Arbitrations CAS 2018/A/5771 Al Wakra FC v. Gastón Maximiliano Sangoy & Fédération Internationale de Football Association (FIFA) & CAS 2018/A/5772 Gastón Maximiliano Sangoy v. Al Wakra FC, award of 11 March 2019 (operative part of 3 December 2018)

Panel: Mr Hendrik Willem Kesler (The Netherlands), President; Mr Mark Hovell (United Kingdom); Mr Juan Pablo Arriagada (Chile)

Football
Termination of the employment contract with just cause by the player
Serious reasons needed for a stay of the proceedings
No reason to stay the proceedings due to lis pendency
Just cause to terminate the contract: deregistration of the player
Disproportionality of the liquidated damage clause
Application of article 17 FIFA RSTP

1. **According to Article 186 (1bis) of the Swiss Private International Law Act (PILA), an arbitration should only be stayed in case serious reasons require such stay. The mere risk of contradictory decisions is not a serious reason. The requirement of "serious reasons" stated in Art. 186(1bis) PILA should be applied in the same way as in any other situation where the arbitral tribunal has to decide whether a stay of its proceedings may be justified, that is, if the arbitral tribunal *"considers it appropriate in view of the interest of the parties"*, bearing in mind that *"in case of doubt, the principle of the swift conduct of the proceedings should prevail"*. In view of these principles, a stay of the arbitration based on Art. 186(1bis) PILA might be justified, for example, if it appears that the foreign proceedings were primarily initiated to "torpedo" the arbitration, or if the arbitration was only initiated when the proceedings in the foreign state court had already reached an advanced stage. The arbitral tribunal may also be willing to examine whether the decision of the foreign court is likely to be recognized and enforced in Switzerland. It should also be prevented that any arbitral award issued by CAS is annulled by the SFT.**

2. **Arbitral proceedings are not to be stayed due to *lis pendency* because CAS is better equipped to render a decision than a national court. The main reason for this is that the "private enforcement mechanism" of FIFA, by means of which sanctions can be imposed on (in)direct members of FIFA that do not comply with final and binding decisions of the FIFA DRC and CAS awards rendered on appeal, is most likely more efficient than the possible enforcement of a state court decision. Furthermore, the fact that CAS has claims of both parties before it, whereas the national court only has a claim of the club before it is relevant.**

3. **Among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to be given the**

possibility to compete with his fellow team mates in the team's official matches. By refusing to register or by de-registering a player, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, violating one of his fundamental rights as a football player. Not only the deregistration in itself already justifies a premature termination, but also the club's silence after the player's legitimate enquiries in this regard aggravate the situation to such an extent that the player has just cause to terminate the employment contract. Furthermore, the club's failure to ensure that the player has a valid residence permit to perform his duties under the employment contract reinforces the fact that it can no longer be reasonably expected from the player to continue the employment relationship.

4. **A contractually agreed liquidated damages clause does not necessarily have to be reciprocal in order to be valid. The validity is dependent on certain criteria. The appropriate test should be whether there has been any excessive commitment from any of the contractual parties in respect of the conclusion of the applicable clause. There is an excessive commitment from the player and a clause excessively favourable towards the club if in case of breach of the club, the player would only be entitled to two months of salary, whereas in case of breach by the player, the club would be entitled to the *"total amount of the contract".* A liquidated damages clause that puts the player entirely at the mercy of the club, because in practice it entitles the club to terminate the employment contract at any moment in time without any valid reasons having to be invoked for the relatively low amount of two monthly salaries cannot be condoned, because the relevant clause is practically in violation of what is determined in Article 14 of the FIFA Regulations on the Status and Transfer of Players (RSTP) and the concept of contractual stability.**

5. **In respect of the calculation of compensation in accordance with Article 17(1) FIFA RSTP and the application of the principle of "positive interest", a CAS panel will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. The panel will proceed to assess the player's objective damages, before applying its discretion in adjusting this total amount of objective damages to an appropriate amount, if deemed necessary. In this regard, the amounts earned by the player under a contract of employment with a new club mitigate his damages and are to be deducted from the damages incurred as a result of the premature termination of the employment contract. Moreover, the fact that the player has mutually terminated his employment contract with his new club cannot come at the expenses of his former club and the entire value of the player's employment contract with his new club is to be deducted from the compensation to be paid to the player by the former club. An additional amount of compensation under the "specificity of sport" should be justified only where the conduct of the club was severe.**

I. PARTIES

1. Al Wakra Football Club Company (the "Club") is a professional football club with its registered office in Wakra, Qatar. The Club is registered with the Qatar Football Association (the "QFA"), which in turn is affiliated to the *Fédération Internationale de Football Association*.

2. Mr Gastón Maximiliano Sangoy (the "Player") is a professional football player of Argentinian nationality.

3. The *Fédération Internationale de Football Association* ("FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties, the hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Background facts

5. On 11 July 2015, the Player and the Club entered into an employment contract (the "Employment Contract") for a period of two sporting seasons, i.e. valid as from 1 July 2015 until 30 June 2017. The Employment Contract contains the following relevant terms:

> *"**Article (9) Termination by the Club or the Player:***
>
> *1. If the Player wishes to terminate this Contract before its expiring term without just cause, by fifteen (15) days' notice in writing, the player must return all financial amounts that he taken* [sic] *during the contract period, and he does not deserve any of the remaining amounts stipulated in the contract.*
>
> *2. When the termination of the Contract is not due to a just cause or a mutual agreement between the Parties concerned, the* [Club] *or the Player shall be entitled to receive from the other party in breach of the Contract a compensation for a net amount of*
>
> - *To the* [Club]*: Al Wakra Football Club Company*
> - *The total amount of the contract*
> - *To the Player:*

Two months of salaries"

6. The *"Schedule"* (the "Annex") attached to the Employment Contract contains the following relevant provisions regarding the Player's salary and other benefits:

"A) First sports Season 2015/2016.

($ 730.000) seven hundred thirty thousand dollar will be as follows:

- Amount of ($ 71.000) seventy one thousand as Introduction contract Batch contract first [sic] at 31/08/2015.
- Amount of ($ 71.000) seventy one thousand as Introduction contract Batch contract Second [sic] at 31/12/2015.
- Amount of ($ 49.000) forty nine thousand monthly salary form [sic] 01/07/2015 to 30/06/2016.

B) Second sports Season 2016/2017.

($ 730.000) seven hundred thirty thousand dollar will be as follows:

- Amount of ($ 71.000) seventy one thousand as Introduction contract Batch contract first [sic] at 31/08/2016.
- Amount of ($ 71.000) seventy one thousand as Introduction contract Batch contract Second [sic] at 31/12/2016.
- Amount of ($ 49.000) forty nine thousand monthly salary form [sic] 01/07/2015 to. [sic]

(B) Other benefits in favour of the player:

[…]

3. (4) Business class tickets for the player and his family per season".

7. On 13 July 2015, the Club applied for a residence permit for the Player.

8. On 19 and 20 August 2015, certain news appeared in the press after the Club had hired a new foreign player:

"[…] We signed Amorim based on the recommendation of our Head Coach Jose Mauricio. Mauricio had made an agreement with the Argentinean Gaston Sangoy to undergo an assessment period, during which the Head Coach was not satisfied with his performance so Sangoy's contract was terminated by mutual consent. […]".

9. On 9 September 2015, the Qatar Ministry of Interior issued a document regarding the Club's application for a residence permit of the Player.

10. The Player played in the first three matches of the Club in the Qatar Stars League on 12, 17 and 27 September 2015.

11. On 30 September 2015, the Club deregistered the Player from the QFA. As from this date, the Player did not play in any other match for the Club.

12. On 1 October 2015, the Player's legal representative sent an email to the Club (which the Club denies having received), which provides, *inter alia*, as follows:

> *"[…] [Y]ou are hereby asked to clarify [the Player's] actual situation within 48 hours from the date of this letter, informing whether he has been registered in the [QFA] by the Club and confirming whether he is eligible to play any official match of the Qatar Stars League for [the Club's] first team in the period ranging from 1 October 2015 to 31 December 2015".*

13. The Club did not reply to the Player's email dated 1 October 2015, but the Manager of the Club's first team allegedly confirmed the Player's deregistration during an informal conversation.

14. On 6 October 2015, the Player sent an email to the Club with a similar content as the email of his legal representative of 1 October 2015 (which the Club denies having received).

15. On 7 October 2015, the Player sent the same email again, but now also to the Club's TMS Manager (which the Club denies having received).

16. On 8 October 2015, the same email was also forwarded to the QFA, requesting the QFA to forward it to the Club.

17. On 13 October 2015 (received on 17 October 2015 by courier), the Player sent another letter to the Club, also by courier and through the QFA, referring to the correspondence sent earlier and stating, *inter alia*, as follows:

> "[…] *In light of the above, you are hereby asked for the last time to clarify my actual situation within 72 hours from the date of this letter, informing if I have been registered in the* [QFA] *by the Club and confirming whether I am eligible to play any official match of the Qatar Stars League for* [the Club's] *first team in the period ranging from 1 October 2015 to 31 December 2015.*
>
> ***In case you don't answer this letter, I will consider your silence as an indubitable proof and recognition of the fact that I am not currently registered in the* [QFA] *by the Club and therefore I am not eligible to play any official match of the Qatar Stars League at least until the next registration period, starting on January 1st 2016.***

Furthermore, I need to remind you that, as I already did personally many times, that my Qatar Visa as a tourist expires next 20 October 2015. My wife, Fabiana Maria Soledad Ferrer and our two children, Bastian Jesus Sangoy Ferrer and Guillermina Soledad Sangoy, are in the same situation: their Qatar Visa also expires next 20 October 2015. Since we are legally authorized to stay in Qatar until 20 October 2015, ***I hereby ask you to urgently address this issue and arrange my residence permit and my Family Residence Visa inmediately****"* (emphasis in original).

18. On 15 October 2015, the Player asked the QFA to confirm whether he was registered.

19. Also on 15 October 2015, the Player changed the flight tickets for him and his family from Qatar to Argentina to depart on 20 October 2015.

20. On 19 October 2015 (received on 20 October 2015), the Player sent another letter to the Club, as well as through the QFA, determining as follows:

"[…] *Neither I nor my lawyer have received any response from the club until today.*

The lack or response from the club to my many letters, and the fact that in the last two official matches of [the Club] *in the Qatar Stars League (vs. Al-Khor, on 1 October 2015 and vs. Al-Sailiya, on 17 October 2015) the club used four foreign players are both an indubitable proof that I am not currently registered before the* [QFA] *and therefore I am not eligible to play any official match of the Qatar Stars League at least until the next registration period, starting on January 1st 2016.*

Furthermore, since the club has not arranged neither my residence permit nor my Family Residence Visa, we are forced to leave Qatar tomorrow because as you already know, our Qatar Visa as tourists expires on 20 October 2015.

In light of the above, you are hereby asked to revert the situation previously described, to register myself before the [QFA] *in order to be eligible to play officially in the Qatar Stars League for* [the Club's] *first team and to arrange my residence permit and my Family Residence Visa.*

In case you don't answer this letter immediately, I will consider your silence as an indubitable proof of your intention to terminate our employment relationship. Therefore, I will be obliged to terminate the contract with just cause*"* (emphasis in original).

21. On 20 October 2015, the Player and his family left Qatar and returned to Argentina.

22. Also on 20 October 2015, the Club sent an email to the Player, informing him as follows:

"Best regards from club administration with referance [sic] *to your email you send about the player Gaston Sangoy, we need the player to get his passport and his family's passport to finish and complete the procedure of residence for the player and his family. and the club is responsible to complete the residence to the player and his family please do this as soon as possible".*

23. Also on 20 October 2015, the Player's legal representative answered the Club's email of the same day, informing it as follows:

"Thank you for your answer.

However, I have to tell you that the documents you are asking for (copies of Gaston Sangoy and his family's passports) have been already handed to the club. In fact, the club has all the passport copies since July 2015.

So please, do not make false excuses to justify the club failure to fulfil its obligation.

