Arbitration CAS 2017/A/5339 Club Sportiv "Gaz Metan" Medias v. Eric de Oliveira Pereira, FC Karpaty Lviv & Clube Atletico Metropolitano, award of 24 April 2018

Panel: Prof. Petros Mavroidis (Greece), President; Mr Fabio Iudica (Italy); Mr Mark Hovell (United Kingdom)

Football
Transfer and loan agreements
Specificity of requests for relief and principle of res judicata
Extent of authority of foreign judgments
Contract interpretation and good faith
Prohibition of entering into two conflicting contracts

1. **Requests for relief must be specified with enough precision in order for the Respondent(s) to be in a position to accurately reply to all parts of the claim. They must be worded in a way that the appellate authority may, where appropriate, incorporate them to the operative part of its own decision without modification. As a general rule, when a payment is sought, the request should be expressly quantified. In case the requests for relief are not sufficiently specified it may be impossible for the adjudicatory body to assess whether the respective claim adjudicated in the appealed decision and the claim raised before it are the same, in which case the respective requests would be barred by the principle of *res judicata*.**

2. **In Switzerland, a recognized foreign judgment only has the authority it would have if issued by a Swiss court. Thus, a declaratory foreign judgment which could be opposed to third parties according to the law of a state of origin, will only enjoy such authority in Switzerland with regard to the parties to the proceedings.**

3. **In order to establish whether a contract has been entered into, who the parties to the contract are and what the exact scope of the contractual relationship is, the parties' declarations of intent must be interpreted. To that end, at first, the true and mutually agreed upon intention of the parties, if necessary empirically, has to be discovered, on the basis of circumstantial evidence. To be taken into account are the content of the statements made – whether in writing or orally - and also the general context; *i.e.* all the circumstances which could give an indication as to the real intention of the parties. Also relevant are the statements made prior to the conclusion of the contract as well as the subsequent events and conduct of the parties. The adjudicatory body must assess the situation according to its general experience of life. In case the mutually agreed real intention of the parties cannot be established, the contract must be interpreted according to the requirements of good faith. The adjudicatory body has to seek to determine how a declaration or an external manifestation by a party could have been reasonably understood depending on the individual circumstances of the case. The**

requirements of good faith tend to give the preference to a more objective approach and the emphasis is not so much on what a party may have meant, but on how a reasonable individual would have understood its declaration. The relevant circumstances in this respect are only those which preceded or accompanied the declaration of intent and not the subsequent events.

4. The signature of two conflicting contracts constitutes an action which cannot be allowed; accordingly, a player who signs a second contract in order to "insure" himself against the possible breach of the first contract by the club is himself in breach of one of the two contracts.

I. THE PARTIES

1. Club Sportiv "Gaz Metan" Medias ("Gaz Metan") is a football club with its registered office in Medias, Romania. It is a member of the Romanian Football Federation (Federaţia Română de Fotbal – the "FRF"), itself affiliated with the Fédération Internationale de Football Association ("FIFA") since 1923.

2. Mr Eric De Oliveira Pereira (the "Player") is a professional football player of Brazilian nationality.

3. FC Karpaty Lviv ("FC Karpaty") is a football club with its registered office in Lviv, Ukraine. It is a member of the Football Federation of Ukraine (the "FFU"), itself affiliated with FIFA since 1992.

4. Clube Atletico Metropolitano ("Metropolitano") is a football club with its registered office in Blumenau, Brazil. It is a member of the Brazilian Football Federation (Confederação Brasileira de Futebol – the "CBF"), itself affiliated with FIFA since 1923.

II. FACTUAL BACKGROUND

A. Background facts

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions, pleadings, and evidence adduced. References to additional facts and allegations found in the Parties' written submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While 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 that it deems are necessary to explain its reasoning.

B. The various contracts signed between June 2007 and August 2010

6. On 4 July 2007, Metropolitano and the Player entered into an employment relationship, valid as from the date of signature until 10 May 2010.

7. On 28 June 2007, Metropolitano, Gaz Metan and the Player signed an agreement, whereby the latter was transferred to Gaz Metan on a loan basis as from 9 July 2007 until 30 June 2008 (the "First Loan Agreement").

8. Articles 3 and 4 of the First Loan Agreement provide, so far as material, as follows:

"3. Rights and obligations

[Gaz Metan] does have a guaranteed right to take an option on the [Player] for more 3 years. In case of drawing the option, [Gaz Metan] has to pay US$ 50.000 as 15 June, 2008 to [Metropolitano].

Maturity date to take the option is as of 01 June, 2008.

Taking the option means that [Gaz Metan] will have 65% of the transfer rights of the [Player] and [Metropolitano] will have 35% of the transfer rights of the [Player].

[…].

4. Litigation

In case one of the parties doesn't comply with the provisions of the above mentioned transfer agreement, the solution shall be found at FIFA Zurich - Swiss in accordance with the regulations and statute of FIFA.

Conditions to transfer the player to another club: both clubs have agreed to transfer the player for €350,000".

9. On 29 June 2007, Gaz Metan and the Player signed an employment contract, valid as from 1 July 2007 until 30 June 2011.

10. On 10 June 2008, Gaz Metan transferred USD 50,000 to Metropolitano.

11. On 1 July 2008, Metropolitano, Gaz Metan and the Player signed the following contract (the "Second Loan Agreement"):

"Transfer Agreement Between [Metropolitano] and [Gaz Metan]

(…)

[Metropolitano] will loan the [Player] to [Gaz Metan]. The period of loan will start on 22 July, 2008 and will end on 21 July, 2011. [Gaz Metan] will pay US$ 50.000 (loan fee) as of 15 June, 2008".

12. On 21 July 2008, Metropolitano and the Player entered into a new employment relationship, valid from the date of signature until 31 August 2012.

13. On 10 August 2010, Gaz Metan informed Metropolitano that it *"wishes to enforce the provision of Article 4 of the Contract Transfer signed between [Metropolitano] and [Gaz Metan] regarding the definitive*

transfer of the Player (…). Would you be so kind to send us your bank details to transfer in your account 35% of EUR 350,000.00, the sum due to your Club".

14. On 11 August 2010, Gaz Metan and the Player signed a new employment contract, valid as from 1 July 2010 until 30 June 2015 (the "Second Employment Contract with Gaz Metan").

15. On 26 November 2010, Gaz Metan informed Metropolitano that it was exercising the option clause contained in Article 3 of the First Loan Agreement to make the Player's transfer definitive and confirmed that it gave the instructions to its bank for the transfer of EUR 125,500 *"representing 35% from transfer rights for [the Player] as was establish by article 4 of the agreement"*.

16. By facsimile sent the same day, Metropolitano answered to Gaz Metan that the latter had no right to make the transfer of the Player definitive or to obtain an extension of the loan period. It insisted on the fact that *"[if] he will not be sold up to the date of end of contract with Gaz Metan, [the Player] will come back to [Metropolitano] since that he is under contract with [Metropolitano] up to August 2012".*

17. Gaz Metan did not respond to the facsimile of Metropolitano.

18. On 29 November 2010, Metropolitano received from Gaz Metan the amount of EUR 122,500. According to the bank transfer details, the payment was made for the permanent transfer of the Player.

