

58. The Club points out that it finds that the Mandate is null and void *"for the violation of the prohibition for representation of the interests of more than one party whereas in the pertinent case the* [Agent] *was an agent of both the Player and the* [Club]*".*

59. The Agent denies the allegations of the Club regarding the dual representation and conflict of interest, and maintains that the Club did not submit exhibits or documents, nor a request of hearing witnesses, which can prove its allegations, whereas, with reference to article 12(3) of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: the "FIFA Procedural Rules"), article 8 of the Swiss Civil Code (hereinafter: the "SCC") and article 2697 of the Italian Civil Code (hereinafter: the "ICC"), the burden of proof lies with the Club.

60. The Agent maintains that he has never been the representative of the Player and filed a witness statement of the Player, dated 3 October 2013, which statement – in its undisputed English translation provided by the Agent – reads as follows:

"I the undersigned Milan Milanovic (…), professional player, registered with [the Club]

State under oath the following:

1) *In all my sporting career as professional player I have never been represented by the Players' Agent, Goran Veljkovic. In particular I would point out that I have never given any mandate to Mr Veljkovic, neither written nor oral;*

2) *In the autumn 2010, before the expiring date of my employment contract with FC Lokomotiv Moscow, my parents phoned me and told me that they had been contacted by Mr Veljkovic. He told them he was representing the Italian FC Palermo, of Italian Serie A League, who was interested in recording me.*

3) The following day he phoned me. At that time I was nineteen years old, unskilled in labour contracts so I told him to talk to my parents about the details of Palermo's proposal. I trusted of them and they helped me when I signed my employment contract with Lokomotiv Moscow.

4) Mr Veljkovic met many times my parents and also the counselor [sic] of my family tolking [sic] about all the advantages for my personal career I could have had playing in Serie A and in the Palermo, very famous Club, in which had played many top level players such as Toni and Barzagli. They all took into consideration the proposal over mentioned.

5) Then I examined with my parents the Palermo's proposal who was one of the many Club interested in registering me because of the expiring date of my employment contract. All together choosed [sic] the proposal of Palermo, explained by Mr Veljkovic, which appeared to be the most convenient, and we called him to give my approval to transfer to Palermo to play in Serie A.

Palermo 3rd October 2013 Milan Milanovic".

61. The Panel observes that indeed on 15 November 2010, the Club and the Agent concluded a *"Mandate"* (the Mandate), in which the Club *"awards exclusive mandate"* to the Agent *"to take care Club's interests giving assistance on registration of* [the Player]*"*.

62. Furthermore, the Mandate provides that the Club is raised from every responsibility if the Agent already has a relationship with the Player, the Players' Agent or any other representatives of the Player.

63. The Panel notes that article 19(8) of the FIFA PAR determines the following:

> *"Players agents shall avoid all conflicts of interest in the course of their activity. A players' agent may only represent the interests of one party per transaction. In particular, a players' agent is forbidden from having a representation contract, a cooperation agreement or shared interests with one of the other parties or with one of the other parties' players' agents involved in the player's transfer or in the completion of the employment contract".*

64. The Panel observes that the positions of the parties particularly divert in respect of whether the Agent had indeed breached article 4 of the Mandate. It remained uncontested by the Club that the Agent assisted the Club in the registration of the Player with the Club.

65. That said, the question to be answered is whether between 15 November 2010 (the date of signing date of the Mandate) and 9 March 2011 (the date of conclusion of the transfer / signing of the employment agreement between the Player and the Club), the Agent had any kind of relationship with the Player or with any representative of the Player.

66. The Panel finds that in applying general procedural rules confirmed in CAS jurisprudence, article 8 of the Swiss Civil Code, respectively pursuant to article 12(3) of the FIFA Procedural Rules, the Club bears the burden of proof in order to convince the Panel that the Agent indeed acted in violation of article 4 of the Mandate.

67. The Panel observes that the Club – although allegedly aware of the alleged conflict of interest in July 2012 – did not send a cancellation letter to the Agent, but only referred to the alleged conflict of interest during the FIFA proceedings in its answer filed on 9 August 2013.

68. Furthermore, the Panel notes that the Club refers to an own investigation and to publications *"in several sports mass media sources",* arguing that on 12 December 2010 the Agent *"declared himself publicly to be a representative of the Player's interests"*, but did not file any documents – in addition to the internet publication dated 12 December 2010 during the FIFA proceedings – to corroborate its position. At the hearing, the Club – although explicitly requested by the Panel to provide information – could neither submit any details regarding its own investigation, arguing that the results of these investigations were confidential, nor could the Club provide any indication whatsoever regarding the alleged assistance of the Agent to the Player in this specific transaction or regarding the alleged (risk of) conflict of interest, in spite of being provided the opportunity to do so even at the CAS hearing.

69. On the other hand, the Agent maintains that he has never been the representative of the Player and filed a witness statement of the Player, which statement supports his contention.

70. The Panel notes that from the Player's statement it appears that the Agent acted on behalf of the Club, and that the Player was assisted and represented by his parents.

71. In continuation, the Panel observes that the Club disputed the facts and circumstances as described and evidenced by the Agent in these proceedings, but did not file documents, witness statements or any other proofs in the proceedings at CAS to refute the assertions made by the Agent and it did not take the opportunity to bring the Player to the hearing to cross-examine him, which could have been done by the Club because the Player is currently still registered with the Club.

