Arbitration CAS 2016/A/4573 Kees Ploegsma v. PFC CSKA Moscow, award of 10 March 2017

Panel: Mr Lars Hilliger (Denmark), President; Mr Manfred Nan (The Netherlands); Mr Michael Gerlinger (Germany)

Football
Agency contract
Freedom of the players' agent to organise his work to a certain extent
Validity of oral contracts
Validity of an oral agency contract not complying with the obligations of the FIFA PAR
Swiss law-based consideration in relation to the interruption of the two-year prescription period to claim the payment of a contractual instalment

1. **A player's agent may organise his occupation as a business as long as his employees' work is restricted to administrative duties connected with the business activity of a player's agent. Only the players' agent himself is entitled to represent and promote the interest of players and/or clubs in connection with other players and/or clubs. A player's agent whose company was involved in an operation will carry the burden to prove that he personally handled the relevant negotiations and that only administrative duties, such as accounting and invoicing, were passed on to the relevant company.**

2. **Under Swiss law, the validity of a contract is not subject to compliance with any particular form unless a particular form is prescribed by law. According to CAS' corresponding jurisprudence, absent any express rule to the contrary, an agreement between two parties does not have to follow any specific form and may in fact simply results, for example, from a verbal agreement.**

3. **Articles 31 and 33 of the FIFA Players' Agents Regulations (PAR) provide for a list of sanctions that may be imposed on any players' agent that violates these regulations. However, in absence in said list of any sanction that would lead to the invalidation of an agreement concluded in violation of the PAR, the parties' oral agreement under examination needs to be considered valid in spite of the players' agent incompliance with the PAR.**

4. **Article 30 paragraph 4 PAR contains a *lacuna*, for said article does not foresee specific situations of acknowledgement of debt by the debtor or of interruption of the regulatory two-year prescription period. In accordance with articles 135 (*"[t]he limitation period is interrupted: 1) if the debtor acknowledges the claim (…)"*) and 137 (*"A new limitation period commences as of the date of the interruption"*) of the Swiss Code of Obligations, which apply as subsidiary applicable law, an interruption of the passage of a limitation period must be possible when a debtor acknowledges its debt and states that its payment shall be effected within a particular period of time.**

1. THE PARTIES

1.1 Mr Kees Ploegsma (the "Appellant" or the "Agent") is a football agent of Dutch nationality, registered with the Royal Dutch football Federation ("KNVB"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA"). The Agent is a partner of the Dutch company Sports Entertainment Group ("SEG").

1.2 PFC CSKA Moscow (the "Respondent" or the "Club") is a Russian professional football club affiliated with the Football Union of Russia ("the FUR"), which in turn is a member of FIFA.

2. FACTUAL BACKGROUND

2.1 The following considerations set out below are a summary of the main relevant facts as established by the Panel on the basis of the decision rendered by the Single Judge of FIFA's Players' Status Committee (the "FIFA PSC") on 16 March 2016 ("the Decision"), the written and oral submissions of the Parties and the exhibits filed. Additional facts may be set out, where relevant, in the legal considerations of the present Award.

2.2 On 1 April 2009, the professional football player of Japanese nationality, K. (the "Player") and SEG, represented by the Appellant, signed an exclusive representation agreement valid from the date of signature until 31 March 2010 (the "Representation Agreement"). The Player was at that point under professional contract with the Dutch football club VVV-Venlo ("Venlo"), which was interested in transferring the Player for a sizeable fee. Pursuant to the Representation Agreement *"the amount of the commission concerning the labour contract of the player with a club in a foreign country will not exceed 11% of the player's gross annual income"*.

2.3 During the autumn of 2009, Mr Goes, representative of the Club, contacted the Agent in order to discuss the Player's possible transfer from Venlo to the Club, which contact was followed by a meeting in late November 2009 between the Agent, Mr Goes and Mr Babaev, the General Director of the Club. No contractual or financial terms were discussed at the meeting, however, according to the Agent, it was agreed that, subject to the Player's agreement, the Agent would be appointed by the Club to ensure the transfer.

