Arbitration CAS 2022/A/8621 Nikola Djurdjic v. Chengdu Rongcheng Football Club LTD, award of 30 December 2022

Panel: Prof. Ulrich Haas (Germany), Sole Arbitrator

Football
Contractual dispute
Requirements under Swiss law for the validity of an arbitration clause
Theory of the group of contracts
Lack of power of CAS panels to render partial awards in relation to claims that are not in the scope of the appeal
Admission to the file of information filed late
New claim integrated in the scope of the appeal
Binding effect of the operative part of a decision only
Entitlement to a performance-related benefit

1. **According to Swiss law, *"[a]n arbitration agreement is an agreement by which two or more specific or identifiable parties agree to submit one or more existing or future disputes to binding arbitration in accordance with a directly or indirectly determined legal order, to the exclusion of the original state jurisdiction (…). It is decisive that the will of the parties is expressed to have certain disputes decided by an arbitral tribunal, i.e. a non-state court"*. A clause that *inter alia* reads that *"[a]ll disputes with respect to this Agreement (…) shall belong to the exclusive jurisdiction of the courts of Lausanne, Switzerland"* does not provide for an *"express waiver to the national courts"*. Additionally, the term *"courts"* typically refers to state courts and absent any clear indication or evidence that the parties intended the term *"courts of Lausanne"* to cover also arbitral tribunals, such provision cannot be construed as granting a mandate to CAS to adjudicate disputes arising from the agreement. While the word "Court" appears in the English version of CAS' name, CAS is not a court in the proper sense under domestic law but rather an arbitral tribunal. Besides, said clause does not foresee – *e.g.* – first-instance proceedings before the FIFA adjudicatory bodies. According to the Swiss Federal Tribunal, a strict threshold must be applied in determining whether the parties wanted to resort to arbitration (contrary to the interpretation of the scope of an arbitration agreement).**

2. **According to the group of contracts theory, when several contracts are materially connected, such as the framework agreement and the various related contracts, but only one of them contains an arbitration clause, it is to be presumed, in the absence of an explicit rule to the contrary, that the parties intended to make the other contracts in the same group subject to that arbitration clause as well. The fact that an agreement contains a separate and different dispute resolution clause clearly speaks against extending the scope of an article of a contract connected to the agreement to disputes arising from said agreement.**

3. When an appellant only appealed against a part of a decision, and the respondent has not appealed said decision at all, the non-appealed portion of the appealed decision has become final and binding. A CAS panel does not have competence to issue a partial award in respect of such non-appealed portion of an appealed decision, as its mandate is limited to the matter in dispute before it.

4. Upon presentation of medical reports and in the absence of reason to doubt the accuracy and veracity of such submissions by a party's counsel, extraordinary circumstances can be deemed to have taken place and the latter be excused for having missed the deadline to submit his reply *via* the e-filing platform due to medical reasons. It is all the more so if the delay *in casu* was minimal (one day) and no prejudice was caused by such delay to the right to be heard of the counterparty.

5. It follows from the *de novo*-principle of the CAS Code that the parties may introduce, in principle, new facts and evidence before the CAS that were not available at the previous instance. However, Art. R57 of the CAS Code does not empower an appellant to change the matter in dispute vis-à-vis the first instance. Art. R47 of the CAS Code provides that an appellant must exhaust the internal legal remedies before lodging an appeal to the CAS. Consequently, an appellant, in principle, cannot submit a matter in dispute for adjudication in CAS appeals arbitration proceedings that was not before the previous instance. However, claims that could, for legitimate reasons, not have been advanced in the previous litigation, but were likely to have been claimed in the absence of such legitimate reasons at that time, do fall under the *de novo* competence of CAS panels and should be considered as admissible.

6. The binding effect of the FIFA's decision under appeal is limited to its operative part and not to its reasoning. This follows from the simple fact that the parties, when submitting to the FIFA adjudicatory bodies, agreed to be bound by such decision as if the latter was rendered by state court. Consequently, the binding effect of the appealed decision cannot go beyond the *res judicata* effects of a decision by a state court (or an arbitral award). Therefore, if the operative part of the appealed decision does not state that the club terminated the parties' employment contract with just cause, the CAS is not bound by the respective reasoning of the FIFA Dispute Resolution Chamber.

7. If, without the club's unlawful termination of the employment contract, a player would have trained and played with the club, it cannot be excluded that the player might have contributed to the club's promotion had the contract continued until the end of the season. In order to determine as to whether a benefit would have been due to a player had the club – contrary to good faith – not prevented the condition from materializing by terminating the contract without just cause, it must be treated as if the condition had materialized in full.

I. PARTIES

1. Mr Nikola Djurdjic (the "Appellant" or the "Player") is a professional Serbian football player. He was born on 1 April 1986.

2. Chengdu Rongcheng Football Club LTD (the "Respondent" or the "Club") is a Chinese football club that is affiliated with the Chinese Football Federation ("CFA") that in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

3. The Player and the Club are jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

A. Introduction

4. The dispute in these proceedings revolves around the decision rendered by the FIFA Dispute Resolution Chamber ("FIFA DRC" or the "Chamber") on 25 November 2021 (the "Appealed Decision"), which concerns an employment-related dispute between the Club and the Player. The FIFA DRC found that the Club is, *inter alia*, liable to pay to the Player compensation for breach of contract in the total amount of EUR 496,525.47. The Player appeals the Appealed Decision insofar as it *"*[rejected] *any further claims of the (…)* [Player]*"* (cf. no. 4 of the operative part of the Appealed Decision).

5. Below is a summary of the relevant facts and allegations based on the Parties' written submissions[1] and the CAS file. References to additional facts and allegations found in the Parties' written submissions and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, this Award refers only to those submissions and evidence it deems necessary to explain its reasoning.

B. Background facts

6. At the beginning of January 2020. Mr Bao Fei and Mr Sunir Patel – on behalf of the Club – informed the Player's agent (Mr Manuel Stojanovic) that the Club was interested in contracting the Player. Subsequently, discussions and negotiations ensued concerning a possible transfer of the Player.

7. Sometime on 16 January 2020, the Club issued two (2) offers, *viz*, an offer to the Player and an offer to the Player's previous club, Hammarby.

8. Sometime on 18 January 2020, the Player and Mr Stojanovic arrived in China in order to finalize the negotiations of the Club's offer. During this trip, the Player met with the Club's team, and

[1] Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for sake of efficiency, they are not all identified with a "[sic]".

passed the necessary medical tests. At the end of the contractual negotiations, the Club made an offer to remunerate the Player the following sums:

1. EUR 1 million in 2020;

2. EUR 1.2 million in 2021;

3. EUR 1.45 million in 2022; and

4. The possibility that the above amounts are doubled if the Club gets promoted to the Chinese Super League (the "CSL").

9. However, at such time, Mr Patel also expressly informed the Player and Mr Stojanovic that two (2) contracts needed to be signed, *viz*, an employment contract and an image rights agreement. The Player had alleged that Mr Patel informed him that such practice for remuneration was common in China due to *"strict and complicated banking legislation in China"* and doing so would be *"much easier for the clubs to make high payments"*.

10. On 22 January 2020, the Club and the Player had reached a verbal agreement on the terms of the Player's employment contract and image right agreement, but the Player alleges that he did not see any draft agreements for review before signature. However, in the late-night hours of the same day, Mr Patel allegedly came into the Player's hotel room to explain that the image right agreement would need to be executed with a third party, a company called Supervision Management that is run by Mr Patel himself. Mr Patel had allegedly informed the Player that the entire deal depended on this technicality.

11. On 23 January 2020, the Club and the Player signed an employment contract valid as from 23 January 2020 until 22 January 2022, with the option of extension until 22 January 2023 (the "Contract"). The pertinent parts of the Contract read as follows:

"ARTICLE 1: Scope and Duration of the Contract

1. *By means of the Contract,* [the Club] *employs* [the Player]*, who hereby accepts employment as a professional football player of* [the Club]*, subject to the terms and conditions set out in the Contract.*

2. *The term of the Contract (hereinafter referred to as the "Term") shall be from 23/01/2020 (day/month/year) to 22/01/2022 (day/month/year), unless prematurely terminated in accordance with Article 7 or as mutually agreed.*

3. *The Term has an option year from 23/01/2022 (day/month/year) to 22/01/2023 (day/month/year). The option year will be activated when* [the Player] *reaches one or multiple of the following targets (…):*

   - *In case* [the Club] *is promoted to the Chinese Super League (CSL) during the duration of* [the Player]*'s contract (…).*

ARTICLE 2: Salary and Bonuses

1. *During the Term, the annual basic salary of* [the Player] *is 727,272 Euro (in words: seven hundred twenty seven thousand two hundred seventy two euros) (before tax, which shall be amounting to 400,000 euros after tax withheld in China) for the season of 2020, the annual basic salary of* [the Player] *is 909,090 Euro (in words: nine hundred and nine thousand ninety euros) (before tax, which shall be amounting to 500,000 euros after tax withheld in China) for the season 2021, the annual basic salary of* [the Player] *is 1,090,909 Euro (in words: one million ninety thousand nine hundred and nine euros) (before tax, which shall be amounting to 600,000 euros after tax withheld in China) for the season of 2022, unless the Contract is prematurely terminated in accordance with Article 6*[2] *or as mutually agreed.*

   If during the Term [the Club] *is promoted to the Chinese Super League (CSL), the salaries that have been determined will be increased by 100% for each applicable season that* [the Club] *is active in the Chinese Super League (CSL) (…).*

4. [The Club] *shall pay* [the Player] *performance-related salaries as follows (…):*

   Euro 181,818 (in words: one hundred eighty one thousand eight hundred eighteen euros, before tax, which shall be amounting to 100,000 euros after tax withheld in China) to be paid 20 days after the last working day before the end of the season in which [the Player] *is officially named the topscorer of the Chinese League One (CJL) (…).*

6. *All the salary and bonus and other contractual benefits paid by Party A shall be amounts before taxes. All the salary and performance-related salary and any other contractual benefits have been agreed as net amounts.* [The Club] *has grossed up these amounts for any tax, social contributions and insurances that might be applicable. Parties hereby explicitly agree that* [the Club] *shall be responsible for withholding any and all amounts that might be due by* [the Player] *under this contract, whereby it is the responsibility of* [the Club] *that* [the Player] *will receive the agreed net amounts. On request of* [the Player] [the Club] *shall provide* [the Player] *or any designated person by* [the Player] *overviews, calculations and specifications of any amount paid on behalf of* [the Player]. *In case of changes in the amounts that need to be withheld or paid by* [the Player] *on the remuneration received under this contract,* [the Club] *shall make the appropriate changes to the gross amounts, so that* [the Player] *will receive the (remaining) agreed net amounts in December of every contractual year the latest (…).*

ARTICLE 6 IMAGE RIGHTS

[The Player] *and* [the Club]*, or an affiliated appointed by* [the Player]*, will conclude a separate Agreement for the use of* [the Player]*'s image rights in China.*

ARTICLE 7 TERMINATION OF THE CONRACT

The Contract may be terminated by mutual agreement between the Parties.

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2 The correct reference is to Article 7.

1. [The Club] *is entitled to terminate the Contract with just cause, free from any liability and entitled to request the pertinent compensation from* [the Player] *in the following cases:*

   (1) [The Player] *commits a material breach of this Contract (including but not limited to severe and/or repeated infringement of obligations stipulated in Article 4 hereof and/or internal regulations of Party A);*

   (2) convicted in the highest instance for a criminal offense which will lead to imprisonment;

   (3) [The Player] *fails to observe the reasonable regulations as stipulated by* [the Club]*, CFA or AFC, which may be updated from time to time and have communicated to him beforehand in English, and failed make remedy upon receiving written notification with a copy to* [the Player]*'s lawyer (*[...]*@vlvm.be) within a reasonable time frame of at least 20 (twenty) days;*

   (4) [The Player] *leaves China, fails to return from holidays or leave, or does not participate the activities of* [the Club] *without just cause for a period of more than 15 (fifteen) days after* [the Club]*'s written notice without* [the Club]*'s written approval;*

   (5) [The Player] *is suspended by CFA, AFC or FIFA for more than 12 (twelve) official CSL and Cup matches (…).*

ARTICLE 8: Settlement of Disputes

1. *Any disputes arising from the fulfillment of, or in connection with the Contract shall be settled, on a first attempt, through friendly negotiation between the Parties.*

2. *In case no settlement can be reached through negotiation, the dispute shall be submitted to the competent dispute resolution body of FIFA with express waiver to the national courts and with the consequent option of appealing to the Court of Arbitration for Sport (CAS) Lausanne, Switzerland. In case of an appeal to CAS, the Parties hereby choose the CAS Shanghai Alternative Hearing Centre as the hearing place.*

3. *This Contract is governed by the rules and regulations of FIFA, AFC and CFA. These rules shall be applicable as well to any other matter not regulated herein. Should any clause of the Contract result to be not compliant with any of said rules and regulations, exclusively the concerned clause shall be considered null and void, without interfering with the validity of the remaining clauses of the Contract".*

12. On the same date, 23 January 2020, Supervision Management and the Club signed the image rights agreement (the "IRA") with the written consent of the Player. The pertinent part of the IRA read as follows:

"Background

1. *The Company* [Supervision Management] *is the owner of the exclusive rights in China to use, develop and otherwise exploit the image Rights of Nikola Durdic (the image Rights) which exist now or in the*

future, radio or media appearances, interviews and broadcasts (the "Appearances") by Nikola Durdic ('ND',) (other than when he is playing football) and the exclusive right to org-anise ND's attendance at events or engagements for reward (other than one that is directly related to his playing football) and all goodwill in connection with each of the foregoing.

