Arbitration CAS 2015/A/4350 Mersudin Akhmetovic v. FC Volga Nizhniy Novgrod & Russian Football Union, award of 21 November 2016

Panel: Prof. Petros Mavroidis (Greece), Sole Arbitrator

Football
Contract of employment between a player and a club
Applicable law
Res judicata
Time limit for appeal
Moral damages

1. **Article R58 of the Code indicates which substantive rules/laws are to be applied to the merits of the dispute. This provision recognizes the pre-eminence of the *"applicable regulations"* to the *"rules of law chosen by the parties"*, which are only applicable *"subsidiarily"*. Article R58 of the Code does not admit any derogation and imposes a hierarchy of norms, which implies for the CAS panel the obligation to resolve the matter pursuant to the regulations of the relevant *"federation, association or sports-related body"*. Should this body of norms leave a lacuna, it would be filled by the *"rules of law chosen by the parties"*.**

2. **According to the Swiss Federal Tribunal, *res judicata* applies both domestically and internationally and applies in particular to the relationship between an arbitral tribunal sitting in Switzerland and a foreign court or arbitral tribunal. The principle of *res judicata* guarantees that a dispute will be subject to only one set of court or arbitration proceedings and serves to establish legal peace between the parties. In this respect, if an employment-related issue has already been validly dealt with by another judicial authority, it is very doubtful that a player's claim related to the payment of contractual expenses can be heard unless it does not arise from the employment relationship already dealt with. It would otherwise be barred by the *res judicata* effect of the decision already issued.**

3. **Pursuant to the clear wording of the applicable regulations, the statute of limitation requires the creditor to bring suit within two years and runs from the day his claim fell due and not when a formal notice is given, when the contract is terminated or when a dispute actually arises. The triggering moment is the maturity of the debt. A player's claim for the payment of the last instalment of contractual expenses is time-barred if it is filed outside this deadline.**

4. **As a general rule, the awarding of moral damages is usually an exception rather than the rule and Swiss courts have usually adopted a modest and restrictive approach when it comes to awarding moral damages. Article 42 para. 1 CO states that *"A person***

claiming damages must prove that loss or damage occurred". **Absent any proof in this respect, a party is not entitled to the payment of any compensation for moral damages.**

I. PARTIES

1. Mersudin Akhmetovic is a former professional football player of Bosnian nationality (the "Player").

2. FC Volga Nizhniy Novgrod is a football club with its registered office in Nizhniy Novgorod, Russia (the "Club"). Until June 2016, it was a member of the Russian Football Union.

3. The Russian Football Union ("RFU") is the governing body of football in Russia and has been affiliated with the Fédération Internationale de Football Association ("FIFA") since 1912.

II. FACTUAL BACKGROUND

A. Background facts

4. Below is a summary of the relevant facts and allegations based on the Parties' oral and written submissions, pleadings, and evidence adduced. References to additional facts and allegations found in the Parties' oral and written submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he deems necessary to explain his reasoning.

B. The contract signed between the Player and the Club

5. On 1 January 2011, the Player signed an employment contract with the Club (the "Employment Contract"). Under this agreement, which was effective from 1 January 2011 until 31 December 2012, the Player was entitled to receive a monthly salary of USD 28,570. In addition and pursuant to Article 9.6 of the Employment Contract (as translated from Russian into English by the Player), the Club undertook *"to pay for the expenses for the moving to the job in Nizhniy Novgorod in the amount 690 800, 00 (…) US dollars with the repayment schedule:*

- *165 100 (…) US dollars until the date 15 March 2011;*
- *135 100 (…) US dollars until the date 15 June 2011;*
- *65 100 (…) US dollars until the date 15 August 2011;*
- *65 100 (…) US dollars until the date 15 December 2011;*
- *65 100 (…) US dollars until the date 15 March 2012;*

- *65 100 (…) US dollars until the date 15 June 2012;*
- *65 100 (…) US dollars until the date 15 August 2012;*
- *65 100 (…) US dollars until the date 15 December 2012".*

6. In its answer filed before the Court of Arbitration for Sport ("CAS"), the Club claims that the above translation is incorrect as the Russian version of the Employment Contract states that each instalment should indeed be paid in US dollars but *"by the course of Central Bank of Russia Federation in rubles for the day of accrual"*.

7. Article 8 of the Employment Contract states the following (as translated from Russian into English by the Player):

"The discharge of the contract

8.1. The discharge of the contract is fulfilled by the reasons which are specified in the labour legislation of Russian Federation.

At that the order of the transfer of the Footballer to the other football club is determined in accordance with the regulating and other documents of FIFA, UEFA, RFU.

8.2. At the deprivation by Russian football union of the Footballer for the certificate which gives the right for the participation in Russian non amateurish competitions for the football, the present contract may be terminated on the basis of the point 1 clause 77 of the Labour Code of Russian Federation (the agreement of the sides).

