Arbitration CAS 2016/A/4450 Iván Bolado Palacios v. PFC CSKA Sofia, award of 24 January 2017

Panel: Mr Manfred Nan (The Netherlands), Sole Arbitrator

Football
Termination of contract of employment between a player and a club by mutual agreement
Distinction between CAS jurisdiction and admissibility of the appeal
Determination of the agreement governing the dispute between the parties
Competence of the FIFA DRC to deal with the player's claim and autonomy of the arbitration agreement
Determination of the compensation due

1. **The jurisdiction of CAS derives from Article 67(1) of the FIFA Statutes (edition 2015). The issue whether the appellant could wait to file an appeal until he received the grounds of the appealed decision or whether he had to file an appeal within 21 days of notification of the operative part of the appealed decision, *i.e.* what is the *dies a quo* of the deadline to file an appeal is not related to the jurisdiction of CAS, but rather to the admissibility of the appeal. In any event, the argument of one of the party that FIFA was not competent to deal with the matter, does not prevent CAS from accepting jurisdiction. Articles 15(2) and 16(13) of the FIFA Procedural Rules explicitly provide that the time limit to lodge an appeal begins upon receipt of the motivated version of the appealed decision i.e. not upon receipt of the operative part of the appealed decision.**

2. **A termination contract entered into between a player and a club does not leave room for any other interpretation that the parties intended to end the employment relationship by mutual agreement. Furthermore, in the absence of any counter-evidence presented by the club, a settlement agreement entered into between the parties following the club's failure to comply with the termination agreement is to be considered validly concluded. Accordingly, since the club failed to comply with both the termination contract and the settlement agreement, the player was entitled to claim damages on the basis of the second contract of employment concluded by the parties, as was specifically mentioned in the termination contract which therefore governs the dispute between the parties.**

3. **According to Swiss Federal Tribunal, an arbitration agreement is independent from the main contract. This "seperability presumption" is a generally accepted principle in international arbitration. It means that an international arbitration agreement is almost invariably treated as presumptively "seperable" or "autonomous" from the commercial or other contract within which it is found. As a result, by signing a termination contract prevailing on the previous contracts concluded between a player and a club, the parties agreed and clearly expressed their mutual intention and will to**

grant the player the right to resort to the FIFA competent bodies and to abandon the jurisdiction of the State court or of the association's arbitration body as mentioned in the previous contracts even though the terms of the termination contract were finally not complied with.

4. **By failing to pay the agreed contractual amount to the player in due time and by signing the termination agreement, the club acknowledged its responsibility in the premature termination of contract. The compensation to be paid to the player needs to be based on the financial obligations deriving from the governing contract concluded by the parties. In principle, a CAS panel is limited to the scope of the previous litigation. As for the compensation for breach of contract to be paid by the club, article 17(1) of the FIFA Regulations on the Status and Transfer of Players and the principle of "positive interest" are applicable.**

I. PARTIES

1. Mr Iván Bolado Palacios (the "Appellant" or the "Player") is a professional football player of Spanish nationality.

2. Professional football club CSKA AD Sofia (the "Respondent" or the "Club") is a football club with its registered office in Sofia, Republic of Bulgaria. The Club is registered with the Bulgarian Football Union (the "BFU"), which in turn is affiliated to the Fédération Internationale de Football Association ("FIFA").

II. FACTUAL BACKGROUND

A. Background Facts

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

4. On 28 February 2012, the Player and the Club entered into an employment contract (the "Spanish Contract") in the Spanish language via electronic mail, valid from 28 February 2012 until 30 June 2013. The Spanish Contract was signed by both parties and by Mr Joaquin Bárcena Uriarte (the "Player's Agent"). The Spanish Contract was uploaded by the Club in FIFA's Transfer Matching System for the issuance of the relevant International Transfer Certificate (the "ITC").

5. The Spanish Contract – in a free translation into English provided by the Player that was not disputed by the Club – contains, *inter alia*, the following relevant terms:

"AGREEMENTS, AGREEMENTS [sic] *AND CLAUSES*

Second: *Signing bonus: Season 2.011- 2.012: four monthly installments of € 18,000 net each (March, April, May and June 2012) totalling € 72,000 net, each payable on the eighth day of the aforementioned months.*

2.012-2013 Season: ten monthly instalments of € 20,000 net each, payable on the 8th day of the corresponding month, totalling € 200,000 net for the 2012-2013 season. In the event that the PLAYER's performance was deemed as high and positive, the monthly instalments shall be increased by € 3,000 net each.

Tenth: *In the event of repeated failure by the CLUB to pay up to three monthly instalments and bonus payments to which the PLAYER is entitled under the present agreement, the PLAYER may terminate the contract with the CLUB, and the latter may not raise any objections. In so doing, the PLAYER does not waive any rights he is entitled to as a consequence.*

Eleventh: *The parties agree to submit any dispute that may arise concerning the interpretation or breach of this contract to the courts of Santander".*

6. On 1 March 2012, the Player and the Club entered into another employment contract dated 28 February 2012 (the "Bulgarian Contract") in the Bulgarian language, valid from 28 February 2012 until 30 June 2013. The Employment Contract was signed in Sofia by both parties and by the Player's Agent.

7. The Bulgarian Contract – in a free translation into English provided by the Player that was not disputed by the Club – contains, *inter alia*, the following relevant terms:

"III.1.2. Remuneration under item III.1.1 be paid to the player as follows:

From 28.02.2012 to 30.06.2012 – 18,000 € (eighteen thousand) Euros-net, payable on every 25th day of the month, following the month for which it is due.

As of 01.07.2012, the monthly remuneration changes to 20,000 € (twenty thousand) Euros.

In a case that the sporting and technical management is satisfied with the performances of the PLAYER, his monthly salary may be increased with 3,000 € (three thousand) Euros-net from the moment of rendering a decision by the sports and technical management.

XIII.3 The disputes arising between the parties in relation with the performance or the interpretation of the contract shall be settled through negotiations, by reaching a written agreement between them. If no agreement is reached, the dispute shall be referred for settlement to the Arbitration Committee (the Arbitration Court) of BFU".

8. On 14 March 2012, the Player sustained an injury during his first official match for the Club. The Player maintains that, as from this moment, the Club failed to assist him and did not comply with its financial obligations towards him.

9. Because of the injury, the Player underwent a knee surgery in Turkey with the permission of the Club. The Club allowed the Player to recover outside Bulgaria until and including 8 July 2012.

10. On 22 July 2012[1], the Player, the Club and the Player's Agent entered into a termination contract (the "Termination Contract"), which – in a free translation into English provided by the Player that was not disputed by the Club – contains, *inter alia*, the following relevant terms:

"Whereas, on the date of the heading, the CLUB, the PLAYER and the AGENT entered into an agreement to terminate the contract signe [sic] *in Sofia on 28 February 2012 in accordance with the following*

AGREEMENTS, AGREEMENTS [sic] *AND CLAUSES*

First: According to clause tenth of the contract signed in Sofia on the twenty-eight of February two thousand and twelve, the PLAYER is no longer under contract and is thus relieved from ALL obligations towards the CLUB and the LATTER undertakes to enable the issuance of the ITC where either the PLAYER or the AGENT so requests.

