



**Arbitration CAS 2013/A/3314 Villarreal CF SAD v. SS Lazio Roma S.p.A., award of 7 March 2014**

Panel: Mr Romano Subiotto QC (United Kingdom), President; Mr Rui Botica Santos (Portugal); Mr Marco Balmelli (Switzerland)

*Football*

*Transfer*

*Scope of review of the CAS*

*Applicability of Art. 18 para. 4 FIFA RSTP to agreements between clubs*

*Parties to a loan agreement*

*Obligation of a doctor to state the truth when issuing a medical certificate*

1. A panel may rule on the dispute as defined by the decision subject to appeal and its jurisdiction is limited by the objective and subjective scope of the appealed decision.
2. Transfer agreements between football clubs can legitimately be made subject to a player passing his medical examination. Indeed, the prohibition laid down in Article 18 para. 4 of the FIFA Regulations on the Status and Transfer of Players belongs to Section IV of the regulations, which concerns the “[m]aintenance of contractual stability between professionals and clubs”, and is expressly qualified as a “special” provision “relating to contracts between professionals and clubs”. Therefore, based on a *prima facie* literal reading, the prohibition in Article 18 para. 4 cannot be applied to contracts between clubs. This conclusion is supported by a purposive interpretation of the provision, which aims at fostering the contractual stability of employment contracts and thus avoiding disruptions during the football season. In addition, given that Article 18 is qualified as a “special” provision, its scope should be narrowly interpreted.
3. A loan contract is in principle only concluded between the two clubs. The co-signing of the loan agreement by the player merely entails him/her not needing to enter into a separate agreement with the club of origin, whereas the effects of the employment contract are temporarily suspended. This also has the result of assuring the destination club that the previous employment contract is suspended. A loan contract can only be deemed to be a tripartite agreement if it establishes the terms of the loan and employment.
4. When issuing a medical certificate, a doctor is under an obligation to state the truth and is subject to severe criminal consequences in case of false representations in such certificate.

## I. PARTIES

1. The Appellant, Villarreal C.F. SAD (“Villarreal”), is a Spanish professional football club located in Villarreal that competes in the Spanish Liga.
2. The Respondent, S.S. Lazio S.p.A. (“Lazio”), is an Italian professional football club located in Rome that competes in the Italian Serie A. Villarreal and Lazio are referred to collectively as the “Parties”.

## II. FACTUAL BACKGROUND

3. In late 2009, Lazio retained the consultancy services of Società Forza (“Forza”) in order to acquire an additional player (a central midfielder) during the January 2010 transfer window.
4. Forza proposed S. (the “Player”) as a potentially suitable player. The Player was employed at the time by Villarreal under a 3-year contract from July 1, 2008 to June 30, 2011.
5. After initial positive contacts, on January 27, 2010 the Parties entered into an agreement (*Accordo Privato/Acuerdo Privado*) drafted in both Italian and Spanish (the “Loan Agreement”). The Player co-signed the Loan Agreement.
6. Under to the Loan Agreement, Villarreal agreed to transfer the Player to Lazio on loan until June 30, 2010 for a payment of Euro 350,000. Lazio was also granted the option to make the transfer permanent for an additional payment of Euro 1,150,000.
7. The Loan Agreement contained a conditions precedent clause, specifying that the agreement was conditional upon the Player (i) signing an employment agreement with Lazio; and (ii) passing a medical examination under the supervision of Lazio’s medical staff. The clause was found under Article 6 of the Loan Agreement, and read as follows:  
  
*“(Suspensive condition) The Agreement is conditional upon the signing of an economic agreement between Lazio and the Footballer, as well as the fact that the player passes the related medical examination in Rome carried out by Lazio’s doctors”.*
8. On the same day (January 27, 2010), Lazio and the Player entered into an employment agreement until June 30, 2013 (the “Employment Agreement”). The Employment Agreement did not contain a conditions precedent clause, or any other provision stating that the Player must pass a medical examination.
9. On the same day (January 27, 2010) Dr. Ivo Pulcini commenced medical examinations of the Player on behalf of Lazio. The examinations were carried out on January 27 and 28, and showed

evidence of hypertension. After consulting with a cardiologist (Prof. Francesco Fedele), on January 29, 2010 Dr. Pulcini deemed that the Player was unfit for the practice of competitive sports.