I remind you also that you have been asked to to clarify Mr. Sangoy's current situation, informing if he has been registered in the [QFA] *by the Club and confirming whether he is eligible to play any official match of the Qatar Stars League for* [the Club's] *first team in the period ranging from 1 October 2015 to 31 December 2015.*

Your silence in this matter and your failure to arrange Mr. Sangoy's residence permit and his family's Residence Visa will be considered as an indubitable proof of your intention to terminate the employment relationship between [the Club] *and* [the Player]*".*

24. Also on 20 October 2015, the Club answered the email of the Player's legal representative of the same day, informing him as follows:

"with referance [sic] *to your email we would like to inform you about the following:-*

1- We know from the player Jorge Saez that [the Player] *leave Qatar today 20/10/2015 without the club know and without any permission from the club administration for travelling and this is not comply with FIFA and QFA regulation, so the club has right to take the legal procedure against the player.*

2- We asked for the origin passport for the player and his family, not a copy of passports, and we asked the [Player] *many times before to give us the original passport to complete the residence procedure but he didn't give us any passport.*

3- the club don't mention to the player for termination the contract, and the [Player] *received all his financial rights mention in his contract till today 20/10/2015.*

so the club have right to take all legal procedure for this case, and we want to confirm that the club didn't Receive any official letter from you or the [Player] *that he will leave Qatar".*

25. On 21 October 2015, the Player's legal representative answered the email of the Club, basically confirming the content of his previous emails.

26. On 4 November 2015, the Player issued another letter to the Club (which the Club denies having received) reiterating all the points previously made and underlining that the Player's October 2015 salary had remained unpaid.

27. On 8 November 2015, the Club answered the Player's letter dated 4 November 2015, informing him as follows:

"We want to inform you that you are absence and refrain from training for the first football team Without an acceptable excuse since 20/10/2015 till now, and you leave the country without prior permission from technical staff this behavior contrary to the rules and regulations and the contact signed with you, therefore we will take the legal procedures as mentioned in your contract".

28. On 13 November 2015[1], the Player's legal representative sent a letter to the Club, extensively setting out the Player's interpretation of the facts and informing the Club as follows:

"[…] *In light of the above, I have no other choice but to terminate with just cause our employment contract with immediate effect, holding you responsible for the early termination of our contractual relationship.*

You are hereby notified that I hold you liable for the early termination of our employment contract and I will seek for the proper compensation of the damages you caused me".

29. On 31 March 2016, the Club filed a claim against the Player before the Civil Court of Qatar, submitting the following requests for relief:

*"**First**: To terminate the contract, subject of the case, issued by and between the plaintiff and defendant.*

***Second**: To force the defendant to pay for the plaintiff amount of USD 218,000/= (two hundred and eighteen thousand US dollars) or equivalent amount in Qatar Riyals as per the exchange rate applicable in the Qatar market, being the value of the amounts received by the defendant and obtained from the plaintiff before he quests and objects to play and practice the activity assigned to in favour of the plaintiff, pursuant to the article (9) of the contract, support and subject of the case.*

***Third**: To force the defendant to pay for the plaintiff amount of USD 1,176,000/= (one million one hundred seventy six thousand US dollars) or equivalent amount in Qatar Riyals as per the exchange rate applicable in the Qatar market, being the agreed compensation equal to the contract value, due to the default of the defendant to the obligations stated in the contract, support and subject of the case, pursuant to the article (9) of the contract, support and subject of the case.*

***Fourth**: To force the defendant to bear the expenses and lawyer's wages".*

30. On 22 September 2016, the Club's legal representative requested the Civil Court of Qatar to *"re-notify the defendant by diplomatic means on the following address:* […] *so that we can complete the procedures of notification* […]*".*

31. On 2 March 2018, at the latest, the Club's claim before the Civil Court of Qatar was notified to the Player.

[1] The Panel notes that the FIFA DRC considered that the Employment Contract was terminated on 11 November 2015, but the Panel notes that the Player's termination letter dated 11 November 2015 was only forwarded to the Club on 13 November 2015 by counsel for the Player.

32. On 26 April 2018, the Civil Court of Qatar issued the following ruling:

"After hearing the pleading and perusal of the papers and legal deliberation

As the case in its present status is not sufficient to form the conviction of the court to settle the issue, therefore to help piece the elements of the case and arrive at the right conclusion the court resolves to appoint expert whose assignment will be as stated in this verdict. As for the expenses, the court defers the decision until a judgment of the dispute is issued".

B. Proceedings before the FIFA Dispute Resolution Chamber

33. On 23 May 2016, the Player lodged a claim against the Club for a breach of the Employment Contract before the FIFA Dispute Resolution Chamber (the "FIFA DRC"), requesting payment of a total amount of USD 1,658,097, plus interest at a rate of 5% *p.a.* over the entire amount as from 13 November 2015. The Player also requested a transfer ban to be imposed on the Club. The Player's monetary claim consisted of the following elements:

- USD 200,000 corresponding to the outstanding amounts that were waived by the Player in view of the termination of his employment contract with Limassol;
- USD 1,242,000 as compensation for breach of the Employment Contract by the Club;
- USD 685 for the costs incurred for the change of the flight dates for his return to Argentina following the early termination of the Employment Contract;
- USD 140 as equivalent to the amount of Argentinean Pesos ("ARS") 1,995 that he had to pay for the remission to the Club of two letters via international courier;
- USD 294,000 as "specificity of sport", corresponding to 6 months of salary;
- USD 100,000 as moral damages.

34. The Club contested the competence of FIFA and *"highly in the alternative"* lodged a counterclaim against the Player, requesting payment of a total amount of USD 1,678,000, plus interest at a rate of 5% *p.a.* since 30 June 2016 or *"in the alternative"*, an amount of USD 239,900, plus interest at a rate of 5% *p.a.* since 30 June 2016.

35. On 30 June 2017, the FIFA DRC rendered its decision (the "Appealed Decision") with the following operative part:

"1. The claim of the [Player] is admissible.

2. The claim of the [Player] is partially accepted.

*3. The [Club] has to pay to the [Player] **within 30 days** as from the date of notification of the present decision, outstanding remuneration in the amount of USD 49,000, plus 5% interest p.a. as from 1 November 2015 until the date of effective payment.*

*4. The [Club] has to pay to the [Player] **within 30 days** as from the date of notification of the present decision, compensation for breach of contract in the amount of USD 998,640, plus 5% interest p.a. as from 23 May 2016 until the date of effective payment.*

5. In the event that the aforementioned sums plus interest are not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

6. Any further claim lodged by the [Player] is rejected.

7. The [Player] is directed to inform the [Club] immediately and directly of the account number to which the remittances under points 3. And 4. Are to be made and to notify the Dispute Resolution Chamber of every payment received.

8. The counter-claim of the [Club] is rejected".

36. On 14 May 2018, the grounds of the Appealed Decision were communicated to the parties determining, *inter alia*, the following:

- *With regard to the competence of FIFA, "the Chamber acknowledged that the [Club] contested the competence of FIFA's deciding bodies invoking lis pendens on the basis that the [Club] had lodged a claim against the [Player] in front of the local courts of Qatar on 31 March 2016 "on the basis of the same legal facts and in a dispute between the same parties".*
- *In relation to said argument, the members of the Chamber took note that the [Player] insisted in the competence of FIFA on the grounds, in particular, that the jurisdiction of FIFA was not excluded by means of the wording of clause 12 in the relevant contract.*
- *In this regard, the Chamber noted that the [Player] stated in this regard that he was never notified in relation to the procedure existing against him before the local courts of Qatar, and that he contested the validity of the [Club's] documentation submitted in this regard. The Chamber also took note that, according to the [Player], he never participated in said alleged proceedings.*
- *In view of the dissent of the parties, the Chamber further examined the argument and evidence submitted by the [Club] in relation to the competence.*
- *In this regard, the members of the Chamber pointed out that clause 12 of the contract provided for the "non exclusive" jurisdiction of the Qatari courts, therewith not excluding the competence of other decision-making bodies such as the DRC. In this respect, the Chamber wished to emphasize that the alleged fact that the claim in front of the Qatari court was filed earlier than the claim in the present proceedings does not prevent the Chamber from entertaining the latter claim. Moreover, the Chamber recalled the basic principle of burden of proof, as established in art. 12 par. 3 of the Procedural Rules (edition 2015), according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof.*
- *In accordance with said principle, the Chamber carefully examined the documentation provided by the [Club] and noticed that the latter failed to provide any convincing evidence to prove that the [Player] was duly informed of any pending proceedings in front of the Qatari courts, and that the information*

provided by said party in this regard is not conclusive in order to determine that an actual notification of any court proceedings was effectively sent to the [Player].

- *In view of the above, the Chamber unanimously decided to reject the [Club's] argument in this regard and, thus, concluded that the DRC is competent to deal with the matter at stake".*
- *With regard to the termination of the Employment Contract, the Player maintained that the Club had "breached the [Employment Contract] by de-registering him from the [QFA]. Consequently, the [Player] stated that he terminated the [Employment Contract] on 11 November 2015 with just cause, after having put the [Club] in default.*
- *In reply to said argument, the Chamber observed that the [Club] acknowledged that the [Player] was de-registered from the QFA as from 1 October 2015, allegedly temporarily until 31 December 2015, but that it argued that said situation does not constitute a just cause for the termination of the [Employment Contract]. In particular, the Chamber observed that the [Club] underlined that the [Employment Contract] did not expressly stipulate any obligation to register the [Player] with the QFA.*
- *At this point, the members of the DRC first of all considered important to point out, as has been previously sustained by the DRC in various decisions, that among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to be given the possibility to compete with his fellow team mates in the team's official matches. In this context, the DRC emphasized that by refusing to register or by de-registering a player, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, violating one of his fundamental rights as a football player.*
- *Therefore, the members of the DRC concluded that the [Club] effectively prevented the [Player] from being eligible to play for it.*
- *In addition, and from the documentation available on file, the members of the DRC confirmed that, indeed, the [Player] notified the [Club] in order to express his dissatisfaction with his de-registration from the QFA on several occasions, without receiving any reply as to the specific issue of his deregistration and that this series of communications remains uncontested by the [Club].*
- *Moreover, the Chamber noted that the [Player] provided documentation from which it could be established that the [Club] publicly announced that the [Player] had been replaced by another player.*
- *Consequently, the members of the DRC highlighted that, at the moment the [Player] terminated the [Employment Contract], he was not registered by the [Club] and had strong reasons to believe the latter was no longer interested in him. As mentioned previously, the sole fact of not registering a player, thus preventing him from rendering his services to a club, constitutes in itself a serious breach of contract.*
- *In light of the aforementioned, the DRC came to the unanimous conclusion that the [Player] had terminated the contract with just cause on 11 November 2015".*
- *As to the consequences of the breach of contract by the Club, the FIFA DRC held that the content of the clause in the Employment Contract by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract was "manifestly*

disproportionate, as it places an excessive burden on the [Player] when compared to a possible compensation payable by the [Club].

- *As a consequence, the members of the Chamber determined that the amount of compensation payable by the [Club] to the [Player] had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable. Therefore, other objective criteria may be taken into account at the discretion of the deciding body.*
- *Bearing in mind the foregoing as well as the claim of the [Player], the Chamber proceeded with the calculation of the monies payable to the [Player] under the terms of the [Employment Contract] as from 11 November 2015 (i.e. the date of termination of the [Employment Contract]) until 30 June 2017 (i.e. the original date of expiration of the [Employment Contract]). In this regard, the members of the Chamber observed, as detailed above, that under the [Employment Contract], the [Player] would have earned the amount of USD 1,193,000, as from the date of termination of the [Employment Contract] until the original expiration date of the [Employment Contract]. The members of the Chamber therefore established that the aforementioned amounts shall serve as the basis for the calculation of the payable compensation.*
- *[…] [T]he DRC noted, subsequently, that, on 25 February 2016, the [Player] concluded an employment contract with the Polish club, Arka Gdynia, valid as from the date of signature until 30 June 2016 and that, according to said contract, the [Player] was entitled to a basic monthly wage in the amount equivalent to EUR 682.*
- *In addition, the DRC noted that, on 18 July 2016, the [Player] concluded an employment contract with the Indian club, Mumbai City FC, valid as from the date of signature until 31 December 2016, for a total remuneration in the amount of USD 230,000, payable in four instalments of USD 57,500 each. However, in this regard, the Chamber noted that, according to the [Player], said contract was terminated on 5 October 2016 via a mutual termination agreement, by means of which the aforementioned club committed to pay to the [Player] the amount of USD 79,360.*
- *In view of said early termination of the employment contract with the Indian club, Mumbai City and after examining the documentation provided in this regard by the [Player], the Chamber considered that, in this particular matter, there is a certain degree of uncertainty in relation to the amounts that the [Player] would have earned from said Indian club.*
- *Consequently, the members of the Chamber understood that they had to reach, on a discretionary basis grounded on the documentation on file, a reasonable and equitable estimation concerning the amounts that the [Player] would have earned following the termination of the [Employment Contract] with the [Club].*
- *As a result, and considering the [Player's] agreed remuneration with the clubs, Arka Gdynia and Mumbai City as well as the amounts payable for the early termination of the employment contract with this last club, the Chamber established that, from the termination of the [Employment Contract] with the [Club] until the original date of expiration, the [Player] would have earned the approximate amount*

of USD 194,360 from the aforementioned two clubs, an amount that the Chamber considered to be reasonable and proportionate in view of the documentation submitted by the [Player].