19. On 2 December 2010, Metropolitano sent the money back to Gaz Metan, which remained silent about this development as well.

C. The various contracts signed in 2011

20. On 1 January 2011, the contractual situation was the following:

- Metropolitano and the Player were bound by an employment contract to expire on 31 August 2012. Metropolitano thus, possessed the federative rights of the Player until that date.

- Metropolitano, Gaz Metan and the Player were bound by a loan agreement to expire on 21 July 2011. Thus, Metropolitano agreed to loan the Player out until that date, the Player being in principle liable to return to Metropolitano by 21 July 2011.

- Gaz Metan and the Player were bound by an employment contract to expire on 30 June 2015. This was the result of the signing of an employment contract that Gaz Metan signed with the Player.

21. On 10 January 2011, FC Karpaty informed Metropolitano of its interest to acquire the Player's services for an amount of EUR 350,000.

22. On 11 January 2011, Gaz Metan reminded Metropolitano that it had paid EUR 122,500 for the permanent transfer of the Player and that *"any discussions (…) in respect of a possible transfer to [FC Karpaty] are void and not opposable to [Gaz Metan]"*. It made clear that it disagreed with such a transfer and insisted on the fact that *"discussions and correspondence between [Metropolitano] and [FC Karpaty] represent a sever breach of FIFA's regulations, art. 17.5 from Regulations on the Status and Transfer of Players being applicable in this matter"*.

23. On 14 January 2011, FC Karpaty confirmed to Metropolitano its interest in the Player's services. However, out of fear of the legal consequences deriving from Article 17 of the applicable FIFA Regulations for the Status and Transfer of Players ("RSTP"), it decided to withdraw its offer of 10 January 2011 until *"settlement of mutual relationships between [Metropolitano] and [Gaz Metan] with respect to [the Player] and subsequent bilateral relations between [Gaz Metan] and [the Player](…)"*.

24. On 26 July 2011, Mr Jürgen Bühler, the Player's agent, on his own initiative informed FC Karpaty that the Player was about to return to Brazil as the loan agreement between Metropolitano and Gaz Metan had come to an end. Mr Bühler also asked FC Karpaty if it was still interested in hiring the Player.

25. By means of a contract signed on 13 August 2011, Metropolitano agreed to transfer the Player to FC Karpaty on a permanent basis for the sum of EUR 750,000.

26. On the same day, FC Karpaty and the Player signed an employment contract, effective as of 13 August 2011 until 30 June 2015.

27. On 30 August 2011, the CBF filed an application for the issuance of the electronic International Transfer Certificate ("ITC"), which was rejected by the FRF, which claimed that the Player was still under contract with Gaz Metan. Eventually, on 27 September 2011, the Single Judge of the FIFA Players' Status Committee issued a decision whereby the CBF was authorised to provisionally register the Player with Metropolitano with immediate effect.

D. The proceedings before the National Dispute Resolution Chamber of the FRF

28. On 7 September 2011, the Executive Board of Gaz Metan sanctioned the Player with a penalty in the amount of 25% of his contractual rights of the 2011/2012 season due to his absence from the scheduled trainings.

29. Gaz Metan initiated two proceedings before the National Dispute Resolution Chamber of the FRF (the "NDRC").

30. In a first decision issued on 7 September 2011, the NDRC ratified the sanctions imposed upon the Player by the Executive Board of Gaz Metan.

31. On 20 October and 15 November 2011, Gaz Metan initiated another procedure with NDRC seeking a declaratory decision that the Player had unilaterally terminated the Second

Employment Contract with Gaz Metan. Only the Player was named as defendant to this proceeding.

32. On 22 November 2011, the NDRC decided the following (as translated from Romanian into English by Gaz Metan):

> *"[The NDRC] approves the petition by [Gaz Metan] and considers terminated, on the date of 22.07.2011, the contractual relations between it and the [Player], pursuant to unilateral termination without just cause by the [Player] of the [Second Employment Contract with Gaz Metan].*
>
> *It punishes the [Player] with 16-lap suspension, to be performed since the date of irrevocability of sentenæ and the moment of existence of a playing right at another club".*

33. It is undisputed that the Player did not file an appeal against the decisions issued by the NDRC.

E. The employment contract signed between the Player and Gaz Metan on 20 July 2012

34. On 18 June 2012, the Player terminated the employment contract with FC Karpaty unilaterally because of the non-payment of some of his wages and of training-related infringements. The matter was brought before the FIFA Dispute Resolution Chamber, which partially accepted the Player's claim against FC Karpaty. The latter was found guilty of breaching the employment contract and was ordered to pay to the Player outstanding salaries as well as financial compensation.

35. On 20 July 2012, Gaz Metan and the Player signed a new employment contract, valid as from the date of signature until 30 June 2015 (the "Third Employment Contract with Gaz Metan"). According to:

- Article 8.1 of this agreement, *"The present contract represents the entire and final agreement between the parties and supersedes all other previous or present, oral or written declarations, communications, understandings and agreements between the parties regarding the object of this contract, to the extent such declarations, communications, understandings and agreement are in breach of or not congruent with the present contract".*

- Article 11.1 of this agreement, *"The present contract together with the Club's Internal Regulations represent the will of the parties and supersedes any previous oral or written agreement between the parties".*

36. Gaz Metan and the Player also signed an "addendum" to this contract, which read as follows, where pertinent:

> *"1. The [Player] acknowledges to having unilaterally and without just cause terminated the [the Second Employment Contract with Gaz Metan], which had been concluded for the period 20.07.2010 - 30.06.2015.*

2. The [Player] assents that the amount to be established by the PFL's Chamber for Dispute Resolution in File n°98CSL2012, as payment obligation towards [Gaz Metan], is to be withhold by the club from the financial rights due to him on the basis of the [Third Employment Contract with Gaz Metan] of 20.07.2012.

3. The party who terminates the contract unilaterally and without just cause shall pay to the other party as compensation the amount of one million five hundred thousand EUR (…). The present clause is not a rescission clause but rather a contractual evaluation of the compensation due by the party at fault for the termination of the contractual relationship.

4. The party who terminates the contract unilaterally and without just cause shall also be sanctioned by the competent sports court with the suspension / prohibition of transfers, as the case may be.

The parties have intended to include the above clause in a separate document, namely the present addendum to the contract, as these constitute the most important understandings (mutual concessions) regarding their mutual legal relationships".

F. The Proceedings before the FIFA Dispute Resolution Chamber

37. On 21 March 2013, Gaz Metan lodged a claim before the FIFA Dispute Resolution Chamber (the "DRC") against the Player, FC Karpaty and Metropolitano, requesting the following:

"(…)

I. To acknowledge that [Metropolitano and FC Karpaty] induced the unilateral termination without just cause by the [Player] of the contract the latter had concluded with [Gaz Metan];

II. To sanction [Metropolitano and FC Karpaty] with a ban on the transfer of players for the next two transfer periods;

III. To compel the Respondents, jointly and severally, to pay to [Gaz Metan] damages amounting to 700.000 EURO net, representing the transfer allowance that [Gaz Metan] could have obtained from the sale of the [Player].

