

**Arbitration CAS 2013/A/3104 Vladimir Stojkovic v. Anthony McGill, award of 31 January 2014**

Panel: Mr Lars Halgreen (Denmark), President; Mr Dirk-Reiner Martens (Germany); Mr Alasdair Bell (United Kingdom)

*Football*

*Representation contract*

*Entitlement of an agent to claim a commission even if such agent was not actively involved in a transfer*

**As a general rule, the players' agent's activities must be causal to the conclusion of employment contract and if an employment contract was signed without the involvement of a particular player's agent, the player concerned does not owe any commission to the agent. However, this rule is not without exception. Thus, an agent is entitled to claim a commission, even when he has not been actively involved in a transfer, if a clause to this effect is explicitly and unequivocally stipulated in the representation agreement.**

**I. THE PARTIES**

1. Mr. Vladimir Stojkovic ("Stojkovic" or the "Appellant") is a professional football player (goal keeper). He is 30 years old and he currently plays for FC Partizan Belgrade ("Partizan").
2. Mr Anthony McGill ("Mr. McGill" or the "Respondent") is a player's agent licensed by the English Football Association.

**I.1 The Dispute between the Parties**

3. Below is a summary of the relevant facts based on the Parties' written submissions, pleadings and evidence presented at the hearing. Additional facts found in the parties' written submissions, pleadings and evidence may be set out where relevant in connection with the legal discussion that follows. Whereas the Panel has considered all the facts, submissions, legal arguments and evidence submitted by the parties in the present proceedings, the Panel only refers to the submissions and evidence that it considers necessary to explain its reasoning below.
4. This dispute concerns the issue whether the Respondent is entitled to claim an agent's fee of EUR 70,000 from the Appellant following the Appellant's agreement to transfer to his present club, Partizan.

5. On 5 October 2010, the parties entered into a 2-year exclusive standard representation agreement (the “Representation Agreement”) in relation to the Appellant’s occupation as a professional footballer, and the Respondent’s exclusive right to represent the Appellant in negotiations with all professional football clubs worldwide within the contractual period.
6. The most pertinent parts of the Representation Agreement are outlined below:

**Clause 4: Services**

*The Authorised Agent shall represent The Player in relation to all income producing activities whatsoever and wheresoever arising from the Player’s occupation as a professional footballer including but not limited to the negotiation of all professional playing contracts with football clubs and the procurement of clubs for The Player within the Agents regulations and the sourcing and procurement and negotiation of all commercial contracts for The Player and the development and marketing of The Player’s image.*

**Clause 5: Term**

*The Term of this Representation Contract shall, subject to clauses 15 – 18 below, be for a period of two years from the date hereof at the end of which it shall terminate without notice. The Representation Contract may be renewed at any time upon the written agreement of both parties, provided that the Term of the Representation Contract renewed by the parties shall not be for a term of more than 2 years.*

**Clause 6: Remuneration**

- (A) *In consideration of the provision of the Services, the Player shall pay to the Authorised Agent a fee in accordance with the requirements of The Agents Regulations and the terms of this Representation Contract as follows:*
  - (a) *a commission of ten per cent (10%) of the annual gross guaranteed salary (signing on fees and basic salary from time to time) payable to the Player and arising from any contract with any club negotiated by the Agent (or by the Player himself during the Term).*
  - (b) *1 July of each year of the Playing Contract during the Term;*
- (B) *The above sums are exclusive of any Value Added Tax that may be payable.*
- (C) *Payment of the sums due above shall be made subject to receipt by the Player of the Authorised Agent’s or The Company’s written invoices therefore.*
- (D) *If the Player makes a written request pursuant to Clause 9(f) of this Agreement and concludes a professional playing contract without utilizing the services of The Authorised Agent he shall still be obliged to make the payment referred to in clause 6(A) hereof.*

### **Clause 7: Exclusivity**

*The Parties agree that this Agreement is exclusive and the Player shall not be entitled to appoint any other Authorised Agent, as defined in the Agents Regulations to provide any Services agreed to be provided by the Agent hereunder.*

