Arbitration CAS 2016/A/4549 Aris Limassol FC v. Carl Lombé, award of 4 November 2016

Panel: Mr Michael Gerlinger (Germany), Sole Arbitrator

Football
Termination of contract of employment between a player and a club
Determination of the law applicable to the termination issue
Condition of validity of a relegation clause
Lack of evidence of mutual termination

1. **The reference to the *"applicable regulations"* in Article R58 of the CAS Code constitutes an indirect choice of law. For this reason, a CAS panel needs to establish, what sets of rules or law might be applicable under the different conditions and circumstances mentioned explicitly in Article R58, which – in case of players and clubs – can be a tacit choice of law in the commitment to respect the rules of national or international federations. Where such commitment of the player has not been demonstrated and substantiated by the club, the federation's regulations especially applicable to the termination of contract cannot be considered the *applicable law*.**

2. **There are relegation clauses stating that the contractual relationship of the parties automatically end in the case of relegation of the club, or give both parties the right to terminate the employment contract in case of relegation. These kinds of relegation clauses do not only benefit clubs but also the players. Therefore, these clauses can be deemed as a valid way to protect mutual interests of both parties of the contract. On the other hand, relegation clauses implying that a club retains full discretion as to whether the employment relationship with the player will continue or will come to an end following the relegation of the club, without protecting any established or substantiated interest of the player, contain an unbalanced right to the discretion of one party only.**

3. **Where the only evidence related to the mutual termination of a contract relies on the testimony of a witness considered close to the party bearing the burden of proving the termination, this evidence is not sufficient.**

I. PARTIES

1. Aris Limassol FC (hereinafter referred to as the "Appellant" or the "Club") is a professional football club with its registered office in Limassol, Cyprus. It is a member of the Cyprus Football Association (hereinafter referred to as the "CFA") and plays in the Cypriot First Division.

2. Mr Carl Lombé (hereinafter referred to as the "Respondent" or the "Player") is a professional football player of Cameroons and Armenian nationalities, with a last assignment with the Appellant.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced during the present procedure and at the hearing. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although 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 he considers necessary to explain his reasoning.

4. On 1 June 2010, the Parties concluded a contract of employment (hereinafter: the "First Contract"), valid from the date of signature until 30 May 2012, whereas the Respondent had signed his very first contract with the Appellant in 2008.

5. According to the First Contract, the Respondent was entitled to receive the amount of EUR 30,000 payable in ten equal monthly instalments amounting to EUR 3,000 (article 5) for the season 2011/2012. In addition, other advantages were provided for, such as an exceptional bonus in the amount of EUR 5,000 was due, if the Club *"climbs to a superior division"* (article 13 lit. e) under the First Contract. The Respondent was promoted to the Cypriot First Division at the end of season 2010/2011.

6. On 1 July 2011, the Parties concluded a second contract of employment for the period as from 1 June 2012 until 30 May 2015 (hereinafter: the "Second Contract") and on 2 July 2011 the Parties concluded a supplementary agreement for the period as from 2 July 2012 until 30 May 2015 (hereinafter: the "Supplementary Agreement"), both hereinafter also referred to together as the "Second Contract".

7. According to the Second Contract the Respondent was entitled to receive the amount of EUR 20,000 payable in ten equal monthly instalments amounting to EUR 2,000 for each season of the three-year-term (articles 4, 5, 6). In addition, the Respondent was entitled to receive *"two return air tickets in order* (…) *to be able to go to France"* (article 14 lit. e.) under to the Second Contract. According to the Supplementary Agreement, the Respondent was entitled to receive the amount of EUR 35,000 payable in ten equal monthly instalments amounting to EUR 3,500 for each season of the three-year-term (articles 1, 2, 3). Also, the Appellant should provide the Respondent an accommodation *"for a rent of not more than EUR 400 per month"* (article 4) under the Supplementary Agreement.

8. The Second Contract stipulated in its article 8: *"In case of gradation of the Football Club to an inferior Category, the Football Club will have the right to release the Football Player and the latter will have no right to damages"*.

