



**Arbitration CAS 2018/A/5624 Dominique Cuperly v. Club Al Jazira, award of 17 December 2018**

Panel: Mr Bernhard Welten (Switzerland), Sole Arbitrator

*Football*

*Termination of an employment contract by settlement agreement*

*Applicable law in appeals arbitration procedure before the CAS*

*Non-exclusive jurisdiction of FIFA for football employment-related matters*

*CAS jurisdiction to decide on the merits of the case*

1. An indirect choice of law is – in principle – always superseded by a direct choice of law. The reason is that – generally speaking – the rules of the arbitral institutions do not wish to limit the parties’ autonomy in any respect. This, however, is not true in the context of appeals arbitration procedures before the CAS. It follows from Article R58 of the CAS Code that the “applicable regulations”, *i.e.* the statutes and regulations of the sports organisation that issued the decision, are applicable to the dispute irrespective of what law the parties have agreed upon. Therefore, Article R58 of the Code takes precedence over the direct choice-of-law clause contained in the parties’ agreements and, thus, the rules and regulations of the sports organisation that issued the decision apply primarily. Although Article R58 of the CAS Code limits the parties’ freedom to choose the applicable law, the provision does not totally exclude the autonomy of the parties, as it expressly provides that in addition to the applicable “rules and regulations” a CAS panel shall apply “*the law chosen by the parties*”. Of course the scope of such choice is limited. It only comes into play subsidiarily, *i.e.* insofar as the applicable rules and regulations do not regulate the legal question at stake.
2. Based on Article 22 of the Regulations for the Status and Transfer of Players (RSTP), the parties have the possibility to opt out of the FIFA jurisdiction and bring employment-related matters before a civil court of their choice.
3. If the parties validly agreed that a civil court is competent to decide on any dispute in relation to their contractual relationship, neither FIFA nor the CAS upon appeal have jurisdiction to decide on the merits of their dispute.

**I. PARTIES**

1. Mr. Dominique Cuperly (the “Coach” or the “Appellant”), born on 5 September 1952, is a physical / assistant coach of French nationality. Since the termination of the employment

relationship with Club Al Jazira, he is no longer working as a football coach.

2. Club Al Jazira (hereinafter referred to as the “Club” or the “Respondent”), is a football club with its registered office in Abu Dhabi, United Arab Emirates (“UAE”). The Club plays in the UAE Pro League and is a member of the United Arab Emirates Football Association (“UAE FA”) which in turn is affiliated to the Asian Football Confederation (“AFC”) and Fédération Internationale de Football Association (“FIFA”).

## II. FACTUAL BACKGROUND

### A. Facts

3. Below is a summary of the main relevant facts, as established by the Sole Arbitrator on the basis of the Parties’ submissions and the exhibits produced during these proceedings. Additional facts and allegations found in the Parties’ submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered carefully 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 considers necessary to explain his reasoning.
4. On 8 May 2014, the Coach and the Club signed an employment contract (the “Employment Contract”) according to which the Coach was employed for two seasons, starting on 1 June 2014 until 30 June 2016. The Coach was hired as a part of the coaching staff of the Club’s head coach, Mr. Eric Gerets.
5. Based on Article 5 of the Employment Contract, the Coach was entitled to a monthly salary of EUR 24,000 net, as well as bonus payments at the discretion of the Club for any match victory of the Club in the Asian Champion’s League, UFL League or President’s Cup equal to the bonus paid to one of the players.
6. In addition, the Coach was also entitled to other benefits, such as 8 return tickets (economy class) from France to the United Arab Emirates for himself and his family during the two contracted seasons (see Article 5.3 Employment Contract), a furnished 3-bedroom apartment in Abu Dhabi including utilities for himself and his family (see Article 5.4 Employment Contract), medical insurance for him and his family (see Article 5.5 Employment Contract) and a car (see Article 5.6 Employment Contract).
7. On 15 June 2015, after having terminated the employment contract of the head coach Mr. Eric Gerets, the Club terminated the Employment Contract of the Coach with immediate effect.
8. On 18 / 22 November 2015, the Parties signed a Settlement Agreement (the “Settlement Agreement”) in which the Club agreed to pay to the Coach a net amount of EUR 109,926.83 on or before 31 January 2016.
9. By 31 January 2016, the Club failed to pay the agreed amount based on the Settlement

Agreement.

