Arbitration CAS 2015/A/4053 Martin Sus v. Czech Republic Football Association (CRFA), award of 19 January 2016

Panel: Prof. Ulrich Haas (Germany), President; Mr Michele Bernasconi (Switzerland); Ms Sylvia Schenk (Germany)

Football
Jurisdictional control of the previous instance by a CAS panel
Interpretation of the statutes and rules of a sport association according to CAS case law
Difference between horizontal and vertical disputes and jurisdiction of the CRFA
Right of an association to design the internal remedies and the competence of its internal judicial organs at its discretion

1. **According to CAS case law, statutes and rules of a sport association must – in the first place – be construed objectively. Thus, the wording of the rule is the starting point of any interpretation (the language, the grammar and the syntax used). In addition, the rules are analysed in a systematic way (by taking into account their regulatory context). In a last step, the intentions of the association which drafted the rule as well as any relevant historical background are also taken into consideration.**

2. **The types of disputes (explicitly) listed in Art. 30.1 of the Statutes of the CRFA are so-called horizontal disputes, i.e. disputes in which the parties are facing each other at a same level. Insofar as the CRFA assumes judicial functions in relation to *"members"*, *"clubs"* or *"FACR agents"* it does so as an independent third legal entity that is not affected directly by the outcome of the dispute. Things are very different in a case in which the CRFA is a party to the dispute. In such (vertical) disputes the CRFA would assume judicial functions in a dispute whose outcome would directly affect it as a party.**

3. **In excluding the jurisdiction for disputes involving the CRFA from its internal judicial organs, the CRFA does not breach any general principles of law. According to Art. 20 of the Czech Charter of Fundamental Rights and Freedoms, which protects the freedom of associations, the CRFA is entitled to design the internal remedies and the competence of its internal judicial organs at its discretion. In particular, the CRFA is entitled to decline competence to decide on disputes to which it is a party and to provide for external judicial protection in such cases.**

I. THE PARTIES

1. Martin Sus (the "Player" or the "Appellant") is a football player of Czech nationality. He was born on 8 May 1989 and is currently affiliated to the Fotbalová Asociace České Republiky.

2. The Fotbalová Asociace České Republiky (the "Czech Republic Football Association", the "CRFA" or the "Respondent") is the national federation responsible for organising the sport of football in the Czech Republic. It is an association under the law of the Czech Republic and it is affiliated to FIFA. The CRFA is the legal successor of the Bohemian-Moravian Football Federation.

3. Appellant and Respondent are referred to together also as the "Parties".

II. THE RELEVANT FACTS

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the discussion of law and merits that follows.

5. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

6. On 1 February 2007, the Appellant and the Czech football club 1. FC Brno (now FC Zbrojovka Brno, a.s.; "FC Brno") signed a player contract (the "Player's Contract").

7. On 29 June 2007, the Respondent registered the Player's Contract.

8. On 31 August 2007, the Royal Netherlands Football Association (the "KNVB") requested the Respondent to issue an International Transfer Certificate (the "ITC") for the Appellant as an amateur player in order to register the latter for its affiliated club Football Club Twente at Enschede 65 ("FC Twente"). On the same day, the Respondent refused to issue the ITC stating that the Appellant was not an amateur, but a professional contractually bound to FC Brno until 31 December 2009.

9. Consequently, the Player could not be registered with the KNVB and, thus, not play for FC Twente. According to a press report submitted by the Respondent, *"the Player arrived in the Netherlands already in the summer of 2007, but has been unable to play competition matches for more than a year and a half due to the problems with his contract"*.

10. On 31 March 2008, the Appellant filed a criminal complaint against FC Brno with the Police of the Czech Republic (the "Criminal Complaint"). In his complaint, the Player alleged that FC Brno had falsified the Player's Contract by turning his amateur status into a professional status.

11. On 17 June 2008, the police adjourned the criminal investigations.

12. On 9 July 2008, the Appellant filed a complaint against the decision to adjourn the criminal investigations.

13. On 22 August 2008, the Appellant filed a claim with the Rechtbank Utrecht (sector handels- en familienrecht – also referred to as the "Utrecht Court") against the CRFA and the KNVB. In the claim against the CRFA, the Appellant requested to be released. With the claim directed against the KNVB the Appellant requested that the latter registers him for its affiliated club FC Twente.

14. On 2 October 2008, the KNVB contacted FIFA and requested its intervention in order to obtain the international clearance for the Player.

15. On 21 October 2008, FIFA contacted the FC Brno and the CRFA. While the FC Brno never replied to FIFA's invitation to make comments on the present matter, the CRFA informed FIFA that the Player was still contractually bound to one of its members, *i.e.* the FC Brno until 31 December 2009.

16. On 28 October 2008, a hearing was held in the dispute pending before the Rechtbank Utrecht. Both respondents in said court proceedings (CRFA and KNVB) did not attend the hearing.

17. On 5 November 2008, the Rechtbank Utrecht rendered a default judgement (ref. no. 250302/KG ZA 08-589 - the "Dutch Judgment"). The Rechtbank Utrecht – in expedited proceedings – dismissed the Player's request against the KNVB and upheld the Player's request against the CRFA. In essence, the reasoning of the Rechtbank Utrecht in relation to the claim against the CRFA can be summarized as follows:

    - according to the court, the prerequisites for rendering a default judgement (Art. 19 of the Regulation (EC) No. 1348/2000) are met;

    - the jurisdiction of the court can be based on Art. 6 (1) of the Regulation (EC) No. 44/2001 (the "Brussel I Regulation"), since one of the defendants, *i.e.* KNVB has its registered office in the Netherlands and the claims lodged against both defendants (KNVB and CRFA) are "closely connected" within the meaning of Art. 6 (1) of the Brussel I Regulation;

    - the claim of the Player is based on tort. The applicable law with respect to the tort claim is, according to the court, Dutch law. Furthermore, the court found that the Player had demonstrated the urgency of the matter and that the claim was neither unlawful nor groundless.