- *In conclusion, for all the above reasons, the Chamber decided to partially accept the [Player's] request and held that the [Club] must pay to the [Player] the amount of USD 998,640 as compensation for breach of contract without just cause, which is considered by the Chamber to be a reasonable and justified amount as compensation.*
- *In addition, taking into account the [Player's] request as well as the constant practice of the Dispute Resolution Chamber, the DRC decided that the [Club] must pay to the [Player] interest of 5% p.a. on the compensation as of from [sic] the date of the claim".*
- *As to the outstanding salary, "the DRC recalled that the [Player] was entitled to a monthly salary in the amount of USD 49,000, and that the [Club] did not deny that the [Player's] salary for October 2015 remained unpaid.*
- *In view of all the above, the DRC decided that, in accordance with the general legal principle of pacta sunt servanda, the [Club] as to the outstanding salaries [sic], and is to be held liable to pay the [Player] the amount of USD 49,000, in view of the outstanding amount for the salary of October 2015".*
- *As to the remaining requests for relief of the Player, "the Chamber noted that the [Player] requested the payment of "USD" 200,000, corresponding to a waived amount arisen from a previous termination agreement with another club (cf. point I.4 above). In this respect, the Chamber unanimously concluded that the [Player] waived said amount at his own risk, and therefore, this part of the claim must be rejected.*
- *Moreover, the Chamber also noted the [Player's] request to be refunded with the costs incurred to notify the [Club] via courier (cf. point I.10 above) must also be rejected, in view of the lack of any legal or contractual basis. In this respect, the Chamber wished to highlight that, under any circumstance, the [Player] decided freely to notify the other party via courier at his own cost.*
- *Furthermore, the Chamber also noted that the [Player] requested the payment of the airplane tickets he had to change in order to leave Qatar early (cf. point I.10 above). In this regard, the Chamber observed that the [Player] acknowledged by himself that he received the contractually stipulated tickets, but that in his claim he only requested the payment of a surcharge billed by the airline. Thus, the Chamber understood that the [Club] complied with its obligations by granting the ticket and cannot be held responsible for said surcharge.*
- *In addition, the DRC analyzed the request of the [Player] corresponding to compensation for moral damages. In this regard, the Chamber deemed it appropriate to point out that the request for said compensation presented by the [Player] had no legal or regulatory basis and pointed out that no corroborating evidence had been submitted that demonstrated or quantified the damage suffered".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

37. On 29 May 2018, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision, in accordance with Articles R47 and R48

of the 2017 edition of the CAS Code of Sports-related Arbitration (the "CAS Code"). In this submission, the Club requested the CAS Court Office to assign the arbitration to a sole arbitrator.

38. On 4 June 2018, the Player filed a Statement of Appeal with CAS against the Appealed Decision, in accordance with Articles R47 and R48 CAS Code.

39. On 6 June 2018, the CAS Court Office acknowledged receipt of both appeals. The parties were invited to inform the CAS Court Office whether they agreed to consolidate the two proceedings (CAS 2018/A/5771 and CAS 2018/A/5772), in accordance with Article R52 CAS Code.

40. On 8 June 2018, upon being invited to express his view in this respect, the Player informed the CAS Court Office that he objected to the Club's suggestion to submit the present matter to a sole arbitrator.

41. On 8 and 11 June 2018 respectively, the Player, the Club and FIFA agreed or indicated to have no objection to consolidate the two arbitration proceedings.

42. On 12 June 2018, upon being invited to express its view in this respect, FIFA informed the CAS Court Office that it did not agree to the Club's suggestion to appoint a sole arbitrator.

43. Also on 12 June 2018, the CAS Court Office informed the parties that, in light of the objections of the Player and FIFA to submit the procedure CAS 2018/A/5771 to a sole arbitrator, pursuant to Article R50 CAS Code, it would be for the Division President to decide on the number of arbitrators.

44. On 13 June 2018, the CAS Court Office informed the parties that the Deputy Division President had decided to consolidate the two arbitration proceedings and to submit such proceedings to a three-member Panel. The CAS Court Office further noted that the Club had nominated Mr Mark Andrew Hovell, Solicitor in Manchester, United Kingdom, as arbitrator, and that the Player had nominated Mr Juan Pablo Arriagada, Attorney-at-Law in Santiago, Chile, as arbitrator.

45. On 15 June 2018, FIFA informed the CAS Court Office not to have any objection to the Player's nomination of Mr Arriagada as arbitrator.

46. On 20 June 2018, FIFA informed the CAS Court Office that, in spite of the consolidation of the two proceedings, it did not wish to intervene as a party to the procedure referenced CAS 2018/A/5772.

47. On 25 June 2018, the Club and the Player filed their Appeal Briefs, in accordance with Article R51 CAS Code. In its Appeal Brief, the Club, *inter alia*, argued that *"the CAS shall firstly suspend this procedure, considering that the same matter between the same parties is opened before*

Qatari Court, whose decision will be issued in due course and will be enforceable in Switzerland" (cf. para. 51 Appeal Brief).

48. On 11 July 2018, in accordance with Article R54 CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

- Mr Hendrik Willem Kesler, Attorney-at-Law in Enschede, the Netherlands, as President;
- Mr Mark Andrew Hovell, Solicitor in Manchester, United Kingdom; and
- Mr Juan Pablo Arriagada, Attorney-at-Law in Santiago, Chile, as arbitrators.

49. On 12 July 2018, the CAS Court Office informed the parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.

50. On 27 July 2018, following a request from the President of the Panel in this regard, the Club provided the CAS Court Office with translations into English of the quotes from decisions of the Swiss Federal Tribunal (the "SFT") cited in its Appeal Brief.

51. On 14 August 2018, following a number of extensions mutually agreed upon by the parties, the Player, the Club and FIFA filed their Answers to the respective Appeals, in accordance with Article R55 CAS Code.

52. On 17 and 21 August 2018 respectively, following an enquiry from the CAS Court Office in this regard, the Club and the Player indicated their preference for a hearing to be held, whereas FIFA indicated that it did not consider a hearing necessary.

53. On 28 August 2018, the CAS Court Office informed the parties that the Panel had decided to hold a hearing. The parties were also informed that the Panel, in light of a request to this effect from the Club, had decided not to suspend the proceedings and that the reasons for this decision would be set out in the final award. The parties were informed that such decision was without prejudice to the Panel's decision on *"lis pendens"* or the competence of the Panel to deal with the merits of the Appealed Decision.

54. On 6, 7 and 13 September 2018 respectively, FIFA, the Club and the Player returned duly signed copies of the Order of Procedure to the CAS Court Office.

55. On 30 October 2018, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, all three parties confirmed not to have any objection as to the constitution and composition of the arbitral tribunal.

56. In addition to the Panel, Mr Antonio de Quesada, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

a) For the Club:
   1) Mr Nilo Effori, Counsel;
   2) Mr Luca Tettamanti, Counsel;
   3) Ms Cintia R. Nicolau, Counsel.

b) For the Player:
   1) Mr Martin Auletta, Counsel;
   2) Mr Marc Cavaliero, Counsel;
   3) Ms Sofia Varela Hall, Interpreter.

c) For FIFA:
   1) Ms Isabel Falconer, Member of the Players' Status Department

57. The Panel heard evidence from Mr Hernán Ricardo Quintela, the Player's former agent, as a witness called by the Player, by phone.

58. The parties had full opportunity to examine the witness, to present their case, submit their arguments and answer the questions posed by the members of the Panel.

59. Before the hearing was concluded, all the parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their right to be heard had been respected.

60. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. REQUESTS FOR RELIEF

A. CAS 2018/A/5771

61. The Club submitted the following requests for relief:

"On a prejudicial – preliminary basis,

a) The appeal filed against the Decision of the DRC dated 14 May 2018 is admissible;

b) That FIFA did not have jurisdiction to hear the present dispute; and

c) The Decision of the DRC dated 14 May 2018 is annulled and set aside and replaced by the relevant CAS award to reflect the aforesaid.

Subsidiarily, and only if the above is rejected:

(d) That the Player was the one who breached the Employment Contract and terminate it unilaterally without just cause; hence the Player should be ordered to pay compensation to the Club;

(e) The Article 9 of the Employment Contract is valid and in accordance with the RSTP and Swiss Law; therefore, the Player must pay compensation to the Club pursuant to Clause 9 of the Employment Contract as detailed herein plus interests of 5% p.a;

Subsidiarily, and only if the above is rejected:

(f) In case the CAS holds that the Appellant is liable for the termination of the Employment Contract, that the compensation to be paid to the Player was excessive in the Decision;

(g) Hence, Al Wakra Football Club Company should be ordered to pay Mr Gaston Maximiliano Sangoy compensation pursuant to clause 9 of the Employment Contract, i.e. 2 month-salaries, and not the totality of the contractual amounts as legally agreed upon by the Parties;

(h) To deduct all amounts duly paid by the Club;

(i) In case the CAS understands that Clause 9 of the Employment Contract is not valid, Al Wakra Football Club Company shall pay Mr Gaston Maximiliano Sangoy no more than fifty per cent of the compensation ordered by the DRC, i.e., USD 49,000 since the Player, to say the minimum, contributed to the termination besides causing damage to the Club as detailed herein.

In any and all cases:

(j) Mr Gaston Maximiliano Sangoy shall bear the entire procedural costs of this arbitration procedure;

(k) Mr Gaston Maximiliano Sangoy shall pay Al Wakra Football Club Company its legal costs and expenses relating to this arbitration procedure in an amount to be determined when requested by the CAS".

62. The Player submitted the following requests for relief:

"Prayer 1: The Appeal shall be rejected, insofar as it is admissible

Prayer 2: In any case, Appellant, Al Wakra FC, shall bear the costs of the arbitration and shall contribute to the legal fees incurred by Mr Gastón Maximiliano Sangoy at an amount of CHF 25,000.

For the sake of good order, Mr Gastón Maximiliano Sangoy equally reiterates his Prayers for Relief submitted in the proceedings CAS 2018/A/5772".

63. FIFA submitted the following requests for relief:

"1. That the CAS rejects the appeal at stake and confirms the presently challenged decision passed by the Dispute Resolution Chamber on 30 June 2017 in its entirety.

2. That the CAS orders the Appellant to bear all the costs of the present procedure.

3. That the CAS orders the Appellant to cover all legal expenses of FIFA related to the proceedings at hand".

B. CAS 2018/A/5772

64. The Player submitted the following requests for relief:

"a) to rule the Appeal of Mr. Gastón Maximiliano Sangoy is admissible;

b) to partially set aside the decision issued by FIFA Dispute Resolution Chamber on 30 June 2017 in the present matter:

b.1. Ruling No. 4 of the Appealed Decision shall be annulled and replaced by the following

4.1. The Respondent shall be ordered to pay to the Appellant the amount of USD 1,360,592 (United States Dollars one million three hundred sixty thousands five hundred and ninety two) as compensation for breach of contract without just cause.

4.2. The Respondent shall be ordered to pay to the Appellant interest of 5% p.a. on the amount of USD 1,360,592 as from 14 November 2015.

4.3. The Respondent shall be ordered to pay to the Appellant the amount of USD 545 for the costs incurred for the change of the flight tickets from Doha to Buenos Aires.

c) to order the Respondent to bear all costs of these proceedings;

d) to order the Respondent to pay to the Appellant the amount of CHF 25,000 in contribution to the legal costs and other expenses incurred in relationship with this proceedings;

e) to confirm the Appealed Decision in the rest of the issues decided".

65. The Club submitted the following requests for relief:

"On a prejudicial – preliminary basis,

The appeal filed by the Appellant against the Decision of the DRC dated 14 May 2018 is inadmissible;

That FIFA did not have jurisdiction to hear the present dispute; and

The Decision of the DRC dated 14 May 2018 is annulled and set aside and replaced by the relevant CAS award to reflect the aforesaid.