10. On 28 March 2016, the Club sent an e-mail to the Coach asking for an extension of the deadline to pay the amount agreed upon in the Settlement Agreement until 25 April 2016 at the latest.
11. On 29 March 2016, the Coach, respectively his legal representative, filed a letter with the Club stating that the payment agreed upon in the Settlement Agreement was not paid by the Club and that, therefore, such Settlement Agreement had to be considered as null and void. As a consequence, he asked for the payment of EUR 417,300, to be paid within eight days.
12. No payments were ever made by the Club to the Coach.

#### **B. Proceedings before the FIFA Players' Status Committee ("PSC")**

13. On 16 May 2016, the Coach filed a claim before the competent FIFA authority, as the Respondent did not pay the amount agreed on in the Settlement Agreement, requesting the payment of the amount of EUR 417,900. He requested a total amount of EUR 415,800 from the Club, as he considered the Settlement Agreement as null and void. The requested amount is composed as follows:
  - a) EUR 72,000 (3 x EUR 24,000) as outstanding salaries for the season 2014/2015;
  - b) EUR 1,600 (2 x 800) corresponding to the allocation allegedly due for the flight tickets during the season 2014/2015;
  - c) EUR 3,000 (3 x 1,000) corresponding to the allocation allegedly due for the use of the vehicle during the season 2014/2015;
  - d) match bonuses;
  - e) EUR 288'000 (12 x EUR 24'000) as compensation for the residual value of contract (season 2015/2016);
  - f) EUR 3'200 (4 x EUR 800) corresponding to the allocation allegedly due for the flight tickets during the season 2015/2016;
  - g) EUR 12,000 (12 x EUR 1,000) corresponding to the allocation allegedly due for the use of the vehicle during the season 2015/2016;
  - h) EUR 36'000 (12 x EUR 3'000) corresponding to the allocation allegedly due for the use of the apartment during the season 2015/2016; as well as all legal and proceeding costs to be borne by the Respondent.
14. In its submission to FIFA, the Club contested the jurisdiction of the PSC to rule on this dispute, since the Parties concluded in Article 8 of the Settlement Agreement that the courts of the Emirate of Abu Dhabi shall have jurisdiction to deal with any disputes arising thereto in accordance with the laws of the UAE.
15. Furthermore, the Club was of the opinion that the amount claimed by the Coach based on the Employment Contract is not owed, due to the amount of EUR 109,926.83 agreed upon in the

Settlement Agreement, replacing all obligations arising from the Employment Contract. However, the Club was not able to fulfil its obligation due to its financial situation.

16. On 27 September 2017, the Single Judge of the PSC decided that the Player's claim was inadmissible and, therefore, that he had to bear the costs of the FIFA proceedings.
17. Based on the Player's request to get the grounds of the decision, the PSC sent the fully reasoned decision on 27 February 2018 to the Parties (the "Appealed Decision").
18. The Single Judge of the PSC stated that the Appellant and the Respondent validly concluded two agreements, the Employment Contract on 8 May 2014 and the Settlement Agreement on 22 November 2015, both stating that any dispute arising from or in relation to the mentioned Employment Contract (Article 10) and Settlement Agreement (Article 10) would be submitted to the non-exclusive jurisdiction of the courts of Abu Dhabi, UAE.
19. The Single Judge of the PSC took into consideration the fact that the Appellant based his claim on the Employment Contract, alleging that the Settlement Agreement should not be considered in the present dispute, as he deemed it became null and void due to the non-payment of the amounts stipulated therein. However, the Single Judge of the PSC confirmed that the Settlement Agreement concluded by the Appellant and the Respondent replaced the initial Employment Contract and became fully valid and enforceable on the date of its signature by both Parties, i.e. on 22 November 2018.

### **III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT ("CAS")**

20. On 16 March 2018, the Coach filed his Statement of Appeal against the Club regarding the Appealed Decision, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code").
21. On 22 March 2018, the CAS Court Office confirmed having received the Statement of Appeal and it asked the Club to confirm that this case shall be decided by a Sole Arbitrator, as requested by the Coach.
22. On 22 March 2018 as well, the Coach confirmed that his Statement of Appeal shall be considered as his Appeal Brief based on Article R51 of the Code.
23. On 23 March 2018, the CAS Court Office set the Club a deadline of 20 days to file its Answer in accordance with Article R55 of the Code.
24. On 26 March 2018, the Club requested that the language of the proceedings shall be English instead of French, as initially requested by the Coach. The Respondent further requested that its deadline to file the Answer be fixed after the payment by the Appellant of his share of the advance of costs.