9. Article 20.3.1. of the Statutes of the Cypriot Football Association (hereinafter the "CFA Transfer Regulations" stipulates: *"In case a club is relegated from A to the B Division, the employment contracts of all foreign professional players shall be automatically terminated and shall be free the latest by 1st of June following the end of the Championship. A relevant term must necessarily be included in all employment contracts of foreign professional players of the A Division".*

10. The Appellant did not pay the remuneration due for the months of March, April and May 2012 (in total EUR 9,000) and did not pay the exceptional bonus amounting to EUR 5,000 despite the Appellant was promoted to the Cypriot First Division at the end of the season of 2010/2011.

11. The Appellant was relegated to the Second Division at the end of season 2011/2012. As a consequence of such relegation, the Parties argue with respect to a termination of the Second Contract in summer 2012, whereas different reasons for such termination were invoked, namely by oral statement, written agreement and statutory automatic termination, to be discussed later. Furthermore the Appellant gave the Respondent a one way ticket to Cameroon and three cheques amounting in a total of EUR 17,100. These cheques could not be cashed.

12. On 29 January 2013, by fax and via his counsel, the Respondent requested the Appellant to pay him, at the latest within 10 calendar days, a total amount of EUR 194,400 due to outstanding remuneration, outstanding bonus payment and compensation payments. The Appellant did not react to this, and on 8 February 2013, the Respondent brought his case before FIFA.

13. On 30 September 2013 the Appellant and Mr Giannakis Vasileiou signed a so called "Settlement Agreement" which stated that a payment of EUR 8,000 by the Appellant fully and finally settles the Payments and that the Respondent had no any other claim against the Appellant.

14. On 10 October 2013 the Appellant transferred EUR 8,000 to the Respondent's bank account.

B. Proceedings before the FIFA Dispute Resolution Chamber

15. On 8 February 2013 the Respondent lodged a claim in front of FIFA against the Appellant asking he be paid a total of EUR 204,000 plus 5% interest from the respective due dates as a consequence of the Appellant's allegedly outstanding remuneration, bonus and compensation payments.

16. On 5 November 2015, the FIFA Dispute Resolution Chamber ruled as follows (hereinafter referred to as the "DRC Decision"):

> *"1. The claim of the Claimant, Carl Lombe, is partially accepted.*
>
> *2. The Respondent, Aris Limassol FC, has to pay to the Claimant,* ***within 30 days*** *as from the date of notification of this decision, outstanding remuneration in the amount of EUR 6,000 plus 5 % interest p.a. until the date of effective payment as follows:*
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> *- 5 % p.a. as of 1 May 2012 on the amount of EUR 3,000;*

- 5 % p.a. as of 1 June 2012 on the amount of EUR 3,000.

3. *The Respondent has to pay to the Claimant,* ***within 30 days*** *as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 119,600 plus 5 % interest p.a. on said amount from 8 February 2013 until the date of effective payment.*

4. *(…)*

5. *Any further claim lodged by the Claimant is rejected.*

6. *(…)".*

17. The DRC Decision including grounds was sent via telefax to both parties on 23 March 2016.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 13 April 2016, the Appellant filed a Statement of Appeal to the Court of Arbitration for Sport (hereinafter referred to as the "CAS"). It submitted the following requests for relief:

"The Appellant requests as follows:

A A declaratory Judgement that the termination of the Respondent's employment had never been effected by the Appellant but it was effected automatically following the Regulations of the Cyprus Football Association.

B A Declaratory Judgement that the Respondent's employment termination was not made without just cause.

C A Declaratory Judgement that even if the Appellant unilaterally terminated the Respondent's employments by virtue of article 8 of the agreement dated 01/07/2011, this clause was not potestative and illegal as the FIFA DRC decided.

D A Declaratory Judgement that in September 2013 the Respondent concluded a settlement agreement with the Appellant and is therefore estopped from requesting payments over and above those mentioned in the settlement agreement.

E A Judgement that the FIFA DRC decision was incorrect and must therefore completely set aside.

F All legal and procedural costs arising out of the present proceedings to be decided in his favour and against the Respondent".

19. On 19 April 2016 the Respondent agreed with the Appellant's request for the appointment of a Sole Arbitrator by the President of the CAS Appeals Arbitration Division or her Deputy.

20. By telefax dated 2 May 2016 FIFA renounced its right to request its possible intervention in the present arbitration proceeding.