Subsidiarily, and only if the above is rejected:

(a) That the Player was the one who breached the Contract and terminate it unilaterally without just cause; hence the Player should be ordered to pay compensation to the Club;

(b) The Article 9 of the Contract is valid and in accordance with the RSTP and Swiss Law; therefore, the Player must pay compensation to the Club pursuant to Article 9 of the Contract as detailed herein plus interests of 5% p.a.;

Subsidiarily, and only if the above is rejected:

(c) In case the CAS holds that the Respondent is liable for the termination of the Contract, that the compensation to be paid to the Player was excessive in the Decision;

(d) Hence, Respondent should be ordered to pay the Appellant compensations pursuant to Article 9 of the Contract, i.e. 2 month-salaries, and not the totality of the contractual amounts as legally agreed upon by the Parties;

(e) In any case, to deduct all amounts duly paid by the Club;

(f) In case the CAS understands that Article 9 of the Contract is not valid, Respondent shall pay Appellant no more than fifty per cent of the compensation ordered by the DRC, i.e., USD 49,000 since the Player, to say the minimum, contributed to the termination besides causing damage to the Club as detailed herein.

In any and all cases:

(g) Mr Gaston Maximiliano Sangoy shall bear the entire procedural costs of this arbitration procedure;

(h) Mr Gaston Maximiliano Sangoy shall pay Al Wakra Football Club Company its legal costs and expenses relating to this arbitration procedure in an amount to be determined when requested by the CAS".

V. SUBMISSIONS OF THE PARTIES

A. CAS 2018/A/5771

66. The submissions of the Club in CAS 2018/A/5771, in essence, may be summarised as follows:

Lis pendency

- The Club submits that CAS shall have jurisdiction, but limited to scrutinize the Appealed Decision and, without entering into the merits of the dispute, to annul and set it aside in view of its blatant violation of the *lis pendens* principle during the first instance procedure of this matter. According to the SFT, Article 9 of Switzerland's Private International Law Act (the "PILA"), which embodies the *lis pendens* rule, also applies to arbitration and is part of public policy.
- As an exception to the general rule of Article 59(2) FIFA Statutes that recourse to ordinary courts of law is prohibited, Article 22 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") stipulates that employment-related disputes may be submitted to civil courts.
- As a general rule, an international dimension of a dispute determines the jurisdiction of FIFA. However, the parties to a contract may establish a different jurisdiction other than, or in addition to FIFA. The parties expressly did so in Article 12 Employment Contract. Even considering that this is a non-exclusive jurisdiction clause, since the Employment Contract expressly provides for the competence of Qatari courts. Therefore, if a claim is lodged there first, as the Club did in this matter against the Player,

FIFA is precluded from deciding the case. The FIFA DRC should therefore have suspended the proceedings, or it should have declared the Player's claim inadmissible.

- The Club filed a claim against the Player before Qatari civil courts on 31 March 2016, which was notified to the Player on 2 March 2018 at the latest. The date of filing the claim is decisive. In any event, the FIFA DRC failed to address in the Appealed Decision whether the relevant elements that constitute *lis pendens* were present. The FIFA DRC erred in its consideration because the matter of *lis pendency* is not decided on whether or not a case is notified, but only on the existence of the case on the date when a second case is lodged with a second court, irrespective of its notification. The dispute pending before the Qatari courts concerns the same parties and the same object and the decision that is expected to be issued in a reasonable time will be enforceable in Switzerland.

Substance (legal arguments)

- The Player maintains that he terminated the Employment Contract because the Club would allegedly not have taken care to arrange his residence permit. With reference to the factual background, an analysis will clearly demonstrate that such unfounded assertion is simply unsustainable. Despite several requests to be provided with his and his family's passports, the Player refused to provide the original passports to the Club. The Player obviously carried the responsibility to cooperate in good faith with the Club insofar it was necessary to perform the Employment Contract.
- The Player did not provide any document signed by the Club, affirming that the Player would have provided his original passport to the Club.
- In fact, when the Club asked the Player for his passport on 20 October 2015, he had already left the State of Qatar without any authorisation from the Club and/or any other justification. It is relevant to note that the Player already on 15 October 2015 bought a flight ticket for him and his family to depart on 20 October 2015, before his letter dated 15 October 2015 was received by the Club on 17 October 2015.
- The Player persistently failed to comply with the general legal doctrine to perform contracts in good faith as well as the Player's obligations under Article 18(5) FIFA RSTP to coordinate with the Club in order to obtain a residence visa. Hence, this aspect cannot serve as a valid reason for the Player to terminate his Employment Contract.
- The Club also complied with its financial obligations towards the Player. Only an amount of USD 8,132.25 may be considered unpaid, although, due to the Player's unjustified and unauthorised departure from the State of Qatar, the payment via check was not possible. The Player therefore did not have any just cause to terminate the Employment Contract for financial reasons.
- Also the Player's temporary deregistration from 1 October until 31 December 2015 does not constitute a just cause for the Player's termination of the Employment Contract.

- In accordance with general legal principles, the deregistration of a player may infringe a player's personality rights and may constitute a contractual breach. However, whether such breach then may provide for just cause to terminate an employment contract must be analysed in accordance with the particular circumstances of each case, which is also confirmed by the well-established jurisprudence of CAS in similar matters.
- The Employment Contract does not require that the Club would register the Player with the QFA. If such aspect would have been of paramount importance to the Player, it could be expected that such aspect should have been expressly included in the Employment Contract, in particular given that the Player was legally assisted at the time. Given the non-inclusion of such requirement, the Player, by concluding the Employment Contract, at least tacitly agreed to waive his right to be (permanently) registered with the QFA. In any event, prior to his temporary deregistration, the Player even expressly agreed thereto.

Substance (consequences of termination)

- Article 9 Employment Contract shall be considered valid. The compensation to be paid by the Player, for terminating the Employment Contract without just cause, would therefore be two months salaries, i.e. an amount of USD 98,000. This provision is to be qualified as a contractual penalty or a liquidated damages clause and complies with all relevant elements in order to be considered valid.
- In case the Panel would find that the Player had just cause to terminate the Employment Contract and if Article 9 of the Employment Contract is not considered valid, the calculation of the compensation to be paid by the Club in accordance with the Appealed Decision is clearly excessive and should be adjusted.
- In accordance with Article 44 of the Swiss Code of Obligations (the "SCO"), and given that the Player helped to give rise or compound the loss or damage, the court may reduce the compensation or even dispense with it entirely. Therefore, the amount ordered to be paid by the FIFA DRC is excessive and should be reduced by at least 50%, totalling an amount of USD 49,000.

67. The submissions of the Player in CAS 2018/A/5771, in essence, may be summarised as follows:

Lis pendency

- The Club relies on a wrong legal basis (Article 9 PILA) and misapplies Article 186(1bis) PILA. The Club's sole argument to justify the exception of *lis pendens* is that there would be a risk of two contradictory decisions. The Player however submits that there is no reason, let alone serious reason, to declare the Player's claim inadmissible or to suspend the ongoing arbitration proceedings.

- The Employment Contract does not provide for any exclusive choice of jurisdiction. In particular, there is no compulsory clause ordering the parties to have any dispute solely and exclusively settled by Qatari ordinary courts. Accordingly, any of the parties was perfectly entitled to lodge a claim before the FIFA DRC in view of the clear international dimension of the dispute.
- In any event, pursuant to the principle of *Kompetenz-Kompetenz*, even in the case a lawsuit would be pending in front of other courts, the arbitral tribunal can declare itself competent and go on with the proceedings. The existence of a case of *litispendence* is not sufficient to decide on a stay of the proceedings. This is only different in case serious reasons require a stay. The Player maintains that two of the three cumulative prerequisites to pronounce a stay of the proceedings are not met.
- The moment of opening an action is to be determined by the law of the country where the action is initiated (i.e. Qatar) and not according to Swiss law. Despite carrying the burden of proof in this respect, the Club is silent and does not bring any explanation let alone provision from Qatari law to clarify how and when an action is validly initiated in Qatar. This is particularly relevant in view of the admitted failures to notify the Player of the claim lodged by the Club in Qatar. The Club did not demonstrate that it notified the Player. The Club failed to prove that an action was validly pending in Qatar.
- In any event, the Player submits that there were no serious reasons to stay the proceedings. The Club is simply silent in this respect. The mere risk of contradictory decision as such will never constitute a serious reason, despite the Club's allegations. The Player's claim before the FIFA DRC was genuine and, at that point in time, the Qatari courts were extremely far from reaching any decision. Still today (two years later) it is completely uncertain if and when a decision will ever be passed in Qatar.

Substance (legal arguments)

- The Player submits that the FIFA DRC correctly concluded that the Player terminated the Employment Contract with just cause.
- Although the Club starts to elaborate on the issue related to work and resident visa and does not seem to pay much attention on the Player's deregistration, the Player deems it necessary to first establish the legal consequences of such deregistration.
- As confirmed by the Club, personality rights apply to the world of sport, which is also confirmed in the Appealed Decision. CAS has recurrently confirmed, as did the FIFA DRC, that by deregistering a player, a club breaches the employment contract preventing a player from being fielded in competitive matches, which also affects his personality rights. This is also confirmed by the SFT.
- Although the Club desperately tries to prove otherwise, it has been established that i) the Club never communicated to the Player that he would have to undergo an assessment period; ii) if he would fail the assessment at the end of that period, he would be deregistered; iii) he never consented to any deregistration and no such evidence has

been provided by the Club to support their claims; iv) due to the fact that the Club had too many foreign players, in particular by signing Mr Amorim in late August 2015, the Club was not allowed to keep the Player registered for the first part of the 2015/2016 sporting season; v) the Club deregistered the Player on the last day of the registration period in Qatar, leaving no possibility for the Player to be transferred or loaned elsewhere; vi) he was effectively barred from participating in any competitive matches for a period of at least three months; vii) the Club prevented the Player access to competition; and viii) the Club failed to respond to the several requests of the Player during October 2015 when he tried to ascertain his status.

- This fact (the deregistration) alone is sufficient to demonstrate that the Club violated the Employment Contract and justified the premature termination with just cause by the Player.
- The fact that the Club paid the Player his salary is therefore irrelevant. In any event, this argument is contested as the FIFA DRC concluded that the Player's salary of October 2015 remained unpaid.
- Again, although the deregistration is already sufficient reason to justify the premature termination of the Employment Contract, the Club failed, despite reiterated requests and full cooperation of the Player, to proceed with the Player's visa application appropriately. The Club did not answer any of the Player's requests, until the Player and his family had already left Qatar.

Substance (consequences of termination)

- The Player submits that Article 9 of the Employment Contract is invalid. First of all, given that the Player had just cause to terminate the Employment Contract, this provision is not applicable.
- It may be understood from Article 9 of the Employment Contract that the Club may terminate the Employment Contract at any time, for any reason other than just cause, it would have as a sole obligation to pay two monthly salaries to the Player. On the other hand, should the Player decide to terminate the Employment Contract for any reason other than just cause, he would have to compensate the Club with the entire value of the Employment Contract. This cannot work and this kind of system has not been welcomed by FIFA or CAS. With reference to CAS jurisprudence, the Player argues that in view of the clearly unbalanced system of Article 9 of the Employment Contract, the FIFA DRC was correct in refusing to apply it.
- The Player rejects all other arguments raised by the Club. For the sake of good order, the Player underlines that the Club makes a totally incorrect application of Article 44 SCO. In particular, the Club does not explain how the Player would have contributed to the rise of the damages or increased them.

68. The submissions of FIFA in CAS 2018/A/5771, in essence, may be summarised as follows:

Lis pendency

- With regard to the competence of the FIFA DRC, in accordance with Article 22(b) in conjunction with 24(1) FIFA RSTP, the FIFA DRC is, as a general rule, competent to deal with employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement.
- This means that, if an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs exists at national level, even a dispute between the aforementioned parties that has an international dimension may be referred to that national body, provided that the parties have explicitly and clearly chosen to submit such dispute to the pertinent national body by means of a respective agreement on jurisdiction. As rightly pointed out in CAS jurisprudence, one of the basic conditions that needs to be met in order to establish that another organ than the relevant decision-making body of FIFA can settle an employment-related dispute of an international dimension, is that the jurisdiction of the relevant alternative judicial organ derives from a clear reference in the pertinent employment contract. This fundamental principle and imperative requirement of an explicit and clear election of an alternative forum by the parties must be taken into account also when addressing the possible jurisdiction of a civil court.
- While referring to Article 22 FIFA RSTP, the Club holds that the Qatari civil courts were, and are, exclusively competent to adjudicate on the labour dispute of an international dimension between the Player and the Club.
- Although it is not clear whether the Club purports to argue that, in accordance with Qatari law, the competence to adjudicate on labour disputes belongs exclusively to the Qatari civil courts; Article 12 of the Employment Contract refers to a "non-exclusive" jurisdiction of the Qatari courts.
- As to the question of whether the Employment Contract contained a clear reference in respect of the jurisdiction of the alternative body, the FIFA DRC rightly noted that Article 12 of the Employment Contract refers to the non-exclusive jurisdiction of the Qatari courts. It can already be inferred from this wording that the parties did not intend to refer their disputes exclusively to the Qatari civil courts.
- What is more, the clause establishes, albeit in rather vague terms, that any other arbitral tribunal established by the QFA and the Qatari League, as well as the "FIFA National Dispute Resolution Chamber" can be competent. In other words, it is undeniable that the Club and the Player explicitly agreed upon football dispute resolution, including explicitly arbitration, in case a dispute would arise between them.