8.3. The dismissal of the Footballer is drawn up by the order (direction) of the President of the Club or of the official who has the right to hire and fire the employees. The day of the Footballer dismissal is the last day of his work in the Club.

8.4. The day of the discharge of the contract is the last day of the Footballer's work in the Club.

In the day of the discharge of the contract the Club must give to the Footballer the work-book and to make the final payment with him".

8. Article 10 of the Employment Contract, entitled *"final conditions"*, provides so far as material as follows (as translated from Russian into English by the Player):

"10.1. The responsibility of the sides is determined by the appropriate standards of the existing legislations of Russian Federation and the standards of FIFA, UEFA, RFU, RFPL.

10.2. The features of the regulation for the labour of the Footballer are determined by the labour legislation and the other standard legal acts which contain the standards of the labour law, collective contracts, agreements, local standard acts and the present contract.

The Footballer and the Club agree that they in the full volume are covered by the standards of regulating and other documents of FIFA, UEFA, RFU, RFPL which regulate relations of the sides in the professional (no amateurish) and amateurish football.

10.3. In the case of the arising of the dispute between the sides it is subject to the regulation by the way of its consideration in the Club.

If the dispute between the sides will not be regulated it is subject to the settlement on the basis of appropriate regulation standards which are determined by FIFA, UEFA, RFU, RFPL. If the dispute is not considered in accordance with the mentioned regulating standards or the Footballer is not agree with the received decisions (decision) he has the right to apply to the court.

10.4. In the case of non-execution or improper execution of his incumbent duties because of his fault which are provided by the existing legislation and the present contract, the Club has the right to use the disciplinary penalties for him in accordance with the labour legislation of Russian Federation.

(…)

10.6. In all other cases which are not covered by the present contract the sides follow by the appropriate conditions of the existing legislation of Russian Federation and by the documents of the Club, FIFA, UEFA, RFU, RFPL".

9. It is undisputed that the Club only paid the first instalment (USD 165'100) of the *"expenses for the moving to the job"* (Article 9.6 of the Employment Contract - hereinafter the "Moving Expenses"). It also failed to execute the timely payment of some of the Player's wages.

10. On 5 October 2012, the Player sent the following notice to the Club (as translated from Russian into English by the Player):

"(…)

By the terms of the labour contract the football club undertook to pay me the salary 28 570 US dollars for the month at the rate of the Central Bank of Russian Federation in rubles' equivalent for the date of the charge and to pay me additionally the money in the amount 690 800 US dollars according to the payment schedule pointed in the labour contract in the clause 9 point 9.6. On 05 October 2012 the amount of the payment by the club must be as the salary for 20 months x 28 570 US dollars and the money payments 625 700 US dollars. The total amount was 1 197 100 US dollars minus the income tax 13 % (the point 2 of the clause 207 of the Tax Code of Russian Federation) which must be paid me in my hands would be 1 041 477 US dollars.

On 05 October 2012 on the basis of my statement from the personal account excluding the bonuses and compensated expenses for the rent of the accommodation the Club paid me the following money in the amount:

- *12 209 358 rubles for the year 2011;*
- *3 528 683 rubles for the year 2012.*

So in the total on 05 October 2012 the Club paid me the amount in the size of 15 738 041 rubles which is approximate 505 721 US dollars for this day by the rate of the Central Bank of Russian Federation.

I ask you to fulfill your financial obligations by my contract and pay me the debt as the money amount 535 755.89 US dollars until 11 October 2012".

11. On 21 December 2012, the Player notified in writing the Club of the fact that he was putting an end to their contractual relationship with effect from 22 December 2012. He unilaterally terminated the Employment Contract, because of the Club's failure to pay his wages *"during a few months".*

C. The various proceedings initiated by the Player against the Club before the various judicial bodies of RFU

12. During the present arbitral proceedings, the Player made the following submissions:

- At an unspecified time, he initiated proceedings with the judicial bodies of the RFU to order the Club to pay in his favour his outstanding salaries as well as compensation for the breach of the Employment Contract.
- At that time, he did not seek to obtain an order for the payment of the remaining instalments of the Moving Expenses.
- Following a decision issued by the *"DRC and PSC of RFU back in the beginning of 2013"*, the Club paid to the Player his outstanding wages as well as an undisclosed amount as compensation for the breach of the Employment Contract.

13. On 5 December 2014, the Player formally asked the Club to pay in his favour the amount of USD 527'700 (corresponding to the 7 last instalments of the Moving Expenses) on or before 19 December 2014. At the hearing before the CAS, the Player's representative confirmed that the requested amount should have been USD 525'700.

14. On 18 December 2014, the Club answered to the Player that *"[By] the letter dated 31.01.2012 No. 41 NP «Football club» «Volga » informed you about the necessity within the period till.15.02.2012 to provide to the address of the Club the documents which confirm of the executed expenses for the moving to the job in Nizhniy Novgrod. However the requested documents haven't been provided till the present day. So the Club will consider the possibility to pay to your address the amounts stated in the point 9.6 of the labour contract exceptionally after the provision of the documents which confirm the executed expenses"* (as translated from Russian into English by the Player).