Second: The compensation for termination is set at SEVENTY THOUSAND (€ 70,000) EURO NET, made up of the following amounts:

- *Forty thousand (€ 40,000) euro net as compensation for the PLAYER;*
- *Twenty thousand (€ 20,000) euro net as compensation for the AGENT;*
- *Six thousand (€ 6,000) euro net as reimbursement to the AGENT of the invoices paid for the player's stay at Hotel MIM in Istanbul in relation to the surgery performed in that same city, which should have been borne by the CLUB but was paid by the AGENT so that the player would be allowed to leave the hotel.*
- *Four thousand (€ 4,000) euro net as compensation for damages caused as a consequence of the repeated failures by the CLUB to pay the agreed monthly instalments and bonuses.*

Third: Payment of the amounts set out above must be made as lump sum or progressively but IN ANY EVENT before 15 August 2012. Where the SEVENTY THOUSAND (€ 70,000) EURO NET payment has not been completed by that date, this contract shall become null and void and the PLAYER and his AGENT will proceed to submit the corresponding claim before the FIFA competent bodies, such as the Players' Status Commission and the DRC, requesting that the CLUB complies with all the financial obligations deriving from the contract of twenty eight of February of two thousand and twelve signed in Sofia and at that currently amount to THREE HUNDRED AND EIGHTEEN THOUSAND (€ 318.000) EURO NET plus any damages caused. […]".

11. On 14 September 2012, since the Club allegedly failed to comply with the terms of the Termination Contract, the Player, the Club and the Player's Agent signed a new agreement (the "Settlement Agreement"), which – in a free translation into English provided by the Player that was not disputed by the Club – contains, *inter alia*, the following relevant terms:

[1] The parties agree that the English translation of the Termination Contract is mistakenly dated 28 February 2012.

"As agreed on the phone earlier this morning, please find below the agreed arrangements as of today.

[…]

FIRST: Let Dimiter know that Ivan and I have submitted the claim to the FIFA General Secretary, Mr. Jerome Volker, but of course should the agreements and payments put forward below be complied with, it is not too late to withdraw it.

[…]

In short, before 27 September 2012 full payment of EIGHTY SIX THOUSAND (€ 86,000) EURO NET shall be made […]".

B. Proceedings before the Dispute Resolution Chamber of FIFA

12. In the meantime (*i.e.* before the Settlement Agreement was concluded), on 8 August 2012, since the outstanding amounts allegedly remained unpaid by the Club, the Player lodged a claim with the FIFA Dispute Resolution Chamber (the "FIFA DRC") against the Club, which claim was received by FIFA on 13 August 2012. The Player's claim was amended twice, resulting in a final claim for payment of EUR 288,000, plus interest of 5% *p.a.* and sporting sanctions to be imposed on the Club. In particular, the Player claimed:

- EUR 72,000 net, as outstanding remuneration, corresponding to the salaries of March, April, May and June 2012;
- EUR 200,000 net, as compensation, corresponding to the remuneration agreed for the 2012-2013 season;
- Damages caused to the Player as a result of the Club's failure to pay the outstanding salaries;
- EUR 10,000 for damages;
- To suspend the Club from participating in all competitions until payment of the due amount and compensation for damages caused;
- EUR 6,000 corresponding to the incurred costs for the surgery performed on his knee.

13. The Club primarily challenged the competence of the FIFA DRC and subsidiarily rejected the claim lodged by the Player, alleging that it was in fact the Player who terminated the employment relationship on 9 July 2012 without notice and without just cause, by failing to appear at the work place without a valid reason. The Club filed a counterclaim against the Player, claiming EUR 300,000 for breach of contract.

14. On 6 November 2014, the FIFA DRC rendered its decision (the "Appealed Decision"), with the following operative part:

"1. The claim of the [Player] is inadmissible.

2. The counterclaim of the [Club] is inadmissible.

[…]".

15. On 22 January 2016, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:

- *"[…] The Chamber wished to outline that the player's claim against the club was dated 8 August 2012 and that it had been received by FIFA on 13 August 2012, i.e. 2 days prior to the deadline for the payment due on 15 August 2012 and thus also 2 days prior to the moment in time the player could possibly consider the termination agreement null and void.*
- *On account of the above, the DRC considered that the player had clearly lodged his claim on the basis of the employment contract signed between the parties and not on the basis of the termination agreement dated 22 July 2012. The DRC is comforted in its conclusion by the fact that the player is also not claiming the amount of EUR 318,000 as indicated in the termination agreement".*
- Noting that both the Spanish Contract and the Bulgarian Contract were signed on the same date, valid for the same period of time and established similar amounts as remuneration and that the Spanish Contract determined that the Spanish courts were competent in case of a dispute, the Bulgarian Contract determined that the Arbitration Court of the BFU was competent in case of a dispute, the FIFA DRC *"took note that the Spanish version, i.e.* [the Spanish Contract], *was the only contract uploaded by the club and registered in TMS*.
- *Moreover, [the Spanish Contract] is the version which the player himself affirms as prevailing.*
- *On account of the above, the DRC concluded that [the Spanish Contract] is the employment contract to be considered in the present dispute.*
- *At this point, the Chamber deemed it appropriate to emphasize that art. 22 of the Regulations does not prohibit players and clubs to refer employment-related disputes possibly arisen between them to the local, national courts. Indeed, in case of an employment-related dispute between a club and a player of an international dimension, the FIFA DRC is generally competent, however, as an exception, if the parties have explicitly and exclusively elected a civil court, the civil court may become competent.*
- *In this context, the Chamber pointed out that the content of clause 11 of [the Spanish Contract] was voluntarily agreed upon by the parties when signing the contract dated 28 February 2012. Moreover, it appears that the jurisdiction clause was included per the player's will and he is the party raising argument that [the Spanish Contract] should be considered as the valid employment contract.*
- *In view of the foregoing, the Chamber concluded that, in the present case, the parties, when signing [the Spanish Contract] on 28 February 2012, had voluntarily and beforehand agreed upon the applicability of clause 11 and accepted the exclusive jurisdiction of the Spanish court in Santander to decide upon any employment-related dispute arisen between them.*
- *In consideration of all the foregoing, and recalling that the club's counterclaim was made "conditional upon the issue with the DRC jurisdiction to rule on this dispute", the Chamber concluded that the player's claim as well as the club's counterclaim lodged before the FIFA DRC are inadmissible".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 12 February 2016, the Player lodged a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (2016 edition) (the "CAS Code"). In this submission, the Player nominated Mr José María Alonso, Attorney-at-Law in Madrid, Spain, as arbitrator.

17. On 22 February 2016, the Player filed his Appeal Brief in accordance with Article R51 of the CAS Code. This document contained a statement of facts and legal arguments. The Player challenged the Appealed Decision, submitting the following requests for relief:

> *"1. to declare the jurisdiction of the FIFA DRC to decide on the dispute between the Parties but to refrain from referring the case back to the FIFA DRC;*
>
> *2. to decide on the merits of the claim of the Appellant against the Respondent;*
>
> *3. to declare that the Respondent terminated the employment contract with the Appellant without just cause;*
>
> *4. to declare the Appellant's right to compensation in the amount of six monthly salaries in the event of confirmation of permanent disability resulting from the injury sustained while under contract with the Respondent;*
>
> *5. to order the Respondent to pay to the Appellant*
>
> *5.1 as outstanding remuneration, EUR 72,000 net corresponding to the aggregated monthly salaries (EUR 18,000 net/month) for the period March – June 2012, as agreed under the employment contract;*
>
> *5.2 as compensation for the termination of the employment contract without just cause, EUR 200,000 net corresponding to the overall salary for the 2012/2013, as agreed under the employment contract.*
>
> *5.3 as interest accrued at a rate of 5% per year*
>
> *a. on the amounts set out in 4.1 from the respective due date for each monthly salary, i.e. 8 March, 8 April, 8 May and 8 June 2012; and*
>
> *b. on the amounts set out in 4.2 from the date of the termination of the employment contract by the Respondent.*
>
> *5.4 as compensation for moral damages, EUR 100,000;*
>
> *6. to order the Respondent to*
>
> *(a) pay the entire costs of the present appeal arbitration proceeding; and*
>
> *(ii) pay the legal fees and expenses of the Appellant in relation to the present appeal arbitration proceeding, to be determined at a later stage".*

18. On 29 February 2016, the Club nominated Mr Sofoklis Pilavios, Attorney-at-Law in Athens, Greece, as arbitrator.

19. On 3 March 2016, FIFA renounced its right to request its possible intervention in the present arbitration proceedings.