2. *The Company wishes to permit the Club to use, develop and otherwise exploit the image Rights in China on the terms and conditions of this Agreement' and the club wishes to take a license on such terms and conditions.*

1. PLAYER CONTRACT

The Club and the Company acknowledge that ND has purported to grant to the Club certain rights in respect of the image Rights pursuant to the Player Contract between the Company and ND notwithstanding that those rights have in fact been assigned by ND to the Company.

2. PERMISSION TO USE IMAGE RIGHTS

In consideration of the payment of the fees set out in clause 3, the Company hereby grants to the Club for the duration of this Agreement an exclusive license to use, develop and otherwise exploit in China (by sub-license or otherwise) the ND's portrait, trademark, patents, sound, name, signature, spart nickname, personal image and related work, any sign and/or mark representing ND as well as other similar rights subject to any exclusive rights granted by the Company or ND to any third party elsewhere in the world.

3. PAYMENTS

In consideration of the rights granted to the Club here-under, the Club hereby agrees to pay the following sums to the Company:

For the year 2020: EUR 588,235 net (five hundred eighty eight thousand two hundred thirty five Euros after tax) payable on or before 1 June 2020;

For the year 2021: EUR 705,882 net (seven hundred five thousand eight hundred eighty two Euros after tax) payable an or before 1 March 2021;

For the year 2022 (option year): EUR 823,529 net (eight hundred twenty three thousand five hundred twenty nine Euros after tax) payable on or before 1 March 2022;

The Agreement applies to the license of the Image Rights for the years 2020 and 2021. Additionally the Company hereby grants the Club an option to continue its use of the Image Rights under this Agreement for the year 2022 for the above mentioned fee for the year 2022. The Club must exercise this option by giving written notice thereof to the Company at the latest on 10 December 2021.

Only in the event the club promotes to CSL ("Chinese Super League") the yearly fee is increased with 100% to: EUR 1,411,764 (one million four hundred eleven thousand seven hundred sixty four Euros, for 2021) and EUR 1,647,058(one million six hundred forty seven thousand fifty eight Euros, for 2022):In the event

the club relegates from CSL to 2nd division, the fee shall be calculated as originally mentioned above (prior to the promotion to CSL) (…).

All sums mentioned in this Agreement are exclusive of any amounts of any Chinese tax or similar levy that might be due or which may be introduced from time to time arising in respect of such supply (…).

4. TERM AND TERMINATION

4.1 This Agreement shall have effect on and from the date of signature of this Agreement and shall subsist for as long as the Player Contract subsists unless terminated earlier in accordance with this clause (…).

8. WARRANTIES AND UNDERTAKINGS (…).

8.2.3 That ND has irrevocably: (i) assigned to the Company all the Image Rights which have prior to the date of this Agreement vested in ND at any time; and (ii) undertaken to assign to the Company all the Image Rights which may vest in ND at any time during the Term, and that no other Image Rights exist at the date of this Agreement nor will arise during the Term (…).

CONSEQUENCES OF TERMINATION (…).

10.2 The termination or expiry of this Agreement shall not affect in any way any provision under the Player Contract (provided that the Player Contract survives such termination or expiry). On termination or expiry of this Agreement (provided that the Player Contract survives such termination or expiry), the Club shall agree with ND a similar net fee to be paid to ND as the remaining amount that still was payable to the Company by the Club under this Agreement (…).

12. GOVERNING LAW AND JURISDICTION

This Agreement is governed by, and shall be construed in accordance with, the laws of the Switzerland. All disputes with respect to this Agreement, including, without limitation its validity, construction and performance, shall belong to the exclusive jurisdiction of the courts of Lausanne, Switzerland".

13. Still on the same date *i.e.*, 23 January 2020, the Player signed the following consent:

"I hereby retain Supervision Management BV from the Netherlands with company registration number 55606792, represented by Mr. Sunir Patel, to act as my sole and exclusive representative to represent, advice and counsel me in all negotiations and contracts with regards to commercial deals and image rights throughout the People's Republic of China".

14. For the season in 2020, no issues arose around the contractual obligations of the Parties. The Player received all amounts due under the Contract. In 2020, the Player also received EUR 588,235 under the IRA. It is unclear whether the amount paid under the IRA was made directly by the Club to the Player, or through Supervision Management.

15. On 7 February 2020, the Club signed an employment contract with Mr Daniel Quintana ("Mr Quintana"), who was the second foreign player in the Club.

16. In the summer of 2020, Mr Leonardo da Silva Naldinho joined the Club, becoming the third foreign player in the Club.

17. After the 2020 season, the Player alleged that the Club tried to force a premature termination of both Mr Quintana and the Player. This was allegedly done by failing to notify both players of when they were expected to return to Chengdu, then making unreasonable requests on their return date – *e.g.*, due to the Chinese travel restrictions arising out of the global pandemic, the Player and Mr Quintana were in mandatory quarantine for a total of 21 days. The Player also alleged that the Club failed to answer every letter of the Player in January and February 2021. When the Player returned to training on 4 February 2021, he was told (together with Mr Quintana) that they were to train with the second team, without an explanation.

18. On 25 February 2021, Mr Quintana terminated his contract with the Club.

19. On 1 March 2021, the Club made the payment to the Player under the IRA of EUR 705,882 for 2021.

20. On 12 April 2021, the Club and the Chinese club Zhejiang Professional FC ("Zhejiang FC") signed a loan agreement by means of which the Player was temporarily transferred from the former to the latter from 12 April 2021 until 31 July 2021. The Player noted that he was cut from the Respondent's first team without an explanation or a meeting with the Club's coach.

21. The Player was paid his salaries arising from the Contract from January 2021 to June 2021.

22. On 8 June 2021, right after Zhejiang FC played the last match of the first stage of the 2021 season, the Player was informed that his services were no longer required, and he was free to go on vacation. The Player was aware that his contractual obligation under the loan agreement with Zhejiang FC was only until 31 July 2021, and he was only required to return to the Club within 7 days after the expiry of the said loan agreement.

23. On 26 June 2021, the Club allegedly wrote to the Player and remarked that his loan with Zhejiang FC would expire on 31 July 2021 and that the Club requested the player to return to its premises until 1 July 2021. The letter, furthermore, read as follows: *"if you fail to return on time, the club may apply penalty to you based on the employment contract and rules on team management. Please pay attention to your return and back to our team on time"*.

24. On 6 July 2021, the Club signed Mr Felipe Silva, another foreign player on the team, which by extension, made it impossible for the Player to be registered for the season.

25. On 8 July 2021, the Club failed to pay the June 2021 salary of the Player. When the Player enquired, he was allegedly told that *"this was the Club's decision"*.

26. On 26 July 2021, the Player sent the Club a letter requesting the Club to confirm whether it needed the services of the Player. The Player had stressed that if the termination documents were not provided by 29 July 2021, he expected to *"show up at the* [C]*lub on 1 August 2021 in order to resume training and honour his contract"*.

27. On 30 July 2021, the Player wrote to the Club and stressed that he had not received any answer to his previous notice to the Club.

28. On 2 August 2021, the Player went to the Club's premises accompanied by two (2) witnesses, but was informed by the Club then that the claim that the Club had lodged before the FIFA DRC in July 2021 (discussed below in the next subsection of this Award) was sufficient to establish at the Contract was terminated and the Player could seek new employment.

29. On 11 August 2021, the Player signed a new employment agreement with the Swedish club, Degerfors IF ("Degerfors"), valid as from the date of signature until 31 December 2023. According to this contract, the Player is entitled to the following remuneration: SEK 60,000 per month during season 2021; SEK 70,000 per month during the season 2022; and SEK 80,000 per month during the season 2023.

C. The proceedings before the FIFA DRC

30. On 13 July 2021, the Club lodged a first claim against the Player before the FIFA DRC. However, since it failed to complete the claim as requested by FIFA, the file was closed.

31. On 20 July 2021, the Club again lodged the (same) claim against the Player before the FIFA DRC.

32. On 16 August 2021, the Player lodged a counterclaim for unlawful termination of the Contract and sought the following remedies:

    - EUR 433,374.41 corresponding to the residual value of the Contract;

    - EUR 1,200.000 net *"which would constitute the amount the player would be entitled to receive in the event* [the Club] *would promote to the China Super league and the option clause within the player's contract would become applicable"*;

    - EUR 181,818 *"in the event the club would be promote at the end of the season 2021"*;

    - EUR 50,000 as *"reputational damages and lawyer representation costs"*;

    - Interest of 5% *p.a.* on the amounts payable to the Player.

33. At the time when the counterclaim was lodged, there was no dispute regarding the image rights fee arising from the IRA, and the Player alleges that the Club had a deadline of until 10 December 2021 to inform the Player on the payment for 2022.

34. On 4 September 2021, the Club submitted the answer to the Player's counterclaim.

35. On 7 September 2021, the FIFA DRC informed the Player that *"[i]n view of the above we would like to inform you that the investigation-phase of the present matter is now closed. This is, no further submissions from the parties will be admitted on file"*.

36. On 25 November 2021, the FIFA DRC issued the Appealed Decision. The grounds of the Appealed Decision were notified to the Parties on 11 January 2022.

37. The operative part of the Appealed Decision reads as follows:

> *"1. The claim of the Claimant/Counter-Respondent, Chengdu Rongcheng FC, is rejected.*
>
> *2. The counterclaim of the Respondent/Counter-Claimant, Nikola Djurdjic, is partially accepted.*
>
> *3. The Claimant/Counter-Respondent has to pay to the Respondent/Counter-Claimant, the following amount:*
>
> *EUR 496,525.47 as compensation for breach of contract plus 5% interest p.a. as from 10 August 2021 until the date of effective payment.*
>
> *4. Any further claims of the Respondent/Counter-Claimant are rejected.*
>
> *5. Full payment (including all applicable interest) shall be made to the bank account indicated in the enclosed Bank Account Registration Form.*
>
> *6. Pursuant to art. 24bis of the Regulations on the Status and Transfer of Players (February 2021 edition), if full payment (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:*
>
> *1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.*
>
> *2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.*
>
> *7. The consequences shall only be enforced at the request of the Claimant in accordance with art. 24bis par. 7 and 8 and art. 24ter of the Regulations on the Status and Transfer of Players.*
>
> *8. This decision is rendered without costs".*

38. The grounds of the Appealed Decision read in their main part as follows:

"[T]aking into consideration the constant practice of the Football Tribunal in similar matters, the DRC decided that the employment contract was terminated on the date of the club's claim for breach of contract in front of FIFA. To this extent, the Chamber wished to outline that despite the claim at hand having been lodged on 20 July 2021, the club had already submitted an incomplete petition with the same petitum before the DRC on 13 July 2021. The Chamber was furthermore comforted in its decision because when the player availed himself at the club's premises on 2 August 2021, the club informed him that the claim before the DRC was sufficient to establish that the employment contract had been terminated (…).

In light of the above, the Chamber were firm to determine that the club could not demonstrate that the player was in breach of the employment contract, let alone that the termination was an ultima ratio measure (…).

Therefore, the members of the Chamber unanimously decided that no just cause on the club's part has taken place and, hence, that its claim shall be rejected. Moreover, the Chamber concurred that the club should be liable to the consequences that follow insofar as it did not have just cause to terminate the employment contract with the player (…).

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 contract from the date of its unilateral termination until its end date.

At this point, the members of the DRC were observant of the player's argumentation regarding the extension of the employment contract for an extra year in connection with the club's promotion to the Chinese Super League (cf. clause 3 of the employment contract).

Nevertheless, in view of the variable and uncertain character of the abovementioned condition coupled with the absence of documentary evidence of performance of the sporting goal, the DRC could not establish that the employment contract would have been extended. Consequently, and in line with the jurisprudence of the Football Tribunal, the DRC decided not take into consideration said extension while assessing the residual value of the employment contract. Likewise, the Chamber concurred that the player's request for the promotion bonus should also be rejected.

Having established the above, the Chamber stressed that the amount of EUR 530,250 (i.e. the residual value of the employment contract until January 2022) serves as the basis for the determination of the amount of compensation for breach of contract.

In continuation, the Chamber verified as to whether the player had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages.

Indeed, the player found employment with Degerfors IF. In accordance with the pertinent employment contract, the Chamber concluded that the player mitigated his damages in the total amount of EUR 33,724.53 (i.e. salaries from August 2021 until January 2022) (…).

Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the club must pay the amount of EUR 496,525.47 to the player (i.e. EUR 530,250 minus EUR 33,724.53), which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter".

D. Events after the closing of the investigation-phase

39. On 18 October 2021, the Club informed Mr Patel as follows:

"Dear Mr. Sunir Patel,

We have entered an Image Rights Agreement pertaining to the player Nicola Durdic on 23 January 2020 (hereinafter: Image Rights Agreement), and the attachment is for your reference.

In light of Nicola, Durdic has terminated the Employment Contract between he and Rongcheng FC without just cause, it is impossible for Rongcheng FC to execute the right from the image rights agreement normally. And according to the Image Rights Agreement, Rongcheng FC has the option to continue its use of the image right for the year 2022, and must exercise this option by written notice at the latest on 10 December 2021. Now, Rongcheng FC hereof officially informs SUPERVISION MANAGEMENT B.V. that it would not exercise the option to continue use of the image right for the year 2022, the original Image Rights Agreement dated 23 January 2020 would expire on 31 December 2021.

Nevertheless, Rongcheng FC has paid all the image right fees for the year 2021 in full amount (EUR 705,882), therefore, SMBV should continue to execute the obligations in the Image Rights Agreement, guarantee Rongcheng FC can continue to exploit the image rights under the Image Rights Agreement. Hereof, Rongcheng FC solemnly declare that it not permit SMBV assign the right under the Agreement to any third party before 31 December 2021, or SMBV would bear all the legal liability on this".

40. On 25 October 2021, Supervision Management replied to the Club's letter as follows:

"Such statement seems a bit premature as player Djurdjic and RONGCHENG FC are currently involved in a FIFA procedure in which parties are blaming each other the unilateral and wrongful termination of the Player's employment contract.

