Arbitration CAS 2017/A/5092 Club Hajer FC Al-Hasa v. Arsid Kruja, award of 16 April 2018

Panel: Mr Ivaylo Dermendjiev (Bulgaria), Sole Arbitrator

Football
Termination of the employment contract with just cause by the player
Validity of the employment contract
Just cause to terminate the contract
Timely termination notice
Obligation of the employer with regard to visa/work permit
Contents of the personality rights of a player
Determination of the compensation due by the club

1. **The authenticity of a signature must be presumed until evidence to the contrary is presented. In any event, even if not originally signed by the club's legal representative, an employment contract is *de facto* confirmed by the club where the latter entered into transfer loan agreements with respect to the signatory player of said employment contract and the contracts were indisputably signed on behalf of the club by its president. In addition, the fact for the club to record the employment contract in the Transfer Matching System ("TMS") is another element confirming the validity of the contract. Under the circumstances, it is irrelevant who exactly signed the employment contract on behalf of the club. The fact that the player never entered into the country of his employer club as he was transferred on loan to other national clubs does not affect the entering into force, the operation or the validity of the employment contract.**

2. **It is generally accepted in most legal systems that an employment contract which has been concluded for a fixed term can only be unilaterally terminated prior to expiry of the term of the contract if there is good cause or a valid reason. This would be any situation, in the presence of which the party terminating the contract cannot in good faith be expected to continue the employment relationship. Only a "material breach" of a contract can possibly be considered as "just cause" for termination without consequences of any kind. In principle, the consecutive non-payment of salaries for several months and the failure to carry out the necessary actions for providing the player with visa and therefore with his working capacity constitute a substantial breach of contract justifying the termination of the employment contract with just cause by the player.**

3. **Except for prescription periods, there is no specific rule providing when at the latest the aggrieved party must file a termination notice following the breach of contract. Although just cause in cases regarding delayed salaries is determined on a case by case basis, a party that has not been paid its salary for more than three months generally has just cause to terminate the contract. A player who was obviously**

awaiting the position of the club before putting an end to the contractual relationship and who ultimately terminated the employment contract after it became evident that the club would not respond to the player's requests while he was also exchanging correspondence with FIFA and the relevant national football federation cannot be accused of bad faith, even if he could have sent the termination notice earlier.

4. **It is a general rule and a basic principle of any labour law that the employer, the club, must arrange the visa/work permit for the employee, the player. Furthermore, according to Article 18.4 of the RSTP, the validity of a contract may not be made subject to the granting of a work permit. If an employer does not undertake the necessary action to provide his employee with a visa/work permit and if this prevents him from entering the country in which he is employed and therefore to start work, this could be seen as an unjustified breach of contract by the employer. If an employer alleges that it does not bear any responsibility for obtaining visa and work permit of the player, it is up to the employer to prove this allegation. The club is responsible to undertake the appropriate actions to obtain the visa/work permit for the player not only before concluding the relevant contract but, as the case may be, at some point of time during the duration of the said contract.**

5. **Among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow team mates in the team's official matches. By not undertaking the necessary actions to provide a player with visa or working permit, the club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, violating one of his fundamental rights as a football player. According to Articles 28 et seq. of the Swiss Civil Code (CC), any infringement of personality rights caused by another is presumed to be illegal and subject to penalties unless there is a justified reason that overturns this presumption. For athletes, personality rights encompass in particular the development and fulfilment of personality through sporting activity, professional freedom and economic freedom. An athlete who is not actively participating in competitions depreciates on the market and reduces his future career opportunities. Athletes have therefore a right to actively practice their profession. To the extent that Articles 28 et seq. CC protect parties from negative actions and require offending parties to refrain therefrom, but do not grant rights to positive actions, such right to actively practice one's profession is resolved notably by labour law.**

6. **Article 17 of the RSTP and the principle of "positive interest" are applicable to determine the compensation due by the breaching party. The principle of the so-called positive interest (or "expectation interest") aims at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract had been performed properly, without such contractual violation to occur. Therefore, in the case of termination of the employment contract for just cause by the player, the latter would be entitled to the entire income until the expiration of the fixed duration of the employment contract less any amount received from a third party.**

I. PARTIES

1. Club Hajer FC Al-Hasa (the "Appellant" or the "Club") is a professional football club based in Al Hofuf, Saudi Arabia. The Club is affiliated to the Saudi Arabian Football Federation ("SAFF") which, in turn, is a member of the Fédération Internationale de Football Association ("FIFA").

2. Mr Arsid Kruja (the "Respondent" or the "Player") is a professional football player of Albanian nationality, born on 8 June 1993.

3. The Appellant and the Respondent will be collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced. Additional facts and allegations found in the Parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions, pleadings and evidence it considers necessary to explain its reasoning.

5. On 15 January 2015, the Club and the Player concluded an employment contract valid as from 15 January 2015 until 14 January 2018 (the "Employment Contract"). The Parties to the Employment Contract agreed to a monthly remuneration of USD 7,500 for the first year of the duration of the contract payable at the end of every Gregorian month (clause 4.1). According to other relevant terms and as per the specific wording of the Employment Contract, the Parties agreed to *"any other benefits"*:

   "This contract for Three years divided as follows

   - Paid player in the first year the amount of 100,000 one hundred thousand US dollars received as provider contract and the remaining 10% distributed on a monthly salary for a year

   - Paid player in the second year the amount of 110,000 one hundred and ten thousand US dollars received as provider contract and the remaining 15% distributed on a monthly salary for a year

   - Paid player in the third year the amount of 150,000 one hundred and fifty thousand US dollars received as presenter hold 15% and the rest distributed in monthly salaries for a year …" (clause 4.4).

   The Player was further entitled to other benefits in the form of a bonus of USD 8,*000 "in the event that the player record number of (8) eight goals in the season"* and another USD 4,000 if the Player *"making of his passing game (8) eight goals in the season"*.

6. On unspecified date, the Club, the Player and the Albanian club Football Club Flamurtari JSC ("Flamurtari") signed an agreement for the temporary transfer (loan) of the Player to Flamurtari from 27 January 2015 until 30 June 2015 (the "Flamurtari Loan Contract").

According to the terms of the Flamurtari Loan Contract, Flamurtari, subject to entering into an individual employment contract with the Player, would be solely responsible for payment of his monthly salaries. Accordingly, for the term of the Flamurtari Loan Contract, the Club would be relieved from the obligation to pay monthly salaries to the Player. The Flamurtari Loan Contract further provided for the return of the Player to the Club after the expiration of this contract. According to the terms of the individual employment contract entered into between Flamurtari and the Player, the latter was entitled to a total payment of EUR 4,000 before taxes for the entire term of the contract to be paid as monthly salaries (i.e. EUR 800 per month).

7. On 30 August 2015, the Club, the Player and the Albanian club Football Club Laci ("Laci") signed an agreement for the temporary transfer (loan) of the Player to Laci from 30August 2015 until 31 December 2015 (the "Laci Loan Contract"). According to the terms of the Laci Loan Contract (which were virtually the same as those contained in the Flamurtari Loan Contract), Laci, subject to entering into an individual employment contract with the Player, would be solely responsible for payment of his monthly salaries. Accordingly, for the term of the Laci Loan Contract the Club would be relieved from the obligation to pay monthly salaries to the Player. The Laci Loan Contract further provided for the return of the Player to the Club after the expiration of this contract. The individual employment contract entered into between Laci and the Player provided for a monthly salary in the amount of USD 1,000.

8. On 11November 2015, the Player put the Club in default of the salaries for June, July and August 2015. In addition, the Player announced that he did not intend to renew the Laci Loan Contract and therefore demanded to be provided with necessary documentation for obtaining an entry visa for Saudi Arabia in order to respect the Employment Contract (it is disputed between the Parties if the letter dated 11 November 2015 was actually received by the Club, which will be discussed below in the relevant parts of the Award). The Player further warned the Club that in the event of failure to pay the outstanding salaries and/or to provide the visa-related documentation he would have to protect his rights by writing to SAFF and FIFA.

9. On 2 December 2015, the Player requested the assistance of FIFA and SAFF *vis-a-vis* the Club with respect to outstanding salaries for June, July and August 2015 and documentation necessary to obtain a visa for entry into Saudi Arabia.

10. On 14 January 2016, having received no communication from the Club, the Player sought permission from FIFA *"to training with any club"*. On 10 February 2016, the Player requested FIFA to receive an answer to his request from 14 January 2016 to *"train with a team"*.

11. On 4 April 2016, the Player acting through an authorized attorney-at-law, required the payment by the Club of an outstanding debt calculated by the Player in the amount of USD 214,125, comprising of: (i) USD 100,000 allegedly due at the beginning of the Employment Contract; (ii) USD 110,000 allegedly due at the beginning of the second year of the Employment Contract; and (iii) an aggregate of USD 4,125 equal to three monthly salaries for the third year of the Employment Contract each in the amount of USD 1,375. The Player further requested to be provided with necessary documents for entering Saudi Arabia and to be reintegrated in the training process of the Club within 10 days as of the invitation.

12. On 25 April 2016, the Player through his attorney, reiterated the requests contained in the letter dated 4 April 2016 and warned the Club that if these requests were not satisfied he would be forced to terminate the Employment Contract with just cause and claim before FIFA Dispute Resolution Chamber ("DRC") payment of overdue payables and compensation pursuant to Article 17 of FIFA Regulations on the Status and Transfer of Players ("RSTP").

13. On 30 May 2016, the Player through his legal representative formally notified the Club of the unilateral termination of the Employment Contract with just cause and with immediate effect on the ground of contractual breaches committed by the Club, notably for non-payment of salaries and failure to provide the Player with documents necessary to enter into Saudi Arabia and to reintegrate him in the training sessions of the Club, all of which in the Player's view clearly showed the Club's disrespect towards the Player. The Player also advised that he would lodge a claim before the FIFA deciding bodies requesting payment of outstanding amounts, compensation and imposition of sporting sanctions to the Club.

14. On 13 July 2016, the Player signed a contract with the Albanian club Vllaznia Football Club j.s.c ("Vllaznia") valid until 31May 2018 with a fixed monthly remuneration for the first 10 months in the amount of 88,000 Albanian Lek (equal to approximately USD 770). Subject to specific performance and appearances for the club, the Player was also entitled to a *"variable reward every month"* up to the amount of 88,000 Albanian Lek. The contract provides that *"the second year of the contract the club and the player have the right to review the contract financially based on the introduction of a season ago"*.

III. THE FIFA PROCEEDINGS

15. On 2 December 2015, the Player sent a letter via fax to FIFA and to SAFF requesting them *"to speak to"* the Club with respect to outstanding salaries for June, July and August 2015 in the amount of USD 22,500 and sought cooperation for receiving necessary documentation for an entry visa for Saudi Arabia. The submission of 2 December 2015 was further completed and modified by the Player on 8 August 2016 by filing a claim before the DRC whereby he asserted that the Employment Contract was terminated by the Player with just cause and requested that the Club be ordered to pay the following amounts:

    a) USD 233,541as outstanding remuneration comprising of: *(i)* USD 100,000 allegedly due at the beginning of the employment relationship; *(ii)* USD 8,333 pertaining to the salary for July 2015 calculated as being USD 7,500 plus the proportional part of the 10% per year of the amount of USD 100,000 pursuant to clause 4.4., second bullet, of the Employment Contract; *(iii)*USD 8,333 pertaining to the salary for August 2015 calculated as being USD 7,500 plus the proportional part of the 10% per year of the amount of USD 100,000 pursuant to clause 4.4., second bullet, of the Employment Contract; (*iv*) USD 110,000 allegedly due on 15 January 2016; and (*v*) USD 6,875 as five monthly salaries for the period January - May 2016 calculated as being USD 1,375 per each month;

b) USD 211,625 as compensation for breach corresponding to the residual value of the Employment Contract.