- In view of the foregoing, it is without a doubt that Article 12 of the Employment Contract cannot be considered as an explicit, clear and exclusive jurisdiction clause granting exclusive jurisdiction in the matter at stake to the Qatari courts.
- As to the arbitrability of labour disputes in Qatar, FIFA submits that the question of arbitrability is a matter of jurisdiction and shall be governed by Swiss law, in particular by Chapter 12 of the PILA. According to the SFT, nothing would prevent CAS from rendering an award in the present matter should the laws of Qatar hypothetically provide for a prohibition to recourse to arbitration for labour disputes.
- As to the Club's request to stay the proceedings, FIFA argues that Article 186(1) bis of the PILA requires that there must be serious reasons to do so. With reference to legal doctrine and CAS jurisprudence, FIFA maintains that the possibility of contradictory decisions does not comprise a serious reason. In fact, FIFA submits that the Club has not proven by any means that the relevant conditions developed in CAS jurisprudence are met.
- First of all, the Club's statement that proceedings regarding the same object and involving the same parties was pending at the time of commencement of the FIFA DRC proceedings is inaccurate, as there was no evidence that the Player was aware of any pending proceedings before the Qatari courts.
- Second, the Club has, even as at the hearing, not produced any convincing evidence that a decision is to be expected anytime soon. Furthermore, if one would consider the possibility to appeal such potential decision, then the delay in obtaining a final resolution of the dispute in Qatar is even longer.
- Third, as to whether the decision of the Qatari court would be enforceable in Switzerland, if the parties have validly agreed to submit their disputes to arbitration, such criteria cannot be viewed as being met.
- Fourth, the risk of a violation of Swiss public order by passing two potentially contradictory decisions is not proven whatsoever. Indeed, no one knows when or if the Qatari courts would have ever passed or still will pass a decision pertaining to the same matter.

Substance (legal arguments)

- FIFA fully endorses the Appealed Decision.
- FIFA maintains that by refusing to register or by de-registering a player, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, violating one of his fundamental rights as a football player. The act of de-registration is considered a serious breach of contract on the part of a club. With reference to CAS jurisprudence, FIFA maintains that CAS has, on several occasions, confirmed such findings.

- The Club's statement that *"if such aspect would have been of paramount importance to the Player it could be expected that such aspect should have been expressly included in the Employment Contract"* is grossly disproportionate.
- As to the Club's argument that the Player had agreed to his deregistration, FIFA submits that the Club has not provided any sort of evidence that such agreement existed. Even if such consent were established, FIFA considers it to be only normal that the Player changed his stance after being legally represented, given that an employee is more often than not the weaker party in the employment relationship.
- The Player was also not in a position to establish for how long he would remain deregistered. The FIFA DRC therefore considered that the Player had just cause to terminate the Employment Contract.

Substance (consequences of termination)

- As to the validity of Article 9 of the Employment Contract, FIFA submits that a compensation clause can only be considered valid if the amount of compensation payable by either party is not totally disproportionate if compared to the amount which the counter-party has to pay in case of breach of contract. CAS has confirmed FIFA's jurisprudence in this respect. The FIFA DRC therefore disregarded Article 9 Employment Contract and assessed the amount of compensation on the basis of Article 17(1) FIFA RSTP.

B. CAS 2018/A/5772

69. The submissions of the Player in CAS 2018/A/5772, in essence, may be summarised as follows:

- The Player's appeal only concerns the amount of compensation awarded to the Player by the FIFA DRC, i.e. point 4 of the operative part of the Appealed Decision.
- Whereas the FIFA DRC rightfully recognised that the basis of the calculation of the compensation for breach of contract committed by the Club should be the residual value of the Employment Contract, i.e. an amount of USD 1,193,000, it erred in the rest of its calculation and considerations, more particularly in respect of four issues.
- First, the erroneous calculation made by the FIFA DRC regarding the amounts earned by the Player from Mumbai City and the corresponding deductions. While the Player submitted to the FIFA DRC all the relevant documents proving the amounts earned by the Player from Mumbai City until the original date of expiration of the Employment Contract, the FIFA DRC ignored such evidence and established an arbitrary sum. There is no uncertainty in relation to the amounts that the Player earned from Mumbai City. Mumbai City paid the Player a first amount of USD 43,878. After the Player suffered from a serious injury at the end of September 2016, the Player and Mumbai City decided to terminate the employment contract by mutual consent. By virtue of this agreement,

Mumbai City agreed to pay the Player an additional sum of USD 79,360. The Player clearly did not fail to earn any amount intentionally. The total amount earned by the Player is therefore USD 123,238 from Mumbai City and USD 3,170 from Arka Gdynia and that only these amounts can be deducted from the residual amount of the Employment Contract.

- Second, the rejection of the reimbursement of the amount paid by the Player to be able to change the return date of the flight tickets from Qatar to Argentina. The Player never claimed the total value of the flight tickets used by him and his family, but only the extra amount he had to pay in order to change the date of the flight tickets. The Player and his family had to leave Qatar on 20 October 2015 in order to avoid being in violation of Qatari national law and to be considered as illegal immigrants as of 21 October 2015. The costs incurred in this respect for him and his family amounted to USD 545. FIFA failed to recall that the Player and his family had to leave Qatar, because the Club did not fulfil its obligation to arrange for visas. Thus, the only liable party for that damage of USD 545 is the Club.
- Third, the rejection without consideration of the amount requested as compensation for "specificity of sport" and due to the serious violations committed by the Club. The Player claimed an amount of USD 294,000 (consisting of six monthly salaries of USD 49,000) on this basis before the FIFA DRC. In the case at hand, there are several facts that lead to the conclusion that the compensation for "specificity of sport" and due to the serious violations committed by the Club, should be granted. First, the Club decided to register the Player three months into the Employment Contract. This issue, in itself, is a serious violation that occurred during the "Protected Period". The Club did so without any official communication to the Player. The deregistration had as a consequence that the Player could not participate in any football match. The Club did not respond to any of the Player's letters or correspondence sent between 1 and 20 October 2015. The Club only responded on 20 October 2015, very well aware that the Player and his family had already left the country in the meantime. The Club did not demonstrate an ounce of consideration towards the Player's personal situation. He had moved to Qatar with a very young child and a new born baby. After the breach of the Employment Contract, the success of the Player's career decreased and he currently no longer practices his professional activity. The Player considers that CAS should grant his request for additional compensation as a way to punish the Club's arbitrary and absolutely disrespectful behaviour.
- Fourth, the starting date for the calculation of the interest on the amount due as compensation for breach of contract without just cause. Without any explanation, and in spite of the clear prayer for relief of the Player before the FIFA DRC that interest should run as from 13 November 2015, the FIFA DRC ruled that interest should be calculated as of 23 May 2016, i.e. the date on which the Player submitted his claim to the FIFA DRC. In accordance with Article 339(1) SCO, compensation owed for breach of an employment contract is due, at the very latest, when the employment relationship

ends. Accordingly, the debtor is in default as from the very next day, i.e. as of 14 November 2015 in the matter at hand.

70. The submissions of the Club in CAS 2018/A/5772, in essence, may be summarised as follows:

- The Club submits that CAS shall have jurisdiction, but limited to scrutinize the Appealed Decision and, without entering into the merits of the dispute, to annul and set it aside in view of its blatant violation of the *lis pendens* principle during the first instance procedure of this matter.
- As to the alleged erroneous calculation made by the FIFA DRC regarding the amounts earned by the Player from Mumbai City and the corresponding deductions, the Club submits that there was room for uncertainty as to how much the Player received from Mumbai City and Arka Gdynia. The Player failed to prove that he only received the amounts set out in the mutual termination agreements. In this context, the FIFA DRC has the discretion to apply the criteria of Article 17(1) FIFA RSTP.
- As to the rejection of the reimbursement of the amount paid by the Player to be able to change the return date of the flight tickets from Qatar to Argentina, the Club argues that it agrees with the reasoning of the FIFA DRC, not only because it duly complied with its contractual obligations, but also because the Player, by leaving the country without the authorisation of the Club or prior notice, never requested the reimbursement of the surcharge prior to the FIFA claim. This was not an outstanding obligation of the Club at the time of termination of the Employment Contract.
- As to the alleged rejection without consideration of the amount requested as compensation for "specificity of sport" and due to the serious violations committed by the Club, the Club submits that the Player has not discharged his burden of proof on his actual efforts to mitigate the damages of the termination of the Employment Contract and that he left Qatar without prior warning or authorisation on 20 October 2015, but only terminated the Employment Contract on 11 November 2015. Thereby, the Player directly contributed to the termination of the Employment Contract.
- As to the starting date for the calculation of the interest on the amount due as compensation for breach of contract without just cause, the Club argues, with reference to CAS jurisprudence, that the salaries until the end of the Employment Contract would have to be paid on a monthly basis, and that interest should apply accordingly, and not from the day after the termination letter sent as argued by the Player, i.e. as from 14 November 2015.

VI. JURISDICTION

71. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) FIFA Statutes (2016 Edition), as it determines that *"*[a]*ppeals against final decisions passed by FIFA's legal bodies*

and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question" and Article R47 CAS Code. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by the parties.

72. Although the Club does not object to the jurisdiction of CAS, it does maintain that the FIFA DRC was not competent to render the Appealed Decision. It was explicitly adopted in the Order of Procedure that the Club submits that the jurisdiction of CAS shall be limited *"to scrutinize the Decision of FIFA and, without entering into the merits of the dispute, annul and set aside it in view of its blatant violation of the lis pendens principle during the first instance procedure of this matter"*.

73. Given that this line of reasoning does not affect the jurisdiction of CAS as such, the Panel will assess these arguments together with the merits of the case below.

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

VII. ADMISSIBILITY

75. Both appeals were filed within the deadline of 21 days set by Article 58(1) FIFA Statutes. Both appeals complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

76. It follows that both appeals are admissible.

VIII. APPLICABLE LAW

77. The Club did not make any submissions on the law to be applied in the matter at hand.

78. The Player submits that, pursuant to Article R58 CAS Code, in conjunction with Article 57(2) FIFA Statutes, and in view of the constant and long-standing CAS jurisprudence, CAS shall primarily apply the regulations of FIFA and, additionally, Swiss law.

79. FIFA did not make any submissions on the law to be applied to the merits of the matter at hand. As mentioned above, FIFA does however maintain that the issue of arbitrability is to be decided based on Swiss law, in particular based on Chapter 12 of the PILA.

80. Article 12 of the Employment Contract provides as follows:

*"**Applicable Law and Jurisdiction:***

In case of any contractual dispute the applicable law shall be firstly the Law of the State of Qatar and, subsequently, the QFA, AFC and FIFA Regulations governing this matter. The parties agree to submit this Contract to the non exclusive jurisdiction of the Qatari Courts or of any other arbitral tribunal established by

QFA and QSML in accordance to its Status and the FIFA National Dispute Resolution Chamber, if applicable".

81. Article R58 CAS Code determines as follows:

"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".

82. Article 57(2) FIFA Statutes determines the following:

"The 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".

83. The starting point to determine the applicable law is Article 187(1) PILA: *"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".*

84. By submitting their dispute to CAS, even if the Club submits that the competence of CAS is limited to examining whether the FIFA DRC was competent, the parties have implicitly and indirectly chosen for the application of the conflict-of-law rule in Article R58 CAS Code, leading to the primary application of the regulations of FIFA. The second alternative referred to in Article 187(1) PILA is therefore not applicable.

