



Arbitration CAS 2016/A/4885 Michaël Ciani v. Sporting Clube de Portugal, award of 21 July 2017

Panel: Prof. Luigi Fumagalli (Italy), President; Mrs Laurence Burger (Switzerland); Mr João Nogueira da Rocha (Portugal)

Football

Termination of the employment contract by mutual agreement

Burden of proof

Duress

1. Pursuant to art. 8 of the Swiss Civil Code, 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.
2. Pursuant to art. 255 (1) of the Portuguese Civil Code, a transactional statement is made under duress when compelled by an unlawful threat of harm made to the person making such statement for the purpose of obtaining that statement from him/her. Accordingly, for an agreement or a statement to be affected by duress under Portuguese law, four requirements must be satisfied: a) the existence of a threat; b) the unlawfulness of that threat; c) the threat being the cause of and essential to the statement; d) the threat being made with the purposeful intent of obtaining the transactional statement. In the absence of evidence that said requirements are met, the argument that a termination agreement was signed under duress shall be rejected.

1. BACKGROUND

1.1 The Parties

1. Michaël Ciani (the “Player” or the “Appellant”) is a professional football player of French nationality, born on 6 April 1984.
2. Sporting Clube de Portugal (the “Club”, “SCP” or the “Respondent”) is a football club with registered office in Lisbon, Portugal. SCP is affiliated to the Portuguese Football Federation (the “Federação Portuguesa de Futebol” or “FPF”), which, in turn, is a member of the Fédération Internationale de Football Association (“FIFA”).

1.2 The dispute between the Parties

3. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during these proceedings¹. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award only to the submissions and evidence it considers necessary to explain its reasoning.
4. On 18 July 2015, the Player and SCP signed a "*Sport Employment Contract*" (the "Employment Contract"), under which the former undertook to provide the latter with his services as a professional football player for a term starting on the day of its signature and ending on 30 June 2017, *i.e.* for 2 seasons. According to the Employment Contract:
- i. the Player was entitled to receive a total remuneration for each season of EUR 1,400,004, payable in 12 monthly instalments of EUR 116,667, due by the 11th day of the subsequent month (Article 3);
 - ii. bonuses were to be paid to the Player in the event of achievement of specified targets (Article 4);
 - iii. the Player was granted by Article 8 the "*right to one-sidedly terminate this agreement without having to invoke just cause, being immediately disentailed from all labour and sport obligations towards Sporting*", under specific conditions:

"8.1 termination can only occur within the time periods comprehended between 15 May and 15 June of each sport season, a written notice to be sent to Sporting (...) in advance of fifteen days in regard to the date in which termination shall become effective;

8.2 with the communication referred to hereinabove, an immediate payment in the amount of € 45.000.000,00 (forty five million Euro) shall be made to Sporting";
 - iv. the Parties agreed "*to appoint the FIFA Dispute Resolution Chamber with possibility to Appeal to the Court of Arbitration for Sport, with its headquarters in Lausanne, to settle any disputes arising from this Agreement, and in particular to determine whether or not there is just cause for any termination on the initiative of either party*" (Article 10);
 - v. the Parties agreed at Article 11 that: "*If any of the Parties terminates this Agreement alleging just cause and its existence is not recognized, the party who has so acted shall be obliged to compensate the other party for all damages caused by the illegitimate conduct, being now determined under the article 17.2 in fine of the FIFA Regulations on the Status and Transfer of Players, the amount of the compensation being the following:*

¹ Several of the documents submitted by the parties and referred to in this award contain various misspellings: they are so many that the Panel, while quoting them, could not underscore them all with a "*sic*" or otherwise.

- *if SPORTING, SAD terminates this Agreement, it shall be obliged to pay to the PLAYER an indemnity corresponding to the amount of the remunerations to be due up to the end of the agreement and it may deduct from such amount the amounts to be received by the PLAYER for rendering of the same activity to another sport entity during the period corresponding to the term of the terminated agreement;*
 - *if the PLAYER terminates this Agreement, i.e. apparently without just cause and in breach of the provisions set forth in the preceding clause 9, his transfer to another club shall depend on the payment by the latter to SPORTING, SAD the amount of € 45.000.000,00 (forty five million Euro), without prejudice to the possibility of SPORTING, SAD to claim an indemnity of the PLAYER's responsibility as foreseen in the applicable labor law. It shall be presumed that any club signing the PLAYER has induced him to terminate this contract without just cause and is also causing damages to SPORTING, SAD and that is why the parties agree in the specific terms of this clause whereas the breach was caused by the PLAYER or by SPORTING, SAD”;*
- vi. *“Applicable Law: All matters as to which this Agreement is applicable shall be governed by the Collective Bargaining Agreement executed by the National Union of Professional Football Players and the Portuguese Professional Football League” (Article 13).*
5. On the same 18 July 2015, the Player and SCP signed an *“Addendum to Sport Employment Contract”*, governing the terms and conditions of an option granted by the Player to SCP to extend the Contract for an additional season (2017/2018), until 30 June 2018.
6. On 15 August 2015, the Player and SCP signed a *“Termination Agreement to Sport Employment Contract”* (*“Acordo de revogação de contrato de trabalho desportivo”* – the *“Termination Agreement”*) providing for the following:
- 1. *Sporting SAD and the PLAYER immediately terminate with immediate effect the Sport Employment Contract concluded, including its potential amendments, terminating thereof their labor relationship.*
 - 2. *The PLAYER states that he has no more claims against the Sporting SAD, considering that he is even for all current or future exigible amounts coming from the labor relationship which is hereby terminated, including any compensation for the month of August 2015.*
 - 3. *The validity of this agreement is subject to the execution, by the PLAYER, of a duly valid Sport Employment Contract with REAL CLUB DEPORTIU ESPANYOL DE BARCELONA SAD.*
 - 4. *The PLAYER undertakes not to disclose whichever the mean any confidential information concerning Sporting SAD, its directors, managers, coaches or players, without its prior and written consent [In case of violation, the PLAYER shall] be obliged to compensate, based on its civil liability, for all damages resulting from his illegal conduct. The same obligation binds Sporting SAD with respect to the PLAYER”.*

7. On 15 August 2015, SCP and the Spanish club Espanyol de Barcelona SAD (“Espanyol”) signed an agreement for the transfer of the Player to Espanyol.
8. In that connection, the Player concluded with the Espanyol an employment agreement (“*Contrato de trabajo de jugador profesional*”), dated 17 August 2015, but bearing a stamp of the Spanish “*Liga Nacional de Fútbol Profesional*” dated 14 August 2015, for 3 sporting seasons, *i.e.* until 30 June 2018. In an annex to this agreement, the Player and Espanyol agreed, *inter alia*, the following:
 - i. as conditions for the enforceability of the such agreement that:

“1.3.1. - El Jugador haya finalizado su relación laboral con SPORTING CLUBE DE PORTUGAL y se encuentre en la situación de libertad para obligarse como jugador profesional de fútbol con el RCDE a partir de la fecha de hoy a cuyo efecto el Jugador garantiza que no tiene suscrito ningún contrato de promesa ni acuerdo de opción con terceras entidades deportivas para su futura incorporación a la finalización de su vínculo con el club SPORTING CLUBE DE PORTUGAL.

