Arbitration CAS 2020/A/7442 Gil Vicente Futebol Clube v. FK Rad, award of 11 January 2022

Panel: Mr Patrick Lafranchi (Switzerland), Sole Arbitrator

Football
Transfer
Obligations of the parties with regard to a conditional contract
Duty to conduct a medical examination
Place of performance of the obligation
Due diligence
Default of the obligor

1. **According to Swiss law, parties are allowed to make the bindingness of a contract subject to the fulfilment of one or more conditions. A conditional contract leads to obligations for the contractual parties. Not only have the parties a negative obligation to "refrain" from specific acts which might prevent the due performance of the obligation. The parties also have positive duties to do what is appropriate to safeguard the prospect of fulfilment of the obligation. The parties are required to act positively in a way that is expected from them in good faith.**

2. **It is the responsibility of the buying club to organise the medical examination as soon as possible. The purpose of the condition of a medical examination is to protect the interests of the buying club. The latter should not be bound by a contract without knowing the physical state of the player. Therefore, a performance of such medical examination after signing the employment contract contradicts the purpose of the condition. Furthermore, the performance of the medical examination is an act which can solely be done by the buying club without the selling club having a possibility to promote the occurrence of the condition.**

3. **According to Article 74 para. 2 ch. 1 of the Swiss Code of Obligations (SCO), pecuniary debts must be paid at the place where the creditor is resident at the time of performance. If the payment is to be made over an invoice with the details of the obligee's bank account, the place of performance is the bank that has the obligee's bank account. The transferring obligor thus bears the risk of loss until the transfer reaches the creditor bank.**

4. **The conclusion of a contract leads to principal and secondary obligations. A secondary obligation is the obligation of due diligence while performing the agreement. The obligation of due diligence forms part of the contract without a mutual expression of intent being required.**

5. **In order to compel performance of a bilateral contract in which the obligee is**

discharged, the obligor must be in default and the performance not rendered at the time for subsequent performance. If an obligor is in default, the obligee is to set a time limit for the subsequent performance (Article 107 para. 1 SCO). If the obligor did not perform within this time limit, the obligor has the choice to either compel performance in addition to suing for damages in connection with the delay or forego subsequent performance and either claim damages for non-performance or withdraw from the contract altogether (para. 2). Article 108 SCO defines the cases where no time limit for subsequent performance is needed such as where it is evident that a time limit would serve no purpose due to the obligor's conduct (Article 108 ch. 1 SCO). In this case, the obligee can exercise its right of choice according to Article 107 para. 2 SCO as soon as the obligor is in default.

I. PARTIES

1. Gil Vicente Futebol Clube (hereinafter "the Appellant" or "Gil Vicente"), is a Portuguese football club, based in Barcelos and affiliated to the Portuguese Football Federation.

2. FK Rad (hereinafter "the Respondent" or "FK RAD") is a Serbian football club, based in Belgrade and affiliated to the Football Association of Serbia.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions and the evidence examined in the course of the present appeal arbitration proceedings and during the hearing. This background is set out for the sole purpose of providing a synopsis of the matter in dispute.

4. On 2 August 2019, the Appellant and the Respondent (hereinafter "the Parties") concluded a transfer agreement (hereinafter "the Transfer Agreement") regarding the permanent transfer of the player A. (hereinafter "the Player"), from FK Rad to Gil Vicente.

5. The Transfer Agreement provided, in its Article 1, that its validity was subject to the following suspensive conditions:

   (i) The Player has successfully completed the medical examination conducted by Gil Vicente and,

   (ii) Gil Vicente and the Player have entered into a valid employment contract.

6. Article 3 of the Transfer Agreement stipulated that FK Rad is entitled to a transfer fee of EUR 80,000, payable in two instalments:

   (i) EUR 50,000 upon signing the Transfer Agreement and,

(ii) EUR 30,000 until 31 August 2019 at the latest.

7. On 5 August 2019, Gil Vincente and the Player signed an employment contract (hereinafter "the Employment Contract").

8. On 8 August and 22 October 2019, medical examinations were carried out. According to the report dated 22 October 2019, the Player suffered from a chronic femoral patellar instability.

9. The Parties communicated with each other via E-Mail and WhatsApp. On 8 August 2019, the Respondent sent an email with an invoice for the payment of the first instalment to the Appellant (hereinafter "the First Invoice"). Shortly after receiving this email the Appellant received another email in which it was asked to withhold the payment. On the following day, on 9 August 2019, the Appellant received a new invoice for the first instalment (hereinafter "the Second Invoice"). On 21 August 2019, the Appellant made the payment of EUR 50,000 according to the Second Invoice.

III. PROCEEDINGS BEFORE THE FIFA PSC

10. On 30 October 2019, FK Rad lodged a claim in front of the FIFA Players' Status Committee (hereinafter "the FIFA PSC") against Gil Vicente, requesting the payment of the overdue transfer fee in the amount of EUR 80,000, in accordance with the Transfer Agreement as well as *"interest as of the due dates"*.

11. Gil Vicente, in turn, claimed back the first instalment of EUR 50,000, arguing that the amount has already been paid to FK Rad, but not owed as the Player had failed medical examinations which is why Gil Vicente considered the Transfer Agreement to be invalid.

12. On 29 July 2020, the Single Judge of the FIFA PSC issued the following decision (hereinafter "the Appealed Decision"):

1. The claim of the Claimant / Counter-Respondent, FK Rad, is accepted.

2. The counterclaim of the Respondent / Counter-Claimant, Gil Vicente FC, is rejected.

3. The Respondent / Counter-Claimant has to pay to the Claimant / Counter-Respondent, the following:

- EUR 50,000 plus 5% interest p.a. as from 3 August 2019 until the date of effective payment;
- EUR 30,000 plus 5% interest p.a. as from 1 September 2019 until the date of effective payment;

4. A warning is imposed on the Respondent / Counter-Claimant.

5. The Claimant / Counter-Claimant is directed to immediately and directly inform the Respondent / Counter-Claimant of the relevant bank account to which the Respondent / Counter-Claimant must pay the due amount.

