Arbitration CAS 2011/A/2681 KSV Cercle Brugge v. FC Radnicki, award of 19 September 2012

Panel: Mr Efraim Barak (Israel), President; Mr Bernard Hanotiau (Belgium); Mr Michele Bernasconi (Switzerland)

Football
Training compensation
Right of a party to reserve a right
Calculation of the training compensation
Burden of proof of disproportionate training compensation
Relevance of the actual training costs in determining the training compensation
Costs of the proceedings at the previous level

1. **A party has no vested right to "reserve" any right that is not granted to it under the CAS Code and such "right" cannot be artificially created by a self declaration of an alleged preservation of a "right".**

2. **For the calculation of the indicative amount of training compensation, partial months have to be regarded as full months.**

3. **The onus of establishing that the indicative amount of training is clearly disproportionate in a specific case lies on the party raising such argument based on the general principle of burden of proof. The party has to satisfy its burden of proof on the basis of reliable evidence, such as invoices, costs of training centres, budgets, and other documentation of expenses showing that the expenses bear a clear relation to the training of its youth sector. In the absence of such evidence, the indicative amounts apply as such.**

4. **The system of training compensation intends to reward clubs for the worthy work done in training young players and is not designed to simply reimburse the club for its actual costs incurred in cultivating youth teams. The training compensation appears to be a reward and an incentive rather than a refund. The actual training costs of the club are therefore irrelevant in determining the amount of training compensation due.**

5. **The costs of the proceedings before the previous instance remain within the discretion of that instance. In the absence of any specific argument in the appeal brief or during the hearing as to why the costs of the previous proceedings would be disproportionate, a CAS panel will confirm the amount.**

I. THE PARTIES

1. KSV Cercle Brugge VZW (hereinafter: the "Appellant" or "Cercle Brugge") is a football club with its registered office in Sint-Andries, Belgium. Cercle Brugge is registered with the Royal Belgian Football Association (hereinafter: "URBSFA"), which in turn is affiliated to the Fédération Internationale de Football Association (hereinafter: "FIFA").

2. FC Radnički Obrenovac (hereinafter: the "Respondent" or "FC Radnicki") is a football club with its registered office in Obrenovac, Serbia. FC Radnicki is registered with the Football Association of Serbia (hereinafter: "FFS"), which in turn is also affiliated to FIFA.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the proceedings before the FIFA Dispute Resolution Chamber (hereinafter: the "FIFA DRC") and the evidence examined in the course of the present appeal proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

4. Mr Jovan Stojanović (hereinafter: the "Player") is a professional football player of Serbian nationality, born on 21 April 1992.

5. According to the player passport issued by the FFS on 7 July 2010 (hereinafter: the "First Player Passport"), the Player was registered with FC Radnicki as an amateur player on 2 February 2006. The Player never entered into a formal written contractual engagement with this club.

6. By letter of 2 September 2008 (hereinafter: the "Document"), Mr Miloš Pavličević, Head of the Football school of FC Radnicki, informed the Player's parents that:

   "With reference to your verbal request, we are hereby informing you that your son, Jovan Stojanović, has been registered with our football club since 2002 and that his official compensation, as calculated from the moment he was 12 (twelve) years of age until present, being the period of 52 (fifty-two) months amounts to: ***RSD 1,352,000.00*** *(one million three hundred and fifty-two thousand Serbian dinars). In view of the fact that Football Club "Radnički" is Jovan's parent football club, the sum stated above is increased by 20% as provided for in the Rules governing monetary compensation for players registered with the Football Association of Serbia, which amounts to the final sum of* ***RSD 1,622,400.00*** *(one million six hundred and twenty-two thousand four hundred Serbian dinars), being the compensation sum, which may be requested, under the applicable law, by the club to be paid for the above named player.*

   We are further informing you that this case has been discussed by the management of the club and it has been decided to make a motion before the Board of Directors seeking reduction of the above sum to the optimum amount as it is neither in our interest to have a dissatisfied player and his parents in the club.

The next meeting of the Board of Directors when the above mentioned matter is to be discussed will be held at the end of September and immediately thereafter we shall inform you, in writing, of the decisions made and further steps to be taken by the club regarding the matter".

7. One year later, on 2 September 2009, the Player stopped playing for the Respondent and practised his football skills on an individual basis until April 2010. During this period the Player was also on a try-out with Cercle Brugge.

8. On 21 April 2010, the Player signed with Cercle Brugge his first employment contract as a professional football player; the agreement was concluded for a term of two seasons, *i.e.* from 1 July 2010 until 30 June 2012. On 8 September 2010, the Secretary General of the URBSFA notified the registration of the Player with the Appellant, the late notification allegedly being a result of administrative problems within the FFS.

9. On 8 July 2010, FC Radnicki requested payment of training compensation in an amount of EUR 132,242 from Cercle Brugge. According to FC Radnicki, this amount was calculated according to the FIFA Regulations on the Status and Transfer of Players (hereinafter: the "FIFA Regulations"), in particular Annex 4 and was based on the First Player Passport, according to which the Player was registered with FC Radnicki from 1 February 2006 until 2 September 2009.

10. On 3 August 2010, Cercle Brugge expressed its surprise regarding the request of FC Radnicki since *"(…) it was, on our* [Cercle Brugge's] *demand, clearly specified by them* [the representatives/agents of the Player (Mr Milan Broceta and Mr Dejan Mitrovic)] *that there was an agreement between FC Radnicki and the player which limited an eventual compensation to a maximum sum of 20.000 EURO".*

11. On 4 August 2010, FC Radnicki responded that the Document with reference to the sum of RSD 1,622,400 was *"given personally to the players parents on the players requirement for the case that player is transferred into a club on the territory of Serbia* [sic]*".*

12. On 16 September 2010, after additional correspondence had been exchanged between the Parties in order to try to reach a settlement, FC Radnicki informed Cercle Brugge, that *"[u]nless you fill to us until and on 25/09/2010 an adequate proposition for achieving the settlement we will be forced to start legal action in FIFA-Dispute Resolution Chamber* [sic]*".*

III. PROCEEDINGS BEFORE THE DISPUTE RESOLUTION CHAMBER OF FIFA

13. On 7 October 2010, FC Radnicki lodged a claim with the FIFA DRC claiming training compensation in an amount of EUR 132,242 from Cercle Brugge.

14. On 10 November 2010, FC Radnicki amended its Claim before the FIFA DRC and requested training compensation in an amount of EUR 160,000. This amended claim was the result of new information provided by the player passport issued by the FSS on 10 November 2010

(hereinafter: the "Second Player Passport"), according to which the Player was already registered with FC Radnicki as an amateur player on 19 September 2001, instead of 1 February 2006 as was stipulated in the First Player Passport.

15. On 24 January 2011, Cercle Brugge submitted its position regarding FC Radnicki's claim to FIFA. Cercle Brugge alleged that FC Radnicki had terminated the employment contract with the Player without just cause and that the sum claimed by FC Radnicki was clearly disproportionate as the actual training costs of FC Radnicki were much lower as the indicative amount and because the training compensation should be limited to a sum of RSD 1,622,400 based on the Document. Finally, Cercle Brugge contended that article 6 Annex 4 FIFA Regulations is discriminatory, as the calculation of training compensation within UEFA territory is dependent on the countries membership of the EU/EEA.

16. By a decision of 15 June 2011 (hereinafter: the "Appealed Decision"), the FIFA DRC held that FC Radnicki was entitled to training compensation in an amount of EUR 160,000. It found *"the assertion of* [Cercle Brugge] *that* [FC Radnicki] *had allegedly terminated the player's employment contract without just cause to be groundless, for the obvious reason that no employment contract existed between the player and* [FC Radnicki]*"*. Furthermore, *"[s]ince Serbia is neither a member of the European Union (EU), nor of the European Economic Area (EEA), the Chamber found it evident that art. 6 of Annexe 4 of the Regulations does not apply in the present case as lex specialis"*. In respect of the Document the Chamber *"took note that the* [Document] *was not addressed to* [Cercle Brugge] *nor did it give any indication as to the amount of training compensation payable in case the player would be transferred internationally. On the contrary, the* [Document] *explicitly mentioned the applicable rules of the FSS, a detail which, in the Chamber's view, led to no other conclusion that the* [Document] *was referring to an amount of money in case of a transfer of the Player within Serbia. Hence, the Chamber decided that the letter could not be regarded as a legally binding document"*. The DRC further held that Cercle Brugge had not met its standard of care and did not act with due diligence as *"in view of the period of time that had elapsed since the date on which the* [Document] *was issued and the date of the player's registration with* [Cercle Brugge] *as well as in view of the contents of the* [Document]*,* [Cercle Brugge] *could, at the least, have contacted* [FC Radnicki] *requesting a confirmation with regard to the amount of training compensation payable"*. Finally, the FIFA DRC considered the arguments of Cercle Brugge which focussed exclusively on the status of FC Radnicki as an amateur club as well as on the costs allegedly incurred by FC Radnicki for the training of the Player, as irrelevant because *"the calculation* [of training compensation] *is based on the costs that would have been incurred by* [Cercle Brugge] *as if it had trained the player itself. In this regard, taking into consideration that the URBSFA had allocated* [Cercle Brugge] *in the club category II and* [Cercle Brugge] *had never contested its allocation to this club category, the Chamber had no reason to believe that the amount payable was disproportionate"*. Consequently, *"the Chamber found the amount of EUR 160,000 not disproportionate"*.