The total amount claimed was USD 445,500 (the precise sum of the amounts under *a)* and *b)* above actually makes a total of USD 445,166) plus 5% interest *per anum* from the relevant due dates broken down as above.

16. In his claim, the Player asserted to have signed with the Club the Employment Contract for a three years term on 15January 2015but was then transferred on loan to Flamurtari from 27 January 2015 until 30 June 2015and thereafter to Laci by a subsequent loan valid from 30 August 2015 until 31 December 2015. Flamurtari and Laci were responsible for payment of monthly salaries to the Player for the term of the respective loan contract. The Player further claimed that on 11 November 2015 he sent a default notice to the Club because of not receiving salaries for June, July and August 2015 in a total amount of USD 22,500. Furthermore, the notice contained a statement that the Player had no intention to extend the Laci Loan Contract and therefore requested to be provided with documents necessary to receive an entry visa for Saudi Arabia. The Player further stated that on 25 April 2016 he put the Club into default for a total of USD 214,125 noting also that the Club failed to register and reintegrate him with the team. The Player claimed that having received no payment of outstanding monies and support for obtaining visa, on 30 May 2016 he notified the Club for the unilateral termination of the Employment Contract.

17. In spite of having been invited to do so, the Club did not file reply to the claim.Thus, the DRC took its decision on the basis of the documents on the file, in other words, upon the statements and documents presented by the Player.

18. On 15 December 2016, the DRC issued its decision, the grounds of which were finally communicated to the Parties on 23 March 2017 (the "Appealed Decision"). The DRC partially accepted the Player's claim and ordered the Club to pay the Player outstanding remuneration in the amount of USD 70,460 and compensation for breach of contract in the amount of USD 193,000, plus 5% interest *p.a.* Any further claims lodged by the Player were rejected. The operative part of the Appealed Decision reads as follows:

"1. The claim of the Claimant, Arsid Kruja, is partially accepted.

2. The Respondent, Hajer Club, has to pay to the Claimant, ***within 30 days*** *as from the date of notification of this decision, outstanding remuneration in the amount of USD 70,460 plus 5% interest p.a. until the date of effective payment as follows:*

a. 5% p.a. as of 1 August 2015 on the amount of USD 7,500;

b. 5% p.a. as of 1 September 2015 on the amount of USD 7,500;

c. 5% p.a. as of 16 January 2016 on the amount of USD 16,500;

d. 5% p.a. as of 1 February 2016 on the amount of USD 7,792;

e. 5% p.a. as of 1 March 2016 on the amount of USD 7,792;

f. 5% p.a. as of 1 April 2016 on the amount of USD 7,792;

g. 5% p.a. as of 1 May 2016 on the amount of USD 7,792;

h. 5% p.a. as of 1 June 2016 on the amount of USD 7,792;

3. *The Respondent, Hajer Club, has to pay to the Claimant,* ***within 30 days*** *as from the date of notification of this decision, compensation for breach of contract in the amount of USD 193,000, plus 5% interest p.a. as from 2 December 2015 until the date of effective payment.*

4. *In the event that the amounts and interest due to the Claimant in accordance with the aforementioned numbers 2. and 3. is not paid by the Respondent within the stated time limits the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

5. *Any further claim lodged by the Claimant is rejected.*

6. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittances are to be made and to notify the Dispute Resolution Chamber of every payment received".*

19. In support of its Decision as to the substance of the dispute, the DRC made the following considerations in section II of the Appealed Decision:

"5. In continuation, the Chamber recalled that the Parties had signed an employment contract valid from 15 January 2015 until 14 January 2018. In this regard, and considering the claim of the Claimant, the Chamber paid particular attention to the content of the clauses relating to salary provisions, notably the provisions for 2015 and 2016 which respectively provide "paid player in the first year the amount of 100,000 one hundred thousand US dollars received as provider contract and the remaining l0% distributed on a monthly salary for a year" and "paid player in the second year the amount of 110,000 one hundred and ten thousand US dollars received as provider contract and the remaining 15% distributed on a monthly salary for a year". The members of the Chamber unanimously considered that the content of said provisions is vague and must therefore be subject to a degree of interpretation. In this regard, the DRC first considered the content of the clause pertaining to salaries due for 2017, i.e. "paid player in the third year the amount of 150,000 one hundred and fifty thousand US dollars received as presenter hold 15% and the rest distributed in monthly salaries for a year". Subsequently, the DRC considered the information to be found on the Transfer Matching System, which confirmed that the salary for the period running from 1 January 2015 until 31 December 2015 totals USD 100,000, that the salary for the period running from 1 January 2016 until 31 December 2015 totals USD 110,000 and that the salary for the period running from 1 January 2017 until 31 December 2017 totals USD 150,000. Therefore, the DRC considered that the salary provision for 2017 as well as the information contained on TMS pertinently give a clearer indication of the intention of the Parties.

6. Consequently; from the content of the employment contract, the information contained on TMS, in line with the aforementioned art. 6 par. 3 of Annexe 3 of the Regulations and in particular the salary provisions for 2017, the members of the Chamber concluded that the employment contract inter alia provides for the total

payment of USD 100,000 for 2015, with USD 10,000 payable at the beginning of 2015, and a monthly USD 7,500 payable thereafter. In continuation, it was noted that the contract provides for the total payment of USD 110,000 for 2016, with USD 16,500 payable at the beginning of 2016, and monthly USD 7,792 payable thereafter. Finally, the Chamber noted that the contract provides for the total payment of USD 150,000 for the 2017 season, with USD 22,500 payable at the beginning of 2017, and a monthly USD 10,625 payable thereafter.

7. Subsequently, the DRC noted that the Claimant had lodged a claim against the Respondent maintaining that he had terminated the employment contract with just cause on 30 May 2016 on the basis that, in spite of having put the Respondent in default of outstanding remuneration on two previous occasions, the Respondent had allegedly failed to pay the Claimant salaries due for the months of July and August 2015, the amount due at the beginning of 2016, in addition to salaries due between January 2016 and May 2016. Consequently, the Claimant requests to be awarded outstanding remuneration as well as the payment of compensation for breach of the employment contract.

8. Furthermore, the members of the Chamber noted that the Respondent, for its part, failed to present its response to the claim of the Claimant, in spite of having been invited to do so. Consequently, the Chamber deemed that the Respondent had renounced its right of defence and, thus, had accepted the allegations of the Claimant.

9. As a consequence of the aforementioned consideration, the members of the Chamber concurred that in accordance with art. 9 par. 3 of the Procedural Rules, a decision shall be taken on the basis of the documents on file, in other words, upon the statements and documents presented by the Claimant.

10. ln continuation, the members of the Chamber recalled that the Claimant inter alia requested to be paid USD 100,000 as an instalment due at the beginning of the employment relationship. In this regard, the DRC took into particular account the considerations to be found in points II./5 and II./6 above, and concluded that in light of the salary provisions provided for in the contract the relevant payment was not due, and therefore decided to reject the claimant's claim in this regard.

11. On account of the aforementioned, and in particular in light of the considerations to be found under points II./5 and II./6 above, the Chamber established that the Respondent, without any valid reason, failed to remit to the Claimant, until 30 May 2016, i.e. the date on which the Claimant terminated the employment contract the total amount of USD 70,460 as salaries due for the months of July and August 2015 totalling USD 15,000, the instalment due at the beginning of 2016 in the amount of U5D 16,500, in addition to salaries due between January 2015 and May 2016 totalling USD 38,960. Furthermore, the Chamber recalled that the Claimant asserted that the Respondent had failed to register the Claimant upon his return from loan, and in line with the considerations to be found in point II./9 above, concluded that this assertion had remained undisputed. In consideration of the above, and considering that the Respondent had repeatedly and for a significant period of time been in breach of its contractual obligations towards the Claimant the Chamber decided that the Claimant had just cause to unilaterally terminate the employment contract on 30 May 2016 and that, as a result the Respondent is to be held liable for the early termination of the employment contract with just cause by the Claimant.

12. In addition, taking into consideration the Claimant's claim, the Chamber decided to award the Claimant interest at the rate of 5% p.a. on the amount of USD 70,460 as of the day following the day on which the relevant instalments fell due".

20. Having established that the Player prematurely terminated the Employment Contract with just cause, the DRC further ruled upon the consequences of such termination. The DRC determined that the amount of compensation shall be calculated in accordance with Article 17.1 of the RSTP. In doing so, the DRC concluded that the amount of USD 204,544 (i.e. the remuneration from June 2016 until December 2017) served as the basis for determination of the amount of compensation due for breach of contract. In this regard, the DRC also noted that on 13 July 2016 the Player signed an employment contract with Vllaznia valid until 31 May 2018, which provided for a monthly remuneration of Albnian Lek 88,000. Therefore, according to its constant practice as well as in connection with the Player's general obligation to mitigate damages, the DRC deducted the amount of USD 11,544 (corresponding to the Player's salaries in Vllaznia for the period running from August 2016 until December 2017)from the remaining remuneration under the Employment Contract which the Player would have received if the contract had been properly performed (*i.e.* USD 204,544 being the remuneration from June 2016 until December 2017). Consequently, the DRC decided that the Club must pay the amount of USD 193,000 (USD 204,544 – USD 11,544) to the Player as compensation for breach of contract. Finally, the DRC decided to award an interest of 5% p.a. on the amount of USD 193,000 as of 2 December 2015.

21. The DRC rejected all other claims lodged by the Player.

22. The grounds of the Appealed Decision were notified to the Parties on 23March 2017.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (THE "CAS")

23. On 13 April 2017, the Appellant filed its statement of appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code"). With its statement of appeal, the Appellant requested that this matter be submitted to a sole arbitrator.

24. On 21 April 2017, the CAS Court Office initiated an appeals arbitration procedure, under the reference *CAS 2017/A/5092 Club Hajer FC Al-Hasa v. Arsid Kruja*.

25. On 21 April 2017, the Respondent objected to the present matter being heard by a sole arbitrator and requested that the President of the CAS Appeals Arbitration Division or her Deputy to decide on this issue.

26. On several occasions, the Appellant requested extensions of the time limit to file the appeal brief on the account of pending negotiations between the Parties for amicable solution of the matter. The Respondent did not object to any of the requests and the extensions were accordingly granted by the CAS (the last one until 11 August 2017).

27. On 11 August 2016, after having been granted the requested extension, the Appellant filed its appeal brief. In its appeal brief, the Appellant made a request for the production of certain documents.

28. On 17 August 2017, pursuant to Article R50 of the Code the Parties were informed by the CAS Court Office that President of the CAS Appeals Arbitration Division had finally decided

to submit the present case to a sole arbitrator, taking into consideration the circumstances of the case, including that the Respondent had indicated that it would not be paying its share of the advance of costs.

29. On 1 September 2017, after having been notified of the appeal brief on 21 August 2017, the Respondent requested an extension of the time limit to file an answer until for reason that the Parties had reopened the negotiations for amicable settlement of the matter. A further extension request followed as parties continued to discuss a potential settlement.

30. On 6 October 2017, the Respondent filed its answer.

31. On 11 October 2017, the Parties were invited to inform the CAS Court Office by 18October 2017, whether they would prefer a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

32. On 14 October 2017, the Respondent expressed the opinion that it was not necessary to hold a hearing in this matter but he would not oppose to such.

33. On 18 October 2017, the Appellant expressed its preference for a hearing to be held in this matter considering that it intended to examine the witnesses already indicated in the appeal brief.

34. On 19 October2017, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division and in accordance with Article R54 of the Code, informed the Parties that the Sole Arbitrator to hear this appeal was constituted as follows: Mr. Ivaylo Dermendjiev, Attorney-at-Law in Sofia, Bulgaria.