In the event FIFA would conclude that RONGCHENG FC unilaterally terminated the said employment contract, you will understand that such could also have an impact upon your current termination of the Image Right Agreement.

As one of the issues within the FIFA procedure concerns the wrongful termination of the Player's contract in order to avoid a possible extended contract year in the event RONGCHENG FC would promote to Chinese Super League (CSL), my client reserves all its rights with regard to the following.

If FIFA establishes that your club wrongfully terminated the Player's contract and RONGCHENG FC would at the end of season 2021 promote to the CSL, the Player would have a claim against your club for the missed (optional) contract year of 2022. As a matter of fact, the Player's contract states that in the event of promotion to the CSL, he would have received an additional contract year (option year) for the upcoming season. In such event, the Image Rights Agreement would also have been renewed for an additional season. Hence, your decision to terminate the Image Rights Agreement, based upon the alleged unilateral termination by the player, would be unlawful and my client would be entitled to a reimbursement of the Image Rights for the season 2022 (at double rate, given the promotion to CSL).

*Therefore, I have been instructed to inform you that (a) in the event FIFA decides to grant the Player's counter claim based upon a wrongful termination by RONGCHENG FC, (b) the promotion of RONGCHENG FC to CSL, my client shall be entitled to claim the amount of 823.529,00 EUR * 2 (1.647.058,00 EUR) against the club. Reference hereto is made to article 10.2 of the Agreement. In such event, the payment of the Image Rights' fee shall be payable to mr. Djurdjic in full".*

41. On 12 January 2022, the Club won the promotion/relegation playoffs against Dalian Professional Football Club ("Dalian Pro") and secured the promotion to the CSL.

42. On 24 February 2022, the Player notified the Club as follows:

"As already ruled by FIFA, your club terminated the Contract without just cause. Clearly, this was done, inter alia, to avoid the scenario described in Article 10.2. (that the Player Contract survives such termination or expiry).

Moreover, after FIFA informed your club and the Player that the investigation-phase was closed and that new submissions would be admitted to the case file, your club informed Supervision Management that it would not extend the IRA to 2022, which triggered the application of clause 10.2.

In light of the foregoing, we herewith invite you to perform the payment of EUR 1,647,058 net to Mr. Djurdjic to his bank account at Komercijalna banka AD Beograd which is stated in Article 7 of the Contract and attached to the FIFA DRC Decision (with Intermediary bank being: Deutsche Bank AG, with swift code: DEUTDEFF).

In this regard, we expect your club to make the payment as soon as possible, otherwise we will request this amount (in net or gross) in a procedure before CAS.

Apart from this, we once again invite you to make the payment of EUR 496,525.47 plus 5% interest p.a. from 10 August 2021 (EUR 509,992.87 in total) as ordered by FIFA, otherwise, the transfer ban will be imposed tomorrow, bearing in mind that 44 days since the grounds of the decisions were notified and from receiving the findings until the grounds were asked for.

This is without prejudice to the Player's right to claim damages sustained from 23 January 2022 to 22 January 2023 in the amounts stated in the Contract (EUR 2,181,818 gross and EUR 181,818)".

43. On 25 February 2022, the Player informed FIFA that the Club had failed to pay the amounts due under the Appealed Decision. By letter dated the same day, the FIFA replied to the Appellant as follows:

> *"Dear Sirs,*
>
> *We refer to the abovementioned matter and in particular, to the appeal lodged before the Court of Arbitration for Sport (CAS) by the claimant, the Player Mr. Nikola Djurdjic, against the decision FPSD-3095.*
>
> *In view of the foregoing, please be informed that the present proceedings are declared suspended as long as the proceedings before the CAS are pending. We will inform the parties of the further steps to be taken regarding the present proceedings as soon as a decision has been rendered by the CAS".*

E. Summary of material events

44. For the sake of clarity, the dates and description of material events arising out of the present appeal is summarised below:

S/No	Date	Description of Material Event(s)	Remarks
1.	23 January 2020	a. Player and Club sign the Employment Contract (23.01.20 – 22.01.22) b. Supervision Management and Club signs the IRA	IRA term: *"shall subsist for as long as the Player Contract subsists"*
2.	13 July 2021	Club begins incompleted FIFA DRC Proceedings	
3.	20 July 2021	Club begins FIFA DRC Proceedings	Date of Termination of the Contract
4.	7 September 2021	Close of FIFA DRC Investigation-Phase	
5.	18 October 2021	Club informs Supervision Management that IRA shall prematurely conclude on 31 December 2021	
6.	25 November 2021	Appealed Decision Issued	Player's counterclaim partially accepted
7.	12 January 2021	Club wins promotion/relegation playoffs against Dalian Pro and is promoted to CSL	Contract includes performance-related salaries – EUR 181,818 for promotion to CSL
8.	22 January 2021	The term of the Employment Contract concludes	Save for optional year

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

45. On 28 January 2022, the Player paid the administrative fee of CHF 1,000 (through Mr Stojanovic) for the Court of Arbitration for Sport ("CAS").

46. On 30 January 2022, the Player filed its appeal before the CAS against the Appealed Decision and submitted his Statement of Appeal according to Article R48 of the Code of Sports-related Arbitration (2020 edition) (the "CAS Code"). The Statement of Appeal indicates that the Player is only partially appealing the Appealed Decision, and requests the appointment of a sole arbitrator. Finally, the Player request an extension of the deadline to file his Appeal Brief until 3 March 2022.

47. Also on 2 February 2022, the Player submitted documents to back his request already filed in the Statement of Appeal for an extension of the deadline to file his Appeal Brief.

48. On 4 February 2022, the Respondent objected to the Player's request for an extension of the deadline to file his Appeal Brief, and agreed to submit the dispute before a sole arbitrator. Furthermore, the Respondent requested that the Answer deadline be set after the Player's payment of his share of the advance of costs.

49. On 7 February 2022, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had granted the Player's request for a 10-day extension of the deadline to file his Appeal Brief.

50. On 10 February 2022, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division has decided to submit the case to a sole arbitrator, the name of whom would be communicated to the Parties in due course.

51. On 14 February 2022, FIFA informed the CAS Court Office that it did not intend to participate in these proceedings, further to Article R41.3 of the CAS Code.

52. On 2 March 2022, the Player filed his Appeal Brief in accordance with Article R51 of the CAS Code.

53. On 7 March 2022, the CAS Court Office acknowledged receipt of the Player's Appeal Brief and advised the Parties that in view of the Respondent's request dated 4 February 2022, the time limit for the Respondent to file its Answer will be set once the Player has paid his share of the advance on costs.

54. On 22 March 2022, the CAS Court Office informed the Parties that the Player had paid, in full, the advance of costs and that consequently the Respondent was invited to file its Answer within 20 days.

55. On 19 April 2022, after having been granted an extension further to Article R32 of the CAS Code, the Respondent filed its Answer including objections to the CAS' jurisdiction to adjudicate the matter, further to Article R55 of the CAS Code.

56. On 21 April 2021, the CAS Court Office acknowledged receipt of the Respondent's Answer and invited the Player to reply to the Respondent's Jurisdictional Objections within 15 days of receipt of the letter.

57. On 2 May 2022, the Player requested an extension of the deadline to file his Reply to the Respondent's Jurisdictional Objections (the "Reply").

58. On 3 May 2022, the CAS Court Office invited the Respondent to comment on the Player's request for an extension of the deadline to submit his Reply.

59. On 4 May 2022, the Respondent objected to the Player's request for an extension of the deadline to submit his Reply.

60. On 4 May 2022, the CAS Court Office informed the Parties that the Player's deadline to submit his Reply remains suspended, and that the President of the CAS Appeals Arbitration Division, or her Deputy will decide the matter further to Article R32 of the CAS Code.

61. On 5 May 2022, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division decided to grant the Player's request for an additional 10-day extension of the deadline to file his Reply, further to Article R32 of the CAS Code.

62. On 16 May 2022, the Player filed his Reply further to Article R55 of the CAS Code. Therein, the Appellant withdrew his request for document production, requested the Sole Arbitrator to issue an award based on the Parties' written submissions only and also reiterated his request that a partial award be issued related to the non-appealed sections of the Appealed Decision.

63. On 18 May 2022, the CAS Court Office acknowledged receipt of the Player's Reply. In addition, the CAS Court Office noted as follows:

> *"Although the Appellant stated in his 16 May 2022 email that the Reply was filed via the CAS E-filing Platform, to date the Reply has not been uploaded to the E-filing Platform in the above-referenced proceeding. It is recalled with reference to Article R32 of the Code of Sports-related Arbitration that the deadline for the Appellant to file his Reply to the Respondent's Jurisdictional Objections was 16 May 2022.*
>
> *Therefore, the Appellant is invited to provide the CAS Court Office by 20 May 2022 with proof of timely filing the Reply (…) by courier or proof of having timely filed the Reply (…) on the CAS Court Office E-filing Platform".*

64. On 20 May 2022, the Player's counsel sent an email to the CAS Court Office clarifying the circumstances regarding his Reply. The email reads as follows:

> *"On 13 May 2022, I started feeling nausea and headache, very similar to the ones I felt two years ago (when I had huge vertigo problems – see Report 1 and 2) and several weeks ago (see Report 3). Prior to this, I had a mild cold for few days. My vertigo problems in 2020 were documented in CAS 6554, when I was unable*

to properly function for longer period and when the respective deadline was extended for 30 days because of this (I attach exchanged in that case and the CAS letter). When I visited a doctor several weeks ago and took the testing, I was told that I have not yet fully recovered from the vertigo disease I had in 2020.

On 16 May 2022, the symptoms were stronger, I vomited again and I also started feeling pressure in my head (as same as several weeks ago). I did not feel well while sending the email to CAS and I do not know how the reply remained non-uploaded. After receiving the email delivery report (attached), instead of uploading the reply, I tried to rest, but the nausea was even stronger. I got scared because of my state (I also train boxing and causes of my vertigo issues are still unknown) so I took taxi to a doctor to do a blood vessel doppler (Report 4). The doctor told me to strictly rest and to go to a neurologist when my nausea calms a little bit, since my blood vessels were fine.

Right after I came back home, my nausea and headache got even worse (I vomited right after leaving the taxi) and I continued vomiting throughout the day and could not walk on my own. The same was happening on 17 May (I vomited after walking for several meters only, from my bed to bathroom). I started taking Betaserc medicine in advance, since this drug helped my vertigo symptoms to weaken both in 2020 and also several weeks ago.

On 18 May, I was able to walk on my own, but I was feeling unpleasant as soon as I separate my head from the pillow. My wife brought my lap top to the home, so I uploaded the reply via e-filing platform, but I did not feel well enough to write an email and explain the situation.

On 19 May, i.e. yesterday, I felt better and I called CAS to pass the information about my situation and that I will write an email as soon as I feel better.

Since this morning, I have the same symptoms, although significantly weaker. I am having difficulties writing this email, as I feel headache and pressure in my head, so I am doing it in rounds. Today I visited a neurologist, who tested me, concluded that I have vertigo peripherica alia, instructed me to do MRI and continue with Betaserc (Report 5).

Translation of Reports 4 and 5 will be sent in due course.

I believe that uploading the Reply via e-filing platform within the second following business day from sending it via email is due to justified reason (vertigo problems are truly an agony). I also wish to point out that I was ill while drafting the Reply and sending it via email. I kindly ask the sole arbitrator to, once appointed, admit the Reply to the case file. If CAS can admit the Reply at this stage, I kindly ask CAS to do so".

65. On 23 May 2022, the CAS Court Office acknowledged receipt of the Player's email and noted that the Player's Reply had been filed on the CAS E-filing Platform on 18 May 2022. The letter further invited the Respondent to file any comments it might have by 30 May 2022.

66. Also on 23 May 2022, the Player submitted translations for Reports 4 and 5, which had been enclosed to the Player's counsel's communication of 20 May 2022.

67. On 24 May 2022, the CAS Court Office, on behalf of the Deputy President of the CAS Appeals Arbitration Division considering Articles R33, R52, R53 and R54 of the CAS Code, informed the Parties that the Panel appointed to decide the dispute was constituted as follows:

    Sole Arbitrator: Prof. Ulrich Haas, Professor of Law in Zurich, Switzerland.

68. On 27 May 2022, the Respondent objected to the admissibility of the Player's Reply.

69. On 31 May 2022, the CAS Court Office acknowledged receipt of the Player's letter of even date, containing his comments on the Respondent's objections. The CAS Court Office further informed the Parties to refrain from further correspondence in the same regard.

70. On 3 June 2022, the CAS Court Office sent a letter to the Parties, containing the following:

    - The Player's request for a partial award on the non-appealed portion of the Appealed Decision is denied, and the reasons for this decision will be provided in the final award of the present proceeding.

    - The Player is invited to inform the CAS Court Office by 10 June 2022 whether he maintains the requests in paragraph 218 of the Appeal Brief *i.e.*, for the production of two (2) documents.

    - The Player's Reply is admitted to the file, and the reasons will be provided in the final award of the present proceeding.

    - The Parties are reminded that unless the Parties agree or the Sole Arbitrator orders otherwise, the Parties are not authorised to supplement or amend their requests, arguments, or product new exhibits, or specify further evidence which they intend to reply, after the submission of the written submissions, pursuant to Article R56 of the CAS Code.

    - The Parties are invited to inform the CAS Court Office by 10 June 2022, on whether they prefer a hearing to be held, or for the Sole Arbitrator to issue an Award based solely on the Parties' written submissions.

71. On 6 June 2022, the Appellant informed the CAS Court Office that he did not maintain his request for document production (paragraph 218 of the Appeal Brief). Furthermore, the Appellant again requested that the Sole Arbitrator render the award based on the Parties' written submissions solely. However, in case the Sole Arbitrator decides to hold a hearing, the Appellant will gladly participate in it and be at the Sole Arbitrator's disposal.