85. In the matter at hand, the parties have, besides the above-mentioned implicit and indirect choice of law, however also made an explicit choice of law in Article 12 Employment Contract for the application of the law of the State of Qatar.

86. In accordance with the HAAS-doctrine, Article R58 of the CAS Code *"serves to restrict the autonomy of the parties, since even where a choice of law has been made, the 'applicable regulations' are primarily applied, irrespective of the will of the parties.* […] *Hence any choice of law made by the parties does not prevail over Art. R58 of the CAS Code, but is to be considered only within the framework of Art. R58 of the CAS Code and consequently affects only the subsidiarily applicable law"* (HAAS U., Applicable law in football-related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law –, Bulletin TAS / CAS Bulletin, 2015/2, p. 11-12).

87. A further question arises as to the relation between the parties' explicit choice of law in the Employment Contract and the reference in Article 57(2) FIFA Statutes to the subsidiary application of Swiss law.

88. According to the HAAS-doctrine, *"in appeal arbitration proceedings* [Article R58 CAS Code] *assumes that the federation regulations take precedence. Consequently, the rules and regulations of a federation also take precedence over any legal framework chosen by the parties* […]. *If, therefore, the federation rules provide that Swiss law is to be applied additionally (to the rules and regulations of FIFA) then this must be complied with by the Panel.* […] *Where* [Article 57(2) FIFA Statutes] *"additionally" refers to Swiss law, such a reference only serves the purpose of making the RSTP more specific. In no way is the reference to Swiss law intended to mean that in the event of a conflict between the RSTP and Swiss law, priority must be given to the latter.* […] *Consequently the purpose of the reference to Swiss law in* [Article 57(2) FIFA Statutes] *is to ensure the uniform interpretation of the standards of the industry. Under* [Article 57(2) FIFA Statutes]*, however, issues that are not governed by the RSTP should not be subject to Swiss law"* (HAAS U., Applicable law in football-related disputes – The relationship between the CAS Code, the FIFA Statutes and the agreement of the parties on the application of national law –, Bulletin TAS / CAS Bulletin, 2015/2, p. 14-15).

89. While the HAAS-doctrine is not binding on the Panel, the Panel finds it persuasive in its approach and the Panel therefore adheres to it.

90. Accordingly, the Panel finds that the various regulations of FIFA are to be applied primarily, in particular the FIFA RSTP, and, subsidiarily, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

91. The Panel could theoretically apply Qatari law on a subsidiary basis, but only insofar as it would concern issues that are not regulated in the FIFA RSTP and if properly submitted. As shown below, the Panel ultimately did not consider it appropriate to apply Qatari law to the present dispute.

IX. MERITS

A. The Main Issues

92. The main issues to be resolved by the Panel are:

a) Should the present proceedings be stayed due to *lis pendency*?

b) Did the Player have just cause to terminate the Employment Contract?

c) What are the consequences thereof?

a) Should the present proceedings be stayed due to lis pendency?

93. The Panel observes that the Club requests that the present appeal arbitration proceedings be suspended because it initiated proceedings against the Player before Qatari ordinary courts before the Player lodged a claim against the Club with the FIFA DRC, whereas the Player and FIFA submit that the proceedings should not be suspended.

94. The Panel notes that the parties also have divergent views on the legal basis to pronounce a potential suspension. Whereas the Club invokes Article 9 PILA, the Player and FIFA submit that Article 186 PILA should be applied.

95. Article 9 PILA determines as follows:

> *"1. When an action having the same subject matter is already pending between the same parties in a foreign country, the Swiss court shall stay the case if it is to be expected that the foreign court will, within a reasonable time, render a decision capable of being recognized in Switzerland.*
>
> *2. In order to determine when an action has been initiated in Switzerland, the conclusive date is that of the first act that is necessary to initiate the proceeding. A notice to appear for conciliation is sufficient.*
>
> *3. The Swiss court shall terminate its proceeding as soon as it is presented with a foreign decision capable of being recognized in Switzerland".*

96. Article 186 PILA determines as follows:

> *"1. The arbitral tribunal shall decide on its own jurisdiction.*
>
> *1bis It shall decide on its jurisdiction without regard to an action having the same subject matter already pending between the same parties before a state court or another arbitral tribunal, unless serious reasons require to stay the proceedings.*
>
> *2. Any objection to its jurisdiction must be raised prior to any defense on the merits.*
>
> *3. The arbitral tribunal shall, in general, decide on its jurisdiction by a preliminary decision".*

97. The Panel observes that, contrary to Article 9 PILA, Article 186 PILA is incorporated in Chapter 12 PILA which deals with "International Arbitration". Accordingly, while Article 9 PILA may be applicable to domestic arbitrations and state court proceedings in Switzerland, it does not govern international arbitrations, as the latter type of arbitrations are specifically governed by Chapter 12 PILA.

98. The Club however maintains that Article 9 PILA should have been applied by the FIFA DRC, as the proceedings before the FIFA DRC are not international arbitration proceedings, but that it is merely a dispute resolution mechanism of a sport's governing body. The Club argues that the Panel should suspend the present appeal arbitration proceedings on this basis, because the FIFA DRC's decision not to suspend the proceedings was mistaken.

99. The Player and FIFA submit in this respect that because parties can file an appeal to CAS following a decision issued by the FIFA DRC, Article 186 PILA should also be applied in proceedings before the FIFA DRC.

100. The Panel finds that no suspension of the present appeal arbitration proceedings is to be pronounced based on Article 186 PILA.

101. Indeed, according to Article 186(1bis) PILA, an arbitration should only be stayed in case serious reasons require such a stay.

102. The legal doctrine is uniform in finding that an international arbitral tribunal having its seat in Switzerland is not obliged to stay the proceedings if an identical legal action has been initiated before a foreign state court first:

> *"No issue of public policy arises – e.g. – in a case of parallel proceedings between civil courts and arbitration. Even if the CAS is the second court seized and the matter in dispute is identical in both proceedings, no mandatory stay applies to the arbitral procedure (cf. Art. 186(1bis) PILS, which basically excludes the lis pendens rule)"* (NOTH/HAAS, Article R32 CAS Code, in: ARROYO (Ed.), Arbitration in Switzerland, 2nd Edition, p. 1466).
>
> *"Article 186(1bis) PILS authorizes an international arbitral tribunal with its seat in Switzerland, when seized second, to proceed with the arbitration and decide on its jurisdiction, regardless of any action on the same dispute already pending before a state court or another arbitral tribunal. In other words, Art. 186(1bis) PILS provides that an international arbitral tribunal in Switzerland seized second, when confronted with a situation of lis pendens, shall not be obliged to stay its proceedings until such time as the authority seized first has decided on its jurisdiction. […]*
>
> *The situation of a foreign state court seized first corresponds to the situation found in the Fomento case and was the primary "target" of the revision that brought Art. 186(1bis) into Chapter 12 of the PILS. This situation therefore does not raise any further concern"* (BERGER, Article 186 PILS, in: ARROYO (Ed.), Arbitration in Switzerland, 1st Edition, p. 149-151).

103. The mere fact that an international arbitral tribunal with its seat in Switzerland is in principle not obliged to stay the proceedings, does not take away the fact that it should stay the proceedings in case serious reasons require it to do so.

104. In this respect, according to legal doctrine, the mere risk of contradictory decisions is not a serious reason:

> *"The 'substantive' (or 'serious' grounds) are one of the conditions enumerated in Article 186 paragraph 1 PILA. Substantive grounds exist if the appellant can prove that the suspension is necessary in order to protect its rights and that the continuation of the arbitration proceedings would cause any serious harm. However, the simple possibility of a state court issuing a decision different from the CAS is not considered to be a substantive ground. Indeed, the possibility to have contradictory decisions exists in all parallel proceedings involving a civil and an arbitration institution. Otherwise, the arbitral procedure would always end up being suspended, which is clearly not the aim of Article 186 paragraph 1 of the PILA"* (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 491).

105. Legal doctrine also addresses what may be considered "serious reasons" to stay arbitral proceedings:

"Article 186(1bis) PILS authorizes the arbitral tribunal, when seized second, to proceed with the arbitration and to decide on its jurisdiction, unless there are "serious reasons" to stay the proceedings. Hence, in practice, arbitral tribunals will have to decide, in any given case, whether or not there are serious reasons that justify or compel a stay of the arbitration. […]

In our opinion, the requirement of "serious reasons" stated in Art. 186(1bis) PILA should therefore be applied in the same way as in any other situation where the arbitral tribunal has to decide whether a stay of its proceedings may be justified. These circumstances have been described by the Swiss Federal Supreme Court as if the arbitral tribunal "considers it appropriate in view of the interest of the parties", bearing in mind that "in case of doubt, the principle of the swift conduct of the proceedings should prevail". In view of these principles, the author considers that a stay of the arbitration based on Art. 186(1bis) PILS might be justified, for example, if it appears that the foreign proceedings were primarily initiated to "torpedo" the arbitration, or if the arbitration was only initiated when the proceedings in the foreign state court had already reached an advanced stage. The arbitral tribunal may also be willing to examine whether the decision of the foreign court is likely to be recognized and enforced in Switzerland" (BERGER, Article 186 PILS, in: ARROYO (Ed.), Arbitration in Switzerland, 1st Edition, p. 149-150).

106. Having considered the legal doctrine set out above, and applying this legal framework to the matter at hand, the Panel finds that no "serious reasons" have been advanced by the Club that would require or legitimise a stay of the present arbitral proceedings.

107. Also, the jurisprudence referred to by the Club is irrelevant in the sense that the precedents cited were pronounced before the introduction of Article 186(1bis) PILA. Indeed, the *Fomento* case cited by the Club appears to have been the primary target of the implementation of Article 186(1bis) PILA.

108. The Club further submits that the *"needing of preventing the consequent CAS ordinary award from being annulled by the SFT is, per se, a very serious reason under paragraph 1bis of Article 186 Swiss PIL Act to oblige CAS suspending this procedure"* and that *"it is not possible to conceive that such two claims can simultaneously exist and eventually generate different, or even contradictory results"*.

109. As indicated *supra*, the mere risk of conflicting decisions is no "serious reason" to stay the present arbitration proceedings.

110. The Panel concurs with the Club's argument that it should be prevented that any arbitral award issued by CAS is annulled by the SFT, but the Panel believes that the arguments submitted by the Club do not justify an annulment of the present arbitral award.

111. In the absence of any further "serious reasons" being invoked by the Club, the Panel finds that the Club's application to stay the present proceedings does not comply with criteria set out in Article 186(1bis) PILA, as a consequence of which the Club's request is to be dismissed.

112. Insofar the Club submits that the Appealed Decision should be annulled because the FIFA DRC mistakenly did not stay the proceedings because of *lis pendens* on the basis of Article 9 PILA, the Panel finds that this argument must be dismissed as well.

113. Even if Article 9 PILA were to be applied by the FIFA DRC, the Panel finds that the FIFA DRC correctly decided not to stay the proceedings based on the circumstances known to it at the moment of rendering the Appealed Decision.

114. Indeed, the Panel finds that the Club failed to prove to the FIFA DRC at the relevant moment in time that the Qatari civil court was expected to render a decision within a reasonable time and that such decision would be capable of being enforced in Switzerland. In particular, at the relevant moment in time, and although the FIFA DRC asked for more information in this respect, the Club did not provide any document regarding the procedural timeline for the proceedings in Qatar. In the absence of information that the proceedings in Qatar would be finalised soon, the Panel does not consider it inappropriate that the FIFA DRC decided not to stay the proceedings.

115. Also, with the benefit of hindsight, the Panel considers that the FIFA DRC's assessment of the situation was correct. In the absence of any information on the status of the Qatari civil court proceedings, the FIFA DRC proceeded efficiently by issuing the Appealed Decision on 30 June 2017, while there is no indication when the Qatari proceedings will finalise. The last evidence on file is that the Qatari court decided on 26 April 2018 that an "account expert" was to be appointed. It is not clear from the evidence on record whether such expert has already been appointed.

116. At the hearing, the Club stated that it had received a report on 29 October 2018 (i.e. a day before the hearing). Allegedly, an expert had in the meantime been instructed by the Qatari court and a hearing was expected to take place within a month. The Panel finds that these statements are insufficient to prove that the Qatari proceedings will be concluded soon.

117. In any event, the Panel finds that CAS is better equipped to render a decision on this issue than the Qatari court. The main reason for this is that the "private enforcement mechanism" of FIFA, by means of which sanctions can be imposed on (in)direct members of FIFA that do not comply with final and binding decisions of the FIFA DRC and CAS awards rendered on appeal, is most likely more efficient than the possible enforcement of a Qatari court decision in (presumably) Argentina (i.e. the Player's current country of residence) through domestic courts in Argentina.