17. As a result, the FIFA DRC decided the following:

    1. *"The claim of the Claimant,* [FC Radnicki]*, is accepted.*
    2. *The Respondent,* [Cercle Brugge]*, has to pay to* [FC Radnicki]*, within 30 days as from the date of notification of this decision, the amount of EUR 160,000 plus 5% interest p.a. due as from 21 May 2010 until the date of effective payment.*

3. *In the event that the aforementioned sum is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*

4. *The final amount of costs of the proceedings in the amount of CHF 8,000 is to be paid by* [Cercle Brugge] *within 30 days of notification of the present decision, as follows:*

   4.1. *The amount of CHF 4,000 to FIFA (…)*

   4.2. *The amount of CHF 4,000 to* [FC Radnicki]

5. [FC Radnicki] *is directed to inform* [Cercle Brugge] *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".*

18. On 8 December 2011, the Parties were notified of the Appealed Decision.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 27 December 2011, Cercle Brugge filed a statement of appeal, accompanied by 4 exhibits, with the Court of Arbitration for Sport (hereinafter: the "CAS"). In this submission the Appellant nominated Mr Bernard Hanotiau, attorney-at-law in Brussels, Belgium, as arbitrator.

20. On 29 December 2011, FIFA was provided with a copy of the statement of appeal and was requested whether, pursuant to Articles R54 and R41.3 of the CAS Code of Sports-related Arbitration (hereinafter: the "CAS Code"), it intended to participate as a party in the present arbitration. Furthermore, FIFA was requested to provide the CAS Court Office with an unmarked copy of the Appealed Decision.

21. Also on 29 December 2011, the CAS Court Office forwarded a copy of the statement of appeal to the Respondent and requested it to nominate an arbitrator within ten days.

22. On 6 January 2012, Cercle Brugge filed its appeal brief. This document contained a statement of the facts and legal arguments and was accompanied by 29 exhibits with translations into English. The Appellant challenged the Appealed Decision of the FIFA DRC, submitting the following requests for relief:

- *"DECLARE the appeal admissible and well-founded.*

  ON A PRINCIPAL BASIS

- *Substantially REVIEW the decision of the FIFA Dispute Resolution Chamber, passed on 15 June 2011, as follows:*
  - *ESTABLISH the disproportionate nature of the training compensation determined by the FIFA Dispute Resolution Chamber, referring to article 5.4 ANNEX 4 of the FIFA Regulations on the Status and Transfer of Players (edition 2009);*
  - *REDUCE the amount of the training compensation to 20,000, payable by football club KSV CERCLE BRUGGE to football club FK RADNICKI OBRENOVAC;*

- *INCREASE the amount of this training compensation by interest at a rate of 5% per year as from 8 October 2010 until full payment to football club FK RADNICKI OBRENOVAC;*
- *REDUCE the costs of the proceedings in the first instance, payable by football club KSV CERCLE BRUGGE;*
- *ORDER football club FK RADNICKI OBRENOVAC to pay all costs of the arbitration proceedings before the Court of Arbitration for Sport as well as the costs for defence incurred by football club KSV CERCLE BRUGGE, estimated ex aequo et bono at an amount of €5,000.00.*
- *DISMISS any other claims of football club FK RADNICKI OBRENOVAC.*

ON A SUBSIDARY BASIS

- *Partially REVIEW the decision of the FIFA Dispute Resolution Chamber, passed on 15 June 2011, as follows:*
  - *ESTABLISH the fact that the training period with football club FK RADNICKI OBRENOVAC started on 2 February 2006 and ended on 2 September 2009;*
  - *REDUCE the amount of the training compensation to € 132,242.00, payable by football club KSV CERCLE BRUGGE to football club FK RADNICKI OBRENOVAC;*
  - *INCREASE the amount of this training compensation by interest at a rate of 5% per year as from 8 October 2010 until full payment to football club FK RADNICKI OBRENOVAC;*
  - *REDUCE the costs of the legal proceedings in the first instance payable by football club KSV CERCLE BRUGGE;*
  - *ORDER football club FK RADNICKI OBRENOVAC to pay all costs of the arbitration proceedings before the Court of Arbitration for Sport as well as the costs for defence incurred by football club KSV CERCLE BRUGGE, estimated ex aequo et bono at an amount of € 5,000.00.*
  - *DISMISS any other claims of football club FK RADNICKI OBRENOVAC.*

ON A SUBSIDARY BASIS

- *ORDER the hearing of the father of Mr. J. STOJANOVIC, Mr. Slobodan STOJANOVIC (with following address: […]) as a witness concerning the training efforts of the football club FK RADNICKI.*
- *GIVE CERCLE BRUGGE the possibility to file additional documents concerning her real training costs".*

23. On 9 January 2012, the Respondent provided the CAS Court Office with a duly signed power of attorney. By same letter, the Respondent nominated Mr Michele Bernasconi, attorney-at-law in Zurich, Switzerland, as arbitrator.

24. Also on 9 January 2012, the CAS Court Office forwarded the appeal brief to the Respondent.

25. Still on 9 January 2012, FIFA informed the CAS Court Office that it renounced its right to a possible intervention in the present arbitration proceedings and provided a clean copy of the Appealed Decision.

26. On 30 January 2012, FC Radnicki filed its answer, with 7 exhibits and translations into English, whereby it requested CAS to decide the following:

- *"The Appellant's Appeal against the decision of the Dispute Resolution Chamber dated 15 June 2011 (case Ref. rov. 10-03040) shall be dismissed and the mentioned decision of the Dispute Resolution Chamber shall be confirmed.*
- *The Appellant shall bear all costs of the procedure before the CAS.*
- *The Appellant shall compensate the Respondent all expenses of this appeal arbitration procedure such as attorneys' fees as well as expenses of the party itself included costs for witnesses and interpreters".*

27. On 31 January 2012, the Parties were invited to inform the CAS Court Office, by 10 February 2012, of their preference for a hearing to be held in this matter or for the Panel to issue an award based on the Parties' written submissions only.

28. On 10 February 2012, both Parties expressed their preference for a hearing to be held. The CAS Court Office took note of the Parties' preference and informed that the Panel would take a final decision on this matter in due course.

29. Also on 10 February 2012, pursuant to article R54 of the CAS Code, and on behalf of the President of the CAS Appeal Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted by:

- Mr Efraim Barak, attorney-at-law in Tel Aviv, Israel, as President;
- Mr Bernard Hanotiau, attorney-at-law in Brussels, Belgium; and
- Mr Michele Bernasconi, attorney-at-law in Zurich, Switzerland, as arbitrators.

30. On 13 February 2012, the file was transmitted to the Panel.

31. On 24 and 27 February 2012, the CAS Court Office, on behalf of the President of the Panel, requested FIFA to provide a copy of its file related to the present matter and a copy of the FIFA DRC Decision dated 15 February 2008 to which reference was made in the Appellant's appeal brief.

32. On 27 February 2012, the Panel informed the Parties that it had decided to hold a hearing and would be available on 17 April 2012 in Lausanne, Switzerland. The Parties were invited to confirm their availabilities for such date by 2 March 2012.

33. On 1 and 2 March 2012 respectively, the Respondent confirmed its availability for a hearing on said date, however the Appellant informed the Panel that it would not be available and requested the Panel to propose another date.

34. On 13 March 2012, the CAS Court Office informed the Parties that the members of the Panel made an extraordinary effort in order to hold a hearing on 31 May 2012 and that the Parties were requested to express their availability for such date on or before 19 March 2012.

35. On 15 and 19 March 2012 respectively, the Parties confirmed their availability for a hearing on 31 May 2012.

36. On 21 March 2012, in view of both Parties' confirmation, it was confirmed by the CAS Court Office that a hearing would be held on 31 May 2012 at the CAS headquarters in Lausanne, Switzerland. Additionally, the Parties were invited to confirm the names of the persons that would attend the hearing by 28 March 2012. The Parties were also reminded that the witness(es) and/or experts, if any, to be heard must be convened and brought to the hearing by and at the expenses of the party which has requested their presence.

37. On 28 March 2012, both Parties provided the names of the persons that would attend the hearing on 31 May 2012.

38. On 3 April 2012, the Parties were requested to sign and return to the CAS Court Office by 10 April 2012, a copy of the Order of Procedure that was enclosed to such correspondence.

39. On 5 April 2012, the Respondent requested the Panel to dismiss the Appellant's request for the presence of Mr Jovan Stojanovic in the capacity of a proposed witness at the hearing as this was not requested in the Appellant's appeal brief and no written statement of such witness was provided.