6. The Respondent / Counter-Claimant shall provide evidence of payment of the due amount in accordance with this decision to psdfifa@fifa.org, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).

7. In the event that the amount due, plus interest as established above is not paid by the Respondent within 45 days, as from the notification by the Claimant / Counter-Respondent of the relevant bank details to the Respondent / Counter-Claimant, the following consequences shall arise:

1. The Respondent / Counter-Claimant shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

2. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.

8. The final costs of the proceedings in the amount of CHF 2,000 are to be paid by the Respondent / Counter-Claimant to FIFA.

13. The grounds of the decision were communicated to the Parties on 16 September 2020.

14. In its decision, the Single Judge first assessed whether the Transfer Agreement was indeed valid or not.

15. He noted that from the documentation contained in the FIFA Transfer Matching System (hereinafter "FIFA TMS"), it appeared that Gil Vicente had signed an employment contract with the Player and had registered the latter on 8 August 2019. Also, the Player and Gil Vicente mutually agreed to terminate their employment relationship on 13 January 2020. Therefore, the Single Judge concluded that the Transfer Agreement was validly concluded and executed.

16. With regard to the payment in the amount of EUR 50,000 reclaimed by Gil Vincente the Single Judge observed that Gil Vicente had paid this amount to another bank account than the one provided by FK Rad in its invoice. The Single Judge decided that the alleged payment could therefore not be taken into account.

17. From that, the Single Judge inferred that Gil Vicente was obliged to pay FK Rad the total amount of EUR 80,000 (EUR 50,000 plus EUR 30,000) as well as 5% p.a. interest as from the due dates over the aforementioned amounts until the date of the effective payment.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 6 October 2020, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport ("CAS") against the Respondent with respect to the Appealed Decision.

19. On 19 October 2020, within the time limit set, the Appellant filed its Appeal Brief.

20. On 26 October 2020, the Parties were informed by the CAS Court Office that, unless the Respondent objected, the case will be submitted to a Sole Arbitrator as requested by the Appellant. Furthermore, the Respondent was invited to object if it did not agree with English being the language of the proceedings. The Respondent was requested to file its Answer within 20 days of receipt of said letter.

21. On 27 October 2020, the Respondent agreed with both the appointment of a sole arbitrator as well as English being the language of the proceedings. It further requested that the time limit to file its Answer be set once the advance of costs had been paid by the Appellant.

22. On the same day, the CAS Court Office granted the Respondent's request regarding the filing of its Answer and set aside the time limit set earlier.

23. On 5 November 2020, the Parties were informed by the CAS Court Office that FIFA renounced to its right to request its intervention in the present arbitration proceedings.

24. On 3 December 2020, the Parties were informed by the CAS Court Office that the suspension of the time limit to file the Answer had been lifted. Furthermore, the Parties were advised that the Sole Arbitrator to decide the case at hand had been appointed as follows:

    Sole Arbitrator: Mr Patrick Lafranchi, Attorney-at-law in Bern, Switzerland

25. On 21 December 2020, the Respondent requested an extension of the deadline of 20 days to file its Answer, which was granted.

26. On 18 January 2021 and within the time limit set, the Respondent filed its Answer. On the same day, the Respondent requested the CAS to deem the Appeal withdrawn, to issue a Termination Order and to exclude the file from the CAS roll, should the Appellant not have paid the second part of the advance of costs.

27. On 19 January 2021, the Parties were requested to inform the CAS Court Office concerning their preferences regarding a possible hearing. They were further informed that the Appellant had paid the totality of the advance costs.

28. On the same day, the Appellant requested three further documents to be admitted to the files.

29. On 26 January 2021, the Appellant requested a hearing to be held. It asked for the addition of two documents as evidences and for authorisation to submit a Reply to the Statement of Defence.

30. On the same day, the Respondent informed the CAS Court Office that i) it preferred a hearing to be held, that ii) it did not agree with the addition of the Appellant's documents to the process and that, iii) these should be disregarded and excluded from the file. In case the documents were allowed, the Respondent requested that its exhibit R09 be also accepted.

31. On 1 February 2021, the CAS Court Office informed the Parties that the Sole Arbitrator noted that both Parties wished that a hearing be held, and accordingly informed the Parties that further information with respect to possible hearing dates would follow in due course.. Furthermore, the Parties were informed that the Sole Arbitrator had decided to grant a second round of

submissions in accordance with Article R56 CAS Code.

32. On 16 February 2021, the Appellant submitted its Reply requesting the CAS to:

*"accepts the present **reply** and issues an award in favour of the Appellant, declaring the **invalidity of the agreement** established between the parties - Transfer Agreement FK Rad Beograd- Gil Vicente FC A., and consequently the Respondent is ordered to **reimburse** Appellant on the amount already payed to the Respondent on 21 August 2019, of the first instalment - **EUR 50.000,00** (fifty thousand euros) according to Article 3.1 of the present Agreement, plus 5% p.a. interest until the date of effective payment.*

***Without prejudice**,*

Should it be understood that the Agreement entered into is valid, it must always be acknowledged that the Appellant has already paid to the Respondent the amount of EUR 50.000,00 (fifty thousand euros) corresponding to the first instalment, being only supposedly due the amount of EUR 30.000,00 (thirty thousand euros);

In any case: a) The Respondent shall always be condemned as a bad faith litigant in an amount of not less than EUR 10.000,00 (ten thousand euros); and b) The Respondent shall always be condemned to pay the costs of the proceedings".

33. On 4 March 2021, the Respondent submitted its Second Submission within the prescribed deadline, requesting:

a) That the present appeal be dismissed;

b) That the Appealed Decision be upheld, being the initial claim of the Respondent fully accepted;

c) That the Appellant be ordered to bear all the costs and fees of the present arbitration, as well as to the proceedings before the FIFA PSC;

d) That the Appellant be ordered to pay the Respondent a contribution towards legal fees and other expenses incurred in connection with the proceedings and those before the FIFA PSC, in an amount not less than CHF 15,000, or the amount deemed fair by the Sole Arbitrator.

34. On 6 May 2021, the CAS Court Office announced to the Parties that the hearing would take place on 3 June 2021, by video conference. The CAS Court Office further invited the Parties to sign the Order of Procedure issued on behalf of the Sole Arbitrator.