35. On 31 October 2017, the Appellant, on behalf of the Sole Arbitrator, was invited by the CAS Court Office, to indicate whether, in light of the Respondent's answer and documents provided in connection thereto, it maintained its request for the production of documents.

36. On 6 November 2017, the Appellant indicated that it maintained its request for disclosure under para.144, let. a of its appeal brief (regarding Player's employment relationship with Vllaznia) and renounced its request for disclosure under para.144, let. b of its appeal brief (regarding any offers received by the Player and not accepted by him in the period January - May 2016).

37. On 7 November 2017, the Parties were informed by the CAS Court Office on behalf of the Sole Arbitrator that the request for the production of documents was denied and that the reasons for which decision would be set out in the arbitral award.

38. On 4 December 2017, the Respondent signed the Order of Procedure.

39. On 7 December 2017, the Appellant signed the Order of Procedure.

40. A hearing was held on 21December 2017 on the basis of the notice given to the Parties in the letter of the CAS Court Office dated 21 November 2017. The Sole Arbitrator was assisted at

the hearing by Mr Jose Luis Andrade, Counsel to CAS. The following persons attended the hearing:

i. for the Appellant: Mr. Luca Tettamanti - counsel and Mr Michele Spadini - co-counsel;

Mr Hamad Abdullah Mohammed Al-Oraifiand and Mr Al Moslem Fawad Abdulaziz - witnesses (via skype)

ii. for the Respondent: Mr Arsid Kruja, in person, Mr Tomislav Kasalo - counsel and Mr Gentian Gjyrezi - interpreter;

41. The Parties were given the opportunity to present their cases, to make their submissions and arguments, to examine the witnesses and to answer questions posed by the Sole Arbitrator. Upon closing the hearing, the Parties expressly stated that they had no objections in relation to their right to be heard and that they had been treated equally in these arbitration proceedings. The Sole Arbitrator had carefully taken into account all the evidence and the arguments presented by the Parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.

V. POSITIONS OF THE PARTIES

42. The following outline of the Parties' positions is illustrative only and does not necessarily encompass every contention put forward by the Parties. The Sole Arbitrator, indeed, has carefully considered, for the purposes of the legal analysis which follows, all the submissions made by the Parties and the evidence produced by them, even if there is no specific reference to those submissions or evidence in the following summary.

A. The Appellant

43. The Appellant's submissions, in essence, may be summarized as follows:

- Regarding the facts of the case, the Appellant asserts the following:
  - After some players of the Club suffered injuries at the training camp in Turkey in January 2015, the then head coach of the Club (Mr Nebojša Jovovic), acting on his own initiative, contacted the Player, negotiated the terms of the Employment Contract and even signed it. The head coach reassured the president of the Club that it would not be a problem to place the Player immediately in Albania when it turned out that the injuries suffered by some of the players of the team were not so serious as expected;
  - This was what happened on 27 January 2015, when the Player accepted the loan to Flamurtari under the terms of the Flamurtari Loan Contract. The Player never requested to nor had ever entered into Saudi Arabia at that time since everything occurred during the 2015 winter training camp abroad of the Club;

  - Before the expiry of the Flamurtari Loan Contract the Player informed the Club that he was not willing to go back to Saudi Arabia and preferred to keep playing in Albania, instead. During the month of July 2015, the Player started training with Laci and on 30 August 2015, the Club, the Player and Laci entered into the Laci Loan Contract valid until 31 December 2015;
  - On 10 November 2015, the Club appointed new head coach to replace Mr Jovovic. Immediately thereafter, on 11 November 2015, the Player requested payment by the Club of salaries allegedly due for June, July and August 2015 for a purported total of USD 22,500. The Appellant denies to have received that notification;
  - On 2 December 2015, the Player sent a fax letter to FIFA and to SAFF (but not to the Appellant) requesting them *"to speak to"* the Club with respect to its alleged debt for salaries due for June, July and August 2015. Such communication was not received by the Club at that time. On 21 December 2015, FIFA instructed the Player to complete its petition according to the FIFA Procedural Rules;
  - On 14 January and 10 February 2016, the Player approached FIFA asking to receive permission to train with any other club;
  - On 25 April 2016, being 5 months and a half after his alleged first notification to the Appellant, the Player's counsel requested the Club to pay the alleged total amount of USD 241,125 (*recte*: USD 214,125) as per his own calculation in compliance with the Employment Contract as the Appellant had purportedly failed to provide the Player with visa to enter Saudi Arabia and reintegrate him with the Club;
  - On 30 May 2016, the Player unilaterally terminated the Employment Contract on the basis that the Club had not replied to previous default notices;
  - On 13 July 2016, the Player entered into an employment contract with Vllaznia valid until 31 May 2018 for a monthly salary of Albanian Lek 88,000;
  - On 8 August 2016, the Player completed his submission by filing a second submission whereby he requested the payment of USD 445,500 plus 5% p.a. The Club did not reply to the claim because it was into a phase of transition with the new management taking over the Club's affairs from October 2016 when it discovered that the old management failed to inform the new ones about the pending FIFA proceedings and had not passed any relevant documents. It must be remembered in that respect that the Appellant is a small club of the second football level in Saudi Arabia and thus lacking proper management structure.

- On the merits, the Appellant submits the following:
  - The Club argues that the Player's salary of June 2015 was due by Flamurtari and not by the Appellant as was correctly held by FIFA in the Appealed Decision. When allegedly sending his notices, the Player relied upon this monthly salary to justify an inexistent 3 months default which had allowed him to terminate for just cause the Employment Contract pursuant to the longstanding FIFA practice;

- The Club is of the opinion that the salaries of July and August 2015 were due by Laci or, in any case, were nor due by the Appellant for two reasons: (a) The Player expressed his will to keep playing in Albania and the Appellant allowed him to immediately join Laci and start training with the squad as the two clubs were discussing the terms of the temporary loan agreement. Laci's sporting season 2015/2016 started in the beginning of July 2015 with a match in the first leg of the Europa League qualifying stage. It follows that the contractual relationship between the Player and Laci effectively initiated when the Player started training with the latter, i.e. during the month of July 2015, although the parties formally signed the Laci Loan Contract only on 30 August 2015; (b) If this was not the case, the Player anyway never offered, let alone rendered, his services to the Appellant and for these two months and cannot pretend to be entitled to salaries for the corresponding period;
- The Club emphasizes that the Player's salaries from January to May 2016 as well as compensation for breach of contract under Article 17 of the RSTP are not due because the Player terminated the Employment Contract without just cause in the beginning of January 2016. As he never entered or intended to enter Saudi Arabia throughout and between the Flamurtari Loan Contact and Laci Loan Contract, there was no way to provide visa to the Player. On 14 January 2016, only fourteen days after the expiry of the Laci Loan Contract and in a period when he allegedly had to consider contacting the Appellant for starting the Employment Contract, the Player made it clear that his intention was not to join the Club. On that day, the Player *de facto* terminated the Employment Contract by asking FIFA the permission to train *"with any club"* at a time when no outstanding salaries were due by the Club.
- In the alternative, in case it is assessed that the termination of the Employment Contract occurred on 30 May 2016, the Club maintains that the salaries are not due because the Player never offered his sporting services to the Club between January and May 2016, meaning in practice that he was the one that terminated the Employment Contract. The Player failed to travel to Saudi Arabia at his own expenses, reserving his right to claim full reimbursement by the Club. Other CAS panels dealt with the particular situation in which a player, albeit unsuccessfully requesting his club to issue return flight tickets, was denied the entitlement to compensation for termination of the employment contract for just cause for reason that he did nothing to return by his own and request reimbursement of his travel expenses at his arrival, thus unilaterally terminating the contract without just cause (CAS 2013/A/3444, §§ 108-117);
- With reference to relevant provisions of the applicable Swiss law, the Club holds that the Player would have been in the position to demand the Club's performance, i.e. the payment of salaries, only if he had, at least, offered his sporting salaries to the Club. CAS jurisprudence has established that the lack of genuine interest in remaining contracted is the decisive element in excluding the right to receive compensation for the alleged unlawful termination of the contract (e.g. CAS 2014/A/3642);

- In the alternative, in the unlikely event that it is assessed that the termination of the Employment Contract was with just cause which occurred on 30 May 2016, the Club notes that it should be taken into account that the Player conveniently waited for almost five months after the expiry of the Laci Loan Contract before formally terminating the Employment Contract. Thus, the Player intentionally consented to the action which caused the alleged damage;
- The Club submits that compensation, if any, shall be reduced for concurrent negligence of the Playerwho, by his behavior between January to May 2016, contributed to the damages that he later requested from the Club;
- The Club holds in the alternative, that the compensation is not due or should be significantly reduced because the Player suffered no damages from the termination of the Employment Contract and he is hiding the true amount of his actual salary or anyway earning an amount of money equal to the Saudi Arabia salary. The Club contends that it is highly unlikely that the nominal amount appearing in the contract with Vllaznia is the true amount of the Player's remuneration at Vllaznia. In any event, the Player did not prove to have made efforts to find employment conditions similar to the ones agreed with the Appellant. Accepting worse financial conditions and preferring to stay in his home country was personal life choice of the Player. Different cost of living and different average salaries in Saudi Arabia and Albania should also be taken into account as a basis for calculation of compensation.

44. In its prayers for relief, the Appellant requests the CAS to rule as follows:

"I. The appeal filed by the Club Hajer FC Al-Hasa is upheld;

II. The challenged decision issued by FIFA on 15 December 2016 is set aside and therefore Club Hajer FC Al-Hasa shall not have to pay any amount to Mr Arsid Kruja;

III. Should the Panel consider that any amount is due to Mr Arsid Kruja, the amounts granted by the challenged decision issued by FIFA on 15 December 2016 are highly reduced according to the arguments set forth in this submission [the appeal brief];

IV. Mr Arsid Kruja is ordered to bear all the procedural costs of the present procedure;

V. Mr Arsid Kruja is ordered to reimburse Club Hajer FC Al-Hasa all the legal and other costs incurred in connection with this arbitration in an amount to be determined at the discretion of the Panel".

B. The Respondent

45. The Respondent's submissions, in essence, may be summarized as follows:

- Regarding the facts of the case, the Respondent asserts the following:
  - The Player maintains that it is irrelevant for the case who was the head coach of the Club at the time the Employment Contract was signed. The latter was signed not by the head coach and the Player but between the Club with the chairman of the Club acting as its representative and the Player. The Appellant failed to

corroborate with evidence its allegations that Mr Jovovic was somehow a mentor of the Player;

- The Player denies the Appellant's allegations that the Player never requested or wanted to travel to Saudi Arabia as completely inaccurate and even absurd;
- The Player put forward that it is common knowledge that in case of employment both entry and exit visa must be issued with the consent of the employer (the Club).At least on three occasions (in his letters dated 11 November 2015, 4 April 2016 and 25 April 2016), the Player requested the Club to provide him with necessary documents to travel to Saudi Arabia;
- The Player refutes the Appellant's allegation for not receiving the letter dated 11 November 2015 by pointing to the confirmation of registered consignment which proves that the letter was duly sent on that date;
- The Player avers that for the respective periods for which the Player was loaned to Flamurtari and Laci he was entitled to receive salary only from these clubs. The salaries for July and August 2015 (i.e., in the interval between the expiry of the Flamurtari Loan Contract and the signing of the Laci Loan Contract) were not paid by the Appellant;
- By the letter dated 11 November 2015, the Player requested payment of salaries he considered to be overdue and asked the Club to respect the Employment Contract and to provide him with documents necessary to get visa to enter Saudi Arabia;
- The Player observes that having received no response to this letter, the Player approached FIFA and SAFF to help him solve the situation with the Club while emphasizing that he wished to respect the Employment Contract asking for assistance in obtaining visa;
- The Player further notes that, as he never heard back from the Club and as he started to realize that he would not be able to resolve the problem with the Club, the Player retained a representative who, on 4 April 2016, sent a second notice to the Club, requesting payment of outstanding amounts and documents necessary for entry visa, as well as the reintegration of the Player in the training process of the team;
- As the Club failed to provide any response, on 25 April 2016, the Player sent a final default notice which also remained unanswered. Therefore, on 30 May 2016, the Player was forced to unilaterally terminate the Employment Contract.