15. On 18 December 2014, the Player filed a claim before the Dispute Resolution Chamber of the RFU ("DRC") *"with the statement about the request to oblige the Club to pay the compensation in the amount 527 700 US dollars and the percentage for the ill-timed payment in the size of 87 917 US dollars and to inflict the sport sanctions for the Club as the prohibition for the registration of new footballers for 1 (one) registration period"*.

16. In a decision dated 3 April 2015, the DRC held that the Player's claim was time-barred pursuant to Article 37 of the RFU Regulations for Dispute Resolution, according to which *"the Chamber does not accept the claim for its consideration if more than two years have passed from the event giving rise to the dispute"*. The DRC found that it was unable to consider the substance of the matter as more than two years had elapsed since the event giving rise to the dispute, *i.e.* the date when the last instalment of the Moving Expenses matured (15 December 2012).

17. The Player filed a statement of appeal against the decision of the DRC at the Players' Status Committee of the RFU ("PSC"), which confirmed the decision of the preceding instance. As a result, on 27 August 2015, the PSC decided the following (as translated from Russian into English by the Player):

"1. To refuse in the satisfaction of the appeal of the [Player] for the decision of the [DRC] dated 03 April 2015 (sic).

2. To keep in force the decision of the [DRC] dated 03 April 2015 for the case of [the Player].

3. To oblige the [Player] to pay to RFU the fee for the consideration of the appeal by the Committee in the amount 15 000 (…) rubles during 30 (…) calendar days in accordance with the clause 31 of the Regulations of RFU for the settlement of disputes.

4. The present decision (…) came into the effect in the order that is determined by the clause 63 of the Regulations of RFU for the settlement of disputes.

On the basis of the clause 47 of the Statute of All-Russian public organization "Russian Football Union" the present decision may be appealed in the Sporting arbitration court in [Lausanne] in accordance with the Code of the Sporting arbitration court".

18. On 6 September 2015, the Player filed a request for the grounds of the decision issued by the PSC (the "Appealed Decision"), which were notified to the Parties on 2 December 2015.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

19. On 14 December 2015, the Player lodged his statement of appeal with the CAS in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the "Code"). Within such document, the Player requested that the present matter be submitted to a Sole Arbitrator.

20. On 22 December 2015, the CAS Court Office acknowledged receipt of the Player's statement of appeal and of its payment of the CAS Court Office fee. It invited the Respondents to comment within five days on the Player's request to submit the present matter to a Sole Arbitrator.

21. As the Respondents failed to provide their position on the Player's request for a Sole Arbitrator within the prescribed deadline, the issue was referred to the President of the CAS Appeals Arbitration Division, who eventually decided to submit the present matter to a Sole Arbitrator.

22. On 28 December 2015, the Player filed his appeal brief in accordance with Article R51 of the Code.

23. On 24 January 2016 and within the granted time-extension, the Club filed its answer in accordance with Article R55 of the Code.

24. The RFU failed to submit its answer within the given time limit.

25. On 1 February 2016, the Club confirmed to the CAS Court Office that it preferred for the matter to be decided solely on the basis of the Parties' written submissions, whereas, on 3 February 2016, the Player expressed his preference for a hearing to be held. The RFU failed to express its position as regards the holding of a hearing.

26. On 12 February 2016, the CAS Court Office advised the Parties that the President of the CAS Appeals Arbitration Division appointed Mr Petros C. Mavroidis, professor, Commugny, Switzerland, as Sole Arbitrator.

27. On 4 March 2016, the Parties were informed that the Sole Arbitrator had decided to hold a hearing, which was scheduled for 5 July 2016, following the agreement of the Player and the Club. The RFU remained silent on possible hearing dates.

28. On 10 March 2016, the RFU filed an application with the CAS Court Office requesting to be dismissed as a party from the present arbitral proceedings. Its request was eventually set aside.

29. On 16 and 30 June 2016, the Club confirmed to the CAS Court Office that it would not be represented at the hearing.

30. On 30 June 2016, the Player signed and returned the Order of Procedure in the present proceedings. The Respondents did not return a duly signed copy of the said document.

31. The hearing was held on 5 July 2016 in Lausanne. The Sole Arbitrator was present and assisted by Mr Brent J. Nowicki, Counsel to the CAS, and Mr Patrick Grandjean, *ad hoc* Clerk.

32. At the hearing, the Player was represented by his legal counsel, Mr Ivan Bykovskiy. The Respondents did not attend the hearing.

33. At the outset of the hearing, the Player's representative did not raise any objection as to the appointment of the Sole Arbitrator.

34. After the final arguments of the Player's representative, the Sole Arbitrator closed the hearing, and announced that his award would be rendered in due course. At the conclusion of the hearing, the Player's representative confirmed that his right to be heard in the present proceedings had been fully respected.