35. The Procedural Order was duly signed and returned to the CAS Court Office on 7 May 2021 by the Respondent and on 11 May 2021 by the Appellant.

36. On 3 June 2021, the hearing by video was held. At the outset of the hearing, all Parties confirmed that they did not have any objections as to the constitution and composition of the Arbitral Tribunal. In addition to the Sole Arbitrator and Mrs Andrea Sherpa-Zimmermann, CAS Counsel, the following persons attended the hearing:

For the Appellant:

- Mrs Isabel Carneiro as Legal Counsel

- Mrs Ana da Silva Ferreira as Legal Counsel
- Mrs Paula Carvalho as Interpreter
- Mr José Manuel Martins as Representative and Witness
- Mr José Miguel Pimenta as Representative and Witness

For the Respondent:

- Mr Jan Schweele as Legal Counsel
- Mr Thomas Prestes Bosak as Legal Counsel
- Mr Hugo Paris as Legal Counsel
- Mr Gavin Dingley as Legal Counsel
- Mrs. Mirela Markus as Representative and Witness

37. The Appellant renounced to question its representative and witness Mr Tiago Manuela Lenho.

38. The witnesses and the interpreter were instructed by the Sole Arbitrator to tell the whole truth and nothing but the truth, subject to penalties of perjury under Swiss Law.

39. At the hearing, the Parties were given a full opportunity to present their case, submit their arguments, and answer any of the questions from the Sole Arbitrator.

40. As preliminary remark, the Respondent's legal counsel pointed out that the language of proceedings is English according to Article R29 of the CAS Code and that no deviation has been agreed on. The Parties agreed that the Appellant will ask the questions in English and all its witnesses will answer with the support of the interpreter. Furthermore, the Respondent pointed out that the translations provided by the Appellant have been done by Mrs Ana da Silva Ferreira, who is a Legal Counsel of the Appellant, and are thus not independent translations which is why the weights attached to the translation is limited. Referring to Article R44.1 CAS Code as well as to Articles 4 and 8 para. 3 of the IBA Rules on Taking of Evidence in Arbitration, the Respondent pointed out that the Appellant did not provide any witness statements but only a summary of their statement.

41. In its closing statement the Appellant requested:

To declare the invalidity of the agreement celebrate between the Parties and consequently to order to FK Rad reimburse Gil Vincente the amount already paid by the latter of EUR 50,000.

Notwithstanding shall this not be the case if the agreement is considered valid, Gil Vincente requests that Gil Vincente has already paid the amount of EUR 50,000 be only due EUR 30,000.

Should this not be the case, the proceedings shall be suspended for the time necessary to carry out the measures to be taken by the police which are already on their way in Serbia and in Portugal. Measures that are essential to the matter of truth and the proper decision of the case under the terms of articles R39 and R57 CAS-Code.

42. In its closing statement the Respondent rejected the Appellant's request to put the proceedings on hold and requested:

    a) To dismiss this Appeal in full; and

    b) To confirm the challenged decision rendered by FIFA.

43. At the end of the hearing, the Parties confirmed that they were satisfied with the hearing and that their right to be heard had been provided and fully respected.

V. THE POSITION OF THE PARTIES

44. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator, indeed, has carefully considered all written and oral submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

A. The Position of the Appellant in the Appeal Brief

45. In its Appeal Brief, the Appellant requested the Sole Arbitrator to decide as follows:

    That the CAS accepts the present claim and issues an award in favour of the Claimant, declaring the invalidity of the agreement established between the parties – Transfer Agreement FK Rad Beograd – Gil Vicente FC A., and consequently the Respondent is ordered to return to Appellant the amount already payed to Respondent on 21 August 2019, of the first instalment – EUR 50,000 (fifty thousand euros) according to Article 2 of the present Agreement, plus 5% p.a. interest until the date of effective payment.

    Without prejudice,

    Should it be understood that the Agreement entered into is valid, it must always be acknowledged that the Appellant has already paid to the Respondent the amount of EUR 50,000 (fifty thousand euros) corresponding to the first instalment, being only due the amount of EUR 30,000 (thirty thousand euros);

    In any case:

    a) The Respondent shall always be condemned as a bad faith litigant in an amount of not less than EUR 10,000 (then thousand euros); and

    b) The Respondent shall always be condemned to pay the costs of the proceedings.

46. The Appellant points out that the Player had failed the medical examinations carried out on 22 October 2019. In these medical examinations, it was established that the Player suffered from a chronic femoral patellar instability of the left knee. Strength tests showed a significant decrease in values in the left lower limb. It was further stated that said chronic patellofemoral instability is an injury that implies long periods of anterior knee pain, joint effusion and marked limitation of sporting activity, particularly in football, conditioning several periods of stopping of sporting activity, and that they need conservative and / or surgical treatment.

47. On 25 October 2019, the Appellant signed a "Commitment Letter" with the Player which allowed the latter to perform further medical examinations in Serbia.

48. According to the Appellant, it had no choice but to terminate mutually the contract with the Player.

49. The Appellant considers that the suspensive condition in Article 1 of the Transfer Agreement (*"The Player has successfully completed the medical examination, as conducted by Gil Vicente FC"*) was not met. As said condition, upon which the validity of the contract was depended, was not met, the Transfer Agreement cannot be considered valid.

50. Therefore, FK Rad was not entitled to receive any payment form Gil Vicente. Rather, FK Rad must return the amount of EUR 50,000 corresponding to the first instalment already received.

51. As to the payment made, the Appellant submits that the first instalment of EUR 50,000 owed according to the Transfer Agreement, was paid on 21 August 2019 to the bank account provided by Mrs. Mirela Markus, the Assistant General Manager of FK Rad.

52. The Appellant argues that on 8 August 2019, per first email, the Respondent sent the Appellant the First Invoice containing a Serbian bank account. In a second e-mail, the Respondent urgently asked the Appellant to withhold its payment as the bank account mentioned in the First Invoice could not be used for any transactions as it was closed by the bank.

