



Arbitration CAS 2015/A/4335 Genoa Cricket and Football Club S.p.A. v. NK Lokomotiva Zagreb, award of 13 May 2016

Panel: Prof. Petros Mavroidis (Greece), Sole Arbitrator

Football

Entitlement to training compensation

Principle of “Kompetenz-Kompetenz” and jurisdiction of CAS in the FIFA Statutes

Standing to be sued and decisions rendered by an association according to the Swiss Federal Tribunal and Swiss law

“Effective” training by a club and entitlement to training compensation

Loan of a player to another club and training compensation

1. The principle of “*Kompetenz-Kompetenz*” is a widely recognized principle in international arbitration and regarded as corollary to the principle of the autonomy of the arbitration agreement. Swiss law gives priority to the arbitral tribunal to decide on its own competence if its competence is contested before it. The provisions of Article 186 of the Swiss Private International Law Act are applicable to CAS arbitration. In accordance with the wording of Article R47 of the Code, it is for the CAS to have jurisdiction over a specific dispute, it is necessary that either a) the parties have expressly agreed to it, or b) the statutes or regulations of the body issuing the decision provide for an appeal before the CAS. In football matters, the jurisdiction of the CAS derives from the applicable FIFA Statutes.
2. According to the Swiss Federal Tribunal, the prerequisite of the standing to be sued is to be treated as an issue of merits and not as a question for the admissibility of an appeal. This jurisprudence has been followed by numerous CAS panels. Neither the CAS Code nor the FIFA Regulations contain any specific rule regarding the standing to be sued issue. Under Swiss law, a decision by an association like FIFA may be challenged pursuant to Article 75 of the Swiss Civil Code. Said provision does not apply indiscriminately to every decision made by an association. If, for example, there is a dispute between two association members, and the association decides that a club (member) has to pay another club (member) a certain sum, this is not a decision, which can be subject to an appeal within the meaning of Article 75 Swiss CC.
3. Article 3 para. 1 of Annex 4 to the FIFA Regulations on the Status and Transfer of Players (RSTP) states that for any subsequent transfer training compensation will only be owed to the “*former club*” of the player for the time that he has effectively been trained by that club. The key term here is “*effectively*”. This term was introduced because the framers of the FIFA RSTP wanted to compensate training clubs for services rendered, and thus, provide them with the incentive continue training players. It follows that clubs cannot and should not be compensated for training that has taken place elsewhere. It is thus, evident that this provision exclusively refers to the segment of time (a) during which the player was contractually bound to the “*former club*”, and (b) which

is immediately preceding the segment of time for which he is registered with the new club.

4. The loan of a player to another club does not interrupt the continuing training period of the player. If Club 1 loans out a player to Club 2 and it then sells the player to Club 3, Club 1 should be compensated only for the time that it provided training to the player itself, and not for the time that the player was being effectively trained by Club 2. For that time, that is time of training with Club 2, it is Club 2 that has the right to be compensated in terms of being paid a training compensation by Club 3. As a consequence, the club, which transferred the player on a loan basis to another club, is entitled to training compensation for the period of time during which it effectively trained the player, however excluding the period of time of the loans to the other club CAS.

I. PARTIES

1. Genoa Cricket and Football Club S.p.A. (“Genoa”) is a football club with its registered office in Genoa, Italy. It is a member of the Italian National Football Association (Federazione Italiana Giuoco Calcio – “FIGC”), itself affiliated to Fédération Internationale de Football Association (“FIFA”) since 1905.
2. NK Lokomotiva Zagreb (“Lokomotiva”) is a football club, registered in Zagreb, Croatia. It is a member of the Croatian Football Federation (Hrvatski Nogometni Savez – “HNS”), itself affiliated to FIFA since 1992.

II. FACTUAL BACKGROUND

A. Background facts

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions, pleadings, and evidence adduced. References to additional facts and allegations found in the Parties’ written submissions, pleadings, 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, he refers in his award only to the submissions and evidence that he deems is necessary to explain his reasoning.

B. S.’s background

4. S. (the “Player”) is of Croatian nationality, and was born in 1992.
5. The Player’s passport issued by the HNS contains the following information:

Name of Club	Country	Club Cat.	from	until	Player's Status
FC GNK Dinamo Zagreb	Croatia	3	27.01.2010	12.07.2013	"non-amateur"*
FC Lokomotiva Zagreb	Croatia	3	15.07.2009	22.01.2010	"non-amateur"**
FC GNK Dinamo Zagreb	Croatia	3	15.11.2006	10.07.2009	"non-amateur"***
FC GNK Dinamo Zagreb	Croatia	3	02.08.2006	04.10.2006	amateur
FC Zadar	Croatia	3	21.05.2003	04.07.2006	amateur

* According to the Player's passport "*The professional employment contract signed on 19.02.2010 valid until 30.06.2017 was earlier terminated by mutual agreement on 15.07.2013*".

** According to the Player's passport, "*Released on loan from GNK Dinamo for the period 10.07.2009 – 15.06.2010. Loan was earlier terminated on 22.01.2010*".

