



Arbitration CAS 2016/A/4441 Jhonny van Beukering v. Pelita Bandung Raya & Fédération Internationale de Football Association (FIFA), award of 27 June 2016

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

Football

Contract of employment

International or national dimension of the dispute

FIFA's competence to decide on the international or national dimension of the dispute

Burden of proof under CAS case law

Rationale of the jurisdiction of FIFA's judicial instances in employment-related disputes of international dimension

Dual nationality and international dimension according to the FIFA Regulations

- 1. As a general rule, the international dimension is represented by the fact that the player concerned is not a national of the country of the association with which the relevant club is affiliated. When both parties have the same nationality, however, the dispute must be considered to be of a national or internal nature, with the consequence being that the rules and regulations of the association concerned must be applied to the matter and the deciding bodies in accordance with the relevant provisions are to rule on the issue. If FIFA's deciding body would deal with such an internal matter, the internal competence of a FIFA member association would be violated.**
- 2. FIFA DRC is entitled, *ex officio*, to decide on its own competence, including the competence to determine whether or not a dispute is of an international dimension in accordance with the FIFA Regulations. In order to decide on the existence of such international dimension, it is first necessary to establish the time that is material to this assessment. The analysis of the player's nationality should be made at the time of the event giving rise to the dispute, and not the time of the signing of the contract.**
- 3. In CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them. The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence.**
- 4. It is a necessary precondition for an effective and dynamic dispute resolution model in the world of football that the competence of FIFA and the competence of its member associations are perfectly defined and respected in order, *inter alia*, to protect the autonomy of the national associations. With a view to ensuring such clarity and predictability in regard to the division of competence, Article 24 par. 1 in combination with Article 22 lit. b of the FIFA Regulations for the Status and Transfer of Players lays**

down that the FIFA DRC is only competent to deal with employment-related disputes of an international dimension between a player and a club.

5. There may be special circumstances when the necessary international dimension exists in disputes where the player holds dual nationality notwithstanding that the parties in the dispute concerned also share the same nationality and where the dispute should therefore, *prima facie*, be considered as a purely national matter lacking the required international dimension. It is in particular a national dispute when the dispute involves primarily national aspects (e.g. the alleged non-payments by a national club of salaries to a player at the time when such player had the same nationality).

1. THE PARTIES

- 1.1 Mr Jhonny van Beukering (the “Appellant” or the “Player”) is a professional football player domiciled in Arnhem, Netherlands.
- 1.2 Pelita Bandung Raya (the “First Respondent” or the “Club”) is an Indonesian professional football club affiliated with the Football Association of Indonesia (the “PSSI”), which in turn is affiliated with the Fédération Internationale de Football Association.
- 1.3 The Fédération Internationale de Football Association (hereinafter the “Second Respondent” or “FIFA”) is the international governing body of football with its registered office in Zurich, Switzerland.

2. FACTUAL BACKGROUND

- 2.1 The elements set out below are a summary of the main relevant facts as established by the Sole Arbitrator on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (the “FIFA DRC”) on 25 September 2015 (the “Decision”), the written and oral submissions of the Appellant and FIFA and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.
- 2.2 On 31 January 2011, the Player and the Club signed an employment contract (the “Contract”), valid as from 1 March 2011 until 30 June 2014.
- 2.3 According to the Contract, the Player was, *inter alia*, entitled to receive:
 - a. EUR 17,000 net as monthly remuneration payable on the 30th day of each month;
 - b. *“accommodation in form of: House with 4 bedrooms already equipped with furniture. The Player has the right to decide whether or not to accept the housing offered as suitable. Until suitable housing as here defined has been found the Club will give accommodation I hotel suite”;*