20. On 7 March 2016, following an Order on the Player's Request for Legal Aid issued by the Board of the International Council of Arbitration for Sport ("ICAS") on the same day, the Player requested that the matter be submitted to a Sole Arbitrator. Although duly invited to comment and informed that if it would remain silent the President of the Appeals Arbitration Division of CAS would decide, the Club did not express its opinion in this respect.

21. On 29 March 2016, the Club objected to the admissibility of the exhibits filed by the Player in Spanish and that acceptance of such documents would constitute an infringement of due process and the Club's right of defence. The Club also objected to the admissibility of the Player's appeal as a whole, because the Appealed Decision entered into force in 2014 because the Player was late in asking for the grounds.

22. On 30 March 2016, the CAS Court Office informed that parties that the Sole Arbitrator, once constituted, would decide on the admissibility of the exhibits of the Appeal Brief filed in Spanish.

23. Also on 30 March 2016, the CAS Court Office informed the parties that the President of the Appeals Arbitration Division had decided to submit the present procedure to a Sole Arbitrator, pursuant to Article R50 of the CAS Code.

24. On 31 May 2016, the ICAS Board issued an Order on the Player's second Request for Legal Aid, granting the Player legal aid in order to assist him with the payment of the CAS arbitration costs.

25. On 2 June 2016, in accordance with 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 arbitral tribunal appointed to decide the present matter was constituted by:

    Mr Manfred Nan, Attorney-at-Law in Arnhem, the Netherlands, as Sole Arbitrator.

26. On 8 June 2016, the CAS Court Office, on behalf of the Sole Arbitrator, the Player was requested to file a legible copy of exhibit 5 to the Appeal Brief and that it should file translations into English of all exhibits, except for exhibit 1, 2, 3, 6, 20, 24, 25, 28, 30, 37 and 38.

27. On 10 June 2016, the Club requested to receive a copy of the complete case file from the proceedings CAS 2015/A/4266 in order to verify whether the Player complied with the 10-day deadline to ask for the grounds of the Appealed Decision.

28. On 15 June 2016, the CAS Court Office informed the parties that the Sole Arbitrator was not satisfied by the explanations provided by the Club as to why the case file in CAS 2015/A/4266 would be relevant for the proceedings at hand. The Club's request was therefore dismissed.

29. Also on 15 June 2016, following a request for extension of the deadline to file translations of certain exhibits by the Player and upon being invited by the CAS Court Office to express its

views, the Club stated that the requested 7-day extension was not justifiable and reiterated its request that the exhibits be declared inadmissible.

30. Also on 15 June 2016, the CAS Court Office, on behalf of the Sole Arbitrator, informed the parties that the Player's time limit to file the translations into English was extended.

31. Also on 15 June 2016, due to the financial burden of having to provide translations into English of a large number of documents, the Player requested for an order on language to be issued, expressly allowing the submission of exhibits in Spanish or, alternatively, allowing for the submission of exhibits in Spanish provided that they were part of the proceedings before the FIFA DRC or, alternatively, to grant an additional deadline of at least two weeks for the translation of the relevant exhibits from the date of notification of the order on language.

32. On 17 June 2016, the CAS Court Office made reference to Article R29 of the CAS Code and the order of the Sole Arbitrator, directing the Player to file the translation into English of the exhibits to the Appeal Brief was confirmed. The Player's new request for an extension of the deadline to file translations was dismissed and the Player's request for an order on language was considered moot.

33. On 22 June 2016, within the deadline granted, the Player filed translations of the exhibits in Spanish filed with the Appeal Brief.

34. On 24 June 2016, the Club sought clarification from FIFA on whether it admitted or not that the requests for the grounds of the Appealed Decision was received timely. The Club expressed its wish to be provided with the case file of the proceedings before FIFA in order to prepare its defence. Finally, the Club reiterated its request to receive the case file of the proceedings before CAS in CAS 2015/A/4266.

35. On 1 July 2016, upon being invited by the CAS Court Office to comment on the Club's requests of 24 June 2016, the Player provided a copy of a letter from FIFA dated 14 December 2015, submitted in the proceedings CAS 2015/A/4266, wherein FIFA stated, *inter alia*, that *"while preparing our answer to the appeal and after having consulted our IT-experts once more, it has come to our attention that we did in fact receive the player's fax dated 21 November 2014, by means of which he requested the grounds of the decision passed by the Dispute Resolution Chamber on 6 November 2014. As a result, we can confirm that we will proceed to provide both the player as well as the club, CSKA Sofia, with the grounds of the aforementioned decision"*.

36. On 11 July 2016, the CAS Court Office informed the parties as follows:

> *"Concerning the FIFA file, the Sole Arbitrator notes that the Respondent was a party to the FIFA proceedings. As such and although the Respondent argues that it wants to receive the FIFA file in order to prepare its defence, it is not necessary for the Respondent to wait for the FIFA file to prepare its defence because the Respondent was a party in the FIFA proceedings and must hold this file.*
>
> *Separately, the Sole Arbitrator notes that the Appellant filed the FIFA letter dated 14 December 2015 in which it explains the circumstances surrounding the decision to finally issue the grounds in the FIFA proceedings*

with case reference 12-02936/emo. As such, the Sole Arbitrator considers that, at this stage, there is no reason to deviate from the content of the CAS letter dated 15 June 2016".

37. On 12 July 2016, the Club filed its Answer in accordance with Article R55 of the CAS Code. The Club submitted the following requests for relief:

> *"99. First of all, CAS shall dismiss the appeal against the DRC decision in question, because CAS has no jurisdiction to rule on the dispute. The Appellant missed the preclusive time limit for appeal, which was 21 days and started on 17 November 2014, because as per CAS' jurisprudence the lack of grounds to a decision does not prevent the party from appealing the decision directly to CAS.*
>
> *100. Alternatively, only if CAS deems itself competent to rule on the case, in view of all grounds stated we would like CAS to reject the appeal in its entirety, to uphold the DRC decision between the parties, and to confirm that DRC had no jurisdiction to rule on that case since the jurisdiction established by the parties to the Court of Santander with* [the Spanish Contract] *shall be honoured.*
>
> *101. Alternatively, only if CAS decides that DRC had jurisdiction – to render an award on the merits of the case in favour of the Club PFC CSKA Sofia and confirm in the arbitral award the Player terminated his contract with the Club without just cause.*
>
> *102. In any of the above cases, to order contribution to the legal and other expenses of the Respondent related to the present procedure.*
>
> *103. In any of the above cases, to order the Appellant to bear all the costs incurred with the present procedure".*

38. On 14 and 19 July 2016 respectively, the Player informed the CAS Court Office of his preference for a hearing to be held, whereas the Club informed the CAS Court Office of its preference for an award to be rendered on the sole basis of the parties' written submissions only.