*** According to the Player's passport, "*The scholarship agreement signed on 25.01.2008 valid until 15.06.2010*".

6. In July 2013, the Player was transferred from FC GNK Dinamo Zagreb to Genoa on a permanent basis and was registered with that club as a professional on 31 August 2013.

C. The Proceedings before the FIFA Dispute Resolution Chamber Judge

7. On 3 October 2014, Lokomotiva initiated proceedings with FIFA requesting from the latter to order Genoa to pay in its favour an amount of EUR 31,135.84 as compensation for the training of the Player ("training compensation", as per the relevant FIFA Statutes, the Regulations on the Status and Transfer of Players, RSTP).

8. In his decision dated 2 September 2015, the FIFA Dispute Resolution Chamber Judge (the "DRC Judge") awarded training compensation to Lokomotiva based upon the following considerations:

- Genoa did not adduce any evidence establishing that the information contained in the Player's passport was not reliable;
- The Player was a professional before he was transferred to Lokomotiva on a loan basis and was registered as such while he was playing with that team for the period between 15 July 2009 and 22 January 2010;
- In light of the applicable regulations governing training compensation, a club, which accepted a professional on a loan basis, is entitled to receive training compensation when, after the expiry of the loan, the professional returns to his club of origin and, thereafter, is transferred from the club of origin to a third club belonging to another association before the end of the season of the player's 23rd birthday. In such a situation and according to the intention of the legislator of the applicable regulations as well as the well-established

jurisprudence of the Dispute Resolution Chamber, the third club, *i.e.* Genoa, has to pay the training compensation to the club, which is loaned the player. “*Any other interpretation would lead to the situation in which clubs accepting a player on loan would never be entitled to receive training compensation, even if they contribute to the training and education of players*”;

- According to the information available and for the purpose of calculating the training compensation, Lokomotiva belonged to a category III club (under the terms of the applicable FIFA Regulations on the Status and Transfer of Players – the “RSTP”), whereas Genoa belonged to a category I club;
- Pursuant to the parameters reflected in Annex 4 to the RSTP, the indicative amount within UEFA for category I clubs is of EUR 90,000 per year and for category III clubs is of EUR 30,000. “*Consequently, the training compensation for the player shall be calculated on the basis of the average training costs in the amount of EUR 60,000 per season. In light of the foregoing, the DRC judge decided that [Genoa] is liable to pay training compensation to [Lokomotiva] in the amount of EUR 31,135.84*”.

9. As a result, on 2 September 2015, the DRC Judge decided the following:

- “1. *The claim of [Lokomotiva] is accepted.*
2. *[Genoa] has to pay to [Lokomotiva], within 30 days as of the date of notification of the present decision, the amount of EUR 31,135.84.*
3. *If the aforementioned sum is not paid within the stated time limit, an interest rate of 5% p.a. year will apply as of expiry of the fixed time limit and the present matter shall be submitted, upon request, to FIFA’s Disciplinary Committee for consideration and a formal decision.*
5. *The final costs of the proceedings in the amount of CHF 4,000 are to be paid by [Genoa] within 30 days of notification of the present decision to FIFA (...).*
6. *[Lokomotiva] is directed to inform [Genoa] immediately and directly of the account number to which the remittances is to be made and to notify the DRC judge of every payment received”.*

10. On 18 November 2015, the Parties were notified of the decision issued by the DRC Judge (the “Appealed Decision”).

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

11. On 9 December 2015, Genoa filed a statement of appeal with the Court of Arbitration for Sport (the “CAS”) against the Appealed Decision in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”).

12. On 15 December 2015, the CAS Court Office acknowledged receipt of Genoa’s statement of appeal, and of its payment of the CAS Court Office fee. It noted that Genoa chose English as the language of the arbitration. In this respect, it informed Lokomotiva that, unless it objected within three days, the procedure would be conducted in English. The CAS Court Office also invited Lokomotiva to comment within five days on Genoa’s request to submit the present matter to a sole arbitrator.

13. As Lokomotiva failed to provide its position on Genoa's request for a sole arbitrator within the prescribed deadline, the issue was referred to the President of the CAS Appeals Arbitration Division, who eventually decided to submit the present matter to a sole arbitrator.
14. Via facsimile dated 10 December 2015 but sent on 18 December 2015, FIFA confirmed to the CAS Court Office that it had renounced its right to request to intervene in the present arbitration proceedings.
15. On 21 December 2015, Genoa filed its appeal brief in accordance with Article R51 of the Code.
16. On 11 January 2016, Lokomotiva filed its answer in accordance with Article R55 of the Code.
17. On 17 February 2016, the CAS Court Office advised the Parties that the President of the CAS Appeals Arbitration Division appointed Mr Petros C. Mavroidis, professor, Commugny, Switzerland, as Sole Arbitrator.
18. On 8 March 2016 and on behalf of the Sole Arbitrator, the CAS Court Office invited Lokomotiva to produce the following documents:

"The loan agreement between GNK Dinamo and [Lokomotiva] of 10 July 2009 concerning [the Player].
The document containing the terms and conditions of [the Player's] engagement [with Lokomotiva] from 15 July 2009 until 22 January 2010, if any".
19. Eventually, Lokomotiva filed a copy and its translation of the requested loan agreement and confirmed that *"there isn't any document with terms and conditions about the relation between the [Player] and the club"*.
20. On 21 March 2016, the Parties were advised that the Sole Arbitrator deemed himself sufficiently informed to render a decision in the present arbitral proceedings without the need of a hearing.
21. On 18 April 2016, Genoa signed and returned the Order of Procedure. Lokomotiva did not sign such Order notwithstanding several reminders from the CAS Court Office. By signing the Order of Procedure, the Appellant confirmed its agreement that the Sole Arbitrator may decide this matter based on their written submissions. The Respondent was also informed that even if it did not sign the Order of Procedure, the Sole Arbitrator would proceed and render an award.

IV. SUBMISSIONS OF THE PARTIES

A. The Appeal

22. Genoa submitted the following requests for relief:

"[Genoa] respectfully requests CAS to render an award:

1. **REVIEWING** the present case as to the facts and to the law, in compliance with article R57 of the CAS Code.

2. **ISSUING** a new decision, which replaces the decision appealed against, confirming that [Genoa] is not obliged to pay [Lokomotiva] any Training Compensation.
3. **ORDERING** [Lokomotiva] to reimburse [Genoa] CHF 4'000 of procedural costs due to FIFA pursuant to the decision appealed against.
4. Alternatively, **CANCELLING** [Genoa's] obligation to pay procedural costs of CHF 4'000 due to FIFA pursuant to the decision appealed against.
5. **ORDERING** [Lokomotiva] to bear all procedural costs and expenses relating to the present procedure.
6. **ORDERING** [Lokomotiva] to cover all [Genoa's] legal costs and expenses relating to the present procedure in the amount that will be deemed appropriate".

23. Genoa's submissions, in essence, may be summarized as follows:

- According to the clear and unambiguous wording of the applicable RSTP, training compensation is due by the Player's new club to his former club. Therefore, Lokomotiva is not entitled to claim any training compensation from Genoa, as it is not the "former club" within the meaning of Article 3 of Annex 4 to the RSTP. FC GNK Dinamo Zagreb was the former club;
- The DRC judge interpreted the applicable regulation in a way that is not consistent with the wording of the text. He claimed that his findings were supported by the intention of the legislator. With such a decision, the DRC created legal uncertainty as "at no point in its regulations did FIFA declare its intention to oblige the professional player's new club to pay training compensation to more than one club (including the one that took the player on loan). It also goes beyond any legal standard to impose an obligation on a club in virtue of some 'intention of legislator' that is not written. How can a party be burdened with an obligation if this is not stipulated anywhere and if, in fact, the wording of the relevant rule of law explicitly excludes the existence of such liability?";
- According to his passport, the Player had turned professional after entering into a scholarship agreement with FC GNK Dinamo Zagreb. At that time, the Player was only 14 years old. "It is quite difficult to imagine that a boy, albeit skilful, may sign a professional contract and acquire professional status at such young age". It is therefore submitted that the Player acquired the professional status only when he signed the professional contract with FC GNK Dinamo Zagreb, that is, on 19 February 2010. In other words and while he was registered with Lokomotiva, the Player was indeed an amateur. This is furthermore confirmed by the fact that, undisputedly, there was no written employment agreement between the Player and Lokomotiva. In the absence of such a document, and in view of the cumulative requirements of Article 2 of the RSTP, the Player could not be considered a professional for the purposes of the RSTP.

B. The Answer

24. Lokomotiva filed an answer, which did not contain specific requests for relief. It limited itself to claim that it did not have standing to be sued, and that CAS had no jurisdiction to hear the matter. In particular, it submitted the following:

“(...) the appeal is misconceived against NK Lokomotiva since Articles S20B and R27 explained clearly that appeals must be filed against:

- ... whose responsibility is to resolve disputes concerning the decisions of federations, associations or other sports-related bodies insofar as the statutes or regulations of the said sports-related bodies or a specific agreement so provide ... (Art. S20B) &
- ... Such reference may arise out of an arbitrations clause contained in a contract or regulations or by reasons of a later arbitration agreement (...) or may involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulation of such bodies, or a specific agreement provide for an appeal to CAS (...) (Art. R27)”

(...) this part considers of appeal must be directed against the Dispute Resolution Chamber of FIFA who first issued the decision against which the club Genoa CFC wants to appeal as there was no agreement with the contents of that document.(...)

(...) we think that the appeal is against CRD FIFA and not against our club. And more, we say that there isn't any document between the Genoa Cricket & Football Club Spa and the NK [Lokomotiva] Zagreb on our voluntary arbitration of the CAS, and this has been unilaterally initiated by the Italian dub, without our knowledge or approval submission”.