10. The certificate issued by Dr. Pulcini specified that, in compliance with applicable Italian law, the Player could within 30 days of receipt of the certificate, appeal Dr. Pulcini's findings before the Regional Medical Commission.
11. On January 31, 2010, Lazio finalized a deal to sign another player (T.) from VfB Stuttgart.
12. On February 2, 2010, the Player tried to participate in a training session on Lazio's training ground, but was refused access.
13. On February 3, 2010 the Player returned to Valencia and Villarreal.
14. On February 15, 2010 a further medical examination of the Player performed on behalf of Villarreal showed mild arterial hypertension. According to the cardiologist Dr. José Antonio Ferrero Cabedo, this condition did not warrant a prohibition on the Player's practice of sport, but rather the doctor just recommended that the Player avoid very salty food and energy drinks.
15. On February 19, 2010 the Player signed a deal with the Swedish football team AIK Fotboll. Villarreal claims that the Player was transferred for free.

### **III. PROCEEDINGS BEFORE THE FIFA PLAYERS' STATUS COMMITTEE**

16. On July 20, 2011 Villarreal lodged a claim with FIFA, claiming, *inter alia*, that (i) the medical tests performed by Lazio's doctors were flawed; (ii) the Player was returned too late (*i.e.*, only two days before the transfer window closed); and (iii) the conditions precedent clause of the Loan Agreement violated Art. 18.4 of the Regulations on the Status and Transfer of Players (the "FIFA Regulations"). Lazio contested these claims.
17. By his decision dated March 19, 2013 (the "Decision"), the Single Judge of the Players' Status Committee (the "Single Judge") rejected Villarreal's claim, finding that: (i) Art. 18.4 of the FIFA Regulations only applies to contracts between professionals and clubs, not to loan agreements; (ii) the Loan Agreement stipulated that Lazio's doctors were to perform the medical examinations, and set the criteria for passing them. It was thus irrelevant that Villarreal's doctors came to a different conclusion, and in any event, there was no indication that the examinations had been manipulated to avoid the performance of the Loan Agreement; and (iii) Lazio's medical examinations were carried out in a timely manner and, even if they did, the Loan Agreement did not set any obligation or deadline for the return of the Player.

18. The Decision was served on Villarreal on August 22, 2013.

#### IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. Villarreal challenged the Decision and filed a statement of appeal with the Court of Arbitration for Sport (“CAS”) on September 5, 2013 and filed its appeal brief on September 17, 2013.

20. The Appellant’s requests for relief are the following:

*“A). To fully accept the present appeal against the Decision of the Single Judge of the FIFA Players’ Status Committee dated 19 March 2013.*

*B). As a consequence, to adopt an award annulling said decision and declaring that:*

*1). The appealed decision of the Single Judge of the FIFA Players’ Status Committee passed on 19 March 2013 in Zurich, Switzerland, is fully set aside and*

*2). SS Lazio terminated with no just cause the Employment Contract it had signed with the Player,*

*3). SS Lazio terminated with no just cause the corresponding Transfer Agreement it had signed with Villarreal CF related to the transfer of the services of the Player,*

*4.1). SS Lazio shall pay an indemnity to the Appellant in the amount of:*

*1,500,000.00/- EUR (One Million Five Hundred Thousand Euro Only) as stipulated by clause 3 of the Transfer Agreement, corresponding to:*

*- Clause 3.1: 350,000.00/- EUR (Three Hundred and Fifty Thousand Euro Only)*

*- Clause 3.2: 1,150,000.00/- EUR (One Million One Hundred and Fifty Thousand Euro Only)*

*OR, IN THE ALTERNATIVE*

*4.2). SS Lazio shall pay an indemnity to the Appellant in the amount of:*

*- Clause 3.1: 350,000.00/- EUR (Three Hundred and Fifty Thousand Euro Only)*

*C). To fix a sum of 20,000 CHF to be paid by the Respondent to the Appellant, to help the payment of its legal fees and costs.*