40. On 6 April 2012, the Appellant returned a duly signed Order of Procedure.

41. On 10 April 2012, the Respondent alleged that the amount in dispute was EUR 160,000 and not EUR 148.000 as stated in the Order of Procedure and asked for the correction of what the Respondent considered as a mistake[1].

42. On 10 April 2012, the CAS Court Office invited the Respondent to amend the Order of Procedure by hand and to send it back with its signature.

43. On 11 April 2012, the Respondent returned a duly signed Order of Procedure, having amended the amount in dispute from EUR 148,000 to EUR 160,000 in handwriting.

44. Also on 11 April 2012, the Panel requested the Appellant to clarify by 16 April 2012 if indeed the Appellant intended to hear Mr Jovan Stojanovic as a witness during the hearing, and if so,

[1] The Order of Procedure referred to EUR 148,000 as the amount in dispute due to the fact that FIFA awarded an amount of training compensation of EUR 160,000, whereas the Appellant requested in its appeal brief (request for relief no. 3) to reduce the training compensation to an amount of EUR 20,000, thus actually only disputing the difference: EUR 140,000. In addition, the Appellant challenged the costs of the proceedings before the FIFA DRC in an amount of EUR 8,000 (request for relief no. 5), leading to a total of EUR 148,000.

to send a formal request to this effect, explaining the reasons for such late petition as well as the exceptional circumstances that might justify such request.

45. On 16 April 2012, the Appellant withdrew its request for the hearing of Mr Jovan Stojanovic as a witness.

46. On 25 May 2012, the Appellant filed two additional documents. The first document concerned the youth budget of the Appellant of the last three years as confirmed by the URBSFA on 24 May 2012. The second document was a list of all youth players of Cercle Brugge.

47. On 29 May 2012, the CAS Court Office informed the Parties that pursuant to article R56 of the CAS Code unless the Parties agreed otherwise or the President of the Panel ordered otherwise on the basis of exceptional circumstances, the Parties would not be authorized to supplement or amend their requests or their argument, nor to produce new exhibits, nor to specify further evidence on which they intended to rely after the submission of the appeal brief and of the answer. The Respondent was invited to inform the CAS Court Office whether it agreed with the Appellant's latest submission and the Parties were informed that in case of disagreement the matter would be decided by the Panel at the hearing, after allowing the Parties to comment on the documents' admissibility.

48. On 30 May 2012, the Respondent informed the CAS Court Office that it objected the Appellant's written submission filed on 29 May 2012.

49. A hearing was held on 31 May 2012 in Lausanne, Switzerland. At the outset of the hearing the Parties declared not to have any objection as to the constitution and composition of the Panel.

50. In addition to the Panel, Mr Pedro Fida, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* clerk, the following persons attended the hearing:

    a) For Cercle Brugge:
        1) Ms Chris Tijsebaert, Counsel;
        2) Mr Laurent Denis, Counsel; and
        3) Mr Yvan Vandamme, Managing Director of Cercle Brugge.

    b) For FC Radnicki:
        4) Dr Marco del Fabro, Counsel;
        5) Mr Zoran Damjanović, Counsel; and
        6) Ms Olivera Ristić, Interpreter.

51. During the hearing the Panel heard evidence of Mr Miloš Pavličević, at present Mr Pavličević is Executive Director of FC Radnicki, but at the time the Document of 2 September 2008 was issued he was Head of the Football School of FC Radnicki. Mr Pavličević was called to be heard as a witness by the Respondent.

52. Mr Pavličević was heard in person pursuant to article R44.2 of the CAS Code and was invited by the President of the Panel to tell the truth subject to the sanctions of perjury. Both Parties and the Panel had the opportunity to examine and cross-examine the witness. The Parties then had ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel.

53. Before the hearing was concluded, both Parties expressly stated that they did not have any objection with the procedure and that their right to be heard had been respected.

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

V. SUBMISSIONS OF THE PARTIES

55. The following outline of the Parties' positions is illustrative only and does not necessarily encompass every contention put forward by the Parties. However, the Panel has carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summaries.

A. The Appellant's submission

56. The submission of Cercle Brugge, in essence, may be summarised as follows:

- Cercle Brugge is of the opinion that the amount of training compensation as established by the FIFA DRC in the Appealed Decision is clearly disproportionate, not only based on the actual costs of the training provided by FC Radnicki, but also based on the actual costs of the training provided by Cercle Brugge.

- The Document is essential to determine the actual costs of the training provided to the Player by the Respondent. The actual costs of the training are fixed at an amount of RSD 1,352,000, without prejudice to an increase of 20% according to the rules for determining the amount of training compensation in Serbia. It can therefore be concluded that the maximum training compensation as determined by FC Radnicki could not exceed RSD 1,622,400.

- The scope of the Document is not limited to a possible national transfer; the Document also applies to possible international transfers. Apart from the absence of a restriction regarding a transfer to a foreign club, this can also be derived from the fact that the Document was issued at a moment the Player was on a try-out with FC Lask Linz, a foreign club.

- Cercle Brugge further contended that it cannot be reproached with any lack of diligence or caution, as it could reasonably expect that the Document would still be applicable because the Respondent did not make any further investments in the Player during that last year. Even assuming that the Document has no binding legal effect, it nevertheless undoubtedly constitutes a fundamental element to determine the amount of training compensation for the Player.

- FC Radnicki had no intention to continue the training of the Player after 2 September 2009. The fact that a football club prematurely puts an end to the training of a player constitutes a factor that must be taken into account in order to determine the "theoretical" (lower) amount of training compensation. Furthermore, the Document of 2 September 2008 already announced the lack of willingness of FC Radnicki to continue the training of the Player, as the club even accepted to reduce the training compensation due in the interest of the Player and of the club itself.

- In addition, Cercle Brugge refers to certain enclosures to its appeal brief, where a calculation of the actual training costs of Cercle Brugge per player per year is made. According to Cercle Brugge, this calculation confirms that the claim of FC Radnicki is clearly disproportionate to the case.

- Assuming that, per impossible, the Panel categorically rejects the arguments put forward above, the period during which the Player was "trained" by FC Radnicki should be considered, as this was not done by the DRC in the Appealed Decision.

- FC Radnicki first referred to the official player passport issued on 7 July 2010 (i.e. the First Player Passport), according to which the Player was trained from 2 February 2006 until 2 September 2009, and subsequently referred to the official player passport issued on 10 November 2010 (i.e. the Second Player Passport), according to which the Player was trained from 19 September 2001 until 2 September 2009. Although a player passport issued by a national association has a presumption of truth attached to it, this presumption is not conclusive and can be countered by proof to the contrary. Additionally, the prohibition of *venire contra factum proprium* is applicable.

- According to previous decisions of the FIFA DRC, any modification or other substantial alteration in a player passport by a National Federation has binding force only if the National Federation justifies this modification or alteration in a detailed manner. The above elements lead to the conclusion that, given the alteration of the passport issued by the FFS on 7 July 2010 (i.e. the First Player Passport), the burden of proof is reversed, so that FC Radnicki and the FFS have to explain the change in the period of registration of the Player on the understanding that, should they fail to do so, only the First Player Passport can serve as a reference.

- Finally, the Appellant emphasises that the Player was already on a try-out with Cercle Brugge in August 2009. To determine the amount of training compensation, only the

period during which the player has been trained in reality can be taken into consideration. The period during which a player was theoretically licensed to a club is irrelevant to determine the training compensation. As only the effective and real formation can be taken into account, the training compensation has to be reduced with EUR 5,000, as the Player was already on a try-out with Cercle Brugge in August 2009.

- The interest on the training compensation due shall only accrue as from 8 October 2010, as this is the 31st day following the formal registration of the Player with Cercle Brugge.

- Cercle Brugge disputes the amount of CHF 8,000 imposed by the FIFA DRC in the Appealed Decision as to the costs of the proceedings and requests the Panel to reduce this amount.

B. The Respondent's submission

57. The submission of FC Radnicki, in essence, may be summarised as follows:

- The Respondent disputes all the Appellant's allegations and conclusions in its appeal brief in relation to the content of the Document signed by Mr Miloš Pavličević, Head of the football school of FC Radnicki, on 2 September 2008.

- The Document does not have any legal effect on the dispute at hand since it has a strict internal character and was only applicable if the then minor Player found a new club in the Super and First league in the Serbian territory. The Document was not addressed to the Appellant, nor can it be concluded from its content that it can be applied in the case of an international transfer. The Document explicitly refers to the Rules of the FFS and the training compensation of RSD 1,622,400.00 is calculated in Serbian dinars and in accordance with the FFS' "Rulebook on determining reimbursement of costs invested in Player's progress".

- The Document was issued on 2 September 2008 and the Appellant registered the Player on 21 April 2010. During that period (18 months) Cercle Brugge never contacted the Respondent in order to verify the content of the Document. The Appellant did not act justly and in the spirit of the FIFA Regulations; it was obliged to contact the Respondent with a request for clarification of the amount of training compensation.