53. The Appellant submits that on 9 August 2019, another e-mail was sent by FK Rad with a revised invoice (hereinafter "the Second Invoice") attached. Gil Vicente paid the amount of EUR 50,000 to this bank account.

54. The Appellant states that said payment had been successful. It submits an email of Mrs. Mirela Markus dated 24 September 2019 confirming the receipt of the first instalment.

55. The Appellant therefore states that FK Rad, by hiding the receipt of said payment, acts in bad faith. It submits that the Respondent requests the payment of an amount already paid to which it is not entitled.

56. In case the Transfer Agreement is understood as valid, the Appellant submits that it had already paid EUR 50,000 and thus only EUR 30,000 are due.

57. In sum, the Appellant therefore states that the Respondent shall be condemned as a bad faith litigant.

B. The Position of the Respondent in the Answer

58. In its Answer, the Respondent requested the Sole Arbitrator to decide as follows:

That the present appeal be rejected in totum;

That the Appealed Decision be confirmed in totum, being the initial claim of the Respondent fully accepted;

That the Appellant be ordered to bear the entire cost and fees of the present arbitration, as well as to the

proceedings before the FIFA PSC;

That the Appellant be ordered to pay the Respondent a contribution towards legal fees and other expenses incurred in connection with the proceedings in an amount not less than CHF 10,000, or the amount deemed fair by the Sole Arbitrator.

59. Regarding the validity of the Transfer Agreement, first, the Respondent considers the conditions to be deemed fulfilled, in theory. Second, and despite the fact that the Player did not pass the medical tests, the Transfer Agreement is valid as certain exceptions apply.

60. According to the Respondent, the second condition had been fulfilled upon the signing of the Employment Contract between the Player and the Appellant as of 5 August 2019.

61. With regard to the first condition, the Respondent points out that the conclusion of the Employment Contract on 5 August 2019 took place before the first medical examinations. This contradicts a long-standing jurisprudence of the CAS. It furthermore highlights that under Swiss Law and CAS jurisprudence (cf. art. 156 Swiss Code of Obligations (hereinafter "SCO"); CAS 2016/A/4794) a party responsible for the fulfilment of a condition precedent must take reasonable cautions to such fulfilment. It highlights that the electrocardiogram and the transthoracic echocardiogram dated 8 August 2019. The reports of the MRI's of the right ankle and the left knee are not dated. However, the final medical exam report is dated 22 October 2019. Referring to CAS 2010/A/2168 and art. 156 SCO, the Respondent underlines that a condition is or is deemed fulfilled where one of the parties has prevented its fulfilment by acting in bad faith and this party is to be held liable.

62. The Respondent then points out – referring to CAS 2016/A/4794 and art. 152 para. 1 SCO - that, the relevant party responsible for the action fulfilling the suspensive condition may execute and perform the agreement without all conditions being fulfilled. It stresses that Gil Vicente did make use of that possibility by registering the Player, signing the Employment Contract and allegedly even paying the first instalment of the transfer fee in the amount of EUR 50,000. Thus, the Appellant performed the Transfer Agreement despite the fact that one of the suspensive conditions was allegedly not fulfilled.

63. Also, the Respondent considers the Appellant to violate the principle of *venire contra factum proprium*. By arguing that only EUR 30,000 would be outstanding, Gil Vicente admits that the Transfer Agreement is valid and that it has effectively been performed.

64. Regarding the alleged payment made by the Appellant, the Respondent states that it has never received the payment of the first instalment. The Appellant, who bears the burden of proof according to art. 8 Swiss Civil Code (hereinafter "SCC"), fails to prove that FK Rad received the allegedly made payment of EUR 50,000.

65. The Respondent contests the authenticity of the e-mail exchange between the Parties submitted by the Appellant. It states that it has never sent an e-mail with further instructions nor a different, second invoice with bank details of a Spanish bank account to the Appellant and that it has never confirmed receipt of the payment allegedly made by Gil Vicente. It submits a different version of the email exchange as well as an official statement of the Banco Santander,

a Spanish bank according to which the Spanish bank account of the Second Invoice does not belong to the Respondent.

66. The Respondent further points out that the Second Invoice shows that said bank details were grossly copied and pasted, evidencing an obvious adulteration in the correct invoice [the First Invoice] previously sent by FK Rad, containing the correct bank details with the Respondent's only bank account.

67. In case the Appellant indeed should have received instructions and effectively should have made a payment, it had failed to undertake the minimal reasonable and expected due diligence. The Respondent therefore considers the Appellant to be liable for this fault according to Article 99 para. 1 SCO.

68. The Respondent submits that regardless of the different versions of the e-mail communication it did not received the payment of the transfer fee of EUR 80,000, to which it would be entitled, plus interest of 5% p.a. as from the date of each instalment.

69. Regarding the request of condemnation as bad faith litigant, the Respondent submits that it has never acted in bad faith and that the request is not supported by any legal basis.

C. The Position of the Appellant in the Reply

70. The Appellant upholds that the Transfer Agreement is valid and the Respondent has to reimburse the Appellant EUR 50,000. It states that due to internal restructuring it was not able to perform the medical examinations before the signing of the Employment Contract with the Player. It further points out that the first medical exam is dated 8 August 2019 and weak physical conditions were mentioned in the training reports.

71. Furthermore, the exception of articles 152 para. 1 and 156 SCO do not apply as the Appellant acted in accordance with the principle of good faith and of *nemo auditor propriam turpitudinem allegans*. The payment of EUR 50,000 was an act in good faith. So was the registration of the Player which was further necessary due to the deadline of the Portuguese Football Federation.

72. Regarding the emails, the Appellant states that it has never falsified any email chains or documents. It states that it received the emails submitted by itself but neither sent nor received the emails submitted by the Respondent. The submitted emails by itself are authentic as it received them from the official FK Rad email account.

73. The Appellant argues that by making the payment to the Spanish bank account it followed the instruction given by the official email account of the Respondent.

74. With regard to the burden of proof, the Appellant argues that it only has to prove that it made the payment and not that the Respondent received the payment. Thus, it is irrelevant whether a fraud was committed by the Respondent or whether the Respondent's email account was hacked.