- On the merits, the Respondent submits the following:
  - The Player contends that the Club's allegations concerning the salary of June 2015 are irrelevant since the FIFA DRC anyway did not award it to the Player;
  - The fact that in his letter dated 11 November 2015 the Player requested payment also of the salary of June 2015, is justified by the fact that he was not a lawyer. In any case, the letter of 11 November 2015 does not contain a single word about the termination of the Employment Contract with just cause and any allegations for acting in bad faith are denied;

- Laci is not responsible for the salaries of July and August as the Laci Loan Contract was only signed on 30 August 2015;
- By signing two consecutive loan contracts for the Player, the Club confirmed the Employment Contract and it cannot be argued that it never entered into force;
- With reference to relevant CAS jurisprudence (CAS 2014/A/3706), the Player argues that the Club was responsible to provide the Player with necessary documents for the issuance of visa. On the contrary, the case law referred to by the Appellant is not applicable to the present matter;
- The Player maintains that the Club perpetrated severe breaches by not paying the salaries for July - August 2015 and January - May 2016 and by not providing the visa related documents. The Club blatantly disregarded the Player and showed no interest in his services and therefore the Player had just cause to terminate the Employment Contract;
- The Player denies the Club's allegations that the amount of the salary under the Vllaznia contract was unrealistic by pointing to the relatively similar level of remuneration agreed with Flamurtari and Laci, as well as to average salary in Albania. The arguments advanced by the Club regarding the different costs of living in Albania and Saudi Arabia bear no relevance for the basis to calculate the compensation pursuant to Article 17 of the RSTP;
- The Player rejects the Club's argument that he did not apply the best efforts to mitigate damages. Contrarily, after not playing football for 6 months exclusively due to the behaviour of the Appellant, in just one month and a half following the termination of the Employment Contract and in the first month of the next summer transfer window the Player signed an employment contract with a football club of the same football level as were the clubs where he played on loan (Flamurtari and Laci) and under almost identical financial conditions.

46. In its prayers for relief, the Respondent requests the CAS to issue an award:

"- rejecting all reliefs sought by the Appellant, and

- confirming entirely the challenged decision of the FIFA DRC dated 15 December 2016,

and

- ordering the Appellant to pay all of the costs of the proceedings hereof, and

- ordering the Appellant to pay a significant contribution towards the legal fees and other expenses incurred by the Respondent in the connection with the proceedings hereof".

VI. JURISDICTION OF THE CAS

47. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration

agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".

48. The jurisdiction of the CAS, which is not disputed by either of the Parties and was confirmed by their signatures of the Order of Procedure, derives from Article 58 of the FIFA Statutes (edition 2016, in force as of 26 April 2016).The provisions of the FIFA Statutes that are relevant to that effect in these proceedings are the following:

Article 57 "Court of Arbitration for Sport (CAS)":

"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 "Jurisdiction of CAS":

"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.

[…]".

49. It follows that the CAS has jurisdiction to decide this dispute.

VII. ADMISSIBILITY

50. Article R49 of the Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".

51. The grounds of the Appealed Decision were notified to the Parties on 23 March 2017. The statement of appeal was filed on 13 April 2017 and, thus, within the deadline of twenty-one days set in Article R49 of the Code and in Article 58.1 of the FIFA Statutes referred to in the Appealed Decision itself.

52. No further recourse against the Appealed Decision is available within the structure of FIFA. Consequently and in perfect accordance with the aforementioned Article 47 of the Code, the internal legal remedies have been exhausted.

53. Accordingly, the appeal filed by the Club is admissible.

VIII. APPLICABLE LAW

54. Article R58 of the Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

55. The matter at stake relates to an appeal against a FIFA decision and reference must hence be made to Article 57.2 of the FIFA Statutes which provides that:

"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".

56. In the Employment Contract, the Club and the Player made specific references to the FIFA regulations and to the FIFA Regulations on the Status and Transfer of Players ("RSTP") in particular.

57. The Parties expressly agreed in their respective submissions that, for the resolution of the dispute, the Sole Arbitrator shall apply primarily the FIFA RSTP.

58. Therefore, the FIFA rules and regulations shall be applied primarily. Swiss law applies subsidiarily to the merits of the dispute.

59. In the present case, the *"applicable regulations"* for the purposes of Article R58 of the Code are, indisputably, the FIFA's regulations (in the edition applicable *ratione temporis* to the facts of the case), which must be primarily applied, because the appeal is directed against a decision issued by FIFA, which was passed applying FIFA's rules and regulations. More precisely, the Sole Arbitrator agrees with the DRC that the regulations concerned are particularly the RSTP, edition 2015 (entered into force on 25 September 2015), considering that the matter was brought to FIFA on 2 December 2015.

60. As the present dispute concerns in essence employment matters regarding the termination of the Employment Contract and its consequences, such as compensation, the following particular rules of the RSTP are applicable:

"Article 13: Respect of contract

A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.

Article 14: Terminating a contract with just cause

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 16: Restriction on terminating a contract during the season

A contract cannot be unilaterally terminated during the course of a season.

Article 17: Consequences of terminating a contract without just cause

The following provisions apply if a contract is terminated without just cause:

1. 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.

[…]".

IX. THE MERITS OF THE APPEAL

61. The core principle applicable by CAS in appeals proceedings in terms of the scope of review is the *de novo* principle resulting from Article R57 of the Code. According to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, the Sole Arbitrator may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

62. The Sole Arbitrator is of the opinion that the default of a party during a FIFA procedure should not be interpreted as an acceptance of the counterparty's factual allegations during the relevant FIFA procedure. In consequence, the facts brought forward by the Respondent during the FIFA proceeding cannot be qualified as undisputed. Rather, the undisputed and disputed facts have to be distinguished based on the Parties' submissions.

63. Based on the Parties' submissions, the issues for determination are the following:

    a) Was the termination of the Employment Contract made by the Player with just cause?

    b) Depending on the answer to *(a)* above, what are the legal consequences of the termination of the Employment Contract with just cause?

    c) Depending on the answers to *(a)* and *(b)* above, were outstanding amounts and compensation for breach of contract determined correctly in the Appealed Decision?

A. Was the termination of the Employment Contract by the Player with just cause?

64. As a preliminary issue, prior to deciding on the termination of the Employment Contract with or without just cause, the Sole Arbitrator will first address the question as to whether a legally binding written employment contract had been concluded by and between the Appellant and the Respondent. In this context, the Sole Arbitrator recalls that in order for an employment contract to be considered as valid and binding, apart from containing the *essentialia negotii* of an employment contract, such as the parties to the contract and their role, the duration of the employment relationship, the remuneration, it should bear the signature of both the employer and the employee.

65. Although not specifically spelled out, the Appellant raises some doubts about the validity of the Employment Contract by pointing to the fact that it was actually signed by the head coach of the Club without the authorization of the Club's official representatives. Further, the Appellant states that as a result of the immediate transfer of the Player on loan to Flamurtari and then to Laci, *"the Employment Contract between the Club and the Player* ***never entered into force*** *…"* (emphasis put by the Appellant).

66. In its initial part, the Employment Contract names Mr Sami Mohammed Al Mulhum in his capacity of President of the Club as its representative. Mr Sami Mohammed Al Mulhum is further specified under the position "Hajer Club Chairman" as the signatory for the Club on the last page of the Employment Contract containing the signatures of the parties to it.

67. The Sole Arbitrator is not in a position to explore who signed the contract on behalf of the Club or to adjudicate upon alleged forged signature (albeit such is not strictly claimed). It is up to the party invoking a forgery of a signature to initiate proceedings before competent penal authorities or to request expert opinion. Such steps did not appear to have been taken by the Club as result of which the Sole Arbitrator must presume the authenticity of the signature until evidence to the contrary is presented.

68. Even if there is a manifest or evident divergence of signatures (for which the Sole Arbitrator again does not feel to be in a position to rule upon), the Sole Arbitrator is satisfied that in this particular case, even if not originally signed by the legal representative, the Employment Contract was *de facto* confirmed by the Club. *First*, the Appellant admits that the representatives of the Club allegedly still during the training camp in Turkey discovered that the head coach had signed the Employment Contract who then reassured the president of the Club that it would not be a problem to place the Player immediately in Albania. *Second*, it is not in dispute that, on two occasions, the Club entered into transfer loan agreements with respect to the Player (the Flamurtari Loan Contract and the Laci Loan Contract) which were indisputably signed on behalf of the Appellant by Mr Sami Mohammed Al Mulhim, President of the Club. In the recitals, these agreements make specific reference to the Employment Contract concluded between the Club and the Player for a term of three years and indicate that *"Hajer is the owner of the Players' Card of the Player"*. *Third*, the Club recorded the Employment Contract in the Transfer Matching System maintained by FIFA and designated to make available information on international player transfers (the "TMS").

69. Therefore, in the circumstances, it appears to be irrelevant who exactly signed the Employment Contract on behalf of the Club.

70. Further, in the Sole Arbitrator's view, the undisputed fact that the Player never entered into Saudi Arabia as he was transferred on loan to Albanian clubs does not affect the entering into force, the operation or the validity of the Employment Contract which remained binding for the Parties. Therefore, the Sole Arbitrator concludes that the Employment Contract must be considered as valid and binding upon the Parties.

71. Having established this, the Sole Arbitrator will now turn to the core issue in the present case.

72. The central issue to be determined in the present matter is which party was in breach of the Employment Contract and thus whether the Player unilaterally terminated the Employment Contract without just cause or, in the opposite, whether the Club breached the Employment Contract, thus entitling the Player to unilaterally terminate the contract with just cause.

73. The Sole Arbitrator has to establish if the unilateral termination of the Employment Contract by the Player was eventually done with or without just cause. The RSTP do not provide the definition of *"just cause"*.

74. The Commentary on the RSTP states the following with regard to the concept of just cause: *"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. Behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist over a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally …"*. (RSTP Commentary, N2 to Article 14).

75. The CAS has had the opportunity of specifying in its jurisprudence that while the FIFA rules do not define the concept of "just cause", reference should be made to the law subsidiary applicable, *i.e.* Swiss law (CAS 2006/A/1062; CAS 2008/A/1447; CAS 2013/A/3091, 3092 & 3093; CAS 2012/A/2698).

76. Article 337 (2) of the Swiss Code of Obligations ("Swiss CO", references to Swiss CO below are according to the translation by the Swiss-American Chamber of Commerce) provides that *"a valid reason is considered to be, in particular, any circumstance under which, if existing, the terminating party can in good faith not to be expected to continue the employment relationship"*. The concept of "just cause" as defined in Article 14 RSTP must therefore be likened to that of "valid reason" within the meaning of Article 337 (2) Swiss CO.

77. It is generally accepted in most legal systems that an employment contract which has been concluded for a fixed term can only be unilaterally terminated prior to expiry of the term of the contract if there is good cause or a valid reason. This would be any situation, in the presence of which the party terminating the contract cannot in good faith be expected to continue the employment relationship.