35. On 14 July 2016, the Club informed the CAS Court Office that it was not a member of the RFU and of the Russian Football National League anymore.

IV. SUBMISSIONS OF THE PARTIES

A. The Appeal

36. The Player submitted the following requests for relief:

"The [Player] herein respectfully requests the Panel:

1. To uphold the present appeal of [the Player], in view of the several reasons pointed out in both Statement of Appeal and this Appeal Brief. To dismiss fully the decision of the RFU PSC No. 263-14 of 27 August 2015.

2. *To issue a new decision stating that the Club (…) has breached the Contract concluded with the Player (…) on 01 January 2011 and should be obliged to pay the amount of USD 525,700 (…) and the interest for late payment in amount of 5 % p.a. from the date 22 December 2012 until the date of effective payment.*

3. *To state that the [RFU] is obliged to pay to the Player an amount of EUR 1,423 (…) for violation of corresponding articles of the Regulations of RFU on Dispute Resolution regarding duly and timely issue of the appealed decision which caused economical and moral damages to the Player as a compensation towards his damages.*

4. *To fix a sum of 10,000 EUR to be paid to the Player by the Respondents, to help the payment of its legal fees costs.*

5. *To condemn both Respondents to the payment of the whole CAS administration costs and the Arbitrators fees".*

37. The Player's submissions, in essence, may be summarized as follows:

- The Player has always complied with his contractual obligations as well as with the instructions given to him by the Club.
- The Club was late in the payment of the Player's wages as well as of the Moving Expenses. In 2013, the Player initiated proceedings with the judicial bodies of the RFU and obtained the payment of his outstanding salaries. At that time, he did not seek to obtain an order for the payment of the remaining instalments of the Moving Expenses, which are still due to him.
- The Player is entitled to the full payment of the outstanding Moving Expenses. His claim is not conditional upon presentation of documentary evidence of the expenses effectively incurred *"for the moving to the job in Nizhniy Novgorod"*.
- The Player's claim for the payment of the Moving Expenses is not time-barred under Article 37 of the RFU Regulations for Dispute Resolution. According to this provision, the Player's claim becomes time-barred two years *"from the event giving rise to the dispute"*. This *"event"* is the termination of the Employment Contract by the Player, which occurred on 22 December 2012. This position is supported by Articles 140 and 142 of the Labour Code of Russian Federation, by the jurisprudence of the Russian Supreme Court as well as by Article 8.4 of the Employment Contract. Consequently, the Player acted in a timely manner when he lodged his claim on 18 December 2014 with the DRC.
- According to the applicable regulations (Article 41 of the RFU for the Settlement of Disputes) and in order to be entitled to file a claim with the judicial bodies of the RFU, the Player had to serve a prior notice to the Club, requesting the payment of the outstanding Moving Expenses within 14 days. This requirement is compulsory and the failure to meet it would result in the claim to be dismissed. *"The Player filed a claim on 05 December 2014 to the Club and in good faith waited 14 days to expire. Then, on 18 December 2014 he filed a claim to the DRC without any expectation for it to be rejected"*. If it was not for this regulation, the Player would have immediately filed his claim before the DRC on 5 December 2014 and the time-bar issue would have been moot.

- On 6 September 2015, the Player filed a request for the grounds of the Appealed Decision, which were notified to him on 2 December 2015. According to its own regulations and upon the request of a party, the RFU has the obligation to deliver the grounds of the decision within the following 10 days. This deadline was not met by the RFU, which did not offer to the Player any explanation or excuses for such a delay. *"Considering rather difficult financial situation of the Player, who is now an amateur Player and is receiving amount around EUR 500 per month and knowing that the decision of RFU PSC was taken on wrong grounds and clearly violated his rights, the Player suffered moral and economical harm from the unlawful actions of the RFU PSC. (…) For the above said, the Player considers the damages he suffered are to be compensated in amount of 110,000 rubles, which as for today is equal to 1,423 EUR (One thousand four hundred twenty three Euros) from the Russian Football Union for abusing its rights and situation in the field of Russian football being sole responsible party for timely and duly issue of the decision related to the rights of the Player".*

B. The Answer

38. The Club filed an answer, with the following requests for relief:

"PETITION

1. *To dismiss the Appeal filed by the Player (…) on December 14, 2015 (sic) against the Decision of August 27, 2015 (sic) issued by the Players' Status Committee of the Russian Football Union.*
2. *To uphold the Decision of August 27, 2015 (sic) issued by the Players' Status Committee of the Russian Football Union.*
3. *To charge the cost of arbitration fees, which will be calculated and invoiced by the CAS Office for the payment by the Parties, on [the Player] in full.*
4. *[The Player] shall be obliged to pay the amount of 1500 Swiss Francs in favour of [the Club] as the reimbursement for the costs incurred to these proceedings".*