2.4 On 1 December 2009, the Player and SEG, represented by the Agent, signed a Player Consent Agreement ("the Consent Agreement"), which stated, *inter alia*, as follows:

> *"1) PFC CSKA Moscow ("the Club") is interested in the services (the "Contract") with the Player, who is currently registered as a professional football player with VVV-Venlo and in accordance with FIFA Players' Agents Regulations in force at the date hereof the Club wished to utilise the services of the Agent in procuring the same as further particularized below.*
> *2) In accordance with the FIFA Player's Agents Regulations, the Agent wishes to provide such services to the Club and has thus duly informed the Player of the Club's request by disclosing to the Player the nature of the proposed services to be performed on behalf of the Club and the fact that in acting for the Club, the Agent could have a conflict of interest take into consideration that the Agent has a valid representation agreement with the Player prior to the contract negotiations with the Club.*

3) By undersigning this Agreement, the player has provided his full and informed consent to (i) the Agent acting on behalf of the Club in the Player's Contract negotiation with the Club and (ii) to the Agent receiving a fee in connection therewith. The Agent shall not receive any additional fees from the player with regard to the services provided by the Agent in connection with the Player's Contract negotiation with the Club.
4) The Player confirms that, as a party to this Contract negotiation, he has been made aware of the actual or potential conflict of interest detailed above and consents to proceeding with the Contract negotiation".

2.5 On 11 December 2009, and following a phone call from Mr Babaev to the Agent, during which the financial terms of the possible transfer of the Player had been discussed, the Agent received a formal proposal for the financial conditions as discussed from Mr Evmenov, the then Sporting Director of the Club.

2.6 On 13 December 2009, a counter-offer was e-mailed from the Agent to Mr Evmenov, which included a proposal for an agent's fee of EUR 900,000 to be paid by the Club in two instalments in April 2010 and April 2011, respectively.

2.7 Since both the Agent and the Player were travelling during the latter part of December 2009, the Agent instructed his colleague at SEG, Mr Kroes, registered Player's Agent, to continue the negotiations on the Agent's behalf since Mr Kroes already knew Mr Goes well.

2.8 On 29 December 2009, the Club provided the Agent with a draft commission agreement between the Club and the Agent (the "Draft Commission Agreement") which stated, *inter alia*, as follows:

"By and Between:
CJSC "Professional football club CSKA" (Russia, Moscow) Lenigradsky (…), hereinafter referred to as "PFC CSKA" (Moscow) herein duly represented by its General Director Mr. Roman Babayev, acting of the basis of Regulations of company, hereinafter referred to as <<CSKA>>, on the part, and ***Mr. Kees Ploegsma,*** *citizen of Netherlands, (…), who acts on his own behalf, hereinafter referred to as* ***"the Agent"****.*
Whereas the Agent renders CSKA services aimed at the successful negotiations signing of the agreement between football player ***K.****, born on […], citizen of Japan, (…), hereinafter referred to as* ***the <<Player>>, VVV-Venlo (Netherlands)*** *(hereinafter - <<Venlo>>) and* ***CSKA*** *concerning Transfer of the Player from VENLO to CSKA for his professional registration and work in CSKA as a football player;*
NOW THEREFORE, the parties agree on the flowing:
1. The Agent renders services to CSKA until the Transfer agreement between VENLO and CSKA concerning the Player is signed by the Parties and the employment contract between CSKA and the Player will come in force and the Player will arrive in Moscow to work in CSKA as a football player.
2. In case of successful completion of the above-mentioned transfer CSKA agrees to pay to the Agent remuneration for his services in the amount of EURO 750.000 (Seven hundred fifty thousand Euros).
3. The remuneration should be paid according to the flowing terms of payment:
3.1. The amount of 250.000 (Two hundred fifty thousand) Euros has to be paid not later than the 30th of March, 2010;
3.2. The amount of 250.000 (Two hundred fifty thousand) Euros has to be paid not later than the 31st of December, 2013.