18. Consequently, the Rechtbank Utrecht ruled against the CRFA as follows:

    "The judge is competent to decide in the preliminary proceedings

    3.1 Decides to render a default judgment;

3.2 Directs the Czech Football Association to release Sus immediately according to Article 9 together with Article 3 of the Annex 3 of the FIFA Regulations on the Status and Transfer of Players, and to provide cooperation in relation to the transfer of Sus from FC Brno to the FC Twente 65 at Enschede;

3.3 Determines that after the expiry of 10 days from the announcement of this judgement the Czech Football Association pays Sus a penalty in the amount of 1,000.00 Euro for each day that it acts in contravention of the provision under 3.2, up to an maximum amount of 400,000 Euro;

3.4 Directs the Czech Football Association to reimburse Sus for the costs incurred to him in these proceedings in connection with the claim against the Association amounting to date to 1,185.19 Euro; …

3.5 Declares this judgement to be provisionally enforceable".

19. On 2 December 2008, the Single Judge of the Players' Status Committee of the FIFA decided that the KNVB *"is authorised to provisionally register the player Martin Sus as an amateur for its affiliated club, FC Twente 65, with immediate effect"* (the "FIFA Decision").

20. On 15 December 2008, the Player was provisionally registered with FC Twente.

21. In September 2009, the Player returned to the Czech Republic.

22. On 16 September 2009, the Appellant initiated enforcement proceedings based on the Dutch Judgement against the Respondent before the District Court in Prague 6 (the "First Enforcement Proceedings"). In this First Enforcement Proceedings the Appellant sought to obtain a total amount of EUR 400,000 plus interests from the CRFA.

23. On 6 September 2010, the Appellant initiated another enforcement proceeding based on the Dutch Judgement before the District Court in Prague 6 (the "Second Enforcement Proceedings"). Thereby, the Appellant again sought the payment of EUR 400,000 plus interest from the Respondent.

24. On 6 December 2012, the Municipal Court in Prague finally dismissed the Appellant's request for enforcement of the Dutch Judgement and terminated the First Enforcement Proceedings.

25. On 27 November 2013, the Supreme Court of the Czech Republic dismissed the Appellant's request for enforcement of the Dutch Judgment and thereby finally terminated the Second Enforcement Proceedings.

26. On 19 November 2014, the Appellant initiated proceedings before the Dispute Resolution Chamber of the CRFA (the "DRC"). The Appellant requested that the Dutch Judgment be enforced through the CRFA's internal dispute settlement mechanism.

27. On 22 December 2014, the DRC rejected the Appellant's request for lack of competence.

28. On 20 January 2015, the Appellant filed an appeal against the Decision of the DRC with the Arbitration Committee of the CRFA (the "AC").

29. On 1 April 2015, the AC confirmed the Decision of the Dispute Resolution Chamber (the "Appealed Decision").

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 20 April 2015, the Appellant filed an appeal against the Appealed Decision with the Court of Arbitration for Sport (the "CAS").

31. On 25 April 2015, the Appellant filed a request for legal aid with the CAS.

32. On 29 April 2015, the CAS Court Office confirmed *inter alia* that the Appellant had paid the CAS Court Office Fee and invited the Appellant to file his Appeal Brief.

33. On 2 May 2015, the Appellant informed the CAS that his statement of appeal of 20 April 2015 shall be considered also as his Appeal Brief.

34. On or before 3 May 2015, the Appellant submitted a supplement to the Appeal Brief dated 20 April 2015 (the "Supplement to the Appeal Brief").

35. On 4 May 2015, the CAS Court Office acknowledged Appellant's letter dated 2 May 2015 and noted that Appellant's submission dated 20 April 2015 shall serve also as Appeal Brief in accordance with Articles R47, R48 and R51 of the Code of Sports-related Arbitration (the "Code").

36. On 8 and 11 May 2015 the Appellant submitted further briefs including exhibits and English translations thereof.

37. On 11 May 2015, the Respondent requested the CAS to order the Appellant to provide the Respondent with a security for costs in the amount of CHF 10,000.

38. On 13 May 2015, the Appellant objected to the Respondent's request for security for costs.

39. On 18 May 2015, the CAS Court Office informed the Appellant that the President of the ICAS had granted legal aid to the Appellant.

40. On 19 May 2015, the Respondent wrote a letter to the CAS. Therein, the Respondent – *inter alia* – objected to the Appellant's submissions dated 8 and 11 May 2015.

41. On 27 May 2015, the Appellant filed further English translations of exhibits previously submitted.

42. On 10 June 2015, the Appellant submitted Exhibit no. 12.

43. On 11 June 2015, the Respondent objected to the Appellant's submissions dated 10 June 2015.

44. On 14 June 2015, the Appellant filed further submissions.

45. On 19 June 2015, the Respondent filed its Answer. Furthermore, it objected to the Appellant's submission filed on 14 June 2015.

46. On 16 June 2015, the Respondent nominated Mrs Sylvia Schenk as arbitrator.

47. On 25 June 2015, the Respondent filed further procedural submissions.

48. On 12 August 2015, the Appellant nominated Mr. Michele Bernasconi as arbitrator.

49. On 25 August 2015, the Parties were advised that the Panel appointed to decide the above-referenced procedure had been constituted as follows: Mr Ulrich Haas, Professor, Zurich, Switzerland, (President); Mr Michele A.R. Bernasconi, attorney-at-law in Zurich, Switzerland and Mrs Sylvia Schenk, attorney-at-law in Frankfurt am Main, Germany (arbitrators). No objection was raised by the Parties as to the constitution of the Panel.