25. On 28 March, 2018, FIFA informed the CAS Court Office that it waived its right to intervene in these proceedings in accordance with Article R54 in connection with Article R41.3 of the Code. Further it filed a clean version of the Appealed Decision.
26. On 29 March 2018, the Coach filed an Appeal Brief in accordance to Article R51 of the Code, indicating that his letter of 22 March 2018 should be disregarded.
27. On 4 April 2018, the CAS Court Office informed the Club that the Coach maintained his position that the language of the proceedings shall be French. Therefore, based on Article R29 of the Code, the Parties were informed that it would be for the President of the CAS Appeals Arbitration Division to decide on the language of these proceedings.
28. On 5 April 2018, the President of the CAS Appeals Arbitration Division decided that these proceedings shall be in English. The Appellant was ordered to file, within a deadline of 10 days, translations in English of his Statement of Appeal and Appeal Brief, as well as of all accompanying exhibits.
29. On 9 April 2018, the Club requested that the case be heard by a panel of three arbitrators.
30. On 16 April 2018, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division had decided to submit the present case to a Sole Arbitrator.
31. On 20 April 2018, the CAS Court Office, upon requests from the Parties, confirmed the suspension of the proceedings for a period of one month.
32. On 23 May 2018, following the Parties' agreement, the CAS Court Office further suspended the proceedings for an additional month.
33. On 28 June 2018, the CAS Court Office confirmed having received the translations of the Appellant's Statement of Appeal and Appeal Brief. In view of such filing, it was understood that the proceedings would resume.
34. On 16 July 2018, following the payment by the Coach of the total amount of the advance of costs, the CAS Court Office set the Club a deadline of 20 days to file its Answer in accordance with Article R55 of the Code. Further, the Parties were informed that Mr. Bernhard Welten, attorney-at-law in Bern, Switzerland, was appointed as Sole Arbitrator in the present proceedings.
35. On 13 August 2018, the Club filed its Answer in accordance with Article R55 of the Code.
36. On 23 August 2018, the Coach informed the CAS Court Office that it did not request a hearing to be held in the present proceedings.
37. On 27 August 2018, the Club requested a hearing to be held in the present proceedings.
38. On 11 September 2018, the CAS Court Office informed the Parties of the Sole Arbitrator's decision that he deemed himself sufficiently well-informed to render an award on the basis of

the Parties' written submissions.

39. On 11 and on 17 September 2018, the Coach and the Club signed the Order of Procedure. By doing so, both Parties expressly confirmed that their right to be heard had been respected.

#### **IV. SUBMISSIONS OF THE PARTIES**

40. In the following summaries, the Sole Arbitrator will not include every argument put forward to support the Parties' prayers for relief. Nevertheless, the Sole Arbitrator has carefully considered and taken into account all of the evidence and arguments submitted by the Parties, but limits his explicit references to those arguments that are necessary in order to justify his decision.

##### **A. Appellant's Submissions and Requests for Relief**

41. The Appellant's submissions, in essence, may be summarized as follows:

- The Club's behavior is against good faith; it entered into the Settlement Agreement with the Coach out of its free will and it seems that the Club never intended to pay the agreed amount to the Coach.
- The Club never complained about the Coach's behavior or work; however, it terminated the Employment Contract together with all the other contracts of the assistant coaches and the head coach, Mr. Gerets. There was no prior warning and no justification of this termination.
- As the Club did not fulfill its obligation under the Settlement Agreement to pay the Coach an amount of EUR 109,926.83, such Settlement Agreement must be considered void. In relying on this Settlement Agreement, however, to deprive the Coach of the jurisdiction of the CAS, is against good faith.
- The principle of contractual stability is valid for both Parties and, therefore, limitation of the damages to be paid in case of a termination without just cause, as foreseen in Article 8.4 of the Employment Contract, cannot help the Club's situation to pay compensation to the Coach. The compensation foreseen of EUR 50,000 is clearly disproportionate and based on Article 20 paragraph 1 Swiss Code of Obligations (CO) must be considered as invalid and unenforceable.
- As the Club did not fulfill its obligations based on the Settlement Agreement, it cannot ask the Coach to comply with such Settlement Agreement. Therefore, the Coach is allowed to ask for the payment of compensation based on the Employment Contract and, therefore, for an amount of EUR 415,800.
- Based on Article 67 [recte 58] FIFA Statutes and Article 121 UAE FA Statutes, the CAS has jurisdiction to decide the Appeal against the Appealed Decision rendered by the Single Judge of the PSC on 27 September 2017.