If the transfer of the [Player] from [Metropolitano] to [FC Karpaty] was made for an amount exceeding 700.000 EURO, then compel the Respondents, jointly and severally, to the payment of damages equal to the amount of the transfer allowance.

To compel the Respondents, jointly and severally, to the payment of interests of 5%/year, calculated for the amount set by the DRC, starting with 22 July 2011 until the date of the effective payment.

Subsidiary, if the request from point III is not fully upheld:

IV. To compel [Metropolitano] to pay to [Gaz Metan] 455.000 EURO net, representing 65% of the transfer allowance that [Gaz Metan] could have obtained from the sale of the [Player];

If the transfer of the [Player] from [Metropolitano] to [FC Karpaty] was made for an amount exceeding 700.000 EURO, then compel [Metropolitano] to the payment of an amount equal to 65% of the value of the transfer allowance.

To compel [Metropolitano] to the payment of an interest of 5%/year, calculated for the amount set by the DRC starting with 22 July 2011 until the date of the effective payment.

Subsidiary, only if the prayers for relief from III and IV are not fully upheld:

V. If the (temporary or permanent) transfer of the [Player] to [FC Karpaty] was carried out for an allowance smaller than 350.000 EURO, to compel [Metropolitano] to pay to [Gaz Metan] 227.500 EURO, representing 65% of the quota due to our club for obtaining said allowance;

To compel [Metropolitano] to the payment of an interest of 5%/year, calculated against the amount set by the DRC starting with 22 July 2011 until the date of effective payment".

38. In a decision dated 8 September 2016, the DRC held that Gaz Metan had decided to lodge a claim before the NDRC, which declared that the Player had terminated the Second Employment Contract with Gaz Metan unilaterally and without just cause on 22 July 2011. Under these circumstances, the DRC found that a competent decision-making body had already ruled upon the matter at stake, and the decision had therefore acquired *Res Judicata* status in respect of the issues submitted before it.

39. The DRC observed that the NDRC did not establish any financial compensation for the Player's breach of the contract, and that it criticized Gaz Metan for trying to pursue the alternative path of lodging a claim before FIFA to seek the payment of the alleged economic damage, which NDRC had failed to award. The DRC found that the claim filed by Gaz Metan was in breach of the forum-shopping prohibition, as the complainant was trying to have its case heard again by another decision-making body with the aim to get a more favourable judgement.

40. As a result, on 8 September 2016, the DRC decided that the claim of Gaz Metan was inadmissible. Its decision was notified to the Parties on 4 September 2017 (the "Appealed Decision") but was received by Gaz Metan on 7 September 2017.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

41. On 27 September 2017, Gaz Metan lodged with the Court of Arbitration for Sport (the "CAS") its statement of appeal against the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (edition 2017) (the "Code").

42. On 3 October 2017, the CAS Court Office acknowledged receipt of the statement of appeal filed by Gaz Metan as well as of its payment of the CAS Court Office fee. It invited the Respondents to comment within five days on the Appellant's request to submit the present matter to a Sole Arbitrator. It advised Gaz Metan that it had to file its appeal brief or declare that its statement of appeal was to be considered as the appeal brief within ten days.

43. On 4 October 2017, Gaz Metan applied for a 5-day extension of its deadline to file its appeal brief, which was eventually granted.

44. On 6, 9 and 30 October 2017 respectively, the Respondents requested the time limit to file their answers be fixed after the payment by Gaz Metan of its share of the advance of costs. The Player and FC Karpaty also informed the CAS Court Office that they did not intend to pay their share of the advance of costs. On 6, 17 and 30 October 2017, the CAS Court Office confirmed that the Respondents' deadline to submit their answers was set aside and that a new time limit would be fixed upon the payment by Gaz Metan of its share of the advance of costs.

45. On 9 October 2017, FIFA filed a request to intervene as a party in the present arbitration proceedings. Whereas Gaz Metan objected to the intervention of FIFA in the present procedure, the Player as well as FC Karpaty accepted FIFA's participation. Metropolitano failed to take position on the matter within the granted deadline. Eventually, on 2 February 2018, FIFA's petition was dismissed by the Panel, which considered that it did not have a legal interest to participate in the present proceeding in light of its decision of inadmissibility of the claim filed before it. *"In this regard, the reasons supporting FIFA's request for intervention, namely that the competence of FIFA's deciding bodies are at stake, do not constitute a sufficient legal interest. The Panel further noted that the Appellant's prayers for relief are not directed against FIFA"*.

46. On 13 October 2017, Gaz Metan filed its appeal brief.

47. On 18 October 2017, the CAS Court Office noted that the Respondents had not filed their position on the nomination of a sole arbitrator within the prescribed deadline and informed the Parties that the President of the CAS Appeals Arbitration Division or her Deputy would decide on the issue.

48. On 24 October 2017, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit the present procedure to a Panel composed of three arbitrators.

49. On 1 November 2017, and within the prescribed deadline, Gaz Metan informed the CAS Court Office that it was appointing Mr Fabio Iudica as arbitrator.

50. Between 3 and 13 November 2017, the Respondents confirmed to the CAS Court Office that they agreed to jointly nominate Mr Mark Andrew Hovell as arbitrator.

51. On 22 November 2017, the CAS Court Office informed the Parties that Gaz Metan had paid the advance of costs in the present matter and invited the Respondents to file their answers within twenty days.

52. On 28 November 2017, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Prof. Petros C. Mavroidis, President of the Panel, Mr Fabio Iudica and Mr Mark Andrew Hovell, arbitrators.

53. Between 12 and 13 December 2017, each of the Respondents requested an extension of the deadline to file their respective answers. The CAS Court Office invited the Parties to take position on these petitions. Whereas the Respondents did not object to the respective requests for a time extension to file the answers, Gaz Metan did not submit any reply on the matter. Accordingly and on behalf of the Panel, the CAS Court Office informed the Parties that the deadline for the Respondents to file their answers had been extended until 8 January 2018.

54. On 8 January 2018, FC Karpaty requested for an extension until 11 January 2018 of the time limit to file its answer, which was eventually granted as there was no objection from the other Parties.

55. On 15 January 2018, the CAS Court Office acknowledged receipt of the answers filed on 8 January 2018 by the Player and Metropolitano as well as of the answer filed on 11 January 2018 by FC Karpaty.

56. Between 15 and 22 January 2018, all the Parties confirmed to the CAS Court Office their preference for a hearing to be held in the present proceedings.

57. On 24 January 2018, the Parties were informed that the Panel had decided to hold a hearing, which was scheduled for 14 March 2018, with the agreement of everyone involved.

58. On 13 February 2018, the CAS Court Office sent to the Parties the Order of Procedure, which was returned duly signed on 19 February 2018.

59. The hearing was held on 14 March 2018 at the CAS premises in Lausanne. The Panel members were present and assisted by Mrs Delphine Deschenaux-Rochat, Counsel to the CAS, and Mr Patrick Grandjean, acting as *ad hoc* Clerk.