3.3. The Amount of 150.000 (One hundred fifty thousand) Euros has to be paid not later than the 31st of December, 2012.
3.4. The amount of 100.000 (One hundred thousand) Euros has to be paid not later than the 31st December, 2013.
4. In case of the employment contract between CSKA and the Player will be dissolved by any reason, the Agent will not be entitled to receive the remuneration under art. 3 of the present Agreement from the date of dissolvement of the employment contract between CSKA and the Player.
5. The Agent shall inform CSKA of his payment details in written form. The Payment will be done in accordance with procedure determined by Parties.
6. In case of Transfer agreement and/or employment contract indicated in art. 1 heretofore will not be signed or transfer rights of the Player by any reason will not be transferred to CSKA this Agreement will terminate and CSKA will be released from the obligation to pay the remuneration to the Agent.
7. This Agreement supersedes and revokes any prior understandings between the Parties in connection with the matter subject hereto".

2.9 On 30 December 2009, Mr Goes and Mr Kroes met at Mr Goes' house in the Netherlands, while Mr Babaev participated in the meeting by telephone conference.

2.10 According to the Appellant, however disputed by the Respondent, the parties discussed, *inter alia*, the terms of the Draft Commission Agreement and agreed on some minor amendments to the payment dates originally set out in the Draft Commission Agreement to bring the final three payments forward. All other terms of the Draft Commission Agreement were agreed.

2.11 Prior to the meeting, and following a request of the Club, a Letter of Intent signed by the Player on the same date was forwarded to Mr Goes by e-mail. In this letter, the Player indicated his interest in a transfer to the Club, subject to agreement on the last details of the terms.

2.12 Following further negotiations of the terms of the Player's new employment contract by e-mail between the Club and Mr Jeroen Hoogewerf (who also is a colleague of the Appellant at SEG), the Parties agreed on the final terms of this contract, and it was agreed that the contract should be signed in person in Moscow on 13 January 2010. During these negotiations, the Player's lawyer, Mr Watanabe, provided legal advice to the Agent and his colleagues.

2.13 On 13 January 2010, the Player, the Agent, and Mr Babaev, on behalf of the Club, signed the Player's employment contract (the "Employment Contract") in person in Moscow. On the last page of the Employment Contract, the Agent signed as *"Agent of the Football Player – Mr Kees Ploegsma on behalf of SEG Netherlands BV"*. Furthermore, a transfer agreement between the Club and Venlo was signed and the final transfer fee, which the Club eventually paid to Venlo for the transfer of the Player, was EUR 6,250,000, including solidarity contribution and an UEFA bonus.

2.14 According to the Appellant, during the meeting in Moscow, he requested that the amended Draft Commission Agreement be signed by Mr Babaev, which never happened. However, later on the same day, on their way to the airport, Mr Babaev requested that the Agent should sign an agreement with a company named Fileca Trading Limited ("Fileca"). This agreement had already been signed on behalf of Fileca by "Mr Bors Dumitru" when presented to the Agent.

2.15 The Agent understood from Mr Babaev that Fileca was simply going to be the vehicle the Club would be using to discharge the debt owed to him since, according to the Agent, the terms of this agreement ("the Fileca Agreement") were identical to those agreed between the Parties. Even if the Fileca Agreement was never mentioned before, but since the Agent was concerned that there was no written agreement between the Parties, the Agent chose to sign the Fileca Agreement, which stated, *inter alia*, as follows:

> *"**AGREEMENT***
> *The agreement (the "Agreement") is entered by and between **Fileca Trading Limited**, PO Box 3540 Tortola BVI; herein duly represented by its General Director Mr. Bors Dumitru, acting of the basis of Regulations of company, hereinafter referred to as "COMPANY", and*
> ***Mr. Kees Ploegsma,** Citizen of Netherlands, (…) hereinafter referred to as the "AGENCY".*
>
> *It is agreed as follows:*
> *1.1 The AGENTCY renders intermediary services to the parties involved aimed at the successful negotiations and assignment of transfer rights of the football players. Besides the AGENCY thoroughly analyses all available offers for sale, transfer and/or assigning the football players. Besides the AGENCY thoroughly analyses all available offers for sale, transfer and/or assigning the football players' transfer Rights and notifies the COMPANY in writing about such offers.*
> *1.2. In case of successful completion of the obligations mentioned in art. 1.1. of this Agreement by the AGENCY and signing of the corresponding agreements, the COMPANY agrees to pay the remuneration in amount of **750.000 (Seven hundred fifty thousand) Euros** of the AGENCY according the following terms of payment:*
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> - *The amount of 250.000 (Two hundred fifty thousand) Euros has to be paid till 30th of March, 2010;*
> - *The amount of 250.000 (Two hundred fifty thousand) Euros has to be paid till 31st March, 2011;*
> - *The Amount of 150.000 (One hundred fifty thousand) Euros has to be paid till 31st July, 2012.*
> - *The amount of 100.000 (One hundred thousand) Euros has to be paid till 31st of July, 2013.*
>
> *Beneficiary: Kees Ploegsma / Sports Entertainment Group [inserted by hand by Mr Kroes].*
> *(…)".*

2.16 On 7 April 2010, Fileca paid the first instalment of EUR 250,000 due on 30 March 2010. The payment was made to SEG's bank account in accordance with the bank details contained in the Fileca Agreement. On 8 April 2010, an invoice issued by SEG to the Club for the said instalment was forwarded to the Club stating *"Herewith you receive our invoice concerning the agency services for K. for the season 2010. We received your payment on the 7th of April 2010"*. This invoice remained without any answer.

2.17 On 7 March 2011, an invoice regarding the second instalment of EUR 250,000 was sent by SEG to the Club stating, *inter alia*, *"Herewith you receive our invoice concerning the agency services for K. for the season 2011"*.

2.18 On 5 July 2011, Fileca paid the second instalment of EUR 250,000 due on 31 March 2011. Once again, the payment was made to the bank account of SEG in accordance with the bank details contained in the Fileca Agreement.

2.19 On 31 July 2012, an invoice regarding the third instalment of EUR 150,000 was sent by SEG to Fileca stating, *inter alia "In accordance with the Agreement between SEG Netherlands and Fileca Trading Limited signed 13.01.2010 we herewith provide you with the third instalment in relation to the services provided by SEG".*

2.20 The said invoice was never paid and, on 13 May 2013, following several reminders to the Club by the Agent and by Mr Kroes, Mr Kroes received an e-mail from Mr Evmenov of the Club, stating, *inter alia*, as follows: *"Hi Alex. Any news? Please send us the invoice for K. one more time, so we can make the payment".*

2.21 Mr Kroes forwarded the invoice to Mr Evmenov on the same date, and on 15 May 2013, Mr Evmenov replied by e-mail as follows: *"Hey, Alex. Thanks for the invoice. We gonna pay you in the first days of June".* According to the Club, the Player later instructed the Club not to make any payment on his behalf.

2.22 On 26 July 2013, Mr Kroes sent an e-mail to Mr Evmenov, stating, inter alia, as follows: *"I would like to ask you again regarding the final payment on K., although our agreement on paper, the verbal agreement together with Roman in Moscow earlier this year during our face to face meeting and some confirmation both by you and Roman on e-mail that the money will be paid, it is still not on our accounts, We are not poor people, but we can use the money very well and it's also because I believe we deserved it".*

2.23 On 31 July 2013, an invoice regarding the fourth instalment of EUR 100,000 was sent by SEG to Fileca stating, *inter alia "In accordance with the Agreement between SEG Netherlands and Fileca Trading Limited signed 13.01.2010 we herewith provide you with the fourth and final instalment in relation to the services provided by SEG".*

2.24 In the following months, the Agent and Mr Kroes contacted the Club by e-mail and by phone in order to obtain the outstanding payments, which, however, were never made.