### **Clauses 8 to 14: Obligations**

*The Player undertakes and warrants to the Authorised Agent that:*

- (a) he is free to enter into the Representation Contract and is not prevented or restricted from so doing by any other extant [sic] agreement with another authorised agent or otherwise;*
  - (b) he shall notify the Authorised Agent of any approach or offer or enquiry that the Player receives from any other authorised agent, club or person acting directly or indirectly on behalf of a club that falls within the scope of the Services. The Player shall not be entitled to engage the services of another authorised agent without the prior written consent of the Authorised Agent;*
  - (c) he shall comply with the Rules of the Football Association and the Agents Regulations;*
  - (d) he will enter into and to the best of his ability carry out the terms of any agreement negotiated on his behalf with his consent and authority by the Authorised Agent and indemnify the Authorised Agent in relation to any breach thereof;*
  - (e) he shall provide any such information that the Authorised Agent may reasonably require in order to enable the Authorised Agent to perform the Services hereunder; and*
  - (f) where permitted by this Representation Contract, if he makes a written request to a club that the club deal with someone other than the Authorised Agent, including with the Player himself, in relation to a Transaction or Contract Negotiation (as defined within the Agents Regulations) he shall provide the Authorised Agent with a copy of the written request as soon as reasonably practical and in any event within 5 days of its execution and shall also provide the Authorised Agent with a copy of any agreement entered into by The Player during The Term where The Player has not utilised the Services of the Authorised Agent and as soon as reasonably practical and in any event within 5 days of the execution of such agreement”.*
- 10. The Player shall not be obliged to use the Services of the Authorised Agent during the term of this Representation Contract and may represent himself in any Transaction or Contract Negotiation (as defined in the Agents Regulations) should he so desire subject to the provisions of clause 6(D) and 9(f) hereof.*

### **Clauses 15 to 17: Termination**

- 15. If the Authorised Agent’s licence/registration is suspended or withdrawn during the term of this Representation Contract as determined by The Football Association or other relevant national association or FIFA, and the relevant appeal process has been exhausted where applicable, then this Representation Contract shall be automatically terminated with immediate effect.*
- 16. If either party:*
  - (a) commits a material breach of this Representation Contract which is not capable of remedy;*

- (b) *commits a material breach of this Representation Contract which is capable of being remedied but fails to remedy such breach within 30 days of a receipt of written notice from the non-defaulting party specifying the breach and requiring it to be remedied; or*
- (c) *is declared bankrupt [or, in the case of the Authorised Agent only, if the Company becomes insolvent], this Representation Contract may be terminated by the non-defaulting party on written notice with immediate effect.*

17. *Any sums that fall due for payment to the Authorised Agent after termination of this Representation Contract, other than those sums arising out of rights that have been accrued before termination, shall not be due and payable by the Player if:*

- (a) *the representation Contract is terminated in accordance with clause 15; or*
- (b) *the Representation Contract is terminated in accordance with clause 16 to the extent only that the material breach giving rise to such termination is committed by the Authorised Agent.*

7. On 7 March 2011, the Respondent lodged a claim in front of FIFA according to para. 32 of the Representation Agreement, stating that the Appellant had breached the contract, when he transferred from his previous Portuguese club, Sporting Lisbon (“Sporting”), to his present employer. Para 32 stipulates the following:

*“Any dispute between the parties arising from this Representation Contract which constitutes a breach of the Rules of the Football Association Rules and/or the Agents Regulations shall be dealt with by the Rules of the Football Association in the first instance and referred to FIFA where appropriate. Any other dispute between the parties shall be dealt with as between the parties under Rule K (Arbitration) of the Rules of the Football Association (as may be varied from time to time)”.*

8. On 16 May 2011, the Appellant before the Single Judge of the Players’ Status Committee rejected all claims stating that he had not signed any effective contract with any club while being bound by the Representation Agreement. Furthermore, the Appellant claimed that Mr. McGill was not active at all and had not offered him any opportunity for a final transfer to another club. He had contractually terminated the Representation Agreement on 8 February 2011, after which date the Respondent was not entitled to any fees.
9. On 25 September 2012, the Single Judge of the Players’ Status Committee reached its decision in favor of the Respondent. The decision of the Single Judge of the Players’ Status Committee was passed on 25 September 2012 and delivered to the Appellant on 18 February 2013.

## **II. THE ARBITRAL PROCEEDINGS**

### **II.1 The proceedings before the Court of Arbitration for Sport**

9. On 5 March 2013, the Appellant filed a Statement of Appeal with the CAS. On the same day, the Appellant also filed his Appeal Brief. In its submissions, the Appellant nominated Mr Dirk-Reiner Martens, attorney-at-law in Munich, Germany, as arbitrator.