75. The Appellant points out that according to the emails submitted by the Respondent the latter

tried to contact the Appellant's financial department using email-addresses that first have never been communicated to it and second do not belong to the Appellant.

76. The Appellant argues that the email exchange submitted by the Respondent shows that the latter did not communicate with the official email addresses of the Appellant. The official email addresses of the Appellant (ending with "@gilvcentefc.pt") are shown as sender or receiver, however, different email addresses (ending with @gmx.pt") appear under "reply to" or "cc". Thus, the Respondent's emails are sent to the @gmx.pt-addresses, which do not belong to the Appellant.

77. According to the Appellant either the Respondent's email account has been hacked or the Respondent has forged emails and created a fake bank account. It denies that itself was hacked arguing that only in the email chain submitted by the Respondent the @gmx.pt-addresses appear. Furthermore, the Appellant refers to the statement of Mrs. Mirela Markus according to which she had contact with […]@gilvicentefc.pt and not with […].gilvicentefc@gmx.pt.

78. According to the Appellant, the Respondent did not receive the payment due to its own negligence. Based on Articles 97 et seq. and 754, 827 SCO, the Respondent is responsible for its own protection and is liable thereof.

79. In any case, the Appellant argues that it was not expected to undertake research with regard to the origin of the bank account as in international football sports it is normal that different bank accounts are used.

D. The Position of the Respondent in the Second Submission

80. The Respondent upholds that the Transfer Agreement is valid. The Respondent submits that there are no precise criteria for the completion of a medical test. If requisite standards are to be met they are to be stated in the contract (cf. CAS 2013/A/3314 and Article 18 SCO). By finishing the medical examination more than two months after the registration of the Player and after the signing of the Employment Contract, the Appellant must have been satisfied and thoroughly informed of the Player's condition. A "post-agreement medical examination" would neither be fair nor sufficient. This is in line with the principle that if a club does not undertake the necessary research before signing a contract, its later nonfulfillment cannot be based on the injuries or the fact that the player has not received a work permit (cf. CAS 2013/A/3261).

81. Subsidiary and in any event, the Respondent argues that it is entitled to a compensation as the Appellant's non-compliance with the Transfer Agreement caused a loss of an important player.

82. With regard to the performance of the Transfer Agreement, the Respondent argues that the Appellant has not proven that the Respondent received the payment and thus is not discharged from the burden of proof. Itself, it is not liable for any mistaken payment as it complied with the Serbian law and acted diligently.

83. Regarding the emails addresses, the Respondent submits that the first time a @gmx.pt-address appears as "reply to" in its version of the email communication, is in the email sent by the Appellant on 9 August 2019 at 1:11PM. Only after receiving this email the Respondent started

to communicate with the @gmx.pt-email addresses. The Respondent submits that the respective IP address is located in Bangkok.

84. Referring to the Appellant's Second Submission the Respondent points out that the Appellant did not communicate with the Respondent's official email account, fcradbdg@gmail.com, but with fcradbgd@mail.com which appears in the "replay to" function in the chain of emails submitted by the Appellant. The Respondent submits that the email accounts of both Parties were hacked.

85. At the hearing before CAS it was stated that the use of the wrong email addressed of the financial department of the Appellant by Mrs. Mirela Markus was due to a translation mistake by herself and is not related to hacking.

86. Moreover, the Respondent argues that any email sent from fcradbgd@mail.com was not sent by the Respondent or a person allowed to represent it according to Article 38 SCO. Referring to SFT 120 II 201, the Respondent argues that despite acting with due diligence it did not have the chance to prevent the action of the hackers. However, the Appellant could have noticed that the Second Invoice was false.

87. The Respondent submits that the Appellants' conduct could be considered as grossly negligent. Referring to SFT 4A_386/2016 (5 December 2016), it argues that first the transaction to a bank account abroad and second the insufficient information given for the Second Invoice in addition to its poor quality asked for additional clarifications to be made. It further submits that it did not know and nor could have known about the fraud at the time the payment was made. The Appellant remains bound by the Transfer Agreement according to Article 28 para. 2 SCO.

88. The Respondent submits that the Appellant did not prove that it acted in accordance with the minimal expected and necessary due diligence. The Appellant knew that the payment had to be made to the Serbian bank account as its details were indicated in the FIFA TMS. Furthermore, Mrs. Mirela Markus asked Mr. Tiago Lenho, Team Manager of Gil Vicente, about the payment, after the payment was made by the Appellant. In addition, the order of events does not correspond to the normal behaviour and the Second Invoice was poorly altered. The Appellant would have been obliged to contact the Respondent as a reasonable third party in the same situation had done.

VI. JURISDICTION OF CAS

89. The question of whether CAS has jurisdiction to hear the present dispute must be assessed on the basis of the *lex arbitri*. Given that CAS has its seat in Switzerland and that when the purported arbitration agreement was executed the Appellant did not have its domicile in this country, the provisions of Chapter 12 of the Swiss Private International Law Act (hereinafter "PILA") apply, pursuant to Article 176.1. In accordance with Article 186 para. 1 PILA (reflected in Article R55 of the CAS Code), CAS has the power to decide upon its own jurisdiction. This general principle of Kompetenz-Kompetenz is a mandatory provision of the *lex arbitri* and has been recognized by CAS for a long time (see e.g. CAS 2004/A/748, para. 6).

90. Article R47 of the CAS Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body. An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".

91. According to Article 58 para. 1 of the FIFA Statutes, appeals *"shall be lodged with CAS within 21 days of notification of the decision in question".*

92. Article 9 of the Transfer Agreement – applicable law and arbitration – provides

"Any dispute arising out of this Agreement shall be submitted to the competent body of FIFA. In the event that no FIFA body would be competent or in case of subsequent appeal, the Parties shall exclusively and definitely submit such claim to the Court of Arbitration for Sport in Lausanne, Switzerland".

93. It is undisputed between the Parties that the CAS has jurisdiction to adjudicate the matter at hand. In addition, the jurisdiction of CAS to hear the appeal filed by the Appellant against the Appealed Decision is confirmed by both Parties' signature of the Order of Procedure. The Sole Arbitrator is satisfied that, according to Article R47 of the CAS Code and Article 58 para. 1 of the FIFA Statutes, CAS has jurisdiction to hear this case and decide on the matter.