- c. Two round trips between the Netherlands and Indonesia in economy per year.
- 2.4 On 25 May 2012, and following several reminders to the Club, the Player put the Club in default of the unpaid salaries and of housing costs for March and April 2012, and on 5 June 2012, the Player reminded the Club that it owed him three monthly salaries and EUR 4,000 in housing cost, notifying the Club that the Player considered the non-payments as a breach of contract without just cause and that, in light of such breach, he would “*have to leave Indonesia*”.
- 2.5 On 19 November 2012, the Player lodged a claim with FIFA against the Club, maintaining that the Club had breached the Contract without just cause and asking that he be paid a total of EUR 517,320 by the Club, which amount was later amended to EUR 619,320, specified as follows:
- “a. EUR 4,000 in unreimbursed housing costs;
- b. EUR in unpaid salaries for the months of March 2012 to May 2012, inclusive;
- c. EUR 424,000 in salaries payable for the months of June 2012 to June 2014, inclusive;
- d. EUR 33,320 in agent fees (EUR 3,570 due prior to the termination and EUR 29,750 due subsequent to the termination);
- e. EUR 102,000 (six months salary) to compensation for damages specific to sport”.
- 2.6 In spite of having been invited by FIFA to provide its position regarding the claim, the Club neither responded to the claim nor made any statement during the course of the investigation.
- 2.7 In analysing its competence, the FIFA DRC in the Decision first of all confirmed that “*in accordance with art. 24 par. 1 in combination with art. 22 lit. b of the Regulations on the Status and transfer of Players (2015 edition) the [DRC] is competent to deal with employment related disputed with an international dimension between a player and a club*”.
- 2.8 The FIFA DRC furthermore stressed that in accordance with the FIFA Regulations on the Status and Transfers of Players (the “Regulations”), the principles outlined in the Regulations are also binding at national level, and each association is obliged to draw up its internal regulations. The national associations, within the framework of their autonomy, are free to adapt their internal rules to the necessity and the particularity of the country concerned. The competence of FIFA therefore is restricted to international transfers and disputes.
- 2.9 As a general rule, the international dimension is represented by the fact that the player concerned is not a national of the country of the association with which the relevant club is affiliated. When both parties have the same nationality, however, the dispute must be considered to be of a national or internal nature, with the consequence being that the rules and regulations of the association concerned must be applied to the matter and the deciding bodies in accordance with the relevant provisions are to rule on the issue. If FIFA’s deciding body

would deal with such an internal matter, the internal competence of a FIFA member association would be violated.

- 2.10 The FIFA DRC went on recalling that in this case the Player holds both Dutch and Indonesian nationalities, even if the Player only acquired Indonesian nationality long after the Contract was signed by the Parties, i.e. in October 2011. However, the analysis regarding which nationality the Player holds should be made at the time of the event giving rise to the dispute, i.e. the alleged non-payment of housing costs and monthly salaries for the months of March, April and May 2012.
- 2.11 Based on these and other circumstances, the FIFA DRC came to the conclusion that at the time of the alleged non-payment of the Player's salaries for the months of March, April and May 2012, the Player was undoubtedly an Indonesian national. Due to the lack of an international dimension of the dispute between an Indonesian player and an Indonesian club, FIFA cannot intervene due to lack of jurisdiction over the matter.
- 2.11 Based on the above, the FIFA DRC dismissed the Appellant's claim as being inadmissible.

3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

- 3.1 On 9 February 2016, the Appellant filed a Statement of Appeal serving also as an Appeal Brief against the decision rendered by the FIFA Dispute Resolution Chamber (the "FIFA DRC") on 25 September 2015. The Appellant requested the appointment of a sole arbitrator. FIFA objected to the latter request and the First Respondent remained silent in this respect.
- 3.2 In accordance with Article R55 of the Code of Sports-related Arbitration (the "CAS Code"), the Second Respondent filed its Answer on 25 April 2016.
- 3.3 The First Respondent never filed any Answer within the granted deadline nor filed any communication with CAS, notwithstanding the CAS Court Office decision to finally notify the First Respondent through its national federation.
- 3.4 By letter dated 4 April 2016, the Parties were informed by the CAS Court Office that Mr Lars Hilliger, Attorney-at-Law, Copenhagen, Denmark, had been appointed as Sole Arbitrator in the case, and on 4 May 2016, the Parties were informed by the CAS Court Office that the Sole Arbitrator had decided to hold a hearing in this matter in accordance with Article R57 of the CAS Code.
- 3.5 Finally, on 13 and 18 May 2016, the Appellant and the Second Respondent, respectively, signed and returned the Order of Procedure. The First Respondent did not sign the Order of Procedure despite having being invited by the CAS Court Office to do so.