*D). To condemn the Respondent to the payment of the whole CAS administration costs and the Arbitrators fees.*

*E). To order SS Lazio to pay an additional 5% annual interest on the amounts due to the Appellant as from the date of the breach of the Transfer Agreement and/or the Employment Contract.*

*F). Awarding any such other relief as the Panel may deem necessary or appropriate”.*

21. On September 16, 2013 FIFA informed counsel for the CAS that it had waived its right to intervene in the proceedings and provided a copy of the Decision.

22. On October 2, 2013, Villarreal reiterated its request that FIFA be ordered to submit the entire procedural case file, including Lazio’s response dated July 20, 2011.

23. By its letter dated October 3, 2013, Lazio noted that the entire procedural case file was already available to Villarreal, including Lazio's response dated July 20, 2011.
24. By its letter dated November 11, 2013, Lazio submitted its answer.
25. The Respondents requests for relief are the following:
  1. *Dismissing the requests for relief of the Appellant;*
  2. *Ordering the Appellant to pay the costs of the proceedings in full;*
  3. *Ordering the Appellant to pay in full, or pay a significant contribution of no less than CHF 50'000 towards, the legal fees and other expenses incurred by the Respondent in connection with these proceedings*".
26. By its letter dated December 5, 2013, Villarreal confirmed that it had all documents in the proceedings before the FIFA Players' Status Committee.
27. A hearing was held on January 29, 2014 at CAS headquarters in Lausanne, Switzerland. At the hearing, the parties' counsels and Villarreal's representative (Mr. Fernando Roig Negueroles) were heard and the witness for Lazio, Dr. Ivo Pulcini, was called to testify. The parties agreed that their rights to be heard and to be treated equally have been respected.
28. The arguments raised by the parties at the hearing will, where relevant, be discussed in the corresponding sections on the merits below.

## **V. JURISDICTION AND POWER OF EXAMINATION**

29. The Parties have raised no objections to CAS's jurisdiction under Article 67.1 of the FIFA Statutes and Article R47 of the Code of Sports-related Arbitration (the "CAS Code"). Both Parties have signed the Order of Procedure, which acknowledges expressly that CAS has jurisdiction over the dispute.
30. The Panel acts pursuant to Article R57 of the CAS Code, according to which the Panel may review the facts and the law of a case, and issue a new decision, which replaces the challenged decision, sets the decision aside, or refers the case back to the previous instance.
31. According to CAS case law, the Panel may rule on the dispute as defined by the decision subject to appeal and its jurisdiction is limited by the objective and subjective scope of the appealed decision<sup>1</sup>.

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<sup>1</sup> See, *ex multis*, CAS 2007/A/1426 and CAS 2007/A/1433. The Panel notes that, while in first instance Villarreal only claimed damages equal to the loan fee, in the present proceedings it also claimed the payment of the full sum that

## VI. ADMISSIBILITY

32. The Panel notes that the appeal was filed within the 21-day deadline set forth in Article R49 of the CAS Code. The Parties complied with all other requirements of Article R48 of the CAS Code, including the payment of the Court Office fee.
33. Accordingly the appeal is admissible and this is undisputed.

## VII. APPLICABLE LAW

34. Article R58 of the CAS Code provides as follows:

*R58 -- Law Applicable to the Merits*

*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.*

35. The Parties agree that the various FIFA rules (including the FIFA Regulations) shall apply primarily to the dispute. Considering that the Decision was rendered by the Dispute Resolution Chamber of FIFA, a body with its corporate seat in Zurich, Switzerland, the Parties agree that Swiss law shall apply complementarily.
36. It is therefore undisputed, and the Panel concurs with this position, that the various FIFA regulations shall apply primarily to the case and Swiss law shall apply complementarily.
37. However, Villarreal claims that the regulations of the Italian Football Federation should also apply, specifically with regards to the question of the validity of the conditions precedent clause of the Loan Agreement, on the basis that Lazio is a member of the Italian Football Federation and is required to submit to the Federation any contract it might execute.
38. According to Villarreal, the regulations of the Italian Football Federation (Article 95.7 of the *Norme Organizzative Interne*) prohibit any type of conditions precedent clause providing that a player pass a medical examination also with respect to transfer agreements. At the hearing, Villarreal claimed that these provisions must apply to the Loan Agreement since they are mandatory as a matter of Italian law.