VII. ADMISSIBILITY

94. Article R49 of the CAS Code provides as follows:

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".

95. According to Article 58 para. 1 of the FIFA Statutes, appeals *"shall be lodged with CAS within 21 days of notification of the decision in question".*

96. The Sole Arbitrator notes that the Statement of Appeal was filed on 6 October 2020, within the 21-day time limit after the notification of the grounds to the Parties and contained the requirements set by Article R48 of the CAS Code.

97. In addition, no questions regarding the admissibility of the Appeal have been raised by either Party.

98. It follows that the Appeal is admissible.

VIII. APPLICABLE LAW

99. Article. R58 of the CAS Code reads 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

100. Article 9 of the Transfer Agreement provides that the *"Agreement shall be governed by and interpreted in accordance with the FIFA Regulations on the Status and Transfer of Players".*

101. According to Article 57 para. 2 of the FIFA Statutes, the provisions of the CAS Code *"shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and additionally, Swiss law".*

102. The Sole Arbitrator therefore rules that the present dispute is to be solved according to the corresponding FIFA regulations, in particular the Regulations on the Status and Transfer of Players (hereinafter "RSTP"), the October 2019 edition of said regulations, and that Swiss law shall apply subsidiarily.

IX. MERITS

A. Issues of the Dispute

103. The first disputed issue is whether the Transfer Agreement took effect and is binding. The Sole Arbitrator notes that it is undisputed that the Parties signed a Transfer Agreement on 2 August 2019 regarding the Player. In its Article 1 the Transfer Agreement contained a suspensive clause of two conditions: First, the successful completion of the medical examination, as conducted by the Appellant, and second the conclusion of a valid employment contract between the Appellant and the Player. The occurrence of the second condition is undisputed. With regard to the first condition, on the one hand, the Appellant submits that the Transfer Agreement is not binding because the first condition did not occur as the Player failed the medical examination. On the other hand, the Respondent submits that Transfer Agreement took effect.

104. The second disputed issue relates to the performance of the Transfer Agreement in particular the Appellant's obligation to pay the transfer fee. The Sole Arbitrator notes that it is undisputed that according to Article 3 of the Transfer Agreement, the Appellant had to pay to the Respondent a transfer fee of EUR 80,000 payable in two instalments: EUR 50,000 upon signing the Transfer Agreement and EUR 30,000 on August 31st 2019 at latest. The Appellant submits that it paid EUR 50,000 as instructed and thereby fulfilled its contractual duties regarding the payment of the first instalment. On the opposite, the Respondent submits that the Appellant did not discharge its obligation regarding the payment of the first instalment due to a violation

of its obligation of due diligence.

105. As a first step, the Sole Arbitrator will address whether the Transfer Agreement is binding. If the Transfer Agreement is considered as binding, the Sole Arbitrator will, in a second step, examine whether the Parties' performed their contractual duties. In case of negation, the Sole Arbitrator will address who is liable for it.

B. Bindingness of the Transfer Agreement

106. As a preliminary remark, it is noted that both Parties addressed the first question as validity of the Transfer Agreement. However, the first question does not address the validity of the Transfer Agreement but its binding nature.

a. Obligation to Act Positively

107. According to Swiss law, parties are allowed to make the bindingness of a contract subject to the fulfilment of one or more conditions. Article 151 SCO reads as follows:

"A contract is conditional if its binding nature is made dependent on the occurrence of an event that is not certain to happen".

108. A conditional contract leads to obligations for the contractual parties. Article 152 para. 1 SCO provides as follows:

"Until such time as the condition precedent occurs, the conditional obligor must refrain from any act which might prevent the due performance of his obligation".

109. According to the wording of Article 152 para.1 SCO, it follows a negative obligation for the parties to *"refrain"* from specific acts. However, it is recognized that Article 152 para. 1 SCO also establishes positive duties of the parties to do what is appropriate to safeguard the prospect of the fulfilment (cf. CAS 2014/A/3647-3648, para. 65; CAS 2016/A/479, para. 76 *et seq.*). The parties are required to act positively in a way that is expected from them in good faith (WIDMER/CONSTANTIN/EHRAT, Basler Kommentar OR-I, 7th edition, Basel 2020, N 2 to art. 152 SCO).

110. With regard to the medical examination, the *lex mercatoria* defines that it is the responsibility of the buying club to organise the medical examination as soon as possible (cf. CAS 2009/A/1991, para. 23). The buying club has to conduct the medical examination before concluding any employment contract with the player (cf. CAS 2009/A/1991, para. 25; CAS 2008/A/1593 para. 18). Thus, the buying club has to make the medical examination before signing the employment contract.

111. In the case at hand, the Sole Arbitrator notes that the performance of the medical examinations is a condition to a contract between two clubs and thus does not fall under Article 18 para. 4 RSTP.

112. Both Parties were obliged to act positively according to Article 152 para. 1 SCO to safeguard the prospect of the fulfilment of the first condition. The Sole Arbitrator notes that the documents submitted do not indicate the Parties' intent to depart from the general rule on the performance and timing of the medical examination. Therefore, the Sole Arbitrator finds that according to the *lex mercatoria* it was the Appellant which had to organise the medical examination and to carry them out before concluding the Employment Contract with the Player.

113. The Employment Contract between the Player and the Appellant was signed on 5 August 2019. The dated documents submitted by the Appellant refer to medical examinations carried out after the signing date of the Employment Contract. For example, the medical examination report dates from 22 October 2019, more than two months after the Employment Contract was signed. Also, Mr José Miguel Pimenta, Secretary of the Professional Department of the Appellant, stated in the hearing that when the Employment Contract was signed the Player still had not done the medical examination. The Appellant thereby did not act in accordance with the *lex mercatoria* and prevented the fulfilment of the first condition of the Transfer Agreement.