39. Also on 19 July 2016, and further to a request from the Sole Arbitrator pursuant to Article R57 of the CAS Code, FIFA provided the CAS Court Office with a copy of its file related to the present matter.

40. On 2 August 2016, and pursuant to Article R57 of the CAS Code, the CAS Court Office informed the parties that the Sole Arbitrator had decided to hold a hearing in this matter.

41. On 26 August 2016, the Player requested that two witness be heard by video or telephone conference.

42. Also on 26 August 2016, the CAS Court Office invited the Club to comment on the Player's request and noted that one of the two persons announced by the Player was not mentioned as a witness in the Player's Appeal Brief.

43. On 31 August 2016, the Club informed the CAS Court Office that it was about to be declared bankrupt by a Bulgarian court and that it was not possible to attend the hearing before CAS

due to a lack of funds. The Club also objected to the admissibility of both witness called by the Player in his letter dated 26 August 2016.

44. Also on 31 August 2016, the CAS Court Office made reference to Article R57 of the CAS Code and informed the parties that if the Club would fail to appear during the hearing, the Sole Arbitrator would nevertheless proceed and render an award. The parties were also informed of the possibility to request to participate in the hearing by video-conference.

45. On 2 September 2016, upon being invited to comment on the Club's objection to hear the two witnesses, the Player reiterated his request for these two persons to be heard.

46. On 5 September 2016, the CAS Court Office informed the parties as follows:

"The parties are advised that the Sole Arbitrator has taken the following decisions:

Pursuant to Article R56 of the Code, the testimony of Ms Trasserras is not admissible as this witness was not mentioned in the Appeal Brief and no exceptional circumstances are provided by the Appellant.

Pursuant to Article R51 of the Code, the Appellant filed the request to hear Mr Bárcena as a witness in his Appeal Brief and provided a short summary of his expected testimony. As such, the witness is allowed to testify".

47. On 5 September 2016, the Player informed the CAS Court Office that he considered that *"his right to be heard is being limited by not admitting Ms Tresserras as a witness and so reserves his right to challenge the final award on the basis of the breach of his procedural rights".*

48. Also on 5 September 2016, the Player returned a duly signed copy of the Order of Procedure to the CAS Court Office.

49. On 7 September 2016, the CAS Court Office informed the parties that, in accordance with Article R51 of the CAS Code, in his Appeal Brief, the Appellant should have at least named Ms Tresserras as a witness and also included a brief summary of her expected testimony and, since this was not the case and as there were not exceptional circumstances which could justify the late filing of said testimony, the Sole Arbitrator maintained his decision to not admit the testimony of Ms Tresserras.

50. On 8 September 2016, the Club returned a duly signed copy of the Order of Procedure to the CAS Court Office.

51. On 14 September 2016, a hearing was held in Lausanne, Switzerland. The Club did not attend the hearing. At the outset of the hearing, the Player confirmed not to have any objection as to the constitution and composition of the Panel.

52. In addition to the Sole Arbitrator and Mr Antonio de Quesada, Counsel to the CAS, the following persons attended the hearing:

a) For the Player:

1) The Player;
2) Mr José Carlos Páez Romero, Counsel;
3) Mr Rodrigo Mencia, Interpreter (by video-conference)

b) The Club did not attend the hearing.

53. The Sole Arbitrator heard evidence from the Player and Mr Joaquin Bárcena Uriarte, the Player's Agent (by video-conference), witness called by the Player.

54. The Player and Mr Joaquin Bárcena Uriarte were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury. The Player and the Sole Arbitrator had the opportunity to examine Mr Joaquin Bárcena Uriarte. The Player then had ample opportunity to present his case, submit his arguments and answer the questions posed by the Sole Arbitrator.

55. Before the hearing was concluded, the Player expressly stated that he did not have any objection with the procedure adopted by the Sole Arbitrator and that his right to be heard had been respected.

56. The Sole Arbitrator confirms that he carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

57. The Player's submissions, in essence, may be summarised as follows:

- Regarding the jurisdiction of the FIFA DRC, the Player maintains that based on clause 3 of the Termination Contract *"the parties had agreed to submit an existing dispute to FIFA's dispute resolution bodies, unless the Respondent paid an overall amount of EUR 70,000 net"*.
- On the merits, the Player submits that the Club not only failed to pay him his salaries for the months March to June 2012, but also refused *"to complete payment for the Player's lodging at Hotel MIM in Istanbul, following the operation performed at the ACIBADEM Fulya Hospital in the same city in March 2012"*. As such, the Player claims to be entitled to a total amount of EUR 72,000 net.
- The Player refers to clause 10 of the Spanish Contract and argues that he was entitled to terminate the employment contract, even without serving a formal warning to the Club. Therefore, and in accordance with clause 10 of the Spanish Contract, the Player terminated the Employment Contract with just cause by *"completion"* of his claim at FIFA*, "i.e. 25 November 2012"*.
- Regarding the consequences of the termination with just cause of the Spanish Contract, which contract prevails over the Bulgarian Contract, the Player stresses that he is entitled

to compensation corresponding to the residual value of the Spanish Contract, which amounts to EUR 200,000 net.

- Finally, the Player points out that *"the special circumstances – injury and conditions of stay in Istanbul; Respondent's lack of interest and repeated breaches; etc.- leading to the termination of the employment contract warrant fair compensation for moral damages"*. The Player maintains that this justifies a further compensation, amounting to EUR 100,000.

58. The Club's submissions, in essence, may be summarised as follows:

- Regarding the jurisdiction of the FIFA DRC, the Club fully concurs with the Appealed Decision in which the FIFA DRC *"concluded that the parties have voluntarily and beforehand agreed upon the applicability of clause 11 of* [the Spanish Contract] *and accepted the exclusive jurisdiction of the Spanish Court in Santander to decide the employment-related disputes arising from* [the Spanish Contract]*"*.
- In addition, the Club argues that the arbitration clause in the Termination Contract is not applicable, as it *"was agreed under condition (expiration of a time limit) and the Player did not wait for the condition to be present",* but lodged his claim at FIFA on 8 August 2012, one week before the agreed payment deadline of 15 August 2012.
- On the merits, the Club maintains that *"as of 9 July 2012 the Player abandoned the Club and never returned to Bulgaria, without any authorization to travel and undergo treatment and rehabilitation elsewhere"*. The Club maintains that the Player by lodging a claim before FIFA DRC *"without prior notice or formal written warning"* terminated the Spanish Contract, *"which governs the current dispute",* without just cause on 8 August 2012.
- The Club also maintains that although at the moment of the termination of the Spanish Contract the salaries for March and April 2012 were outstanding, *"the Club had justification to not pay the Players' salaries for March and April 2012, because such payments are normally performed by cash at the place, where work has been performed"* and the Player was not in Bulgaria from 14 March until 2 May 2012 *"with the permission of the Club",* from 3 May to 8 July 2012 on granted *"unpaid leave"*, and as from 9 July 2012 refused to come back.

V. JURISDICTION

59. The Club initially expressed some doubts about whether the Player timely requested for the grounds of the Appealed Decision, however, once the Player clarified the situation in its letter to the CAS Court Office dated 1 July 2016, the Club did not refer to this issue in its Answer. This issue is therefore considered moot.