*1.3.2. - El Jugador supere favorablemente el correspondiente examen médico a realizarse antes del 20 de agosto 2015 por los especialistas designados por el RCDE, al cual en ningún caso podrá oponerse o negarse.
A dichos efectos, el RCDE certifica que el Jugador ha superado favorablemente el correspondiente examen médico a realizado por los especialistas designados por el RCDE, declarando que el Jugador está apto para al práctica del fútbol profesional objeto del presente Contrato”;*

- ii. as remuneration for the Player, in addition to bonuses, that:

“3.1. - El Jugador percibirá como retribución económica fija y variable por la prestación de sus servicios profesionales las cantidades que se estipulan a continuación en términos de globalidad, de modo que retribuye y comprende todos los importes y conceptos de la naturaleza que sean, incluida la cesión de derechos de imagen, que por Convenio Colectivo o por disposición legal le correspondiese percibir al Jugador, derivado de la relación laboral. Igualmente se estipula la compensación y absorción de los importes y mejoras salariales que se estableciesen en disposición legal o convencional aplicable con las cantidades pactadas en la presente estipulación.

*3.1.1. - Sueldo mensual y pagas extraordinarias
Durante la Temporada 2015/2016 el Jugador percibirá la cantidad de 10.000,00.- Euros brutos por once (11) mensualidades de Agosto a Junio de la temporada, más dos (2) pagas extraordinarias por el mismo importe en los meses de Diciembre 2015 y Junio 2016.
Para las Temporadas 2016/2017 y 2017/2018, en cada una de ellas el Jugador percibirá la cantidad de 10.000,00.- Euros brutos por doce (12) mensualidades de Julio a Junio inclusive, más dos (2) pagas extraordinarias por el mismo importe en*

Diciembre y Junio de la temporada.

3.1.2. - Prima de Contrato:

- *Por la Temporada 2015/2016: por dicho concepto el Jugador percibirá la cantidad de 470.000,00.- Euros brutos según el cronograma de pagos establecido para dicho concepto salarial con la primera plantilla profesional del RCDE.*
- *Por la Temporada 2016/2017: por dicho concepto el Jugador percibirá la cantidad de 1.015.000,00.- Euros brutos según el cronograma de pagos establecido para dicho concepto salarial con la primera plantilla profesional del RCDE.*
- *Por la Temporada 2017/2018: por dicho concepto el Jugador percibirá la cantidad de 1.015.000,00.- Euros brutos según el cronograma de pagos establecido para dicho concepto salarial con la primera plantilla profesional del RCDE”.*

9. On 19 August 2015, the Player expressly accepted his transfer to Espanyol, by signing the contract dated 15 August 2015 between SCP and Espanyol.
10. On 9 November 2015, the Player’s counsel contacted SCP, giving it “*formal notice*” to pay an amount, corresponding to no less than EUR 1,000,000, for the “*significant moral and financial harm*” caused to the Player by the SCP’s conduct therein described. More specifically, the Player’s counsel referred to the Employment Contract and noted the following:

“As you are aware, only a few days after the signature of his contract, Mr. CLANI was arbitrarily excluded from the Sporting’s First and Reserve teams. He was forbidden from training with any of them or even to share the same lockers. Mr. CLANI was instead assigned to a small group of “outcast” players, who were following a separate minimalist training, unworthy of a professional player. Mr. CLANI was not provided with any reason for this exclusion, and was later made to understand that he stood no chance of coming back in the pool of players forming these teams, still without any explanation.

As the end of the summer transfer period was approaching, Mr. CLANI’s position was becoming increasingly difficult, both personally and professionally. A player in the age of Mr. CLANI (31 years old) simply cannot afford to be set aside and not to train properly for a prolonged period of time, especially without revising any explanation whatsoever for such “punishment”. This not to mention the damage caused to Mr. CLANI’s image by this situation. In other words, the remainder of Mr. CLANI’s career was simply jeopardized by the Sporting’s behavior.

Ultimately, Mr. CLANI was able to secure a potential contract with the Reial Club Deportiu Espanyol de Barcelona (“RCD Espanyol”), although with much less favorable financial conditions. As you know, Mr. CLANI’s contract with the Sporting provided for an annual compensation of EUR 1,400,004 to which were added several participation-related bonuses as well as bonuses related to the team’s results in the Portuguese Primeira Liga or in UEFA competitions. On the other hand, Mr. CLANI’s salary at the RCD Espanyol is nowhere near these amounts.

Adding insult to injury, Mr. CLANI was then forced by the Sporting, on August 15, 2015, to sign a

“settlement agreement”, in which he was requested to relinquish all of his rights in relation to his employment at the Sporting, in exchange of the termination of their employment relationship. Such settlement agreement was undoubtedly obtained under duress. Mr. CLANI was basically given the choice between risking the rest of his career by staying at the Sporting without properly training and not having any opportunity of playing, or to sign this extortionate document and be allowed to leave for another club where he could normally continue his – so far successful – career (albeit at much less favorable financial conditions).

In parallel, Mr. CLANI was unofficially offered by the Sporting a lump sum compensation of EUR 100,000 for the termination of his employment contract (this sum including Mr. CLANI’s salary for August 2015). However, your club refused to acknowledge this in writing and to pay Mr. CLANI directly, requesting instead that such payment transits through an agent, Mr. Emrah Simsek Kirdemir and his company Buttonpath Limited. Given the circumstances described above, Mr. CLANI had no other choice than to endure this fraudulent scheme which was obviously designed by your club to avoid paying taxes and other social contributions. Ultimately, such amount was not even paid.

It is evident that the general behavior of your club towards Mr. CLANI has been utterly abusive. Not only the Sporting – by preventing Mr. CLANI from exercising normally his profession – failed to abide by the terms of Mr. CLANI’s employment contract and by the applicable Portuguese regulations, but it further wrongfully terminated his contract and forced him into a fraudulent arrangement (...).”

11. On 15 December 2015, SCP answered the letter of the Player’s counsel, denying the claims thereby brought, as follows:

“It was with total surprise that we received your letter dated 9th November 2015 whereas it is stated that ‘the general behavior (...)’ of Sporting towards Mr. CLANI ‘has been utterly abusive’ assuming that we did not allow Mr. Ciani to exercise normally his profession and allegedly force the player to accepted a fraudulent agreement and wrongfully terminated his contract.

As way of background, (...) SPORTING started the preparation for the 2015/2016 season on 30th June 2015 with all player’s from the main senior squad, and, only on the 20th July – therefore after 21 days after – Mr. Ciani joined the team.

We would also like to remind you that the contract between Mr. Ciani and it’s previous club terminated on the 30th June and the last game that player played was on the 16th May – Sampdoria vs Lazio. Therefore, the player arrived at SPORTING after almost two months without playing any game and after the holiday’s period.

Nevertheless, SPORTING bearing in mind the best possible conditions to the player and to better introduce him to the working group included Mr. Ciani in a pre-season tournament that was held in South Africa from 20th July up to 28 July – Cape Town Tournament – whereas Sporting SAD made two games. One of them Mr. Ciani made an appearance.

At this stage, it is clear that otherwise what is said on your letter; “(...) only a few days after the signature of the contract, Mr. Ciani was arbitrarily exclude from Sporting’s First Team and Reserve Team” – truth is that Mr. Ciani not only was immediately assumed as part of the working group but also made an

appearance on a Sporting's First team game.

Adding to this, on the 9th of August 2015 SPORTING had its first official game of the season which turn out to be against its major internal rival and had the particularity to decide the first trophy of the season.

As can be easily understood, Mr. Ciani needed to have specific training in order to have the better condition possible to avoid any future muscle injury, therefore, the player was subject to special training so that he could be a squad option – for the full length of the match – on the quickest time possible.

Bearing this in mind, it is clear that since the moment that Mr. Ciani was considered to be as SPORTING player the Club offered all the best working conditions – including all the medical attention needed.

Mr. Ciani was then a first team player that would be eligible to play when and if he meets all the tactic and physical conditions.