72. As a result, the Panel has no reason to doubt the correctness of the facts and circumstances as set out by the Agent, nor does the Panel have any reason to question the reliability of the witness statement of the Player. This consideration cannot be put aside by one extract of an internet publication. In this regard, although acknowledging that the extract in the present case was published on mediagol.it, the Panel concurs with the CAS Panel in CAS 2008/A/1665, in which the panel did not consider *"the extracts of various media to be per se sufficient, complete and credible evidence. The Panel was unable to establish who the authors and what the sources and circumstances under which the news reproduced were, so as to be able to consider the veracity, accuracy and rigour of the information conveyed"*.

73. Consequently, the Panel holds that the Club did not discharge its burden of proof regarding the alleged violation of the Mandate.

74. In view of this, the question whether the Italian national provisions should be applied or whether criminal proceedings could be instigated against the Club can be left unanswered, as the Mandate (and the Supplementary Agreement) is valid and binding for the Club. Consequently, the Club is also not entitled to terminate the Mandate prematurely nor is there any ground for reimbursement of the paid amount of EUR 250,000.

75. Consequently, the Panel finds that the Mandate is valid and binding on the Club, and in accordance with the general principles of *bona fide* and *pacta sunt servanda,* the Panel concurs with the Appealed Decision insofar as it determines that in principle the Club must fulfil its obligations pursuant to the Mandate (and the Supplementary Agreement) towards the Agent.

b) If not, is the remuneration established for the services of the Agent disproportionate/excessive?

76. The Club submits that the remuneration of EUR 2,500,000 established for the services of the Agent, *"who arranged for one single transfer of the young player to the* [Club]*",* is totally disproportionate to the scope of the services rendered by him. Therefore, the Club requests the remuneration to be reduced.

77. The Agent maintains that the amounts contractually agreed upon are not disproportionate and refers to the general principle of *pacta sunt servanda*. In continuation, the Agent points out that the only provision that could have been invoked by the Club was article 21 of the SCC, but this provision had to be invoked within one year of conclusion of the Mandate and is therefore now inadmissible due to prescription.

78. The Panel points out that although article 3 b) and c) of the Mandate provide for the possibility of additional payments amounting up to a total amount of EUR 2,500,000 for the services rendered by the Agent, the scope of this appeal is limited to the amount awarded by the Single Judge, which amount is solely related to the claim of the Agent filed at FIFA based on the fixed amount stipulated in article 3 a) of the Mandate. However, the assessment of the claimed disproportionality of the fee is made by the Panel in looking at the total fee agreed between the parties, *i.e.* EUR 2,500,000.

79. As such, the Panel has to assess whether the agreed total fee of EUR 2,500,000 is excessive and/or disproportionate, as a result of which the awarded amount of EUR 1,250,000 by the Single Judge has to be reduced proportionally.

80. The Panel observes that article 20 of the FIFA PAR defines in paragraphs 1 to 4 the remuneration for agents to be paid by players. In relation to clubs, paragraph 5 states: *"A players' agent who has been contracted by a club shall be remunerated for his services by payment of a lump sum that has been agreed upon in advance"*. There are no specific rules on a maximum fee for a contract between a club and an agent, contrary to rules regarding the remuneration to be paid by a player to his agent. This has its reason mainly in the fact that a club is considered a party with detailed knowledge about players and their salaries, meanwhile players not having such specific knowledge have to be protected from a possible excessive remuneration the agent could be asking.

81. The Panel notes that in the case at hand the Club voluntary agreed to a fee for the Agent consisting of two parts, a fixed amount of EUR 1,500,000 and additionally two conditional payments of each EUR 500,000 which in total may bring the amount up to EUR 2,500,000. Such agreement corresponds to article 20 para. 5 of the FIFA PAR. Further, the Panel takes into consideration that the Club obtained the services of the Player for free; it did not pay any

transfer fee to the former club of the Player. Furthermore, the Club, agreeing to such fee when concluding the Mandate, and confirming its obligation to pay the agreed fees by means of concluding the Supplementary Agreement, failed to provide the Panel with information and explanations regarding the origin of the fee and circumstances surrounding it, preventing the Panel from obtaining evidence to consider the fee excessive.

82. In light of the above, the Panel is of the opinion that the remuneration established for the services of the Agent (the fee of EUR 1,500,000 as a fixed amount plus the two variable amounts agreed by the parties in the Mandate) corresponds to article 20 of the FIFA PAR and is not excessive or disproportionate.

83. Consequently, the Panel has no reason to differ from the considerations of the Single judge to award the Agent the outstanding amount of EUR 1,250,000 to be paid by the Club, as claimed by the Agent.

B. Conclusion

84. Based on the foregoing, and after taking into due consideration all the evidence produced and all the arguments made, the Panel finds that:

a) The Mandate is valid and binding on the Club;

b) The remuneration established for the services of the Agent is not disproportionate/excessive.

c) The Club is ordered to pay to the Agent the amount of EUR 1,250,000, with interest at a rate of 5% *per annum* as from 18 March 2013.

85. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 9 September 2014 by US Città di Palermo S.p.A. against the decision issued on 23 April 2014 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is dismissed.

2. The decision issued on 23 April 2014 by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is confirmed.

3. (…).

4. (…).

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