42. In his prayers for relief, the Appellant requests as follows:

*'Having regard to the principles of *venire contra factum proprium* and *estoppel*,*

- *To reject the pleas for lack of substantive jurisdiction,*
- *Invalidate the arbitration clauses found in the non-executed settlement agreement and employment contract,*
- *Find that the settlement agreement entered into between the parties is void,*
- *Find that the AL JAZIRA Club cannot claim, without eroding the principle of *venire contra factum proprium*, to enforce against the applicant a settlement agreement that it has refused to execute without justification, while also requesting a reduction of the compensation it provides for;*
- *Reject the AL JAZIRA Club's arguments as contrary to the principles of fair dealing and good faith, which are applicable to arbitration proceedings,*
- *Find that the termination of Mr. CUPERLY's contract took place without just cause,*
- *Find that the provisions of Article 8.4 of the contract are contrary to Articles 13, 14 and 16 of FIFA's RSTP and must be invalidated,*
- *Find that no legitimate contractual provisions make it possible to limit the compensation that must be granted to Mr. CUPERLY.*

*Accordingly:*

- *To order the payment to Mr. CUPERLY by the AL JAZIRA Club of the amount of 415,800 euros (FOUR HUNDRED FIFTEEN THOUSAND EIGHT HUNDRED EUROS).*
- *Charge the costs of the arbitration proceedings, evaluated at the amount of 25,000 CHF, to the Club".*

## B. Respondent's Submissions and Requests for Relief

43. The Respondent's submissions, in essence, may be summarized as follows:

- The Employment Contract was terminated by the Club; the Parties then signed the Settlement Agreement which finally settled their dispute over the termination of the Employment Contract. The wording of the Settlement Agreement is clear.
- In agreeing to the Settlement Agreement, the obligations of the Employment Contract were replaced by the new obligations stated in the Settlement Agreement. The Club's failure to respect these obligations does not make it null and void. The Parties did not stipulate any such clause.
- As the Coach does exclusively claim for the payments stipulated in the Employment Contract, his claim must be dismissed immediately. Further, FIFA and CAS do not have jurisdiction to decide this dispute under the Settlement Agreement. This was acknowledged by the Single Judge of the PSC. Therefore, the decision was made in accordance with the Settlement Agreement, Article 8. For employment matters, the FIFA regulations do foresee an exemption from the competence of the FIFA

authorities and allow to go in front of national courts.

- In the unlikely event that the CAS would retain jurisdiction, the Coach can only claim for the obligations under the Settlement Agreement to be fulfilled and therefore, the maximum amount to be claimed is EUR 109,927.
- In the very unlikely event that the obligations based on the Employment Contract were not replaced by the obligations of the Settlement Agreement, the Coach would nonetheless be unsuccessful. In the Employment Contract, the Coach is clearly considered as physical trainer; he, therefore, cannot be considered a "coach" as referred to in Articles 22c) RSTP and 6.1 Procedural Rules. Further, Article 8.4 of the Employment Contract limits the damages to be paid to EUR 50,000. Such limitation is not disproportionate and must, therefore, be considered as valid and enforceable. It corresponds to the concept of liquidated damages similar to Article 160 CO. As Article 8.3 (damages to be paid by the Coach) of the Employment Contract is equal to Article 8.4 (damages to be paid by the Club) of the Employment Contract, the Club and the Coach are treated similarly, and there is absolutely no reason to consider this limitation to an amount of EUR 50,000 as invalid.
- As the Employment Contract was terminated on 15 June 2015 and salaries are only due by the end of a month, the June salary was not yet due. Therefore, the Coach could only be entitled to outstanding salaries in the amount of EUR 48,000. Regarding flight tickets, the Coach did not bring any proof of tickets he used for the flights between France and the UAE. He only brought a proof for a flight between Geneva and the UAE; such claim has therefore to be rejected.
- During all the time the Coach was working, he received a car from the Club to be used. Therefore, he has absolutely no claim for the monthly payments of EUR 1,000 for the rent of a car. He did further not bring any proof of any such expenses he incurred.
- In conclusion, in the very unlikely event that CAS is competent and the Coach has a claim based on the Employment Contract, the maximum amount to be attributed to the coach is EUR 50,000 as compensation for breach of contract and EUR 48,000 as outstanding remuneration for the period until the contract was terminated.