50. On 24 September 2015, the President of the Panel decided on Respondent's request for security of costs (the "Order for Security for Costs"). The Order for Security of Costs states – *inter alia* – as follows:

> 1. *"The Request for Security for Costs filed by the Respondent on 11 May 2015 in the procedure CAS 2015/A/4053 Martin Sus v. Fotbalová Asociace České Republiky is dismissed.*
>
> 2. *The costs of the present order shall be determined in the final award".*

51. On 14 October 2015, the CAS Court Office following an exchange of letters between the Parties, confirmed that a hearing will be held on Tuesday, 8 December 2015 at the CAS Court Office in Lausanne and invited the Parties to provide the CAS Court Office with the names of all persons who would be attending the hearing.

52. The Appellant, in his undated letter received by the CAS Court Office on 20 October 2015, submitted the names of all persons attending the hearing on his behalf.

53. On 21 October 2015, the Respondent submitted its list of names in respect of the persons attending the hearing.

54. On 28 October 2013, the Panel issued an Order of Procedure containing various procedural directions for the Parties. The Parties were requested to sign and return a copy of the Order of Procedure to the CAS Court Office by 4 November 2014.

55. On 28 October 2015, the Appellant returned the signed Order of Procedure to the CAS.

56. On 29 October 2015 the Appellant was requested to submit an English translation of his exhibit no. 7.

57. On 30 October 2015, the Appellant filed the requested English translation of the exhibit no. 7 with the CAS.

58. On 4 November 2015, the Respondent objected to the attendance of Mr Kryštof Petrusek at the hearing on behalf of the Appellant.

59. On 5 November 2015, the Appellant filed his response to the Respondent's objection.

60. On 9 November 2015, the CAS Court Office extended the deadline for the Respondent to return the signed Order of Procedure until Friday, 13 November 2015.

61. On 10 November 2015, the Parties were advised that the Respondent's objection referred to in n. 8 of the Order of Procedure had been rejected by the Panel. The letter advised the Parties that the grounds of such decision would be released in the final arbitral award. The Parties were further informed that Mr Kryštof Petrusek was allowed to participate in the hearing scheduled on 8 December 2015 on behalf of the Appellant.

62. On 11 November 2015 the Respondent returned the signed Order of Procedure to the CAS.

63. On 8 December 2015, a hearing was held at the premises of the CAS. The Appellant was present in person and was assisted at the hearing by Ms Markéta Haindlová and Mr Alfonso Léon Lleó, both attorneys-at-law. Furthermore, the following persons were present at the hearing on behalf of the Appellant: Mr Kryštof Petrusek and Ms Monika Nazbedová, both Counsel.

64. The Respondent was assisted by Mr Marek Vojáček, Mr Dušan Sedláček and Mr René Cienciala, all attorneys-at-law. Furthermore, the following persons were present at the hearing on behalf of the Respondent: Mr Rudolf Řepka, Secretary General of the CRFA and Mr Jan Pauly, Head of Legal Department of the CRFA.

65. At the end of the hearing, the Parties confirmed that they were satisfied and had no objection as to the way the hearing had been conducted and that their right to be heard had been fully respected.

IV. THE PARTIES' RESPECTIVE REQUESTS FOR RELIEF AND BASIC POSITIONS

66. The following outline of the Parties' position is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary, though the Panel has only noted the submissions it finds relevant to its decision.

A. The Appellant's position

67. In his Appeal Brief dated 20 April 2015 and in his Supplement to the Appeal Brief the Appellant requested:

i. To fully accept the present appeal against the decision of the Arbitration Committee of the Football Association of the Czech Republic rendered on 1 April 2015, ref. no. AK/64/14;

ii. As consequence, to adopt an award declaring that:

a. The Football Association of the Czech Republic is obliged to enforce the judgement of the Court of Utrecht rendered on 5 November 2008, ref. no. 250302/KG ZA 08-589, and to pay the player Martin Sus the amount of 400,000.00 Euro;

b. The Football Association of the Czech Republic is obliged to pay the player Martin Sus damage for the loss incurred to the player Martin Sus by the non-enforcement of the judgement of the Court of Utrecht rendered on 5 November 2008, ref. no. 250302/KG ZA 08-589;

iii. To condemn the Football Association of the Czech Republic to the payment of the whole CAS administration costs and the Arbitrator(s) fees.

iv. Awarding any such other relief as the Panel may deem necessary or appropriate.

68. In support of his requests the Appellant submits – *inter alia* – as follows:

(i) facts

- The Appellant and FC Brno entered into the Player's Contract. The latter was signed on behalf of FC Brno by the club's chairman of the Board of Directors, Mr Karel Jarůšek and the vice-chairman of the Board of Directors, Mr Roman Pros. Since the Appellant was a minor at the time, he was represented by his parents.

- Parts of the Player's Contract were later forged by representatives of FC Brno. In particular page 3 of the original Player's Contract was removed and substituted with a new page 3. The new page – that was never negotiated, consented to or signed by the Player – amended the remuneration originally agreed upon in "Art. III. lit a), Obligations of the club". While originally it was agreed that FC Brno had to pay CZK 5,000 to the Player, this amount was later changed into CZK 8,000. The falsification of the Player's Contract is evidenced – inter alia – by *"the extracts from the account of Mr Martin Sus to which payments by the club* [FC Brno] *were transferred. The amounts transferred were always CZK 5.000 and never 8.000"*.

- According to the Appellant FC Brno fabricated the new contract to comply with the regulations of the Respondent. According thereto a player must be paid a minimum wage of at least CZK 8,000 in order to be registered as a professional player. The advantage for a club of registering a professional player consists in being able to obtain a transfer fee in case the player transfers to another club.

- The Respondent was aware of the fact that it had registered a fabricated version of the Player's Contract, since the Appellant had informed the Respondent accordingly a number of times. In particular, the Appellant submitted to the Respondent the valid

version of the Player's Contract on 1 February 2007. Furthermore, the Appellant informed the Respondent of the criminal investigation by the Czech Police into this matter.