However, Mr. Ciani came to the conclusion that, due to the latter stage of its career, being a regular first team option had to mandatory, and if that condition was not accepted he would have to seek another club to continue his career.

Considering that the transfer market was still open it was agreed that if the player founded a solution to continue to perform his career Sporting would considered his move on a permanent basis.

So, as it is stated on the letter “Mr. Ciani was able to secure a potential contract with Real Club Deportivo Espanyol de Barcelona”.

Having in mind that Mr. Ciani had an option that would secure him first team appearances – like stressed by the Player – and that Sporting did not paid any transfer fee to the player it was mutually agreed a permanent transfer of the Player to the club that was proposed by the Player.

Therefore, Mr. Ciani only stayed with Sporting less than a month (which was paid on a proportional basis) and left to a Club that was chosen by him.

It is also stated that an allegedly lump compensation was agreed by Sporting to the player through a third company.

On this unfounded accusations Sporting will remain open to a civil and criminal procedure to whom may harm Sporting company reputation by accusing the Club of using or even suggesting “fraudulent schemes”.

All in all, SPORTING does not recognize to have caused any “significant moral and financial harm” to Mr. Ciani that could grant him the right to receive any compensation”.

12. On 18 January 2016, the Player lodged a claim with FIFA against SCP, maintaining that SCP had breached the Employment Contract and had forced him to sign the Termination Agreement. The Player therefore requested a payment in the amount of EUR 1,395,008, corresponding to (i) the residual value of the Employment Contract, minus the salary that he

was entitled to receive from Espanyol, (ii) the damages to his reputation, and (iii) the damages to his sporting career.

13. On 7 September 2016, the Player, after terminating the contract with Espanyol, signed a new contract with the French club F.C. Lorient Bretagne Sud (“Lorient”) for the season 2016/2017.
14. On 8 September 2016, the FIFA Dispute Resolution Chamber (the “DRC”) issued a decision (the “Decision”), holding as follows:

“The claim of the Claimant, Michaël Ciani, is rejected”.

15. On 15 November 2016, the Decision, together with the grounds supporting it, was notified to the Appellant.
16. In its Decision, the DRC first found that the 2015 edition of the Regulations on the Status and Transfer of Players (the “RSTP”) was applicable to the merits of the dispute. The DRC, next, stated the following:

“8. The Chamber (...) reviewed the claim of the Claimant, who inter alia held that the termination agreement was signed by him under pressure from the Respondent, which was no longer interested in him, and that, consequently, the contract was terminated by the Respondent without just cause. Therefore, according to Claimant, the Respondent is liable to pay compensation to him.

9. Subsequently, the Chamber noted that the Respondent, on the other hand, is of the firm opinion that the termination agreement was signed by the Claimant without any type of coercion whatsoever and, consequently, rejects the claim lodged against it.

10. At this point, the Chamber deemed it appropriate to recall the legal principle of the burden of proof and the wording of art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the burden of proof.

11. Having said that, the Chamber pointed out that in the present case, the Claimant bore the burden of proving that he had been coerced by the Respondent into signing the termination agreement and that the Respondent was to be held liable for breach of contract and payment of compensation.

12. Subsequently, the members of the Chamber agreed that the Claimant failed to present documentary evidence in support of his allegation that he had been forced by the Respondent to sign the termination agreement.

13. In continuation, the Chamber recalled that the validity of the termination agreement was made subject to the Claimant signing a valid employment contract with Espanyol, which condition in fact was fulfilled on 17 August 2015, when the Claimant and Espanyol signed a valid employment contract.

14. Consequently, the members of the Chamber established that the termination agreement was valid and binding upon the parties.

15. *Furthermore, the DRC highlighted that the termination agreement unambiguously stipulated that, apart from the contract having been terminated by mutual consent with immediate effect, the Claimant acknowledged having received all amounts due to him on the basis of the contract and that he has not further claims against the Respondent.*

16. *In the light of all of the above, in particular the fact that the termination agreement signed by and between the Claimant and the Respondent was valid and binding upon the parties, the Dispute Resolution Chamber decided that it must reject the claim put forward by the Claimant”.*

2. THE ARBITRAL PROCEEDINGS

2.1 The CAS proceedings

17. On 6 December 2016, pursuant to Article R47 of the Code of Sports-related Arbitration (the “Code”), the Player filed a statement of appeal with the CAS against the Decision. The statement of appeal, drafted in French, contained, *inter alia*, the appointment of Mrs Laurence Burger as an arbitrator and the requests that French be adopted as the language of the arbitration and that the time limit to file the appeal brief, pursuant to Article R51 of the Code, be extended.
18. On 12 December 2016, the CAS Court Office transmitted the statement of appeal to the Respondent and, by separate letter, to FIFA informing it of the appeal filed in the event FIFA would decide to intervene in the arbitration.
19. In a letter of 15 December 2016, the Respondent objected to the choice of French as the language of the arbitration and requested further information regarding the Appellant’s request for the extension of the time limit to file the appeal brief.
20. On 19 December 2016, the Respondent appointed Mr João Nogueira da Rocha as an arbitrator.
21. On 20 December 2016, the Appellant insisted in his request that the arbitration be conducted in French, and provided some explanations regarding the request for the extension of the time limit to file the appeal brief.
22. On 21 December 2016, the Respondent insisted in its objection to French as the language of the arbitration, and agreed to a limited extension of the time limit to file the appeal brief.
23. In a letter of 22 December 2016, FIFA informed the CAS Court Office that it renounced its right to intervene.
24. On 28 December 2016, the Deputy President of the CAS Appeals Arbitration Division issued an Order on language and on request for an extension to file the appeal brief, ruling that English would be the language of the arbitration and setting deadlines for the filing of a translated text of the statement of appeal and of the appeal brief.

25. On 6 January 2017, the Appellant filed a translated text of the statement of appeal.
26. On 31 January 2017, the Appellant requested an additional, short extension of the time limit to file his appeal brief. The Respondent objected to this request on the same day. As a result, the matter was submitted to the President of the CAS Appeals Arbitration Division or her Deputy for a decision. In the meantime, the deadline was suspended by the CAS Court Office.
27. On 1 February 2017, the Parties were informed that the Deputy President of the CAS Appeals Arbitration Division had decided to dismiss the Appellant's request.
28. On the same 1 February 2017, the Appellant filed his appeal brief, together with the supporting documents.
29. On 13 February 2017, pursuant to Article R54 of the Code, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, informed the parties that the Panel appointed to hear the dispute between the parties was constituted as follows: Professor Luigi Fumagalli, President; Mrs Laurence Burger and Mr João Nogueira da Rocha, Arbitrators.
30. On 22 February 2017, the Respondent lodged its answer to the appeal, pursuant to Article R55 of the Code.
31. On 6 March 2017, the Parties were informed that the Panel had decided to hold a hearing in this case.
32. On 20 March 2017, in light of the Parties' unavailability for the dates originally proposed by the Panel, the hearing was eventually set for 8 May 2017.
33. On 3 May 2017, the Parties were provided with an indicative hearing schedule, proposed by the Panel in light of the number of witnesses called to appear.
34. On 4 May 2017, the Appellant sought from the Panel leave to introduce in the file of the arbitration two new documents, declared to be responsive to the Respondent's answer to the appeal.
35. On 5 May 2017, the CAS Court Office advised the parties, on behalf of the Panel, that the Appellant's application would be discussed during the hearing.
36. On 8 May 2017, a hearing was held in Lausanne. The Panel was assisted by Mr Fabien Cagneux, Counsel to CAS. The following persons attended the hearing for the parties:
 - i. for the Appellant: the Player in person, assisted by Mr Joël Alquezar and Mr Rami Chahine, counsel, and Mr Eduardo Kamani, interpreter;
 - ii. for the Respondent: Mr João Filipe Lobão, counsel.