39. The Club's submissions, in essence, may be summarized as follows:

- The payment of the Moving Expenses was conditional upon presentation of documentary evidence of the costs effectively incurred *"for the moving to the job in Nizhniy Novgorod"*. On several occasions, the Club requested the receipts of such costs, but the Player systematically failed to produce them.
- Article 140 of the Labour code of the Russian Federation as well as Article 8.4 of the Employment Contract *"just determine the total period for the performance of the employer's liabilities to the employee upon the termination of the employment contract. However, the Parties have stipulated by p. 9.6 of the Employment Contract a special period for the fulfilment of the liabilities to pay the compensation for the relocation, namely till 15.12.2012"*. Hence the two-year period provided under Article 37 of the Regulations of the RFU for the Settlement of Disputes began to run from 15 December 2012 as rightly decided by the DRC and the PSC. Hence, the Player's claim filed on 18 December 2015 is time-barred.

- The wording of Article 37 of the Regulations of the RFU for the Settlement of Disputes makes it very clear that *"the statute of limitations for any case begins to lapse from a specific date (from the time of the said event) determined by the parties to fulfill their obligations under the contract"*. Under the Employment Contract, Article 9.6 provides for specific dates, which are relevant as to the application of the said Article 37. *"Having not received the [payment of the Moving Expenses], the Player obtained since 16.12.2012 every reason for initiating proceedings at the jurisdictional bodies of the FIFA or the RFU"*.
- Article 41, first sentence, of the Regulations of the RFU for the Settlement of Disputes, provides that *"Prior to filing a statement of appeal to the [DRC] the applicant should require from the defendant to fulfill the latter's obligations within 14 days and only after that apply to the [DRC] with a statement"*. The Player met the requirements set under this provision well before 5 December 2014. As a matter of fact, he served a notice to the Club on 5 October 2012. Under these circumstances, he did not have to serve another notice on 5 December 2014 and could have filed immediately his claim with the DRC. In addition, the Player could have avoided the 14-day period established under Article 41 of the Regulations of the RFU for the Settlement of Disputes by lodging his claim directly with FIFA.

V. JURISDICTION

40. The jurisdiction of the CAS, which is not disputed, derives from Article 47 of the applicable Statutes of the RFU and Article 67 of the applicable FIFA Statutes. It is furthermore confirmed in the Appealed Decision as well as by Article 10.3 of the Employment Contract, by virtue of which the Player and the Club accepted that their dispute be settled *"on the basis of appropriate regulation standards which are determined by FIFA, UEFA, RFU, RFPL"*.

41. In the course of the present arbitral proceedings, the Club decided to withdraw its membership from the RFU. This does not change the fact that it accepted the jurisdiction of the CAS. It proceeded before the CAS, filed an answer and, in its last correspondence sent to the CAS Court Office on 30 June 2016, it simply informed the Parties that it would not be represented at the hearing. In other words, the Club has never questioned the jurisdiction of the CAS, which is therefore competent to decide on the present dispute.

42. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

VI. ADMISSIBILITY

43. The appeal is admissible as the Player submitted it within the deadline provided by Article R49 of the Code. It complies with all the other requirements set forth by Article R48 of the Code.

VII. APPLICABLE LAW

44. It is generally accepted that the choice of the place of arbitration also determines the law to be applied to arbitration proceedings. The Swiss Private International Law Act (hereinafter "PILA") is the relevant arbitration law (DUTOIT B., Droit international privé Suisse, commentaire de la loi fédérale du 18 décembre 1987, Bâle 2005, N. 1 on Article 176 PILA; TSCHANZ P-Y., in Commentaire romand, Loi sur le droit international privé - Convention de Lugano, 2011, n° 1, p. 1627, ad art. 186 LDIP). Article 176 para. 1 PILA provides that the provisions of Chapter 12 of PILA regarding international arbitration shall apply to any arbitration if the seat of the arbitral tribunal is in Switzerland and if, at the time the arbitration agreement was entered into, at least one of the parties had neither its domicile nor its usual residence in Switzerland.

45. Article 187 para. 1 PILA provides - inter alia - that *"the arbitral tribunal shall rule* according *to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected"*. This provision establishes a regime concerning the applicable law that is specific to arbitration and different from the principles instituted by the general conflict-of-law rules of the PILA (CAS 2013/A/3274, para. 56).

46. According to the legal doctrine, the choice of law made by the parties can be tacit and/or indirect, by reference to the rules of an arbitral institution. In agreeing to arbitrate the present dispute according to the Code, the Parties have submitted to the conflict-of-law rules contained therein, in particular to Article R58 of the Code (CAS 2013/A/3274, para. 58; CAS 2008/A/1705 para. 9 and references, CAS 2008/A/1639, para. 21 and references; CAS 2006/A/1141, para. 61).

47. Article R58 of the Code provides the following:

> *"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"*.