21. On 5 May 2016 the Appellant's appeal brief was filed at the CAS in accordance with Article R51 of the Code.

22. On 3 June 2016 the Respondent's answer was filed at the CAS in accordance with Article R55 of the Code. It submitted the following requests for relief:

"To declare the appeal brought by [the Appellant] against [the Respondent] admissible but not founded.

To declare the unilateral termination of the Second Contract of employment and the Supplementary Agreement by [the Appellant] (on July 2012) without just cause.

To condemn [the Appellant] to pay an amount of € 6,000.00 NETS as outstanding remuneration increased by an interest of 5% per annum on € 3,000.00 NETS from 1 May 2012 until the effective date of payment and increased by an interest of 5% per annum on € 3,000.00 NETS from 1 June 2012 until the effective date of payment to [the Respondent].

To condemn [the Appellant] to pay an amount of € 181,960.00 NETS as compensation for breach of contract increased by an interest of 5% per annum from 1 August 2012 until the effective date of payment to[the Respondent] or, to confirm the FIFA DRC Decision pronounced on 5 November 2015 (as principal and interest concerning the compensation for breach of contracts).

To reject any request of any nature by [the Appellant] against [the Respondent].

To condemn [the Appellant] to be born all arbitration fees and costs.

To condemn [the Appellant] to pay a sum fixed ex aequo et bono amounting to CHF 10,000 as contribution towards the expense incurred by [the Respondent] in connection with the present arbitration proceedings".

23. By letter dated 9 June 2016 the CAS Court Office informed the Parties that Dr. Michael Gerlinger had been appointed as Sole Arbitrator on behalf of the Deputy President of the CAS Appeals Arbitration Division. The Parties did not raise any objections as to the appointment of the Sole Arbitrator.

24. By telefax dated 21 June 2016 the Appellant requested for a hearing to be held. The Respondent, who had agreed with the issuance of an award based on the Parties' written submissions, did not object. The Sole Arbitrator decided to hold a hearing.

25. By telefax on 26 July 2016 the Appellant submitted further documents with respect to the alleged authorization of Mr Vasileiou.

26. An Order of Procedure was issued on 26 July 2016. It was duly signed by both Parties, on 29 July 2016.

IV. THE HEARING

27. A Hearing was held at the CAS Court Office, in Lausanne, on 29 July 2016.

28. The following persons attended the Hearing:

- For the Appellant:
  - Mr Loizos Hadjidemetriou, Counsel
  - Ms Elena Koushos, Interpreter
- For the Respondent:
  - Mr Laurent Denis, Counsel
  - The Respondent, via Skype

29. The following persons, called by the Appellant, were present to testify at the Hearing via Skype:

- Mr Lysandros Lysandrou, lawyer and former board member of the Appellant
- Mr Giannakis Vasileiou, player agent
- Mr Andreas Petsas, legal counsel of the CFA

30. As a preliminary issue, the Respondent confirmed that it does not pursue its request regarding a higher compensation as awarded by the FIFA DRC and made as a counterclaim. The Respondent acknowledged that according to the standing jurisprudence such counterclaim should have been filed within the original deadline. The Respondent also confirmed that it agreed with the admissibility of the document filed by the Appellant on 26 July 2016, containing an alleged representation agreement between the Respondent and Mr Vasileiou (hereinafter the "Representation Agreement").

31. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Sole Arbitrator. Upon closing the hearing, the Parties expressly stated that they had no objections in relation to their right to be heard and that they had been treated equally in these arbitration proceedings.

V. SUBMISSIONS OF THE PARTIES

32. The Appellant's submissions, in essence, may be summarized as follows:

- The Appellant considers that the Second Contract and the Supplementary Agreement were automatically terminated by virtue of article 20.1.3 of the CFA Transfer Regulations or, if not so, that it lawfully terminated the Second Contract and the Supplementary Agreement based on article 8 of the Second Contract.
- The Appellant argues that on 10 July 2012 the Respondent signed a document titled "Certificate of Debts" which confirmed that all of the Appellant's contractual obligations towards him had been fully and completely settled.
- The Appellant argues that within the "Settlement Agreement" of 30 September 2013 Mr Giannakis Vasileiou acted on the Respondent's behalf and under respective authorization. As a consequence, the Appellant argues that by signing the "Settlement Agreement", the Respondent waived any rights that he might have had against the Appellant.