4. HEARING

- 4.1 A hearing was held on 31 May 2016 in Lausanne, Switzerland.
- 4.2 The Appellant was represented at the hearing by his counsel, Mr Wil van Megen, and by his brother, Mr Dennis van Beukering, acting as translator for the Appellant. The Second Respondent was represented by Mr Mario Flores Chemor and Mr Hugh Kisielewski.
- 4.3 The First Respondent was not present at the hearing despite having been duly convened by the CAS Court Office. In accordance with Article R57 of the Code, the Sole Arbitrator decided to proceed with the hearing and render this Award.
- 4.4 The Appellant and the Second Respondent confirmed that they did not have any objections to the appointment of the Sole Arbitrator.
- 4.5 The Appellant was given the opportunity to answer questions from the Second Respondent and the Appellant and the Second Respondent had ample opportunity to present their cases, submit their arguments and answer the questions posed by the Sole Arbitrator. After the final submissions, the Sole Arbitrator closed the hearing and reserved his final award. The Sole Arbitrator heard carefully and took into account in his subsequent deliberation all the evidence and arguments presented by the Appellant and by FIFA although they have not been expressly summarised in the present Award. Upon closure, the Appellant and the Second Respondent expressly stated that they did not have any objections in respect of their right to be heard and to be treated equally in these arbitration proceedings.

5. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

- 5.1 Article R47 of the CAS Code states as follows: *“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body”*.
- 5.2 With respect to the Decision, the jurisdiction of the CAS derives from Article 67 of the FIFA Statutes (2015 edition) in force at the time of the FIFA DRC rendering the Decision. In addition, neither the Appellant nor the Respondents objected to the jurisdiction of CAS, and the Appellant and the Second Respondent confirmed the CAS jurisdiction when signing the Order of Procedure.
- 5.3 The Decision was notified to the Appellant on 22 January 2016, and the Appeal was lodged on 9 February 2016, i.e. within the statutory time limit set forth in Article 67 of the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal serving as the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

- 5.4 It follows that the CAS has jurisdiction to decide on this Appeal and that such Appeal is admissible.
- 5.5 Under Article R57 of the CAS Code, the Sole Arbitrator has full power to review the facts and the law and may issue a de novo decision superseding, entirely or partially, the decision appealed against.

6. APPLICABLE LAW

- 6.1 Article R58 of the CAS Code states as follows: *“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”*.
- 6.2 The Sole Arbitrator notes that the Appellant, in addition to the application of the various regulations of FIFA and, additionally, Swiss law and EC law, refers to the national Indonesian and national Dutch laws regarding requirements for obtaining nationality.
- 6.3 The Sole Arbitrator finds that the dispute at hand shall be decided based on the various regulations of FIFA and, additionally, Swiss law.

7. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

- 7.1 The following outline of the Appellant's and of the Second Respondent's requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by them. The Sole Arbitrator, however, has carefully considered all the submissions and evidence filed by the Appellant and by FIFA with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

7.2 The Appellant:

- 7.2.1 In his Statement of Appeal serving as Appeal Brief of 9 February 2016, the Appellant requested the following from the CAS:
- 1) To annul the decision of the FIFA DRC and replace it with a new decision indicating that there is an international dimension according to the FIFA Regulations and that the Appellant's request before the FIFA DRC is admissible.
 - 2) To decide the Appellant's initial claim or to refer the case to FIFA in order to make a decision on the merits of the case.
 - 3) To award the Appellant the amount of EUR 517,320 under the Contract, as follows:
 - a. *“EUR 4,000 in unreimbursed housing costs;*
 - b. *EUR 55,000 in unpaid salaries for the months of March 2012 to May 2012, inclusive;*

- c. EUR 425,000 in salaries payable for the months of June 2012 to June 2014, inclusive;
 - d. EUR 33,320 in agent fees (EUR 3,570 due prior to the termination and EUR 29,750 due subsequent to the termination);
 - e. EUR 102,000 (six months salary) to compensation for damages specific to sport;
 - f. Interest in an amount of not less than 5% per annum in respect of the amount due calculated as from the dates the respective amounts fell due".
- 4) To grant an order that the Respondents shall be liable for all costs and expenses incurred by the Appellant in lodging this Appeal, including the costs and expenses of the CAS.