- On 25 July 2007, the Player informed the Respondent that he had terminated his contract with FC Brno and requested that his registration be cancelled, because he intended to play for the FC Twente.

(ii) applicable law

- Pursuant to Art. R58 of the Code, the rules and regulations of the CRFA shall apply to the case. Additionally, *"considering that the seat of the arbitration is Switzerland, general legal principles recognized by the jurisprudence of the CAS shall also be taken into consideration just as, secondarily, the Swiss law"*.

(iii) enforcement of the Dutch Judgment

- According to the Appellant, he is entitled to receive the amount of EUR 400,000 from the Respondent, because

  - the claim has been established in the Dutch Judgment. According thereto the Respondent was ordered to pay a *"penalty in the amount of 1,000.00 Euro for each day that it acts in contravention of the provision under 3.2"* as from the tenth day of its notification.

  - Despite repeated *"calls of the Appellant to the Respondent … the Respondent has not enforced the judgment and did not pay the Appellant any amount pursuant to the judgment as of today"*.

  - The judicial organs of the CRFA (Dispute Resolution Chamber and Arbitration Committee) were competent to hear and decide upon the Appellant's claim. The competence of the DRC derives from Art. 30.1 of the Statutes of the CRFA and Art. 5.1 lit. d of the Rules of the DRC. In addition, the Appellant submits that in the CRFA proceedings *"(…) his right for a fair trial was severely violated by the Respondent as the fundamental principle of procedural fairness was not respected in the legislation of the Respondent (please see Annex no. 10)"*.

  - At the hearing, the Appellant emphasized that should the Rules of the Respondent be inconsistent or unclear, the latter must be interpreted according to the principle of *contra proferentem*. The Appellant in particular refers to Art. 27.3 lit. c of the Rules of the DRC which deal with the enforcement of decisions.

  - The CRFA must respect court decisions as well as CAS decisions. Not complying with court judgments constitutes – according to the Appellant – a violation of the Statutes of the CRFA.

- The Dutch Judgment is enforceable in the Czech Republic. In particular, the Appellant submits that the CRFA was duly summoned in the proceedings before the Rechtbank Utrecht. Furthermore, the Respondent had sufficient time to defend its cause. It was the Respondent's decision not to participate or to appear before the Utrecht Court. Since the requirements according to Art. 19 of the Council regulation (EC) No 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (the "Council regulation No 1348/2000") were fulfilled the Utrecht Court was entitled to issue a default judgement against the Respondent.

(iv) damages

- By not enforcing the Dutch Judgment the Respondent has *"prevented the Appellant from his sporting activity as his occupancy"* and thereby *"caused severe damage to the Appellant"*. In particular, the Appellant submits that

  - he was not under a valid contract with the FC Brno. This is proven – inter alia – by the FIFA Decision, because *"(…) in case there would have been a valid contract between the Appellant and the Czech club FC Brno, the FIFA could not have authorized a foreign football association to register the Appellant for a foreign football club. This means that if the Respondent disposed of a contract between the Claimant and the club FC Brno, upon which it refused to release the Claimant to the club FC Twente 65, the club FC Brno must have a falsified contract"*.

  - Since there was no valid contract with the FC Brno, the Respondent violated Art. 9 in conjunction with Art. 3 of the Annex 3 of the FIFA Regulations on the Status and Transfer of Players ("RSTP") by not issuing an ITC to the Player. The RSTP are binding on the Respondent pursuant to the latter's Statutes.

B. The Respondent's position

69. In its answer dated 19 June 2015, the Respondent requests the CAS to declare that:

I. *The appeal is dismissed in full.*

II. *The Appellant is ordered to pay the cost of arbitration in full.*

III. *The Appellant is ordered to pay 20,000 Swiss francs to the Respondent as a partial compensation of its legal fees and other expenses incurred in connection with these proceedings.*

70. In support of its requests the Respondent submits – *inter alia* – as follows:

(i) procedural issues

- The Respondent objects to the Appellant's unsolicited submissions and evidence of 8, 11 May and of 10 June 2015 based on Art. R56 of the Code. According to the Respondent the late filing of submissions by the Appellant should be disregarded.

(ii) applicable law

- According to the Respondent, the Panel must decide the dispute pursuant to Art. R58 of the Code according to the laws of the Czech Republic only to the extent that the relevant issues in question cannot be solved solely on the basis of the internal rules and regulations of the CRFA.

(iii) enforcement of the Dutch Judgment

- The Respondent submits that it complied with the Dutch Judgment, since the Appellant actually played in FC Twente as of autumn 2007 (the Appellant was on loan with the FC Twente U-21 team) and was registered with FC Twente as of 15 December 2008.

- By initiating proceedings with the CRFA the Appellant tried to circumvent the proper ways of enforcement. Only Czech courts are competent to enforce foreign judgements. Requesting enforcement by the CRFA represents a clear abuse of process by the Appellant.

- According to the Respondent the *"Arbitration Committee lacked competence to decide on the Appellant's claim"*. Neither the Czech law nor Art. 30.1 of the Statutes of the CRFA in conjunction with Art. 5.1 of the Rules of the DRC grants competence to the judicial instances of the CRFA to decide the dispute at hand. According to the aforementioned provisions the DRC is only competent to decide on disputes between members of the CFRA and not on disputes between the CRFA and one of its members. The CRFA cannot be considered a member of the very same legal entity (*"can't be a member of itself"*). Thus, the judicial organs of the CRFA lack jurisdiction (*rationae personae*) to decide on the Appellant's claim.