60. The following persons attended the hearing:

- Gaz Metan was represented by its legal counsels, Mrs Anca Alina Iordanescu and Mrs Gloria Daniela Pop, assisted by Mr Valentin Iordanescu, a consultant.

- The Player was represented by his legal counsel, Mr Josep Vandellos.

- FC Karpaty was represented by its technical director, Mr Taras Hordyenko, assisted by its legal counsel, Mr Jorge Ibarrola.

- Metropolitano was represented by its legal counsels, Mr Breno Costa Ramos Tannuri and Mr André Oliveira de Meira Ribeiro.

61. At the outset of the hearing, the Parties confirmed that they did not have any objection as to the composition of the Panel.

62. The Panel heard the following witnesses, who were examined and cross-examined by the Parties, as well as questioned by the members of the Panel:

- Mr Mario Flores Chemor;
- Mr Alexandre Kuniy;
- Mr Ihor Dedyshyn.

63. Mr Ihor Dedyshyn was heard via telephone with the agreement of the President of the Panel, in compliance with Article R44.2 para. 4 of the Code.

64. Each witness was invited by the President of the Panel to tell the truth subject to the sanctions of perjury.

65. At the end of the hearing, the Parties confirmed that their right to be heard and to be treated equally in the present proceedings had been fully respected. After the Parties' final arguments, the President of the Panel closed the hearing and announced that the award would be rendered in due course.

IV. THE SUBMISSIONS OF THE PARTIES

A. The Appeal

66. In its Appeal Brief, Gaz Metan submitted the following requests for relief:

"In view of the above [Gaz Metan] respectfully asks the Panel to:

1. *Replace the Decision from 8 September 2016 and state that the claim of [Gaz Metan] is founded and therefore admissible.*
2. *Accept all the prayers for relief formulated by [Gaz Metan] against [the Player], [FC Karpaty] and [Metropolitano].*

Subsidiarily, only if the above-mentioned prayers for relief are rejected:

3. *State that Dispute Resolution Chamber of FIFA had jurisdiction and was competent to settle the case between [Gaz Metan] / [the Player] / [FC Karpaty] / [Metropolitano], having the reference no. 13-01107/ago;*
4. *Annul the Decision from 8 September 2016 issued by Dispute Resolution Chamber of FIFA in the above mentioned case and refer the case to the FIFA DRC for the legal proceedings to be restarted based upon the correct applicable law and procedure rules.*
5. *Order the Respondents to jointly and severally bear all the costs incurred in the present procedure (administrative fee of CAS, costs of the arbitrators, expeditions, document translations and others)".*

67. The submissions of Gaz Metan, in essence, may be summarized as follows:

- The Player terminated the Second Employment Contract with Gaz Metan signed on 11 August 2010 without just cause.

- FC Karpaty and Metropolitano induced the Player to unilaterally terminate his employment relationship with Gaz Metan without just cause.

- The present dispute falls under Article 17 of the applicable RSTP, which governs the consequences resulting from the premature termination of an employment contract without just cause.

- According to the national regulations, the termination of an employment contract without just cause must be dealt with in a two-stage process:

  - The disciplinary stage: This aspect of the dispute is purely of disciplinary nature and must be dealt with at national level. It requires a claim to be brought before the national competent decision-making body; *i.e.* the NDRC, for the sanctions to be *"enforced within the territory of Romania"*. In the case at hand, and in a first decision issued on 7 September 2011, the NDRC ratified the sanctions imposed upon the Player by the Executive Board of Gaz Metan due to his absence from the scheduled trainings. In a second decision issued on 22 November 2011, the NDRC *"punishes the [Player] with 16-lap suspension"* as a consequence of the termination of the employment relationship with Gaz Metan without just cause. *"In this case, the applicable provisions were the ones stipulated by articles 11 and 12 of the Convention corroborated with the ones provided by articles 183 par. 1, 3, 8 and 9.14 of the Romanian Regulations on the Status and the Transfer of Players applicable in 2011 (…)"*.

  - The financial compensation stage: This second leg of the dispute must be brought before FIFA as it has an international dimension. It is the only way for Gaz Metan to obtain compensation against foreign clubs, *i.e.* FC Karpaty and Metropolitano. The *Res Judicata* effect of the disciplinary stage does not extend to this stage, as it is a different claim, directed at different defendants. The disciplinary sanction is aimed exclusively at the Player, whereas the compensation claim is aimed at the Player and at the other clubs as well.

- As a consequence, the DRC should have heard the complaint, and was wrong when it found that the claim of Gaz Metan was inadmissible and in violation of forum-shopping.

- The Appealed Decision does not explain how the claim lodged before the DRC meets the three prerequisites of identity required by the principle of *Res Judicata, "namely the parties, the petitum and the causa petendi"*. In the present case, none of these three conditions were met.

- Regarding the Player, Gaz Metan followed conscientiously the requirements of Article 13 of the Applicable RSTP and FIFA's recommendations contained in the FIFA Commentary on the RSTP. *"In our case, [Gaz Metan] followed exactly the recommendations of FIFA, respectively the Club fined the Player, it requested for the sanction to be confirmed by the relevant authority (the NDRC) and only after, asked for the confirmation of the termination as it was already*

made by the player. Therefore it is obvious that [the Player] violated the principle of contractual stability contained in article 13 of the FIFA Regulations by prematurely terminating the employment relationship with [Gaz Metan] without just cause".

- *"The amount of compensation should be calculated by the DRC according to the conditions provided for under article 17(1) of the FIFA RSTP".*

- Regarding Metropolitano, it *"bears a double liability. On one hand is the liability provided by article 17, as previously showed, and on the other hand is the contractual liability"*:

  - It induced the Player to prematurely terminate the Second Employment Contract with Gaz Metan and is therefore jointly and severally liable for the payment of the compensation resulting from Article 17 RSTP.

  - *"According to the Contract concluded between the parties [Gaz Metan] was to receive (at least, if we don't consider the permanent transfer as being effective) 65% of the any amounts obtained from the transfer of the Player".*

- Regarding FC Karpaty, it must be regarded as the "new club" as provided under Article 17 para. 2 RSTP, which is therefore applicable to it. FC Karpaty is therefore jointly and severally liable for the payment of the compensation resulting from Article 17 RSTP.

- Gaz Metan has always acted in good faith.

B. The Answers

1. The Player

68. In his answer, the Player submitted the following requests for relief:

"In light of the above facts and legal arguments, the [Player] respectfully requests the Panel to:

Reject in its entirety the Appeal submitted by [Gaz Metan].

To fix a sum, to be paid by [Gaz Metan] to the [Player], in order to pay its defence fees in the amount to be determined at the full discretion of the Panel".

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

- The claim lodged by Gaz Metan before the DRC was barred by *Res Judicata* as it had already been fully dealt with by the NDRC.