V. JURISDICTION

25. According to Article R47 para. 1 of the Code *“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body”.*
26. Lokomotiva seems to claim that CAS has no jurisdiction, as it has never agreed to refer the dispute to this sport-specific arbitral body.

A. In general

27. It is generally accepted that the choice of the place of arbitration also determines the law to be applied to arbitration proceedings. The Swiss Private International Law Act (“PILA”) is the relevant arbitration law (DUTOIT B., *Droit international privé Suisse, commentaire de la loi fédérale du 18 décembre 1987, Bâle 2005, N. 1 on Article 176 PILA*; TSCHANZ P-Y., in *Commentaire romand, Loi sur le droit international privé - Convention de Lugano, 2011, n° 1, p. 1627, ad Article 186 LDIP*). Article 176 para. 1 PILA provides that the provisions of Chapter 12 of PILA regarding international arbitration shall apply to any arbitration, if the seat of the

arbitral tribunal is in Switzerland, and if, at the time the arbitration agreement was signed, at least one of the parties had neither its domicile, nor its usual residence in Switzerland. Article 176 para.1 PILA reads: *“The provisions of this chapter apply to any arbitration if the seat of the arbitral tribunal is in Switzerland and if, at the time when the arbitration agreement was entered into, at least one of the parties had neither its domicile nor its habitual residence in Switzerland”*.

28. The CAS is recognized as a court of arbitration (ATF 119 II 271). It has its seat in Lausanne, Switzerland. Chapter 12 of the PILA shall therefore apply, as at least one of the Parties in the present dispute has neither its domicile nor its usual residence in Switzerland. In fact, in the present dispute none of the parties has its domicile or its usual residence in Switzerland. A fortiori thus, the condition embedded in Article 176 para. 1 PILA has been met.
29. Pursuant to Article 176 para. 2 PILA, the provisions of Chapter 12 do not apply where the parties have excluded its application in writing, and agreed to the exclusive application of the procedural provisions of cantonal law regarding arbitration. There is no such agreement in this case. Therefore, Articles 176 et seq. PILA are applicable.
30. In accordance with Swiss Private International Law, the CAS has the power to decide upon its own jurisdiction. In this regard, Article 186 PILA states:
 - “1. *The arbitral tribunal shall rule on its own jurisdiction.*
 - 1 bis. *It shall rule on its jurisdiction irrespective of any legal action already pending before a State court or another arbitral tribunal relating to the same object between the same parties, unless noteworthy grounds require a suspension of the proceedings.*
 2. *The objection of lack of jurisdiction must be raised prior to any defence on the merits.*
 3. *In general, the arbitral tribunal shall rule on its jurisdiction by means of an interlocutory decision”*.
31. According to Swiss legal scholars, this provision *“is the embodiment of the widely recognized principle in international arbitration of ‘Kompetenz-Kompetenz’. This principle is also regarded as corollary to the principle of the autonomy of the arbitration agreement”* (ABDULLA Z., *The Arbitration Agreement*, in: KAUFMANN-KOHLER /STUCKI (eds.), *International Arbitration in Switzerland – A Handbook for Practitioners*, The Hague 2004, p. 29). *“Swiss law gives priority to the arbitral tribunal to decide on its own competence if its competence is contested before it (...). It is without doubt up to the arbitral tribunal to examine whether the submitted dispute is in its own jurisdiction or in the jurisdiction of the ordinary courts, to decide whether a person called before it is bound or not by the arbitration agreement”* (MÜLLER C., *International Arbitration – A Guide to the Complete Swiss Case Law*, Zurich et al. 2004, pp. 115-116). *“It is the arbitral tribunal itself, and not the state court, which decides on its jurisdiction in the first place (...). The arbitral tribunal thus has priority, the so-called own competence”* (WENGER W., n. 2 ad Article 186, in: BERTI S. V., (ed.), *International Arbitration in Switzerland – An Introduction to and a Commentary on Articles 176-194 of the Swiss Private International Law Statute*, Basel et al. 2000). The provisions of Article 186 are applicable to CAS arbitration (RIGOZZI A, *L’arbitrage international en matière de sport*, thesis Geneva, Basel 2005, p. 524; CAS 2005/A/952).

B. In the specific case

32. In accordance with the wording of Article R47 of the Code, for the CAS to have jurisdiction over a specific dispute, it is necessary that either a) the parties have expressly agreed to it, or b) the statutes or regulations of the body issuing the decision provide for an appeal before the CAS (Decision of the Swiss Federal Tribunal of 19 April 2011, 4A_404/2010, at. 4.1.1).

33. The jurisdiction of the CAS derives from Articles 66 *et seq.* of the applicable FIFA Statutes. Article 67 para. 1 and 2 of the applicable FIFA statutes provides the following:

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.

Recourse may only be made to CAS after all other internal channels have been exhausted”.

34. These FIFA rules are binding for Lokomotiva. It is a member of the HNS, which - for its part - is affiliated to FIFA. Accordingly, the FIFA Rules, particularly the jurisdiction of the CAS according to Article 67 of the FIFA Statutes, apply also to Lokomotiva (Decision of the Swiss Federal Tribunal of 9 January 2009, 4A_460/2008, at. 6.2).