- The judicial organs of the CRFA also lack jurisdiction *rationae materiae*. According to the Statutes and the Rules of Arbitration of the CRFA the judicial organs are competent to decide on limited types of "football-related" disputes, *i.e.* disputes that fall into the categories of Art. 5.1 lit. a-d of the Rules of the DRC and "other similar disputes" within the meaning of Art. 5.1 lit. d. The dispute at stake is not covered by the above categories. First, the matter does not concern a "football-related" dispute. Instead, the dispute turns around the enforceability of a Dutch Judgment in the Czech Republic. Pursuant to Art. 38(1) in conjunction with Art. 39(1) of the Brussels I Regulation, which is applicable to the case at hand, the only way to enforce the foreign (EU Member State) judgment in the Czech Republic is to submit an application for a declaration of enforceability of said judgment to the competent authority. The competent authority is defined in Annex II of the Brussels I Regulation. According thereto an application to declare a foreign judgement enforceable must be submitted to the "okresní soud" (district court) or "soudní exekutor" (bailiff/enforcement officer).

- At the hearing, the Respondent submitted that Art. 27.3 lit. c of the Rules of the DRC refers only to the enforcement of internal decisions of the bodies of the CRFA and its members and not to the enforcement of court judgments.

- The Czech courts have finally dismissed the Appellant's request for enforcement of the Dutch Judgement. According to the Respondent, the CRFA is bound to these decisions based on *res judicata*. The principle of *res judicata* is of a fundamental nature and part of the Swiss procedural public policy.

- The Respondent submits that the Dutch Judgment was rendered in violation of the Respondent's fundamental procedural rights. The Respondent submits that it has never been duly informed about the initiation of the proceedings before the Utrecht Court nor has it been duly summoned to the hearing. In addition, it has not been served with the Dutch Judgment. Thus, the Respondent was completely and effectively denied any opportunity to defend its rights before the Rechtbank Utrecht.

- Furthermore, the Respondent submits that the Utrecht Court was not competent to decide the matter in dispute. The Dutch Court derived its competence from Art. 6(1) of the Brussels I Regulation. The provision requires that the individual claims against a number of defendants must be *"so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgements resulting from separate proceedings"*. Since the Utrecht Court fully dismissed the Appellant's claim against the KNVB and, on the other hand, upheld the Appellant's claim against the Respondent, it appears that there is no connection between both claims. Thus, there was no *"risk of irreconcilable judgements"* from the outset nor was it "expedient" to decide on both claims within a single procedure.

- The Dutch Judgment is manifestly contrary to the public policy of the Czech Republic within the meaning of Art. 34(1) of the Brussels I Regulation given that it unreasonably interferes with the Respondent's constitutional right for autonomy of civic societies (which follows from Art. 20 of the Czech Charter of Fundamental Rights and Freedoms).

- Finally, the enforcement of the Dutch Judgment would be in contravention of Art. 49 of the Brussels I Regulation. According thereto, *"a foreign judgment which orders a periodic payment by way of a penalty shall be enforceable in the Member State in which enforcement is sought only if the amount of the payment has been finally determined by the courts of the Member State of origin"*. The Dutch Judgment does not comply with this provision, because it fails to determine the final amount of the penalty. Furthermore, a daily penalty of EUR 1,000 is grossly disproportionate and unjustified given the circumstances of the case.

(iv) damages

- The Respondent submits that the Appellant's allegation according to which the Player's Contract was fabricated is irrelevant given that the Respondent is not and cannot be held responsible for a conduct of an independent third party – presumably FC Brno.

- In addition, the Respondent is of the view that the Appellant's allegations of forgery are unfounded:

    - The version of the Player's Contract submitted by the Appellant is not signed by FC Brno and the Player and, therefore, invalid. Furthermore, the version submitted by the Player has never been provided to the Respondent for registration.

    - The criminal investigation initiated by the Appellant and conducted by the Czech Police was terminated without any conclusive findings.

    - In addition, the FIFA Decision does not address the issue of whether or not the version of the Player's Contract filed with the Respondent was forged or not. The Appellant has not provided any evidence whatsoever that the Player's Contract was fabricated by FC Brno. Even if the Player's Contract had been forged, the Player has failed to provide evidence that the Respondent was aware of this fact.

- The Respondent submits that it complied with the applicable RSTP (edition 2005). According to Annex 3 Art. 2(3) RSTP the Respondent is entitled to refuse the ITC to a professional player in case the latter is under a valid contract with an affiliated club. Accordingly, in late August 2007, the Respondent was acting with just cause when refusing the ITC to the Appellant. This is not contradicted by the Dutch Judgment. The latter did not conclude that the Respondent was allowed to issue an ITC to the Appellant.

- According to the Respondent it was the Appellant who breached the applicable provisions. He should have lodged any claim of his with the FIFA pursuant to Art. 22 RSTP, instead of initiating proceedings before the Rechtbank Utrecht.

- The Respondent submits that the claim for damages is beyond the scope of the appeal procedure before the CAS. Pursuant to Art. R57 of the Code the scope of Panel's review is strictly limited to the Appealed Decision. The claim for damages did not form part of the matter in dispute before the judicial organs of the CRFA. Therefore, the CAS cannot decide on the request for damages.

- Moreover, the damages sought by the Appellant are completely unfounded. In particular the Respondent submits that the Appellant has failed to prove – *inter alia* – the applicable law to the claim, a breach of Respondent's obligation, the existence of damages, the causal link, and the proper quantification of damages.

- Finally, the Respondent submits that any claim for damages is time-barred in view of the statute of limitation, since the alleged claim dates back to incidents in the year 2008.