- *"[Gaz Metan] never requested during the first instance proceedings at FIFA, to be awarded compensation from the [Player] under article 17 of the FIFA RSTP (…) and is accordingly, barred from doing so at this stage, during the appeals proceedings, being such motion ultra petita".*

- Article 3 of the First Loan Agreement does not give to Gaz Metan the option to make the transfer of the Player definitive. Therefore, the Player was registered with Gaz Metan on a temporary basis only and the loan expired on 21 July 2011. At that moment, the Player had to come back to Metropolitano, as his employment relationship with that club was still running until 31 August 2012. In other words, the Player was no longer in an employment relationship with Gaz Metan when he signed the contract with FC Karpaty.

- Via the employment contract signed on 20 July 2012, Gaz Metan and the Player agreed to settle their former disputes. Hence, the claim lodged by Gaz Metan before the DRC on 21 March 2013 was without object.

2. FC Karpaty

70. In its answer, FC Karpaty submitted the following requests for relief:

"FC Karpaty […] applies for the Court of Arbitration for Sport to rule as follows:

I. The appeal filed by [Gaz Metan] against the decision issued on 8 September 2016 by the FIFA Dispute Resolution Chamber is dismissed.

II. The decision issued on 8 September 2016 by the Dispute Resolution Chamber of FIFA is confirmed.

III. [Gaz Metan] shall bear all the arbitration costs and shall be ordered to reimburse FC Karpaty […] of any advances of costs paid to the CAS, if any.

IV. [Gaz Metan] shall be ordered to pay FC Karpaty […] a contribution towards the legal and other costs incurred by the latter in the framework of these proceedings, in an amount to be determined at the discretion of the Panel".

71. The submissions of FC Karpaty, in essence, may be summarized as follows:

- FC Karpaty and Metropolitano were not parties to the proceedings before the NDRC and, therefore, *"were deliberately deprived of their right to defend their positions with respect to the purported breach of contract alleged by Gaz Metan. Accordingly, they were unable to prove that they had not induced the Player to breach the [employment contract with Gaz Metan]"*. It is not reasonable for Gaz Metan to contend that the decision of the NDRC is binding upon FC Karpaty and Metropolitano, which were not parties to the Romanian proceedings.

- *"Gaz Metan proceeded wrongfully and in bad faith, by splitting its claims, opportunistically choosing different forums, submitting part of the claim to the NDRC and the other part to FIFA, with the purpose of coercing FIFA to acknowledge the most favourable decision taken by the national judicial body. This is precisely what is forbidden under the principles of electa una via non datum recursus ad alteram and of the prohibition of forum shopping".*

- A claim based on Article 17 RSTP cannot be split. The decision-making body hearing the case must decide on all the consequences of the alleged unjustified breach of contract,

whether they are of disciplinary nature or else. The claim lodged by Gaz Metan before the DRC was barred by *Res Judicata* as it has already been fully dealt with by the NDRC.

- If Gaz Metan was to be followed and if the proceedings before the NDRC were exclusively of disciplinary nature, then the decision issued by this instance would be of no avail with respect to the "non-disciplinary" consequences of the alleged unjustified termination of the employment relationship. Under such circumstances, Gaz Metan should have alleged and proven before the DRC the breach of contract by the Player, which it failed to do.
- In the present procedure before the CAS, Gaz Metan has not established in any manner that the requirements of Article 17 RSTP have been met.
- The Player has never been transferred on a definitive basis to Gaz Metan. Articles 3 and 4 of the First Loan Agreement did not grant a purchase option to Gaz Metan.
- The Player had a just cause to terminate the employment relationship with Gaz Metan. In spite of the fact that the Second Loan Agreement was to expire on 21 July 2011, the Player and Gaz Metan signed a second employment contract valid until 30 June 2015, *i.e.* beyond the validity of the Second Loan Agreement. Gaz Metan *"put the Player before the cornelian choice, where he was:*
    - *either to abide with the [employment contract with Metropolitano] and the Loan Agreement, thus breaching the [Employment contract signed with Gaz Metan on 11 August 2010];*
    - *or to comply with the First Gaz Metan Contract, thus breaching the Metropolitano contract as well as the Loan Agreement".*
- Hence, the Player had just cause to terminate the Second Employment Contract with Gaz Metan in order to comply with his duties under his employment contract with Metropolitano.
- Pursuant to Article 18 para. 5 RSTP, a professional football player is not allowed to sign two employment contracts covering the same period. On the basis of this provision and of the FIFA Commentary, the Second Employment Contract with Gaz Metan was invalid and unenforceable beyond the duration of the Loan Agreement.
- Even if the termination of the Second Employment Contract with Gaz Metan was without just cause, the Player and Gaz Metan settled all of their disputes amicably via the contract signed on 20 July 2012.
- FC Karpaty is not the "new club" as provided by Article 17 RSTP.
- FC Karpaty has not been involved and/or not induced the termination of the Second Employment Contract with Gaz Metan.

3. Metropolitano

72. In its answer, Metropolitano submitted the following requests for relief:

"In view of the above, [Metropolitano] herein submits to the attention of the CAS the following request for relief:

FIRST - To set aside in full the appeal lodged by [Gaz Metan] before the CAS;

SECOND - To confirm in full the Appealed Decision; and

THIRD - To order [Gaz Metan] to pay to [Metropolitano] any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel".

73. The submissions of Metropolitano, in essence, may be summarized as follows:

- The claim lodged by Gaz Metan before the DRC was barred by *Res Judicata* as it had already been fully dealt with by the NDRC.
- The claim brought by Gaz Metan before the FIFA is in violation of the prohibition of forum-shopping. *"FIFA legislator acknowledges the possibility for a party to opt for national decision-making body adjudication, but establishes the principle that once such option is exercised, the possibility to submit the same matter to the FIFA DRC is precluded".*
- In the present matter, the main issue to be resolved is whether the DRC had the competence to hear the claim filed before it. Under these circumstances, the only party that has standing to be sued is FIFA and not the Player, FC Karpaty or Metropolitano. As a consequence, and bearing in mind that FIFA is not a party in these arbitral proceedings, the appeal must be dismissed.
- The NDRC does not have the authority to apply Article 17 RSTP. *"In fact, when a dispute is under jurisdiction of decision-making bodies organised by a national football-association, "the rules and regulations of the association concerned must be applied to the matter and such deciding bodies in accordance with the relevant provisions are to rule on the issue"*. As a consequence, Gaz Metan should have established before the DRC that the requirements of Article 17 RSTP were met, which it failed to do.
- Gaz Metan is trying to use the DRC as a sort of appeal body, in order to fill the gaps and compensate for the deficiencies identified in the decision of the NDRC, which failed to rule on the financial compensation that it claims to be entitled to. *"Such understanding, obviously, has no legal basis".*
- The present matter consists of a financial dispute between clubs belonging to different football associations. Hence, Gaz Metan should have brought its claim before the FIFA Players' Status Committee and not the DRC, which is not competent to hear the case.
- Gaz Metan has not exercised the option contained in Article 3 of the First Loan Agreement. In addition, on 1 July 2008, Gaz Metan, the Player and Metropolitano signed the Second Loan Agreement, which a) replaced the First Loan Agreement and b) did not contain any option clause. Moreover, the Second Loan Agreement came to an end on 21 July 2011. For all these reasons, Gaz Metan is not entitled to claim any amount from Metropolitano with respect to the transfer fee paid by FC Karpaty in August 2011, *i.e.* after the expiry of the loan.