10. In his Statement of Appeal, the Appellant applied for a stay of the challenged decision. However, after having been informed by the CAS Court Office that a decision of a financial nature is unenforceable while under appeal, the Appellant withdrew its application for a stay of the decision on 12 March 2013.
11. On 18 April 2013, the CAS Court Office informed the parties that based on the DHL delivery reports, the Respondent had been refusing all communications made by the CAS Court Office. As the Respondent had been designated in the present matter in accordance with Article R48, para 1 of the CAS Code, and once a letter had come within his sphere of control pursuant to Swiss law, service was effectuated. The Panel would proceed with the arbitration and deliver an award, even if the Respondent failed to submit his answer within the stated time limit.
12. On 21 April 2013, the Respondent sent an email to the CAS Court Office asking why he was involved in the present case, as the Appellant was appealing against the decision taken by FIFA and not him. On 22 April 2013, the CAS Court Office informed the parties that the present procedure related to a purely contractual dispute between the parties and that it did not concern FIFA. The Single Judge of the Players' Status Committee acted in the matter at stake in its role as the competent deciding body of the first instance and was not a party to the dispute. Therefore, FIFA could not be considered as a Respondent in the present procedure.
13. Subsequently, the Respondent on 22 April 2013 confirmed that he would submit a Statement of Defense in this matter, and the Respondent nominated Mr Alasdair Bell, UEFA General Counsel in Nyon, Switzerland, as arbitrator.
14. On 25 April 2013, the Respondent filed his Statement of Defense. By communication dated 29 May 2013, the CAS Court Office informed the parties on behalf of the Deputy President of the CAS Appeals Arbitration Division that the Panel had been constituted as follows:  
  
President: Mr Lars Halgreen, attorney-at-law in Copenhagen, Denmark.  
Arbitrators: Mr. Dirk-Reiner Martens, attorney-at-law in Munich, Germany  
Mr Alasdair Bell, UEFA General Counsel in Nyon, Switzerland
15. On 4 June 2013, the CAS Court Office invited FIFA to provide the CAS with copy of the complete case file in the matter. Furthermore, FIFA was invited to provide the CAS with "the information and documents available on the Transfer Matching System (hereinafter: TMS) with respect to the content of different employment contracts, concluded between the player and Partizan on 11 January 2011 and valid until January 2014, according to which the Respondent was entitled to receive from Partizan a total salary of EUR 700,000".
16. On 28 June 2013, FIFA forwarded a copy of the case file to the CAS and provided the relevant print-outs of the transfer instructions entered into the Transfer Matching System by Partizan as well as a copy of the document dated 11 January 2011 uploaded in the TMS.

17. On 16 August 2013, the CAS Court Office invited the parties to submit any comments related to the FIFA file no later than 23 August 2013.
18. On 4 October 2012, the CAS Court Office forwarded an Order of Procedure to the parties, which was signed without reservation by both parties on 7 October 2013.
19. On 16 October 2013, a hearing was held in Lausanne, Switzerland. The Panel was assisted at the hearing by CAS counsel Mr. Christopher Singer. The following persons attended the hearing:
  - (i) For the Appellant; Mr. Ilija Drazic, Attorney-at-law
  - (ii) For the Respondent; Mr. McGill representing himself
20. At the hearing, Mr. Drazic informed the Panel that his client unfortunately was not able to attend the hearing, as he had missed his connecting flight to Switzerland. The Panel asked, if he would be available by telephone conference, but Mr. Drazic informed that his client was boarding a plane back to Serbia and would therefore not be available by telephone conference either. No other witnesses had been called to be heard. However, Mr. Drazic asked for the Panel's permission to present an affidavit by Mr. Darko Grubor, General Secretary of Partizan. The affidavit was signed on 14 October 2013, and Mr. Drazic explained that Mr. Grubor was not in a physical condition to travel to Lausanne. After deliberation, the President of the Panel informed the Appellant that the affidavit of Mr. Grubor would not be admitted into the case file pursuant to Article R56 of the CAS Code, as the Respondent had objected to the inclusion of the new evidence, which had not been forwarded previously. The circumstances regarding this evidence could neither be deemed to be "exceptional" within the meaning of the CAS Code.
21. At the conclusion of the hearing, the parties confirmed that they had no objections in respect to the formation of the Panel, nor with respect of their right to be heard and to be treated equally in the arbitration proceedings, and that they had been given the opportunity to fully present their case.