V. JURISDICTION OF THE CAS, ADMISSIBILITY AND TIMELINESS OF THE APPEAL

71. The Appellant submits that the CAS has jurisdiction according to Art. 3.3 and 29 of the Statutes of the CFR and Art. 66.1 of the FIFA Statutes. Art. 3.3 and Art. 29 of the Statutes of the CRFA read as follows:

> *3.3 "Players, coaches, referees … must be members of the CRFA"*
>
> *29.1 "Members of the CRFA … are obliged to resolve any dispute arising from the statutes, rules and regulations of the CRFA through CRFA bodies and authorities; they can turn to other authorities only in case of exhaustion of resources that regulations of the CRFA provide. Violation of this provision shall be subject to sanction".*
>
> *29.2 "In addition to the statutory right to turn to general court in accordance with …. the CRFA member may submit a proposal for decision to the Court of Arbitration for Sport (CAS based in Lausanne, as defined in the regulations of FIFA and UEFA and with the fact that its decision is not subject to review by the Czech common courts".*

72. The Respondent has not objected to the jurisdiction of the CAS. The jurisdiction of the CAS has further been confirmed by the Parties' signing of the Order of Procedure. Accordingly, the Panel is satisfied that it is competent to hear this dispute.

73. In addition, the appeal filed by the Appellant is admissible, because the Statement of Appeal was filed within the deadline specified in Art. R49 of the Code.

74. Finally, the Panel notes that in view of Art. 13 and 29 et seq. of the Statutes of the CRFA in conjunction with Art. 31.4 of the Rules of the DRC, the Appellant has exhausted all internal legal remedies available within the CRFA. Thus, the Appealed Decision is final in view within the meaning of Art. R49 of the Code.

VI. THE MANDATE OF THE PANEL

75. The mandate of the Panel follows from Art. R57 of the Code. According thereto the CAS has power to review the facts and the law of the matter in dispute. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

76. The Respondent submits that the Appellant's claim as to damages is beyond the Panel's mandate, because such claim was not part of the matter in dispute before the judicial organs of the CRFA. The Panel does not follow such reasoning. In case the Panel would find that the CRFA was under an obligation to enforce the Dutch Judgment the Panel automatically would have determined that the CRFA is in breach of its obligation. In doing so, the Panel would have decided also on the essence and core of the claim for damages. Therefore, the Panel finds that the claim for damages and the appeal against the Appealed Decision are so closely connected that under the present specific circumstances the Panel's mandate also covers the claim for damages.

VII. APPLICABLE LAW

77. Art. R58 of the Code provides as follows:

> *"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".*

78. The "applicable regulations" within the meaning of the above provision are the rules and regulation of the entity that has issued the Appealed Decision. Consequently, it is the rules and regulations of the CRFA that apply in the case at hand. In the absence of a law chosen by the Parties, the Panel will apply – on a subsidiary basis – the law of the country in which the CRFA is domiciled, *i.e.* Czech law.

79. The provisions which are relevant in this arbitration include the following:

- Art. 3 of the Statutes of the CRFA

  Membership

  1. *Both natural persons (individuals) as well as legal entities (clubs) are eligible to become members of the FACR. There is no legal right to be accepted as a member of the FACR. Each member must be included in the central FACR register. The membership of an individual in the FACR is exclusively a member-association relationship between the FACR and the individual.*

     (…).

- Art. 29 of the Statutes of the CRFA

  Resolution of Disputes

  1. *FACR members are obliged to resolve any disputes arising from the Statutes and FACR rules and regulations through the FACR organs. They can turn to other authorities only in the event that all resources provided by the FACR regulations have been exhausted. A breach of this provision is subject to sanctions.*

  2. *In addition to the statutory right to turn to general court the FACR member may submit a proposal for decision to the Court of Arbitration for Sport (CAS) based in Lausanne, as defined in the regulations of FIFA and UEFA and with the fact that its decision is not subject to review by Czech common courts.*

     (…).

- Art. 30 of the Statutes of the CRFA

  Arbitration Proceedings

  1. *The members of the FACR Dispute Resolution Chamber make decisions in any disputes between FACR members resulting from contracts between clubs and players, in any disputes between clubs with regard to the compensation paid for a player, in disputes ensuing from the activities of FACR agents, and in any other comparable disputes.*

     (…).

- Art. 5 of the Rules of the DRC

  Competence of the Dispute Resolution Chamber

  1. *Pursuant to the FACR Statutes, the Dispute Resolution Chamber decides on:*

     a. *disputes from the contracts between the clubs and players,*

     b. *disputes between clubs on severance payments for players,*

     c. *disputes resulting from the activities of agents, and*

     d. *similar disputes.*

     (…).

- Art. 27 of the Rules of the DRC

  Competency and constitution of the Arbitration Committee

  1. *The Arbitration Committee is an elected body of the FA and its decisive competence is given by the FACR Statutes.*

     (…)

  3. *the Arbitration Committee decides upon:*

  a. *Appeals against ineffective decisions of the tribunal, against which an appeal is admissible;*

  b. *Claims on retrial*

  c. *Claims on the enforcement of decisions.*

     (…).

- Art. 20 of the Czech Charter of Fundamental Rights and Freedoms

  1. *The right of association is guaranteed. Everybody has the right to associate together with others in clubs, societies, and other associations.*

  2. *Citizens also have the right to form political parties and political movements and to associate therein.*

  3. *The exercise of these rights may be limited only in cases specified by law, if it involves measures that are necessary in a democratic society for the security of the state, the protection of public security and public order, the prevention of crime, or the protection of the rights and freedoms of others.*

  4. *Political parties and political movements, as well as other associations, are separate from the state.*

80. The English translations of the above provisions were submitted by the Appellant. At the hearing, the Respondent confirmed that these translations were correct and could be relied upon.

VIII. PRELIMINARY ISSUES

81. The Respondent objected to several submissions filed by the Appellant in view of Art. R56 of the Code. As stated in n. 8 of the Order of Procedure the Respondent objected:

- on 19 May 2015: to the Appellant's submissions dated 8 and 11 May 2015;

- on 11 June 2015: to the Appellant's submissions dated 10 June 2015;

- in its answer of 19 June 2015: to the Appellant's submission filed on 14 June 2015.