72. On 10 June 2022, the Respondent advised the CAS Court Office that its preference is for the Sole Arbitrator to render a decision based on the written submissions only.

73. On 28 June 2022, the CAS Court Office informed the Parties that the Sole Arbitrator deems himself sufficiently well-informed to decide this case based solely on the Parties' written submissions, without the need to hold a hearing, further to Article R57 of the CAS Code.

74. On 18 July 2022, the CAS Court Office issued an Order of Procedure ("OoP") and invited the Parties to return a signed copy thereof.

75. On 21 July 2022, the Appellant returned a signed copy of the OoP to the CAS Court Office. In the accompanying letter the Appellant submitted that the disputed amount – contrary to the amount stated in the OoP – amounts to EUR 4,786,815.13.

76. On 27 July 2022, the Respondent returned a signed copy of the OoP to the CAS Court Office.

IV. SUMMARY OF PARTIES' POSITIONS

A. The Player's position

77. In his Statement of Appeal dated 30 March 2022, the Player made the following requests for relief:

> *"1. to annul the Decision of the FIFA Football Tribunal - the Dispute Resolution Chamber dated 25 November 2021 in thus far as it rejected the claim of Mr. Nikola Djurdjic;*
>
> *2. to order Chengdu Rongcheng Football Club LTD to pay to Mr. Nikola Djurdjic an amount of EUR 1,200,000 net as compensation, plus interest of 5% per annum from 10 July 2021 until the payment is effectively made,*
>
> *or, alternatively, to order Chengdu Rongcheng Football Club LTD to pay to Mr. Nikola Djurdjic an amount of EUR 2,181,818 gross as compensation, plus interest of 5% per annum from 10 July 2021 until the payment is effectively made*
>
> *3. to order Chengdu Rongcheng Football Club LTD to pay to Mr. Nikola Djurdjic an amount of EUR 181.818 as compensation, plus interest of 5% per annum from 10 July 2021 until the payment is effectively made;*
>
> *4. to grant Mr. Nikola Djurdjic a contribution towards his legal fees and other expenses incurred in connection with these arbitration proceedings, the amount of which will be specified at a later stage;*
>
> *5. to condemn the Respondent to pay the entire CAS administration costs and the arbitration fees and to reimburse the Appellant of any and all expenses he incurred in connection with this procedure".*

78. In his Appeal Brief dated 2 March 2022, the Player amended his requests and filed the following requests for relief (Main Prayers):

"1. The appeal filed on 30 January 2022 by Mr. Nikola Djurdjic against the decision issued on 25 November 2021 by the Football Tribunal - the Dispute Resolution Chamber of the Fédération Internationale de Football Association is upheld.

2. The decision issued on 25 November 2021 by the Football Tribunal - the Dispute Resolution Chamber of the Fédération Internationale de Football Association is confirmed, save for paragraph 4 of the operative part, which shall be amended as follows:

Chengdu Rongcheng Football Club LTD has to pay to Mr. Nikola Djurdjic:

- *an amount of EUR 496,525.47, plus interest of 5% per annum from 10 August 2021 until the payment is effectively made;*
- *an amount of EUR 181.818, plus interest of 5% per annum from 13 January 2022 until the payment is effectively made;*
- *an amount of EUR 2,082,922.13, plus interest of 5% per annum from 13 July 2021 until the payment is effectively made;*
- *an amount of EUR 2,522,075 plus interest of 5% per annum from 13 July 2021 until the payment is effectively made.*

3. Chengdu Rongcheng Football Club LTD shall bear its own costs and is ordered to pay Mr. Nikola Djurdjic a contribution towards his legal fees and other expenses incurred in connection with these arbitration proceedings, the amount of which will be specified at a later stage;

4. The entire costs of the CAS administration costs and the arbitration fees shall be borne in their entirety by Chengdu Rongcheng Football Club LTD".

79. Furthermore, the Appellant has filed the following request for a partial award in his Appeal Brief:

"1. The request of Mr. Nikola Djurdjic for partial award is accepted.

2. The decision issued on 25 November 2021 by the Football Tribunal – the Dispute Resolution Chamber of the Fédération Internationale de Football Association is confirmed in paragraphs 1, 3, 5, 6 and 7 of the operative part.

3. Chengdu Rongcheng Football Club LTD has to pay to Mr. Nikola Djurdjic an amount of EUR 496,525.47, plus interest of 5% per annum from 10 August 2021 until the payment is effectively made.

4. Other requests for relief of Mr. Nikola Djurdjic shall be adjudicated in the form of final award".

80. In support of his Main Prayers, the Player argues as follows:

i. The Appellant is of the view that the CAS is competent to hear the dispute. This follows from the FIFA Statutes, the FIFA Regulations on the Status and Transfer of Players ("RSTP") and Article 8(2) of the Contract. As to the remuneration stated in the IRA, the Appellant argues that the competence of the CAS *"depends on the issue pertaining to merits – whether the amounts stated in the IRA must be deemed as an integral part of the Parties' employment relationship, i.e., if the Contract and the IRA are linked. The answer to this question is positive"*. In particular, the Appellant states that:

- The IRA is a simulated document *"which contains/hides part of the Appellant's salaries and as such forms part of the Parties' employment relationship"*;

- The dispute resolution clause in the IRA refers *"to the courts of Lausanne"*. The CAS is a court from Lausanne. It is to be noted that Article 12 of the IRA does not make limitations with regard to the *"courts of Lausanne"*, in particular the clause does not refer exclusively to state courts nor does it exclude courts of arbitration seated in Lausanne. Furthermore, *"the plain wording of the provision suggests an option for a potential claimant to submit the claim either to the state court or to the CAS"*;

- Since *"the remuneration from the IRA is requested in the process of appealing the FIFA decision, the* [CAS competence arises from Article R47 CAS Code and] *the only remaining question in this appeal procedure would be whether FIFA would have been competent to decide this matter in the first instance. (…) In other words, the sole fact that the Appellant claims his remuneration from the IRA in the process of appealing the FIFA decision makes the CAS competent to adjudicate the matter"*.

- The Appellant contests that the IRA is a genuine commercial agreement with its own purpose and that such purpose is unrelated to the Parties' employment relationship.

- The fact that different parties are involved in the Contract and the IRA does not prevent both contracts to be read together. A further aspect that ties both agreements together is – *inter alia* – that *"the payments from the IRA are conditioned to the stability of the Contract"*.

ii. The Appeal is admissible according to the Player, because the deadlines in Article 58(1) of the FIFA Statutes were met.

iii. As for the law applicable to the merits, the Player submits that *"the RSTP are applicable (…) while Swiss law shall be applied subsidiarily, i.e., if any important issue for this matter is not regulated by the RSTP. Only if the RSTP and Swiss law (which should further specify the RSTP's potential lack of regulation) and analogous jurisprudence arising from their application do not provide an answer to the legal issue, the Parties' choice of local law/regulations comes into application"*.

iv. The Player submits that the Appealed Decision rightly confirmed that the Respondent terminated the Contract without just cause. Since the Respondent did not appeal the Appealed Decision, the CAS is bound by this finding and *"the only remaining issue in terms of merits is the consequence of such termination, i.e. amounts payable to the Appellant"*.

v. The consequences of such unlawful termination follow from the Contract and the IRA. The Appellant is of the view that *"the content of the foregoing documents is clear"*. However, should the Sole Arbitrator feel the need to interpret these documents, any unclarity should be construed *"in favor of the Appellant, i.e., against the Respondent's position"*. The Appellant also refers to the award in CAS 2015/A/4333 with regard to both (i) the consequences of the Club's promotion to the CSL and (ii) the expiration/termination of the IRA.

vi. The Appellant stresses that this is a *de novo* hearing. The Appellant, thus, claims that he is *"allowed to bring new facts and evidence without any sorts of limitations"*. He sees himself comforted by CAS jurisprudence (CAS 2017/A/4936, para 167). The Appellant is of the view that two new facts – that were not available before FIFA – need to be assessed by the CAS in these proceedings:

   a. The Club advanced to the CSL on 12 January 2022, *i.e.* after the end of the investigation phase before FIFA and after the grounds of the Appealed Decision had been notified to the Parties. According to the Appellant, this triggers a bonus payment and – in addition – substantially increases the amount of damages sustained by the Player in relation to 2022.

   b. The Club failed to honor its obligations arising from the IRA after the investigation phase of the FIFA proceedings ended. On 18 October 2021, the *"Club issued a letter that only makes it clear that no payment through Supervision Management would be made"*. In doing so, the Club *"completely disregards (…) the clause from Article 10.2 of the IRA, which obliges the Club to fully remunerate the Player in such situation"*. The Appellant submits that he is entitled to *"introduce the amounts from the IRA to the present arbitration"*. He refers in this regard to CAS jurisprudence (CAS 2012/A/2874, paras. 82, 83, 161). By requesting this amount the Appellant does not introduce "a new claim", but only increases the quantum of the claim that was already before the FIFA judicial organs. In addition, there is a clear factual connection between the amounts requested in this procedure and the FIFA proceedings, since both claims *"stem from the same set of relations between the Appellant and the Respondent"*. In support of this, the Appellant also refers to provisions of the Swiss Code of Civil Procedure ("CCP"), specifically Articles 227 and 317 of the CCP.

vii. The Appellant submits that he *"did not claim before FIFA his overdue salaries for June 2021"*. In the Appealed Decision the FIFA DRC did not elaborate on the exact period it *"took into account when encompassing the damage compensation"*. The Appellant requests CAS to clarify this topic in order to *"avoid potential issues of res judicata"*. In particular, the Appellant submits as follows:

a. FIFA did *"not specify which exact dates (…) it* [took] *into account when determining the period for which the awarded compensation was calculated. In the Player's view, this should be the period from 23 June 2021 until 22 January 2022, given that the Contract was concluded from 23rd day of January of 2020 and was about to expire on 22nd January of respective year, while the payments were divided by 12 monthly instalments"*.

viii. The Appellant requests that he is paid the bonus according to Article 2(4) of the Contract in the amount of EUR 181,818 gross because of the Club's promotion to the CSL. The Contract provides that the bonus *"is to be paid 20 days after the last working day before* [sic!] *the end of the season in which* [the Club is] *promoted to the Chinese Super League (CSL)"*. The Player explains that the *"wording* [of Article 2(4) of the Contract] *is a bit confusing"* and that this wording *"should be interpreted in the manner that the payment is due 20 days after the end of the season in which the Club earned promotion"*. Since the promotion was secured at the end of the 2021 season, which ended on 22 December 2021, the bonus fell due – according to the Appellant – on 12 January 2022.

ix. For the period from 23 January 2022 until 22 January 2023, the Contract provides in Article 2(1) a salary in the amount of EUR 1,090,909 gross/EUR 600,000 net. Article 2 of the Contract also stipulates *"that the Player's salary is doubled in case the Club is promoted during the term of the Contract"*. According to the Appellant the Contract provides for two conditions for him to be entitled to claim EUR 2,181,818 gross/EUR 1,200,000 net: (i) the Club must be promoted to the CSL and (ii) the promotion must be secured during the term of the Contract.

a. The Appellant submits that both conditions are met in the case at hand.

b. The Appellant's alternative income at Degerfors for the relevant period amounts to *"SEK 1,047,096.77 gross, which equals EUR 98,895.8786. In net amounts, this corresponds to SEK 603,001.0387, i.e. EUR 56,952.06"*.

c. Therefore, the residual value of the Contract in the period from 23 January 2022 until 22 January 2023 amounts to EUR 2,082,922.13 gross (EUR 2,181,818 – EUR 98,895.87)/EUR 1,143,047.94 net (EUR 1,200,000 – EUR 56,952.06).

d. Article 2(6) of the Contract foresees that *"the Club shall be responsible for any potential increase of the respective taxes/contributions and that the Player shall receive the agreed net amounts ('in case of changes (…)* [the Club] *shall make the appropriate changes to the gross amounts, so that* [the Player] *will receive the (remaining) agreed net amounts)'"*.

x. The Appellant submits that the amounts due under the IRA are an integral part of the employment relationship between the Parties. According to the Appellant this follows from FIFA practice (*e.g.* Quintana decision) and CAS jurisprudence (CAS 2015/A/4039, CAS 2015/A/3923; CAS 2018/A/5653). *"Accordingly, the payable amounts from the IRA in 2022 are owed by the Club as part of the Player's remuneration for his services for the Club's first team. Furthermore, considering the Player's annual salary from the Contract, the part of his remuneration stated*

in the IRA constitutes a substantial share of his total income at the Club". In the case at hand, there are numerous elements that link both the Contract and the IRA together, such as – *e.g.*:

a. the structure of the IRA to increase the payments to the Player for his services was proposed by the Club through Mr Patel;

b. just the night prior to the signing of the Contract, the Player was informed that part of the agreed remuneration for his services would be paid through a 'third party';

c. the IRA was signed contemporaneously with the Contract;

d. the IRA and the Contract had the same fixed term (2020 and 2021), with the Club having an option to either extend the IRA to 2022 or remunerate the Player under the IRA;

e. the IRA had the same clause regarding the increase of the Player's remuneration by 100% in case of the Club's promotion to the CSL;

f. the 'third party', *i.e.* Supervision Management, is run by Messrs. Patel and Fei, who were exclusively authorized by the Club to negotiate with the Player and Hammarby, and who acted on behalf of the Club throughout the entire transfer negotiations; and

g. the Player and Supervision Management have never been in contact with each other in relation to exploitation of the Player's image. This *"makes it obvious that the IRA is a clear simulation"*.

xi. The Appellant claims interest in the amount of 5% *p.a.* (payable under both Swiss law and well-established jurisprudence of the FIFA DRC).