## II.2 The Position of the Parties

22. The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. The Panel, indeed, has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.
  - a) *The Position of the Appellant*
23. The Appellant's request for relief on the merits as indicated in both the Statement of Appeal and the Appeal Brief are the following:

*“A. The appeal of the Appellant, Mr. Vladimir Stojkovic, filed on 5 March 2013, against the appeal decision of the Players’ Status Committee, ref No 11-00701/LDE made on 25 September 2012, is granted.*

*B. The appeal decision of the Players’ Status Committee, ref No 11-00701/LDE made on 25 September 2013, is set aside.*

*C. Adjudicate and declare that the Respondent’s claim is rejected on the merits, and that the Appellant has no obligation to pay to the Respondent an agent’s fee.*

*D. Order to the Respondent, Mr. Anthony (Tony) McGill, to pay a loan cost of the proceedings to be determined and served by the CAS Court Office.*

*E. Order to the Respondent, Mr. Anthony (Tony) McGill to pay legal other costs of the Appellant to be quantified at the end of these proceedings, or the other amount the CAS considers equitable”.*

24. In his submissions, the Appellant has brought forward a number of legal arguments in support of his requests, which shall be summarized as follows:

(i) *Loan Agreement between Sporting and Partizan signed on 27 August 2010 was completed before the Representation Agreement dated on 5 October 2010*

25. First, the Appellant argues that the agreement, in which Sporting loaned the Appellant to Partizan, was concluded on 27 August 2010, and hence the Respondent’s claim for remuneration would not under any circumstances fall due, as the Representation Agreement between the parties was not dated until 5 October 2010, although the agreement was really concluded in March 2010, and the date was inserted afterwards by the Respondent himself. Nevertheless, the Appellant argues that the time of conclusion is of no importance, as the Appellant claims that it is “indisputable” that the contract was terminated on 8 February 2011.

(ii) *The agreement signed between the Appellant and Partizan dated 11 January 2011 never came into effect*

26. The Appellant argues that the Employment Contract with Partizan dated on 11 January 2011 never came into effect, as the conditions precedent in clause 3 of the agreement never were fulfilled. These conditions stipulated: 1) Settlement of termination of existing professional agreement between the Appellant and Sporting and 2) Approval of Sporting that the Appellant had status of a free player that he could conclude the agreement without any obligation of Partizan towards the Appellant’s previous club or any other club, and that the Portuguese Football Association would issue a permanent and final international certificate of transfer to Partizan in conformity with FIFA Regulations.

27. The Appellant maintains that although himself and his new club, Partizan, did their best to fulfill these conditions, Sporting was not ready at that time to terminate the professional agreement with the Appellant.

(iii) *The uploading of the Employment Contract of 11 January 2010 into the TMS was a mistake*

28. The Appellant argues that the Employment Contract with Partizan dated on 11 January 2010 was uploaded by mistake by an unidentified person with the Football Association of Serbia.

Contrary to the Single Judge's considerations regarding the significance of the TMS registration, the Appellant maintains that the uploading by mistake of the 11 January 2010 Employment Contract does not prove that the agreement had come into effect, nor that the mistaken registration in itself would serve as conclusive evidence that the agreement in fact had come into effect.

(iv) *The Appellant undisputedly terminated the Representation Agreement on 8 February 2011*

29. The Appellant maintains that he was within his contractual right, according to the Representation Agreement, to terminate forthwith the services of the Respondent on 8 February 2011, and therefore as of this date, the Respondent would not be entitled to an agent fee on any contract that the Appellant would have entered into after this date. The Appellant also claims that the termination was undisputed by the Respondent.

(v) *The agreement entered into between the Appellant and Partizan dated 13 June 2011 is the only valid and effective agreement*

30. The Appellant argues that as the conditions precedent in the agreement dated 11 January 2010 never came into effect, the only valid and effective agreement between the Appellant and Partizan is the one concluded on 13 June 2011 that came in effect as of 1 July 2011. Consequently, this agreement has been entered into after the termination of the Representation Agreement on 8 February 2011. This supports the conclusion that the Respondent is not entitled to an agent fee on the basis of the Representation Agreement, as this agreement was terminated, when the only valid and effective agreement was entered into between the Appellant and Partizan on 13 June 2011.

(vi) *The Respondent is not entitled to an agent fee, since he breached his obligations, and his activities were not causal to the conclusion of the employment contract with Partizan.*

31. Finally, the Appellant argues that the Respondent has not lived up to his obligations according to the Representation Agreement, as he did nothing to help the Appellant during his loan period in Partizan, nor did the Respondent make an effort to find another engagement with a third club. Based on the letter from the Bureau of the Players' Status Committee in June 1999, which the Single Judge referred to in his decision, the Appellant maintains that the Respondent could not under any circumstances be entitled to an agent fee, as he was never involved in the negotiations between the Appellant and Partizan and therefore not causal to the conclusion of the Employment Agreement of 13 June 2010.