7.2.2 In support of his requests for relief, the Appellant submitted, *inter alia*, as follows:

- a) When signing the Contract with the First Respondent on 31 January 2011, the Player was indisputably of Dutch nationality only.
- b) By mistake, the Appellant in the Contract was registered as "Indonesian"; however the passport number included in the Contract is the number of the Appellant's Dutch passport. Such mistake does not affect the nationality of the Player.
- c) It was also a mistake with no legal effect when the former counsel for the Appellant stated during the proceedings before FIFA that the Appellant had obtained dual citizenship.
- d) The Appellant never acquired Indonesian nationality, and the case at hand therefore does have an international dimension in accordance with the FIFA Regulations.
- e) The Appellant never fulfilled the mandatory requirements according to Indonesian national law in order to obtain Indonesian nationality; *inter alia*, at the time where he allegedly obtained such nationality, the Appellant a) had not "*resided in Indonesian territory for at least five consecutive years or at least ten years intermittently*", b) was not "*able to speak Bahasa Indonesia and acknowledges the state basic principles of Pancasila and the 1945 Constitution*" and c) did not "*relinquish any other citizenship*".
- f) Indonesian national law prohibits double nationality and, thus, it is not possible to obtain Indonesian nationality if obtaining such nationality would result in double citizenship for said person.
- g) The Appellant indisputably kept his Dutch nationality and passport, which he used for travelling, just as the Appellant kept requesting visas for his stay in Indonesia, which would not have been possible if the Appellant had obtained Indonesian citizenship.
- h) Under any circumstances, it must be emphasised that having a passport of a certain country does not prove that someone is a national of said country.

- i) In any case, according to Dutch national law, the voluntary acceptance of a foreign nationality will have the immediate effect of loss of Dutch nationality for the person in question. The Appellant never lost his Dutch nationality.
- j) Furthermore, the Appellant's player passport only states that the Player is of Dutch nationality.
- k) In any case, it is outside the powers of FIFA to determine someone's nationality in order to deny competence, especially in a case like this where the First Respondent never objected to the international dimension of the case.
- l) The fact that the DRC on its own initiative investigated the question of the Player's nationality is an infringement of the principle of due process.
- m) In any case, and in accordance with the FIFA Regulations, the international dimension needed for FIFA to be competent to deal with the matter explicitly refers to nationality and to registration.
- n) It is obvious that there is an international dimension in this particular case since it concerns a dispute regarding a Dutch player and an Indonesian club, and FIFA was therefore competent to decide the case.

7.3 The Respondents

7.3.1 As already mentioned above, the First Respondent never filed any answer within the granted deadline. In its Answer of 25 April 2016, the Second Respondent requested the following from the CAS:

1. *“That the CAS rejects the appeal at stake and confirms the presently challenged decision passed by the Dispute Resolution Chamber on 25 September 2015 in its entirety.*
2. *That the CAS orders the Appellant to bear all the costs of the present procedure.*
3. *That the CAS orders the Appellant to cover all legal expenses of FIFA related to the proceedings at hand”.*

7.3.2 In support of its requests for relief, the Second Respondent submitted, *inter alia*, as follows:

- a) First of all, it is undisputed that the FIFA DRC, which forms part of a private dispute resolution of a Swiss association, *i.e.* FIFA, founded in accordance with the Swiss Civil Code, is, as a general rule, competent to deal with employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair process and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement.