48. Article R58 of the Code indicates how the Sole Arbitrator must determine which substantive rules/laws are to be applied to the merits of the dispute. This provision recognizes the pre-eminence of the *"applicable regulations"* to the *"rules of law chosen by the parties"*, which are only applicable *"subsidiarily"*. Article R58 of the Code does not admit any derogation and imposes a hierarchy of norms, which implies for the Sole Arbitrator the obligation to resolve the matter pursuant to the regulations of the relevant *"federation, association or sports-related body"*. Should this body of norms leave a lacuna, it would be filled by the *"rules of law chosen by the parties"*.

49. The Sole Arbitrator observes that the Club recently withdrew from the RFU. This does not, however, change the fact that when the dispute arose between the Parties, it was a member of the RFU and so was the Player. The Player's claim was the object of decisions issued by the competent judicial bodies of the RFU and, under these circumstances, it must be assessed

according to the rules applicable then. In this regard, the Parties in the present case are bound by the FIFA Statutes for several reasons:

- First, they expressly agreed that *"their rights and obligations are regulated by the [Employment Contract], constituent and other documents of the Club, the appropriate documents of [FIFA], the Union of European football association (UEFA), [RFU], Russian Football Premier League (RFPL), acting legislation of Russian"* (Introduction of the Employment Contract as translated from Russian into English by the Player);
- Second, Article 10 of the Employment Contract makes numerous references to FIFA Regulations, which govern the *"responsibility of the sides"* (Article 10.1), *"the disputes between the sides"* (Article 10.3); *"all other cases which are not covered by the present contract"* (Article 10.6).
- Third, the Parties made a tacit choice of law when they submitted themselves to arbitration rules, which contained provisions relating to the designation of the applicable law.
- Fourth, each Party is – at least indirectly – was affiliated to FIFA when the dispute arose.

50. It can also be observed that during the hearing, the Player's representative made several references to Swiss law, in particular to Article 49 of the Swiss Code of Obligations ("CO") in support of his claim for compensation for moral damages.

51. Therefore, this dispute is subject, in particular, to Article 66 para. 2 of the FIFA Statutes, which provides that *"[t]he provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law"*.

52. Hence, and with respect to the applicable substantive law, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply to the extent warranted. *"Subsidiarily"* only, the laws and regulations, which stem from the regulations of the RFU are applicable.

VIII. NEW DOCUMENTS

53. Pursuant to Article R44.3 para. 2 of the Code, *"If it deems it appropriate to supplement the presentations of the parties, the Panel may at any time order the production of additional documents or the examination of witnesses, appoint and hear experts, and proceed with any other procedural step. The Panel may order the parties to contribute to any additional costs related to the hearing of witnesses and experts"*.

54. At the hearing the Sole Arbitrator required from the Player's representative the production of an email dated 2 December 2015. A copy of this document was forwarded to the Respondents. Separately, the Player was also directed to produce the decision of the DRC/PSC from 2013 referred to in paragraph 11 of his appeal brief. On 11 July 2016, the Player informed the CAS Court Office that he was unable to comply with this request.

55. On 12 July 2016 and on behalf of the Sole Arbitrator, the CAS Court Office asked the RFU to produce a copy of the decision of the PSC from 2013.

56. On 14 July 2016, the Sole Arbitrator was informed of the fact that the Club was not a member of the RFU anymore and, as a consequence, it informed the Parties that it did not deem it necessary to provide any further communication from the RFU.

IX. PROCEDURAL ISSUES – IS THE PLAYER'S CLAIM AGAINST THE CLUB TIME-BARRED?

57. Before entering into the substance of the case, the Sole Arbitrator has to determine whether the Player's claim against the Club is time-barred.

58. On the one hand, the Player contends that there was no *"dispute"* within the meaning of Article 37 of the RFU Regulations for Dispute Resolution until he had terminated the Employment Contract on 22 December 2012. According to the Player, this argument is supported by Article 8.4 of the Employment Contract as well as by Article 140 of the Labour Code of Russian Federation. In addition and according to Article 142 of the Labour Code of Russian Federation, once its obligation matured, the employer has a 15-day period to make the payment. Before the expiry of this two-week period of time, the Player claims that he *"could not be sure that the alleged amounts indicated in the article 9.6 of his Employment contract would not be paid to him. Only in the last days of his duties, i.e. 22 December 2012 it became clear that the amounts would remain outstanding"*.

59. On the other hand, the Club argues that the claim filed by the Player against it on 18 December 2014 is time-barred by virtue of Article 37 of the RFU Regulations for Dispute Resolution. It submits that the facts leading to the dispute arose on 15 December 2012, when the last instalment of the Moving Expenses fell due. The proceedings against the Club were initiated only on 18 December 2014, *i.e.* two years and two days after the *"event giving rise to the dispute"*.

60. Article 37 of the RFU Regulations for Dispute Resolution states the following (as translated form Russian into English by the Player): *"Deadlines for filing a claim: The Chamber does not accept the claim for its consideration, if more than two years have passed from the event giving rise to the dispute"*.