- The allegation of Cercle Brugge that the Player was looking for an international transfer at that time and that the Document would therefore be applicable to international transfers, is in breach of article 19 FIFA Regulations, as it determines that *"international transfers of players are only permitted if the player is over the age of 18"* and as, at that time, the Player was 16 or 17 years old.

- Article 6 Annex 4 FIFA Regulations does not apply directly or by analogy, because the transfer of the Player was not concluded within the EU/EEA.

- If the Document is considered as an offer, which is contested, Cercle Brugge could not rely on such offer as *"the offerer shall remain bound until such time as he should reasonably expect receipt of a reply dispatched properly and in due time"*. One and a half year after issuance of the Document, FC Radnicki is obviously no longer bound by such offer.

- The Appellant's statements in respect of the actual training costs of FC Radnicki are irrelevant. According to article 5(1) Annex 4 FIFA Regulations: *"As a general rule, to calculate the training compensation due to a player's former club(s), it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself"*.

- The Appellants' explanation and submitted exhibits in respect of the actual training costs of Cercle Brugge do not have any evidentiary power in the present case. The Appellant submitted two single papers taken completely out of context, they could have no legal value only in respect of the Solidarity fund of UEFA.

- In addition, the Appellant calculated the training costs on the basis of the average expenses for all minor players in the club. That is wrong, pursuant to article 4(1) Annex 4 FIFA Regulations the relevant value depends on the costs to form one professional player. In addition, it is false and irrelevant that the Respondent was not willing to continue the training of the Player and that the Player was side-lined for several weeks and months, as the Player was only not selected for five official games at the beginning of the 2008/2009 season because of lack of fitness. Consequently, there is no indication that the training compensation in the amount of EUR 160,000 is disproportionate.

- It is true that the Respondent submitted two player passports with different registration periods. However, according to FC Radnicki, it is undisputed that it explained the difference between both player passports in a reliable and responsible manner. The Second Player Passport was issued on 9 November 2010 by the sole authorised body in relation to the status and registration of players. Evidence is attached to the answer, explaining that the Municipality of Obrenovac made an accidental administrative mistake, because at that time player registration was not conducted in an electronic manner yet.

- The Respondent does not know any facts regarding the late registration of the Player by the URBSFA. The late delivery of the ITC by the FFS is contested, and in any case, the Appellant did not corroborate this allegation with any facts.

- In respect of the costs of the proceedings before the FIFA DRC, the FIFA DRC gave reasons for the amount payable, but the Appellant did not deal with such costs as well as the reasons given by the FIFA DRC at all.

VI. JURISDICTION

58. The CAS' jurisdiction, which is not disputed, derives from articles 62 *ff.* of the FIFA Statutes, more specifically from article 63(1) FIFA Statutes as it determines: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"*, and article R47 of the CAS Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.

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

60. Pursuant to article R57 of the CAS Code, the Panel has full power to review the facts and the law and it may issue a new decision which replaces the decision challenged.

VII. APPLICABLE LAW

61. Article R58 of the CAS Code provides the following:

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

62. Article 62(2) FIFA Statutes determines that *"[t]he 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".*

63. The application of the FIFA Regulations is not in dispute between the Parties.

64. The Panel notes that the Player was registered with the Appellant on 21 April 2010 and that FC Radnicki lodged a claim with the FIFA DRC on 7 October 2010, *i.e.* after the entry into force of the 2010 edition of the FIFA Regulations on 1 October 2010.

65. Article 26(1) FIFA Regulations (2010 edition) determines that *"[a]ny case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations".*

66. Pursuant to article 26(2) FIFA Regulations (2010 edition):

"As a general rule, all other cases shall be assessed according to these regulations with the exceptions of the following: a) Disputes regarding training compensation; (…)

Any cases not subject to this general rule shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose".

67. Consequently, the Panel determines that the 2009 edition of the FIFA Regulations is applicable to the substance of the present dispute as the disputed facts arose when the Player signed his professional employment contract with Cercle Brugge, *i.e.* on 21 April 2010, whereas the 2010 edition of the FIFA Regulations only entered into force on 1 October 2010.

68. Although the Respondent initially considered the 2008 version of the FIFA Regulations applicable, during the hearing the Respondent confirmed that it agreed to the application of the 2009 version of the FIFA Regulations.

69. Pursuant to article R58 of the CAS Code, article 62(2) of the FIFA Statutes and the Parties' agreement, Swiss law is to be applied complementary to the FIFA Regulations, should the need arise to fill a possible gap in the FIFA Regulations.

VIII. ADMISSIBILITY

70. The statement of appeal was submitted within the deadline of twenty-one days to appeal as provided by article 63(1) FIFA Statutes and the "Note relating to the motivated decision" enclosed to the Appealed Decision. The Respondent did not object the admissibility of the present appeal and the appeal complied with all other requirements of article R48 of the CAS Code, including the payment of the CAS Court office fees.

71. It follows that the appeal is admissible.

IX. PRELIMINARY ISSUES

A. Absence of Mr Slobodan Stojanovic

72. Shortly before the commencement of the hearing, the Panel was informed that Mr Slobodan Stojanovic, witness called to be heard by the Appellant and father of the Player, would not be present at the hearing.

73. The Appellant explained that it provided the witness with flight tickets and reserved a room in a hotel, but that the witness suddenly requested a payment for his testimony. Because the Appellant did not accept such request, the witness decided not to appear.

74. Pursuant to article R44.2 of the CAS Code, the Parties are responsible for the availability and costs of the witnesses and experts called to be heard. The Parties were reminded of such practise in the correspondence of the CAS Court Office dated 21 March 2012. However, the Panel informed the Parties that the witness statement of Mr Stojanovic would remain in the file, but due to the absence of the witness from the hearing, the weight and relevance given to it would be for the Panel to decide.

B. Appellant's submission of 25 May 2012

75. At the outset of the hearing, both Parties were given the opportunity to comment on the documents submitted by the Appellant on 25 May 2012. More specifically, the Appellant was invited by the Panel to explain why these documents were relevant and what would be the exceptional circumstances for the Panel under which it should allow this new submission.

76. The Appellant argued that it preserved the possibility to file new documents in its appeal brief and that the present documents could not have been filed earlier as the Appellant only received the letter from the URBSFA on 24 May 2012. Furthermore, the Appellant contended that the documents did not contain any new elements; the documents are solely a confirmation of the URBSFA that the figures referred to in the appeal brief are correct.

77. The Respondent argued that the Appellant only requested the URBSFA to provide such document one month before the hearing and that such request was therefore filed too late. The Respondent did not deny that the Appellant preserved the possibility to file new documents, however it held that the CAS Code does not allow such preservation. Finally, the Respondent noted that one figure was not confirmed by the letter of the URBSFA, but was actually different.

78. The Appellant replied that indeed one figure was different from the figures provided in the appeal brief, but that the difference was so small that it was not relevant. In respect of the list of youth players of the Appellant, the Appellant held that such list was a confirmation that there were 350 youth players registered with the Appellant.

79. The Respondent did not have any comments in respect of the list of youth players.

80. Having considered the above and in light of article R56 of the CAS Code, the Panel decided to allow the documents submitted by the Appellant on 25 May 2012 to the file on the basis of exceptional circumstances. The Panel came to such decision as it found that the Respondent could not have been surprised by the new documents as the documents only confirmed statements already made in the appeal brief and that allowing the documents to the file therefore did not harm the Respondent. However, the Panel would like to emphasize that the fact the letter of URBSFA was indeed filed on 24 May 2012 and that the Appellant *"reserved to oneself the right to file additional documents concerning her real training costs"* in its appeal brief carries no weight in the decision to admit the late submission. A party has no vested right to "reserve" any right that is not granted to it under the CAS Code and such "right" cannot be artificially created by a self declaration of an alleged preservation of a "right". Finally, the Panel noted that the Appellant's training costs per year in the 2009-2010 season as provided in the appeal brief differed from the figure provided by the URBSFA, but that such difference was in any case irrelevant for the reasons to be explained in §§ 148 – 153 hereunder.

X. LEGAL MERITS

A. The main issues

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

1) Is the Respondent entitled to training compensation?
2) During what period was the Player registered with and trained by the Respondent?
3) What is the correct calculation of the indicative amount of training compensation according to the FIFA Regulations?
4) Is the indicative amount of training compensation clearly disproportionate?
5) From which date shall the interest accrue?
6) Shall the procedural costs before the FIFA DRC be reduced?

1. Is the Respondent entitled to training compensation?

82. It is not disputed between the Parties that the Respondent is entitled to receive training compensation for the Player. This entitlement, which was recognized by the FIFA DRC in the Appealed Decision, derives from the relevant provisions of the FIFA Regulations.