- b) It follows, *a contrario sensu*, that every such dispute involving a player who is not a foreigner in the country where the club is registered and said club must be considered as a purely national matter lacking the required international dimension. A case only has an international dimension if the parties do not share a common nationality, which the FIFA DRC was entitled to investigate ex officio without infringing the principle of due process in any way.
- c) If FIFA's decision-making bodies would adjudicate on a national dispute, the internal competence of FIFA's member associations would be violated. Indeed, the competence of FIFA and the competence of its member associations need to be perfectly defined and respected in order to protect their own respective autonomy.
- d) The Second Respondent notes that even if the Appellant submitted before the FIFA DRC that he "*does not dispute the fact that he obtained dual citizenship*", the Appellant is now submitting that he neither holds nor ever held Indonesian nationality, and the FIFA DRC was consequently wrong in concluding that the dispute between the Appellant and the First Respondent was a purely national matter including two Indonesian parties.
- e) Apparently, the Appellant alleges that he never fulfilled the requirements for obtaining Indonesian nationality, which, according to the Appellant, carries the consequence that he actually never obtained such nationality legally.
- f) The Second Respondent disputes such argumentation.
- g) Neither of the Parties involved in these procedures are in a position or legitimately authorised to judge whether the Indonesian authorities correctly followed their own procedure in order for the Appellant to become Indonesian.
- h) While it is not within the scope of the present procedures to analyse whether the Indonesian authorities correctly applied their own law, the essential issue at stake here is only to determine if the Appellant is an Indonesian national as far as the relevant Indonesian authorities are concerned, in view of the fact that the Indonesian authorities alone are in a position to recognise the Appellant as such.
- i) According to several official documents issued by the national Indonesian authorities, the Appellant was granted Indonesian nationality and subsequently swore the national Oath in order to fulfil the requirements for obtaining the nationality legally.
- j) Furthermore, the Appellant indisputably holds an Indonesian passport, which, according to Indonesian national law, is only issued to Indonesian citizens.
- k) The fact that the Appellant apparently still also holds Dutch nationality does not and cannot affect his Indonesian nationality vis-à-vis the only authorities entitled to recognise him as a national of Indonesia.

- l) Moreover, after having been granted Indonesian nationality, the Appellant actually even played for the Indonesian national football team in official matches, thus also gaining a sporting benefit from the Indonesian nationality.
- m) Furthermore, the Appellant never documented that he actually renounced his Indonesian nationality after obtaining it in accordance with the official Indonesian documents stating so.
- n) The fact that the Player is apparently registered as a Dutch citizen in his player passport does not have any consequences with regard to the legal nationality of the Player, since, *inter alia*, the player passport is in general issued by the national federations and in fact only indicates that the Player at the time of issue of said passport (also) holds Dutch nationality, which is undisputed during these proceedings.
- o) Finally, it must be stressed that in accordance with firm jurisprudence from FIFA and the CAS, the relevant moment to determine whether a dispute has an international dimension in the sense of the Regulations is the moment when the dispute arises.
- p) In this case, the dispute arose due to the alleged non-payment by the First Respondent of the Appellant's salaries for the months of March, April and May 2012, i.e. after the Appellant had already acquired Indonesian nationality in October 2011.
- q) Thus, since the Appellant held Indonesian nationality at the time when the dispute arose and since the First Respondent indisputably is an Indonesian football club, the FIFA DRC was correct in deciding that it was not competent to decide on the matter at hand due to the lack of an "international dimension" in the case.

8. DISCUSSION ON THE MERITS

- 8.1 Initially, the Sole Arbitrator notes that is undisputed between the Appellant and FIFA that in accordance with Article 24 par. 1 in combination with Article 22 lit. b of the Regulations, the DRC is competent to deal with employment-related disputes with an international dimension between a player and a club.

Article 22 of the Regulations, states as follows:

"Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

[...]

b) employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement.

[...]"

- 8.2 Based on that, it is furthermore undisputed by the Appellant and by FIFA that the FIFA DRC is only competent to deal with the matter at hand if the case is found to be a case of an international dimension.
- 8.3 While it is undisputed by the Appellant and the Second Respondent that the Appellant, throughout the time he spent with the First Respondent, apparently held Dutch nationality, they are not in agreement about whether the Appellant during this stay with the First Respondent (also) obtained the Indonesian nationality and, in the affirmative, was still holding such Indonesian nationality at the relevant time of this dispute.
- 8.4 As a consequence, and since it is undisputed that the First Respondent is an Indonesian football club, the Appellant and FIFA are not in agreement about the existence of such international dimension in this particular case and, accordingly, not in agreement about the competence of the FIFA DRC, and subsequently of the CAS, to decide on the substance of the Appellant's claim against the First Respondent.