**b) *The Position of the Respondent***

32. In his answer ("First Statement of Defense") together with his initial correspondence with the CAS Court Office, the Respondent has requested that the appeal be set aside, and the decision of the Single Judge be upheld. In support of these requests, the Respondent has in his

submission brought forward the following legal arguments, which shall be summarized as follows:

- (i) *The Termination of 8 February 2011 initiated by the Appellant was not valid*
33. Contrary to the submission of the Appellant, the Respondent disputes that the termination sent by the Appellant on 8 February 2011 was valid. The Respondent does not recognize the legitimacy of the basis for termination, as none of the termination clauses in the Representation Agreement had been satisfied.
- (ii) *The Representation Agreement signed on 5 October 2010 is valid and binding on the Appellant*
34. The Respondent argues that the Representation Agreement signed by himself and the Appellant on 5 October 2010 has been carefully drafted with the assistance of British lawyers in order to fulfill all requirements by FIFA and the English FA. The Respondent came to know the Appellant through his business partner in Serbia (Mr Ian Anderson), through which he learned that the Appellant had been dropped from the team by Sporting around the middle of 2009 and was available for transfer. The Respondent was aware that Wigan Athletic FC was looking for a goal keeper and arranged with Wigan to go to the England versus Serbia match in London on 18 November 2009. This was the first time that the Respondent met the Appellant in person. The Appellant was concerned about losing his spot on the national team of Serbia, since he hadn't played for Sporting since 9 January 2008.
35. The Respondent was hired by Wigan Athletic FC in order to arrange a loan agreement between Wigan Athletic FC and Sporting and to negotiate terms. Sporting was very keen to get the Appellant off the wage bill, and in January 2010 a temporary transfer agreement for the period of 4 January 2010 until 31 June 2010 was signed by the Appellant and the two clubs. The relationship with the Appellant, which developed through his time at Wigan, led to the signing of the Representation Agreement for a period of two years in October 2010. This Representation Agreement was registered with the English FA on 8 October 2010.
36. The Appellant had been offered to obtain legal advice in connection with the signing of the agreement, but he had declined.
- (iii) *The Contract between the Appellant and Partizan signed on 11 January 2011 is valid and effective and falls under the terms of the Representation Agreement*
37. The Respondent dismisses the Appellant's submission that the Transfer Agreement signed on 11 January 2011 between the Appellant and Partizan is not legally binding and effective. The Respondent argues that section 6 of the Representation Contract stipulates that he, as the authorized agent, is entitled to 10 per cent of the annual gross guaranteed salary payable to the player and arising "from any contract with any club".

38. The Respondent maintains that the signing of the contract between the Appellant and Partizan on 13 June 2011 was merely an attempt to circumvent the Appellant's obligations towards the Respondent in accordance with the said Representation Agreement. By comparing the two contracts from January and June 2011, the Respondent emphasizes that virtually no changes have been made in the two contracts, except the correction of the salary amount due to the lapse in time from January till June. All of the essential terms are the same. The Respondent maintains that the agreement signed in June 2011 has been a bad faith attempt by the Appellant to avoid paying the agent fee of 10 per cent of the annual income of EUR 700,000, which was agreed upon in January 2010.
39. The Respondent and his staff had made several phone calls to the Appellant in November and December 2010, but the Appellant did not notify the Respondent, as he was contractually obligated to do. The Respondent sent an email to the Appellant and to Sporting and Partizan on 2 January 2011 informing them of his right to an agent fee in accordance with clause 6 (A) (a) regardless whether the contract had been negotiated by the player himself without the assistance of his agent.
40. The Respondent maintains that the registration of the 11 January 2011 contract in the TMS – as pointed out by the Single Judge – is an irreversible proof that this contract indeed was valid and effective, and as a consequence hereof, the Appellant was obliged to pay the ten per cent agent fee, i.e. EUR 70,000.
  - (iv) *The Respondent is entitled to his fee pursuant to Art. 6 D, even though the Appellant has not used the services of his agent in connection with his transfer to Partizan*
41. The Respondent stresses that the valid Representation Agreement expressly states that the agent is entitled to his fee, even though the player has not used his services in connection with the transfer.
42. Furthermore, the Respondent emphasizes that the Appellant never made a written request pursuant to Clause 9 (f) of the Representation Agreement, as provided for in Clause 6 (D). On the contrary, the Appellant never informed the Respondent that he was negotiating with Partizan for a permanent transfer agreement, even though the Respondent emailed him on 2 January 2011. Had the Appellant made the request according to the contractual terms of the Representation Agreement, the Respondent would nevertheless still have been entitled to his fee. As pointed out by the Single Judge, the Bureau of the Players' Status Committee had stated that players' agents could claim commission, even though they had not been actively involved in the transfer, if a clause to this effect was explicitly and unequivocally stipulated in the relevant Representation Agreement. A clause to fulfill these requirements was precisely what was included in Clause 6 (D). Thus, the Respondent was entitled to his commission, even though the player had concluded the professional playing contract without utilizing the services of his exclusive agent.