83. The general provision in the FIFA Regulations concerning training compensation is article 20 FIFA Regulations, which stipulates:

"Training compensation shall be paid to a player's training club(s): (1) when a player signs his first contract as a professional and (2) each time a professional is transferred until the end of the season of his 23rd birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player's contract. The provisions concerning training compensation are set out in Annexe 4 of these regulations".

84. Article 2 Annexe 4 FIFA Regulations determines more specifically that:

"1. Training compensation is due when:
- *i. a player is registered for the first time as a professional; or*
- *ii. a professional is transferred between clubs of two different associations (whether during or at the end of his contract) before the end of the season of his 23rd birthday.*

2. Training compensation is not due if:
- *i. the former club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs); or*
- *ii. the player is transferred to a category 4 club; or*
- *iii. a professional reacquires amateur status on being transferred.*

85. It is not disputed by Cercle Brugge that the Player was an amateur during his registration with FC Radnicki and signed his first employment contract as a professional football player with Cercle Brugge.

86. Hence, in accordance with the above-mentioned provisions, the Panel affirms that FC Radnicki is in principle entitled to receive training compensation from Cercle Brugge.

2. During what period was the Player registered with and trained by the Respondent?

87. Although FC Radnicki only objected the training period taken into account in the Appealed Decision as a supplementary request for relief, the Panel found it important to review the indicative amount of training compensation as calculated in the Appealed Decision before dealing with the alleged disproportionality of such amount.

2.a. The commencement of the training period

88. Cercle Brugge contended that the period during which the Player was "trained" by FC Radnicki should be considered as this was not done by the FIFA DRC in the Appealed Decision. FC Radnicki first presented an official player passport, issued on 7 July 2010 (the First Player Passport), according to which the Player was trained by FC Radnicki from 2 February 2006 until 2 September 2009, and subsequently presented a second official player passport, issued on 10 November 2010 (the Second Player Passport), according to which the Player was trained by FC Radnicki from 19 September 2001 until 2 September 2009.

89. Although Cercle Brugge admitted that a player passport issued by a National Federation has a presumption of truth attached to it, it held that such presumption is not conclusive and can be countered by proof to the contrary. The Appellant referred to CAS 2006/A/1177, § 28 in this respect. In that CAS award the Panel held that *"the classification of the player made by his national association is not decisive or indeed persuasive"*. Furthermore, Cercle Brugge alleged that *"the prohibition of venire contra factum proprium, often compared to the common law principle of 'estoppel' is a principle recognised in Swiss law and applied in CAS precedents. As a result, no party can be allowed to derive an advantage from its infringement of the legitimate expectations of another party* (*CAS 2005/A/968*)*"*.

90. According to previous decisions of the FIFA DRC, any modification or other substantial alteration in a player passport by a National Federation has binding force if and only if the National Federation justifies in a detailed manner this modification or alteration. The Appellant refers to a decision of the FIFA DRC dated 15 February 2008 where the Chamber considered that:

"After analysing the reason indicated by the Football Federation of clubs A and D, the Chamber explained that the Football Federation of clubs A and D had not really explained why the error in the dates of the training period had occurred. In order to amend an official document such as the player passport, the Chamber declared it to be not sufficient when a club which is a party to the dispute, informs its Association that the

training dates were different, without indication as to why they were different. In view of the above, the Chamber concluded that the new player passport could not be taken in consideration and therefore had to be rejected".

91. According to the Appellant, the above elements lead to the conclusion that, given the alteration of the passport issued by the FFS on 7 July 2010 (the First Player Passport), the burden of proof is reversed so that FC Radnicki and the FFS have to explain the alteration of the period of registration of the Player on the understanding that, should they fail to do so, only the First Player Passport can serve as a reference. It goes without saying that simply stating that a "material" mistake was made is not acceptable and that the justification must be serious. For the sake of completeness, Cercle Brugge wished to emphasise that the FIFA DRC did not respond to this argument in its Appealed Decision, although sustained by Cercle Brugge.

92. FC Radnicki confirmed that it indeed submitted two player passports with different registration periods for FC Radnicki. However, according to FC Radnicki, it is undisputed that it explained in a reliable and responsible manner the validity of the Second Player Passport, issued by the FFS on 10 November 2010. The FFS is the sole authorised body in relation to the status and registration of players.

93. Besides, FC Radnicki contends that the mistake is explained by submitting valid evidence on the exact registration period of the Player for the Respondent. Namely, it is undisputed that the Player was registered with FC Radnicki as of 19 September 2001. An accidental administrative mistake occurred because at that time the player registration was done manually, and not in an electronic manner.

94. In order to decide this issue, the Panel first refers to the Document of 2 September 2008 where it is stipulated that *"[w]ith reference to your verbal request, we are hereby informing you that your son, Jovan Stojanović, has been registered with our football club* ***since 2002*** *(…)"* (emphasis added). It appears from the facts of the case that the Appellant was aware of the Document even before the First Player Passport was issued on 7 July 2010.

95. Cercle Brugge could therefore not rely on the First Player Passport and accordingly the principle of *venire contra factum proprium* does not apply. Additionally, in light of the contradiction between both documents, it would be expected from Cercle Brugge to verify the registration period of the Player with FC Radnicki with either the Respondent itself or with the FFS, which it nevertheless did not do.

96. Moreover, the Panel noted that the Player signed his first professional employment contract with the Appellant on 21 April 2010, whereas the First Player Passport was only issued on 7 July 2010. Cercle Brugge could therefore not have relied on the First Player Passport on the moment it offered a professional employment contract to the Player, as it apparently did not find it necessary to verify the registration period of the Player with FC Radnicki before concluding an employment agreement with the Player.

97. Finally, the Panel noted that both the Second Player Passport as well as the original identification card of the Player that was provided by FC Radnicki during the hearing at the request of the Appellant, determined that the Player was registered with the Respondent as of 19 September 2001.

98. Taking into account the above, the Panel is convinced that the Player was registered with FC Radnicki on 19 September 2001, or at least before the season of the Player's 12th birthday, *i.e.* the 2003-2004 season.

2.b. The end of the training period

99. Although the Appellant did not dispute that the registration of the Player with FC Radnicki ended on 2 September 2009, the Appellant contends that the Player was already on a try-out with Cercle Brugge in August 2009. To determine the amount of training compensation, only the period during which the Player has been actually trained by FC Radnicki should be taken into consideration according to Cercle Brugge. Cercle Brugge sustained that the training period during which a player is only registered with a club but does not train is irrelevant to determine the training compensation. As only the effective and real formation period can be taken into account, Cercle Brugge finds that the training compensation has to be reduced with EUR 5,000, as the Player was already on a try-out with Cercle Brugge in August 2009.

100. The Respondent does not find it relevant whether or not the Player was actually trained by the Respondent since August 2009.

101. The Panel finds that the Appellant's argument, although it may in principle be justified and supported by article 3(1) Annex 4 FIFA Regulations, should be rejected in this case since no reliable evidence regarding this alleged try-out period is submitted. More specifically, it remains unclear to the Panel how long such try-out period lasted and whether the try-out period lasted for the entire month of August 2009 and would therefore justify a reduction of the training period with one month.

102. Consequently, the Panel is not convinced that the training period of the Player with FC Radnicki already ended in August 2009 instead of September 2009 as determined in both the First and the Second Player Passport.

103. In light of the above, the Panel holds that the Player was registered with FC Radnicki from 19 September 2001 until 2 September 2009 and was trained during this entire period.

3. What is the correct calculation of the indicative amount of training compensation according to the FIFA Regulations?

104. In order to calculate the indicative amount of training compensation, article 4 and 5 of Annex 4 of the FIFA Regulations are the applicable rules.

105. Article 4 of Annex 4 of the FIFA Regulations stipulates as follows:

"1. In order to calculate the compensation due for training and education costs, associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio of players who need to be trained to produce one professional player.

2. The training costs, which are established on a confederation basis for each category of club, as well as the categorisation of clubs for each association, are published on the FIFA website (www.FIFA.com). They are updated at the end of every calendar year".

106. In addition, article 5 of Annex 4 of the FIFA Regulations provides that:

"1. As a general rule, to calculate the training compensation due to a player's former club(s), it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself.

2. Accordingly, the first time a player registers as a professional, the training compensation payable is calculated by taking the training costs of the new club multiplied by the number of years of training, in principle from the season of the player's 12th birthday to the season of his 21st birthday. In the case of subsequent transfers, training compensation is calculated based on the training costs of the new club multiplied by the number of years of training with the former club.

3. To ensure that training compensation for very young players is not set at unreasonably high levels, the training costs for players for the seasons between their 12th and 15th birthdays (i.e. four seasons) shall be based on the training and education costs of category 4 clubs. This exception shall, however, not be applicable where the event giving rise to the right to training compensation (cf. Annexe 4 article 2 paragraph 1) occurs before the end of the season of the player's 18th birthday.

4. The Dispute Resolution Chamber may review disputes concerning the amount of training compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review".