78. For example, a grave breach of duty by the employee or the employer would constitute a good cause. The existence of a valid reason may be admitted when the essential conditions, of an objective or personal nature, under which the contract was concluded, are no longer present. Only a breach which is of a certain severity justifies termination of a contract. In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the Parties such as serious breach of confidence. According to the practice of the Swiss Federal Tribunal, an employment contract may be terminated immediately for good reason when the main terms and conditions, under which it was entered into are no longer implemented and the party terminating the employment relationship cannot be required to continue it (ATF 101 Ia 545; Judgment 4C.240/2000of 2 February 2002; Judgment 4C.67/2003 of 5 May 2003; WYLER R., *Droit du travail*, Berne 2002, p. 364; TERCIER P., *Les contrats spéciaux*, Zurich 2003, N. 3402, p. 496).

79. According to CAS case law, only a "material breach" of a contract can possibly be considered as "just cause" for termination without consequences of any kind (CAS 2006/A/1062; CAS 2006/A/1180; CAS 2007/A/1210; CAS 2006/A/1100; CAS 2013/A/3091, 3092 & 3093). A material breach occurs *"when the main terms and conditions, under which it was entered into are no longer implemented. The circumstances must be such that, according to the rule of good faith, the party terminating the employment relationship cannot be required to continue it"* (CAS 2013/A/3091, 3092 & 3093; CAS 2012/A/2698).

80. Likewise, in the case CAS 2013/A/3237, the concept of "just cause" has been identified as *"the prevailing situation, in the presence of which the injured party cannot in good faith be expected to continue the employment relationship …. Moreover, the unilateral termination of the contract is accepted when the essential conditions under which the contract was concluded are no longer present"*.

81. Applying the above principles, the Sole Arbitrator will go on to establish if, in light of the particular circumstances of the case, the Player had just cause to unilaterally terminate the Employment Contract. In performing this exercise the Sole Arbitrator has to establish in particular whether the Club committed any of the alleged contractual breaches, as claimed by the Player, and whether any of these breaches justified his termination.

a) Did the Club default on payments due to the Player for the months of July-August 2015 and January-May2016?

82. In the opinion of the Sole Arbitrator, the issue if the salary of June 2015 was due by the Club, although payment of this salary was initially requested by the Player, has become moot since it was not claimed before FIFA DRC.

83. It is not in dispute that the Player's salaries of July and August 2015 were not paid by the Club. First of all, the Sole Arbitrator observes that the Club did not contest that a consecutive non-payment of monthly salaries would in principle be a sufficient legal basis for termination of the Employment Contract with just cause. Rather, the Club's position on this point is that it was Laci and not the Appellant which was responsible for the July and August 2015 salaries. If this was not the case, the Appellant submits that the Player never offered or rendered his

services to the Club for these two months as he had always wanted to keep playing in his country of origin.

84. The Appellant maintains that the Player entered in a *de facto* employment relationship with Laci already in July 2015 when he started training with the latter. Laci sporting season 2015/2016 started in early July 2015 with matches from the first leg of the Europa League qualifying stage. On the other hand, the first Laci's game in the Albanian Championship was scheduled for 21 August 2015.

85. The Sole Arbitrator observes that the Laci Loan Contract was signed on 30 August 2015 between the Appellant, the Player and Laci. It is very unlikely that the Player, not having been registered for Laci yet, participated in these first games of the club referred to by the Appellant. Therefore, the Player was not part (at least formally) of Laci as of the official start of season 2015/2016 and he could have joined and played for the club only from 30 August 2015 on. In addition, as provided in the Laci Loan Contract, upon and by signing the agreement, Laci will *"have the right to instruct and receive the issuance of the ITC for the Player, by Hajer and SAFF"* (article 2.4). Therefore, it is not established that the Player provided its sporting services to Laci before signing of the Laci Loan Contract (30 August 2015). The fact alleged by the Appellant that the Player trained with Laci before signing of the Laci Loan Contract is, on one hand, not corroborated by any evidence, and on the other hand, even if true, it does not automatically mean that Laci became obliged to pay to the Player salaries for the alleged training period (July - August 2015).

86. The Sole Arbitrator further recalls here that, according to the Laci Loan Contract, the latter was *"signed for a specific period of time, which starts on 30 August 2015 and ends on 31 December 2015"* (article 1.4). During the term of the Laci Loan Contract, *"the Club* [Laci] *is obliged to carry out all the expense relative to the monthly salaries of the Player, as it will be agreed in the individual employment contract between the parties"* (article 2.5). Accordingly, *"the Player will have the right to receive remuneration from the contractual relationship that he will have with the Club* [Laci]*"* (article 4.1).On the other side, *"the Player sets free of any obligation Hajer, for all the expenses relative to the monthly salaries, sporting insurance, neither medical care, for the whole duration of this agreement"* (article 4.2). The Laci Loan Contract does not provide retroactively for any financial obligations of Laci towards the Player (other than the salaries for the period of the loan itself) that might have purportedly arisen before the start of the loan. Neither does so the individual employment contract entered into between the Player and Laci and valid from 30 August until 31 December 2015.

87. The Sole Arbitrator notes that the headers and footers of the Laci Loan Contract bear the logo and the contact details of the Appellant. The Sole Arbitrator further observes that the wording of the Flamurtari Loan Contract and the Laci Loan Contract is literally the same. As a consequence, the Sole Arbitrator infers that the terms of the Laci Loan Contract were proposed by the Appellant. Despite that the Laci Loan Contract is quite clear as to its term and payment obligations, the Sole Arbitrator may also resort to alternate means of interpretation, pursuant to which, in case of doubt, the contract must be interpreted against the party which drafted it(*in dubio contra proferentem).* Had the Appellant wished to relieve itself from payment of Player's salaries of July and August 2015 (allegedly due by Laci for reason that the contractual relationship between Laci and the Player had effectively initiated in July

2015), it would (or must) have undoubtedly included a wording to that effect in the Laci Loan Contract. Therefore, it cannot be successfully pleaded by the Appellant that Laci was responsible for Player's salaries for July and August 2015.

88. With regard to the alternative defence of the Appellant, the latter maintains that the Respondent was not supposed to enter Saudi Arabia between the expiry of the Flamurtari Loan Contract and the commencement of the Laci Loan Contract. Therefore, it must be presumed that the Club tacitly agreed to the Player not joining the Club until the process of transferring him on further loan from Flamurtari to Laci was completed. Therefore, it could not have been reasonably expected that the Player would return to the Club after the expiry of the Flamurtari Loan Contract just to be transferred on loan soon after that to Laci. The Club did not provide any evidence that the Player would have expressly or implicitly waived any right to the salaries for July and August 2015.

89. Therefore, in light of the particular contractual provisions at issue, the Sole Arbitrator is satisfied that the Parties remained bound by the Employment Contract in the interval between the end of the Flamurtari Loan Contract and the start of the Laci Loan Contract (i.e. 30 June 2015 – 30 August 2015). Accordingly, the Club was obliged for payment of the Player's salaries of July and August 2015 pursuant to the terms of the Employment Contract.

90. With regard to the salaries of January – May 2016, the non-payment of which is not disputed, the Appellant advances the arguments that the Player was not entitled to receive them since *(i)* he never entered into Saudi Arabia or intended to do so and *(ii)* on 14 January 2016, i.e. only fourteen days after the expiry of the Laci Loan Contract, the Player made it clear that his intention was not to join the Club.

91. The Sole Arbitrator takes note of CAS case law, according to which, if the player does not provide the club with his working capacity, this constitutes a serious breach of duty which can justify unilateral termination of the contract, for example if the player does not even report for work (see CAS 2006/A/1082 & 1104, para. 69 et seq.).

92. Indeed, the absence of a player without the authorisation of the club can generally constitute a just cause for a club to terminate the contract. However, in this particular case, following the expiry of the Laci Loan Contract, the Club neither contacted the Player requesting explanation as to his absence from work, nor it sent any letter, warning notice or a contract termination notification explaining that the contract was terminated due to the Player's long absence. In addition, by not providing the Player with documents necessary to obtain visa to enter Saudi Arabia, the Club itself prevented the Player from rendering his services to the Club (the issue with the visa requirement will be separately discussed in more detail below).

93. It is not sufficiently clear to the Sole Arbitrator why the Appellant did not contact the Player after the expiry of the Laci Loan Contract considering that *"the Player is obliged to return immediately to Hajer, after the lapse of the term of this agreement"* (article 4.3 of the Laci Loan Contract). Likewise, Laci undertook to facilitate the return of the Player to the Club (article 2.7 of the Laci Loan Contract). The explanation that the Club inferred from the Player's behaviour (i.e. that he simply disappeared without any explanations) that he would not be willing to travel to

Saudi Arabia is not convincing. The Club neither attempted any negotiations to terminate the Employment Contract, nor sent a contract termination notification which it should have done in order to release itself from the contractual relationship had it believed that Player was in breach.

94. The Sole Arbitrator disagrees with the Appellant's assertions claiming that the Player acted in bad faith, considering that his non-return to Saudi Arabia after the expiry of the Laci Loan Contract could be explained by his lack of desire to complete the Employment Contract or to terminate it.

95. Moreover, this opinion is also reinforced by the extensive correspondence of the Player evidencing his contemporaneous intention regarding the continuation of the Employment Contract. Indeed, apart from claiming payment of outstanding salaries, the Player repeatedly expressed in his various correspondences his will to continue to play for the Respondent upon providing him with entry visa.

96. In his letter to the Club dated 11 November 2015, the Player clearly indicated that he did not intend to renew the Laci Loan Contract and expressed his will to respect the Employment Contract by requesting the Club to provide him with necessary documents for obtaining visa. Thereafter, having received no response, on 2 December 2015, the Player wrote to FIFA and to SAFF, notifying the federations of his intent to respect the Employment Contract and of his request to receive documents necessary for visa. At some point of time the claim lodged with FIFA on 2 December 2015 must have been communicated to the Club in order to file a reply. On 4 April 2016, the Player requested the Club to provide to him the necessary documents to come to Saudi Arabia and to be reintegrated in the training process of the team. On 25 April 2016, for a consecutive time the Player requested the Club to be provided with documents necessary to obtain visa and to be reintegrated with the team and warned that failure of which would force him to bring a claim before FIFA. On 30 May 2016, having received no replies to his previous communications, the Player sent a formal notice for termination of the Employment Contract for failure of the Club to settle outstanding payments and to provide document necessary for visa and to reintegrate him in the team. All of the correspondence remained unanswered by the Club.

97. In the meantime, on 14 January 2016, the Player wrote to FIFA in response to a letter of the latter providing copy of the relevant contract and contact details for correspondence. The Player's letter of 14 January 2016 was apparently primarily intended to complete the claim of 2 December 2016. In addition, the Player sought from FIFA *"permission to training with any club"* explaining that he had not received any communication from the Club and that as a professional player he needed to train. On 10 February 2016, the Player reiterated its request to be permitted to train with any club. The Sole Arbitrator is not persuaded that the wording of the letters dated 14 January 2016 and 10 February 2016 imply that the Player wished to terminate the Employment Contract. To the extent that the Player sought support from FIFA and SAFF, it was only with respect to a permission to train with and not to play for, to join or to be provisionally registered with another club. On the other hand, undoubtedly, any preparation performed individually by a player on his own would be less productive than a training process with a club, which as a result may adversely affect the future career and

development of the player. In that regard, it was reasonable from the Player to seek options to maintain and develop his sporting abilities and form. With no communication received from the Club, the Player's concerns for the impossibility to train seem credible and the request to FIFA in that respect was justified. In any way, such permission was not granted, at least no proof to the contrary was provided. Moreover, there is no evidence whatsoever that the Respondent's main target was to terminate the Employment Contract in order to join a new football club team or for other reason.

98. Therefore, the Sole Arbitrator does not consider that, by sending of the communication of 14 January 2016, the Player sought to find a way to free himself from the employment relationship and to terminate the Employment Contract.