xii. In relation to taxes, the Appellant submits the *"Club cannot contest the* [gross] *amounts awarded by FIFA to the Player in this arbitration"*. Furthermore, the Appellant finds that *"certain provisions of Serbian law need to be taken into account for the purposes of properly establishing the problem of calculating the payable compensation"*. The Player is of the view that he is entitled *"after all taxes are paid* [in both/either China and/or Serbia] *(…)* [to] *end up having EUR 3,170,751.78 (with interest) on his bank account"*. The Appellant finds that this follows from Article 2(6) of the Contract, *"as well as to the fact that all amounts from the IRA are stipulated as net"*. The term *"net"*, however means – according to the Appellant – that the Club shall bear all costs insofar as the amounts to be paid by the Respondent are subject to any deductions (taxes, charges, expenses whatsoever).

a. Since all payments will have to be done at once, the tax charge (according to Serbian law) will inevitably increase *"and decrease the net amounts owed to the Player (if paid in the same gross amounts as stated in the Contract)"*. The Player has no remedies for making the Club pay the respective taxes in China, *"while the Serbian tax authorities will recognize the*

taxes paid in China and – should certain tax rates be higher in Serbia – charge the difference between the payable taxes in Serbia and the ones paid in China".

b. Furthermore, the Appellant submits that Serbian law (Article 87(1) of the Tax Law) provides for supplementary annual taxation as follows:

"The annual individual income tax shall be paid by resident natural persons whose income in a calendar year was greater than three times the average annual wage/salary per employee paid out in the Republic in the year for which the tax is being charged, as published by the republic authority competent for statistics, and in particular the following:

1) Residents for income earned in the territory of the Republic [of Serbia] *and in other country".*

c. According to the Appellant, the individual/personal income taxation in Serbia – regardless of whether the income was earned in Serbia or abroad – is progressive. Thus, in case the sums are paid altogether, progression kicks in. Furthermore, it must be considered that the Player has additional income from Degerfors that needs to be added (when calculating the tax rate).

d. In light of the above, the Appellant requests *"that the CAS expressly acknowledges that he shall ultimately receive the total amount of 3,163,195.21 (plus interest), net of any and all taxes and public expenses, as follows: (i) EUR 273,089.27123 plus 5% interest p.a. as from 10 August 2021 until the date of effective payment; (ii) EUR 100,000 plus interest 5% p.a. from 13 January 2022 until the date of effective; payment; (iii) EUR 1,143,047.94, plus interest 5% p.a. from 13 July 2022 until the date of effective payment; (iv) 1,647,058, plus interest 5% p.a. from 13 July 2022 until the date of effective payment".*

81. In support of the request for a partial award, the Player argues as follows:

i. The Player is of the view that the Appealed Decision has become final and binding, but for the part that has been appealed by him. The Player submits that *"*[t]*herefore, at this stage, there is no dispute between the Parties whether the Respondent needs to pay to the Appellant the amount of EUR 496,525.47, plus 5% interest p.a. as from 10 August 2021 until the date of effective payment".*

ii. The Player requests that the aforementioned amount be awarded to him in the form of a partial award. He argues that he has *"a legitimate interest for the partial award to be issued".* Furthermore, the Swiss Private international Law Act ("PILA") authorizes a panel/sole arbitrator to issue partial awards (Article 188 of the PILA).

iii. FIFA has rejected the Player's request for partial enforcement of the Appealed Decision as long as an appeal is pending before the CAS. The Player is of the view that FIFA's standpoint *"is formalistic and goes against the purpose of efficient debt collection/enforcement process* [and leads to] *a discrepancy between the enforcement system established by the RSTP and the one enshrined in the Swiss Civil Procedure Law".* All of this – according to the Appellant – *"makes*

it necessary for the Player to request for a partial award, given that he is unable to collect through FIFA the uncontested part of his claim".

B. The Club's position

82. In its Answer dated 19 April 2022, the Respondent sought the following requests for relief:

> *"i. to entirely reject the appeal against the FIFA Decision in the present case.*
>
> *ii. to entirely reject the claim based on the Image Right Agreement.*
>
> *iii. to order the Appellant to pay all costs and expenses relating to the CAS arbitration proceedings.*
>
> *iv. to order the Appellant to pay a contribution towards the legal fees and other expenses incurred by this party, estimated in CHF 10,000".*

83. The Sole Arbitrator understands the Club's position to be for the Sole Arbitrator to uphold the Appealed Decision, and reject the additional claims by the Player, including the Player's claim for the residual value of the Contract extending beyond January 2022, and any performance-related bonuses beyond the same time. In particular, the Club maintains that:

> *"[T]he residual value of the Employment Contract considered by FIFA to calculate the compensation (EUR 496,525.47) is accurate and appropriate and there is no evidence against it".*

84. In support of its position, the Club argues as follows:

i. The Appellant requests increase of the amounts payable to him based on two agreements (the Contract and the IRA). The latter was executed between the Respondent and the third party Supervision Management BV. The Respondent submits that the latter is not an integral part of the employment relationship between the Parties and that *"the Jurisdiction and Applicable Law of the two contracts (…)* [must] *be discussed separately".*

ii. In relation to the claims arising out of the Contract, the Respondent does not dispute the competence of the CAS as an appeal body. As for the law applicable to the merits, the Respondent submits that the rules and regulations of FIFA, the AFC and the CFA apply.

iii. In relation to the claims arising from the IRA, the Respondent submits that the CAS has no jurisdiction to adjudicate them, since:

   a. The IRA is a commercial contract not relating to sport. Consequently, the dispute falls outside of the scope of Article R27 of the CAS Code, which requires the dispute to be "sports-related".

   b. The Respondent also refers to the dispute resolution clause in Article 12 of the IRA. The respective clause is a jurisdiction clause referring all disputes *"including, without*

limitation its validity, construction and performance" to the *"exclusive jurisdiction of the courts in Lausanne, Switzerland"*. The clause is distinct from the dispute resolution clause in the Contract and does not qualify as an arbitration clause. The Respondent submits that the parties to the IRA have not agreed to CAS or FIFA as the competent forum to decide disputes arising from the IRA.

iv. According to the Respondent, the promotion of the Club to the CSL cannot be considered when calculating the residual value of the Contract, because:

a. The Contract was terminated on 13 July 2021. The Respondent had informed its foreign players on 8 November 2020 that in view of the COVID-pandemic they might not be able to enter the territory of China and return to the Respondent's team if they chose to leave China during the season break. The Respondent further submits that it told all its foreign players that they bear the responsibility for not being able to return in time to the Club.

b. Despite the forgoing information, the Player decided to leave China. This prevented him from returning to and joining the Respondent's team on 4 January 2021, a date which had been communicated to all players in advance. The Player only returned to the Respondent on 4 February 2021 and was thus absent for an entire month. According to the Respondent, this constitutes a breach of the Contract, more particularly of Article 3 of said contract. The Respondent submits that despite the above breach, it had decided *"to forgive"* the Player and to loan the Player to Zhejiang FC for the first stage of the CSL competition. At the end of the first stage of the CSL, the Player failed to inform the Respondent regarding his whereabouts and did not return to prepare the next stage of the competition. Instead, the Player signed a contract with a new club without informing the Respondent. This constitutes a breach of the FIFA RSTP and the Contract. For this reason, the Club decided to terminate the Contract based on Article 7(1) of the Contract and to lodge a claim against the Player at the FIFA DRC on 13 July 2021. Thus, the Appealed Decision rightly concluded that the Contract was terminated on 13 July 2021 and all clauses contained therein became *"invalid"*.

c. The Club's team got promoted to the CSL on 12 January 2022, *i.e.* after the Contract was terminated. Furthermore, one needs to consider that the Player had not played a single match for the Respondent in the whole season 2021. The Player *"did not make any contribution to the Respondent's team promotion"*, since before the Contract was terminated, the Player was on loan to Zhejinag FC and thereafter he played for his new club.

v. The Respondent also submits that its promotion has not activated the extension of the Contract according to Article 1(3). For the latter to occur, three conditions must be fulfilled: (i) the Player must have played for the Respondent, (ii) the Respondent is promoted to the CSL and (iii) the two previous conditions must occur during the term of the Contract. According to the Respondent none of these conditions are fulfilled in the

case at hand. The Respondent further submits that it did not prevent the conditions from occurring and in any case did not act in bad faith. Consequently, the conditions for an extension of the Contract cannot be *"deemed fulfilled or granted"*. The Respondent bases its conclusions also on CAS jurisprudence (CAS 2015/A/4361 and CAS 2016/A/4709).

vi. The Respondent further objects to the Player's entitlement of the bonus (based on the promotion of the Club to the CSL). The Player has not played a single match with the Respondent within the relevant period and, thus, has not merited a bonus. The purpose of a bonus – according to the Respondent – is to reward the Player's performance. This also follows from the language in Article 2(4) of the Contract that refers to *"performance-related salaries"*.

vii. In relation to claims arising from the IRA, the Respondent claims that CAS' mandate is limited to the scope of the procedure before FIFA. This clearly follows from CAS jurisprudence (CAS 2010/A/2135; CAS 2007/A/1426; CAS 2009/A/1879). According thereto, *"claims made in appeal proceedings in front of CAS cannot cover matters outside the scope of the challenged decision"*. Since the Player never claimed the amounts from the IRA before the FIFA DRC, he is prevented from doing so in these CAS proceedings.

viii. The IRA is not an employment relationship and not part of the Contact. Furthermore, the IRA does not refer to the contents of the employment relationship. Disputes arising from the IRA, thus, fall outside the competence of the FIFA DRC, since Article 22(b) of the FIFA RSTP refers to *"employment-related disputes between a club and a player of an international dimension"*.

ix. The IRA expired at the end of 2021 following the Respondent's letter of 18 October 2021 to Supervision Management BV informing the latter that it would not exercise the option to continue the use of the image rights for the year 2022. Consequently, no claims arise from the IRA for the year 2022.

x. In order for the IRA to be qualified as part of the employment relationship, there need to be specific elements suggesting that the IRA in fact was meant to be part of the employment relationship. Such elements are missing in the case at hand according to the Respondent. In particular, the Respondent refers to the following facts and elements:

   a. The contracting parties of the IRA and of the Contract differ, since the Appellant is not a party to the IRA and Supervision Management BV is not a party to the Contract;

   b. The termination of the IRA is not subject to the termination of the Contract. While the Contract ended on 13 July 2021, the IRA only expired on 31 December 2021;

   c. The fees under the IRA are not paid *"in installments like wages but in a lump sum"*. Furthermore, the payments under the IRA are not based on the performance of the Player;

d. The dispute resolution clause and the choice-of-law clause contained in the IRA and the Contract differ; and

e. The IRA does not include any elements typical for employment contracts.

xi. The Appellant cannot avail himself of Article 10.2 of the IRA, since:

a. He is not a party to the IRA; and

b. According to Article 10.2 of the IRA, the Club *"shall pay the remaining image right fees directly to the Appellant only on the premise that the Employment Contract is valid upon the expiration of the IRA"*. However, since the Contract was terminated already on 13 July 2021, Article 10.2 of the IRA is not applicable.

V. JURISDICTION

85. As a preliminary matter, it is recalled that the Appellant in the case at hand has filed the following claims under two different agreements:

S/No	Amount Claimed	Description of Claim
a.	EUR 496,525.47 Interest of 5% *p.a.* from 10 August 2021	Claim awarded in the Appealed Decision (and based on the Contract) for which a partial award is sought, as it is not appealed by the Appellant
b.	EUR 181,818.00 Interest of 5% *p.a.* from 13 January 2022	Claim based on Article 2(4) of the Contract because of Club's promotion to the CSL on 12 January 2022 (based on the Contract)
c.	EUR 2,082,922.13 Interest of 5% *p.a.* from 13 July 2021	Claim based on Article 1(3) in conjunction with Article 2(1) of the Contract for the period from 23 January 2022 to 23 January 2023
d.	EUR 2,522,075.00 Interest of 5% *p.a.* from 13 July 2021	Claim based on the IRA for the year 2022

86. 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 it prior to the appeal, in accordance with the statutes or regulations of that body".*

87. Article 57(1) of the FIFA Statutes (2021 edition) states as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".

88. Furthermore, Article 8(2) of the Contract provides as follows:

"In case no settlement can be reached through negotiation, the dispute shall be submitted to the competent dispute resolution body of FIFA with express waiver to the national courts and with the consequent option of appealing to the Court of Arbitration for Sport (CAS) Lausanne, Switzerland. In case of an appeal to CAS, the Parties hereby choose the CAS Shanghai Alternative Hearing Centre as the hearing place".

89. It follows from the above that there is an arbitration clause contained in the Contract, which provides for jurisdiction in favour of the CAS. Furthermore, the Parties have submitted to the dispute resolution bodies of FIFA in the Contact. The respective provisions in the FIFA regulations provide that decisions of these adjudicatory bodies can be appealed to CAS. Finally, is undisputed (and supported by the Order of Procedure signed by the Parties) that the CAS is competent to decide on disputes arising from the Contract, *i.e.* claims "a, b and c" in the above chart.

90. What is in dispute between the Parties, however, is whether the CAS is competent to adjudicate the claim arising from the IRA, *i.e.* claim "d" in the above chart. The Sole Arbitrator will evaluate this issue below.

A. No competence of the CAS deriving from the IRA

91. Article 12 of the IRA provides as follows:

"This Agreement is governed by, and shall be construed in accordance with, the laws of the Switzerland. All disputes with respect to this Agreement, including, without limitation its validity, construction and performance, shall belong to the exclusive jurisdiction of the courts of Lausanne, Switzerland".