35. It is undisputed that the Appealed Decision is final, as all internal remedies have been exhausted.

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

37. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

VI. ADMISSIBILITY

38. The appeal is admissible as Genoa submitted it within the 21-day deadline provided by Article R49 of the Code, as well as by Article 67 para. 1 of the applicable FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code.

VII. APPLICABLE LAW

39. Article R58 of the Code provides the following:

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

40. The present case was submitted to FIFA on 3 October 2014, *i.e.* after 1 August 2014 and 11 August 2014, which are the dates when a) the RSTP, edition 2014 and b) the FIFA Statutes, edition August 2014, came into force.
41. Pursuant to Article 66 para. 2 of the applicable FIFA Statutes, “[t]he provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.
42. As a result and in light of the foregoing, subject to the primacy of applicable FIFA’s regulations, Swiss Law shall apply complementarily, whenever warranted.

VIII. MERITS

43. The main issues to be resolved by the Sole Arbitrator in deciding this dispute are the following:
 - Has Lokomotiva the standing to be sued?
 - Is Lokomotiva entitled to the payment of training compensation?
 - What is the training compensation to which Lokomotiva is entitled?

A. Has Lokomotiva the standing to be sued?

44. Lokomotiva claims that it does not have standing to be sued and that the appeal should have been directed against “*the Dispute Resolution Chamber of FIFA who first issued the decision against which the club Genoa CFC wants to appeal*”.
45. According to the Swiss Federal Tribunal, the prerequisite of the standing to be sued is to be treated as an issue of merits and not as a question for the admissibility of an appeal (Decision of the Swiss Federal Tribunal ATF 136 III 365 at. 2.1). This jurisprudence has been followed by numerous CAS Panels (see DE LA ROCHEFOUCAULD E., Standing to be sued, a procedural issue before the [CAS], in CAS Bulletin 1/2010, p. 51 and references).
46. CAS Panels have consistently noted that neither the CAS Code nor the FIFA Regulations contain any specific rule regarding the standing to be sued issue (see DE LA ROCHEFOUCAULD E., Standing to be sued, a procedural issue before the [CAS], in CAS Bulletin 1/2010, p. 51 and references). Therefore, the question of whether or not Lokomotiva has the standing to be sued must be derived from the Swiss law, which applies on subsidiary basis.
47. Under Swiss law, a decision by an association like FIFA may be challenged pursuant to Article 75 of the Swiss Civil Code (CC). Under the heading “*protection of member’s rights*”, the provision reads as follows:

“Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month from the day on which he became cognizant of such resolution”.

48. Article 75 CC has consistently been interpreted in jurisprudence to mean that, assuming litigation in this context, it is the association, which has the capacity to be sued. Doctrine endorses this view (see DE LA ROCHEFOUCAULD E., *op. cit.*, p. 52 and references).
49. Nevertheless, according to CAS jurisprudence, Article 75 of the Swiss CC does not apply indiscriminately to every decision made by an association. If, for example, there is a dispute between two association members (e.g. regarding the payment for the transfer of a football player), and the association decides that a club (member) has to pay another club (member) a certain sum, this is not a decision, which can be subject to an appeal within the meaning of Article 75 Swiss CC. In similar cases, so the argument goes, the relevant sports association would not be taking a decision in order to address say a disciplinary issue that regards its own relationship with a club. It will be rather taking a decision on a matter, which concerns a relationship between two of its members. It will, consequently, be acting as a kind of first decision-making instance, at the request of the disputing parties (see DE LA ROCHEFOUCAULD E., *op. cit.*, p. 52 and references).
50. In the present case, the Appealed Decision was the result of the claim brought by Lokomotiva before the DRC Judge against Genoa. Lokomotiva was awarded training compensation, which is precisely the object of the present arbitration proceedings. The matter dealt with in the Appealed Decision was clearly not a membership-related dispute covered by Article 75 CC, but it touched a purely pecuniary claim of one club against another club arising from their respective relationship with the Player. The FIFA DRC Judge acted as first instance body at the request of the disputing Parties. Indeed, it is Lokomotiva, which initiated (and therefore accepted) to proceed before FIFA to order Genoa to pay in its favour a training compensation.
51. As a principle, a party has standing to be sued (*“légitimation passive”*) only if it has some stake in the dispute because something is sought against it in the CAS proceeding (see for instance CAS 2008/A/1517). This is the case in the present arbitration as Genoa is submitting that the Appealed Decision must be dismissed, that it *“is not obliged to pay to [Lokomotiva] any training compensation”* and that the latter club must pay in its favour *“CHF 4’000 of procedural costs due to FIFA pursuant to the decision appealed against”*.
52. Accordingly, the Sole Arbitrator holds that Lokomotiva has standing to be sued.