- Metropolitano has never been informed of the existence of the Second Employment Contract with Gaz Metan, signed on 11 August 2010. Gaz Metan cannot derive any right against Metropolitano from that contract, which was signed by it *"in clear breach of its obligations"*.
- Metropolitano has not induced the Player to terminate his employment relationship with Gaz Metan without just cause. On 21 July 2011, the loan came to an end and the Player had to resume his activities with Metropolitano as he was still under contract with this club.

V. JURISDICTION

74. The jurisdiction of the CAS, which is not disputed, derives from Articles 66 *et seq.* of the applicable FIFA Statutes (July 2012 edition) and Article R47 of the Code. It is further confirmed by the Order of Procedure duly signed by the Parties.

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

76. Under Article R57 of the Code, the Panel has the full power to review the facts and the law.

VI. APPLICABLE LAW

77. 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".*

78. Pursuant to Article 66 para. 2 of the applicable FIFA Statutes, *"[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".*

79. As a result, and in light of the foregoing, subject to the primacy of the applicable FIFA regulations, Swiss Law shall apply complementarily, whenever warranted. The Panel is comforted in its position by the fact that, in their respective submissions, all the Parties adopted the same position and/or referred to Swiss law.

80. The present case was submitted to FIFA on 21 March 2013, *i.e.* after 25 July 2012, 1 December 2012, 1 January 2008, which are the dates when a) the FIFA Statutes, edition 2012, b) the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, edition 2012, and c) the Regulations on the Status and Transfer of Players, edition

2012 came into force. These are the editions of the rules and regulations under which the present case shall be assessed.

VII. ADMISSIBILITY

81. The appeal is admissible as Gaz Metan submitted it within the deadline provided by Article R49 of the Code as well as by Article 67 para. 1 of the applicable FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code.

82. In view of the outcome of the present proceedings, and of the fact that the appeal must be dismissed for the reasons exposed hereafter, the Panel refrained to resolve the question of whether the appeal is barred by *Res Judicata*. As a matter of fact, among the numerous issues raised in this appeal, it appears that the requests for relief of Gaz Metan are particularly unclear. Under these circumstances, it is difficult to assess whether the claim adjudicated in the decision of the NDRC and the claim raised before FIFA or the CAS are the same. For instance, before the NDRC, Gaz Metan sought a declaratory decision that the Player had unilaterally terminated the employment contract signed on 11 August 2010, whereas before FIFA, it based its claim against Metropolitano partly on the option that it allegedly exercised in accordance with Articles 3 and 4 of the First Loan Agreement. In the present proceedings, Gaz Metan is asking *"the Panel to: 1. Replace the Decision from 8 September 2016 and state that the claim of* [Gaz Metan] *is founded and therefore admissible. 2. Accept all the prayers for relief formulated by* [Gaz Metan] *against* [the Player], [FC Karpaty] *and* [Metropolitano]*"*, without specifying which claims it is actually referring to.

VIII. MERITS

83. As exposed just above, the appeal gives rise to multiple complex questions, which Gaz Metan either partially addressed or left completely unanswered:

- <u>What are the reliefs actually sought by Gaz Metan before the CAS?</u>

  Requests for relief must be specified with enough precision in order for the Respondents to reply accurately to all parts of the claim. They must be worded in such a way that the appellate authority may, where appropriate, incorporate them to the operative part of its own decision without modification. As a general rule, when a payment is sought, the request should be expressly quantified (ATF 137 III 617 consid. 4.2 et 4.3 p. 618). In the present case, the main requests for relief contained in the appeal brief of Gaz Metan are so vague that the Panel is exposed to award more or something else than what it sought, in violation of the principle *ne eat index ultra petita partium.*

- <u>What is the legal basis of the compensation sought by Gaz Metan? Article 17 RSTP or Articles 3 and 4 of the First Loan Agreement?</u>

In its brief, Gaz Metan claims that the present dispute falls under Article 17 RSTP. However, during the hearing before the CAS, Gaz Metan mainly - if not exclusively - availed itself of Articles 3 and 4 of the First Loan Agreement in support of its claim.

- How is the compensation sought to be calculated?

Nowhere in the appeal brief is there any indication on how the claimed compensation must be calculated. For the first time, at the hearing before the CAS, Gaz Metan put forward that the damage resulting from the Player's unjustified termination of the Second Employment Contract with Gaz Metan corresponds to the amounts it was allegedly entitled to receive on the basis of Articles 3 and 4 of the First Loan Agreement. Such an assertion was not substantiated in any manner and was not supported by any figures as to the amount of the compensation due.

- Why do the employment contracts signed between the Player and Gaz Metan systematically expire after the end of the loan periods and how is this compatible with Article 18 para. 5 of the RSTP?

The First Loan Agreement was valid as from 9 July 2007 until 30 June 2008. However, the first employment contract signed between Gaz Metan and the Player was valid as from 1 July 2007 until 30 June 2011.

Likewise, the Second Loan Agreement was valid as from on 22 July 2008 until 21 July 2011. The Second Employment Contract with Gaz Metan was valid as from 1 July 2010 until 30 June 2015.

What is the status of the employment relationship with Gaz Metan, once the second loan comes to an end, bearing in mind that, at that moment, the Player was simultaneously bound by a) an employment contract with Metropolitano and b) an employment contract with Gaz Metan?

- How can Gaz Metan rely on the decision of the NDRC to establish that the Player had unilaterally terminated the employment contract without just cause?

In Switzerland, a recognized foreign judgment has only the authority it would have if issued by a Swiss court. Thus, a declaratory foreign judgment (such as the decision of the NDRC), which could be opposed to third parties according to the law of a state of origin, will only enjoy such authority in Switzerland with regard to the parties to the proceedings (ATF 140 III 278 consid.3.1 and references). In other words, Gaz Metan has not explained how the decision of the NDRC and the resulting consequences can be opposed to FC Karpaty and to Metropolitano, which were not parties to the Romanian proceedings. These two clubs have not had the opportunity to exercise their right to be heard before the NDRC, in particular to either prove that the Player had a just cause to terminate the contract with Gaz Metan or that they did not induce the unjustified termination of the said contract.

- Gaz Metan submits that the proceedings before the NDRC were exclusively of disciplinary nature and the decision was taken solely on the basis of the FRF regulations. Under these circumstances how can the decision passed by this disciplinary body have any relevance in a proceeding a) pending before another jurisdiction (namely FIFA), b) which is governed by the RSTP and c) is not of disciplinary nature?

  Gaz Metan did not explain how the findings of its national disciplinary body could bind FIFA as well as FC Karpaty or Metropolitano, which are entities not subject to the NDRC and the Romanian Regulations.

84. The Panel does not find it necessary to address all the above questions and aspects, as the claims of Gaz Metan against FC Karpaty and Metropolitano as well as against the Player are unfounded for the reasons explained hereafter.

i) The claim of Gaz Metan against FC Karpaty and Metropolitano

85. Gaz Metan submits that it exercised the option clause contained in Articles 3 and 4 of the First Loan Agreement and, as a consequence, the Player was transferred to it on a permanent basis following its payment of EUR 122,500. In its view, Metropolitano was not entitled to assign the Player's economic and federative rights to another club.