44. In its prayers for relief, the Club requests as follows:

"(i) *Confirm that FIFA does not have jurisdiction and/or competence to decide on the claim lodged by Mr Dominique Jean Maurice Cuperly;*

*Subsidiarily,*

(ii) *Find that Mr Dominique Jean Maurice Cuperly's claim shall be rejected on the merits;*

*Subsidiarily,*

(iii) *Reduce the amounts claimed by Mr Jean Maurice Cuperly to the amount considered appropriate by the Sole Arbitrator considering Al Jazira Football Sport Company's submissions;*

- (iv) *In any event, rule that the costs of these proceedings shall be paid by Mr Cuperly in full;*
- (v) *In any event, rule that Mr Cuperly shall contribute towards the legal costs and other related expenses of the Respondent in an amount to be defined by the Sole Arbitrator".*

## V. JURISDICTION

45. Article R47 of the Code provides as follows:

*"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".*

- 46. The Coach refers to Article 67 [recte 58] FIFA Statutes which provides that final decisions passed by FIFA's legal bodies may be appealed with CAS within 21 days of notification. Therefore, the Coach concluded that the CAS has jurisdiction.
- 47. The Club does not dispute that the CAS has jurisdiction to decide appeals against final decisions passed by FIFA's legal bodies. However, the Club disputes that the PSC and CAS have jurisdiction to decide the dispute between the Parties as the Employment Contract, as well as the Settlement Agreement, clearly indicate that the courts of the Emirates of Abu Dhabi shall be competent.
- 48. In looking at Article 58 para. 1 FIFA Statutes, Article R47 of the Code and the Appealed Decision, the Sole Arbitrator is of the clear opinion that CAS has jurisdiction to decide the appeal against the decision of the Single Judge of the PSC of 27 September 2017.
- 49. The issue whether the Single Judge of the PSC has correctly denied his competence concerning the dispute between the Parties is one which will be addressed in the merits section below.
- 50. The jurisdiction of the CAS was further confirmed by the Parties signing the Order of Procedure.

## VI. ADMISSIBILITY

- 51. The Appealed Decision was notified to the Parties on 27 February 2018. The Statement of Appeal was filed on 16 March 2018. Therefore, the Appeal was filed within the 21-day deadline stipulated by Article 58 para. 1 FIFA Statutes. The Appeal further complied with all other requirements of Article R48 of the Code.
- 52. Therefore, it follows that the Appeal is admissible.

## VII. APPLICABLE LAW

53. Article 187 para. 1 of the Swiss Private International Law Act (“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 2014/A/3850, para. 48).
54. 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. As a matter of principle, in agreeing to arbitrate a dispute according to the Code, the parties submit to the conflict-of-law rules contained therein, in particular to Article 58 of the Code (see CAS 2014/A/3850, para. 49; CAS 2008/A/1705, para. 9; CAS 2008/A/1639, para. 21). Whether such indirect choice of law can be accepted here, appears questionable, since both, the Employment Contract (article 10) and the Settlement Agreement (articles 8.1 and 8.2) contain a direct choice-of-law clause in favour of the laws of the UAE. In addition, the Respondent formally contests that the Parties agreed to arbitrate a dispute according to the Code in such contracts.
55. However, in view of the findings above on the jurisdiction of the CAS and the signature of the Order of Procedure by both Parties expressly agreeing to the same, the Sole Arbitrator considers that the findings below shall apply with respect to the issue of the applicable law.
56. According to the predominant view in the legal literature, an indirect choice of law is – in principle – always superseded by a direct choice of law (see BERGER/KELLERHALS, International and Domestic Arbitration in Switzerland, 3<sup>rd</sup> edition, Bern 2015, No. 1393; KAUFMANN-KOHLER/RIGOZZI, Arbitrage International, 2<sup>nd</sup> edition, Bern 2010, No. 618; see also BSK-IPRG-KARRER, 3<sup>rd</sup> edition, Basel 2013, Art. 187 No. 123: “*Häufig wird das anwendbare Recht gewählt, gleichzeitig aber auch eine Schiedsordnung. In den meisten Schiedsordnungen steht etwas über das anwendbare Recht [...] Die direkte Rechtswahl durch die Parteien muss, da diese spezieller ist, der Rechtswahlbestimmung der gewählten Rechtsordnung vorgehen [...]*”). However, the Sole Arbitrator finds that this principle shall not apply here. The reason why the predominant view in the legal literature holds that a direct choice of law always takes precedent over an indirect choice of law contained in the rules of the arbitral institution is that – generally speaking – the rules of the arbitral institutions do not wish to limit the parties’ autonomy in any respect (BSK-IPRG-KARRER, 3<sup>rd</sup> edition, Basel 2013, Art. 187 No. 123). This, however, is not true in the context of appeals arbitration procedures before the CAS.
57. Pursuant to Article R58 of the Code, in an appeal arbitration procedure before the CAS, 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision*”. It follows from this provision that the “applicable regulations”, *i.e.* the statutes and regulations of the sports organisation that issued the decision (here FIFA) are applicable to the dispute irrespective of what law the Parties have agreed upon. In the Sole Arbitrator’s view, the Parties cannot derogate from this provision if CAS retains jurisdiction which is the case here. To conclude,