118. Furthermore, CAS has claims of both the Club and the Player before it, whereas the Qatari court only has a claim of the Club before it. If the present proceedings would be stayed, this may have severe consequences for the Player.

119. Finally, since the Club argues that the Player breached the Employment Contract and that it is therefore entitled to be compensated for its damages by the Player, the Club could

have invoked the joint liability of any new club of the Player on the basis of Article 17(2) FIFA RSTP. In the proceedings before the FIFA DRC, the Club could have requested the FIFA DRC to declare the Player's new club jointly liable, which would objectively have increased the Club's chances of obtaining such compensation because it would have two debtors that it could pursue, whereas such possibility is not available before domestic courts with the consequence that it could only attempt to enforce such decision against the Player alone.

120. Consequently, the Panel finds that the present arbitral proceedings are not to be stayed due to *lis pendency*.

b) Did the Player have just cause to terminate the Employment Contract?

121. Having established that CAS is competent to adjudicate and decide the matter at hand, the Panel turns its attention to the question whether the Player had just cause to prematurely terminate the Employment Contract by letter dated 13 November 2015.

122. Article 14 FIFA RSTP determines as follows:

"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause".

123. Given that the Player terminated the Employment Contract, the burden of proof in establishing that such premature termination was justified lies with the Player.

124. The Panel considers that the FIFA Commentary provides guidance as to when an employment contract is terminated with just cause:

"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally".

125. In this regard, the Panel notes that in CAS 2006/A/1180, a CAS panel stated the following:

"The RSTP 2001 do not define when there is "just cause" to terminate a contract. In its established legal practice, CAS has therefore referred to Swiss law in order to determine the purport of the term "just cause". Pursuant to this, an employment contract which has been concluded for a fixed term, can only be terminated prior to expiry of the term of the contract if there are "valid reasons" or if the parties reach mutual agreement on the end of the contract (see also ATF 110 I 167; WYLER R., Droit du travail, Berne 2002, p. 323 and STAEHELIN/VISCHER, Kommentar zum Schweizerischen Zivilgesetzbuch, Obligationenrecht, Teilband V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, marg. no. 17 ad Art. 334, p. 479).

In this regard Art. 337 para. 2 of the Code of Obligations (CO) states – according to the translation into English by the Swiss-American Chamber of Commerce: "A valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship". According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (ATF 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa). Particular importance is thereby attached to the nature of the breach of obligation. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (ATF 101 Ia 545). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus (ATF 5 May 2003, 4C.67/2003 no. 2). According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit., p. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., op. cit., p. 364 and TERCIER P., op. cit., no. 3394, p. 495)" (CAS 2006/A/1180, para. 25 of the abstract published on the CAS website).

126. The Panel fully adheres to such legal framework, which is still applied in recent CAS jurisprudence (cf. CAS 2016/A/4846, para. 175 of the abstract published on the CAS website), and will therefore examine whether the Club's conduct was of such a nature that it could no longer be reasonably expected from the Player to continue the employment relationship with the Club.

127. The Panel observes that the Player basically invoked two separate arguments in justifying the unilateral termination of the Employment Contract: i) the deregistration of the Player; and ii) the Club's failure to extend the Player's visa, as well as the visa of his family members.

128. It remained undisputed between the parties that the Club deregistered the Player on 30 September 2015.

129. The parties however have different views as to the nature of such deregistration. Whereas the Club submits that the deregistration was mutually agreed upon between the Club and the Player and that it was only of temporary nature, the Player maintains that he never consented to be deregistered and that it was not made clear to him whether the deregistration was of temporary or permanent nature.

130. The Panel notes that the Player sent various communications (i.e. emails/letters dated 1, 6, 7, 13 and 19 October 2015) to the Club, inquiring about the nature of the deregistration,

while on 13 and 19 October 2015 also addressing the situation of the visa. The Club however denies having received the emails dated 1, 6 and 7 October 2015.

131. Upon close review of the emails dated 1, 6 and 7 October 2015, the Panel notes that they are addressed to alwakrh@olympic.qa, with Mr Abdul Aziz H. Al-Obaidly, Secretary General of the Club, in copy (abdulazizobaidly@yahoo.com).

132. The Panel notes that when the Club addressed the Player by email (i.e. emails dated 20 October (twice) and 8 November 2015), it sent its emails from the address alwakra@olympic.qa, also with Mr Abdul Aziz H. Al-Obaidly in copy (abdulazizobaidly@yahoo.com).

133. It therefore appears that the Player's emails dated 1, 6 and 7 October 2015 may not have been sent to the correct email address of the Club (i.e. the seventh letter of the email addresses are different, an "h" instead of an "a"), even though the Club's Secretary General was correctly copied in. At the very least, the Player's submission that the emails dated 1, 6 and 7 October 2015 were sent to the same email address that was used by the Club is incorrect.

134. The Panel however does not deem it necessary to determine whether it was sufficient that the Player sent his emails to the Club's Secretary General in copy, as it remained undisputed that the Player's communications dated 13 and 19 October 2015 were duly received by the Club.

135. The Panel in particular considers that the Player's letter dated 13 October 2015 (received by courier on 17 October 2017) is important, as the Player informed the Club as follows:

> *"*[…] *In light of the above, you are hereby asked for the last time to clarify my actual situation within 72 hours from the date of this letter, informing if I have been registered in the* [QFA] *by the Club and confirming whether I am eligible to play any official match of the Qatar Stars League for* [the Club's] *first team in the period ranging from 1 October 2015 to 31 December 2015.*
>
> ***In case you don't answer this letter, I will consider your silence as an indubitable proof and recognition of the fact that I am not currently registered in the* [QFA] *by the Club and therefore I am not eligible to play any official match of the Qatar Stars League at least until the next registration period, starting on January 1st 2016.***
>
> *Furthermore, I need to remind you that, as I already did personally many times, that my Qatar Visa as a tourist expires next 20 October 2015. My wife, Fabiana Maria Soledad Ferrer and our two children, Bastian Jesus Sangoy Ferrer and Guillermina Soledad Sangoy, are in the same situation: their Qatar Visa also expires next 20 October 2015. Since we are legally authorized to stay in Qatar until 20 October 2015,* ***I hereby ask you to urgently address this issue and arrange my residence permit and my Family Residence Visa inmediately****"* (emphasis in original).

136. Although the Club answered the Player within 72 hours of receipt of the Player's letter, it did not clarify the situation concerning the Player's deregistration. Furthermore, the Player clearly informed the Club that he and his family would have to leave the country on 20 October 2015 because his visa was about to expire.

137. The Panel therefore finds that the Club should have treated the Player's letter with utmost urgency and that its reply of 20 October 2015 was too late, because the Player and his family had already left the country in the morning of 20 October 2015.

138. In any event, the Club's first email dated 20 October 2015 was not particularly helpful to the Player, as the language used is confusing and contradictory:

"Best regards from club administration with referance [sic] to your email you send about the player Gaston Sangoy, we need the player to get his passport and his family's passport to finish and complete the procedure of residence for the player and his family. and the club is responsible to complete the residence to the player and his family please do this as soon as possible".

139. On the one hand, the Club imposes a duty on the Player to complete the procedure for residence, while on the other hand stating that *"the club is responsible to complete the residence to the player and his family"*, but then ending again with an instruction to the Player to *"do this as soon as possible".*

140. When the Player responded on the same day that the Club already had copies of the passports of him and his family, the Club responded (this time immediately, not waiting a few days) still on 20 October 2015 that it required the original passports of the Player and his family.

141. The Panel notes that there is no documentary evidence on file or witness evidence suggesting that the Club had at any moment in time prior to 20 October 2015 asked the Player to provide the Club with the original passports of him and his family.

142. The Panel therefore finds that the Player cannot be reproached for his failure to provide the Club with original passports.

143. In any event, the Player submits that he attended a training camp in Italy in July 2015, which submission was not disputed by the Club. As such, the Player necessarily had his passport with him during such trip abroad and his passport was therefore available to the Club at that moment in time.

144. Given that the visa of the Player and his family were only valid until 20 October 2015, the Panel finds that the Player had very good reasons to leave the country on 20 October 2015.

145. Consequently, insofar the Club submits that the Player was not permitted to leave the country and that such action resulted in a breach of the Player's duties under the Employment Contract, the Panel finds that such argument must be dismissed.

146. Also, after the Player had already left the country in the morning of 20 October 2015, the Player continued to ask the Club to clarify the situation about his deregistration (i.e. emails/letters dated 20 and 21 October and 4 November 2015, now incontestably using the email address that was used by the Club itself (alwakra@olympic.qa)), but the Club never provided assistance to the Player in obtaining a visa and did not provide the Player with any explanations regarding the deregistration or the visa problems.

147. The Panel notes that it is established CAS jurisprudence that a club is responsible to provide a player with the required extensions of residence and work permits (see *e.g.* CAS 2014/A/3706, para. 95 of the abstract published on the CAS website) although players have the duty to fully cooperate in the efforts aimed at obtaining the visa or the work permit (DE WEGER F., The Jurisprudence of the FIFA Dispute Resolution Chamber, 2nd Edition, 2016, p. 125-126).

148. The Panel observes that the Club's allegation that the Player was only temporarily deregistered was – even if this were true – at least not communicated to the Player. The Panel finds that the Club's lack of communication in this respect, legitimately resulted in a lack of confidence of the Player in the Club.

149. In any event, there is no evidence on file suggesting that the Player would have been registered again in January 2016, i.e. the first subsequent moment in time when the Club could potentially register and deregister players again.

150. Furthermore, also in respect of the Club's argument that the Player would have consented to a temporary deregistration, the Panel finds that this allegation must be dismissed. The Club did not provide any contemporary documentary evidence to corroborate such proposition, or, in the absence of such documentation, any witness statements, proving that the Player ever agreed to be deregistered.

151. The Panel takes due note of the considerations of the FIFA DRC in the Appealed Decision concerning the severity of a deregistration of a football player by his club and that such deregistration alone is already sufficient reason to prematurely terminate an employment relationship with just cause:

> *"At this point, the members of the DRC first of all considered important to point out, as has been previously sustained by the DRC in various decisions, that among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to be given the possibility to compete with his fellow team mates in the team's official matches. In this context, the DRC emphasized that by refusing to register or by de-registering a player, a club is effectively barring, in an absolute manner, the*

potential access of a player to competition and, as such, violating one of his fundamental rights as a football player.

[…]

Consequently, the members of the DRC highlighted that, at the moment the [Player] terminated the [Employment Contract], he was not registered by the [Club] and had strong reasons to believe the latter was no longer interested in him. As mentioned previously, the sole fact of not registering a player, thus preventing him from rendering his services to a club, constitutes in itself a serious breach of contract".

152. The importance of competing has also been addressed by the Swiss Federal Tribunal:

"[…] it is obvious that a professional football player playing in the premier division must, in order to retain his value on the market, not only train regularly with players of his level but also compete in matches with teams of the highest possible level" (SFT 4A_53/2001 and 137 III 303 consid. 2.1.2. et seq.).

153. The Panel finds that not only the deregistration in itself already justifies a premature termination, but that also the Club's silence after the Player's legitimate enquires in this regard (even discarding the Player's emails dated 1, 6 and 7 October 2015) aggravate the situation to such an extent that, in this Panel's mind, the Player had just cause to terminate the Employment Contract.

154. If one adds to this the above conclusion that the Club failed to ensure that the Player had a valid residence permit to perform his duties under the Employment Contract, or at least failed to instruct the Player in some detail how to obtain such residence permit, the Panel finds that there can be no doubt that, on 13 November 2015, it could no longer be reasonably expected from the Player to continue the employment relationship.

155. Consequently, the Panel finds that the Player had just cause to terminate the Employment Contract on 13 November 2015.

c) What are the consequences thereof?

156. Although it has been established that the Player had just cause to terminate the Employment Contract with the Club, Article 14 FIFA RSTP does not specifically determine that a player is entitled to any compensation for breach of contract by the club in such scenario.