B. Is Lokomotiva entitled to the payment of training compensation?

1) In general

53. The RSTP provide so far as material as follows:

Article 20 RSTP – Training compensation

Training compensation shall be paid to a player's training club(s): (1) when a player signs his first contract as a professional and (2) each time a professional is transferred until the end of the season of his 23rd birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player's contract. (...)

Article 1 para. 1 Annex 4 to the RSTP - Objective

A player's training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21. In the latter case, training compensation shall be payable until the end of the season in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between the age of 12 and the age when it is established that the player actually completed his training.

Article 3 para. 1 of Annex 4 to the RSTP – Responsibility to pay training compensation

On registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the players' career history as provided in the player passport) and that has contributed to his training starting from the season of his 12th birthday. The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club. In the case of subsequent transfers of the professional, training compensation will only be owed to his former club for the time he was effectively trained by that club.

54. The system put in place by the FIFA Regulations divides into segments the player's sporting career. In the present case (and regardless of the registration with FC Zadar, which is not at stake), the first segment consists of the time spent by the Player with FC GNK Dinamo Zagreb. As a matter of fact, if an amateur player is offered a professional contract with the same club, no training compensation is payable. In such event, if the player is transferred for the first time to another club, it is the latter club would have to pay training compensation for the entire period of registration of the player with the training club, both for the period when the player was registered as an amateur as well as for the period when the player was registered as a professional (CAS 2013/A/3119).
55. Then, Article 3 para. 1 of Annex 4 to the RSTP states that for any subsequent transfer training compensation will only be owed to the "former club" of the Player for the time that he has effectively been trained by that club. The key term here is "effectively". This term was introduced because the framers of the FIFA RSTP wanted to compensate training clubs for services rendered, and thus, provide them with the incentive continue training players. It follows that clubs cannot and should not be compensated for training that has taken place elsewhere. It is thus, evident that this provision exclusively refers to the segment of time (a) during which the Player was contractually bound to the "former club", and (b) which is immediately preceding the segment of time for which he is registered with the new club (See CAS 2007/A/1320 – 1321; para. 46 *et seq.*).

56. When a club (club 1) transfers a professional player to a new club (club 2) on a permanent basis, the period of time preceding this transfer will constitute a specific period of training for the purpose of calculating the training compensation. Club 1 will be entitled to training compensation for this segment of time. If, subsequently, club 2 continues to train the acquired player, and then transfers the player to a third club (club 3) on a permanent basis, club 2 will be entitled to training compensation for the period of time running from the moment the player was transferred from club 1 to it, until the moment when the player was transferred to club 3. In other words, each time the player is definitively transferred to another club, it interrupts the “former club’s” entitlement to training compensation (see CAS 2014/A/3710 and references).
57. It is now well established that the loan of a player to another club does not interrupt the continuing training period of the player. Assume for example that, as per the terminology adopted above, Club 1 loans out a player to Club 2. It then sells the player to Club 3. In this case, Club 1 should be compensated only for the time that it provided training to the player itself, and not for the time that the player was being effectively trained by Club 2. For that time, that is time of training with Club 2, it is Club 2 that has the right to be compensated in terms of being paid a training compensation by Club 3. As a consequence, the club, which transferred the player on a loan basis to another club, is entitled to training compensation for the period of time during which it effectively trained the player, however excluding the period of time of the loans to the other club (CAS 2014/A/3710 and reference; CAS 2013/A/3119).
58. In CAS 2013/A/3119, the CAS Panel found that this conclusion (*i.e.* the club which transferred the player on a loan basis to another club is entitled to training compensation for the entire period of time during which it effectively trained the player, however, excluding the period of time of the loan)] *“is consistent with the actual rationale of the training compensation system, which is to encourage the recruitment and training of young players. To hold that the loan of a player would interrupt the training period, could, in the opinion of the Panel, deter training clubs from loaning players. It occurs frequently in the world of football that young players are not proficient enough to play for the first team of their club. In order to prepare these players for the first team, or to give these players a chance to train and play in order to try and reach the required level to play for the first team, a solution regularly used is to loan the player concerned to another team in order for the player to gain experience with another club and to prepare him or give him the chance to reach the requisite professional level for playing in the first team of the training club. However, if the making of such loan would entail the consequence that the training club would thereby waive its entitlement to training compensation, the training club might decide not to loan the player to another club merely in order to secure its entitlement to training compensation. In such situation, the player would be deprived from the very training considered to be the most suitable for him. The Panel would regard such a situation as undesirable, and endorses the view of the FIFA DRC insofar it argued that any other interpretation of the FIFA Regulations would potentially deprive young players of the opportunity to gain practical experience in official matches for another club in order to develop his footballing skills in a positive way”*.
59. This finding was fully endorsed by the CAS Panel of CAS 2014/A/3710). The Sole Arbitrator sees no reason to depart from the line of reasoning of these precedents, which can be applicable *mutatis mutandis* to the present dispute.