60. The Club nevertheless disputes the jurisdiction of CAS on another ground, namely that the Player should not have waited for the grounds of the Appealed Decision before filing an appeal, but that he should have filed an appeal within 21 days after it was notified with the operative part of the Appealed Decision. As such, and with reference to CAS jurisprudence, the Club argues that the Player's appeal was filed late.

61. The Player insists that FIFA admitted having received his request for the grounds of the Appealed Decision timely, *i.e.* within ten days from 17 November 2014. After notification of the grounds of the Appealed Decision by FIFA on 22 January 2016, the appeal at CAS was filed within the time limit prescribed by Article R47 of the CAS Code. As such, the Player submits that CAS is competent to deal with this matter.

62. Article R47 of the CAS Code reads as follows – as relevant:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with 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 that body.*
>
> […]*".*

63. The Sole Arbitrator notes that the jurisdiction of CAS derives from Article 67(1) of the FIFA Statutes (edition 2015) 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"*.

64. Following the argument of the Club, it needs to be examined however, whether the Player could wait to file an appeal until he received the grounds of the Appealed Decision or whether he had to file an appeal within 21 days of notification of the operative part of the Appealed Decision, *i.e.* what is the *dies a quo* of the deadline to file an appeal.

65. The Sole Arbitrator finds that this issue is not related to the jurisdiction of CAS, but rather to the admissibility of the appeal. As such, the Sole Arbitrator will address this issue below in the section related to the admissibility of the Players' appeal.

66. Finally, the argument of the Club that FIFA was not competent to deal with the present matter, does not prevent CAS from accepting jurisdiction. Whether the FIFA DRC rightly declined jurisdiction, will be examined in more detail below together with the merits of the case.

67. Consequently, the Sole Arbitrator is satisfied that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

68. The Club maintains that *"the Appellant missed the preclusive period for appeal, namely 21 days from the notification of the DRC decision"* and that *"although the original decision was rendered by DRC without the grounds and notified to the Player on 17 November 2014, the lack of grounds of the decision did not prevent the Player from submitting an appeal to CAS"*.

69. The Sole Arbitrator observes that article 15 of the FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules") (edition 2008) determines as follows:

> *"1. The Players' Status Committee, the DRC, the single judge and the DRC judge may decide not to communicate the grounds of a decision and instead communicate only the findings of the decision. At the same time, the parties shall be informed that they have ten days from receipt of the findings of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the decision coming into force.*
>
> *2. If a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full, written form.* ***The time limit to lodge an appeal begins upon receipt of this motivated decision.***
>
> […]*"* [Emphasis added by the Sole Arbitrator].

70. Article 16(13) of the FIFA Procedural Rules reads as follows:

> *"The time limit for lodging an appeal shall always begin on receipt of the full version of the decision".*

71. Furthermore, enclosed to the reasoned Appealed Decision is a document named *"Directions with respect to the appeals procedure before CAS"*. These directions state, *inter alia*, the following:

> *"1. Any party intending to challenge a final decision issued by a FIFA legal body, in accordance with the FIFA Statutes, must file a statement of appeal with CAS within* ***a 21-day time limit starting from the receipt of the grounded decision challenged*** […]*"* [Emphasis added by the Sole Arbitrator].

72. The Sole Arbitrator finds that articles 15(2) and 16(13) of the FIFA Procedural Rules explicitly provide that the time limit to lodge an appeal begins upon receipt of the motivated version of the Appealed Decision. Accordingly, there was no duty for the Player to file an appeal with CAS within 21 days of receipt of the operative part of the Appealed Decision. Accordingly, it was necessary for the Player to get the motivated decision first in order to file an appeal with CAS (within 21 days of receipt of such motivated decision).

73. The Sole Arbitrator observes that the operative part of the Appealed Decision was notified to the Player on 17 November 2014 and that the Player requested FIFA for the grounds of the Appealed Decision on 21 November 2014, in accordance with article 15(1) of the FIFA Procedural Rules.

74. Furthermore, the Sole Arbitrator notes that the grounds of the Appealed Decision were communicated to the Player on 22 January 2016, and that the Player lodged his Statement of Appeal with CAS against the motivated version of the Appealed Decision on 12 February 2016, which is within the 21 days set by article 67(1) of the FIFA Statutes.

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

76. It follows that the appeal is admissible.

VII. APPLICABLE LAW

77. 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".

78. Both parties agree that the present matter should be decided according to the various regulations of FIFA and additionally Swiss law.

79. The Sole Arbitrator observes that article 66(2) of the FIFA Statutes stipulates the following:

"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".

80. As such, the Sole Arbitrator is satisfied to primarily apply the various regulations of FIFA and, subsidiarily, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

A. The Main Issues

81. As a result of the above, the main issues to be resolved by the Sole Arbitrator are:

a) Which agreement(s) govern(s) the dispute between the Player and the Club?

b) Was the FIFA DRC competent to deal with the Player's claim?

c) When did the employment relationship come to an end?

d) Which party was responsible for the early termination of the employment relationship?

e) What amount of outstanding salary and compensation for breach of contract is to be paid?

a) Which agreement(s) govern(s) the dispute between the Player and the Club?

82. The Sole Arbitrator observes that it remained undisputed that the Player and the Club entered into an employment relationship on 28 February 2012, be it under the Spanish Contract or under the Bulgarian Contract.

83. However, the parties have different views on the termination of the employment relationship. Whereas the Club submits that the Player terminated the Spanish Contract without just cause on 8 August 2012 by filing a claim against the Club at FIFA, the Player maintains that the parties terminated the employment relationship by mutual agreement through the conclusion of the Termination Contract dated 22 July 2012.

84. The Sole Arbitrator observes that the Termination Contract, signed and stamped by the Club was sent on 25 July 2012 as an attached file by email from *"Iva Nikolova, Secretary – PFC CSKA Sofia"* to the Player's Agent, with *"Pavlov Georgi"* in carbon copy (cc).

85. The Sole Arbitrator notes that the Club does not deny that it signed the Termination Contract. As such, in analysing the interdependency of the different contracts concluded, the Sole Arbitrator turns his attention first to the Termination Contract.

86. The Sole Arbitrator finds that by means of the Termination Contract the parties agreed to resolve their dispute and to terminate their employment relationship. Particularly the statement in the Termination Contract that *"the CLUB, the PLAYER and the AGENT entered into an agreement to terminate the contract signe* [sic] *in Sofia on 28 February 2012"* does not leave room for any other interpretation that the parties intended to end the employment relationship by mutual agreement.

87. The Club's argument that the employment relationship ended by means of the claim filed by the Player before the FIFA DRC on 8 August 2012 is therefore dismissed, as the employment relationship already came to an end on 22 July 2012.

88. In accordance with the Termination Contract, the Club was obliged to pay the Player a total amount of EUR 70,000 as compensation before 15 August 2012, failing which the Player *"will proceed to submit the corresponding claim before the FIFA competent bodies, such as the Players' Status Commission and the DRC, requesting that the CLUB complies with all the financial obligations deriving from the contract of twenty eight of February of two thousand and twelve signed in Sofia and at that currently amount to THREE HUNDRED AND EIGHTEEN THOUSAND (€ 318.000) EURO NET plus any damages caused"*.

89. Although the Termination Contract prevails over the Spanish and the Bulgarian Contract, the Sole Arbitrator understands that if the Club would not comply with its financial obligations vis-à-vis the Player under the Termination Contract (*i.e.* payment of EUR 70,000 net before 15 August 2012), the Player would be entitled to claim full compensation under the Bulgarian Contract (*i.e.* payment of EUR 318,000 net plus any damages caused).