61. The content of Article 37 of the RFU Regulations for Dispute Resolution is similar to that of Article 25 para. 5 of the FIFA Regulations for the Status and Transfer of Players, editions 2012 to 2016 (RSTP):

> *"The Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case"*.

62. This provision is identical to Article 25 para. 5 of the RSTP edition 2005. In this respect, the FIFA commentary on the RSTP (edition 2005) reads as follows (commentary ad. Article 25, page 76):

"Period of limitation

(…)

2. The events giving rise to the dispute depend on the particular case and can be explained with the following example: the clubs A and B (obviously belonging to different associations) enter into a transfer agreement for the player X. Club B shall pay club A transfer compensation in five equal instalments. The last instalment is due on 30 June 2003. Club A does not claim this amount for a long time. On 10 August 2005, club A lodges a claim with the Players' Status Committee to demand payment of the last instalment. The deciding body will be unable to consider the substance of this matter as more than two years have elapsed since the event giving rise to the dispute, i.e. the date that the last instalment matured".

63. It is evident that the present dispute displays certain similarities with the example used in the FIFA commentary. However, the Player submits that the case must be assessed in light of the Labour Code of Russian Federation, according to which the liability of the Club arose only at the termination of the Employment Contract, which occurred on 22 December 2012.

64. In this regard, the Sole Arbitrator observes that the RFU judicial bodies have already dealt with the employment relationship between the Player and the Club. In December 2012, the Player unilaterally terminated the Employment Contract and, in the beginning of 2013, he initiated proceedings before the DRC and the PSC of the RFU.

65. According to the Player's own submissions, he obtained a decision ordering the Club to pay in his favour the outstanding salaries as well as compensation for breach of the Employment Contract. The dispute was the object of a valid and final decision, following which the Club paid the amounts awarded to the Player.

66. It appears that the Player's employment-related claims against the Club were exhaustively determined in a decision, which entered into force. The Sole Arbitrator has to observe former decisions, which have *res judicata* status in respect of the issues submitted before him. As a matter of fact, the Sole Arbitrator would violate procedural public policy if he disregards the *res judicata* principle and issues an award on a claim that has already been validly and finally adjudicated upon (ATF 140 III 278, consid. 3.1).

67. *Res judicata* applies both domestically and internationally and applies in particular to the relationship between an arbitral tribunal sitting in Switzerland and a foreign court or arbitral tribunal (ATF 140 III 278 consid 3.1, p. 279; ATF 127 III 279 consid 2).

68. The principle of *res judicata* guarantees that a dispute will be subject to only one set of court or arbitration proceedings and serves to establish legal peace between the parties. The parties must set out the facts and evidence known and available to them at the time of the proceedings and this information will form the basis for the decision (ATF 140 III 278 consid. 3.3; VOSER/GEORGE, in ASA Special Series N°38; Post Award Issues, edition 2011, chapter 3; Revision of Arbitral Awards, p. 43).

69. At the hearing before the CAS, the Player's representative explained that, during the proceedings initiated in 2013, he did not seek to obtain the payment of the outstanding Moving

Expenses as he was unsure of the legal merits of his related claim. It is only when he found out that other players sought for the payment by the Club of their Moving Expenses and succeeded at trial that he decided to pursue his legal action against the Club. At the hearing, the Player's representative also explained that according to Russian legal literature, his claim was not barred by the *res judicata* doctrine. Nevertheless, he accepted that it could be the case under Swiss and other continental legislations.

70. The Player's claim related to the payment of the Moving Expenses can certainly not be interpreted as a request for revision of the decision rendered by the DRC / PSC in 2013. The Player did not try to argue to the contrary.

71. Considering that the employment-related issues between the Player and the Club have already been validly dealt with by another judicial authority, it is very doubtful, in the Sole Arbitrator's view, that the Player's claim related to the payment of his Moving Expenses can be heard unless it does not arise from the employment relationship with the club. It would otherwise be barred by the *res judicata* effect of the decision already issued in 2013.

72. In other words, assuming that the claim for the payment of the Moving Expenses is not an employment related dispute and/or is not a form of salary (which is arguable), there is no need to take into consideration the Labour Code of Russian Federation to assess the present matter. Likewise, there is no reason to take into account Article 8.4 of the Employment Contract, which is exclusively linked to the *"discharge of the contract"*, which is governed by Russian labour law (see Article 8 of the Employment Contract in general and Article 8.1 in particular). Hence, Article 8.4 of the Employment Contract is purely employment-related and, for the reasons exposed here-above, the Player cannot derive any rights from this provision.