92. The Swiss Federal Tribunal ("SFT") has defined an arbitration agreement in the case SFT 4A_342/2019 as follows:

"Unter einer Schiedsvereinbarung ist eine Übereinkunft zu verstehen, mit der sich zwei oder mehrere bestimmte oder bestimmbare Parteien einigen, eine oder mehrere, bestehende oder künftige Streitigkeiten verbindlich unter Ausschluss der ursprünglichen staatlichen Gerichtsbarkeit einem Schiedsgericht nach Massgabe einer unmittelbar oder mittelbar bestimmten rechtlichen Ordnung zu unterstellen (…). Entscheidend ist, dass der Wille der Parteien zum Ausdruck kommt, über bestimmte Streitigkeiten ein Schiedsgericht, d.h. ein nichtstaatliches Gericht, entscheiden zu lassen".[3]

Free translation: An arbitration agreement is an agreement by which two or more specific or identifiable parties agree to submit one or more existing or future disputes to binding

[3] SFT 4A_342/2019, consid. 3.2.

arbitration in accordance with a directly or indirectly determined legal order, to the exclusion of the original state jurisdiction (…). It is decisive that the will of the parties is expressed to have certain disputes decided by an arbitral tribunal, *i.e.* a non-state court.

93. It follows from a literal construction of Article 12 of the IRA that the competent forum to decide disputes arising from the IRA are *"the courts of Lausanne"*. The Appellant is of the view that this term does not only cover state courts in Lausanne, but also includes arbitral tribunals having their seat in Lausanne. The Sole Arbitrator does not agree with such construction of the clause. The term *"courts"* typically refers to state courts. In addition, the Sole Arbitrator notes that – unlike the clause contained in Article 8(2) of the Contract – Article 12 of the IRA does not provide for an *"express waiver to the national courts"*. Furthermore, the clause in Article 12 of the IRA does not foresee – *e.g.* – first-instance proceedings before the FIFA adjudicatory bodies. Absent any clear indication or evidence submitted by the Appellant that the parties to the IRA intended the term *"courts of Lausanne"* to cover also arbitral tribunals, the Sole Arbitrator is not prepared to construe the provision as granting a mandate to CAS to adjudicate disputes arising from the IRA. While the word *"Court"* appears in the English version of CAS' name, CAS is not a court in the proper sense under domestic law but rather an arbitral tribunal.

94. Even, if one were to follow Appellant's argument that the plural *"courts"* refer to both state courts and arbitral tribunals, this would not be of any help to the Appellant, since a key requirement of a valid arbitration clause in Swiss law is that it excludes all recourse to state courts (which is not the case here). Furthermore, there is simply no indication on file that the parties to the IRA wanted to give a potential claimant the option either to resort to state courts or to an arbitral tribunal. Finally, the Sole Arbitrator is minded by the jurisprudence of the SFT that a strict threshold must be applied in determining whether the parties wanted to resort to arbitration (contrary to the interpretation of the scope of an arbitration agreement). In SFT 4A_342/2019, consid 3.2, the SFT stated as follows:

"Bei der Auslegung einer Schiedsvereinbarung ist deren Rechtsnatur zu berücksichtigen; insbesondere ist zu beachten, dass mit dem Verzicht auf ein staatliches Gericht die Rechtsmittelwege stark eingeschränkt werden. Ein solcher Verzichtswille kann nach bundesgerichtlicher Rechtsprechung nicht leichthin angenommen werden, weshalb im Zweifelsfall eine restriktive Auslegung geboten ist (…) Steht demgegenüber als Auslegungsergebnis fest, dass die Parteien die Streitsache von der staatlichen Gerichtsbarkeit ausnehmen und einer Entscheidung durch ein Schiedsgericht unterstellen wollten, bestehen jedoch Differenzen hinsichtlich der Abwicklung des Schiedsverfahrens, greift grundsätzlich der Utilitätsgedanke Platz; danach ist möglichst ein Vertragsverständnis zu suchen, das die Schiedsvereinbarung bestehen lässt".

Free translation: When interpreting an arbitration agreement, its legal nature must be taken into account; in particular, it must be noted that the waiver of a state court severely restricts the avenues of appeal. According to the case law of the Federal Supreme Court, such a waiver cannot be assumed lightly, which is why a restrictive interpretation is required in case of doubt (…) If, on the other hand, the result of the interpretation is that the parties wanted to exclude the dispute from state jurisdiction and submit it to a decision by an arbitral tribunal, but there are differences regarding the conduct of the arbitral proceedings, the

utilitarian principle applies; according to this, a contractual understanding must be sought that leaves the arbitration agreement in place.

95. To conclude, therefore, the Sole Arbitrator finds that the competence of the CAS to adjudicate on claims arising from the IRA cannot be based on Article 12 of the IRA.

B. The IRA is not an integral part of the Contract

96. The Appellant argues that the CAS is competent to decide on the claim arising from the IRA because the IRA is an integral part of the Contract. The Sole Arbitrator notes that nothing in the Contract points in such direction. Instead, Article 6 of the Contract provides as follows:

> *"ARTICLE 6 IMAGE RIGHTS*
>
> [The Player] *and* [the Club]*, or an affiliated appointed by Party B, will conclude a separate Agreement for the use of Party B's image rights in China".*

97. Contrary to what the Appellant states, it follows from Article 6 of the Contract that any regulation pertaining to the use of the Appellant's image rights will not be dealt with in the Contract, but remains reserved for a "separate" contract. Furthermore, the Sole Arbitrator notes that the parties to the Contract and to the IRA are different. Thus, for all of these stated reasons, it cannot be assumed that the contents of the IRA is an integral part of the Contract.

C. Article 8(2) of the Contract does not extend to the disputes arising from the IRA

98. In SFT 142 III 239 (consid. 5.2.3), the SFT held as follows:

> *"En application de la théorie du groupe de contrats, lorsque plusieurs contrats se trouvent dans une relation de connexité matérielle, tels le contrat-cadre et les différents contrats qui s'y rattachent, mais qu'un seul d'entre eux contient une clause d'arbitrage, il y a lieu de présumer, à défaut d'une règle explicite stipulant le contraire, que les parties ont entendu soumettre également les autres contrats du même groupe à cette clause d'arbitrage".*
>
> **Free translation**: According to the group of contracts theory, when several contracts are materially connected, such as the framework agreement and the various related contracts, but only one of them contains an arbitration clause, it is to be presumed, in the absence of an explicit rule to the contrary, that the parties intended to make the other contracts in the same group subject to that arbitration clause as well.

99. In the case at hand, there can be no doubt that the Contract and the IRA are materially connected. The IRA would have never been executed without the Contract. Furthermore, the Contract and the IRA were signed on the same day. Not only does the history of both contracts indicate that they are materially closely connected, but so does their content. Articles 1, 4 and 10.2 of the IRA specifically refer to the Contract, and Article 6 of the Contract refers to the (separate) IRA. Thus, the question arises whether in light of this interconnection between the

contracts, the dispute resolution clause contained in the Contract extends to the (materially connected) IRA.

100. It follows from the above jurisprudence of the SFT, however, that such extension cannot be assumed automatically, but only absent any indications to the contrary. In the case at hand, the fact that the IRA contains a separate and different dispute resolution clause clearly speaks against extending the scope of Article 8(2) of the Contract to disputes arising from the IRA. In light of Article 12 of the IRA, there is no indication on file that the parties to the IRA and the Contract (that again are not identical) wanted to submit all disputes arising from these contracts to the CAS. The Appellant submits that the IRA was a sham and that for this reason Article 12 of the IRA shall not be attributed any relevance. However, the Sole Arbitrator, based on the evidence before him, is not prepared to follow this. Consequently, the Sole Arbitrator finds that CAS' competence for the Appellant's claim based on the IRA cannot be derived from Article 8(2) of the Contract.

D. Summary

101. To conclude, therefore, the Sole Arbitrator finds that – absent any arbitration agreement of the Parties in favor of the CAS – CAS is not competent to adjudicate any claims arising from the IRA. Thus, Appellant's claim for payment in the amount of EUR 2,522,075.00 including interest must be rejected.

VI. ADMISSIBILITY

102. The Statement of Appeal was timely filed and complied with the requirements set by Article R48 of the CAS Code. No further recourse against the Appealed Decision is available within the structure of FIFA. Accordingly, the appeal filed by Appellant is admissible.

VII. OTHER PROCEDURAL ISSUES

103. The Sole Arbitrator will address the following procedural issue in turn: (A) the Player's request for a Partial Award; and (B) the Player's late filing of the reply to the Respondent's jurisdictional objections. In doing so, the Sole Arbitrator will apply Chapter 12 of the PILA, since the seat of this arbitration is located in Switzerland.

A. The Player's request for a Partial Award

1. Background and Parties' Positions

104. On 29 November 2021, the Appealed Decision dated 25 November 2021 was notified to the Parties. On 1 December 2021, the Player requested the grounds of the Appealed Decision, which were notified to the Parties on 11 January 2022.

105. On 24 February 2022, the Player sent a letter to the Club, demanding, *inter alia*, the payment of EUR 496,525.47 and interest, pursuant to the Appealed Decision. The Club did not respond to said demand.

106. On 25 February 2022, the Player informed FIFA that the Club had failed to comply with the uncontested part of the Appealed Decision and requested the initiation of enforcement proceedings. In parallel, the Player commenced the present CAS proceedings, wherein he paid the CAS administration fee on 28 January 2022, and filed the Statement of Appeal on 30 January 2022.

107. On 25 February 2022, FIFA informed the Appellant in relation to the enforcement proceedings that *"the present proceedings are declared suspended as long as the proceedings before the CAS are pending"*.

108. On 26 February 2022, the Player explained to FIFA that he did not challenge the Appealed Decision in its entirety and asked for a transfer ban to be imposed, since there were no reasons preventing the enforcement of the uncontested part of the Appealed Decision.

109. FIFA replied to the Player as follows:

> *"In this context, we kindly refer you to our previous correspondence dated 25 February 2025 (attachment 2), the contents of which is self-explanatory"*.

110. Based on the foregoing, the Player requested the CAS to issue a partial award in relation to the unchallenged part of the Appealed Decision. The Player claims to have a legitimate interest to obtain a partial award. Furthermore, he points to Article 188 of the PILA, which provides that an arbitral tribunal may render partial awards, unless the parties have agreed otherwise. The Player is aware of Article 24(5) lit. b of the FIFA RSTP, which reads as follows:

> *"The time limit* [within which the debtor must pay the full amount due] *is also paused by an appeal to the Court of Arbitration for Sport"*.

2. The Finding of the Sole Arbitrator

111. On 3 June 2022, the CAS Court Office informed the Parties that the Player's request for a partial award on the non-appealed portion of the Appealed Decision was denied, and that the reasons would be provided in the final award of the present proceeding.

112. The Sole Arbitrator acknowledges that there is a *"non-appealed portion"* of the Appealed Decision, since the Appellant only filed a partial appeal, and the Respondent has not appealed the FIFA decision at all. The non-appealed portion of the Appealed Decision that has become final and binding, thus, relates to:

> *"EUR 496,525.47 as compensation for breach of contract plus 5% interest p.a. as from 10 August 2021 until the date of effective payment"*.

113. The Sole Arbitrator finds that CAS does not have competence to issue a partial award in respect of this non-appealed portion of the Appealed Decision. The mandate of the Sole Arbitrator is limited to the matter in dispute before him. Thus, for the Sole Arbitrator to issue a decision there must be something in dispute between the Parties. This also follows from Article R27 of the CAS Code according to which the CAS' mandate is to decide *"sports-related disputes"*. However, the non-appealed part of the Appealed Decision has become final and binding and no longer is in dispute between the Parties. Instead, the dispute has – insofar – been finally adjudicated and disposed of. Consequently, the Sole Arbitrator is not empowered in an appeal arbitration proceeding to render a partial award on claims that have become final and binding. Since the appeal filed by the Player does not cover the portion of the Appealed Decision in question here, there is no matter in dispute before the Sole Arbitrator and consequently, the Sole Arbitrator has no mandate to render any decision in relation to this portion of the Appealed Decision.

114. Finally, the Sole Arbitrator finds that the Appellant's request is directed against the wrong respondent. It follows from the above submissions that the Player is in essence seeking to overturn the decision of the FIFA Disciplinary Committee to suspend the enforcement proceedings pertaining to the (final and binding portion of the) Appealed Decision. The proper recourse in such circumstances would have been to lodge an appeal against the decision of the FIFA Disciplinary Committee declining to enforce the non-appealed portion of the Appealed Decision. The Club, however, has no case to answer in these proceedings, since it is neither responsible nor accountable for the fact that FIFA refused to partially enforce the Appealed Decision. To conclude, therefore, the Sole Arbitrator finds that the Appellant's request for a partial award must be rejected.

B. The Player's late filing of the reply to Respondent's jurisdictional objections

1. Background and Parties' positions

115. On 21 April 2021, the CAS acknowledged receipt of the Respondent's Answer and invited the Player to reply to the Respondent's Jurisdictional Objections within 15 days of receipt of the letter.

116. On 2 May 2022, the Player requested an extension of the deadline to file his Reply.

117. On 3 May 2022, the CAS Court Office invited the Respondent to comment on the Player's request for an extension of the deadline to submit his Reply.

118. On 4 May 2022, the Respondent objected to the Player's request for an extension of the deadline to submit his Reply.

119. On 4 May 2022, the CAS Court Office informed the Parties that the Player's deadline to submit his Reply remains suspended, and that the President of the CAS Appeals Arbitration Division, or her Deputy. would decide the matter further to Article R32 of the CAS Code.

120. On 5 May 2022, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided to grant the Player's request for an additional 10-day extension of the deadline to file his Reply.