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Lazio would have paid to make the transfer permanent. In light of its decision to reject Villarreal's appeal, the Panel deems that there is no need to assess whether or not this additional claim is admissible.

39. Lazio objects to the application of the Italian Football Federation's regulations. Given that the contemplated loan involved an international transfer between clubs belonging to different associations, Lazio claims that the transfer should be governed solely by the FIFA Regulations. Lazio reiterated this position at the hearing.
40. In this regard, the Panel notes that Article 1.1 of FIFA Regulations clearly states that "[t]hese regulations lay down global and binding rules concerning the status of players [...] and their transfer between clubs belonging to different associations", while "[t]he transfer of players between clubs belonging to the same association is governed by specific regulations issued by the association concerned".
41. Consequently, the regulations of the Italian Football Federation cover only the transfer of players among Italian clubs, and not the transfer of players between an Italian club and a club belonging to a different association. Accordingly, the Italian regulations are inapplicable to the present case.
42. The Panel is aware that the Italian rules – allegedly extending the prohibition of Article 18.4 to transfer contracts – could apply in the present case if they were to be considered mandatory according to the law of the seat of the arbitration, which – as noted above – is Swiss law (see CAS 2008/A/1485, § 7.4.3). No submission has been made in this case that the rules allegedly in force in Italy are of a mandatory nature according to Swiss law, and the Panel has no reason to deem this to be the case. The conditions set by Swiss law are very restrictive, and a provision of law which is not applicable as *lex causae* would be considered mandatory and directly applied only in exceptional circumstances.
43. In light of the above, the Appellant's claim concerning the application of Italian law in the present case is rejected.

## VIII. LEGAL ANALYSIS

### A. ALLEGED VIOLATION OF ARTICLE 18.4 OF THE FIFA REGULATIONS

#### 1. Applicability of Article 18.4 of the FIFA Regulations to agreements between clubs

44. A preliminary question that must be addressed is whether Article 18.4 of the FIFA Regulations also applies to agreements between clubs.
45. In its reply brief, Lazio emphasized that – as stated by the Single Judge in his Decision – transfer agreements between football clubs can legitimately be made subject to a player passing his medical examination. It argues that the prohibition under Article 18.4 of the Regulations only applies to contracts between players and clubs; this is evident from the heading of Article 18, namely "*special provisions relating to contracts between professionals and clubs*". The Commentary on the

FIFA Regulations similarly limits the prohibition in Article 18.4 to an “*employment contract between a player and a club*”.

46. The Panel notes that the prohibition laid down in Article 18.4 of the FIFA Regulations belongs to Section IV of the regulations, which concerns the “[*maintenance of contractual stability between professionals and clubs*”], and is expressly qualified as a “*special*” provision “*relating to contracts between professionals and clubs*”.
47. Therefore, based on a *prima facie* literal reading, the prohibition in Article 18.4 cannot be applied to contracts between clubs.
48. This conclusion is supported by a purposive interpretation of the provision, which aims at fostering the contractual stability of employment contracts and thus avoiding disruptions during the football season.
49. In addition, given that Article 18 is qualified as a “*special*” provision, its scope should be narrowly interpreted.
50. Having established the scope of the prohibition set out in Article 18.4 of the FIFA Regulations, the questions that now need to be addressed are: (i) whether the Loan Agreement can be qualified as a tripartite contract – entered into between the Parties and the Player – which could therefore not be made subject to the passing of his medical examination; or, even if it cannot be qualified as such, (ii) whether the Loan Agreement and the Employment Agreement are so intertwined that the prohibition in Article 18.4 should still apply to the Loan Agreement.