37. At the opening of the hearing, both parties confirmed that they had no objections to the appointment of the Panel. The Panel, then, after hearing submissions from the parties with respect to the Appellant's application to submit new documents, decided to admit in the file one of the two documents proposed by the Appellant, consisting in screenshots of some short mobile text messages in the period 30 July 2015 – 2 August 2015. The Appellant, at the same time, withdrew the application regarding the other document. The Panel, thereafter, heard opening statements by counsel as well as declarations from Mr D., Mrs L., Mr Y., Mr T., Mr P., Mr V., Mr G., Mr S., Dr J., and the Player himself. All the witness who had submitted a witness statement confirmed it.

38. The contents of the respective statements can be summarised as follows²:

Witnesses for the Appellant:

- i. Mr D., a player who played for Sporting from 2010 to 2012, confirmed that he met the Player when he joined the Club, and that the Player – who appeared to be physically fit – told him about the problems he had with the coach, Mr J. Mr D. indicated that soon after Mr J. joined, it became clear that some players would have to find their way out. Mr D. described the condition of a group of players (five or six of them), to which he and the Player belonged, forced to train in a separate group and not with team A or B of the Club, and to use separate facilities. Mr J. had joined the club after Mr D. Mr D. finally confirmed having signed a termination agreement with the Club before moving to Genoa CFC in August 2015 and that he received no compensation for such signature;
- ii. Mrs L., [...], declared *inter alia* that when she met the Player in Lisbon around mid-August 2015 she found him under pressure and psychologically distressed. At the same time, Mrs L. declared remembering perfectly the moment the Player told her that he had met with the coach, who had told him that he was not part of the plans of the Club;
- iii. Mr Y., [...], better detailed a temporal reference in his witness statement, by indicating that also in the month of July (and not only in August) 2015 he was in daily contacts with the Player regarding his situation at SCP. Mr Y., then, confirmed that the Player told him about his meeting with the coach of the Club, and that the Player was completely panicked and distressed by the situation he was facing;
- iv. Mr T., an investment consultant, reported about his conversation with the Player at the beginning of August 2015, when the Player told him that he had had a conversation with the coach of the Club, who informed him that he did not count on him. Mr T. explained that he offered his assistance to try and solve the problem, but the Player declined because he hoped that his agent of the time, who had disappeared, could intervene. At the same time, Mr T. mentioned the fact that the Player, in a subsequent

² The summary which follows intends to give an indication of only a few points touched at the hearing. The Panel, in fact, considered the entirety of the declarations rendered at the hearing and/or contained in the relevant witness statements filed for the purposes of this arbitration.

conversation, in the second week of August 2015, told him of the Club's promise to pay EUR 100,000, and that he found that the way in which the Club had offered to pay that amount was unusual;

- v. Mr P., a football player, confirmed meeting with the Player at the end of August 2015, when he joined Espanyol, and that the Player was at the time in bad shape, for lack of proper training. However, the Player at Espanyol trained very hard and even underwent some extra-work to be fit to play;

Witnesses for the Respondent:

- vi. Mr V., team manager of the Club, declared that the Player, after joining the Club in South Africa, could not continue his training with the group of players who were to take part in the important matches at the beginning of the season. The Club had too many players and it was decided to reduce the number of those preparing for such matches. In addition, the Player had to recover a physical condition he had lost. However, Mr V. underlined that several players who were training separately later joined again the A team; the Player himself was called to train with the A team a couple of times. Yet, the Player did not react well to the Club's decision. At the same time, Mr V. denied that the coach had decided not to count on the Player: he simply wanted the Player to train separately in order to better recover and be ready to play. He did not remember if he had met with the Player after the latter asked him to meet (see Exh. C-14). Finally, Mr V. explained the technical coordination in place between the staff in charge of the training of the various groups of players;
- vii. Mr G., member of the board of directors of the Club, holding a financial control role, confirmed his involvement in the transfer of the Player to the Club and indicated that the Player was one of the better paid players of SCP. He did not remember if SCP had to hire players after the Player left. At the same time, he indicated that the agent who had participated in the transfer of the Player contacted him to inquire what was happening with the Player: he however did not know of any reason for the problems the Player was facing at the Club. Mr G. also said that he could not remember if he had met with the Player after he asked him to meet. At the end, the Player was let to go to Espanyol, because he wanted to leave. Mr G. indicated that the Club received a compensation from SCP but is not aware of any payment to the Player with respect to his termination of the employment with the Club;
- viii. Mr S., who used to be a board advisor at SCP, confirmed his presence when the Termination Agreement was signed and declared not having any knowledge of a payment to the Player. He declared that the Termination Agreement was not negotiated;
- ix. Dr J., nutritionist at the Club, declared that the Player was above the reference values in weight when he joined the Club, and was not losing weight or modifying the ratio fat/muscles. However, he no longer followed the Player's preparation when the Player was moved to another group of players;

- x. The Player recalled the poor training conditions he was forced to accept when the coach decided that he was no longer part of the group of players he was counting upon. The Player contacted G to complain about his treatment. The Player, then, mentioned his decision to transfer to Espanyol, when an agent proposed him a way out of the difficult situation he was facing. Everything was very quickly organized (in 2 or 3 days) and all necessary documents were signed on 15 July 2015. Finally, the Player confirmed that he had received the salary for July but not for August 2015.
39. At the conclusion of the hearing, the parties expressly stated that their right to be heard and to be treated equally in the proceedings had been fully respected.

2.2 The position of the Parties

40. The following outline of the parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Appellant and the Respondent. The Panel has nonetheless carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.

a. *The position of the Appellant*

41. In his appeal brief, the Appellant submitted the following requests for relief:

"Claimant respectfully requests the Court of Arbitration for Sport to overturn the decision of the DCR in its entirety, and to:

- (a) Find that the termination agreement signed by Mr. Ciani and Sporting on 15 August 2015 is null and void as it was obtained by duress,*
 - (b) Find that the Sporting unilaterally terminated Mr. Ciani's sport employment contract dated 18 July 2015 without just cause and;*
 - (c) Order the Sporting to pay Mr. Ciani damages in the amount of 1,930,008 euros as damages*
 - (d) Order the Sporting to pay all costs and expenses in this arbitration, including the CAS's administrative fees, the fees and expenses of the Arbitral Tribunal and of any experts appointed by the Arbitral Tribunal, the fees and expenses of Mr. Ciani's legal representatives in respect of this arbitration, and any other costs of this arbitration; and*
 - (e) Grant any other relief that it finds just and proper".*
42. In support of his claim, the Player contends in essence that the present dispute is the result of the "unlawful, abusive and coercive" behaviour of the Respondent: a few days after enticing the Player to join SCP, the SCP's coach and staff abruptly changed their mind and decided that the Player's services were no longer required; then, instead of terminating the Employment

Contract and paying fair and adequate compensation, the Player was side-lined, excluded from SCP's main team and forced to train separately, "*in shockingly unprofessional conditions*". In the end, SCP forced the Player, "*brought to his knees*", to sign the Termination Agreement and thereby accept "*grossly unfair conditions*", and leave with the sole oral promise of a payment of EUR 100,000, which he never received. The Termination Agreement is however null and void, being the product of coercive actions of SCP towards the Player. Therefore, the termination of the Employment Contract must be considered as a unilateral termination without just cause by SCP: the Player is entitled to receive compensation from SCP for the damages caused by its wrongful behaviour.