Thus, the main issue to be resolved by the Sole Arbitrator is:

- a) Was the FIFA DRC competent to decide on the substance of the Appellant's claim against the First Respondent, and, in the affirmative, what should be the consequences?
- a. Was the FIFA DRC competent to decide on the substance of the Appellant's claim against the First Respondent, and, in the affirmative, what should be the consequences?**
- 8.5 Initially, the Sole Arbitrator notes that the FIFA DRC is entitled, *ex officio*, to decide on its own competence, including the competence to determine whether or not a dispute is of an international dimension in accordance with the Regulations.
- 8.6 In order to decide on the existence of such international dimension in this particular case, it is first necessary to establish the time that is material to this assessment.
- 8.7 In connection with that, the Sole Arbitrator notes that it is undisputed between the Appellant and FIFA that at the time of signing the Contract with the First Respondent, i. e. in January 2011, the Appellant held Dutch nationality only.
- 8.8 However, the Sole Arbitrator is in agreement with the FIFA DRC in its decision that the analysis of the Appellant's nationality should be made at the time of the event giving rise to the dispute, and not the time of the signing of the Contract.
- 8.9 In this particular case, the events giving rise to the dispute are the alleged non-payments of costs and salaries to the Appellant for the months of March, April and May 2012, which, according to the Contract, fell due "*on 30th date of each month*", for which reason the Sole Arbitrator considers this to be the relevant time for the analysis of whether or not this case is of a international dimension in accordance with Article 22 of the Regulations.

- 8.10 During the proceedings, the Second Respondent has, *inter alia*, produced a copy of a Presidential Decree of the President of the Republic of Indonesia, dated 19 August 2011, according to which the Appellant was granted the application for Indonesian citizenship, subject to, *inter alia*, the Appellant reading an “*oath or pledge allegiance before the officer within their domicile*”. Furthermore, a document named “minutes of Oath”, dated 20 October 2011, was filed, according to which the Appellant’s application “*for becoming an Indonesian citizen has been granted*” and the Appellant has taken the Oath/pledge of allegiance, necessary in order for the Appellant to obtain Indonesian citizenship.
- 8.11 Furthermore, it is undisputed between the Appellant and FIFA that the Appellant did in fact obtain an Indonesian passport, just as the Appellant played official matches for the Indonesian football team following the above-mentioned events.
- 8.12 Based on that, and since the Sole Arbitrator finds no basis for doubting or disregarding the application and interpretation by the Indonesian national authorities of applicable national rules and regulations governing the procedure for obtaining Indonesian citizenship, the Sole Arbitrator finds sufficient grounds for establishing that the Appellant did in fact obtain Indonesian citizenship in October 2011 at the latest.
- 8.13 Thus, the Sole Arbitrator finds, *inter alia*, that there are no grounds for attributing weight to the Appellant’s unsubstantiated allegations that it was merely a pro forma citizenship for the purpose of obtaining permission to play for the Indonesian national football team. Nor is it possible in any way whatsoever to attribute weight to the Appellant’s allegation that he did not understand that he would actually obtain Indonesian citizenship through this process. Furthermore, the Sole Arbitrator finds it of no relevance that the Appellant’s player passport states that he is of Dutch nationality as such a statement does not rule out the possibility that the Appellant may also have obtained Indonesian citizenship.
- 8.14 After having concluded that the Appellant did in fact obtain Indonesian citizenship in October 2011 at the latest, and considering the Appellant’s allegations on this issue, it is relevant to address the question of whether the Appellant may be assumed to have renounced the citizenship subsequently by not fulfilling the necessary requirement, *inter alia* by not renouncing his Dutch nationality.
- 8.15 In that connection, the Sole Arbitrator finds that the Appellant has failed to discharge the burden of proof to prove that he had effectively renounced the Indonesian citizenship by not fulfilling the necessary requirements, *inter alia* by not renouncing his Dutch nationality or otherwise.
- 8.16 By taking that view, the Sole Arbitrator refers to the general legal principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact must discharge the burden of proof, proving that the alleged fact is as claimed.
- 8.17 The Sole Arbitrator further notes that this is in line with Article 8 of the Swiss Civil Code (“Swiss CC”), which provides as follows:

“Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact”.