99. The Appellant also claims that the Player's termination notice of 30 May 2016 was in bad faith filed too late almost 5 months after the expiry of the Laci Loan Contract, thus allowing the Player to claim unpaid salaries the amount of which could have otherwise been lesser had the Employment Contract been terminated earlier.

100. The Sole Arbitrator notes that, except for prescription periods, there is no specific rule providing when at the latest the aggrieved party must file a termination notice following the breach of contract. Although just cause in cases regarding delayed salaries is determined on a case by case basis, there is CAS jurisprudence to the effect that a party that has not been paid its salary for more than three months generally has just cause to terminate the contract (CAS 2014/A/3584, at paragraph 87). The Sole Arbitrator is satisfied that the Player, having sent the default notice of 11 November 2015, was obviously awaiting the position of the Club before putting an end to the contractual relationship. After it became evident that the Club would not respond to the Player's requests (the last one from 25 April 2016, containing a warning for termination), he ultimately terminated the Employment Contract on 30 May 2016. In addition, the Player was also exchanging correspondence with FIFA and SAFF. Under these circumstances, the Player cannot be accused of bad faith, even if he could have sent the termination notice earlier. In view of the foregoing, the Sole Arbitrator finds that the termination notice was not filed lately in bad faith.

101. On a side note, from practical point of view, it would be irrelevant as a financial consequence if the Appellant was ordered to pay salaries of January - May 2016 or the same amounts would have been awarded to the Player as compensation on the basis of the residual value of the Employment Contract including the amounts pertaining to not received salaries of January - May 2016.By way of example, if the Player had terminated the Employment Contract with just cause on 30 January 2016 (instead on 30 May 2016) he would be entitled to the salary of January 2016, while the value of the contract for the period February - May 2016 would have been included in the total amount of compensation for breach of contract.

102. Accordingly, the Sole Arbitrator finds that the Club owed to the Player the salaries for the months which fell due before the termination of the Employment Contract. Failure to pay due salaries under a binding contract for a continuous period of time constitutes a serious breach of contract.

103. In relation with the present matter, the Sole Arbitrator consulted other CAS case-law which has also considered that continuous breaches by the employer of its duty to comply with its financial commitments towards the player can constitute just cause for termination.

104. In the landmark case CAS 2006/A/1180, the panel ruled: *"The non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated as in the present case - constitute "just cause" for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in the future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5 et seq.)"*.

105. In light of the above, the Sole Arbitrator holds that non-payment of salaries in the present case is not insubstantial and thus the "substantiality" condition for terminating the Employment Contract with just cause is met.

106. As regards the second prerequisite, the Sole Arbitrator recalls that, as the CAS jurisprudence has declared, *"for a party to be allowed to validly terminate an employment contract, it must have warned the other party, in order for the latter to have had the chance, if it deemed that the complaint to be legitimate, to comply with its obligations"* (CAS 2013/A/3091-3093). According to the same line of reasoning, CAS jurisprudence has consistently held that *"a party will only be able to establish a just cause to terminate the employment contract if it had previously warned the other party of its unacceptable conduct or attitude"* (CAS 2013/A/3237; CAS 2013/A/3091, 3092 & 3093).

107. Therefore, before proceeding with the termination, it is advisable, depending on the circumstances, for the aggrieved party to send a notice to the breaching party asking it to desist its wrongful acts. Indeed, the Sole Arbitrator in CAS 2014/A/3460 held (at para. 63) that *"[a]lthough the need to send notices is not mandatory in all cases and is established on a case by case basis, CAS Sole Arbitrators have regarded notices as a vital step which could possibly have played a role in bringing an end to an unexplained breach or series of breaches, particularly where the breach or breaches in question has not yet reached a fundamentally unacceptable level and/or unduly prejudiced the non-breaching party to the extent that the latter cannot be reasonably expected to continue the contract"*.

108. In denying the possibility for the Player to enforce his claim for payment, the Appellant cannot contend that no proper notice had been given and that therefore the Player terminated the Employment Contract without just cause.

109. The Appellant disputes to have received the default notice of 11 November 2015 by which the Player requested payment of the salaries of June - August 2015 and to be provided with

visa-related documents. However, the receipt by the Appellant of the Respondent's letter of 11 November 2015may prove to be irrelevant since, in any case, it is undisputed that the monthly salaries were due on the dates indicated in the Employment Contract ("the end of every Gregorian month"), irrespective of any request of payment by the Player, and that the Club in any case received the claim lodged thereafter by the Player with FIFA, but still failed to either make the payment requested or react in any other way.

110. Notwithstanding the above, on the balance of probabilities the Sole Arbitrator is satisfied that the Player offered sufficient evidence to prove that the letter of 11 November 2015 was sent and received. The bill of receipt attached to the letter bears some stamp, evidencing its presentation to the relevant Albanian post office. In addition, the fact that the letter was sent is not expressly disputed by the Appellant that only denies its receipt. On such basis, the Sole Arbitrator is satisfied that the letter, sent by the Player, can also be deemed to have been received by the Club. According to Swiss law, facts whose existence must be presumed according to the normal course of events can be indicated as a basis of a judgment, even if these facts are not confirmed by evidence, if the opposing party does not indicate or prove circumstances suitable to put their existence in doubt. In that regard, the Sole Arbitrator notes that a letter, sent through a post office, is ordinarily received, and that the Appellant did not offer any indication, in addition to its own word, to confirm that the letter had not been delivered. Notably, in his letters dated 4 April 2016 and 25 April 2016, the Player reminded that he had kindly asked the Club to provide him with visa and to reintegrate him in the training process after the expiry of the loan period with Laci, as well as to pay outstanding monies, to which the Club did not object.

111. The Appellant admits that it was not until October 2016 when the new management of the Club took up office when the Appellant discovered that the old managers of the Club had failed to inform the new ones about the FIFA proceedings and had not passed over any relevant documents. Therefore, it can reasonably be supposed that any correspondence from the Player were not kept in the best possible way and was not duly passed over to the new management of the Club. As an explanation for not filing a reply to the Player's claim in the FIFA proceedings, the Appellant further noted that as a small club it lacked a proper management structure. In the view of the Sole Arbitrator, however, shortcomings in proper keeping of files and documents or deficiency in the organization of the Club cannot be held to the detriment of the Player.

112. Regardless of whether the default notice dated 11 November 2015 was received by the Club, it is not in dispute that the Club was further requested to comply with its contractual obligations by the Player's letters dated 4 April 2016 and 25 April 2016 when the Player sent a final notice of default and warned that failure to satisfy the requests would force him to terminate the Employment Contract with just cause and to file a claim before FIFA. On 30 May 2016, the Player terminated the Employment Contract for the reasons stated in the termination notice, to which the Club did not object. In the termination notice of 30 May 2015 the Player made express reference to his correspondence of 25 April 2016.

113. In the opinion of the Sole Arbitrator, the above shows that the Club had for some reasons lost interest in the Player's services as the Club was in default of various payments due

pursuant to the Employment Contract and did not react in any way to the Player's actions to obtain his remuneration, even before the Employment Contract was terminated. According to the Sole Arbitrator, such attitude justifies the termination by the Player since he could not reasonably expect future performance by the Club in accordance with the Employment Contract.

114. For the reasons set out above, the Sole Arbitrator is satisfied that the Appellant had been warned of a possible termination of the Employment Contract.

115. As set out above, the Sole Arbitrator finds that, both prerequisites for the early termination with "just cause" of the Employment Contract because of the Appellant's failure to pay the due salaries are satisfied: *(i)* the unpaid amount due by the Club was not "insubstantial" or completely secondary; and *(ii)* the Player gave a warning, drawing the Club's attention to the fact that its conduct was not in accordance with the Employment Contract.

b) Did the Club fail to facilitate the obtaining of the Player's visa?

116. It is common knowledge and is in fact not disputed by the Parties that visitors to Saudi Arabia must obtain a visa in advance unless they come from one of the visa exempt countries (Albania is not among such visa exempt countries). In addition to an entry visa, an employment visa is required for staying in the country for the purpose of providing labour services under an employment contract. In other words, the right of employment is subject to obtaining a visa/work permit.

117. Thus, the Player must have had a visa before he would be able to play for the Club. The Sole Arbitrator holds that the Club, as the employer, is responsible for obtaining the visa/work permit. It is a general rule that the employer, the Club, must arrange the visa/work permit for the employee, the Player. Furthermore, according to Article 18.4 of the RSTP, it is explicitly stipulated that the validity of a contract may not be made subject to the granting of a work permit (it would not be a far reaching extensive interpretation if this provision is applied by analogy with respect to visa, too).

118. The employer is obliged to undertake the necessary steps to provide his employees with visa and/or work permit. It is very natural and is a basic principle of any labour law that an employer must provide his employees with visa/work permit, if necessary. By not providing the employee with visa/work permit, not even after being reminded to do so, the employer in effect is forcing the employee to leave. If an employer does not undertake the necessary action to provide his employee with a visa/work permit and if this prevents him from entering the country in which he is employed and therefore to start work, this could be seen as an unjustified breach of contract by the employer.

119. The Club and the Player signed the Employment Contract valid for a term of three years. If the Club genuinely wished to benefit from the services of the Player it should have made the necessary actions to obtain a long term visa for him. At the very least, the Club should have obtained a visa for the Player following the expiry of the Flamurtari Loan Contract and the Laci Loan Contract. It should be noted in that aspect that it is unreasonable for the Club to

wait until only expiration of the said Loan Contracts before applying for a visa for the Player in front of the competent authorities. The Player has the right to know well in advance whether or not the Club would be taking the necessary actions for obtaining visa or, in the opposite, he can look for another club and thus avoid having to find himself unemployed in case the Club decides not to provide him with visa.

120. The Sole Arbitrator does not share the Appellant's view that the Player should have tried to travel to Saudi Arabia at his own expenses, reserving the right to claim a full compensation by the Club, thus implying that a visa could have been obtained by the Player personally. According to the Club, the Player did not himself take the necessary steps to secure his legal entry into the country. If an employer alleges that it does not bear any responsibility for obtaining visa and work permit of the player, it is up to the employer to prove this allegation. The Club failed to prove such allegation and is therefore presumed to have been under the responsibility for obtaining the visa/work permit. The responsibility to obtain the necessary visa/work permit to enable the player to render his services to the club is incumbent on and lies with the club. The club is responsible to undertake the appropriate actions to obtain the visa/work permit for the player not only before concluding the relevant contract but, as the case may be, at some point of time during the duration of the said contract (for example, in this particular case after the expiry of the Laci Loan Contract). In the absence of proof to the contrary, it must be held that the visa or work permit had not been obtained by the Club.

121. In that respect, the Sole Arbitrator notes that the Appellant cannot truly rely on the award in CAS 2013/A/3444 where the Panel reached the conclusion that, by doing nothing to return to Romania (the home country of the club) on his own and request reimbursement of travel expenses, the player had no just cause to terminate the contract. The circumstances there were different as, first, nationals of Brazil (the home country of the player) are exempted from Romanian visa requirements and access is visa-free for them, and, second, the player had already played for his club but did not return from holidays.

122. It is the duty of the club to make sure that the relevant application and required documents are duly and timely completed and submitted to the relevant authorities so as to allow the obtaining of the visa/work permit. Of course, the player must cooperate in full with the efforts to obtain visa or work permit. Thus, the player must put himself at the club's disposal and supply the prospective club with all necessary information and documentation in order to facilitate these tasks. However, it can hardly be expected that the initiative for collecting the required documentation must come from the player who is not national of the host country and is presumably not aware of the formal requirements.