90. It is not in dispute that the Club did not pay the amount of EUR 70,000 net to the Player before 15 August 2012. The Sole Arbitrator finds that the Player is therefore in principle entitled to claim compensation from the Club in the amount of EUR 318,000 net plus any damages caused, in accordance with the Bulgarian Contract.

91. In continuation, the Player argues that his Agent, *"following the earlier confirmation by the Club that it was not in a position to meet the financial obligations undertaken by means of the Termination* [Contract]*"*, proposed to the Club, via a person called Giorgi Pavlov, a new settlement on 15 August 2012, which allegedly resulted in the conclusion of the Settlement Agreement on 14 September 2012.

92. The Club however denies that one of its representatives provided the Player or his Agent with information that the Club did not intend to comply with the Termination Contract before 15 August 2012 and that a person called "Giorgi" could represent the Club in the conclusion of the alleged Settlement Agreement. The Club maintains that the Player did not provide any evidence that the Settlement Agreement was binding on the Club, adding that the Settlement Agreement did not contain any arbitration clause.

93. The Sole Arbitrator notes that the Player's Agent apparently sent a draft of the Settlement Agreement to the general email address of the Club and Mr Georgi Pavlov.

94. The Sole Arbitrator notes that on 14 September 2012, Ms Iva Nikolova sent an email to the Player's Agent, requesting him, due to *"a problem with the e-mail accounts"*, to provide her *"with the contract with the new date"*.

95. On the same day, the Player's Agent replied to Ms Nikolova's email, with attached thereto an updated draft of the Settlement Agreement. This email, that was also sent to Mr Georgi Pavlov, determines as follows:

"Dear Giorgi,

As agreed, I am sending you attached to this email the final version of the agreement for the settlement by CSKA of the debts owed by the Club to Iván Bolado and to myself. Once the Club settles the payment of € 86,000, it will book flights to fly to Sofia and once there we will agree what is most convenient.

I expect it will be complied in full".

96. The Settlement Agreement reads, *inter alia*, as follows:

"Dear Giorgi,

As agreed on the phone earlier this morning, please find below the agreed arrangements as of today.

[…]

FIRST: Let Dimiter know that Ivan and I have submitted the claim to the FIFA General Secretary, Mr. Jerome Volker, but of course should the agreements and payments put forward below be complied with, it is not too late to withdraw it.

[…]

In short, before 27 September 2012 full payment of EIGHTY SIX THOUSAND (€ 86,000) EURO NET shall be made […]*".*

97. The Sole Arbitrator further notes that, still on the same date, Ms Iva Nikolova provided the Player's Agent by email with the Settlement Agreement, signed and stamped by the Club, with the request to sign and return it.

98. On 17 September 2012, Ms Nikolova then sent the Player's Agent an email saying *"*[…] *please can you kindly let us know when we'll have the signed agreement by you and Mr. Bolado?* […]*".*

99. On the same date, the Player's Agent provided Ms Nikolova and Mr Georgi Pavlov by email with a *"duly signed contract by the player and for my as his representative* […]*".*

100. Finally, the Sole Arbitrator notes that the Player's Agent confirmed this course of events in his witness statement at the hearing, adding that Mr Georgi Pavlov represented the Club and informed him by telephone on 8 August 2012 that the Club could not pay the amount agreed upon in the Termination Contract.

101. The Sole Arbitrator considers the testimony of the Player's Agent to be convincing and has no reason to doubt about the veracity of his witness statement.

102. In the absence of any counter-evidence presented by the Club, in particular evidence showing that Mr Georgi Pavlov and Ms Nikolova were no representatives of the Club, the Sole Arbitrator is satisfied to accept that the Settlement Agreement was validly concluded.

103. Even if Mr Georgi Pavlov was not authorised to conclude the Settlement Agreement on behalf of the Club, the Sole Arbitrator finds that the Player could nevertheless rely on the representations made, as the Player's Agent addressed his email correspondence to Ms Nikolova, who is undisputedly a representative of the Club, particularly because also the correspondence in relation to the Termination Contract was made through her. The Player's Agent followed Ms Nikolova's instructions by sending the draft Settlement Agreement to another email address. The Sole Arbitrator finds that there was no reason for the Player's Agent or the Player himself to question whether the Settlement Agreement was signed by an unauthorised person. The addition of a stamp bearing the name of the Club on the Settlement Agreement makes this even more so.

104. Accordingly, the Sole Arbitrator finds that the Club is bound by the Settlement Agreement.

105. The Sole Arbitrator finds that the Settlement Agreement is a follow-up of the Club's failure to pay the amounts agreed upon in the Termination Contract and as such deals with the consequences of the termination of the employment relationship between the Player and the Club.

106. Be this as it may, the Club failed to comply with its obligations under the Settlement Agreement.

107. The Sole Arbitrator finds that the conclusion of the Settlement Agreement was however without prejudice to the claim lodged by the Player before the FIFA DRC in the meantime, as the Settlement Agreement specifically determines that if the Club would comply with the terms of the Settlement Agreement *"we will accordingly withdraw the claim submitted before FIFA"*. The Sole Arbitrator notes that the Player clearly stated that he would withdraw his claim only if the Club would pay him the amounts set out in the Settlement Agreement, and not upon conclusion of the Settlement Agreement.

108. Accordingly, since the Club failed to comply with both the Termination Contract and the Settlement Agreement, the Sole Arbitrator finds that the Player could claim damages on the basis of the Bulgarian Contract, as was specifically mentioned in the Termination Contract.

109. Consequently, the Sole Arbitrator finds that the dispute is governed by the Bulgarian Contract.

b) Was the FIFA DRC competent to deal with the Player's claim?

110. The Sole Arbitrator finds that, with the conclusion of the Termination Contract, the parties not only expressed their will to terminate the employment relationship, but also that if the Club would fail to pay the amount of EUR 70,000 to the Player before 15 August 2012, the Player would be entitled to submit a claim before *"the FIFA competent bodies, such as the Players' Status Commission and the DRC"*.

111. The Sole Arbitrator finds that the Termination Contract provides clear evidence of the parties' common and real intent and agreement to grant the Player the right to submit a claim before the FIFA competent bodies and to claim EUR 318,000 plus *"any damages caused"* in accordance with the Bulgarian Contract if the Club failed to pay the agreed amount of EUR 70,000 before 15 August 2012.

112. Consequently, these findings justify the conclusion that the parties, by signing the Termination Contract, agreed and clearly expressed the same mutual intention and will to grant the Player the right to resort to the FIFA competent bodies and to abandon the jurisdiction of the State Court of Santander, as mentioned in the Spanish Contract, or the Arbitration Committee of the BFU, as mentioned in the Bulgarian Contract.

113. The Club argues that *"[b]y lodging a claim before the set deadline the* [Player] *himself renounced with his actions the right to file a claim based on the arbitration clause, which should have been active after 15 August 2012"*.

114. As indicated *supra*, the Sole Arbitrator considered the testimony of the Player's Agent very convincing, also in respect of the Player's argument that the Player's Agent was informed by the Club that it would not comply with its obligations pursuant to the Termination Contract.

115. The Sole Arbitrator finds that a situation where a debtor has announced that it will not comply with its obligations within the term granted to it, even though the term to render performance has not passed, can be equated to a situation where the term to render performance has passed.

116. The Sole Arbitrator finds that it would be illogical for the Player to lodge a claim before the FIFA DRC on 8 August 2012, whereas the deadline for the Club to pay only expired on 15 August 2012.