43. As to the factual background of the dispute, in which the "*unlawful, abusive and coercive*" behaviour of SCP was carried out, the Appellant submits the following:
- i. with respect to the Player's transfer to SCP, that in July 2015 Mr M., a football agent, contacted the Player on behalf of SCP to try to recruit him. In June 2015, in fact, the Player had completed a three-year work contract with S.S. Lazio. At that time, SCP had just hired a new coach, Mr J., a man of "strong views", from his fiercest rival: however, in a telephone conversation with Mr G., the Player was reassured that the entire technical staff of SCP had approved his transfer to SCP. As a result, the Player chose to join SCP, notwithstanding his initial lack of interest in the Portuguese championship. Therefore, immediate negotiations were conducted through Mr M., which led to the signature of the Employment Contract on the basis of "*advantageous financial terms for the Player*";
 - ii. with respect to the Player's arrival to SCP and "*his immediate and arbitrary exclusion from the Professional Group*", that, a few days after signing the Employment Contract, the Player joined his new teammates in South Africa where the team was participating in a friendly tournament against local teams. As a result, on 22 July 2015, the Player participated in his first training with the team, and on 24 July 2015 made his first game appearance at the occasion of the SCP's victory against the South-African team of Ajax Cape Town, entering the pitch twenty minutes before the end of the match. However, as he had just returned to Lisbon from South Africa at the end of July 2015, the Player found out that the coach of SCP had suddenly decided to exclude him from the professional group, without any form of explanation. From this moment on, the Player stopped training with the A team (or even with the B team) and was instead set aside. The Player was forced to train separately, in unprofessional conditions: training sessions took place on a field in an extremely poor conditions and did not involve any meaningful technical or physical exercise. The Player was prevented from accessing the Club's gym or the A team's locker room, and were even told to use a different entrance to access the Club's facilities and a different parking lot³. On 2 August 2015, SCP played a game intended to

³ As evidence of that situation, the Player filed in these proceedings screenshots of a thread of *WhatsApp* messages exchanged with Mr V., team manager of the Club, between 3 and 6 August 2015 (as follows: 3 August 2015, message to the Player: "*My friend, today your training session will be with B team, 16:00 to be here and 17:00 to start. You should park in the youth side (same place where you pick up your car). The dressing room is in youth side too (...)*"; 5 August 2015, message from the Player: "*V., there is nobody here to give the training session. I waste my time here. I'm still in the changing*

present the new squad to the press and to the supporters. However, the Player was requested to stay at his hotel. To justify his absence from the team's official group picture for the new season, SCP falsely alleged that the Player was suffering from gastroenteritis. In that context, the agent who assisted in the transfer to SCP, Mr M., had disappeared and did not help the Player to solve the situation;

- iii. with respect to the Player's "*forced departure*" to Espanyol, that the "*unprofessional and discriminatory*" treatment to which the Player was subjected exposed him to a serious threat that his career could come to an end. However, the Player could not simply sit idle and earn good money doing nothing. As a result, the Player took the opportunity of the visit to the Club of another agent, Mr E.: after hearing of the Player's situation, Mr E. got in touch with the President of SCP and obtained the promise of a payment of EUR 100,000 if he found a new club for the Player. Mr E. eventually found the availability of Espanyol to hire the Player, even though at much less favourable conditions than those contemplated by the Employment Contract. In that situation, SCP "*cynically*" decided to take advantage of the situation in which it had placed the Player, and therefore conditioned the departure of the Player to the signature of an "*amicable*" termination of the Employment Contract, pursuant to which the Player was surrendering all contractual rights under it. In that context, therefore, the Player was confronted with a choice: sit idle and earn good money doing nothing, but enduring a daily humiliation and putting his career at risk, or leave the Club, signing this "*outrageous amicable termination*";
- iv. with respect to SCP's "*unrecorded promise*" to pay EUR 100,000 to the Player, that, in its attempt to pressure the Player to leave the Club as quickly as possible, SCP promised him to pay EUR 100,000, which was supposed to include the salary of the first two weeks of August 2015⁴. However, "*for reasons best known to the Sporting, it refused to record this promise in writing. One can only suppose that this refusal was intended to conceal a fraudulent scheme pursuant to which the Sporting was trying to evade its tax duties and social contributions*". In fact, on 15 August 2015, the Player and Mr E. signed an agreement pursuant to which Mr E. was to transfer to the Player the sum of EUR 100,000, immediately after receiving this amount from a company named Buttonpath Limited, pursuant to another agreement signed on the same day: the Player submits that Buttonpath Limited was to receive that amount from SCP. In addition, on 24 September 2015, an agreement was concluded between Mr E. and Buttonpath Limited, explaining that SCP and Buttonpath Limited closed a deal for the payment of a fee for the intervention of Mr E. in the incorporation in the Club of a player, made possible by the transfer of the Player to Espanyol. Under such contract, Mr E. was to receive a payment, which "*further*

room. I'll going home in few minutes if it's not change"), and of a message sent to Mr G., member of the board of directors of the Club, on 4 August 2015 ("*Hello G. it's Michael Ciani. Can we talk about the situation? I tried to call you but no answer. Listen, I can't stay here and we need to find a solution. The coach doesn't respect me, I'm here since two weeks now and already outside the team and have to stay with the B team. I didn't go to the official presentation (...) Without good reason. Come on! I'm not a kid and I don't want to waste my time. Can you understand that this situation is harmful to my reputation. Please let's find a way to fix this problem. I can come to meet you this afternoon if you can*").

⁴ This is evidenced, according to the Appellant, by an exchange of *WhatsApp* messages of 15 and 16 September 2015.

correspondence” suggests it was to be transferred by Mr E. to the Player.

44. As to its claim that SCP “*is liable for its wrongful termination*” of the Employment Contract, the Appellant argues about the “*invalidity of the Termination Agreement*” and the SCP’s “*unilateral termination*” of the Employment Contract “*without just cause*” as follows:

i. “*the Termination Agreement is null and void*”:

- from the moment the Player arrived in Portugal to the day he signed the Termination Agreement, SCP made every possible effort to make him feel rejected and unfit to be a member of the Club’s first team. The overall goal of this campaign was to force the Player to leave SCP in a manner that would prove least costly for the Club. SCP emotionally and psychologically harassed the Player until he was finally presented by Club officials with a pre-prepared Termination Agreement, to be signed by the Player with no negotiation whatsoever: when the Player signed the Termination Agreement, SCP had created such an inhospitable environment that he would have signed any document guaranteed to extricate him from those unfortunate circumstances. The Player had no choice but to sign the Termination Agreement and leave for another club where he would be afforded better working conditions and the opportunity to maintain and further develop his skills. If the Player had refused to sign the Termination Agreement, his career would probably be over today. Indeed, a prolonged lack of proper training can have irreversible consequences for a 31-year-old football player like the Player. It would have been impossible for the Player to find a competitive club (or any club) willing to pay 45 million euros, *i.e.* the amount of the buyout clause imposed by SCP, to recruit him during the next winter transfer window. SCP had perfect knowledge of these facts and consequently used them to make the Player sign a termination agreement that was obviously abusive;
- Article 255 of the Portuguese Civil Code defines “moral coercion” as the act of procuring a contracting party’s consent “*by fear of a harm with which the [contracting party] was illegally threatened*”, and provides that “*the threat can either be directed at the person or their honour, or at the assets of the contracting party or those of a third party*”. As a result, the situation of exclusion and isolation imposed by SCP clearly amounts to moral coercion under the Portuguese civil code: the Player’s physical and psychological health was threatened, as he was training on a dangerous field and was constantly humiliated;
- Article 1248 of the Portuguese Civil Code defines a settlement as a “*contract by which the parties anticipate or end a dispute through mutual concessions*”. There is substantial uncertainty as to what kind of concessions SCP could have possibly made in the Termination Agreement;
- Article 40(3) of the Collective Labour Agreement, signed by the Professional Portuguese Football League and the Union of Professional Football Players (the