- The Appellant, finally, argues that by accepting the payment of the amount of EUR 8,000 to a bank account, provided by the Respondent, the Respondent agreed that this payment fully settled all contractual obligations between the Parties.

33. The Respondent's submissions, in essence, may be summarized as follows:

- The Respondent argues that it did not sign any certificate of debts with the Appellant.
- The Respondent argues that it did never give any instruction or "power of representation" to Mr Giannakis Vasileiou to sign or conclude the "Settlement Agreement" in its name and for its account.
- The Respondent considers that Art. 20.3.1. of the Transfer Regulations of the CFA is irrelevant in the present case.
- The Respondent considers that the Appellant, on 1 July 2012, unilaterally terminated the Second Contract and the Supplementary Agreement on basis of a contractual clause which is potestative and in contrary with the FIFA Regulations on the Status and Transfer of Players of 2012 (RSTP 2012) and Swiss (public) law. Therefore the Respondent considers that the Appellant terminated the Second Contract and the Supplementary Agreement without just cause.
- The Respondent considers that the payment of the sum amounting to EUR 8,000 on his financial account did not constitute an evidence of its agreement as a payment for balance of any account.
- The Respondent argues that the compensation claimed was not to be reduced by the FIFA DRC referring to the principle "mitigation of damage".

VI. JURISDICTION

34. Article R47 of the 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 said 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.

35. The jurisdiction of the CAS is not disputed by the Parties and was confirmed by the Parties signing the Order of Procedure. It derives from Article 67 para. 1 of the FIFA statutes and Article 24 para. 2 of the Regulations on the Status and Transfer of Players (RSTP 2012) according to which a decision of the FIFA DRC maybe appealed to the Court of Arbitration for Sport in Lausanne.

36. It follows that the CAS has jurisdiction to decide on the present appeal against the DRC Decision. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law and may issue a de novo decision, partially or entirely, superseding the appealed decision.

VII. ADMISSIBILITY

37. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

38. The appeal was filed on 13 April 2016, i.e. within the deadline of 21 calendar days after receipt of the reasoned decision as set by Article 67 para. 1 of the FIFA statutes.

39. It follows that the Appeal is admissible.

VIII. APPLICABLE LAW

40. Article R58 of the Code provides as follows:

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

41. Article 66 para. 2 of the FIFA Statutes provides as follows:

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

42. The parties have not agreed on the application of any specific national law. There is no reference in the Second Contract to the national law or statutory regulations, therefore there is no express choice of law. There are also no circumstances that could lead to the assumption of a tacit choice of law. In particular, there is no common attitude of the Parties with respect to the application of the national statutory regulations or other sets of law (see: MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, Article R58, para. 97). On the contrary, the Respondent continuously argues that without a reference in the Second Contract, the regulations of the CFA do not apply.

43. The applicable law in a dispute between players and clubs is determined under Article 66 para. 2 of the FIFA Statutes as the *various regulations of FIFA and, additionally, Swiss law* (MAVROMATI/REEB, *op. cit.*, para. 100 and 121). Therefore the applicable regulations at the matter are the 2012 edition of the Rules Governing the Procedures of the Players´ Status Committee and the Dispute Resolution Chamber (procedural rules), the 2012 edition of the Regulations on the Status and Transfer to Players (RSTP 2012) and, as subsidiary, Swiss law.

44. Further, the Sole Arbitrator notes that the decision appealed had been taken by FIFA and not by the CFA, the *law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled* would be the various regulations of FIFA in any case. Therefore, it remains that the FIFA Regulations and, as subsidiary, Swiss Law apply. The Appellant seems to argue that the CFA Transfer Regulations also form part of the *applicable law* with respect to alleged (automatic) termination of the Second Contract. Such question shall be addressed by the Sole Arbitrator below.

IX. MERITS

45. In order to decide on the Appellant's requests, the Sole Arbitrator considers that there are five issues that need to be addressed:

- First, whether the Second Contract and the supplement agreement were automatically terminated on 1 June 2012 by virtue of Article 20.1.3. of the CFA Transfer Regulations;
- if not so, second, whether based on Article 8 of the Second Contract in July 2012 the Appellant legally terminated the Second Contract and the supplement agreement;
- if not so, third, whether the Parties concluded a mutual termination agreement;
- if not so, fourth, whether the Respondent waived all of his possible claims because of the "Certificate of debts";
- if not so, fifth, whether the Respondent waived all of his possible claims because of the "Settlement Agreement" or the acceptance of the payment amounting EUR 8,000.