therefore, the Sole Arbitrator finds that Article R58 of the Code takes precedent over the direct choice-of-law clause contained in the Parties' agreements and that, thus, the FIFA rules and regulations apply primarily.

58. Article 57 para. 2 of the FIFA Statutes provides that in proceedings before the CAS, "*the CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law*". The provision makes it clear that the FIFA rules and regulations have been drafted against the backdrop of a certain legal framework, *i.e.* Swiss law. Thus, whenever issues of interpretation arise with respect to the FIFA Rules and Regulations, the Sole Arbitrator will resort to Swiss law. Consequently, the Sole Arbitrator will apply the rules and regulations of FIFA and Swiss law insofar as matters are at dispute relating to the application or interpretation of the FIFA rules and regulations.
59. Article R58 of the Code limits the parties' freedom to choose the applicable law. However, the provision does not totally exclude the autonomy of the parties. Article R58 of the Code expressly provides that in addition to the applicable "rules and regulations" the Sole Arbitrator shall apply "*the law chosen by the parties*". Of course the scope of such choice is limited. It only comes into play subsidiarily, *i.e.* insofar as the applicable rules and regulations do not regulate the legal question at stake. In the case at hand the Parties have chosen the laws of the UAE as the law subsidiarily applicable. Thus, the Sole Arbitrator will respect such choice of law as far as matters are concerned pertaining to these contracts (and not covered by the FIFA rules and regulations).

## VIII. MERITS

60. Before possibly entering into the discussion about the merits and with this looking in details at the termination of the Employment Contract, the non-fulfillment of the Settlement Agreement and the amount due by the Club to the Coach, the Sole Arbitrator has first to look into the question regarding the choice of forum eventually agreed between the Parties. In other words, the Sole Arbitrator needs to analyse whether the Single Judge of the PSC correctly denied the claim of the Coach on the basis of his lack of competence in favour of the courts of Abu Dhabi. The following questions need, therefore, to be addressed:
  - a) What is the Parties' choice of the competent forum?
  - b) Do the Parties have a duty to bring their litigation before the FIFA authorities and CAS, respectively is the Parties' choice of the competent courts of Abu Dhabi binding?
  - c) What are the consequences of the Parties' choice?

### A. What is the Parties' choice of the competent forum?

61. It is uncontested by the Parties that they agreed in the Employment Contract, respectively the Settlement Agreement, on the following Articles:
  - Article 10.2 Employment Contract: "*The PARTIES hereby submit to the non-exclusive jurisdiction of the Courts of Abu Dhabi, United Arab Emirates, to resolve any dispute arising from or related to this CONTRACT*".