## **2. Parties to the Loan Agreement**

51. Villarreal claims that the Player was a party to the Loan Agreement and, therefore, that the Loan Agreement was a tripartite agreement subject to the prohibition of Article 18.4 of the FIFA Regulations since:
  - (i) Even though Article 1 of the Loan Agreement only names Villarreal and Lazio as parties to it, the Player’s signing of the Loan Agreement should – under Swiss law – be interpreted as an expression of intent, making him a party to a tripartite agreement. The Commentary on Article 10.1 of the Regulations allows for two clubs and the player to enter into a tripartite agreement;
  - (ii) The tripartite agreement under examination contained all the required essential elements, including the place of work, period of validity and economic terms;

- (iii) Article 2.5 of the Loan Agreement (providing that “[a]ll the undersigned [declare] that they know and understand at least one of the two languages of the Contract”) illustrates that the Player was a party to the Loan Agreement;
- (iv) The principle of *contra proferentem* interpretation should apply, considering that the Loan Agreement was drafted by Lazio and that Villarreal and the Player were under a strict time limit in which to reach an agreement as the transfer window was closing.

52. Lazio rejects these assertions since:

- (i) Article 1 of the Loan Agreement states that the parties are Lazio and Villarreal only;
- (ii) The execution of the contract by the Player does not demonstrate an intention to create a tripartite agreement incorporating an employment contract.

Article 6 of the Agreement makes explicit reference to the conclusion of a separate employment contract between Lazio and the Player, which was negotiated and signed independently;

- (iii) The Loan Agreement does not contain all the elements of an employment contract. In particular, no reference is made to the economic terms of any employment relationship.

53. The Panel is of the opinion that the Player cannot be considered a party to the Loan Agreement for several concurrent reasons:

- (i) The literal interpretation of the text supports the view that only Lazio and Villarreal are parties to the agreement, since they are the only ones referred to and formally qualified as parties. Article 1 (*Parties to the Agreement*) provides that: “*The parties that enter into the agreement, accept it and sign it are: [...] Lazio [and] Villarreal*”. Nowhere in the Loan Agreement is the Player implicitly or explicitly acknowledged as a party;
- (ii) The execution of the Loan Agreement by the Player does not change the scope and purpose of the contract (*i.e.*, regulating the relationship between the two clubs with respect to the loan of the Player). The execution of the Loan Agreement *per se* cannot have as its consequence the Player receiving the benefits or accepting the obligations specified within (as they can only fall on the clubs). The Commentary to Article 10 of the FIFA Regulations clarifies this matter, stating that:

*“A loan contract is in principle only concluded between the two clubs. The player is, however, often asked to co-sign it so as to give his consent to the transfer on a loan basis”.*

The co-signing of the loan agreement merely entails the player not needing “*to enter into a separate agreement with the club of origin, whereas the effects of the employment contract are temporarily*

*suspended*” (footnote 49 of the Commentary). This also has the result of assuring the destination club that the previous employment contract is suspended.

The execution by the Player of the Loan Agreement falls into the aforementioned scenario: the Player co-signed the Loan Agreement in order to give his consent to the transfer, not to enter into a tripartite agreement or establish an employment relationship with Lazio;

- (iii) For the same reasons, the argument based on the reference to “signatories” in Article 2.5 of the Loan Agreement is unconvincing. First, Article 1 of the Loan Agreement specifies that the parties that “*enter into the agreement, accept it and sign it*” are solely Lazio and Villarreal. Second, even on the assumption that the “*signatories*” mentioned in Article 2.5 include the Player (which, based on a literal interpretation, the Panel very much doubts), this would only show that the Player declares to have understood the content of the contract he was co-signing, *i.e.*, he was knowingly giving his consent to the transfer;
- (iv) The Loan Agreement could only be deemed to be a tripartite agreement if, as specified in the Commentary to Article 10 of the FIFA Regulations, it establishes “*the terms of the loan and employment*”. However, no provision of the Loan Agreement can be construed as establishing an employment relationship between Lazio and the Player. There is no reference to – let alone an agreement on – even the most essential terms, such as duration of employment or remuneration. Moreover, Article 6 of the Loan Agreement provides that the negotiation and execution of a *separate* employment agreement is a condition precedent to the Loan Agreement itself, which further supports the conclusion that the terms of employment are not established by the Loan Agreement itself.
- (v) Finally, the circumstance that Lazio drafted the Loan Agreement is irrelevant, as taking it into account could not justify an interpretation contrary to the clear text and purpose of the agreement.