82. On 10 November 2015, the Parties were advised that the Respondent's objection had been rejected by the Panel and that the grounds of such decision would be released in the final arbitral award.

83. Art. R56.1 of the Code provides as follows:

> *"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer".*

84. The above provision is only applicable in case of new submissions. The Panel notes that the Respondent objected in its submission of 11 June 2015, p. 2, to the Appellant's submission dated 10 June 2015. However, the Appellant's submissions consisted in the filing of the exhibit n. 12 (to the Appeal Brief). The very same exhibit has been submitted by the Respondent in its

answer (see exhibit n. 2 to the answer). Hence, Art. R56 of the Code is not applicable to this incident from the outset.

85. Appellant's submissions dated 8 and 11 May and 14 June 2015 refer to "new" facts and evidence. However, the Panel allows these new submissions on file based on *"exceptional circumstances"* (Art. R56.1 of the Code).

1. The Panel notes that it enjoys a wide margin of discretion when assessing the admissibility due to *"exceptional circumstances"*. In particular, exceptional circumstances may exist, if:

   - the late submissions merely confirm statements already made in the appeal brief,
   - the late submissions are considered pertinent and necessary by the Panel in order to establish the facts of the case,
   - the objecting party was granted additional time to address the late submissions in substance,
   - the late submissions do not harm the Respondent if taken on file.

2. The Panel is of the view that some of the Appellant's submissions merely confirmed prior allegations and documents and, therefore, can be taken on file without any harm to Respondent. Insofar as the submissions referred to new facts and evidences (cf. the Appellant's submissions of 8 May 2015, p. 2, §2 et seq. and related attached exhibits; submitted translations of exhibits of 11 May 2015; submission of 14 June 2015, p. 2, para.2), the Panel deems these new facts and evidence to be pertinent and helpful in order to decide the matter in dispute. In addition, the Panel notes that the Respondent repeatedly requested time extension to respond to these new facts and evidences submitted by Claimant (cf. Respondent's request dated 5 and 11 June 2015) and that these requests were granted by the Panel. Thus, the Respondent had sufficient extra time to respond to these new facts and evidences (cf. letters of the CAS Court Office of 5 and 16 June 2015, respectively). Consequently, no harm was done to the Respondent by admitting said (new) submissions on file. Finally, the Panel notes that by admitting these new submissions on file the arbitration proceedings were not prolonged or protracted.

86. To conclude, therefore, the Panel found that the Respondent's objection referred to in n. 8 of the Order of Procedure had to be rejected by the Panel in view of Art. R56.1 of the Code.

IX. MERITS

87. The appeal of the Player would need to be granted, if the judicial organs erred when rejecting the Appellant's claim for enforcement of the Dutch Judgment for lack of competence. Thus, the Panel will analyse whether or not the judicial organs of the CRFA (*i.e.* the DRC and the AC)

had jurisdiction (*rationae personae* and/or *rationae materiae*) to hear and decide on the Appellant's claim for enforcement.

88. In doing so, the Panel will look at Art. 3.1, Art. 29 and Art. 30.1 of the Statutes of the CRFA, and Art. 5.1. lit. d and Art. 27.3. lit. c of the Rules of the DRC. According to CAS case law, statutes and rules of a sport association must – in the first place – be construed objectively. Thus, the wording of the rule is the starting point of any interpretation. Consequently, the Panel will take into account the language as well as the grammar and the syntax used. In addition, the Panel will proceed with a systematic analysis of the rules, *i.e.* will take into account their regulatory context. In a last step, the Panel may also take into account – where submitted by the Parties – the intentions of the association which drafted the rule as well as any relevant historical background provided that these factors are publicly known by the relevant stakeholders and addressees of the provisions in question (cf. CAS 2013/A/3453, no. 76; CAS 2011/A/2436, no. 12). The Parties have not submitted nor pleaded that Czech law differs from the above principles when it comes to the interpretation of the rules and regulations of a sports organisation.

89. Whether disputes between the CRFA and the Player can be submitted to the judicial organs of the CRFA (Dispute Resolution Chamber and Arbitration Committee) is questionable. Art. 29.1 of the Statutes of the CRFA provides as follows:

> Resolution of Disputes
>
> 1. *FACR members are obliged to resolve any disputes arising from the Statutes and FACR rules and regulations through the FACR organs. They can turn to other authorities only in the event that all resources provided by the FACR regulations have been exhausted. A breach of this provision is subject to sanctions.*
>
> 2. *In addition to the statutory right to turn to general court the FACR member may submit a proposal for decision to the Court of Arbitration for Sport (CAS) based in Lausanne, as defined in the regulations of FIFA and UEFA and with the fact that its decision is not subject to review by Czech common courts.*
>
> *(…)*
>
> [Emphasis added by the Panel].

90. Art. 29.1 of the Statutes of the CRFA provides that members of the CRFA are under the obligation to resolve their disputes through the judicial organs of the CRFA [emphasis added]. The term "members" of the CRFA is defined in Art. 3.1 of the Statutes of the CRFA. The provision states as follows:

> *Membership*
>
> 1. *Both natural persons (individuals) as well as legal entities (clubs) are eligible to become members of the FACR. There is no legal right to be accepted as a member of the FACR. Each member must be included in the central FACR register. The membership of an*

> *individual in the FACR is exclusively a member-association relationship between the FACR and the individual.*
>
> *(…).*

91. If one reads both provisions (Art. 3.1 and 29.1 of the Statutes of the CRFA) conjunctly, it appears that the judicial organs of the CRFA are not competent to decide on disputes to which the CRFA is a party, since the term "member" in Art. 3.1 of the Statutes of the CRFA refers to *"natural persons (individuals) as well as legal entities (clubs)"*. The CRFA, however, is neither an *"individual"* nor is it a *"club"*. The interpretation followed here is backed by Art. 30.1 of the Statutes of the CRFA governing the proceedings before the DRC. The provision reads as follows:

> *Arbitration Proceedings*
>
> 1. *The members of the FACR Dispute Resolution Chamber make decisions in any disputes between FACR members resulting from contracts between clubs and players, in any disputes between clubs with regard to the compensation paid for a player, in disputes ensuing from the activities of FACR agents, and in any other comparable disputes.*
>
> *(…)*
>
> [Emphasis added by the Panel].