117. The Sole Arbitrator feels himself comforted in this conclusion by article 108(1) of the Swiss Code of Obligations, determining in a free translation into English that *"[n]o time limit need be set where it is evident from the conduct of the obligor that a time limit would serve no purpose"*.

118. In any event, there is no evidence on file proving that the Club was informed about the filing of the claim by the Player before 15 August 2012. Nonetheless, the Club did not comply with the terms of the Termination Contract before 15 August 2012.

119. However, even when the Club would have known already before 15 August 2012 that the Player had filed a claim, the Club could have prevented further litigation by paying the Player the amount of EUR 70,000 before 15 August 2012, which it did not.

120. The Sole Arbitrator feels comforted by the often stated view of the Swiss Federal Tribunal that an arbitration agreement is independent from the main contract (SFT February 18, 2016 4A_84/2015). This "seperability presumption", which is a generally accepted principle in international arbitration, pursuant to which an international arbitration agreement is almost invariably treated as presumptively "seperable" or "autonomous" from the commercial or other contract within which it is found (BORN, International Commercial Arbitration, second edition, p. 349-350). Also Swiss law recognises the principle of autonomy of the arbitration agreement, a principle adopted in case law for decades (and universally accepted in Western Europe and in the United States under the concepts of "severability" or "seperability") (ATF 119 II 380, 384).

121. Applying this "seperability presumption" to the matter at hand, the dispute resolution clause in favour of the FIFA DRC in the Termination Contract trumped the dispute resolution clauses in the Spanish and the Bulgarian Contract even though the terms of the Termination Contract were finally not complied with, and according to such terms, the Player can claim compensation on the basis of the Bulgarian Contract. This is even more so in the matter at hand, because this specific situation is explicitly foreseen in the Termination Contract. Accordingly, even though the relevant contract for the merits of the case is the Bulgarian Contract, the dispute resolution clause in the Termination Contract is applicable.

122. In continuation, the Sole Arbitrator finds that although the Player apparently based its claim before the FIFA DRC on the amounts mentioned in the Spanish Contract instead of the amount of EUR 318,000 *"plus any damages caused"* mentioned in the Termination Contract, this does not demonstrate a different understanding of the agreed arbitration provision. On the contrary, the Player lodged his claim with the FIFA DRC in accordance with the arbitration clause in the Termination Contract.

123. Consequently, the Sole Arbitrator finds that the FIFA DRC was competent to deal with the Player's claim.

c) When did the employment relationship come to an end?

124. In the light of the above, the Sole Arbitrator observes that FIFA was competent to hear the employment related dispute arising out of the Club's employment relationship with the Player in accordance with article 22(b) of the FIFA Regulations on Status and Transfer of Players (the "FIFA Regulations").

125. As Article R57 of the CAS Code empowers the Sole Arbitrator *"to review the facts and the law"* by issuing *"a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance"*, the Sole Arbitrator finds that the case should not be sent back to FIFA, as none of the parties asked for it and because there are no procedural grounds based upon which the case should be referred back to FIFA.

126. Therefore, in exercising the powers granted to him under Article R57 of the CAS Code, the Sole Arbitrator proceeds to review the facts and the law *de novo*.

127. The Sole Arbitrator observes that both parties filed extensive submissions related to the termination of the employment relationship without just cause by either party and the consequences thereof.

128. Although the Termination Contract was intended to put an end to the employment relationship between the Club and the Player, it is undisputed that the Club did not comply with the terms thereof. In such situation, as set out in the Termination Contract itself, this "settlement" is null and void and the Player can claim full compensation on the basis of the Bulgarian Contract.

129. Consequently, and despite the fact that the Termination Contract is null and void, the Sole Arbitrator deems it nevertheless appropriate to set the date of termination of the employment relationship on 22 July 2012.

d) Which party was responsible for the early termination of the employment relationship?

130. Turning his attention to the responsibility for the termination of the employment relationship, the Sole Arbitrator observes that the Termination Contract clearly stipulates that the consequence of the Club's failure to pay the agreed amount before 15 August 2012 would be that the Player is entitled to *"requesting that the CLUB complies with all the financial obligations deriving from the contract of twenty eight of February of two thousand and twelve signed in Sofia and at that currently amount to THREE HUNDRED AND EIGHTEEN THOUSAND (€ 318.000) EURO NET plus any damages caused"*.

131. Accordingly, and as confirmed later in the Settlement Agreement, the Club would have to pay a certain sum to the Player. This implies that the Club was responsible for the premature termination. Although the Sole Arbitrator does not deem it necessary to examine whether this conclusion is warranted based on the evidence on file, for the Club acknowledged its responsibility in causing the employment relationship to be terminated prematurely by signing the Termination Contract (and the Settlement Agreement), the Sole Arbitrator notes that the

amount of outstanding remuneration in the amount of EUR 72,000 (4 x EUR 18,000) is not disputed by the Club and that this in principle proves the responsibility of the Club for the discontinuation of the employment relationship.

132. Consequently, the Sole Arbitrator finds that the Club was responsible for the early termination of the employment relationship.

e) What amount of outstanding salary and compensation for breach of contract is to be paid?

133. The Sole Arbitrator finds that the compensation to be paid by the Club to the Player for breach of contract cannot simply be based on the reference to the amount of EUR 318,000 in the Termination Contract, because the wording of the relevant clause does not allow to draw this conclusion. Rather, the compensation to be paid needs to be based on the *"financial obligations deriving from* [the Bulgarian Contract]*"*.

134. The Sole Arbitrator will therefore proceed to establish the compensation to be paid by the Club to the Player on the basis of the Bulgarian Contract.

135. The Sole Arbitrator observes that the Player's requests for relief before CAS are wider than his requests for relief before the FIFA DRC, *i.e.* whereas the Player claimed EUR 288,000 before the FIFA DRC, he claims EUR 372,000 in the present proceedings before CAS.

136. In this regard, the Sole Arbitrator notes that in CAS 2012/A/2874, a CAS panel stated the following in this respect:

> *"CAS jurisprudence related to Article R57 of the CAS Code shows that in reviewing a case in full, a Panel cannot go beyond the scope of the previous litigation. It is limited to the issues arising from the challenged decision (CAS 2007/A/1396 & 1402 at §46, with further references to: CAS 2008/A/1478, CAS 2007/A/1294, TAS 2007/A/1433 and TAS 2002/A/415 & 426). Although it is true that claims maintained in a statement of appeal may be amended in an appeal brief, such amended claims may however not go beyond the scope and the amount of the previous litigation that resulted in the Appealed Decision. Maintaining any other opinion will not only be against the basic principles of the scope of an appeal, but will blur the clear distinction that should be strictly kept between appeal arbitrations and ordinary arbitrations when such an ordinary arbitration clause exists.*
>
> *Nevertheless, in an appeal in which the case is heard de novo one exception to this basic principle may exists when a party in the previous proceedings claimed amounts that he was entitled to receive from the other party in the framework of contractual or other relations, however such entitlement in full, or part of it, is conditional upon the actual materialization of a certain clear and undisputed condition (such as, in a football case, winning the championship or the Cup etc.) and the condition was indeed fulfilled while the previous proceedings were pending and the fulfilment of the condition itself (as opposed to the entitlement to receive the payment because of the materialization of the condition) is not disputed. This is even more so when in the previous proceedings a lump sum amount is claimed in respect of compensation for the termination of the agreement without just cause. In such cases, this amount, that was conditional upon the materialization of a condition, may be considered within the compensation for the termination of the contract when the materialization of the condition was not*

disputed by the other party" (CAS 2012/A/2874, para. 81-82 of the abstract published on the CAS website).