- Article 8.2 Settlement Agreement: "*Any dispute arising from or related to the SETTLEMENT AGREEMENT will be submitted to courts of the Emirate of Abu Dhabi*".
62. Article 22 FIFA Regulations on the Status and Transfer of Players ("RSTP") states:  
*"Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:*
- [...]
- c) *employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level;*
- [...]".
63. Article 23 para. 1 RSTP further states: "*The Players' Status Committee shall adjudicate on any of the cases described under Article 22 c) and f) as well as on all of the disputes arising from the application of these regulations, subject to Article 24*".
64. The Sole Arbitrator acknowledges that the Parties have the possibility based on Article 22 RSTP to opt out of the FIFA jurisdiction and bring employment-related matters before a national court. In the case at hand, Article 10.2 of the Employment Contract is somewhat ambiguous, as it states that the Parties submit any dispute to the non-exclusive jurisdiction of the courts of Abu Dhabi. However, in the Sole Arbitrator's view, this does not matter as by signing the Settlement Agreement, the Parties novated their contractual relation in the sense that the Employment Contract was no longer valid and replaced by the Settlement Agreement. This was explicitly confirmed in Articles 1.2 and 10.1 of the Settlement Agreement:  
*"1.2 The PARTIES hereby acknowledge and agree that the EMPLOYMENT CONTRACT was terminated on 15 June 2015.*  
*10.1 This SETTLEMENT AGREEMENT is the complete understanding between the PARTIES in relation to the subject matter of this SETTLEMENT AGREEMENT, and supersedes any and all previous correspondence between the PARTIES in relation to the subject matter of this SETTLEMENT AGREEMENT".*
65. Therefore, the Sole Arbitrator has exclusively to look at Article 8 para. 2 of the Settlement Agreement regarding the Parties' will of choice of a competent court. The wording of Article 8 para. 2 of the Settlement Agreement is clear and leaves no room for any interpretation. It clearly refers to the courts of the Emirates of Abu Dhabi as being competent to decide any dispute in relation to the Settlement Agreement. Therefore, the Sole Arbitrator confirms the Club's allegations, and therefore the findings of the Single Judge of the PSC in this respect, that based on the Parties will, the FIFA authorities were not competent to decide the dispute in this employment matter; only the courts of the Emirate of Abu Dhabi are competent.
- B. Do the Parties have a duty to bring their litigation before the FIFA authorities and CAS, respectively is the Parties' choice of the competent courts of Abu Dhabi binding?**
66. First of all, the Parties agree that the Settlement Agreement was closed out of their free will and,

therefore, is a binding contract. It is only now that the Coach alleges that the Settlement Agreement should be considered as void as the Club did not comply with its duties to pay him. His reasoning is that the Club is acting against good faith (*venire contra factum proprium*) in relying on the Settlement Agreement which it breached and, therefore, such Settlement Agreement shall be null and void. The Sole Arbitrator, however, is of the opinion that the Settlement Agreement is a valid and binding contract which replaced the Employment Contract even if the Club possibly breached such Settlement Agreement.

67. In looking at Article 22 RSTP, it is clear to the Sole Arbitrator that the Parties have the possibility to bring their employment-related dispute to a civil court of their choice. As the Club as employer has its seat in Abu Dhabi it is, therefore, somewhat logical to bring such disputes before the local courts in Abu Dhabi. In other words, the Sole Arbitrator does not see any rule or reason which would forbid the Parties to validly agree to bring their employment-related dispute in front of the court in Abu Dhabi. Especially the Coach did not bring forward any reasoning why this should not be possible. The Coach only gave reasons to show that CAS has jurisdiction to decide this appeal. Obviously, the FIFA regulations do clearly confirm such CAS jurisdiction and, therefore, the Sole Arbitrator has formally also accepted that CAS has jurisdiction to hear the Appeal filed against the Appealed Decision. However, the Parties clearly agreed that neither the FIFA authorities nor the CAS shall have the competence to decide on the merits of their dispute. The Sole Arbitrator is, therefore, of the opinion that the Parties do not have a duty to bring their employment-related litigation before the FIFA authorities respectively the CAS; their choice of forum of the courts of Abu Dhabi is, therefore, valid and binding.

### **C. What are the consequences of the Parties' choice?**

68. As stated before, formally, the CAS has jurisdiction to hear the Coach's appeal against the Appealed Decision. However, as the Parties validly agreed that the courts of Abu Dhabi are competent to decide on any dispute in relation to the Settlement Agreement, neither the PSC nor the CAS have jurisdiction to decide on the merits. Therefore, this Appeal has to be dismissed.
69. Based on the above conclusion, the Sole Arbitrator does not need to look into any further details of the Parties' dispute.

## ON THESE GROUNDS

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

1. The appeal filed by Mr. Dominique Cuperly against the decision of the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association of 27 September 2017 is dismissed.
2. The decision of 27 September 2017 of the Single Judge of the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association is upheld and confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.