“CLA”), provides that if, in a mutual agreement to terminate a sport employment contract (or in one of its annexes), *“the parties provide for financial compensation of a global nature for the player, it will be considered, in the absence of any contradictory provision, that this financial compensation includes debts already expired before the date of the termination of the contract or due for payment before this termination”*. *A fortiori*, the rule is that any financial compensation, whether global or earmarked for a specific purpose, necessarily must be included in the mutual agreement to terminate the contract. In any case, the amount of EUR 100,000 is ridiculously low compared to what the Player was entitled to receive under the Employment Contract and to the savings made by SCP by forcing the Player to leave;

- the reason why SCP refused to record its promise in writing to pay EUR 100,000 was likely to conceal a fraudulent scheme aimed at avoiding paying its taxes and social contributions. Therefore, the SCP’s fraud has the effect of corrupting the entire Termination Agreement, because this document and the fraudulent act are inextricably linked;
- ii. SCP’s unilateral termination of the Employment Contract is *“without just cause”* and gives rise to the Player’s claim for compensation:
- SCP wanted to get rid of the Player as soon as he arrived in Portugal. To accomplish this, SCP violated its most elementary contractual obligations to provide the Player with good working conditions and to afford him the human and technical resources necessary for him to pursue his professional activity, in accordance with Article 12(a) of Portuguese Law No 28/98 on Sport Employment Contracts and Sport Training Contracts and Article 14(d) of the CLA. Such behaviour undoubtedly constitutes gross negligence attributable to SCP, committed solely to push the Player to leave the Club and to make him sign a Termination Agreement *“unfair and null”*. The termination of the Employment Contract is directly and solely attributable to SCP, and therefore must be interpreted as a unilateral termination without just cause;
 - as expressly provided by Article 11 of the Employment Contract, the compensation due to the Player corresponds to the difference between the total salary he would have normally earned throughout the term of the Employment Contract and the salaries earned after the termination of the Employment Contract. In that regard, it is to be noted that:
 - the Player was entitled under the Employment Contract to a fixed compensation of EUR 1,400,004 per season, plus several bonuses. Accordingly, up until 30 June 2017, the Player would have, at the minimum, earned EUR 2,800,008 (excluding bonuses);
 - when he was playing for Espanyol, during the 2015-2016 season, the Player’s compensation amounted to EUR 10,000 per month (pre-tax), or EUR

130,000 per season. In addition, the Player received a “contract bonus” of EUR 470,000 for the 2015-2016 season. Therefore, until 30 June 2016, the Player could earn a maximum of EUR 600,000, which is EUR 800,004 fewer than what he would have earned playing for SCP during the 2015-2016 season alone;

- regarding the 2016-2017 season, during which the Player played for Lorient, he earned a total of EUR 500,000 (from September 2016 to June 2017) plus a “contract bonus” of EUR 70,000. The difference between this amount and the sum he would have earned playing for SCP is EUR 830,004;
- in total, therefore the Player suffered a loss of EUR 1,630,008, which must be paid by SCP in compensation for its wrongful termination of the Employment Contract.
- the Player further suffered from moral and physical damage. In fact, it is evident that SCP’s behaviour not only severely affected the Player’s physical preparation, but also his reputation. In terms of public image, it is unquestionable that it is extremely harmful for a player to leave a club he joined less than a month before. This harm is estimated to a minimum of EUR 300,000.

b. The position of the Respondent

45. In its answer to the appeal, the Respondent requested the Panel to rule as follows:

- “A. Dismiss all the claims presented by Mr. Ciani against Sporting Portugal on the present procedure, as it is clearly shown that Sporting did not terminated the Contract without just cause, and therefore the request of Mr. Ciani for the outstanding payments should be dismissed;*
- B. The request to compensation or additional damages are based on unproven facts. Therefore, shall also be dismissed”.*

46. In other words, the Respondent is requesting this Panel to confirm the Decision challenged by the Appellant, dismissing all the Appellant’s claims.

47. In support of its request, the Respondent, after indicating that Swiss law is applicable to the present case, analyses the evidence brought by the Appellant to ground its claims, considers the Player’s transfer to SCP, his physical conditions when he joined SCP, the SCP’s calendar at the beginning of the season 2015/2016, the transfer of the Player to Espanyol and the Player’s contract with Espanyol, the Player’s public statements upon his transfer to Espanyol, the Player’s subsequent transfer to Lorient, and the alleged tax fraud. In the Respondent’s contention, such examination shows that the Appellant’s claims are devoid of merits.

48. With respect to the Respondent’s submissions, the following can be noted:

- i. the Appellant failed to prove to this Panel not only the alleged unlawful breach of contract, but also the compensation he should receive and the “*moral and reputation*” damages allegedly sustained. In fact:
 - the witnesses are not credible because of their relations with the Player or because they have no direct knowledge of the facts on which they are testifying, but mostly refer to what the Player told them; and
 - with respect to the screenshots of the *WhatsApp* messages filed by the Appellant, they are not reliable because they do not show, for instance, whether the conversation presented contains all the messages exchanged;
- ii. in the season 2014/2015 the Player had played with Lazio only 8 games in the starting squad. However, the Player, notwithstanding the limited number of matches played, was a special request of the Club’s new coach;
- iii. 22 days of training had already passed since the beginning of the season, when the Player joined SCP;
- iv. at the time, the Player was almost 4 Kg over-weight. Nevertheless, the coach wanted to put the Player on the pitch in order to prepare him for the upcoming matches. However, it was soon realized that the Player needed specific training in order to fulfil the normal standards of a high professional athlete. Indeed “*it is normal to a Player with only 8 (eight) games played in the previous season and with no preparation whatsoever during the summer not to be on his best shape when initiating a pre-season*”; at the same time, it was “*normal to a Club to do his best efforts – without prejudicing the Team as an all – to engage specific training in order to help the Player to acquire the best shape*”. Under Portuguese law, in fact, while a player has the right to train with the rest of the team, the club has the right to adopt the technical decisions regarding the use of players in competitions and to organize trainings in the way to allow players keep their best physical conditions. Accordingly, the specific trainings were aimed at the Player’s recovery from extra-weight and his familiarization with the working style of SCP;
- v. at the beginning of the 2015/2016 season, SCP had important matches to play, but the Player was not physically fit, and, as explained to him, needed specific trainings. The Player was frustrated with this situation and started to pressure the board of directors, the coach, and the rest of the staff not only to be included in the group of players eligible to play, but also to play in those matches. As a result, he was invited not to interfere with the coach’s decision;
- vi. not accepting the position of SCP, the Player started to pressure SCP in order to find a solution and continue his career with another club. In that context, a transfer to Espanyol was presented to SCP as a possible solution: however, Espanyol was not contacted by SCP, and SCP did not negotiate the employment of the Player with Espanyol;

- vii. the Termination Agreement was subject to the transfer of the Player to Espanyol, and the transfer of the Player to Espanyol was conditional upon the signature of an employment contract with Espanyol and the completion of medical examinations. This shows that the termination of the Employment Contract was not the effect of unlawful pressures by SCP, because situations (beyond the control of SCP) existed which could prevent the transfer of the Player;
- viii. contrary to the Appellant's submissions, it is not a requirement, necessary under Portuguese rules, that mutual termination agreements provide for payments: the CLA only requires that if the parties established any financial compensation, this has to be mentioned in the termination agreement;
- ix. under the contract with Espanyol, the Player received better financial conditions, over the three seasons for which it was concluded, and it is difficult to believe that a "*pressured player*" could sign such a favourable contract. In addition, the public statements made by the Player when he joined Espanyol contradict the claims brought in this arbitration: he declared in fact that he left SCP amicably and that he had trained well with SCP;
- x. the Player later left Espanyol to join Lorient, probably because he wanted to be fielded in the first team – what also Espanyol could not guarantee;
- xi. the arguments relating to an alleged tax fraud are "*nonsense*" and are not supported by any evidence.