92. The Panel notes that Art 30.1 of the Statutes of the CRFA provides for personal jurisdiction of the DRC over *"members"*, *"clubs"* and *"FACR agents"*. Again, the CRFA is not mentioned as one of the possible parties to a dispute that must be submitted to the judicial organs of the CRFA. The Respondent is neither a *"member"* nor a *"club"* nor a *"FACR agent"*. It is true, however, that Art. 30.1 of the Statutes of the CRFA does not list the type of disputes to be submitted to the judicial organs of the CRFA exhaustively, since the provision also refers to *"any other comparable disputes"*.

93. However, the Panel is of the view that the term *"any other comparable disputes"* does not cover disputes to which the Respondent is a party. The types of disputes (explicitly) listed in Art. 30.1 of the Statutes of the CRFA are so-called horizontal disputes, *i.e.* disputes in which the parties are facing each other at a same level. Insofar as the CRFA assumes judicial functions in relation to *"members"*, *"clubs"* or *"FACR agents"* it does so as an independent third legal entity that is not affected directly by the outcome of the dispute. Things are very different in a case in which the CRFA is a party to the dispute. In such (vertical) disputes the CRFA would assume judicial functions in a dispute whose outcome would directly affect it as a party. Thus, the Panel finds that the term *"comparable disputes"* does not cover situations in which the CRFA itself is a party.

94. The interpretation followed here with regard to Art. 30.1 of the Statutes of the CRFA is also in line with Art. 5.1 of the Rules of the DRC. The latter provision reads as follows:

Competence of the Dispute Resolution Chamber

1. Pursuant to the FACR Statutes, the Dispute Resolution Chamber decides on:

a. disputes from the contracts between the clubs and players,

b. disputes between clubs on severance payments for players,

c. disputes resulting from the activities of agents, and

d. similar disputes.

(…).

95. Art. 5.1 of the Rules of the DRC explicitly regulates the *"Competence of the Dispute Resolution Chamber"*. The provision lists certain types of disputes between members affiliated to the CRFA. All disputes expressly listed in the provision are "horizontal disputes". None of the examples listed in the provision refers to disputes to which the CRFA is a party. The provision, thus, is completely in line with Art. 30.1 of the Statutes of the CRFA with the consequence that the term "similar disputes" (in Art. 5.1 of the Rules of the DRC) must be given the same meaning as in to Art. 30.1 of the Statutes of the CRFA ("comparable disputes").

96. The interpretation followed here is also not contradicted when looking at Art. 27.3 of the Rules of the DRC. The latter provision reads as follows:

Competency and constitution of the Arbitration Committee

1. The Arbitration Committee is an elected body of the FA and its decisive competence is given by the FACR Statutes.

(…)

3. the Arbitration Committee decides upon:

a. Appeals against ineffective decisions of the tribunal, against which an appeal is admissible;

b. Claims on retrial

c. Claims on the enforcement of decisions.

(…).

97. The Panel notes that according to para. 1 of this provision the AC's *"decisive competence is given by the FACR Statutes"*. It follows from this reference to the CRFA Statutes that Art. 27.3 of the Rules of the DRC does not want to define the competence of the AC differently from Art. 29.1 of the Statutes of the CRFA. Furthermore, the Panel notes that according to Art. 30.7 of the Statutes of the CRFA, the AC is competent to decide on appeals against decisions of the DRC.

Thus, it appears rather self-evident that the jurisdiction *rationae personae* of the AC as an appeal body cannot be any different from Art. 30.1 of the Statutes of the CRFA, which defines the competence of the first instance judicial body (DRC).

98. To conclude, therefore, the Panel holds that it follows from the interpretation of all the provisions referred to by the Parties that the judicial organs of the CRFA are not competent to decide on disputes to which the CRFA is a party. There is, therefore, no inconsistency in the rules and regulations of the CRFA that could be interpreted *contra proferentem*. Consequently, the rules and regulations of the CRFA do not provide for jurisdiction *rationae personae* in favour of the judicial organs of the CRFA for the dispute at stake here.

99. On a side note, the Panel wishes to note that it appears that also the Appellant – at least initially – adhered to the understanding of the Panel of the rules regulations of the CRFA. It is for exactly this reason that the Appellant – at least initially – sought the enforcement of his claim before the Czech state courts. Only when the latter finally dismissed his request he turned to the judicial organs of the CRFA to pursue his claim anew.

100. In excluding the jurisdiction for disputes involving the CRFA from its internal judicial organs, the CRFA has not breached any general principles of law. According to Art. 20 of the Czech Charter of Fundamental Rights and Freedoms, which protects the freedom of associations, the Respondent is entitled to design the internal remedies and the competence of its internal judicial organs at its discretion. In particular, the CRFA is entitled to decline competence to decide on disputes to which it is a party and to provide for external judicial protection in such cases.

101. Since in the view of this Panel neither the DRC nor the AC have jurisdiction to hear and decide on the Appellant's claim, the appeal filed by the Appellant has to be dismissed in its entirety.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Mr Martin Sus against the decision issued by the Arbitration Committee of the Czech Republic Football Association on 1 April 2015 is dismissed.

2. The decision rendered by the Arbitration Committee of the Czech Republic Football Association on 1 April 2015 is confirmed.

3. (…).

4. (…).

5. All other prayers for relief are dismissed.