121. On 16 May 2022, the Player sent an email informing the CAS Court Office that he filed his Reply.

122. On 18 May 2022, the CAS Court Office acknowledged receipt of the Player's Reply which was filed on 18 May 2022 on the CAS E-filing Platform. In addition, the CAS Court Office noted as follows:

> *"Although the Appellant stated in his 16 May 2022 email that the Reply was filed via the CAS E-filing Platform, to date the Reply has not been uploaded to the E-filing Platform in the above-referenced proceeding. It is recalled with reference to Article R32 of the Code of Sports-related Arbitration that the deadline for the Appellant to file his Reply to the Respondent's Jurisdictional Objections was 16 May 2022.*
>
> *Therefore, the Appellant is invited to provide the CAS Court Office by 20 May 2022 with proof of timely filing the Reply (…) by courier or proof of having timely filed the Reply (…) on the CAS Court Office E-filing Platform".*

123. On 20 May 2022, the Player sent an email to the CAS Court Office clarifying the circumstances regarding the filing of his Reply. The email reads as follows:

> *"On 13 May 2022, I started feeling nausea and headache, very similar to the ones I felt two years ago (when I had huge vertigo problems – see Report 1 and 2) and several weeks ago (see Report 3). Prior to this, I had a mild cold for few days. My vertigo problems in 2020 were documented in CAS 6554, when I was unable to properly function for longer period and when the respective deadline was extended for 30 days because of this (I attach exchanged in that case and the CAS letter). When I visited a doctor several weeks ago and took the testing, I was told that I have not yet fully recovered from the vertigo disease I had in 2020.*
>
> *On 16 May 2022, the symptoms were stronger, I vomited again and I also started feeling pressure in my head (as same as several weeks ago). I did not feel well while sending the email to CAS and I do not know how the reply remained non-uploaded. After receiving the email delivery report (attached), instead of uploading the reply, I tried to rest, but the nausea was even stronger. I got scared because of my state (I also train boxing and causes of my vertigo issues are still unknown) so I took taxi to a doctor to do a blood vessel doppler (Report 4). The doctor told me to strictly rest and to go to a neurologist when my nausea calms a little bit, since my blood vessels were fine.*
>
> *Right after I came back home, my nausea and headache got even worse (I vomited right after leaving the taxi) and I continued vomiting throughout the day and could not walk on my own. The same was happening on 17 May (I vomited after walking for several meters only, from my bed to bathroom). I started taking Betaserc medicine in advance, since this drug helped my vertigo symptoms to weaken both in 2020 and also several weeks ago.*

On 18 May, I was able to walk on my own, but I was feeling unpleasant as soon as I separate my head from the pillow. My wife brought my lap top to the home, so I uploaded the reply via e-filing platform, but I did not feel well enough to write an email and explain the situation.

On 19 May, i.e. yesterday, I felt better and I called CAS to pass the information about my situation and that I will write an email as soon as I feel better.

Since this morning, I have the same symptoms, although significantly weaker. I am having difficulties writing this email, as I feel headache and pressure in my head, so I am doing it in rounds. Today I visited a neurologist, who tested me, concluded that I have vertigo peripherica alia, instructed me to do MRI and continue with Betaserc (Report 5).

Translation of Reports 4 and 5 will be sent in due course.

I believe that uploading the Reply via e-filing platform within the second following business day from sending it via email is due to justified reason (vertigo problems are truly an agony). I also wish to point out that I was ill while drafting the Reply and sending it via email. I kindly ask the sole arbitrator to, once appointed, admit the Reply to the case file. If CAS can admit the Reply at this stage, I kindly ask CAS to do so".

124. On 23 May 2022, the Player's counsel submitted translations for Reports 4 and 5, which had been transmitted with his 20 May 2022 communication.

125. On 27 May 2022, the Respondent submitted a letter containing its objections to the admissibility of the Player's Reply. The CAS Court Office acknowledged receipt of the said letter and transmitted it to the Player and the Sole Arbitrator.

126. On 31 May 2022, the Player commented on the Respondent's objections. The CAS Court Office acknowledged receipt of the said letter and transmitted the letter to the Respondent and the Sole Arbitrator.

2. The finding of the Sole Arbitrator

127. On 3 June 2022, the CAS Court Office informed the Parties that the Player's Reply was admitted to the file, and that the reasons for this decision would be provided in the final award of the present proceedings.

128. It is uncontested that the Appellant missed the deadline to timely submit his Reply. According to Article R32 of the CAS Code *"any other written submissions (…) must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself, failing which the CAS shall not proceed. If they are transmitted in advance by facsimile or by electronic mail at the official CAS email address (procedures@tas-cas.org), the filing is valid upon receipt of the facsimile or of the electronic mail by the CAS Court Office provided that the written submission and its copies are also filed by courier or uploaded to the CAS e-filing platform within the first subsequent business day of the relevant time limit, as mentioned above".*

129. In the case at hand, the email containing a copy of the Reply was sent by the Appellant to the CAS Court Office on 16 May 2022, which would have given the Appellant the possibility to file the Reply by courier or *via* the CAS E-filing Platform until 17 May 2022 under Article R32 of the CAS Code. However, the submissions were only uploaded on the CAS E-filing Platform on 18 May 2022. The Appellant's counsel explained in his email of 20 May 2022 that the reasons for the late uploading of the Reply were due to medical reasons *i.e.*, huge vertigo problems. The counsel of the Appellant filed medical reports to support his submissions.

130. The Sole Arbitrator has seen the evidence submitted by the Appellant and has no reason to doubt the accuracy and veracity of the submissions of the Appellant's counsel. Thus, in view of the extraordinary circumstances in the case at hand, the Sole Arbitrator finds that the Appellant's counsel is excused for having missed the filing deadline. The Sole Arbitrator further finds that the delay is minimal (1 day) and that no prejudice was caused by such delay to the right to be heard of the Respondent.

C. Amendment of the Appellant's requests

131. The Sole Arbitrator notes that the Appellant has filed different requests for relief in his Statement of Appeal and his Appeal Brief. It is trite that the Appellant can amend his requests until the filing of the Appeal Brief, which will thereafter form the central document for which the Respondent will respond to [see MAVROMATI/REEB (Ed.) The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials, Article R51 (Appeal Brief)]. As such, and following the fact that the Respondent was able to respond to the Appeal Brief and was not affected by the Player's change in requests, the Sole Arbitrator accepts the (new) requests in the Appeal Brief hereinafter.

VIII. APPLICABLE LAW

132. Article R58 of the CAS Code provides 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 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".*

133. Article 56(2) of the FIFA Statutes reads as follows:

> *"The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. The CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

134. In addition, Article 8(3) of the Contract provides as follows:

> *"This Contract is governed by the rules and regulations of FIFA, AFC and CFA. These rules shall be applicable as well to any other matter not regulated herein. Should any clause of the Contract result to be not*

compliant with any of said rules and regulations, exclusively the concerned clause shall be considered null and void, without interfering with the validity of the remaining clauses of the Contract".

135. The Appellant's submissions in relation to the law applicable to the merits are that *"the RSTP are applicable (…) while Swiss law shall be applied subsidiarily, i.e., if any important issue for this matter is not regulated by the RSTP. Only if the RSTP and Swiss law (which should further specify the RSTP's potential lack of regulation) and analogous jurisprudence arising from their application do not provide an answer to the legal issue, the Parties' choice of local law/regulations comes into application"*. The Respondent in turn submits that the rules and regulations of FIFA, AFC and CFA apply.

136. The Sole Arbitrator notes that the Parties agree on the application of the FIFA RSTP. Consequently, the Sole Arbitrator will apply the latter in conformity with Article 56(2) of the FIFA Statutes. The Sole Arbitrator also notes that the Respondent has not referred to any provision of the AFC and the CFA that it wishes to apply. The Sole Arbtirator will therefore apply first and foremost the FIFA rules and regulations. Furthermore, the Sole Arbitrator will apply Swiss law as an interpretative tool when applying and construing the FIFA regulations. In case a matter is not addressed by the FIFA regulations, the Sole Arbitrator will determine the applicable law depending on the issue at stake, which could include the rules and regulations of the AFC and CFA.

IX. THE MANDATE OF THE SOLE ARBITRATOR

137. According to Article R57 of the CAS Code, the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, the Sole Arbitrator may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

A. Background and Parties' positions

138. The Player submits that based on Article R57 of the CAS Code, he is allowed to bring new facts and evidence in this appeal arbitration proceeding. This is all the more true when considering that he was not able to bring the said new facts and evidence at an earlier stage. The Club, on the contrary, submits that the Club's promotion to the CSL on 12 January 2022 was after the release of the Appealed Decision, and that the Player is therefore not allowed to introduce said promotion in these proceedings and derive any claims from this new fact.

B. The Finding of the Sole Arbitrator

139. It follows from the *de novo*-principle enshrined in Article R57 of the CAS Code that the Parties may introduce, in principle, new facts and evidence before the CAS that were not available at the previous instance. Thus, the Appellant is not barred from availing himself of the fact that the Respondent got promoted to the CSL on 12 January 2022. However, Article R57 of the CAS Code does not empower an appellant to change the matter in dispute vis-à-vis the first instance. Article R47 of the CAS Code provides that an appellant must exhaust the internal legal

remedies before lodging an appeal to the CAS. Consequently, an appellant, in principle, cannot submit a matter in dispute for adjudication in CAS appeals arbitration proceedings that was not before the previous instance. The Sole Arbitrator concurs insofar with the findings in CAS 2012/A/2874, where the panel found at para. 81 *et seq.* as follows:

> *"Although it is true that claims maintained in a statement of appeal may be amended in an appeal brief, such amended claims may however not go beyond the scope and the amount of the previous litigation that resulted in the Appealed Decision. Maintaining any other opinion will not only be against the basic principles of the scope of an appeal, but will blur the clear distinction that should be strictly kept between appeal arbitrations and ordinary arbitrations when such an ordinary arbitration clause exists.*
>
> *Nevertheless, in an appeal in which the case is heard de novo one exception to this basic principle may exists when a party in the previous proceedings claimed amounts that he was entitled to receive from the other party in the framework of contractual or other relations, however such entitlement in full, or part of it, is conditional upon the actual materialization of a certain clear and undisputed condition (such as, in a football case, winning the championship or the Cup etc.) and the condition was indeed fulfilled while the previous proceedings were pending and the fulfilment of the condition itself (as opposed to the entitlement to receive the payment because of the materialization of the condition) is not disputed. This is even more so when in the previous proceedings a lump sum amount is claimed in respect of compensation for the termination of the agreement without just cause. In such cases, this amount, that was conditional upon the materialization of a condition, may be considered within the compensation for the termination of the contract when the materialization of the condition was not disputed by the other party (…).*
>
> *New claims advanced in appeal, hitherto not claimed in the previous litigation, are in principle inadmissible. However, the Panel finds that claims that could, for legitimate reasons, not have been advanced in the previous litigation, but were likely to have been claimed in the absence of such legitimate reasons at that time, do fall under the de novo competence of CAS Panels and should hence be considered as admissible".*

140. Considering the above, the Sole Arbitrator concludes that the scope of review of CAS is not unlimited, but – instead – is restricted to the scope of the procedure before the FIFA DRC. Thus, claims made in appeal proceedings in front of CAS cannot cover matters outside the scope of the appealed decision, unless exceptions like those mentioned in CAS 2012/A/2874 are present.

141. However, in the case at hand, the two damage heads left to be adjudicated in these CAS proceedings were already submitted before FIFA. The Appellant had requested before the FIFA DRC – *inter alia* – EUR 1,200,000 net *"which would constitute the amount the player would be entitled to receive in the event* [the Club] *would promote to the China Super League and the option clause within the player's contract would become applicable"* and EUR 181,818 *"in the event the club would promote at the end of season 2021"*. Thus, the Appellant only changed the quantum in relation to the requests filed already before FIFA. Thus, the matter in dispute has not changed. The core of the claims filed before the FIFA DRC and the CAS is identical. Consequently, the Sole Arbitrator is mandated to adjudicate both claims.

X. MERITS

A. Summary of substantive issues

142. With regards to the Appellant's claims (b) and (c) (see supra the chart in the section on CAS jurisdiction), the main the issues to be resolved by the Sole Arbitrator are:

1. Did the Club terminate the Contract?

2. Did the Club have 'just cause' to terminate the Contract?

3. If not, what is the amount of damages that the Player is entitled to?

143. The Sole Arbitrator will address these issues in turn below.

B. Main issues

1. Did the Club terminate the Contract?

144. The Appealed Decision concluded as follows (para. 51):

> *"Therefore, the DRC concluded that the employment contract was prematurely terminated by the Club on 13 July 2021".*

145. This conclusion was neither contested by the Appellant nor by the Respondent.

146. Thus, the Sole Arbitrator bases his decision on this undisputed factual submission of the Parties.

2. Did the Club terminate the Contract with just cause?

a) Background and Parties' positions

147. The Appealed Decision found in para. 58 as follows:

> *"Therefore, the members of the Chamber unanimously decided that no just cause on the club's part has taken place and, hence, that its claim shall be rejected. Moreover, the Chamber concurred that the club should be liable to the consequences that follow insofar as it did not have just cause to terminate the employment contract with the player".*

148. The Appellant has submitted in his Appeal Brief as follows:

> *"As properly established by the Chamber, the Respondent terminated the Contract without just cause. Given that the Respondent did not challenge the Decision, whether the termination was valid or not is out of question in this arbitration. Therefore, the only remaining issue in terms of merits is the consequence of such termination, i.e. amounts payable to the Appellant".*

149. The Respondent, on the contrary, submits that the Player breached the Contract and submits as follows:

> *"However, the Appellant did inform the Respondent his whereabouts nor back to prepare the next stage of competition. In fact, he has participated in the trial to his new club without inform the Respondent and without the Respondent's consent either (…) In consider of the term of the Appellant's employment contract is to 22 January 202210, he doesn't have right to free to conclude a contract with another club according to RSTP as his employment contract is not expire within six months at that moment.*
>
> *The Appellant's behaviors mentioned above should be presumed to breach the Employment Contract again. In light of his action, the Respondent determines to maintain its legal rights under the situation this time. The Appellant's repeat breaches should be regard as grave breach of contract, which entitled the club Rongcheng FC terminate the Employment Contract with just cause according to paragraph 1, ARTICLE 7 of the Employment contract".*

b) The finding of the Sole Arbitrator

150. It is true that the Respondent did not appeal the Appealed Decision. It is equally true, however, that the binding effect of the Appealed Decision is limited to the operative part of such decision only and not to its reasoning. This follows from the simple fact that the Parties, when submitting to the FIFA adjudicatory bodies, agreed to be bound by such decision as if the latter was rendered by state court. Consequently, the binding effect of the Appealed Decision cannot go beyond the *res judicata* effects of a decision by a state court (or an arbitral award). In the decision SFT 136 III 345 (consid. 2.1), the SFT found as follows:

> *"Die Rechtskraftwirkung beschränkt sich auf das Urteilsdispositiv. Die Urteilsbegründung wird davon nicht erfasst. Die Urteilserwägungen haben in einer anderen Streitsache keine bindende Wirkung, sind aber gegebenenfalls zur Klärung der Tragweite des Urteilsdispositivs beizuziehen".*
>
> **Free translation**: The effect of res judicata is limited to the dispositive part of the judgment. The reasons for the judgment are not covered by it. The reasoning of the judgment has no binding effect in another dispute, but may be consulted in order to clarify the scope of the judgment.