123. In any event, the Sole Arbitrator is satisfied that the Player showed sufficient degree of diligence by requesting the Club on more than one occasion to be provided with necessary documents for obtaining visa to enter Saudi Arabia (the first one already during the existing Laci Loan Contract). The Club, however, did not offer any evidence demonstrating that it ever contacted the Player either for the purpose of complying with the administrative formalities for obtaining a visa, or for any other contract-related issue.

124. The findings of the Sole Arbitrator are consistent with other CAS jurisprudence. Although the Sole Arbitrator in CAS 2015/A/4158 ultimately found that the coach there had terminated the employment contract without just cause, with respect to visa it held: *"… Although the Employment Contract contains no provision regarding the visa and work permit renewals, the Club, as the employer, had an implied duty to facilitate the renewal of the Coach's visa and work permit. This is the general presumption in employment relationships and if the Club intended to shift this obligation to the Coach, then it ought to have ensured a clause to this effect in the Employment Contract"* (at para.118).

125. Similarly, the Sole Arbitrator in CAS 2014/A/3706 concluded: *"As per the Player's visa renewal, the Sole Arbitrator considers that it was also the responsibility of the Respondent, as employer of the Appellant, to provide this last with all the necessary documents"* (at para.95).

126. The Sole Arbitrator considers that among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow team mates in the team's official matches. By not undertaking the necessary actions to provide a player with visa or working permit, the club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, violating one of his fundamental rights as a football player.

127. As elaborated above, the circumstances must be such that, according to the rules of good faith, the party terminating the employment relationship cannot be required to continue it. When immediate termination is at the initiative of the employee, a serious infringement of the employee's personality rights, consisting, for example, in unilateral or unexpected change in his status which is not related either to company requirements or to organization of the work or the failings of the employee, may be deemed "good reason".

128. According to Articles 28 *et seq.* of the Swiss Civil Code, any infringement of personality rights caused by another is presumed to be illegal and subject to penalties unless there is a justified reason that overturns this presumption. It is generally accepted in jurisprudence (ATF 120 II 369; ATF 102 II 211; ATF 137 III 303; Judgment of the Swiss Federal Tribunal 4A_558/2011, dated March 27, 2012) that personality rights apply to the world of sport. For athletes, personality rights encompass in particular the development and fulfilment of personality through sporting activity, professional freedom and economic freedom. An athlete who is not actively participating in competitions depreciates on the market and reduces his future career opportunities. Athletes have therefore a right to actively practice their profession. To the extent that Articles 28 *et seq.* of the Swiss Civil Code protect parties from negative actions and require offending parties to refrain therefrom, but do not grant rights to positive actions, such right to actively practice one's profession is resolved notably by labour law (CAS 2013/A/3091, 3092 & 3093).

129. The Employment Contract was therefore not terminated by mutual agreement, but unilaterally by the Player with just cause due to the Club's misbehaviour. From the facts stated before, the Sole Arbitrator is satisfied that the unilateral termination was caused by the Appellant in that it failed to pay agreed remuneration and did not carry out the necessary actions for

providing the Player with visa all of which had the effect of a just cause for the Player to terminate the Employment Contract.

130. In application of Article 8 of the Swiss Civil Code, concerning the burden of proof, it has been considered that it is up to the party invoking a "just cause" to establish the existence of the facts founding this "just cause" (see IBARROLA J., La jurisprudence du TAS en matière de football – Questions de procédure et de droit de fond, in BERNASCONI/RIGOZZI (eds.), The Proceedings before the Court of Arbitration for Sports, Berne 2007, p. 252).

131. In the present case, the Sole Arbitrator is clearly of the opinion that the Player established the existence of a just cause. For all the reasons set out above, the Sole Arbitrator concludes that the Employment Contract was unilaterally terminated by the Player with just cause.

B. What are the legal consequences of termination of the Employment Contract with just cause?

132. Having established that the Club is to be held liable for the early unilateral termination of the Employment Contract by the Player, the Sole Arbitrator will now proceed to assess the legal consequences of the termination.

133. The Sole Arbitrator observes that Article 14 of the RSTP reads as follows:

"A contract may be terminated by either party without consequences of any kind (either payment or compensation or imposition of sporting sanctions) where there is just cause".

134. Although the Sole Arbitrator has established that the Player had just cause to terminate his Employment Contracts with the Club, this provision does not specifically determine that the Player is entitled to any compensation for breach of contract by the Club.

135. The Sole Arbitrator, however, is satisfied that the Player is, in principle, entitled to outstanding payments and compensation because of the breach of the Employment Contracts by the Club. In this respect, the Sole Arbitrator makes reference to the Commentary to the RSTP (the "FIFA Commentary"). According to Article 14 (5) and (6) of the FIFA Commentary, a party *"responsible for and at the origin of the termination of the contract is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed".* Accordingly, although it was the Player who terminated the Employment Contracts by filing a claim against the Club with FIFA, the Club was at the origin of the termination of the Employment Contracts and is thus liable to pay compensation for damages suffered by the Player as a consequence of the early termination.

136. The Sole Arbitrator observes that Article 17.1 of the RSTP determines the financial consequences of a premature termination of a contract:

"The following provisions apply if a contract is terminated without just cause:

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annex 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".

137. As the Employment Contract does not contain any contractual provisions determining the consequences of a possible unilateral breach by the Club, the Sole Arbitrator will apply Article 17 of the RSTP and notes that there is ample jurisprudence of CAS on the issue of breach of contract. The vast majority of this jurisprudence establishes that the purpose of Article 17 of the RSTP is basically nothing more 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 2012/A/2874, §128, CAS 2012/A/2932, §84; CAS 2008/A/1519-1520, §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, §90; CAS 2007/A/1359, §92: *"[…] the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability […]"*, confirmed in CAS 2008/A/1568, §6.37).

138. With reference to CAS 2014/A/3642, the Appellant purports that the lack of genuine interest to stay remaining contracted with the club is the decisive element in excluding the player's right to receive compensation for the alleged unlawful termination caused by the club. In that particular case, the panel found that the player did not have sufficient grounds to terminate the contract with just cause. The panel in CAS 2014/A/3642, however, found that although, in general, compensation was due in case of a breach of contract without just cause, the fact that the club placed no value on the player's services questioned the existence of any damage for the club. As the club apparently considered it favourable to save the payments of salary in exchange of losing the player's services, it could not argue that there was a damage to be compensated when losing such services while saving the salary. The panel therefore ruled that the club should not be awarded any value or compensation for the player, regardless of whether he breached the contract or not.

139. The Sole Arbitrator observes that the facts in the present case are different in that, as was already established above, the Player had just cause to terminate the Employment Contract. On the other hand, it remained unproven that the Player had no real interest in pursuing its career with the Appellant. On the contrary, the written evidence in the file shows the opposite.

140. Therefore, in the present case of premature termination of the Employment Contract the breaching party (the Club) shall owe compensation to the Player.

C. Were outstanding amounts and compensation for breach of contract determined correctly in the Appealed Decision?

a) Outstanding remuneration

141. The relevant provisions related to payments contained in the Employment Contract for 2015 provide for *"payment of a monthly salary of ## 7500 # Seven thousand five hundred US dollars each month of the first year …. To the second party at the end of every Gregorian month"*. Next, denoted as *"any other benefits"*, the Employment Contract further provides, as follows: *"paid player in the first year the amount of 100,000 one hundred thousand US dollars received as provider contract and the remaining 10% distributed on a monthly salary for a year"*. The relevant salary provisions contained in the Employment Contract for 2016 and 2017 respectively provide the following: *"paid player in the second year the amount of 110,000 one hundred and ten thousand US dollars received as provider contract and the remaining 15% distributed on a monthly salary for a year"* and *"paid player in the third year the amount of 150,000 one hundred and fifty thousand US dollars received as presenter hold 15% and the rest distributed in monthly salaries for a year"*.

142. As correctly noted by the DRC, the contract provisions related to payments during the respective years of the term of the Employment Contract are vague and require interpretation. In order to properly analyse them, the DRC considered the information in the TMS, which confirmed that the salary for the first year totals USD 100,000, that the salary for the second totals USD 110,000 and that the salary for the third year totals USD 150,000.Considering the relevant provisions, the DRC further accepted, with which the Sole Arbitrator agrees, that any of the annual payments were divided into two components: (i) an instalment in a percentage of the total amount payable at the beginning of the respective year and (ii) a monthly salary calculated after deduction of the instalment from the total amount. Thus, the Employment Contract provided for the total payment of USD 100,000 for 2015 with USD 10,000 payable at the beginning of 2015 (10% of the total amount of USD 100,000) and a monthly salary of USD 7,500 payable thereafter. Next, the Employment Contract provided for the total payment of USD 110,000 for 2016 with USD 16,500 payable at the beginning of 2016 (15% of the total amount of USD 110,000) and a monthly salary of USD 7,792 payable thereafter. Lastly, the Employment Contract provided for the total payment of USD 150,000 for 2017 with USD 22,500 payable at the beginning of 2017 (15% of the total amount of USD 150,000) and monthly salary of USD 10,625 payable thereafter.

143. The Sole Arbitrator notes that, the Appellant generally disputes to be liable for any outstanding payments. The Appellant, however, does not object to the DRC's findings regarding the information contained in the TMS. The Appellant does not object to the particular calculation of the separate outstanding payments (instalment plus monthly salaries) made by the DRC after decoding the content of the salary provisions, either. Further, the Appellant explicitly confirmed in the appeal brief that the Player had a monthly salary of USD 7,792 for 2016 and of USD 10,625 for 2017.

144. The DRC awarded a total amount of USD 70,460 comprising of USD 15,000 as salaries due for the months of July and August 2015 (each in the amount of USD 7,500), USD 16,500 as instalment due at the beginning of 2016 (15 % from USD 110 000) and USD 38,960 as salaries

due for the months of January - May 2016 (each in the amount of USD 7,792). The decision of the DRC with respect to outstanding payments is hereby confirmed with the following two notes.

145. *First*, the DRC is somewhat inconsistent in that it first concluded that for the year 2015 the Employment Contract provided for the total payment of USD 100,000 with USD 10,000 payable at the beginning of the year and a monthly salary of USD 7,500 payable thereafter (point II./6 of the Appealed Decision). However, later on in the decision, the DRC held that the instalment due at the beginning of 2015 was not due point (II./10 of the Appealed Decision) while the instalment due at the beginning of 2016 was granted (point II./11 of the Appealed Decision). Nevertheless, the rejection of the claim pertaining to the instalment due at the beginning of 2015 was not appealed by the Player and therefore the Sole Arbitrator cannot review the Appealed Decision in this part.

146. *Second*, in his claim lodged before FIFA, the Player requested the payment of USD 6,875 as five monthly salaries for the months of January - May 2016 calculated as USD 1,375 per month. The DRC awarded an amount of USD 38,960 (calculated as 5 months *x* USD 7,792) although the Player claimed under this heading salaries for 5 months in the amount of USD 1,375 per month (equal to a total of USD 6,875). The Sole Arbitrator is mindful of the *"non ultra petita"* principle, according to which a party may not be awarded anything more than or different from what it has requested. However, the DRC was not barred under the *ne ultra petita* principle from ordering the Club to pay USD 38,960 to the Player, although the Player in his prayers for relief before the DRC had requested payments amounting to USD 6,875. The DRC has partially rejected the Player's claim related to the instalment due at the beginning of 2016 in the amount of USD 110,000 (the DRC ordered payment of USD 16,500) and thus was able to award more to the Player under the heading of the claim for outstanding salaries of January - May 2016, because the total amount awarded remains lower than the total amount claimed by the Player as outstanding remuneration (cf. KAUFMANN-KOHLER/RIGOZZI, International Arbitration – Law and Practice in Switzerland, 2015, p. 478, para. 8.164). In addition, the Appellant has confirmed that the monthly salary for 2016 is in the amount of USD 7,792 (and not USD 1,375) and therefore the Sole Arbitrator is satisfied that the DRC decision was correct.

b) Compensation

147. In respect of the calculation of compensation in accordance with Article 17 of the RSTP and the application of the principle of "positive interest", the Sole Arbitrator took note of the explanation thereof by a previous CAS Sole Arbitrator:

"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 [had] 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" (cf. CAS 2008/A/1519-1520, at §80 et seq.