3. LEGAL ANALYSIS

3.1 Jurisdiction

- 49. CAS has jurisdiction to decide the present dispute between the parties.
- 50. In fact, the jurisdiction of CAS is not disputed by the parties and is contemplated by the Statutes of FIFA (in the text in force as of 27 April 2016), which provide materially as follows:

Article 57

- "1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents.
- 2. 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".

Article 58

- “1. *Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question.*
2. *Recourse may only be made to CAS after all other internal channels have been exhausted.*
3. *CAS, however, does not deal with appeals arising from:*
 - (a) violations of the Laws of the Game;*
 - (b) suspensions of up to four matches or up to three months (with the exception of doping decisions);*
 - (c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.*
4. *The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect.*
5. *FIFA is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by the confederations, member associations or leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations.*
6. *The World Anti-Doping Agency (WADA) is entitled to appeal to CAS against any internally final and binding doping-related decision passed in particular by FIFA, the confederations, member associations or leagues in accordance with the provisions set out in the FIFA Anti-Doping Regulations”.*

Article 59

- “1. *The confederations, member associations and leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated players and officials comply with the decisions passed by CAS. The same obligation shall apply to intermediaries and licensed match agents.*
2. *Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations. Recourse to ordinary courts of law for all types of provisional measures is also prohibited.*
3. *The associations shall insert a clause in their statutes or regulations, stipulating that it is prohibited to take disputes in the association or disputes affecting leagues, members of leagues, clubs, members of clubs, players, officials and other association officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and duly constituted arbitration tribunal recognised under the rules of the Association or Confederation or to CAS.*

The associations shall also ensure that this stipulation is implemented in the association, if necessary by imposing a binding obligation on its members. The associations shall impose sanctions on any party that fails to respect this obligation and ensure that any appeal against such sanctions shall likewise be strictly submitted to arbitration, and not to ordinary courts of law”.

3.2 Appeal proceedings

51. As these proceedings involve an appeal against a decision rendered by FIFA, brought on the basis of rules providing for an appeal to the CAS, in a dispute relating to a contract, they are considered and treated as appeal arbitration proceedings in a non-disciplinary case, within the meaning, and for the purposes, of the Code.

3.3 Admissibility

52. The statement of appeal was filed within the deadline set in Article 58.1 of the FIFA Statutes. The admissibility of the appeal is not challenged by the Respondent. Accordingly, the appeal is admissible.

3.4 Scope of the Panel’s review

53. According to Article R57 of the Code,

“the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance (...).”

3.5 Applicable law

54. Pursuant to Article R58 of the Code, this Panel is required to decide the dispute:

“(...) according to the applicable regulations and, subsidiarily, 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”.

55. In the present case, the “*applicable regulations*” for the purposes of Article R58 of the Code are, indisputably, the FIFA regulations because the appeal is directed against a decision issued by FIFA, which was passed applying FIFA’s rules and regulations. More specifically, the Panel agrees with the DRC that the particular regulations concerned – apart from the FIFA Statutes – are the RSTP in their 2015 edition, in force since 1 December 2012, given that the petition to FIFA by the Player was received on 18 January 2016, before the entry into force (on 1 June 2016) of the subsequent edition of the same regulations.

56. The question is which other “*rules of law*”, as mentioned by Article R58 of the Code, may be

applicable. In that regard, the Panel notes that the Employment Contract contains a provision confirming the application to the Employment Contract of the CLA. It might be argued, therefore, that the parties subjected the Employment Contract to Portuguese law. Some references, for instance to provisions of the Portuguese Civil Code, were also submitted by the parties in their pleadings.

57. On the other hand, the Panel remarks that the FIFA Statutes provide for a choice-of-law rule, if an appeal against a final decision passed by FIFA's legal bodies is filed with the CAS. As already mentioned, in fact, pursuant to Article 57.2 of the FIFA Statutes:

"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".

58. As a result, it can be assumed that the parties agreed to a choice of law, for they submitted to Article 57.2 of the FIFA Statutes, which provides that, in the event that CAS has the competence to decide the case, this is to be decided according to Swiss law.
59. The Panel however notes that, along a line of reasoning emerging in the CAS jurisprudence (HAAS U., *Applicable law in football related disputes – the relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law*, in *CAS Bulletin*, 2015, 7-17), the application of Swiss law is confined to ensuring uniform application of the FIFA regulations. The rules adopted by FIFA to govern the status and transfer of players (the RSTP) are in fact based on Swiss law: therefore, if a question of interpretation arises in their regard, Swiss law applies. Any other issue regarding the Employment Contract is governed by Portuguese Law, as the law chosen by the parties in its respect.

3.6 The dispute

60. The object of the dispute is the Decision which dismissed the Player's claims. The Appellant wants the Decision to be set aside and the Respondent found liable for breach of contract and bound to pay compensation for the damages caused. The Respondent requests the confirmation of the Decision.
61. As a result of the above, two main issues have been raised before the Panel in this arbitration: the first concerns the liability, if any, of the Respondent for breach of contract; the second, to be addressed only in the event a liability of the Respondent for breach of contract is found, concerns the amount of compensation to be paid.
62. The Panel shall consider the two issues separately.

i. Did the Respondent terminate the Employment Contract without just cause?

63. The Appellant submits that the Employment Contract was terminated by the Respondent without just cause for the purposes of the RSTP. In essence, according to the Appellant, the Termination Agreement, which put an end to the Employment Contract, was signed by the

Player under “*duress*” and is therefore null and void; and the invalidity of the Termination Agreement affected the termination of the Employment Contract, depriving it of just cause.

64. Such “*duress*”, in the Appellant’s opinion, consisted in the “*silent treatment*” reserved to the Player by the coach and the Club: the Player was isolated without justifications, was not allowed to participate in the activities of the first team of the Club, and was forced to train in very poor and unprofessional conditions, together with a group of out-cast players, and was even not allowed to take part in the presentation of the Club and in the official photo for the new season. Such situation had a big psychological impact on the Player and posed a big threat to his future. As a result, the Player, “*devastated*” and “*humiliated*”, was forced to accept the termination of the Employment Contract, in order to have the possibility to continue his career with a new club. Such treatment, it is submitted, constitutes “*duress*” under the Portuguese legislation.
65. The Panel preliminarily notes that a contract between a professional and a club may only be terminated upon the expiry of the term of the contract or by mutual agreement (Article 13 RSTP). In addition, a contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause (Article 14 RSTP).
66. On the basis of the above, it is therefore clear that an employment contract can be terminated according to the parties’ will, expressed through the setting of a term or by entering into a contract terminating the employment: only in the presence of a “just cause” is a unilateral termination (without further consequences) allowed. This feature is just one aspect of the fundamental principle “*pacta sunt servanda*” underlying the RSTP: in the same way as the parties are free to enter into a contract, they are free to terminate it, and only exceptionally a possibility of unilateral termination is granted. It is however clear to the Panel that for a “mutual agreement” to effectively terminate an existing contract, it must constitute a valid expression of consent.
67. In this case, the Employment Contract was terminated by the Termination Agreement: therefore, it appears that a case of termination by “mutual agreement” occurred. The question is whether such “mutual agreement” was validly expressed.
68. The Appellant, who bears the burden to prove his claim (Article 8 of the Swiss Civil Code: “*Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu’elle allègue pour en déduire son droit*”), points to the pressure put on the Player, by his exclusion from the first team and the deprivation of any meaningful possibility to train in a professional way.
69. The Panel notes that it is an established fact that the Player, who had signed the Employment Contract on 18 July 2015 and participated in a friendly match in South Africa on 24 July 2015, started to train in a separate group of players, and only occasionally was called to train with the first team, when the Respondent’s team returned to Portugal at the end of July 2015. The parties, then, dispute as to the reasons of such “treatment”: on one side, the Player refers to a decision of the coach, who wanted to get rid of him; on the other side, the Club points at the necessity for the Player to undergo specific training to recover his fitness for first team appearances, while

the team was playing important matches for which the Player was not ready, and submits that the Player had the opportunity to be readmitted to the first team once he had recovered.