(v) *The Respondent has not breached his obligations as an agent under the Representation Agreement*

43. Finally, the Respondent dismisses the Appellant's submission that *"he had not been active at all and had done nothing to secure a transfer from Sporting"*. The Respondent maintains that he had been very supportive, when the Player arrived from Lisbon to England to play for Wigan. He had helped with the visa application, search for accommodations, setting-up bank accounts, organizing cable television, family visits and a number of other services associated with helping a player in a new environment. The Respondent also pointed out that many of his services had been carried out through his partner, Ian Andersson, in Serbia, and the Appellant presumably was not aware of the fact that this assistance was attributable to the Representation Agreement with the Respondent. After the Player transferred to Partizan on a loan agreement in August 2010, he had not personally been in contact with the Appellant, as his partner, Ian Andersson, was handling the day-to-day operations in Serbia. When he heard rumors that a final transfer agreement was being negotiated, he tried to contact both the Appellant and the two clubs involved, but received no reply.

### III. LEGAL ANALYSIS

#### A. Jurisdiction

44. 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 the CAS, insofar as the statutes or regulations of the body so provide, or as the parties have concluded a specific arbitration agreement, and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body"*.

45. The jurisdiction of the CAS in the present case is based on Article 67 para. 1 of the FIFA Statutes as well as Article R47 of the CAS Code. No objections have been raised by the parties as to the jurisdiction of the CAS.
46. Both parties have signed the Order of Procedure without reservations in this respect.
47. Consequently, the Panel has jurisdiction to resolve this dispute.

#### B. Admissibility of the Appeal

48. The Statement of Appeal was filed by the Appellant on 5 March 2013. Pursuant to Article R49 of the CAS Code, *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concern, or of a previous agreement, the time limit for appeal shall be 21 (twenty one) days from the receipt of the decision appealed against"*.

49. As the record shows, the decision of the Single Judge of 25 September 2012 was notified to the Appellant on 18 February 2013. Accordingly, the Panel concludes that the Appeal has been filed within the 21 day deadline in both Article 67 para. 1 of the FIFA Statutes and Article 49 of the CAS Code, and that the appeal therefore is admissible.

### **C. Applicable Law**

50. Article R58 of the CAS Code provides as follows:

*“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties on the absence of such a choice, according to the law of the country, in which the federation, association or sports-related body, which has issued the challenged decision is domiciled, or accordingly to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*

51. As a result of such provision, the Panel considers that the FIFA Players’ Agent Regulations (2008 edition) shall be applicable. As for the contractual dispute itself the Representation Agreement shall be construed and interpreted in accordance with the Laws of England and Wales pursuant to para. 33 of the Representation Agreement.

### **D. Scope of the Panel’s review**

52. According to Article R57 of the CAS Code: *“The Panel shall have full power to review the facts and the law. It may issue a new decision, which replaces the decision challenged or annul the decision and refer the case back to the previous instance”.*

### **E. The Merits**

53. The following key issues will have to be resolved by the Panel in these proceedings:
1. Was the Appellant within his contractual right to terminate the Representation Agreement forthwith on 8 February 2011?
  2. Was the Respondent entitled to his commission (agent fee), regardless that the Player did not make use of his professional services at the completion of either the Employment Contract dated 11 January 2011 and 13 June 2011, cf. Clause 6 (D)?