### **3. Relationship between the Loan Agreement and the Employment Agreement**

- 54. Villarreal claims that, even if the Player was not a party to the Loan Agreement, Article 6 of the Loan Agreement would still be invalid as: (i) the Loan Agreement and the Employment Agreement are inextricably linked; (ii) Lazio violated the industry standard practice that medical examinations should be conducted prior to the signing of transfer agreements; and (iii) the Player was denied the possibility to seek a second medical opinion, in violation of the standard employment contract of the European Clubs Association, of which Lazio is a member.
- 55. Lazio submits that: (i) the Appellant cannot rely on any provisions of the applicable FIFA regulations to advance his claim, as there is no provision whereby the alleged breach of a

contract (*i.e.*, the Employment Agreement) is sufficient in itself to establish the breach of a separate agreement (*i.e.*, the Transfer Agreement); (ii) the existence or otherwise of standard practice is irrelevant; and (iii) Lazio gave the Player the possibility to appeal the decision of the medical doctor.

56. The Panel rejects the argument that Article 6 of the Loan Agreement is null and void.
57. The Loan Agreement and Employment Agreement are necessarily linked (to the point where the latter constitutes a condition precedent for the validity of the former), but are still independent agreements, entered into between different parties, which are subject to separate sets of rules and prohibitions. Since – as established above – the scope of Article 18 is limited to agreements between clubs and professionals, the Loan Agreement can be legitimately conditional on the passing of a medical examination.
58. Whether Lazio allegedly violated the standard practice of conducting medical examinations before signing is irrelevant in terms of the validity of Article 6. Widely-accepted market practices may be relevant in the interpretation of unclear clauses, but cannot be relied on to invalidate a divergent clause, plainly accepted by the parties, when its terms are clear. Therefore, even if it were established, the violation of any alleged standard practice would not undermine the validity of Article 6 of the Loan Agreement.
59. In any event, the Panel notes that Villarreal is a professional football club with decades of experience, which entered into an agreement that had sufficiently clear terms. Nothing in the record shows that Villarreal wished to and proposed following the alleged standard practice, deleting Article 6 from the Loan Agreement, or negotiating different terms thereof. As a result, the Panel sees no justification – even on equitable grounds – to attach any consequence to the violation of this alleged standard practice, least of all to invalidate a clear contractual clause.
60. The fact that the Player failed his medical examination, which was lawfully stipulated in the Loan Agreement, does undoubtedly have clear implications for the Player himself. However, this does not establish the type of link between the contracts asserted by Villarreal.
61. If the Player believed that his Employment Agreement was *de facto* subject to his passing the medical examination, and that this circumstance violated Article 18.4 of the FIFA Regulations, he would himself had to bring a claim before a competent judge. However, the Player is not a party to the present proceedings, nor can the alleged breach of the Employment Agreement be invoked by someone (*i.e.*, Villarreal) who was not a party to it.
62. It follows from the above that Article 6 of the Loan Agreement legitimately conditioned the validity of the agreement to the successful passing of a medical examination.