148. The Sole Arbitrator finds that the legal framework set out above and the principle of positive interest are also applicable to the present case. The principle of the so-called positive interest (or "expectation interest") aims 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 recognized by various law systems and aims at setting the injured party to the original state it would have if no breach had occurred. The positive damages of the employee are the salaries and other material income that he would have had if the contract would have been performed until its natural expiration. Therefore, in the case of termination of the Employment Contract for just cause by the Player, the latter would be entitled to the entire income until the expiration of the fixed duration of the Employment Contract (and not only until the termination) less any amount received from a third party.

149. According to the CAS jurisprudence (CAS 2008/A/1447, para. 30; CAS 2008/A/1518, para. 71), Article 17.1 RSTP closely follows Article 337c Swiss CO, which grants as compensation to the party not being in breach of the contract an amount corresponding to all claims arising out of the employment relationship, reduced by everything *"which he saved as a consequence of the termination of the employment relationship and which he earned or intentionally failed to earn through other work"*(see CAS 2006/A/1180, para. 41). The Sole Arbitrator therefore has to compare two financial situations in order to determine the compensation: the Player's hypothetical financial situation without the Appellant's breach of contract and his financial situation following the breach of contract by the Appellant.

150. Indeed, the Sole Arbitrator notes that there is a consensus in the CAS jurisprudence as to the application of the "positive interest" principle approach followed in the case of CAS 2008/A/1519 & 1520, and applied in CAS 2009/A/1880 & 1881. The Sole Arbitrator agrees with such approach and emphasises that the application of the criteria indicated by Article

17.1 RSTP should *"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"* (CAS 2008/A/1519 & 1520, § 86).

151. For such purposes, it is this Sole Arbitrator's role to consider each of the criteria within Article 17.1 RSTP and any other objective criteria, in light of the specific facts of this case and to determine how much weight, if any at all, to apply to each in determining the amount of compensation due in this particular case. It is also the Sole Arbitrator's role to ensure that *"the calculation made … shall be not only just and fair, but also transparent and comprehensible"* (CAS 2008/A/1519 & 1520, § 89), with a view to putting the injured party in the position it would have been in, had no breach occurred.

152. In this case, however, in which a breach by the Club (and not by the Player) is involved, the "remuneration factor", together with "the time remaining on the existing contract" plays a major role. In addition, the salaries and other benefits earned by the player in question under any new contract signed (also to mitigate the damages sustained) have to be taken into account by way of deduction from the amount the player can claim.

153. Against this background, the Sole Arbitrator will proceed to determine the amount due. The Sole Arbitrator observes that the DRC awarded the amount of USD 193,000 to the Player as compensation for the breach of contract by the Club as well as 5% interest *per annum* after the expiry of 30 days as from 2 December 2015.

154. The DRC granted compensation on the basis of the remaining duration of the Employment Contract, had there been no breach by the Appellant. The Sole Arbitrator shares the view of the DRC that in the present case it is reasonable to take into due consideration, on the one side, the amount of the salary to be received by the Player for the remaining duration of the Contract and, on the other side, to deduct the amounts earned by the Player from his new club. The basis for calculating the compensation granted to the Player seems therefore to be neither arbitrary nor unreasonable, as claimed by the Appellant.

155. The remaining payments under the Employment Contract, following the termination of 30 May 2016, include 7 salaries for 2016 (June to December 2016) and the payments for the entire 2017. It was established that the monthly salary for 2016 was in the amount of USD 7,792 and therefore the remaining payments for 2016 were totalling USD 54,544 (7 months *x* USD 7,792). The Employment Contract provided for the total payment of USD 150,000 for 2017. Therefore, the residual value of the Employment Contract was in the amount of USD 204,544 (USD 54,544 + USD 150,000).

156. On 13 July 2016, the Player concluded a new employment contract with Vllaznia valid until 31 May 2018 pursuant to which the Player was entitled to receive a monthly salary of Albanian Lek 88,000 (equal to approximately USD 780, according to the Appellant, or USD 770, according to the Respondent, respectively). The Sole Arbitrator accepts the figure of USD 770 for which evidence of the exchange rate was presented to the file. The Sole Arbitrator observes that in addition to the fixed amount of Albanian Lek 88,000, the Vllaznia contract provides also for a contingent payment (*"Variable Reward every month 88.000"*) subject to the

fulfilment of certain conditions such as appearances for the club. The Sole Arbitrator, however, was not provided with evidence if the conditions for payment of the additional bonus of Albanian Lek 88,000 were met or if the parties reviewed the financial conditions to the Vllaznia contract in the second year

157. According to generally accepted principles of the law of damages and also of labour law (*cf.* Article 337c of the Swiss CO and Article 17.1 of the RSTP), any amounts which the Player earned must be deducted from the compensation. The Sole Arbitrator, therefore, finds that the remuneration the Player earned with Vllaznia during the remaining contractual term of the Employment Contract should be deducted from the amount the Player would have earned with the Club should the Club have properly performed the Employment Contract. In other words, the amount of the Player's salaries from Vllaznia for the months of July 2016 to December 2016 (the Sole Arbitrator will count the entire monthly salary of July 2016 considering that the contractual relationship was operational for more than half of the month of July) and for the 12 months in 2017 should be deducted. This amount of the Player's salaries form Vllaznia is calculated to be in the total of USD 13,860 (18 months *x* USD 770).

158. In conclusion, the compensation for termination of the Employment Contract for just cause is in the amount of USD 190,684 (USD 204,544 - USD 13,860). Therefore, the Appealed Decision which awarded the amount of USD 193,000 should be accordingly modified.

159. According to articles 104 and 339 of the Swiss CO, the Appellant has to pay the Respondent a 5% annual interest rate on the compensation owed under article 337b of the Swiss CO for the termination of the Employment Contract as from the date following its termination (i.e. 30 May 2016). Indeed, the Player lodged his claim before FIFA on 2 December 2015 which was subsequently amended on 8 August 2016. However, as of the first date, the termination of the Employment Contract, which triggers the obligation for compensation, was not a fact. For the above-mentioned reasons, the Sole Arbitrator disagrees with the DRC regarding the date on which interest started to accrue and rules that the Respondent is indeed entitled to receive from the Appellant interest on the amount of USD 190,684 but from the date following the termination of the Employment Contract, i.e. from 31 May 2016.

160. The Appellant questioned the credibility of the amount of the salary of the Player with Vllaznia stating that such an amount was not true and made a request for the production of certain documents. In the course of the proceedings the request was modified and the Appellant indicated that it maintained only its request for disclosure under para.144, let.a of its appeal brief (any copy or unilateral acknowledgement signed in connection to and/or as a consequence of the Player's registration and his employment relationship with Vllaznia, including any contracts for the exploitation of image rights, sponsorship or endorsement rights, etc.). As stated above (para. 37 of the Award), the request was denied by the Sole Arbitrator for reasons to be set out in the arbitral award.

161. The request was refused on the basis that the Appellant has not been able to prove that any other documents exist (as required by Article R44.3 of the Code).The Appellant's challenge was not substantiated by facts or at least by an indication that any of the requested documents were ever concluded or must have been in the custody of the Player. According to Swiss

procedural law, a valid contestation of facts needs to be specific, i.e. it must be directed and attributable to an individual fact submitted by the party bearing the burden of proof (ATF 117 II 113, E. 2; ATF 115 II 1, E. 4; see also SFT 4A_299/2015, E. 2.3; DIKE-ZPO/LEU, 2011, Art 150 no 59). The challenge made by the Appellant was generic in nature and did not meet this threshold.

162. In this context, the Club also claims that the Player failed to comply with the duty to mitigate his damage. As already noted above, according to article 337 c (2) of the Swiss CO, the duty of mitigation is related to the rule that the employee must permit a set-off against the amount of compensation for what he saved because of the termination of the employment relationship, or what he earned from other work, or what he has intentionally failed to earn.

163. In the opinion of the Sole Arbitrator, such a rule implies that, in accordance with the general principle of fairness, the injured player must act in good faith after the breach by the club and seek for other employment.

164. The wording of article 337c (2) of the Swiss CO, with reference to what the employee intentionally failed to earn, suggests that the duty to mitigate should not be considered satisfied when, for example, the player deliberately fails to search for a new club or unreasonably refuses to sign a satisfying employment contract, or when, having different options, he deliberately accepts to sign the contract with worse financial conditions, in the absence of any valid reason to do so.

165. In this respect, the Sole Arbitrator holds that in the specific case at stake, there is no evidence in the file that the Player intentionally failed to find new employment opportunities after the termination of the Employment Contract.

166. Moreover, the Sole Arbitrator observes that the Club has not demonstrated that the Player acted in bad faith or that he deliberately decided not to enter into negotiations with other clubs after the termination of his relationship with the Appellant.

167. According to the principle established by CAS jurisprudence, *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (…). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).

168. The Sole Arbitrator holds that since the Club maintains that the Player failed to mitigate his damage, it is the burden of the Club to prove that the Player intentionally refused to sign other employment contracts or otherwise intentionally failed to reduce his damage. As a result of the observations above, the Sole Arbitrator believes that the Player partially mitigated his damage by signing a new employment contract with Vllaznia on 13 July 2016. The Sole Arbitrator was not referred to any evidence that prior to that date or afterwards, the Player

failed to comply with his duty to mitigate his damages within the meaning of article 337c (2) of the SCO, as specified above.

169. According to the terms of the individual employment contracts entered into between the Player and Flamurtari and Laci, the Player was entitled to a monthly salary of EUR 800 and USD 1,000, respectively. The Sole Arbitrator concludes from this that the amount of the monthly payment under the Vllaznia contract (USD 770 plus potential bonus) was close or comparable to the one agreed in the employment contracts of the Player with Flamurtari and Laci. Therefore, the Sole Arbitrator is satisfied that the amount of the salary of the Player with Vllaznia was not untrue.

170. Contrary to what the Appellant argues, the difference in costs of living and levels of average salary in Saudi Arabia and Albania is not a convincing reason to justify a different calculation or reduction of the compensation due to the Player. The Sole Arbitrator can only conclude that the damage suffered by the Player justifies the basis of calculating the compensation determined in the Appealed Decision as amended with the present Award.

171. In view of all the above findings, the Sole Arbitrator decides to partially uphold the Appellant's appeal only with respect of reduction of the sum awarded as compensation for termination of the Employment Contract for just cause and the interest accrued thereupon. The Appealed Decision in that respect shall be amended and the Appellant is therefore ordered to pay to the Respondent the amount of USD 190,684 as compensation for termination of the Employment Contract for just cause as well as 5% interest *per annum* as from 31 May 2016.

172. The Appealed Decision shall only be modified with respect of the above amounts. In its remaining part the Appealed Decision should be upheld and the appeal dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Club Hajer FC Al-Hasa on 13 April 2017 against the decision issued by the FIFA Dispute Resolution Chamber on 15 December 2016 is partially upheld.

2. Point 3 of the operative part of the decision rendered by the FIFA Dispute Resolution Chamber on 15 December 2016 is set aside and replaced by the following: *The Respondent, Hajer Club, has to pay to the Claimant,* ***within 30 days*** *as from the date of notification of this decision, compensation for breach of contract in the amount of USD 190,684, plus 5% interest p.a. as from 31 May 2016 until the date of effective payment.*

3. (…).

4. (…).

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