114. The Appellant's argument that the medical examination was not carried out due to internal restructuring cannot be followed. First, hiring new players is an administrative task and thus is not a reason to not carry out an operative task, such as the medical examination. Second, hiring new players is done by the professional department whereas the medical examinations are performed by the medical department. Third, the Appellant also had had to carry out medical examinations before, from what can be deduced that the Appellant had a system to perform the medical examination. The argument raised by the Appellant does thus not justify a violation of its obligation to carry out the medical examination before signing the Employment Contract.

115. In conclusion, and in light of all these factors, the Sole Arbitrator considers that the Appellant was obliged to carry out the medical examinations the latest before signing the Employment Contract. By not doing so it breached Article 152 para. 1 SCO.

b. To Act against Good Faith

116. According to Article 156 SCO, a condition is deemed fulfilled where one of the parties has prevented its fulfilment by acting in bad faith. This provision includes the elements of preventing the fulfilment as well as acting against good faith. In that respect for a condition to be deemed fulfilled it requires more than a violation of Article 152 para. 1 SCO, *i.e.* that the party preventing the fulfilment acted against good faith *"in a gross manner"* (CAS 2014/A/3647-3648, para. 114; SJ 1961, p. 165 f.; MATT I., Der bedingte Vertrag im schweizerischen und liechtensteinischen Privatrecht, Zurich 2014, p. 388).

117. By examining if the first condition is deemed fulfilled, the Sole Arbitrator emphasizes that the purpose of the condition of a medical examination is to protect the interests of the buying club, in the case at hand of the Appellant. The buying club should not be bound by a contract without knowing the physical state of the player. Therefore, a performance of such medical examination after signing the employment contract contradicts the purpose of the condition. Furthermore, the performance of the medical examination is an act which can solely be done by the Appellant

without the Respondent having a possibility to promote the occurrence of the condition.

118. In the case at hand, the Player was registered with the Portuguese Football Federation and participated in training sessions of the Appellant. Furthermore, according to the correspondence submitted by the Parties, the Appellant neither informed the Respondent that it did not perform the medical examination before signing the Employment Contract nor informed the Respondent about the physical problems of the Player.

119. In conclusion, and in light of all these factors, the Sole Arbitrator considers that the Appellant acted against good faith in a gross manner. Therefore, the first condition of the Transfer Agreement is deemed fulfilled. In consequence, both conditions of the Transfer Agreement are fulfilled which is why the Sole Arbitrator concludes that the Transfer Agreement is binding.

120. As the Transfer Agreement is of binding nature, the other points raised by the Respondent with regard to the bindingness do not have to be elaborated on.

C. Performance of the Contractual Duties and Liability

121. As the Transfer Agreement is considered as binding, the Sole Arbitrator will examine whether the Appellant performed its contractual duties.

122. It is undisputed that on 8 August 2019 the Respondent sent an email with the First Invoice for the payment of the first instalment to the Appellant. According to the First Invoice, the payment had to be made through an intermediary bank to the account of Unicredit Bank Serbia to the benefits of the Respondent. It is further undisputed that shortly after receiving the email with the First Invoice, the Appellant received another email in which it was asked to withhold the payment. On the following day, on 9 August 2019, it received a new invoice, the Second Invoice, for the first instalment with the Banco Santander as beneficiary bank. On 21 August 2021, the Appellant made the payment according to the Second Invoice.

123. The Respondent denies that it received the first instalment. It submits that the emails following the First Invoice were not sent by itself as both Parties were hacked. On the contrary, the Appellant argues that the Respondent received the payment and that only the Respondent was hacked, but not itself. However, in the hearing Mr José Manuel Martins, the Head of the IT Department of the Appellant, stated that according to the information provided to him the Appellant and the Respondent were aware that somebody was interfering in the conversation and that this was known to both Parties. He confirmed that according to the files there was interference. Therefore, the Sole Arbitrator finds that both Parties were hacked.

124. As a first step, the Sole Arbitrator examines whether the Respondent received the first instalment. If not, it will be examined whether the Appellant performed its contractual obligation by making the payment according to the Second Invoice or whether the obligation of due diligence would have required from the Appellant to realise that it was hacked. If the Sole Arbitrator comes to the conclusion that the Appellant did not performed its obligation it will examine whether the Respondent can compel performance or subsidiarily claim damages for non-performance.

a. Performance of the Obligation as the Respondent Received the First Instalment

125. According to Article 74 para. 2 ch. 1 SCO, pecuniary debts must be paid at the place where the creditor is resident at the time of performance. If the payment is to be made over an invoice with the details of the obligee's bank account, the place of performance is the bank that has the obligee's bank account (SCHROETER, Basler Kommentar OR-I, N 49 to art. 74 SCO). The transferring obligor thus bears the risk of loss until the transfer reaches the creditor bank (VON CAEMMERER, Zahlungsort, in: FS für Frederick A. Mann, Munich 1977, 3 ff., p. 14).

126. In the case at hand, the payment of the Transfer Fee was to be done by invoices which contained the details of a bank account. Thus, the place of performance is the beneficiary bank. Accordingly, the Appellant bears the risk of loss until the amount is credited to the account. To prove that the Respondent received the first instalment, the Appellant submitted a declaration of the bank Caixa de Credito Agricola Mutuo do Noroeste according to which the bank transfer effectuated by the Appellant on 21 August 2021 was processed to the bank account with the IBAN ES[…]. The submitted posting note shows that the beneficiary bank of this payment was BSCHESMM, BANCO SANTANDER S.A. The Respondent submitted a statement of the BANCO SANTANDER S.A. according to which the bank account ES[…] is not owned nor registered as authorized by the Respondent.

127. Therefore, the Sole Arbitrator concludes that the Respondent did not receive the EUR 50,000. The Appellant's argumentation that it is discharged from its contractual obligation as the Respondent received the first instalment cannot be followed.

b. Performance of the Obligation by Making the Payment according to the Second Invoice

128. The conclusion of a contract leads to principal and secondary obligations (SFT 4A_494/2010, 7 December 2010, C. 4). A secondary obligation is the obligation of due diligence while performing the agreement (HONSEL, Basler Kommentar ZGBI, 6th edition, Basel 2018 N 16 to art. 2 SCC). The obligation of due diligence forms part of the contract without a mutual expression of intent being required (WIEGAND, Basler Kommentar OR-I, N 35 to art. 99 SCO).