A. Alleged automatic termination on 1 June 2012

46. First, the Appellant claims an automatic termination on the basis of Article 20.1.3. of the CFA Transfer Regulations. The wording of Article 20.1.3. of the CFA Transfer Regulations contains two different parts. In the first part, it stipulates that, if the requirements are met, the respective contracts *"shall be automatically terminated"*. On the other hand, it continues saying that a respective clause has to be included in the employment contracts.

47. In the present case, the Appellant - in clause 8 - did not include a stipulation providing for automatic termination, but only granted a termination right to the Appellant only. Such right needs to be executed.

48. Consequently, Article 20.1.3. of the CFA Transfer Regulations and clause 8 of the Second Contract contain a conflicting wording. One might assume that the contract stipulates the *lex specialis* and, therefore, prevails, even if by doing so the Appellant might have failed to comply with Article 20.1.3 of the CFA Transfer Regulations. At the same time, one might assume that the statutory regulations contain mandatory provisions and prevail themselves over the contract. And in addition, given that there was no reference with respect to the CFA Transfer Regulations in the Second Contract, one might question whether such regulations actually apply to the Second Contract. Article 20.1.3. of the CFA Transfer Regulations seems contradictory

itself in this sense, since – although it provides for an automatic termination – links the prerequisites to a condition, but does not mention the absence of it.

49. In order to clarify such questions, the Appellant called as a witness Mr Andreas Petsas, who also serves as an arbitrator in the national dispute resolution system. As such, it is questionable whether his statements have to be considered as witness statements, expert statements. Notwithstanding this question, Mr Petsas' statement could not clarify above questions to the conviction of the Sole Arbitrator for the following reasons: Mr Petsas, first, was of the opinion that as a statutory regulation of the respective federation, the CFA Transfer Regulations automatically apply to all clubs and players even without any reference in the employment contract, license agreement or other documents. Hence, Mr Petsas seems to conclude that the CFA Transfer Regulations form part of the *applicable law*. However, the reference to the *"applicable regulations"* in Article R58 constitutes an indirect choice of law (RIGOZZI/HASLER in: Arroyo, Arbitration in Switzerland, Article R58 CAS Code, para 7). For this reason, a Panel or Sole Arbitrator needs to establish, what sets of rules or law might be applicable under the different conditions and circumstances mentioned explicitly in Article R58 (RIGOZZI/HASLER, *op. cit.*, para. 8), which – in case of players and clubs – can be a tacit choice of law in the commitment to respect the rules of national or international federations (MAVROMATI/REEB, *op. cit.*, para 103). Usually, in employment contracts, licenses and registration documents, clauses can be found according to which the player undertakes to abide by the national or international (sporting) regulations. Such commitment of the Respondent has not been demonstrated and substantiated by the Appellant in the present case, since neither does the Second Contract include such commitment, nor did the Appellant submit a national license, registration or similar document containing such commitment. Finally, the Sole Arbitrator notes that one cannot infer from the Contract signed in 2008 that the Respondent was aware of the automatic qualification that would result from a relegation and even less that the CFA regulations would be applicable to the Second Contract. Without any circumstance leading to a tacit choice of law, the CFA regulations cannot be considered the *applicable law*. Consequently, the Sole Arbitrator is not convinced that the CFA Transfer Regulations apply.

50. But even assumed, the CFA Transfer Regulations would apply, the Sole Arbitrator is not convinced that this would lead to the assumption of an automatic termination of the Second Contract. Mr Petsas concluded that the CFA Transfer Regulations prevail over the contractual agreements and are in this sense mandatory. However, he also concluded to the Sole Arbitrator's question that as a consequence only the existing employment contracts, which are registered with the CFA, shall become null and void under Article 20.1.3. The Second Contract, however, was supposed to come into force only after the end of the respective season on 1 June 2012 and – according to the witness Lysandros Lysandrou – was not registered with the CFA. One could argue that the *ratio* of Article 20.1.3 of the CFA Transfer Regulation was that the club (and the player) are free to adapt to the different sporting and financial environment after a relegation and that all contracts whether registered or not, or in force or not, would become null and void. But one might also argue, on the other hand, that – if parties concluded an employment contract that would come into force only later, they wanted to keep the contractual relationship independent from the sporting result, and that such arrangements into the future might not be affected by Article 20.1.3. of the CFA Transfer Regulations. Also a *systematic* interpretation of Article 20.1.3. of the CFA Transfer Regulations does not clarify the matter.