**B. MEDICAL EXAMINATION**

63. Having established the validity of Article 6 of the Loan Agreement, the next question that must be decided is whether Lazio's doctors failed to conduct a competent and accurate examination of the Player.
64. Villarreal contests the assessment of Lazio's doctors on the following grounds:
- (i) The Player is still participating in professional football and has never experienced any medical problems. Therefore, his alleged disease did not impact his performance;
  - (ii) Even though the Loan Agreement did not specify on what dates the medical test had to be carried out, the contract cannot be interpreted so as to leave it to Lazio's sole discretion. In this regard, well-established case law of FIFA's judicial bodies states that a medical examination should be performed prior to the signing of an employment contract.
65. Villarreal emphasizes that the burden of proving the Player's inability to play rests entirely on Lazio, and that Lazio acted in bad faith by conducting a biased medical examination. Therefore, Lazio had no just cause to terminate the Loan Agreement.
66. At the hearing, Villarreal claimed that, before deeming that the Athlete was unfit to play professional football, Lazio's doctor (Dr. Ivo Pulcini) should have assessed whether the Athlete's health condition could have been successfully treated.
67. Lazio points out that the Player was fully and competently examined on January 27 and 28 and that Dr. Ivo Pulcini issued a formal decision stating that the Player was unable to play professional sports, which the Player could have appealed, but chose not to. Therefore, Dr. Pulcini's decision became final. At the hearing, Lazio also underlined that, when issuing the certificate, Dr. Pulcini was acting on behalf of the Italian State, in his quality of public official releasing a public document.
68. Moreover, the subsequent examination carried out in Spain on February 15 confirmed the general finding of hypertension. The fact that the Player continued to play professional football afterwards does not affect the accuracy of Dr. Pulcini's opinion.
69. At the hearing, Dr. Pulcini testified on the many tests that he and his colleagues performed on the Athlete and the reasons for the adverse diagnosis he reached. Dr. Pulcini also pointed out that, in case a doctor was found guilty of knowingly issuing a false certificate, he could be exposed to severe criminal and deontological sanctions, as well as civil consequences (*e.g.*, damage actions from the athlete). In particular, a doctor would be responsible for "fraudulent misrepresentation" under Italian criminal code.

70. The Panel shares the view of the Single Judge, that there is nothing in the record to show that the medical examination conducted by Lazio was erroneous or maliciously biased.
71. The Player was subject to a series of medical tests by a doctor specialized in both cardiology and sports medicine (Dr. Ivo Pulcini), who even consulted with another cardiologist before issuing a certificate of inability to play professional sports. Nothing in the record shows that his conclusions were erroneous and the doctor's good faith must be presumed, unless proven otherwise. In this respect, it is noteworthy that, when issuing a certificate, a doctor is under an obligation to state the truth and is subject to severe criminal consequences in case of false representations in a medical certificate<sup>2</sup>.
72. Moreover, even Villarreal's doctor confirmed the existence of a medical condition (hypertension), which clearly cannot be characterized as absent.
73. The controversy revolves around whether this medical condition prevents the Player from playing professional football. In this context, Article 6 of the Loan Agreement establishes that the medical examination had to be performed by Lazio's doctors, whose opinion is the only relevant one for the purposes of the agreement. Villarreal's doctors may have come to a different conclusion, but – as stated by the Decision – *“it is not up to [Villarreal] to decide on which basis [Lazio] deems that a player is fit to practice professional football”* (p. 7).
74. Accordingly, there is no need to examine the different results in detail; it suffices to say that, in the opinion of the Panel, Villarreal has failed to produce any convincing evidence that Lazio, or its doctors, manipulated the examination to avoid performance of the Loan Agreement. Further, the conclusions of Dr. Pulcini could have been challenged in the appropriate venue, but there is no evidence of such.
75. For the same reasons, the argument raised at the hearing by Villarreal that Lazio or its doctors should have considered the option of treating the Athlete's condition instead of issuing a negative certificate or returning the Athlete is irrelevant. Article 6 of the Loan Agreement conditioned the validity of the agreement upon the result of a medical examination with the specific aim of assessing whether – at that moment in time – the Athlete was fit for the practice of professional football. Therefore, Lazio or its doctors were under no obligation to weigh the