73. In any event, even if the *res judicata* effect of the 2013 decision was to be ignored, the Labour Code of Russian Federation and Article 8.4 of the Employment Contract are of no avail. The claim for the payment of the Moving Expenses is based on Article 9.6 of the Employment Contract, which sets a deadline for performance of each instalment. From the moment the contractually agreed deadline elapsed, the debt became due. A notice is not necessary (see Article 102 para. 2 of the Swiss Code of Obligations - "CO"; THÉVENOZ L.; in THÉVENOZ/WERRO (eds.), Commentaire romand, Code des obligations I, 2ème edition, 2012, ad art. 102 CO, N. 26). Hence and as regards to the last instalment of the Moving Expenses, the liability of the Club arose on 15 December 2012 and, from that moment on, the Player was entitled to its payment.

74. Pursuant to the clear wording of Article 37 of the RFU Regulations for Dispute Resolution / Article 25 para. 5 of the RSTP, the statute of limitation requires the creditor to bring suit within two years and runs from the day his claim fell due and not when a formal notice is given, when the contract is terminated or when a dispute actually arises (as argued by the Player). The triggering moment is the maturity of the debt, which is *"the event giving rise to the dispute"*. At that moment only, can the Player file a claim. As a matter of fact:

- before the 15 December 2012, there cannot be any dispute as the Player has no right to request from the Club the payment of the last instalment of the Moving Expenses and is not in a position to bring his claim before the competent judicial body;
- after 15 December 2015, should the Club fail to perform its contractual obligation, there can be a dispute and the Player can bring action against his debtor. He has two years to do so. He does not need to terminate the Employment Contract to seek the payment of the instalment of the moving Expenses, which fell due.

75. The above considerations are consistent with the example provided in the FIFA commentary on the RSTP (edition 2005).

76. It results from the above considerations that the Player's claim for the payment of the last instalment of the Moving Expenses is time-barred if not already barred by the *res judicata* effect of the decision issued in 2013. For obvious reasons, there is no need to address here the question whether the two-year statute of limitation runs from the maturity of each instalment or of the last instalment.

77. Based on the foregoing, the Sole Arbitrator finds that the Appealed Decision must be upheld.

X. MERITS

78. Bearing in mind the fact that the Appealed Decision must be up held, the only remaining issue to be resolved by the Sole Arbitrator is whether the Player is entitled to be awarded an *"amount of EUR 1,423 (…) for violation of corresponding articles of the Regulations of RFU on Dispute Resolution regarding duly and timely issue of the appealed decision which caused economical and moral damages to the Player as a compensation towards his damages"*.

79. In light of his submissions, it appears that the Player is actually claiming compensation for moral damages, which he suffered as a result of RFU's poor management of his request for the grounds of the Appealed Decision.

80. Pursuant to Article 49 of the Swiss Code of obligations (CO), *"Any person whose personality rights are unlawfully infringed is entitled to a sum of money by way of satisfaction provided this is justified by the seriousness of the infringement and no other amends have been made"*.

81. In order to obtain compensation, the following requirements must be met (Decision of the Swiss Federal Tribunal, 5A_170/2013, 3 October 2013, consid. 6.2.1; ATF 131 III 26, consid. 12.1):

- the violation of the victim's personality rights, such as physical, mental or psychological integrity, reputation, esteem in society, respect of privacy;
- an unlawful act, *i.e.* a behaviour that is not authorized by law or by the consent of the victim;

- a moral damage, *i.e.* a physical or emotional pain, which must be severe and which goes beyond what can be considered as bearable for a normal person in a similar situation;
- a causal link between the unlawful act and the damage;
- the damage has not been remedied otherwise.

82. It must be noted that, as a general rule, the awarding of moral damages is usually an exception rather than the rule and Swiss courts have usually adopted a modest and restrictive approach when it comes to awarding moral damages (CAS 2013/A/3260, para. 127).

83. Article 42 para. 1 CO states that *"A person claiming damages must prove that loss or damage occurred"*.

84. In the present case, the Sole Arbitrator agrees with the Player when he claims that RFU failed to perform its duties with due expedition. However, this is not enough to be awarded moral damages. The Sole Arbitrator observes that the Player limited himself to claim an amount of EUR 1,423.00 without explaining the particulars and/or criteria he has used to reach this amount. He has also not substantiated in any manner what unlawful act was committed by RFU and has failed to establish a nexus or causal relationship between RFU's conduct and the alleged moral damages, in particular he has not proven that RFU's administrative failure was so serious that it led to a violation of his personality rights. Under these circumstances, the Sole Arbitrator comes to the conclusion that the Player has failed to discharge his burden of proof and, therefore, is not entitled to the payment of any compensation for moral damages.

85. The above findings make it unnecessary for the Sole Arbitrator to consider the other requests submitted by the Parties. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr Mersudin Akhmetovic against FC Volga Nizhniy and the Russian Football Union with respect to the decision issued on 27 August 2015 by the Players' Status Committee of the RFU is dismissed.

2. The decision issued on 27 August 2015 by the Players' Status Committee of the RFU is upheld.

3. (…).

4. (…).

5. All other claims are dismissed.