- 8.18 As a result, the Sole Arbitrator reaffirms the principle established by CAS jurisprudence that *“in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence”* (cf. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).
- 8.19 As it can be assumed in these circumstances that the Appellant, at the relevant time when the dispute arose, had obtained and held Indonesian citizenship, it is up to the Sole Arbitrator to assess whether the fact that the Appellant at the same time held Dutch nationality provides the necessary international dimension to the case in order for the FIFA DRC to be competent to decide the case.
- 8.20 The Sole Arbitrator initially notes in this connection that it is a necessary precondition for an effective and dynamic dispute resolution model in the world of football that the competence of FIFA and the competence of its member associations are perfectly defined and respected in order, *inter alia*, to protect the autonomy of the national associations.
- 8.21 With a view to ensuring such clarity and predictability in regard to the division of competence, Article 24 par. 1 in combination with Article 22 lit. b of the Regulations lays down that the FIFA DRC is only competent to deal with employment-related disputes of an international dimension between a player and a club.
- 8.22 According to the Commentary on the Regulations for the Status and Transfers of Players, *“the international dimension is represented by the fact that the player concerned is a foreigner in the country concerned”*.
- 8.23 According to the Second Respondent, it follows, *a contrario sensu*, that every dispute involving a player who is not a foreigner in the country where the club is registered and said club must be considered as a purely national matter lacking the required international dimension.
- 8.24 The Sole Arbitrator initially notes that a dispute between a player and a club, as a general rule, must be assumed to have an international dimension according to the Regulations unless the parties share the same nationality.
- 8.25 In the present case, it has already been established that the Appellant and the First Respondent share Indonesian nationality, the effect of which therefore is, *prima facie*, that the dispute must be considered as a purely national matter lacking the required international dimension.
- 8.26 However, since it is undisputed that the Appellant, at the relevant time, apparently also held Dutch nationality, at least as the case has been presented to the Sole Arbitrator, the question

arises whether the Appellant's Dutch nationality implies that the dispute must be considered to have the international dimension needed for FIFA to be competent to deal with the matter.

- 8.27 The Sole Arbitrator does not deny the possibility that there may be special circumstances when the necessary international dimension, see Article 24 par. 1 in combination with Article 22 lit. b of the Regulations, exists in disputes where the player, as is apparently the case here, holds dual nationality notwithstanding that the parties in the dispute concerned also share the same nationality and where the dispute should therefore, *prima facie*, be considered as a purely national matter lacking the required international dimension.
- 8.28 The Sole Arbitrator finds, however, that this is not the case in the matter at hand.
- 8.29 In this context, the Sole Arbitrator attaches particular importance to the fact that the present dispute involves primarily national aspects since the dispute concerns the alleged non-payments by an Indonesian club of salaries to the Appellant at a time when the Appellant held Indonesian citizenship, resided in Indonesia and participated actively in official matches as a player on the Indonesian national football team. The Sole Arbitrator also notes that the Appellant, even after having lodged his claim with FIFA, continued to use his Indonesian nationality for playing official matches for the Indonesian national football team, which merely accentuates the Appellant's national affiliation still further.
- 8.30 In the light of these circumstances, the Sole Arbitrator finds that it would be illogical and constitute a violation of the competence of the national football association if the mere fact that the Appellant incidentally also continues to hold Dutch nationality would determine that the dispute before us should be deemed to be of a sufficient international dimension to fall within the competence of FIFA in accordance with Article 24 par. 1 in combination with Article 22 lit. b of the Regulations.
- 8.31 Based on the foregoing, the Sole Arbitrator finds that the FIFA DRC was correct in considering the dispute as a purely national matter lacking the required international dimension.

9. SUMMARY

- 9.1 Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Sole Arbitrator finds that the FIFA DRC was right in deciding that the dispute comes under the jurisdiction of the national Indonesian association due to the lack of international dimension, and FIFA is consequently not competent to intervene due to lack of jurisdiction over the matter.
- 9.2 The Appeal filed against the Decision is therefore dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 9 February 2016 by Mr Jhonny van Beukering against the Decision rendered by the FIFA Dispute Resolution Chamber on 25 September 2015 is dismissed.
2. The Decision rendered by the FIFA Dispute Resolution Chamber on 25 September 2015 is confirmed.
3. (...).
4. (...).
5. All further and other requests for relief are dismissed.