#### ***Analyzing question (1): Was the Appellant within his contractual right to terminate the Representation Agreement forthwith on 8 February 2011?***

54. In resolving the first question, the Panel will begin by acknowledging that the parties have entered into a valid and legally binding Standard Representation Agreement, which formation or content itself has not been challenged by the Appellant. The Representation Agreement was

(in hand) dated 5 October 2010 and registered with the English FA on 8 October 2010. With respect to the issues present in this dispute, it is of no relevance whether the contract was *de facto* concluded in March 2010 as claimed by the Appellant or in October 2010 as claimed by the Respondent. The fact remains that the agreement was concluded for a two year period, and that the agent's exclusivity thus as a point of departure covered both transfer agreements in respectively January and June (The Panel notes that no claims for compensation have been made by the Respondent as a result of the Appellant's loan agreement with Partizan in the summer of 2010).

55. When perusing the termination clause in the Representation Agreement, the Panel finds that a player accordingly may terminate the agreement for a number of reasons: a) according to Clause 15, the Representation Agreement may be terminated with immediate effect, if the authorized agent's license or registration have been suspended or withdrawn by the relevant national association or FIFA, and the appeal process has been exhausted; b) according to Clause 16, the Appellant may also terminate the Representation Agreement with immediate effect, if the agent commits a material breach, which is not capable of remedy or commits a material breach, which is capable of being remedied, but fails to remedy such breach within thirty days of receipt of written notice.
56. The termination notice was sent by Appellant on 8 February 2011. The date of receipt is not clear, but the receipt has been acknowledged by the Respondent. The termination is said to have had effect "*from today*", *i.e.* with immediate effect. The reason for this immediate termination has been the Respondent's alleged unwillingness to assist the Appellant with resolving his status in Sporting Lisbon, while under loan to Partizan. The termination notice also mentions that the Respondent has allegedly not been willing to assist the Appellant in finding another club after the expiry of the loan agreement with Partizan.
57. In this context, the Panel notes that it is the Appellant that carries the burden of proof for the alleged material breach of the Representation Agreement. Unfortunately, the Player was not able to be present at the hearing in Lausanne, nor did he make himself available to give his statement via a telephone conference call at the hearing. Based on the written evidence submitted by the Appellant during these proceedings, the Panel thus finds that no persuasive evidence has been presented by the Appellant, which could substantiate that the Respondent had committed a material breach, which could not have been remedied to. The Appellant's absence at the hearing and his choice not to make himself available by telephone makes it impossible for the Panel to investigate into other possible reasons behind the Appellant's termination.
58. On the other hand, the Panel finds the Respondent's evidence presented during these proceedings and his oral testimony at the conference convincing and substantiated. The Panel is satisfied that the Respondent carried out his services as an authorized agent in a manner, which could be deemed normal and acceptable in an agent/player representation relationship. The Respondent explained that he, together with his partner Ian Anderson, had assisted the Appellant in Serbia in the best possible way, but that the Appellant after the conclusion of the employment contract on 11 January 2011 realized that it was perhaps better and safer to

terminate the Representation Agreement to avoid paying the commission fee. The Panel agrees with the Respondent that the reasons behind the termination notice must indeed be considered highly speculative, and that the timing of the termination notice in relation to the conclusion of the permanent employment contract with Partizan is hardly a coincidence.

59. Thus, the Panel must come to the conclusion that the Appellant has not produced sufficient evidence to substantiate that the Respondent has materially breached the Representation Agreement, and consequently the Appellant's termination notice dated 8 February 2011 is without merit. It follows that the obligations of the Appellant in accordance with the Representation Agreement would still be in place, when the second Employment Contract with Partizan was signed on 13 June 2011.

***Analyzing question (2): Was the Respondent entitled to his commission fee regardless that the Player did not make use of his professional services at the completion of either the Employment Contract dated 11 January 2011 and 13 June 2011, cf. Clause 6 (D)?***