151. Since the operative part of the Appealed Decision does not state that the Respondent terminated the Contract with just cause, the Sole Arbitrator is not bound by the respective reasoning of the FIFA DRC.

152. Despite of the above, the Sole Arbitrator finds that he has no reason to depart from the findings of the Appealed Decision. Instead, the Sole Arbitrator finds the conclusions of the FIFA DRC coherent and convincing. The Respondent could not establish any breach of the Player on or before the date the Club first lodged a claim against the Player for breach of contract on 13 July 2021. The Sole Arbitrator observes that the Club had – by then – hired and signed a contract with (the foreign player) Mr Felipe Silva and thereby exceeded the foreigners' quota with the

consequence that the Player could no longer be registered with the Club. Furthermore, the Respondent stopped paying the salaries due under the Contract as of 8 July 2021. On 26 July 2021, the Player sent the Club a letter requesting the Club to state whether his services were still required by the Club and set a deadline to this effect until 29 July 2021. The Player then showed up at the Club's premises where he was eventually told by the Club that the Contract had been terminated and that the Player could seek new employment. It was only on 11 August 2021 that the Player entered a new employment contract with the Swedish club Degefors.

153. To conclude, the Sole Arbitrator finds that it was the Respondent that unlawfully terminated the Contract without just cause, and upholds the Appealed Decision in this regard.

3. What is the amount of damages that the Player is entitled to?

a) Preliminary remarks

154. In case a club terminates an employment contract without just cause, Article 17(1) of the FIFA RSTP provides the following consequences in favor of a player:

> *"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.*
>
> *Bearing in mind the aforementioned principles, compensation due to a player shall be calculated as follows: (…).*
>
> *ii. in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract".*

155. In the case at hand, it is undisputed that the Contract does not include a provision by means of which the parties had beforehand agreed upon an amount of compensation payable in the event of breach of contract. Consequently, the amount of compensation payable by the Club to the Player must be assessed in application of the other parameters set out in Article 17(1) of the FIFA RSTP, *i.e.* the monies payable to the Player under the terms of the Contract from the date of its unilateral termination until its end date at stake.

156. The Player submits that when calculating the residual value of the Contract, the following parameters need to be taken into account:

i. the bonus provided for under Article 4(2) of the Contract; and

ii. the automatic extension of the term of the Contract according to Article 1(3) of the Contract.

b) The Player's entitlement to the Bonus

157. Article 4(2) of the Contract reads as follows:

> *"4.* [The Club] *shall pay* [the Player] *performance-related salaries as follows: (…).*
>
> *Euro 181,818 (in words: one hundred eighty one thousand eight hundred eighteen euros, before tax, which shall be amounting to 100,000 euros after tax withheld in China) to be paid 20 days after the last working day before the end of the season in which* [the Player] *is officially named the topscorer of the Chinese League One (CJL)".*

158. It is uncontested that the Club was promoted to the CSL. As explained above, this fact (not available before the first instance) must be taken into account in this appeal arbitration proceeding. Furthermore, the Sole Arbitrator finds that the bonus in question is *"a benefit"* within the meaning of Article 17(1) of the FIFA RSTP. The only remaining question is whether such benefit would have been due to the Player (in case the Contract would not have been terminated by the Club). The Respondent submits that this is not the case, since the bonus is *"performance-related"*, the promotion was achieved after the Contract was terminated (*i.e.* on 12 January 2022) and because the promotion was completely unrelated to the Player's performance.

159. The Sole Arbitrator is not prepared to follow this. The Respondent unlawfully terminated the Contract on 13 July 2021. Without such termination the Player would have trained and played with the Respondent. Consequently, it cannot be excluded that the Player might have contributed to the promotion of the Respondent to the CSL had the Contract continued until the end of the season. Since the Respondent – contrary to good faith – prevented the condition from materializing by terminating the Contract without just cause, the Club must be treated as if the condition had materialized in full.

160. It follows from the above that the Player is entitled to the bonus in the amount of *"Euro 181,818 (…) before tax, which shall be amounting to 100,000 euros after tax withheld in China)"*. The Player in these proceedings has claimed the amounts brut (*i.e.* before tax). The Respondent has not objected to this. Consequently, and – since the Player is no longer resident in China – the amount shall be awarded brut (*i.e.* before tax).

161. The Appellant submits that the date the promotion was secured was at the end of the 2021 season, which ended on 22 December 2021, and that, therefore, the bonus fell due on 12 January 2022. The Respondent has not objected to this submission. Hence, the Sole Arbitrator

finds that the above bonus fell due on 12 January 2022. Furthermore, the Sole Arbitrator finds that – absent any contrary submission by the Respondent – the Appellant is entitled to interest at 5% *p.a.* on the aforementioned amount as of 13 January 2022 until the date of effective payment.

c) The Player's entitlement to the extended term of the Contract

162. The Contract provides for an automatic extension in Article 1(3), which reads as follows:

> *"ARTICLE 1: Scope and Duration of the Contract (…).*
>
> *3. The Term has an option year from 23/01/2022 (day/month/year) to 22/01/2023 (day/month/year). The option year will be activated when Party B reaches one or multiple of the following targets: (…).*
>
> - *In case Party A is promoted to the CSL (CSL) during the duration of Party B's contract".*

163. The Respondent has sought to argue that the Contract is only extended for the optional year if three (3) conditions are satisfied, *viz*, (i) the Player reaches a target *i.e.*, the Player should be playing for the Club, (ii) the Club is promoted to the CSL, and (iii) the promotion should happen during "the duration" of the Player's Contract. The Sole Arbitrator disagrees with this reading. Article 1 of the Contract very clearly stipulates that *"the option year will be activated when* [the Player] *reaches one or multiple of the following targets"*, which includes that the Club is promoted to the CSL during the Contract Term. Article 1 does not provide that the option is only activated in case the Player *"plays for the Club"*.

164. The Respondent also claims that the extension of the Contract – in addition – requires that the Contract has not expired otherwise by the time the promotion is secured. The Sole Arbitrator does not concur with this view. It is true that the Club terminated the Contract without just cause on 13 July 2021. However, the Club cannot not escape its obligation arising from the Contract by simply breaching and terminating the latter. The term *"duration of Party B's contract"* in Article 1(3) of the Contract clearly refers to the ordinary term of the Contract or to instances in which the Club would have been entitled to terminate the Contract according to Article 7 of the Contract.

165. The Club also makes the submission that the promotion of the Club to the CSL could not be foreseen at the time of the termination of the Contract, and that the Player is, therefore, not entitled to any compensation for the extended period. This argument has little merits in the legal framework of premature termination of employment contracts without just cause, since in such an event, the harmed party has to be restored to the position he would have been in, should the contract not have been prematurely terminated without just cause. This follows from Article 17(1) of the FIFA RSTP. The FIFA Commentary on the Regulations on the Status and Transfer of Players (edition 2021) specifically states in this regard as follows:

> *"Readers will also be familiar with the principle of the "positive interest". According to this principle, the injured party should be compensated for damage incurred because of the breach of the contract. Specifically, the amount of compensation granted should, in simple terms, put the injured party in the position they would have been in had the breach of contract not occurred"* (page 151).

166. As such, it mattered not that the promotion of the Club was foreseeable, but rather whether the Player can rely on the said fact to have his entitled damages increased.

167. Consequently, the Sole Arbitrator finds that the 2022 season (*i.e.* the period between 23/01/2022 and 22/01/2023) provided for in Article 1(3) of the Contract must be taken into account when calculating the residual value of the Contract.

168. With respect to the remuneration due for the 2022 season, the Contract provides in Article 2(1) as follows:

> *"During the Term, the annual basic salary of* [the Player] *is (…) 1,090,909 Euro (in words: one million ninety thousand nine hundred and nine euros) (before tax, which shall be amounting to 600,000 euros after tax withheld in China) for the season of 2022, unless the Contract is prematurely terminated in accordance with Article* [7] *or as mutually agreed.*
>
> *If during the Term* [the Club] *is promoted to the Chinese Super League (CSL), the salaries that have been determined will be increased by 100% for each applicable season that party A is active in the Chinese Super League (CSL)".*

169. The Player has requested the amount brut (*i.e.* before tax). The Respondent has not objected to this. The Sole Arbitrator, thus, finds that the Player is entitled to EUR 2,181.818 brut ("before tax"). However, the Player must – according to Article 17(1) (ii) of the FIFA RSTP – deduct the amounts due under the new contract with Degerfors. The Player has submitted that his alternative income at Degerfors for the relevant period amounts to *"SEK 1,047,096.77 gross, which equals EUR 98,895.8786"* and that, therefore, the *"residual value of the Contract in the period from 23 January 2022 until 22 January 2023 amounts to EUR 2,082,922.13 gross"*. These submissions have remained uncontested by the Respondent.

170. Furthermore, the Appellant claims 5% interest *p.a.* on the amount of EUR 2,082,922.13 as of 13 July 2021, *i.e.*, the date upon which the Contract was terminated without just cause by the Respondent. Again, these submissions have remained uncontested by the Respondent and, therefore, the Sole Arbitrator will award the aforementioned claim for interest.

d) Request for declaratory relief

171. The Appellant has not made a specific request for declaratory relief. However, in his submissions he has stated as follows:

> *"the Player respectfully requests that the CAS expressly acknowledges that he shall ultimately receive the total amount of* ***3,163,195.21 (plus interest)****,* ***net*** *of any and all taxes and public expenses, as follows:*

(i) EUR 273,089.27123 plus 5% interest p.a. as from 10 August 2021 until the date of effective payment; (ii) EUR 100,000 plus interest 5% p.a. from 13 January 2022 until the date of effective; payment; (iii) EUR 1,143,047.94, plus interest 5% p.a. from 13 July 2022 until the date of effective payment; (iv) 1,647,058, plus interest 5% p.a. from 13 July 2022 until the date of effective payment.

The Player (...) herewith requests the CAS to (...) acknowledge that (i) in case of discrepancy between the foregoing gross and net amounts, the net amounts shall apply and (ii) should the Player be charged with taxes to the extent that his total remuneration, net of any and all public payables, corresponds to the amount of less than 3,163,195.21 (plus respective interest), he should be entitled to claim the difference from the Club".

172. The Sole Arbitrator interprets the above request of "acknowledgement" to mean that the Player requests the CAS to find that in case taxation and other public expenses imposed on the Player in Serbia exceed a certain amount, he would be entitled to claim further damages from the Club.

173. The Sole Arbitrator finds that such claim is premature since it is unknown what taxes and other expenses the Appellant will pay in Serbia on the amounts awarded to him under this Award. Furthermore, the Sole Arbitrator finds that the request is not sufficiently substantiated. Finally, the Sole Arbitrator does not concur with the Appellant that the Respondent must bear taxes and other public expenses incurred by the Appellant in Serbia. No such guarantee follows from Article 2(6) of the Contract. The latter provision reads as follows:

"All the salary and bonus and other contractual benefits paid by Party A shall be amounts before taxes. All the salary and performance-related salary and any other contractual benefits have been agreed as net amounts. Party A has grossed up these amounts for any tax, social contributions and insurances that might be applicable. Parties hereby explicitly agree that Party A shall be responsible for withholding any and all amounts that might be due by Party B under this contract, whereby it is the responsibility of Party A that Party B will receive the agreed net amounts. On request of Party B Party A shall provide Party B or any designated person by Party B overviews, calculations and specifications of any amount paid on behalf of Party B. In case of changes in the amounts that need to be withheld or paid by Party B on the remuneration received under this contract, Party A shall make the appropriate changes to the gross amounts, so that Party B will receive the (remaining) agreed net amounts in December of every contractual year the latest".

174. This provision has been drafted in light of the Chinese taxes and expenses. Thus, the provision seeks to guarantee certain net amounts in case the Player is submitted to taxes and public expenses in China. The provision, however, is mute in respect of taxes and other expenses that the Player must pay in other countries. Consequently, the Sole Arbitrator finds that the Player's request for declaratory relief must be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 30 January 2022 by Nikola Djurdjic against the decision rendered on 11 January 2022 by the FIFA Dispute Resolution Chamber is partially upheld.

2. Point 4 of the operative part of the decision issued on 11 January 2022 by the FIFA Dispute Resolution Chamber is amended as follows:

   Chengdu Rongcheng Football Club LTD has to pay to Nikola Djurdjic

   a. an amount of EUR 181,818, plus interest of 5% *per annum* from 13 January 2022 until the payment is effectively made;

   b. an amount of EUR 2,082,922.13, plus interest of 5% *per annum* from 13 July 2021 until the payment is effectively made.

3. (…).

4. (…).

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