86. Metropolitano and FC Karpaty contest the definitive transfer of the Player to Gaz Metan.

87. In order to establish whether a contract has been entered into, who the parties to the contract are and what the exact scope of the contractual relationship is, the judge must interpret the parties' declarations of intent. At first, he must seek to discover the true and mutually agreed upon intention of the parties, if necessary empirically, on the basis of circumstantial evidence (Decision of the Swiss Federal Tribunal, 4A_155/2017, 12 October 2017, consid. 2.3; ATF 132 III 268 consid. 2.3.2, 131 III 606 consid. 4.1). To be taken into account are the content of the statements made – whether they are written or oral - and also the general context; *i.e.* all the circumstances, which could give an indication as to the real intention of the parties. Also relevant are the statements made prior to the conclusion of the contract as well as the subsequent events and conduct of the parties (ATF 118 II 365 consid. 1, 112 II 337 consid. 4a). The judge must assess the situation according to his general experience of life (ATF 118 II 365 consid. 1 and references). When the mutually agreed real intention of the parties cannot be established, the contract must be interpreted according to the requirements of good faith (ATF 129 III 664; 128 III 419 consid. 2.2 p. 422). The judge has to seek to determine how a declaration or an external manifestation by a party could have been reasonably understood depending on the individual circumstances of the case (ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422). The requirements of good faith tend to give the preference to a more objective approach. The emphasis is not so much on what a party may have meant but on how a reasonable man would have understood its declaration (ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422). The relevant circumstances in this respect are only those which preceded or accompanied the declaration of intent and not the subsequent events (Decision of the Swiss Federal Tribunal, 4A_155/2017, 12 October 2017, consid. 2.3; and references).

88. The First Loan Agreement was valid as from 9 July 2007 until 30 June 2008. According to its Articles 3 and 4:

> *"3. Rights and obligations*
>
> *[Gaz Metan] does have a guaranteed right to take an option on the [Player] for more 3 years. In case of drawing the option, [Gaz Metan] has to pay US$ 50.000 as 15 June, 2008 to [Metropolitano].*
>
> *Maturity date to take the option is as of 01 June, 2008.*
>
> *Taking the option means that [Gaz Metan] will have 65% of the transfer rights of the [Player] and [Metropolitano] will have 35% of the transfer rights of the [Player].[…].*
>
> *4. Litigation*
>
> *In case one of the parties doesn't comply with the provisions of the above mentioned transfer agreement, the solution shall be found at FIFA Zurich - Swiss in accordance with the regulations and statute of FIFA.*
>
> *Conditions to transfer the player to another club: both clubs have agreed to transfer the player for €350,000".*

89. The first conclusion that can be drawn from the literal interpretation of these provisions is that, should Gaz Metan exercise the option, it will benefit from the Player's services *"for more 3 years"*. There is no indication whatsoever that the option gives to Gaz Metan the possibility to make the Player's transfer permanent.

90. Article 4 of the First Loan Agreement specifies that *"Conditions to transfer the player to another club: both clubs have agreed to transfer the player for €350,000"*. It seems unambiguous that only the transfer to *"another club"* is contemplated in this provision. This provision does not say that Gaz Metan is entitled to acquire the Player's economic and federative rights on a definitive basis against the payment of EUR 122,500.

91. In addition, the position of Gaz Metan is inconsistent with the sequence of events (circumstantial evidence):

- On 28 June 2007, the First Loan Agreement was signed. It was valid from 9 July 2007 until 30 June 2008.
- On 10 June 2008, Gaz Metan transferred USD 50,000 to Metropolitano.
- On 1 July 2008, the Second Loan Agreement was signed. According to this document *"The period of loan will start on 22 July, 2008 and will end on 21 July, 2011. [Gaz Metan] will pay US$ 50.000 (loan fee) as of 15 June, 2008"*.
- Gaz Metan did not transfer another USD 50,000.
- On 10 August 2010, Gaz Metan informed Metropolitano that it *"wishes to enforce the provision of Article 4 of the Contract Transfer signed between [Metropolitano] and [Gaz Metan]*

regarding the definitive transfer of the Player (…). Would you be so kind to send us your bank details to transfer in your account 35% of EUR 350,000.00, the sum due to your Club".

- On 26 November 2010, Gaz Metan informed Metropolitano that it was exercising the option clause contained in Articles 3 and 4 of the First Loan Agreement to make the Player's transfer definitive and confirmed that it gave the instructions to its bank for the transfer of EUR 125,500.

- By facsimile sent the same day, Metropolitano answered to Gaz Metan that the latter had no right to make the transfer of the Player definitive or to obtain an extension of the loan period. It insisted on the fact that *"[if] he will not be sold up to the date of end of contract with Gaz Metan, [the Player] will come back to Metropolitano] since that he is under contrat with [Metropolitano] up to August 2012".*

- Gaz Metan did not respond to the facsimile of Metropolitano.

- On 29 November 2010, Metropolitano received from Gaz Metan the amount of EUR 122,500.

- On 2 December 2010, Metropolitano sent the money back to Gaz Metan, which remained silent about such developments.

92. It is already unclear whether the payment of USD 50,000 by Gaz Metan was to exercise the option clause provided under Article 3 of the First Loan Agreement or was the amount due under the Second Loan Agreement. It is also ambiguous whether the Second Loan Agreement was an extension/amendment of the First Loan Agreement or a new and distinct contract. In this respect, it can be observed that the end of the loan period of the First Contract (30 June 2008) does not coincide with the beginning of the Second Contract (22 July 2008), which seems to imply that the First Contract came to an end on 30 June 2008 and so did the option clause contained therein. Moreover, if the three-year period of the loan was extended by the simple payment of EUR 50,000 made by Gaz Metan on 10 June 2008, then it is hard to understand why the clubs had to sign the Second Loan Agreement entitled *"Transfer Agreement Between* [Metropolitano] *and* [Gaz Metan]*"* at all.

93. In addition, it results from the above sequence of events, that Metropolitano has persistently contested the right of Gaz Metan to make the Player's transfer definitive. Conversely, Gaz Metan has not reacted to the facsimile of 26 November 2010 of Metropolitano or to the return of the EUR 122,500. Under these circumstances, Gaz Metan could not ignore that Metropolitano was not in agreement with its position and did nothing about it, but claim that the Player's transfer was permanent. In this respect, Gaz Metan has not explained a) how it could argue that the Player's transfer was definitive in spite of the fact that its payment of EUR 122,500 had been refused and b) why it did not file a claim before FIFA as provided under Article 4 of the First Loan Agreement.

94. In conclusion, in light of the foregoing and in the best case scenario for Gaz Metan, the Panel finds that the First Loan Agreement (if applicable) did not give to this club an option to make the Player's transfer definitive but only to extend the loan period for three more years, together with the entitlement to 65% of the transfer rights to the Player in case of transfer to a third club in the extended period. The Panel finds that Metropolitano has never suggested that it was willing to transfer the Player on a permanent basis to Gaz Metan and its attitude in this regard was unequivocal. Had Gaz Metan not agreed with Metropolitano, it should have brought the matter before FIFA (as provided for under Article 4 of the First Loan Agreement), but it failed to do so.