2) *In particular*

60. The following sequence of events is accepted by the Parties:
- the Player was registered with FC GNK Dinamo Zagreb;
 - then he was transferred on a loan basis to Lokomotiva as he was 17 years old;
 - then he returned to FC GNK Dinamo Zagreb as he was 18 years old;
 - then he was transferred on a permanent basis to Genoa before he turned 23 years old.
61. However, and contrary to the findings of the DRC Judge, Genoa is of the opinion that the Player was an amateur while he was on loan and not a professional. Genoa still accepts that the Player signed a professional employment contract with FC GNK Dinamo Zagreb (and turned professional) just after the end of the loan.
62. In its appeal brief, Genoa claims that under the combined reading of Article 20 of the RSTP and of Article 3 of Annex 4 to the RSTP, training compensation is due by the Player's new club to the former club. Therefore, Lokomotiva is not entitled to claim any training compensation from Genoa, as it is not the "former club" within the meaning of Article 3 of Annex 4 to the RSTP.
63. In light of the foregoing, the Sole arbitrator has to assess a) whether the Player's status while registered with FC GNK Dinamo Zagreb is relevant and b) which club must pay a training compensation to Lokomotiva, if any.
- a) *The Player's status while registered with FC GNK Dinamo Zagreb*
64. Whether the Player was already a professional or not while he was on loan with Lokomotiva is irrelevant. If an amateur player is offered a professional contract with the same club, no training compensation is payable. In such event, if the Player is transferred for the first time to a third club (*i.e.* Genoa), this third club would have to pay training compensation for the entire period of registration of the player with the training club, both the period when the player was registered as an amateur as well as the period when the player was registered as a professional (see para. 54 above).
65. In other words, the Player's change of status occurred during the first segment of his career. For the reasons explained above (see para. 57 *et seq.*), this segment was not interrupted by the loan.
66. Under these circumstances, there is no need to determine the actual status of the Player while he was with FC GNK Dinamo Zagreb.

b) *Which club must pay a training compensation to Lokomotiva, if any?*

67. Genoa did not address the question of whether Lokomotiva is entitled to training compensation and, if yes, whether FC GNK Dinamo Zagreb must pay for it. As a matter of fact and from the submissions of Genoa, the following two scenarios can be inferred:

- when a player is loaned by the club of origin (FC GNK Dinamo Zagreb) to another club (Lokomotiva) and then returns to the club of origin, the other club (Lokomotiva) has no right to claim training compensation for any training and education it has provided while the loan took place (“**first scenario**”).
- when a player is loaned by the club of origin (FC GNK Dinamo Zagreb) to another club (Lokomotiva) and then returns to the club of origin, the other club (Lokomotiva) has the right to obtain training compensation from the club of origin (FC GNK Dinamo Zagreb)(“**second scenario**”).

68. **The first scenario** can be dismissed as the purpose of the system put in place by the RSTP is to encourage the training of young players and to create stronger solidarity among clubs by awarding financial compensation to clubs that have invested in training young players (see the FIFA Commentary to the RSTP, ad Article 20). As a consequence, every club, which has actually contributed to the training and education of a young player in the period between the ages of 12 and 21, is, in principle, entitled to training compensation for the time the player was effectively trained by it. A club, which is loaned a player, and thus effectively trains that player, is entitled to training compensation corresponding to the period it provided training to the player (CAS 2013/A/3119, para. 115).

69. Genoa did not challenge the fact that Lokomotiva has trained the Player and did not submit that FC GNK Dinamo Zagreb bore the costs for the player’s training for the duration of the loan. Under these circumstances, the Sole Arbitrator finds that Lokomotiva is entitled to the payment of training compensation. Genoa simply stated that Lokomotiva should not be entitled to any compensation because the Player was a mere amateur when training with it. As already stated above though, this consideration is irrelevant when it comes to quantifying the obligation to pay training compensation.

70. In **the second scenario**, the question, which arises, is whether Lokomotiva must obtain its training compensation from FC GNK Dinamo Zagreb or from Genoa.

71. As explained here above (para. 54 *et seq.*, in particular para. 57), the loan of a player to another club does not interrupt the continuing training period of the player. As a consequence, the club, which transferred the player on a loan basis to another club, is entitled to training compensation for the period of time during which it effectively trained the player, however excluding the period of time of the loan to the other club (unless the loaning club can demonstrate that it bore the costs for the player’s training for the duration of the loan, which is not the case here).

72. The Sole Arbitrator concludes from the above that the period of the loan as well as the period during which the loaning club has provided the training belongs to the same segment of the

Player's sporting career. He is comforted in his position by the fact that no permanent transfer occurred between these two clubs.