137. In the light of the above, the Sole Arbitrator finds that, in principle, he is limited to the scope of the previous litigation, *i.e.* to a claim of EUR 288,000.

138. The Sole Arbitrator observes that the Player's claim related to outstanding remuneration (EUR 72,000) and compensation (EUR 200,000) before the FIFA DRC does not differ from the requests for relief before CAS.

139. The deviation lies in the amount claimed for (moral) damages (EUR 10,000 before the FIFA DRC, and EUR 100,000 before CAS) and EUR 6,000 corresponding to the costs incurred for the surgery performed on the Player's knee, which was claimed before the FIFA DRC, but not before CAS, and *"the right to compensation in the amount of six monthly salaries in the event of confirmation of permanent disability resulting from the injury sustained while under contract with the* [Club]*"*, which was not claimed before the FIFA DRC, but only before CAS.

140. Examining the differences between the claims before the FIFA DRC and CAS, the Sole Arbitrator, first of all, observes that the claim of EUR 6,000, corresponding to the costs incurred for the surgery performed on his knee, is not claimed before CAS and is therefore not relevant in the present arbitration.

141. Second, regarding *"the right to compensation in the amount of six monthly salaries in the event of confirmation of permanent disability resulting from the injury sustained while under contract with the* [Club]*"*, the Sole Arbitrator notes that no arguments have been advanced by the Player as to why this claim could not have already been lodged before the FIFA DRC. The Sole Arbitrator therefore finds that this claim exceeds the scope of the previous litigation and is thus inadmissible.

142. Third, with regard to the damages claimed by the Player, the Sole Arbitrator observes that the Player seeks compensation from the Club *"for moral damages equal to 10% of the overall remuneration under* [the Spanish Contract], *i.e. EUR 272,000 net of taxes"*, but in his request for relief claims EUR 100,000. In support of his claim the Player refers to the difficult situation he and his pregnant wife had to endure when he was abandoned by the Club, *"the lack of interest shown by* [the Club]*"*, *"the uncooperative conduct"* of the Club and *"the deteriorating employment, financial and health situation"* of the Player. The Club did not file any position in this regard.

143. The Sole Arbitrator notes that in the proceedings before the FIFA DRC, the Player only claimed to be awarded with EUR 10,000 in respect of the alleged damages. As such, and in the absence of any exceptional circumstances being advanced based on which the Player can suddenly increase his claim in this respect, the Sole Arbitrator considers himself limited by the scope of the previous litigation and deems the claim of the Player inadmissible insofar it supersedes the Player's claim before the FIFA DRC. Furthermore, importantly, the Player's claim for moral damages is based on the Spanish Contract, whereas the Bulgarian Contract is the relevant contract in the matter at hand and no reference to moral damages is made in this contract. The claim for moral damages is therefore dismissed.

144. In the light of the fact that the Settlement Agreement does not mention any amount related to moral damages, but was even aimed at signing a new employment contract for the 2012/2013 season, the Sole Arbitrator, in any event, does not deem it appropriate to award the Player an additional amount of compensation for moral damages.

145. This leaves the Sole Arbitrator to decide whether the claim of the Player in the amount of EUR 272,000 is to be upheld.

146. The Sole Arbitrator notes that the Player's claim that an amount of EUR 72,000 remained outstanding was not disputed by the Club. The Sole Arbitrator therefore deems it appropriate to award this amount to the Player with interest at a rate of 5% *p.a.* as from the relevant due dates, until the effective date of payment.

147. As for the compensation for breach of contract to be paid by the Club to the Player, the Sole Arbitrator finds that article 17(1) of the FIFA Regulations is applicable.

148. Article 17(1) of the FIFA Regulations determines as follows:

> *"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".*

149. The Sole Arbitrator takes due note of previous CAS jurisprudence establishing that the purpose of article 17 of the FIFA Regulations is basically nothing else than to reinforce contractual stability, *i.e.* to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (CAS 2008/A/1519-1520, para. 80, with further references to: CAS 2005/A/876, p. 17*: "[…] it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability' […]"*; CAS 2007/A/1358, para. 90; CAS 2007/A/1359, para. 92: *"[…] the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability […]"*; confirmed in CAS 2008/A/1568, para. 6.37).

150. In respect of the calculation of compensation in accordance with article 17 of the FIFA Regulations and the application of the principle of "positive interest", the Sole Arbitrator follows the framework as set out by a previous CAS Panel as follows:

> *"When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.*

As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have if no breach had occurred.

The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see Streiff/von Kaenel, Arbeitsvertrag, Art. 337d N 6, and Staehelin, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also Wyler, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) (…).

The principle of the "positive interest" shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the player by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the player from a third party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including the specificity of sport, as foreseen in art. 17 FIFA Regulations" (CAS 2008/A/1519-1520, at para. 85 *et seq.*).

151. The Sole Arbitrator finds that the legal framework set out above and the principle of positive interest are applicable to the present case.

152. Since the residual value of the Bulgarian Contract in the amount of EUR 200,000 remained undisputed and because there is no evidence on file that the Player found new employment during the 2012/2013 sporting season to mitigate his loss, the Sole Arbitrator finds that the Club is indeed required to pay to the Player the amount of EUR 200,000 as compensation for breach of contract, with interest at a rate of 5% *p.a.* accruing as from 23 July 2012 (*i.e.* the date after conclusion of the Termination Contract) until the date of effective payment.

153. Consequently, the Sole Arbitrator finds that the Player is entitled to receive outstanding salaries in the amount of EUR 72,000 and compensation for breach of contract in the amount of EUR 200,000 from the Club, with interest at a rate of 5% *p.a.* accruing as from the relevant dates, until the date of effective payment.

B. Conclusion

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

a. The dispute is governed by the Bulgarian Contract.

b. The FIFA DRC was competent to deal with the Player's claim.

c. The date of termination of the employment relationship is set on 22 July 2012.

d. The Club was responsible for the early termination of the employment relationship.

e. The Player is entitled to receive outstanding salaries in the amount of EUR 72,000 and compensation for breach of contract in the amount of EUR 200,000 from the Club, with interest at a rate of 5% *p.a.* accruing as from the relevant dates, until the date of effective payment.

155. Any other and further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 12 February 2016 by Mr Iván Bolado Palacios against the decision issued on 6 November 2014 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is partially upheld.

2. PFC CSKA Sofia is ordered to pay to Mr Iván Bolado Palacios the net amount of EUR 72,000 (seventy two thousand Euro) as outstanding remuneration with interest accruing as follows until the date of effective payment:

   - EUR 18,000, with 5% interest *p.a.* accruing as from 9 March 2012;
   - EUR 18,000, with 5% interest *p.a.* accruing as from 9 April 2012;
   - EUR 18,000, with 5% interest *p.a.* accruing as from 9 May 2012;
   - EUR 18,000, with 5% interest *p.a.* accruing as from 9 June 2012.

3. PFC CSKA Sofia is ordered to pay to Mr Iván Bolado Palacios a net amount of EUR 200,000 (two hundred thousand Euro) as compensation for breach of contract, with 5% interest *p.a.* accruing as from 23 July 2012 until the date of effective payment.

4. (…).

5. (…).

6. All other and further motions or prayers for relief are dismissed.