107. As Annex 4 of the FIFA Regulations does not contain the actual categorisation of clubs, but rather generally refers to the FIFA website, the Panel resorts to the wording of FIFA Circular no. 1223, which established the so-called indicative amounts to assess the training compensation for the year 2010. This FIFA Circular established the following indicative amounts of training compensation for European clubs:

"Category I: EUR 90.000

Category II: EUR 60.000

Category III: EUR 30.000

Category IV: EUR 10.000".

108. Both Cercle Brugge and FC Radnicki are clubs affiliated to UEFA and falling in club Category II as they played in the Belgium first league and the Serbian first league respectively at the moment of registration of the Player with Cercle Brugge.

109. In the table below an overview of the calculation of the indicative amount of training compensation is presented:

Sporting seasons	*Age of the Player*	*Applicable category*	*Indicative amount*	*Appellant's entitlement*
2001-2002	*9/10*	*/*	*/*	*/*
2002-2003	*10/11*	*/*	*/*	*/*
2003-2004	*11/12*	*IV*	*EUR 10.000*	*EUR 10.000*
2004-2005	*12/13*	*IV*	*EUR 10.000*	*EUR 10.000*
2005-2006	*13/14*	*IV*	*EUR 10.000*	*EUR 10.000*
2006-2007	*14/15*	*IV*	*EUR 10.000*	*EUR 10.000*
2007-2008	*15/16*	*II*	*EUR 60.000*	*EUR 60.000*
2008-2009	*16/17*	*II*	*EUR 60.000*	*EUR 60.000*
TOTAL				***EUR 160.000***

110. It is worth noting that the amount of training compensation as calculated in the Appealed Decision is incorrect and should have been EUR 5,000 higher. From the evidence provided to the Panel it appears that the 2009-2010 season commenced on 15 August 2009. Since CAS jurisprudence determines that partial months have to be regarded as full months (CAS 2008/A/1705, § 47) and because the registration of the Player was terminated on 2 September 2009, an additional month has to be taken into account (EUR 60,000 / 12 x 1).

111. However, since the Respondent did not dispute the awarded amount of training compensation in the Appealed Decision, did not appeal and confined its request to the confirmation of the Appealed Decision, the amount of training compensation shall remain limited to an amount of EUR 160.000. This conforms to the generally applicable prohibition in arbitration to decide *ultra* or *extra petita*, *i.e.* a Panel cannot rule on matters beyond the claims submitted to it (cf. art. 190 para. 2 lit. c of the Swiss Federal Code on Private International Law).

112. Consequently, the amount of training compensation due to be paid by Cercle Brugge to FC Radnicki in respect of the transfer of the Player is based on the indicative amounts: in this case EUR 160,000.

4. Is the indicative amount of training compensation clearly disproportionate?

113. The Appellant asserts that the indicative amount of training compensation is clearly disproportionate and requests the Panel to adjust the amount pursuant to article 5(4) of Annex 4 of the FIFA Regulations. Pursuant to this provision *"[t]he Dispute Resolution Chamber*

may review disputes concerning the amount of training compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review".

4.a. Ratio of training compensation

114. Before dealing with the alleged disproportionality of the awarded training compensation in the specific case at hand, the Panel found it relevant to present a short overview regarding the system of training compensation in general and the possibilities for this Panel to adjust the indicative amount of training compensation based on the categorisation of clubs.

115. The Panel first underlines that the Commentary on the FIFA Regulations determines the following in respect of article 5 of Annex 4 of the FIFA Regulations: *"Training compensation is based on the training and education costs of the association of the new club in order to encourage solidarity within the world of football. In this way, clubs shall be discouraged from hiring young players from clubs in other countries just because the training costs in those countries are lower. This means, in other words, that a club that has the resources to sign players from abroad shall be paying a foreign club according to the costs of its own country".*

116. In CAS 2009/A/1810 & 1811, it was underlined that the system of training compensation *"intends to reward clubs for the worthy work done in training young players and is not designed to simply reimburse the club for its actual costs incurred in cultivating youth teams. The training compensation appears to be a reward and an incentive rather than a refund (CAS 2003/O/506, §78). Such solidarity principle applies with the purpose of providing financial assistance to weaker clubs by stronger ones. The indicative amounts (…) are supposed to reflect this principle and are a general average applying globally. In other words, they are supposed to facilitate the handling of transfer cases by making specific calculations unnecessary, thereby simplifying and speeding up the compensation and transfer process"* (See also CAS 2003/O/500, CAS 2009/A/1908).

117. In respect of a possible deviation from the indicative amount of training compensation it was determined by another CAS Panel in CAS 2003/O/500 that training compensation calculated on the basis of the indicative amounts is to be considered *"a general guide in determining the Training Compensation to be paid in the present case. This amount, therefore, may be applied, increased or reduced, according to the facts and circumstances of the particular case".*

118. The onus of establishing that the indicative amount of training is clearly disproportionate in a specific case lies on the party raising such argument based on the general principle of burden of proof. In CAS 2009/A/1908, which dealt with such an allegation, that Panel held that *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (…). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (See also CAS 2003/A/506, CAS 2009/A/1810 & 1811).

119. This Panel, for the reasons mentioned above, finds that Cercle Brugge is free to object to a training compensation calculated on the basis of the indicative amounts. However, the Appellant bears the burden of convincing the Panel that such compensation is clearly disproportionate when considering the truly particular circumstances of the case under review and that therefore the pre-assessed indicative amount must be adjusted. The Appellant has to satisfy its burden of proof on the basis of reliable evidence, such as invoices, costs of training centres, budgets, and other documentation of expenses showing that the expenses bear a clear relation to the training of its youth sector. In the absence of such evidence, the indicative amounts apply as such.

4.b. Clear disproportionality of the training compensation in the case at hand

120. The Appellant maintains that the indicative amount of training compensation in the present case is clearly disproportionate and mainly relies on three arguments to convince the Panel that the indicative amount of training compensation based on article 5(4) of Annex 4 of the FIFA Regulations is clearly disproportionate: (i) FC Radnicki limited the amount of training compensation to RSD 1.622.400 by issuing a Document with such content on 2 September 2008; (ii) the amount is clearly disproportionate if one takes into account the actual training costs of FC Radnicki, the fact that FC Radnicki was no longer interested in the services of the Player and in comparison with the amount of training compensation that would have been due if both clubs would have been affiliated to a national football association in an EU/EEA country; and (iii) the amount is clearly disproportionate if one takes into account the actual training costs of Cercle Brugge.

4.b.i. The Document of 2 September 2008

121. According to Cercle Brugge, contrary to what was held in the Appealed Decision, the scope of the Document is not limited to a possible national transfer. The Document does not contain any restriction in respect of a transfer to a foreign club and the basic training compensation is the one fixed at RSD 1,352,000. FC Radnicki cannot increase this amount because the Document of 2 September 2008 was made on the request of the Player, at a moment he was on a try-out with a foreign club (FC Lask Linz, Austria). The Document can therefore only relate to international transfers. To restrict the applicability of this Document to a national transfer would constitute the creation of a new, purely discretional condition, affecting the legal security that can reasonably be expected from a legal document.

122. Cercle Brugge further contends that it cannot be reproached with any lack of diligence or caution because it did not contact FC Radnicki before entering into an employment agreement with the Player. The Player was on a try-out with Cercle Brugge from August 2009, *i.e.* one year after the issuance of the Document (and not 1,5 year as was held in the Appealed Decision). According to the witness statement of the Player's father, FC Radnicki did not make any investments in the training of the Player during that last year. In view of the above,

Cercle Brugge could not reasonably expect that the official Document of the Head of the football school of FC Radnicki would not be applicable.

123. The Appellant further alleges that even assuming that the Document has no binding legal effect; it nevertheless undoubtedly constitutes a fundamental element to determine the amount of training compensation for the Player.

124. According to the Respondent, the Document does not have any legal effect since it has a strict internal character and by its nature was issued on the request of the unsatisfied father of the Player in relation to the amount of a possible compensation of expenses invested in the development of the Player in case that the minor Player finds a new club, but only clubs that belong to Super and First league in Serbian territory. The Document was not addressed to the Appellant, nor can it be concluded from its content that it can be applied in the case of an international transfer.

125. The Document explicitly mentions the application of the relevant rules of the FFS and calculated the compensation based on Serbian dinars. The marked compensation in this Document should have been strengthened by the decision of the Executive Board of the Respondent in the case that the minor Player finds a new club in Serbian territory, which did not happen.

126. The Document was issued on 2 September 2008, while the Appellant registered the Player only on 21 April 2010. During that period (longer than 18 months) Cercle Brugge never contacted the Respondent in order to verify the content of the Document. According to FC Radnicki, Cercle Brugge therefore did not act justly and in the spirit of the FIFA Regulations; it was obliged to contact the Respondent with a request for clarification of the amount of training compensation. In respect of the above, the Respondent submitted a witness statement of Mr Milos Pavličević, the person that signed the Document on behalf of FC Radnicki.