95. At the hearing before the CAS, Gaz Metan claimed that its interest in the Player deriving from Article 3 of the First Loan Agreement was actually running beyond the term of the Second Loan Agreement. It was its submission that it was entitled to 65% of the transfer fee paid to Metropolitano for any subsequent transfer of the Player, regardless of whether it occurred before or after 21 July 2011. Such an allegation is clearly incompatible with the wording of the First Loan Agreement. According to this document, *"[Gaz Metan] does have a guaranteed right to take an option on the [Player] for more 3 years"*. Once exercised, the option had the effect of extending/renewing the loan period for another three years and during that period Gaz Metan would be entitled to 65% of any transfer fee, should the Player be sold. Additionally, a minimum price would have to be achieved: *"Conditions to transfer the player to another club: both clubs have agreed to transfer the player for €350,000"*. However, nowhere in the First Loan Agreement or in the Second Loan Agreement did it specify that such an interest would survive the expiry of the loan.

96. Pursuant to Article 12 para. 3 of the applicable Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, *"Any party claiming a right on the basis of an alleged fact shall carry the burden of proof"*. Gaz Metan has not established that it was the intention of the parties to the First Loan Agreement to make its right to *"65% of the transfer rights of the [Player]"* unlimited in time. In particular, it adduced no evidence to ascertain such an allegation, which seems also very unreasonable. One does not see the interest of Metropolitano to abandon *"65% of the transfer rights of the [Player]"* forever, against the payment of USD 50,000. It is much more likely that the *"65% of the transfer rights of the [Player]"* was only an accessory to the principal duty of Metropolitano; *i.e.* the loan of the Player to Gaz Metan. If Metropolitano had transferred the Player within the three-year period of the loan, then only, Gaz Metan was entitled to *"65% of the transfer rights of the [Player]"*, to compensate the fact that it was deprived from the Player's services. On 21 July 2011, the loan period came to an end and so did the obligation of Metropolitano to loan the Player. At that moment, the accessory right to 65% of the transfer fee of the Player was extinguished as well (Article 114 of the Swiss Code of Obligation).

97. As a consequence, the Panel finds that, on 21 July 2011, the Second Loan Agreement came to an end and so did Gaz Metan's entitlement to *"65% of the transfer rights of the [Player]"*. On 21 July 2011, Metropolitano had performed all of its contractual duties resulting from the First and Second Loan Agreements and was released of any further obligations towards Gaz Metan.

98. Since the loan period had expired, the Player was expected to resume his activities with its club of origin, *i.e.* Metropolitano, which was free to negotiate the Player's transfer with FC Karpaty.

Under these circumstances, these two clubs have obviously not induced the Player to breach the employment contract with Gaz Metan. In this respect, it must be observed that the latter has not claimed that it brought to the attention of Metropolitano the fact that the Player had signed an employment contract valid after the expiration of the loan agreement. Under these circumstances, Metropolitano cannot be accused for having induced the Player to the termination of the Second Employment Contract with Gaz Metan, the existence of which it was not aware. This aspect will be further developed hereafter.

ii) The claim of Gaz Metan against the Player

99. On 11 August 2010, Gaz Metan and the Player signed a new employment contract, valid as from 1 July 2010 until 30 June 2015. It is undisputed that the Player left Gaz Metan before the term of this contract. As a matter of fact, the loan period came to an end on 21 July 2011 and, at that moment, the Player returned to his club of origin, *i.e.* Metropolitano.

100. Gaz Metan has not explained a) why it signed with the Player employment contracts, which systematically expired after the end of the Loan Agreements, b) how such contracts were compatible with Article 18 para. 5 of the RSTP and c) how they could co-exist with the employment contract still in force and passed beforehand by the Player and his club of origin.

101. According to a CAS precedent (CAS 2009/A/1909), the signature of two conflicting contracts constitutes an action which cannot be allowed; a player is not entitled to sign a second contract in order to "insure" himself against the possible breach of the first contract by the club: if he does that, he is himself in any case in breach of one of the two contracts. This CAS case concerned a player who had concluded two employment contracts, valid as from 1 July 2008. The first agreement was signed on 1 February 2008 with a Spanish club and the second with a Qatari club on 17 March 2008. The player decided to honour the first signed contract. The Qatari club initiated proceedings with FIFA to obtain compensation as a consequence of the breach of contract without just cause, and to hold the Spanish club jointly and severally liable for the payment of such compensation. In the appeal proceedings before it, the CAS found that the player was indeed bound by the second contract (para. 37), which he breached without just cause (para. 40). It held that the Spanish club could not be held jointly and severally liable for the payment by the player of the damages awarded to the Qatari club, because its contract with the player had been signed before the contract signed with the Qatari club. *"As a result, [the Spanish club], being already the club of the Player at the time of the breach, cannot be considered as the new club of the Player for the purposes of Article 17.2 of the Regulations"* (para. 55).

102. The Panel finds no reasons to depart from the position expressed in this CAS precedent, which, applied by analogy to the present matter, leads to the result that Metropolitano cannot be considered as the "new club" under Article 17 para. 2 RSTP as its contract with the Player had been signed before the Second Employment Contract with Gaz Metan.

103. The Player breached the Second Employment Contract with Gaz Metan at the end of the loan period, when he returned to his club of origin, the contract of which was still valid and binding. At that moment, there was no contractual relationship anymore between Metropolitano and

Gaz Metan. In particular, Metropolitano was not a party to the Second Employment Contract with Gaz Metan and cannot be bound by it or liable for its unjustified termination by the Player. Under these circumstances, once the Player resumed its activities with Metropolitano, the latter was free to transfer him to FC Karpaty, without Article 17 RSTP coming into play.

104. In view of the foregoing, only the Player can be held responsible for the breach of the Second Employment Contract with Gaz Metan and there is no joint and several liability of FC Karpaty or Metropolitano. In this respect, on 20 July 2012, Gaz Metan and the Player signed the Third Employment Contract, valid as from the date of signature until 30 June 2015. In view of Articles 8.1, 11.1 and the addendum to this contract, the Panel finds that Gaz Metan and the Player contractually agreed that all their previous conflicts were settled and that their legal relationship was exclusively governed by the Third Employment Contract with Gaz Metan.

105. In view of the above, the alleged claim filed by Gaz Metan against the Player before the CAS lost its object and therefore became moot. It requires no further consideration.

iii) Conclusion

106. In light of the foregoing considerations, the Panel comes to the conclusion that the appeal of Gaz Metan must be dismissed and the Appealed Decision must be upheld in its entirety.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 27 September 2017 by Club Sportiv "Gaz Metan" Medias against the decision issued on 8 September 2016 by the FIFA Dispute Resolution Chamber, is dismissed.

2. The decision issued on 8 September 2016 by the FIFA Dispute Resolution Chamber is upheld.

(…)

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