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<sup>2</sup> At the hearing, Lazio appeared to take the rather broad view that (i) a doctor always qualifies as a public official when issuing a medical certificate; (ii) a medical certificate is thus always a “public document”; and, therefore, (iii) a false declaration in a medical certificate always qualifies as a “fraudulent misrepresentation in a public document” as a matter of Italian criminal law. However, the Panel notes that, under Italian law, the nature of a doctor's activity and the criminal consequences attached to false declarations in a medical certificate heavily depend on the circumstances of the case (*e.g.*, a medical certificate could qualify as a “public document” if the issuing doctor was an employee of a hospital of the National Health System, not if he was an independent professional). In any event, the Panel can confine itself to remark that a doctor is still exposed to criminal sanctions for false declarations in a medical certificate even if he does not qualify as a public official (see Articles 479, 480 and 481 of Italian Criminal Code). Therefore, there is no need to reach a conclusion on the nature of the certificate issued by Dr. Pulcini and the criminal consequences he would have potentially been exposed to for false declarations.

chances that the Athlete could still have played professional football if adequately treated in the future.

76. In light of the above, the Panel finds that the condition laid down by Article 6 was triggered when the Player was deemed unable to play professional football by Lazio's doctors. As a result, the Loan Agreement became ineffective, and Villarreal is no longer entitled to receive the loan fee.

### **C. RETURN OF THE PLAYER**

77. The next issue to be addressed is whether, once the Player failed his medical examination, Lazio was under an obligation to return him to Villarreal by a specific deadline.
78. According to Villarreal, Lazio did not inform Villarreal about the results of the medical examination in a timely fashion, despite the fact that the transfer window was about to close, and when it was in any event too late to conduct further negotiations for the transfer of the Player to a different club.
79. Lazio points out that the Loan Agreement does not contain any provision outlining when the medical examination needed to be performed or when the Player needed to be returned in case of he failed his medical examination.
80. Lazio started the examination on the same day the Loan Agreement was signed and immediately informed Villarreal on January 29, 2010 of the results of the medical examination.
81. Given that the Player failed his medical examination, pursuant to Article 6, the Loan Agreement never went into effect and Lazio had no performance obligation. In fact Lazio, without being obliged to do so, even provided the Player with a return flight to Valencia on February 3, 2010, and there is no indication that Villarreal made any effort to bring the Player back or secure a third party club for the Player.
82. The Panel observes that the Loan Agreement does not contain any provision regulating the timing of the medical examination, or the consequences of failing it. Therefore, it can only consider whether Lazio violated its good faith obligations upon finding that the Player was unfit to play professional football.
83. The Panel deems that, having finished the medical examination within two days from the execution of Loan Agreement and having informed the agent and Villarreal of the results in a timely fashion, Lazio did not take so disproportionate a length of time by which it could be deemed to have acted contrary to *bona fide*.

**D. ALLEGED CONSPIRACY TO SIGN ANOTHER PLAYER AND CONSEQUENCES OF THE BREACH**

84. Villarreal contends that the medical examinations were manipulated since Lazio was negotiating a transfer agreement with another player, which was entered into shortly after the failed medical examinations (on January 31). Therefore, it is seeking compensation for the damages it suffered, as well as sporting sanctions to be imposed on Lazio.
85. Lazio rejects the accusation that the results of the medical examination were manipulated in an effort to sign another player. The negotiations and signing of T. were done on short notice, which is common in football, especially against the backdrop of a rapidly closing transfer window.
86. In light of the conclusions mentioned in the preceding paragraph (*i.e.*, that the medical examination does not appear to be maliciously erroneous or biased), the Panel deems that there is no need to investigate neither the allegations of a conspiracy to sign another player, nor the alleged damages suffered by Villarreal.

**IX. CONCLUSION**

87. Based on the all of the above – and after taking into due consideration all the evidence produced, and all arguments submitted – the Panel finds that the Decision must be upheld in full.
88. Villarreal's appeal is therefore dismissed.

**ON THESE GROUNDS**

**The Court of Arbitration for Sport rules that:**

1. The appeal by Villarreal C.F. SAD against the decision by the Single Judge of the Players' Status Committee dated March 19, 2013 is dismissed.
  2. The decision by the Single Judge of the Players' Status Committee dated March 19, 2013 is confirmed.
- (...)
5. All other requests are dismissed.