127. The allegation of the Appellant that the Document of 2 September 2008 was applicable to international transfers because FC Radnicki knew that the Player was looking for an international transfer does not make sense according to the Respondent. At that time, the Player was 16 or 17 years old and consequently an internationally transfer would not be permitted according to the FIFA Regulations.

128. During the hearing the witness explained that the Document was issued upon the request of the Player's father. According to the witness, the Player's father requested FC Radnicki to determine the compensation that could possibly be due in accordance with the Regulations of Serbia.

129. During the hearing, the Panel, with the help of Ms Olivera Ristić, Interpreter for the Respondent, carefully examined the original Serbian wording of the Document.

130. Considering the above, the Panel finds that the Appellant cannot rely on the Document in holding that the indicative amount of training compensation is clearly disproportionate. The Panel has no reason to deviate from the argumentation of the FIFA DRC in the Appealed Decision and holds that the Document was not addressed to Cercle Brugge, nor did it give any indication as to the amount of training compensation payable in case the Player would be transferred internationally. To the contrary, the Document explicitly mentioned the applicable rules of the FFS and consequently referred to an amount of money due in case of a transfer of the Player in Serbia. Accordingly, the Panel finds the Document of 2 September 2008 not a legally binding document on the basis of which the Appellant could legitimately expect that the amount payable as training compensation for the Player as a consequence of an international transfer would, at a maximum, be RSD 1,622,400.

131. Additionally, the Panel understands that Cercle Brugge relied on the assurance of the Player's representatives that the training compensation would remain limited to the amount determined in the Document. Although the Panel understands that Cercle Brugge suffered from a to some extent unfortunate occurrence of events, it finds that Cercle Brugge had the duty to verify the content of the Document with FC Radnicki or at least should bear the consequences of not contacting FC Radnicki, and in the absence of such verification, the Panel is of the opinion that the Appellant could not rely solely on the content of the Document and the assurance of the Player's representatives.

132. Finally, the Panel noted that if the Appellant had truly relied on the content of the Document, it should have paid the amount of RSD 1,622,400 within 30 days upon the registration of the Player with the Respondent. However, the Appellant chose not to pay such amount and waited for FC Radnicki to undertake action. Accordingly, the contention of the Appellant that it acted in good faith by relying on the Document cannot be fully upheld.

133. Consequently, the Panel finds the Appellant's arguments in respect of the Document not convincing to determine that the indicative amount of training compensation is clearly disproportionate.

4.b.ii The actual training costs of FC Radnicki and the application of article 6 Annex 4 of the FIFA Regulations

134. According to Cercle Brugge, the Document of 2 September 2008 signed by Mr Miloš Pavličević in his capacity as Head of the football school of FC Radnicki is essential to determine the actual costs of the training provided by the Respondent. The actual costs of the training of the Player are fixed at an amount of RSD 1,352,000.00, without prejudice to an increase of 20% according to the rules for determining the amount of training compensation in Serbia. It can therefore be concluded that, even if the Document is not directly applicable, the maximum training compensation due cannot exceed RSD 1,622,400.00 as the Document shows that only the Board of Directors of FC Radnicki can reduce this amount.

135. With reference to CAS jurisprudence, Cercle Brugge contends that one of the criteria for a training club to be entitled to training compensation is the intention of the training club to continue the training of the player. Consequently, by analogy, if the fact that an employment contract is offered to a young player is the best evidence of the intention to maintain the right to training compensation then, *a contrario*, the fact that a football club prematurely puts an end to the training constitutes a factor that must be taken into account in order to determine the "theoretical" (lower) amount of training compensation.

136. In the present case it is clear that FC Radnicki had no intention to continue the training of the Player. Such allegation is corroborated by the witness statement of Mr Jovan Stojanovic, the Player's father, and by the fact that the Player's registration with FC Radnicki was terminated on 2 September 2009. The witness statement of Mr Stojanovic reads, *inter alia*, *"*[the Player] *was sidelined for several weeks and months.* [The Player] *did not played for his cadet selection for five official games at the start of season and the pressure continued during the rest of the season* [sic]*".*

137. The witness statement of Mr Stojanovic further stipulated that *"[f]or all the period of time that* [the Player] *was registered for FC Radnicki, he was not offered or did not received any proposal for scholarship contract or funds equipement or travel costs. We as a family have covered all costs during all those years: fee for membership and training in the club, summer and winter preparations, equipment and travel (…). FC Radnicki did not invested more than 1,000.00 euro (one thousand) and he did not received any support as a young and talented player* [sic]*".*

138. Furthermore, Cercle Brugge alleges that if FC Radnicki would have been affiliated to a football association in an EU/EEA country, the training compensation would have amounted to EUR 110.000 instead of the present EUR 160.000. Although Cercle Brugge emphasizes not to demand the application of article 6 of Annex 4 of the FIFA Regulations, it contends that the difference of EUR 50.000 is disproportionate.

139. The Respondent refers to article 5(1) of Annex 4 of the FIFA Regulations and finds the training costs of FC Radnicki completely irrelevant for the determination of the training compensation. The actual training costs of FC Radnicki are not to be considered, neither directly nor by analogy. The Appellant's reference to CAS jurisprudence are (with one exception) not relevant because those awards dealt with transfers within the EU/EEA territory.

140. Regarding the indirect application of article 6 of Annex 4 of the FIFA Regulations, FC Radnicki contends that such provision does not apply to the present case, neither directly nor by analogy because FC Radnicki is a Serbian club and Serbia is not an EU/EEA country.

141. Finally, FC Radnicki held that it is not true and irrelevant that the Respondent was not willing to continue the training of the Player. It is not true that the Player was sidelined for several weeks and months; the Player was only not selected for 5 matches due to a lack of fitness. Furthermore, this argument would only be relevant if the transfer was conducted within the EU/EEA. As determined by CAS jurisprudence, only a club which already has a contract with

a player is obliged to offer a new contract if it intends to secure its entitlement to training compensation.

142. The Panel notes that the obligation of a club to offer a contract to a Player in order to remain entitled to training compensation derives from article 6(4) of Annex 4 of the FIFA Regulations.

143. Article 6 of Annex 4 of the FIFA Regulations is a *lex specialis* of the general system of training compensation and as the preconditions for the application of this *lex specialis* are not fulfilled in the case at hand, article 6 of Annex 4 of the FIFA Regulations cannot be applied.

144. The Panel feels itself comforted in this conclusion by the argumentation of the CAS Panel in CAS 2009/A/1810 & 1811, where the Panel held that *"it appears that article 6 of Annex 4 to the FIFA Regulations is nothing more than the codification of the system agreed upon by the European authorities and put into place to govern the transfer of a player moving from one association to another inside the territory of the EU/EEA. There is therefore no reason to depart from the unambiguous wording of article 6 of Annex 4 to the FIFA Regulations, which is obviously not applicable in the case of a player moving from a country outside the EU/EEA to a country within the EU/EEA. This is consistent with CAS precedents (for instance, CAS 2007/A/1338)"*. Put differently, the language of a provision governs its interpretation where the language is clear and explicit and does not involve an ambiguity or absurdity, *i.e. in claris non fit interpretatio*.

145. However, even if article 6 of Annex 4 of the FIFA Regulations would have been applicable to the case at hand, still the absence of a contractual offer from FC Radnicki to the Player would not have convinced the Panel to mitigate the amount of training compensation. As rightly noted by the Respondent, the obligation to offer a contract to a player in order to maintain its entitlement to training compensation only applies if the player already had a contract with such club. This derives from the wording of article 6 of Annex 4 of the FIFA Regulations where it is determined that *"[t]he former club must offer the player a contract in writing (…) before the expiry of his current contract"* and *"[s]uch an offer shall furthermore be at least of an equivalent value to the current contract"* (emphasis added). Since the Player was an amateur player during his registration with FC Radnicki no contract existed and consequently no new contract could be offered. This is corroborated by CAS 2006/A/1177 where a CAS Panel held that *"only a club which already had a contract with a player is obliged to offer a new contract if it intends to secure its entitlement to training compensation"*.

146. Insofar as Cercle Brugge refers to the actual training costs of FC Radnicki in order to train the Player, the Panel notes, as stipulated *supra*, that the system of training compensation *"intends to reward clubs for the worthy work done in training young players and is not designed to simply reimburse the club for its actual costs incurred in cultivating youth teams. The training compensation appears to be a reward and an incentive rather than a refund (CAS 2003/O/506, § 78)"*. The actual training costs of the former club, FC Radnicki, are therefore irrelevant in determining the amount of training compensation due.

147. Consequently, the Panel rejects the Appellant's arguments that the indicative amount of training compensation is clearly disproportionate based on the actual training costs of FC Radnicki or the indirect application of article 6 of Annex 4 of the FIFA Regulations.