157. The Panel, however, is satisfied that the Player is in principle entitled to compensation because of the Club's breach of its contractual obligations under to the Employment Contract. In this respect, the Panel makes reference to the FIFA Commentary. According to Article 14(5) and (6) FIFA Commentary, a party *"responsible for and at the origin of the termination of the contract is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed"*. Hence, although it was the Player who terminated the Employment Contract, the Club was at the origin of the termination by breaching its contractual obligations towards the Player and is thus liable to pay compensation for the damages incurred by the

Player as a consequence of the early termination. This approach has also been applied in CAS jurisprudence (*e.g.* in CAS 2012/A/3033, para. 72 of the abstract published on the CAS website). Following the CAS jurisprudence on this issue, this practice is also constantly applied by the FIFA DRC.

158. The Panel observes that article 17(1) of the FIFA Regulations provides as follows:

"The following provisions apply if a contract is terminated without just cause:

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".

159. The Panel notes that the Employment Contract contains the following clause:

"Article (9) Termination by the Club or the Player:

1. If the Player wishes to terminate this Contract before its expiring term without just cause, by fifteen (15) days' notice in writing, the player must return all financial amounts that he taken [sic] during the contract period, and he does not deserve any of the remaining amounts stipulated in the contract.

2. When the termination of the Contract is not due to a just cause or a mutual agreement between the Parties concerned, the [Club] or the Player shall be entitled to receive from the other party in breach of the Contract a compensation for a net amount of

- *To the [Club]: Al Wakra Football Club Company*
  The total amount of the contract
- *To the Player:*
  Two months of salaries".

160. The Panel finds that Article 9 Employment Contract is indeed the kind of deviation alluded to in Article 17(1) FIFA RSTP. By means of Article 9 Employment Contract, the parties contractually deviated from the default application of Article 17(1) FIFA RSTP.

161. As to the validity of Article 9 Employment Contract, the Panel observes that the FIFA DRC in the Appealed Decision reasoned that the Article 9 Employment Contract was:

"[…] manifestly disproportionate, as it places an excessive burden on the [Player] when compared to a possible compensation payable by the [Club].

As a consequence, the members of the Chamber determined that the amount of compensation payable by the [Club] to the [Player] had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations".

162. As determined in CAS jurisprudence before, the Panel finds that a liquidated damages clause like Article 9 Employment Contract does not necessarily have to be reciprocal in order to be valid, but that the validity is dependent on certain criteria:

"The Panel notes that article 17(1) of the FIFA Regulations does not require contractually agreed liquidated damages clauses to be reciprocal, nor is there any other source or legal doctrine, or at least no such source has been cited by any of the parties, based on which such test would have to be applied.

As a consequence, the Panel is not convinced that both liquidated damages clauses must be set aside for the mere fact that they are not reciprocal. […]

Rather, the Panel finds that the appropriate test should be whether there has been any excessive commitment from any of the contractual parties in respect of the conclusion of the applicable clause, i.e. in this case article 5(1) of the Employment Contract" (CAS 2015/A/3999-4000, para. 158-160 of the abstract published on the CAS website).

163. Although there was no such excessive commitment in the precedent cited in the previous paragraph, the Panel finds that the liquidated damages clause in the matter at hand is an excessive commitment from the Player. Indeed, the Panel notes that the content of Article 9 Employment Contract is excessively favourable towards the Club, because in case of breach of the Club, the Player would only be entitled to two months of salary (i.e. USD 98,000), whereas in case of breach by the Player, the Club would be entitled to the *"total amount of the contract"* (i.e. USD 1,460,000).

164. Besides, the Panel finds it particularly important that Article 9 Employment Contract puts the Player entirely at the mercy of the Club, because this clause in practice entitles the Club to terminate the Employment Contract at any moment in time without any valid reasons having to be invoked for the relatively low amount of two monthly salaries.

165. Such practice cannot be condoned, because the relevant clause is practically in violation of what is determined in Article 14 FIFA RSTP and the concept of contractual stability (*"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause"*), as it permits a termination of contract even without just cause for a low amount of compensation.

166. The Panel therefore agrees with the reasoning of the FIFA DRC in the Appealed Decision that Article 9 Employment Contract cannot be applied, but that the default provision of Article 17(1) FIFA RSTP in respect of the calculation of damages is to be applied.

167. The Panel takes due note of previous CAS jurisprudence establishing that the purpose of Article 17(1) FIFA RSTP is basically nothing else than to reinforce contractual stability, i.e. to

strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (CAS 2008/A/1519-1520, para. 80, with further references to: CAS 2005/A/876, p. 17*: "*[…] *it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability'* […]*"*; CAS 2007/A/1358, para. 90; CAS 2007/A/1359, para. 92: *"*[…] *the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability* […]*"*; confirmed in CAS 2008/A/1568, para. 6.37).

168. In respect of the calculation of compensation in accordance with Article 17(1) FIFA RSTP and the application of the principle of "positive interest", the Panel follows the framework as set out by a previous CAS panel as follows:

> *"When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.*
>
> *As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have if no breach had occurred.*
>
> *The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see Streiff/von Kaenel, Arbeitsvertrag, Art. 337d N 6, and Staehelin, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also Wyler, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) […].*
>
> *The principle of the "positive interest" shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the player by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the player from a third party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including the specificity of sport, as foreseen in art. 17 FIFA Regulations"* (CAS 2008/A/1519-1520, at para. 85 et seq.).

169. The Panel finds that the legal framework set out above and the principle of positive interest, which are still applied in recent CAS jurisprudence (cf. CAS 2017/A/5111, para. 137 of the abstract published on the CAS website, with further references to, *inter alia*, CAS 2014/A/3527, para. 78) are applicable to the present case. Against this background, the Panel will proceed to assess the Player's objective damages, before applying its discretion in adjusting this total amount of objective damages to an appropriate amount, if deemed necessary.

170. The Panel notes that, as was held by the FIFA DRC in the Appealed Decision, the remaining value of the Employment Contract at the moment of termination by the Player was USD 1,193,000 gross (i.e. USD 730,000 for the 2016/2017 sporting season, the amount of USD 71,000 and 8 monthly salaries of USD 49,000).

171. The Player however found new employment after the termination of the Employment Contract and he thereby mitigated his damages. Such amounts are to be deducted from the damages incurred as a result of the premature termination of the Employment Contract.

172. On 25 February 2016, the Player signed an employment contract with the Polish football club Arka Gdynia, valid as from the date of signing until 30 June 2016. The employment contract specifies that the Player was entitled to a monthly remuneration of EUR 682 gross. Since the Player was employed by Arka Gdynia for approximately four months, the Panel finds that the amount of EUR 2,728 (EUR 682 * 4) is to be deducted from the amount of compensation. The Player's submission that this amount in EUR is equivalent to USD 3,170 remained undisputed.

173. Subsequently, on 18 July 2016, the Player entered into an employment contract with the Indian football club Mumbai City FC, valid as from the date of signing until 31 December 2016. The employment contract specifies that the Player was entitled to a total amount of USD 230,000 gross over this period.

174. However, on 5 October 2016, due to an injury of the Player, the Player and Mumbai City FC concluded a mutual termination agreement, pursuant to which the employment contract was to be cancelled for an amount of USD 79,360. Since the Player effectively only received USD 123,238 from Mumbai City FC, the Player maintains that only this amount is to be deducted.

175. The Panel does not agree with the Player's considerations in this respect. The Panel notes that the Player was entitled to receive an amount of USD 230,000 from Mumbai City FC and, by means of the mutual termination agreement, waived a considerable amount. The Player may obviously have had valid reasons to mutually terminate his employment contract with Mumbai City FC, but the Panel finds that this cannot come at the expense of the Club. The Club had no involvement in the Player's employment relationship with Mumbai City FC, while the consequence of only deducting the amount effectively received by the Player, would lead to a higher amount of compensation to be paid by the Club. The Panel finds that this cannot be accepted and that the entire value of the Player's employment contract with Mumbai City FC in the amount of USD 230,000 is to be deducted from the compensation to be paid to the Player by the Club.

176. As an interim conclusion, the Panel therefore finds that the Player is entitled to be compensated for damages incurred in the amount of USD 959,830 gross (USD 1,193,000 -/- USD 3,170 -/- USD 230,000).

177. Besides this amount, the Player submitted two additional damage heads. It requested an additional amount of compensation equivalent to six monthly salaries (i.e. USD 294,000) under the "specificity of sport" and USD 545 because he had to change his flight ticket from Doha to Buenos Aires because his visa expired on 20 October 2015.

178. As to the claim under the "specificity of sport", the Panel adheres to the reasoning of a previous CAS panel in CAS 2007/A/1358, where it considered the following about the "specificity of sport":

> *"[…] The criterion of specificity of sport shall be used by a Panel to verify that the solution reached is just and fair not only under a strict civil (or common) law point of view, but also taking into due consideration the specific nature and needs of the football world (and of parties being stakeholders in such world) and reaching therefore a decision which can be recognised as being an appropriate evaluation of the interests at stake, and does so fit in the landscape of international football".*

179. The Panel finds the amount of USD 959,830 gross is an appropriate amount of compensation for the damages incurred by the Player. The Panel finds that the conduct of the Club was not so severe as to justify an additional amount of compensation. The conduct of the Club was certainly reproachable, but the Club paid the Player his salary until the end of the employment relationship and did not prevent the Player and his family from leaving the country.

180. Finally, turning its attention to the Player's claim to be compensated for the expenses incurred in relation to changing his flight ticket from Doha to Buenos Aires in the amount of USD 545, the Panel first of all notes that the Club does not dispute that the invoices submitted by the Player indeed relate to the changing of the Player's flight to Buenos Aires.

181. Although the FIFA DRC dismissed the Player's claim in this regard because *"the Chamber understood that the* [Club] *complied with its obligations by granting the ticket and cannot be held responsible for said surcharge"*, the Panel finds that the Club can be held for the extra costs incurred, because if the Club had provided the Player with a valid residence permit, the Player would not have been required to leave Qatar on 20 October 2015. Accordingly, the Panel finds that the Club was responsible for the extra costs incurred by the Player and should compensate him accordingly.

182. Consequently, the Panel finds that the Club shall reimburse the Player with the amount of USD 545 for the costs incurred for the change of the flight tickets from Doha to Buenos Aires.

183. The Panel however notes that the Player did not ask for interest over this amount in its requests for relief, as a consequence of which the Panel is prevented from awarding interest over such amount. Because of this, the operative part of this award mentions two different amounts, one with interest, and one without.

184. The Panel notes that the FIFA DRC awarded 5% interest *per annum* over the amount of compensation as from 23 May 2016, whereas the Player claims to be entitled to interest as from 14 November 2015.

185. The Panel observes that Article 339(1) SCO determines as follows in a free translation into English:

"When the employment relationship ends, all claims arising therefrom fall due".

186. Accordingly, the Panel finds that the compensation to be paid fell due on the day following the date of termination of the employment relationship (i.e. 13 November 2015) rather than the date that the Player filed a claim against the Club before the FIFA DRC. Interest at a rate of 5% *per annum* shall therefore accrue over the amount of USD 959,830 gross as from 14 November 2015 until the date of effective payment.

B. Conclusion

187. Based on the foregoing, the Panel finds that:

a) The present arbitral proceedings are not to be stayed due to *lis pendency*.

b) The Player had just cause to terminate the Employment Contract on 13 November 2015.

c) The Club shall pay compensation for breach of contract to the Player in the amount of USD 959,830 (USD 1,193,000 -/- USD 3,170 -/- USD 230,000), with interest at a rate of 5% *per annum* accruing as from 14 November 2015 until the date of effective payment.

d) The Club shall reimburse the Player with the amount of USD 545 for the costs incurred for the change of the flight tickets from Doha to Buenos Aires.

188. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 29 May 2018 by Al Wakra Football Club Company against the decision issued on 30 June 2017 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is partially upheld.

2. The appeal filed on 4 June 2018 by Mr Gastón Maximiliano Sangoy against the decision issued on 30 June 2017 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is partially upheld.

3. The decision issued on 30 June 2017 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is confirmed, save for para. 4, which shall read as follows:

   Al Wakra Football Club Company has to pay to Mr Gastón Maximiliano Sangoy, ***within 30 days*** *as from the date of notification of the present decision, compensation for breach of contract in the amount of USD 959,830 (nine hundred fifty nine thousand eight hundred thirty United States Dollars), plus 5% interest per annum as from 14 November 2015.*

   Al Wakra Football Club Company shall reimburse Mr Gastón Maximiliano Sangoy, ***within 30 days*** *as from the date of notification of the present decision, with the amount of USD 545 for the costs incurred for the change of the flight tickets from Doha to Buenos Aires.*

4. (…).

5. (…).

6. (…).

7. All other and further motions or prayers for relief are dismissed.