70. The Panel finds that an issue as to a violation of the Employment Contract might arise in that context: the Club's decision to "exclude" the Player from the first team could be seen as a breach of contract, or, at least, as giving rise to a dispute as to the compliance by the Respondent with its obligations under the Employment Contract and/or the Portuguese regulations. The Panel, however, in the same way as the DRC, finds that the Appellant has not claimed such breach of contract. To wit, the Appellant's prayers for relief only request the Panel to find that the Termination Agreement is null and void as it was obtained by duress and that, by illegally "forcing" the signature of the Termination Agreement, the Respondent terminated the Employment Contract without just cause. Hence, the Panel is not called to decide whether the Respondent was otherwise in breach of its obligations. The Panel is only called to determine whether by such conduct the Respondent "forced" the Appellant to enter into the Termination Agreement, signed under "duress" in a way relevant to affect its validity.
71. The Panel finds that the Player has not discharged his burden to prove the existence of such "duress".
72. The Panel remarks that the Player was clearly dissatisfied with his conditions at the Respondent's team: he joined SCP on 18 July 2015 with the personal and professional expectation to be a member of the first team, but found himself at the beginning of August 2015 (*i.e.*, almost immediately) in a group of players not training with the first team. As a result, he reacted by some *WhatsApp* messages, complaining about his conditions and requesting clarifications, and "*a way to fix this problem*" (message to Mr G. of 4 August 2015). Such messages confirm the declarations of the witnesses heard at the hearing.
73. At the same time, however, the Panel observes that Player found by himself the "*way to fix this problem*", by getting in touch with a new club and finding a new contract to his satisfaction. It is in fact undisputed that the Player directly and freely negotiated (through an agent) his employment with Espanyol during the second week of August 2015, and eventually found an agreement as to the terms of such employment, without any involvement of the Respondent. Indeed, it not even submitted that the "duress" allegedly sustained by the Player and put in place by the Respondent directly affected the terms of the contract signed by the Player with Espanyol, a third party. In any case, such terms are not obviously less favourable than those the Player was enjoying under the Employment Contract: even though the Player was receiving a lower yearly salary, the term of the new contract with Espanyol was longer, so that the Player was guaranteed an employment (and a salary) also for the season 2017/2018.
74. In that context, the Termination Agreement was a necessary element for the Player to be able to join Espanyol, avoiding the risks involved in a unilateral termination of the Employment Contract for the Respondent's breach. The fact that the text of the Termination Agreement was prepared by the Respondent's lawyer, was drafted in Portuguese and was not negotiated is therefore irrelevant. In any case, the Panel notes that the link between the possibility to join Espanyol and the signature of the Termination Agreement is made clear by Article 3 of the

latter: if no employment contract were signed with Espanyol, the Termination Agreement would not have been “valid”.

75. In other words, the Panel finds that the Player, dissatisfied with his situation, decided to leave within days after he started training in a separate group of players. His situation could well be the result of a breach of contract by the Respondent, but by entering into the Termination Agreement the Player waived any claim – and was allowed to join Espanyol. At the same time, nothing in the records shows that the exclusion of the Player from the first team was specifically intended to “extort” the signature of the Termination Agreement.
76. In this context, the Panel is struck by the very short time frame in which the events developed: the Player returned to Portugal at the end of July 2015, and found himself out of the team immediately thereafter; evidence exists that he complained about his situation (and wanted to find a solution) as early as on 4 August 2015. In such situation, it is difficult to find that “moral coercion” based had occurred, causing the signature, a couple of weeks later, of the Termination Agreement after the Player had directly negotiated a contract with a new club of his choice.
77. Although, the applicable law to the present case is Swiss law, the Panel also analysed whether by the above referred conduct the Respondent “forced” the Appellant to enter into the Termination Agreement, signed under “duress” in a way relevant to affect its validity in accordance with the Portuguese law.
78. Firstly, the Panel notes that the definition of moral coercion or duress is provided by Article 255 (1) of the Portuguese Civil Code and states the following: “*A transactional statement is made under duress when compelled by an unlawful threat of harm made to the person making such statement for the purpose of obtaining that statement from him/her*”.
79. On this basis, the Panel observes that for an agreement or statement, as the Termination Agreement *sub judice*, to be affected by duress certain requirements should be met under Portuguese law. In fact, for a relevant party to avoid a contract due to duress, the following requirements, set out in Article 255 of the Portuguese Civil Code, must be satisfied: a) the existence of a threat; b) the unlawfulness of that threat; c) the threat being the cause of and essential to the statement; d) the threat being made with the purposeful intent of obtaining the transactional statement.
80. Therefore, in order for a statement to be affected by duress, the person making the statement must first be threatened and that threat must come from either a counterparty or a third party.
81. In addition, in order to be considered duress, the threat must be unlawful. A threat to merely exercise a right in order to obtain satisfaction of an obligation or secure a right is therefore not deemed coercion or duress. Several Portuguese legal scholars defend that there is no coercion, for example, if a debtor is threatened with bankruptcy if he/she fails to sign an acknowledgement of debt, if he/she fails to hand over an asset to satisfy the debt, if he/she fails to repay an asset of a value equivalent to the debt when unable to provide security/guarantee, etc.

82. Moreover, the threat must serve the sole purpose of obtaining the transactional statement. Lastly, there must be a causal link between the coercion or duress and the act or statement.
83. Taking into account the factual background and the evidence produced by the Appellant, the Panel finds that the Player failed to prove that the requirements of the existence of “duress” in accordance with Portuguese law are met: at least, there is no evidence at all showing that SCP threatened the Player with the purpose of forcing him to sign the Termination Agreement.
84. At the same time, the Panel finds irrelevant all discussions as to the “*unrecorded promise*” allegedly made by the Respondent to pay EUR 100,000 to the Player to accept the Termination Agreement: in fact, there is no evidence that the Appellant undertook to pay such amount to the Player, and in any case there is no evidence that the signature of the Termination Agreement (allowing the Player to join Espanyol) was based on such “*unrecorded promise*”, the illegality of which would corrupt the entire contractual structure.
85. In summary, the Panel finds that the Player has not established that Termination Agreement was affected by “duress” and is therefore invalid. As a result, it validly terminated the Employment Contract. The Appellant’s claim that the Employment Contract was terminated by the Respondent without “just cause” is to be dismissed.

ii. Is the Respondent liable to pay compensation to the Appellant?

86. In light of the conclusion reached with respect to the first question, there is no need for the Panel to address this second issue.

3.7 Conclusion

87. Based on the foregoing, the Panel finds that the appeal brought by the Player against the Decision has to be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 6 December 2016 by Mr Michaël Ciani against the decision rendered on 8 September 2016 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA) is dismissed.
2. The decision issued by the Dispute Resolution Chamber of the Fédération Internationale de Football Association (FIFA) on 8 September 2016 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.