129. While performing the Transfer Agreement the Appellant had to act diligently also when receiving the email to hold on the payment and the Second Invoice.

130. The Sole Arbitrator notes that by deciding on a possible violation of the obligation to act diligently it has to be considered that, first, around two hours after receiving the First Invoice, the Appellant received another email asking to *"hold on with* [the] *payment as the account cannot be used for any transaction because of* [the] *IBAN being taken off from the bank"*. On the following day, the Appellant received an email according to which the invoice was revised and contained the complete and correct details for the payment. Attached to the email was the Second Invoice. The argumentation of the IBAN being taken off was given only 2.5 hours after sending the First Invoice. In addition, no explanation was given why the IBAN was taken off or why the Second Invoice contained bank details of a different bank account in a different country. The Sole Arbitrator notes that under these circumstances a reasonable third person is required to enquire whether the argumentation about the IBAN is true and whether the Second Invoice

was indeed sent by the Respondent.

131. Second, the bank details of the Second Invoice do not correspond to the bank details indicated in the FIFA TMS. It contains a different account / IBAN number as well as a different bank. At the hearing, Mr José Miguel Pimenta confirmed that he saw the FIFA TMS. The Sole Arbitrator notes that a reasonable third person responsible for the transfer would check whether the bank details indicated in an invoice correspond to the FIFA TMS' information, especially if the details changed during the transfer. At the hearing, Mr José Miguel Pimenta stated that he would expect that the invoice contains the bank details of a bank account registered in the same country as the club.

132. Third, by comparing the invoices one sees that the First and Second Invoice have the same number and the same date. If a party sends a second invoice for the same payment on a different date with a different bank account, one would expect the invoice number and the date to be adapted.

133. Fourth, the layout of the Second Invoice is to be taken into consideration. The Second Invoice has a blank spot, which corresponds to the spot of the First Invoice with the information of the intermediary bank. Furthermore, in the Second Invoice, the information of the beneficiary's bank is in a different font than the rest of the text and is not aligned. Also, the gaps between the lines of the text block "Beneficiary's Bank", between this text block and the title "Beneficiary". In addition, the first line of the text block "Beneficiary" does not correspond to the rest of the layout of the Second Invoice. At the hearing, Mr José Miguel Pimenta stated that the font is smaller and that there might be some differences between the First and Second Invoice. The Sole Arbitrator notes that given these circumstances, a reasonable third person is required to investigate whether the Second Invoice is correct. This obligation is even higher when comparing the First Invoice to the Second Invoice. In this case, investigation of a possible alteration is required.

134. In conclusion, all these factors together raise suspicion by a reasonable third person on the correctness of the Second Invoice. The obligation to act diligently therefore requires from the performing party, namely the Appellant, to verify the correctness of the Second Invoice. By not doing so, the Appellant breached its obligation of due diligence and is liable thereof according to Article 99 SCO. As the payment of the first instalment was not credited to the Respondent's bank account due to the Appellant breach, the later did not discharge its contractual obligation regarding the payment of the first instalment.

c. Consequences of Non-Performance

135. In order to compel performance of a bilateral contract, in which the obligee is discharged, the obligor must be in default and the performance not rendered at the time for subsequent performance.

136. According to Article 102 para. 1 SCO: *"Where an obligation is due, the obligor is in default as soon as he receives a formal reminder from the obligee"*. Para. 2 states *"Where a deadline for performance of the obligation has been set by agreement or as a result of a duly exercised right of termination reserved by one party,*

the obligor is automatically in default on expiry of the deadline".

137. If an obligor is in default, the obligee is to set a time limit for the subsequent performance (Article 107 para. 1 SCO). If the obligor did not perform within this time limit, the obligor has the choice to either compel performance in addition to suing for damages in connection with the delay or forego subsequent performance and either claim damages for non-performance or withdraw from the contract altogether (para. 2). Article 108 SCO defines the cases where no time limit for subsequent performance is needed such as where it is evident that a time limit would serve no purpose due to the obligor's conduct (Article 108 ch. 1 SCO). In this case, the obligee can exercise its right of choice according to Article 107 para. 2 SCO as soon as the obligor is in default.

138. In the case at hand, the Transfer Agreement and the First Invoice define a definite expiration date for the payment of the first instalment. According to the Transfer Agreement the payment had to be made within 10 working days as from the moment the condition (which is for the first instalment the signing of the Transfer Agreement) is fulfilled and upon receipt of a valid corresponding invoice. The First Invoice was sent on 8 August 2019 and stipulated a 3-day time limit for payment.

139. Thus, the Appellant was automatically in default on the expiry of the deadline. In its written submission, the Appellant repeatedly stated that it was not obliged to pay the first instalment. Also, at the hearing and after having admitted that both Parties were hacked, the Appellant insisted that it was not obliged to pay as it had already paid EUR 50,000. The Appellant repeatedly and seriously refused to perform its contractual obligation which is why no time limit for subsequent performance needed to be set (cf. Article 108 para. 1 SCO). Based on Article. 107 para. 2 SCO, the Respondent is entitled to compel performance of the first instalment's payment in addition to suing for damages in connection with the delay.

140. The Transfer Agreement also set a definite expiration date for the payment of the second instalment. Since the amount of EUR 30,000 was not credited to the Respondent's bank account by the definite expiration date, the Appellant was automatically in default. Based on the described argumentation of the Appellant in its written submission and at the oral hearing, the Respondent was not required to set a time limit for subsequent performance but is entitled to compel performance of the second instalment's payment.

D. Conclusion

141. In light of the foregoing, the Sole Arbitrator holds that the Appeal brought by the Appellant against the Decision of the FIFA PSC is to be rejected. The Sole Arbitrator upholds in full the Appealed Decision.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Gil Vicente Futebol Clube on 6 October 2020 against FK Rad concerning the Decision of the FIFA PSC of 29 July 2020 is rejected.

2. The decision issued by the FIFA PSC on 29 July 2020 is confirmed.

3. (…).

4. (…).

5. All other or further requests or motions for relief are dismissed