The Appellant argues that foreign players do not have the statutory right to play in second division, which is why all contracts of foreign players needed to be considered null and void in case of a relegation. However, the Sole Arbitrator notes that the Appellant had played in the Cypriot Second Division in the season 2010/2011, after which it was promoted to the Cypriot First Division. The Respondent had signed the First Contract beginning with such season including a potential bonus for promotion, so one must assume that the Respondent had indeed played in the second division. The Sole Arbitrator is, therefore, not convinced that the automatic termination under Article 20.1.3. of the CFA Transfer Regulation would have an effect on the Second Contract.

51. In conclusion, the Appellant cannot rely on an automatic termination of the Second Contract, since Article 20.1.3. of the CFA Transfer Regulations cannot be considered part of the applicable law, notwithstanding the fact that it is very questionable, whether such stipulation would actually have an effect on the Second Contract.

B. Alleged termination on basis of Article 8 of the Second Contract

52. Second, it is disputed between the Parties as to whether the Appellant terminated the Second Agreement in "summer 2012" effectively on the basis of Article 8 of the Second Contract. The first disagreement seems to exist with respect to the question whether there was an actual "act of termination" by the Appellant or whether due to the alleged automatic termination such act was neither needed nor effected. The Respondent claims that in July 2012, the Appellant's president informed him that his services were no longer needed. The Respondent further argues that the Appellant had changed its factual allegations from the FIFA DRC proceedings – then relying on an act of termination – to the CAS proceedings – now relying on an automatic termination.

53. This question, however, is not relevant for the present case, if Article 8 of the Second Contract would have to be considered null and void. Article 8 of the Second Contract has to be regarded as a so called "relegation clause" which is a popular tool widely used with the aim to protect the club from wage burdens as a result of relegation, which would supersede the financial capability. Generally, there is a justifiable interest to adapt the wage structure to the changing sporting and financial environment in the second division, which also ensures that players would receive their salary.

54. But it is to be noted that there are two different types of relegation clauses:

55. On the one hand, there are relegation clauses stating that the contractual relationship of the parties automatically end in the case of relegation of the club, or give both parties the right to terminate the employment contract in case of relegation. From these kinds of relegation clauses do not only benefit clubs but also the players. That is to say, players themselves also could find it desirable to include such a clause in their employment contracts in order to protect their sports career, in that they would not be obliged to play in lower level competition in the case of relegation of their actual club. Therefore, these clauses can be deemed as a valid way to protect mutual interests of both parties of the contract.

56. This view is supported by a CAS 2008/A/1447 para. 38 stating that *"relegations clauses are mainly a way protecting the players' careers, as their employment opportunities and market values would be reduced by playing in lower divisions during their short-term careers"*.

57. On the other hand, there are relegation clauses which do not automatically lead to the termination of the contractual relationship in case of relegation but only give one party the opportunity to terminate the employment contract without any regulation of compensation for the other party. These kind of clauses bear the risk that they contain an unbalanced right to the discretion of one party only without having any interest of any kind for the other party. Therefore, the Sole Arbitrator needs to analyze the balance of interest according to the specific circumstances in the present case.

58. In the present case, Article 8 of the Second Contract only allowed the Appellant to terminate the employment contract in case of relegation. Moreover, neither in the Second Contract nor in the Supplementary Agreement there is any compensation granted to the Respondent in the case of the termination of the contractual relation. That implies that the Appellant retained full discretion as to whether the employment relationship with the Respondent will continue or will come to an end following the relegation of the Appellant, without protecting any established or substantiated interest of the Respondent.

59. In the light of the above the Sole Arbitrator considers that Article 8 of the Second Contract establishes unbalanced rights in the present circumstances, and is, therefore, contrary to the freedom of workers under Art. 27 para. 2 of the Swiss Civil Code, as well as contrary to the parity of termination rights under Art. 335a of the Swiss Code of Obligations (SFT 102 II 211, p. 218 et alt., CAS 2005/A/983 & 984, para. 88). Therefore the Appellant could not rely on an act of termination under Article 8 of the Second Contract.