73. In other words, the training provided respectively by FC GNK Dinamo Zagreb and Lokomotiva belong to the same segment of the Player's career. These two clubs are entitled to obtain training compensation from the club, which belongs to the very next segment of the Player's career, *i.e.* Genoa.
74. Another conclusion would lead to the result that Lokomotiva would have to claim the payment of training compensation to FC GNK Dinamo Zagreb; *i.e.* the club from which it obtained the Player on a loan basis. The Sole Arbitrator rejects this approach for the following reasons:
- Such a conclusion would appear to be quite unreasonable, in particular if the loan is free of charge. Under such circumstances, not only the loaning club (*i.e.* FC GNK Dinamo Zagreb) would not receive any compensation for the loan but, actually, would have to pay for it. In the present case, the transfer agreement between FC GNK Dinamo Zagreb and Lokomotiva was apparently free of charge. The fact that a loan is made free of charge is not unusual and is even contemplated in the FIFA Commentary on the RSTP: *"The loan of a player is often used to foster young talented players that would otherwise not find opportunities in a team. These players are therefore loaned to a club with the purpose of letting them regularly play and thus gain experience. Frequently, the club of origin transfers these players on a free loan basis and sometimes covers the salary of the player either entirely or partially"* (see commentary, ad Article 10, para. 4.3).
 - If the loaning club (FC GNK Dinamo Zagreb) must pay for the loan (in the form of training compensation to the club which is loaned the Player), it would certainly deter training clubs from loaning players. This would be inconsistent with the actual rationale of the training compensation system (see para. 58).
 - Such a situation is obviously not foreseen in the RSTP and would raise number of technical issues (*e.g.* at what moment would the payment of the training compensation to Lokomotiva be triggered? Can the loaning club claim that it bore the costs for the player's training for the duration of the loan and, therefore, be entitled to the payment of training compensation for the period of the loan? What if the loaning club and the club to which the player was loaned do not belong to the same category? Etc.).
75. Based on the foregoing consideration, the Sole Arbitrator has no difficulty to find that Lokomotiva is entitled to obtain from Genoa training compensation for the Player.

C. What is the training compensation to which Lokomotiva is entitled?

76. The compensation due for training and education costs is calculated in accordance with the principles set forth in Articles 4 and 5 of Annex 4 to the RSTP, as well as in the FIFA circular letter n° 1418, dated 2 May 2014.
77. Article 5 para. 1 and 2 of Annex 4 to the RSTP reads as follows:

“5 Calculation of training compensation

1. As a general rule, to calculate the training compensation due to a player’s former club(s), it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself.

2. Accordingly, the first time a player registers as a professional, the training compensation payable is calculated by taking the training costs of the new club multiplied by the number of years of training, in principle from the season of the player’s 12th birthday to the season of his 21st birthday. In the case of subsequent transfers, training compensation is calculated based on the training costs of the new club multiplied by the number of years of training with the former club”.

78. With reference to the calculation of the period for which training compensation is due, the DRC Judge took into account the time that elapsed between 15 July 2009 and 22 January 2010; *i.e.* the period during which the Player was registered with Lokomotiva. Genoa does not dispute the fact that Lokomotiva effectively trained the Player during that period of time. Under these circumstances, the Sole Arbitrator sees no reason to depart from the findings of the DRC Judge.
79. For the purposes of calculating the training compensation, the following elements have been established or are undisputed:
- Lokomotiva belonged to a category III club under the terms of the RSTP;
 - Genoa belonged to a category I club under the terms of the RSTP;
 - The indicative amount within UEFA for category I clubs is of EUR 90,000 per year and for category III clubs is of EUR 30,000 per year.
 - The Player turned 18 years old while he was trained by Lokomotiva.
 - The Player was trained by Lokomotiva between 15 July 2009 and 22 January 2010.
80. In calculating the indicative amount of training compensation, CAS jurisprudence shows that a part of a month has to be calculated as a full month, only in the event a club has provided training to a player throughout more than half of the month (CAS 2013/A/3119, para. 130). The Sole Arbitrator endorses this CAS precedent as a different interpretation could lead to a situation in which over the course of one month multiple clubs would be entitled to a full month of training compensation. This would impose a disproportionate burden on any club interested in acquiring the services of the player.
81. For the purposes of calculating the training compensation, the Sole Arbitrator holds that Lokomotiva effectively trained the Player for seven months.
82. The calculating of the training compensation is the following:
- Average of the training costs: EUR 60,000; *i.e.* $(90,000 + 30,000) / 2$
 - Monthly training costs: EUR 60,000/12 = EUR 5,000.
 - Training costs to which Lokomotiva is entitled: EUR 35,000 (7 x EUR 5,000)

83. Without much explanation, the DRC Judge awarded EUR 31,134.85. The Sole Arbitrator ignores how the first instance body reached this result but observes that a) it is lower than what Lokomotiva is actually entitled to but b) corresponds to the amount claimed by Lokomotiva when it initiated proceedings before FIFA on 3 October 2014.
84. Under these circumstances, in spite of the fact that Lokomotiva is actually entitled to receive a greater amount, the Sole Arbitrator will, under the *ultra petita* principle, refrain from going beyond the amount of training compensation awarded by the DRC Judge.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 9 December 2015 by Genoa Cricket and Football Club S.p.A. against the decision issued by the FIFA Dispute Resolution Chamber Judge on 2 September 2015 is dismissed.
2. The decision issued by the FIFA Dispute Resolution Chamber Judge on 2 September 2015 is confirmed.
3. (...).
4. (...).
5. All other claims are dismissed.