60. Based upon the conclusion above as regards question 1, the Panel is of the opinion that the Representation Agreement was still binding between both parties as from 5 October 2010 and for the contractual period of two years. As pointed out by the Single Judge in the decision appealed against, the remuneration set out by clause 6 (A) (a) provides that *"The Player shall pay to the authorized agent a compensation of 10% of the annual gross guaranteed salary (signing-on fees and basic salary from time to time) payable to the Player and arising from any contract with any club negotiated by the agent (or by the Player himself during the term)"*.
61. The wording of this remuneration clause would lead the Panel to the conclusion that the Employment Contract signed between the Appellant and Partizan on 11 January 2011 would be covered by the contractual term *"any contract with any club"* within the meaning of Clause 6 (A) (a). By reaching this conclusion, the Panel has put emphasis on the fact that the stipulated conditions precedent in the Employment Contract of 11 January 2011 were *de facto* fulfilled, when the Player signed the "second" Employment Contract on 13 June, later the same year. In other words, the Panel believes that the signature of the "second" Employment Contract was in effect to be considered as the fulfillment of the condition precedent of the first Employment Contract from January 2011, and should hence not be regarded as a new agreement.
62. Subsequently, the Panel is of the opinion that the Appellant may not be able to circumvent his obligations by terminating the Representation Agreement without any legal grounds and then enter into a "new and second" employment contract only with the purpose of relieving himself of his obligations to pay a commission to his agent. Based on the evidence submitted during these proceedings, the Appellant has failed to provide any proof that the "second" Employment Contract of 13 June 2011 was in fact a new contract and not merely the fulfillment of the conditions precedent in the contract from January the same year. The contractual terms are essentially the same and the reduction of the salary can be explained by the lapse of time between January and June 2011. On the basis hereof, the Panel is satisfied that the first Employment Contract of 11 January 2011 between the Appellant and Partizan was the "real

deal”, which conclusion is also heavily supported by the fact that this contract was uploaded into the TMS, and that the conditions precedent were subsequently fulfilled with effect of 1 July 2011. In light of this conclusion, the Panel will have to analyze whether the Respondent would still be entitled to his commission, even though the Appellant had not utilized his services in the conclusion of the Employment Contract.

63. The Panel concurs with the decision of the Single Judge in this matter. Although the Bureau of the Players’ Status Committee had held in August 1998 that the Players’ Agent’s activities must be causal to the conclusion of employment contract and that, as a general rule (emphasis added), if an employment contract was signed without the involvement of a particular player’s agent, the player concerned did not owe any commission to the agent, this rule is not without exception. Thus, it is clearly recognized that an agent is entitled to claim a commission, even when he has not been actively involved in a transfer, if a clause to this effect is explicitly and unequivocally stipulated in the Representation Agreement. The Panel agrees with the Respondent that a clause of this effect is explicitly and unequivocally stipulated in Clause 6 (D) in the Representation Agreement.
64. Notwithstanding this clause, it is also the Panel’s opinion that the agent in this case would have been entitled to his commission, given the fact that the Representation Agreement was signed in October 2010, approximately three months before the permanent employment contract was signed between the Appellant and Partizan in January 2011. The Respondent had made several efforts to contact the Appellant, at the latest on 2 January 2011, to inform him of his obligation to pay the agent’s fee, and the evidence suggests that the Player acted in bad faith, when he signed the contract with Partizan on 11 January 2011. In this respect, the Panel observes that the Player failed to contact his agent to explain that he was dissatisfied with the quality of his services and did not send any termination notice until after the signing of the “first” Employment Contract on 11 January 2011. The Panel considers that the most realistic and plausible explanation for this pattern of events is that the Appellant has simply tried to avoid the obligation to pay a commission of ten per cent of his salary to his agent. The Panel further notes that the Player did not even observe the requirement of a written request pursuant to Clause 9 (f), if he did not want to utilize the services of his agent in the negotiations.
65. In conclusion, it is the firm opinion of the Panel that the Respondent is entitled to a commission equivalent to ten per cent of the annual salary of EUR 700,000, *i.e.* EUR 70,000, stipulated in the first Employment Contract of 11 January 2011. This right of remuneration is based on the Clauses 6 (A) (a) and 6 (D) according to the established guidelines of interpretation by the Bureau of the Players’ Status Committee in case where the Player has not utilized the services of his agent, when negotiating a contract.

#### IV. CONCLUSION

66. Based upon the above rationale, the Panel concludes that the termination of the Representation Agreement initiated by the Appellant on 8 February 2011 is without grounds. Hence, the Representation Agreement was legally binding on the parties as of 5 October 2010 and in the

following two year contractual period. Secondly, the Respondent is entitled to EUR 70,000 in commission from the Appellant following the Appellant's agreement with Partizan of 11 January 2011 for the total amount of EUR 700,000.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules:**

1. The appeal filed by Mr Vladimir Stojkovic on 5 March 2013 against the decision issued by the FIFA Single Judge of the Players' Status Committee on 25 September 2012 is dismissed.
2. The decision issued by the FIFA Single Judge of the Players' Status Committee on 25 September 2012 is confirmed.
3. (...).
4. (...).
5. All other requests, motions or prayers for relief shall be dismissed.