C. Mutual Termination Agreement in July 2012

60. Third, in the hearing, the witness Lysandros Lysandrou claimed an alleged additional reason for the termination of the Second Contract, i.e. an additional mutual termination agreement signed at the Appellant's offices in July 2012. Mr Lysandrou reported that the player entered the offices of the Appellant in July 2012 and met with the president in the latter's office, where both signed a written termination agreement, and which Mr Lysandrou himself left with the club. As he was not in function anymore, he did not possess such document. Upon question of the Sole Arbitrator, Mr Lysandrou argued that he considers the Second Contract having been terminated by such termination agreement, which was never previously mentioned.

61. The Appellant's counsel confirmed in the hearing that also the Appellant was not in possession of such additional termination agreement. The Appellant's counsel, therefore, does not explicitly rely on a written termination agreement, but claimed that the termination was effected automatically as assessed earlier under A.

62. The Respondent argues that when coming to the Appellant's offices, he claimed the outstanding remuneration. He firmly denies any conclusion of a termination agreement.

63. Since the Appellant would bear the burden of proof according to Article 8 of the Swiss Civil Code with respect to the termination by agreement and is not in possession of a respective document, it could only rely on the testimony of Mr Lysandrou. However, the Sole Arbitrator considers that Mr Lysandrou's statement is not sufficient to support the conclusion of a mutual termination agreement. Mr Lysandrou served as a member of the board of the Appellant between 2008 and 2014. He was directly involved in the conclusion of the employment agreements as well as the alleged termination of the agreements and the settlement discussions with the Respondent. For that reason he has to be considered being close to one party, i.e. the Appellant. In addition, his claim of a mutual termination agreement in July 2012 has been brought forward for the first time in the hearing and was not part of his submitted witness statement. Such claim was neither supported by written evidence as could be expected in case of a written termination agreement. In conclusion, and given that the Respondent firmly denies having signed such agreement, the Sole Arbitrator, based on the submitted evidence, is not convinced that the Parties had signed mutual termination agreement in July 2012.

D. Alleged waiver of claims by the Certificate of debts

64. Fourth, the Appellant argues that the Respondent waived all of his possible claims because of the "Certificate of debts".

65. The "Certificate of debts" was allegedly concluded in conjunction with the handing over of the three cheques amounting up to EUR 17,100, which were handed over to the Respondent, but could not been cashed in. It says: *"I confirm that the name of the [Appellant] has paid all its obligations arising from contractual agreements as of 31th May 2012"*. At this time, there were outstanding remunerations and payments due arising from the First Contract in the amount of at least EUR 14,000. The "Certificate of debts" explicitly refers to the *"contractual agreements"* and the date 31 May 2012. However, the date 31 May 2012 falls within the contractual period of the First Contract and not of the Second Contract. An interpretation of this document with respect to its wording and its *ratio* consequently speaks for the assumption that only the First Contract and the respective outstanding obligations would be subject of the contained stipulations. The Appellant's argument that paying an amount of EUR 17,100 instead of the owed EUR 14,000 demonstrated that also claims with respect to the Second Contract would be covered, does not change such assumption. First, the Appellant was allegedly of the opinion that the Second Contract was legally terminated, in what way ever. Therefore, no obligations were outstanding regarding the Second Contract in the Appellant's view. Second, accepting a surplus of EUR 3,100 as a final compensation for the Second Contract is not comprehensible and would seem illogical. There are other explanations for such surplus, e.g. performance bonuses, team bonuses, compensation for late payment etc. The witness Mr Vasileiou, for example, argued that the president liked the Respondent a lot, which is why he allegedly increased the payment.

66. Therefore, the Sole Arbitrator considers, that the question, if the Respondent signed the "Certificate of debts" or not, and also the question of the evidential value of the present paper, can be left open, because objectively viewed with regard to the specific circumstances of the present case it can only be deemed to refer to the First Contract and cannot be deemed to affect the Second Contract.

E. Alleged Settlement Agreement and respective payment

67. Fifth, the Appellant argues that the Settlement Agreement or the acceptance of EUR 8,000 by the Respondent leads to the conclusion that the Respondent legally effective waived all of his claims against the Appellant.