4.b.iii The actual training costs of Cercle Brugge

148. The final argument on which Cercle Brugge relies in order to convince the Panel that the amount of training compensation awarded by FIFA is clearly disproportionate is that the actual training costs of Cercle Brugge were lower than the indicative amount. Cercle Brugge refers to certain enclosures to its appeal brief, in which a calculation is made of the actual training costs of the training provided by Cercle Brugge. These enclosures are official documents that were handed over to UEFA regarding the UEFA Solidarity Fund. Based on these enclosures the total training costs of Cercle Brugge can be determined at EUR 412,319 for the 2009-2010 season (although the document issued by URBSFA on 24 May 2012 refers to an amount of EUR 462,419) and EUR 513,972.11 for the 2010-2011 season. Taking into account that Cercle Brugge trains 350 players per year, the real training costs per player per year can therefore be determined at EUR 1,323.27. The training of a player from the age of 12 until the age of 17 can therefore be determined at EUR 6,616.37. According to Cercle Brugge, this calculation confirms that the claim of FC Radnicki is clearly disproportionate.

149. According to the Respondent, the Appellant's explanation and the submitted evidence do not have any evidentiary power in the present case and the two single papers submitted have been taken completely out of context.

150. In addition, the Appellant calculated the training costs on the basis of the average expenses for all minor players in the club. That is completely wrong according to the Respondent. Pursuant to article 4(1) of Annex 4 of the FIFA Regulations, the relevant value depends on the costs to form one professional player.

151. Although Cercle Brugge provided the Panel with additional documents a few days before the hearing, still the Panel is not in the position to establish that the indicative amount of training compensation as awarded in the Appealed Decision is clearly disproportionate. The Panel finds that Cercle Brugge did not discharge its burden of proving that calculating the amount of training compensation based on the indicative amounts would be clearly disproportional to this case.

152. As reflected in article 4(1) of Annex 4 of the FIFA Regulations *"The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio of players who need to be trained to produce one professional player"*. Cercle Brugge did not take such "player factor" into account, it only calculated the average training costs of one player per season, no evidence is adduced as to how many professional football players were produced by Cercle Brugge. Hence, it is impossible for the Panel to compare the indicative amount of training compensation with the actual training costs of Cercle Brugge as an important factor in the calculation of training compensation is omitted.

153. Consequently, the Panel finds that Cercle Brugge did not prove to the comfortable satisfaction of the Panel that the indicative amount of training compensation is clearly disproportionate in the case at hand.

5. From which date shall the interest accrue?

154. The Panel noted that the operative part of the Appealed Decision determined that "[Cercle Brugge] *has to pay to* [FC Radnicki]*, within 30 days as from the date of notification of this decision, the amount of EUR 160.000 plus 5% interest p.a. due as from 21 May 2010 until the date of effective payment".*

155. Although Cercle Brugge does not dispute the fact that the Player was registered with the URBSFA on 21 April 2010, the Appellant contends that *"due to a delay in the delivery of the* [ITC] *by the* [FFS]*, the qualification of* [the Player] *only took effect on 8 September 2010 so that, in derogation of previous decisions of the* [FIFA DRC] *and taking into account the actual circumstances, the interest on the amount of training compensation can only be charged as from 8 October 2010, which corresponds to the date on which* [FC Radnicki] *filed its complaint with the FIFA authorities".*

156. In addition, Cercle Brugge alleges that the interest accrues from the 31st day following the registration of the football player with his new club, *i.e.* the actual registration allowing the football player to be qualified for participation in the official matches of his new club. In this particular case, the actual registration of the Player to participate in any official match of Cercle Brugge took place on 8 September 2010.

157. FC Radnicki contends not to be aware of any facts regarding the purported late delivery of the ITC and contests such occurrence. Even if the ITC would have been delivered late, still the Appellant did not state any fact that the FFS would have caused the late delivery. Therefore, the Appellant has to pay 5% interest *p.a.* as from 21 May until the date of effective payment.

158. The Panel notes that the Appealed Decision considered article 3(2) of Annex 4 of the FIFA Regulations in determining the interest due. In light of this *"the Chamber decided that* [Cercle Brugge] *has to pay, in conformity with its longstanding practice, interest at 5% p.a. over the amount payable as training compensation as of the 31st day of the registration of the Player with the Respondent, i.e. as of 21 May 2010, until the date of effective payment".*

159. The Panel notes that article 3(2) of Annex 4 of the FIFA Regulations stipulates that: *"(…) the deadline for payment of training compensation is 30 days following the registration of the professional with the new association".*

160. The Panel is aware that pursuant to article 9(1) FIFA Regulations, *"[p]layers registered at one association may only be registered at a new association once the latter has received an* [ITC] *from the former association".* The issuance of the ITC by the Player's former association is therefore a precondition for the registration of the Player by the new association. Although Cercle Brugge

alleges that the ITC of the Player was only issued on 8 September 2010, from the evidence adduced by Cercle Brugge it appears that it was not the ITC of the Player that was issued on 8 September 2010, but the notification of the registration of the Player. Such notification is not a formal requirement for the registration of the Player and is therefore irrelevant for the determination of the actual date or registration.

161. Moreover, Cercle Brugge did not contend or adduced evidence corroborating that the Player was ineligible to play for Cercle Brugge between 21 April 2010 and 8 September 2010 due to the fact that the Player was not officially registered by the URBSFA.

162. In light of the above, the Panel holds that the FIFA DRC was right in determining that the training compensation became due on 21 April. However, the Panel notes that the Appealed Decision referred to the 31st day after the registration of the Player, whereas article 3(2) of Annex 4 of the FIFA Regulations refers to the 30th day following the registration of the Player. Irrespective of this negligible difference, the FIFA DRC was right in determining that the interest shall accrue as of 21 May 2010 as April 2010 contained only 30 days.

6. Shall the procedural costs before the FIFA DRC be reduced?

163. The Panel notes that the operative part of the Appealed Decision determined that *"[t]he final amount of costs of the proceedings in the amount of CHF 8,000 is to be paid by* [Cercle Brugge] *within 30 days of notification of the present decision, as follows: The amount of CHF 4,000 to FIFA (…); The amount of CHF 4,000 to* [FC Radnicki]*"*.

164. The FIFA DRC came to such amount for the following reasons as determined in the Appealed Decision:

"Lastly the Chamber referred to art. 25 par. 2 of the Regulations in combination with art. 18 par. 1 of the Procedural Rules, according to which, in proceedings before the DRC relating to disputes regarding training compensation costs in the maximum amount of CHF 25'000 are levied. It is further stipulated that the costs are to be borne in consideration of the parties' degree of success in the proceedings and that, in accordance with Annex A of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute.

In respect of the above, the Chamber held that the amount to be taken into consideration in the present proceedings is EUR 160,000 related to the claim of [FC Radnicki]. *Consequently, the Chamber concluded that the maximum amount of costs of the proceedings corresponds to CHF 25,000 (cf. table in Annex A).*

As a result, and taking into account that the claim of [FC Radnicki] *has been accepted as well as the complexity of the case, the Chamber determined the costs of the current proceedings to the amount of CHF 8,000, which shall be borne by* [Cercle Brugge]*"*.

165. Cercle Brugge disputes the amount of CHF 8,000 as to the costs of the proceedings before the FIFA DRC. Cercle Brugge contends that *"[w]ithout prejudice to the arbitral decision to be passed and the possible review of the decision against which the appeal is lodged, the costs of the proceedings in any case*

do not justify this amount claimed from [Cercle Brugge]. *They should therefore be reduced by the Panel, which has sovereign authority in this respect".*

166. According to FC Radnicki, Cercle Brugge did not specifically argue why the costs of the proceedings before the FIFA DRC were disproportionate, nor did Cercle Brugge deal with the reasons given by the FIFA DRC in coming to such amount. The FIFA DRC stated that the maximum costs of the proceedings that could have been charged were CHF 25,000 and it explained why it had reduced such costs to the amount of CHF 8,000.

167. The Panel notes that the costs of the proceedings remain within the discretion of the FIFA DRC and finds the argumentation of the FIFA DRC leading to the amount of CHF 8,000 convincing. In the absence of any specific arguments put forward by Cercle Brugge in its appeal brief or during the hearing as to why the costs of the proceedings would be disproportionate, the Panel confirms the amount of CHF 8,000 regarding the costs of the proceedings before the FIFA DRC.

B. Conclusion

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

1. The Respondent is entitled to training compensation.
2. The Player was registered with FC Radnicki from 19 September 2001 until 2 September 2009.
3. The indicative amount of training compensation due to be paid by Cercle Brugge to FC Radnicki in respect of the transfer of the Player is EUR 160,000.
4. The Appellant has not convinced the Panel that the indicative amount of training compensation is clearly disproportionate and the indicative amount shall therefore remain unchanged.
5. Interest over the amount of training compensation shall accrue as of 21 May 2010.
6. The procedural costs of CHF 8,000 before the FIFA DRC are confirmed.

169. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 27 December 2011 by KSV Cercle Brugge VZW against the Decision issued on 15 June 2011 by the FIFA Dispute Resolution Chamber is dismissed.

2. The Decision issued on 15 June 2011 by the FIFA Dispute Resolution Chamber is confirmed.

3. (…)

4. (…)

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