68. The Settlement Agreement was not signed by the Respondent, but by Mr Giannakis Vasileiou. The Respondent contested having authorized Mr Giannakis Vasileiou to sign such document. Indeed, since the signatory of the agreement is different to the creditor, a due authorization is required.

69. In this respect, the Appellant relies on the testimony of Mr Giannakis Vasileiou. In the hearing, Mr Vasileiou stated that the Respondent had told him about an agreement reached between the latter and the Appellant, and that Mr Vasileiou should sign a respective paper. For this reason, Mr Vasileiou considered himself duly authorized by the Respondent. He also stated that he had worked as a player agent of the Respondent since his arrival in Cyprus, and that for this reason, the club representatives also accepted him representing the player as a signatory.

70. The Appellant, in order to support such allegation, submitted the Representation Agreement allegedly containing the signatures of Mr Lysandrou, Mr Vasileiou and the Player. The Appellant does not explicitly claim that such document could be considered as an authorization to sign the Settlement Agreement, but rather argues that the document shows the close relationship between the player and Mr Vasileiou. However, the Representation Agreement does not appoint Mr Vasileiou as the player agent, but Mr Lysandrou. Both, Mr Lysandrou and Mr Vasileiou confirmed that Mr Lysandrou was only appointed player agent for the sake of the FIFA regulations, but in reality, Mr Vasileiou was the player agent. The Respondent stated that he was introduced to Mr Vasileiou as a translater by the Appellant, since the president did not speak English. Also in the following, Mr Vasileiou acted for translation purposes according to the Respondent.

71. In fact, during the hearing, the following facts were clarified regarding Mr Vasileiou: Mr Lysandrou acted as an advisor and lawyer for Mr Vasiliou. Both worked together with respect to Mr Vasiliou's activity as player agent. That was also the case with respect to the Respondent. However, the Respondent did not remunerate Mr Vasiliou regarding any services as a player agent. Mr Vasiliou in fact received a "gift" from the Appellant in this respect. The close relationship between the two witnesses is also documented at the signature line of the Representation Agreement, where Mr Vasiliou signed next to Mr Lysandrou and not next to the Respondent. In consequence, Mr Vasiliou has to be considered as a person close to Mr Lysandrou, and – due to the fact that the latter was responsible to deal with the Respondent's issues as a board member – close to the Appellant.

72. Given that the Respondent firmly denies having authorized Mr Vasiliou to sign the Settlement Agreement and, therefore, contradicts Mr Vasiliou's statement, the Sole Arbitrator is not convinced that such authorization existed. Since the burden of proof, again, lies with the Appellant, the latter cannot rely on the effective conclusion of the Settlement Agreement.

73. Furthermore, the acceptance by the Respondent of the amount of EUR 8,000 transferred by the Appellant on 10 October 2013 does not constitute an evidence of agreement to waive any further claims. As outlined above, the Appellant carries the burden of proof that the Respondent accepted the payment as the full settlement of all of his claims. In conjunction with its much higher request arising from the claim already pending before the FIFA DRC the Sole Arbitrator considers that it is indeed unreasonable to presume the acceptance of the payment amounting EUR 8,000 as an implied settlement agreement. That applies all the more so since at the time of the transfer of the money the Appellant still undisputedly owed the Respondent the payment of remuneration arising from the First Contract beyond the paid amount of EUR 8,000.

F. Damages

74. The Appeal is not directed against the calculation of damages established by the FIFA DRC, but against the legal basis for awarding damages. The FIFA DRC awarded the outstanding amounts of salary as well as an amount for breach of contract regarding the Second Contract based on the principle of "positive interest" (see: CAS 2008/A/1519-1520, para. 86).

75. The Respondent in its Answer argued that the FIFA DRC should have awarded a higher amount of compensation than it actually did. However, as outlined above, the Respondent withdrew such counter-claim at the beginning of the hearing, which is why the amount awarded by the FIFA DRC is not contested anymore.

76. In the light of all above the Sole Arbitrator holds that the Appeal has to be dismissed in entirety.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Appellant on 13 April 2016 against the decision issued by the FIFA Dispute Resolution Chamber on 5 November 2015 is dismissed.

2. The decision issued by the FIFA Dispute Resolution Chamber on 5 November 2015 is confirmed.

(…)

5. All other prayers for relief are dismissed.