2.25 On 31 March 2015, having received no payment from the Club or Fileca, the Agent lodged a claim with the FIFA PSC against the Club requesting from the latter the payment of EUR 250,000 plus interest. In addition, the Agent requested payment of unspecified costs.

2.26 In support of his claim, the Agent stressed, *inter alia*, that he had entered into an oral agreement with the Club in connection with the conclusion of the Employment Contract between the Player and the Club, by means of which the Club undertook to pay him EUR 750,000 as commission in consideration for the services provided; that the said agreement was concluded on his behalf by Mr Kroes, who had also been involved in the negotiations of the Player's Employment Contract; that later on the Club had asked him to sign the Fileca Agreement, according to which Fileca would discharge the payment obligations of the Club to the Agent for the agency services; that the said agreement does not supersede the oral agreement between the Parties which remained valid and binding; that in any case the Club and Fileca could be

treated as one entity for the purpose of the dispute; and that the Agent had so far received EUR 500,000, corresponding to the first two instalments only.

2.27 In reply to the claim, the Club stated, *inter alia*, that the claim should in any case have been lodged against Fileca and not against the Club, that the Club and the Agent never had entered into an agreement with regard to the transfer of the Player and that the Agent acted on the Player's behalf during the negotiations.

2.28 In his replica, the Agent added, among other things, that even if the Agent had signed a representation contract with the Player, the Player, by signing the Consent Agreement, has agreed that the Agent was also acting on behalf of the Club in connection with this transfer and that the Player had actually been taking advice from his own legal advisor.

2.29 The FIFA PSC, having confirmed its competence, noted, *inter alia*, that the Agent in his claim requested the payment of part of his commission in connection with the conclusion of an employment contract between the Player and the Club, *i.e.* the sum of EUR 250,000, on the basis of an oral agreement which he allegedly concluded with the Club on 30 December 2009 and, in the alternative, that his entitlement to the said amount could be deduced from the Fileca Agreement signed on 13 January 2010 upon the Club's request. The Club, on its side, rejected all allegations of the Agent and contested having concluded any agreement at all with the Agent in connection with the Player.

2.30 Based on the above, the FIFA PSC first of all recalled that, as clearly established in article 19 paragraph 1 of the FIFA Players' Agents Regulations (2008 edition) (the "Regulations"), a players' agent shall be permitted to represent a player or a club only by concluding the relevant written representation contract with that player or club. Furthermore, and as stated in article 19 paragraph 4 of the Regulations, such representation contract shall explicitly state who is responsible for paying the player's agent and in what manner. Finally, and in accordance with article 12 paragraph 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules"), it recalled that the burden of proof has to be carried by the party claiming a right on the basis of an alleged fact.

2.31 Based on the above, and bearing in mind that no written agreement signed by the Parties was provided to FIFA by the Agent in support of his allegations, as well as taking into consideration the fact that the Club had contested the existence of such an agreement, the FIFA PSC found that it had to be assumed that no agreement had been concluded between the Parties in this respect.

2.32 Hence, in view of the content of article 19 paragraphs 1 and 4 of the Regulations, and considering that no written agreement between the Parties seemed to exist in connection with the payment of commission to the Agent in relation to the transfer of the Player, the FIFA PSC concluded that the Agent's claim had to be rejected as it lacked a legal basis.

2.33 Thus, on 16 March 2016, the FIFA PSC rendered the following Decision and decided that:

1. "The claim of the Claimant, Kees Ploegsma, is rejected.

2. The final costs of the proceedings in the amount of CHF 22,000, are to be paid by the Claimant, Kees Ploegsma. Considering that the Claimant, Kees Ploegsma, already paid the amount of CHG 5,000 as advance of costs at the start of the present proceedings, the latter has to pay the remaining amount of CHF 17,000, within 30 days as from the date of the present to the following bank account (…)".

2.34 On 7 April 2016, the grounds of the Decision were communicated to the parties.

3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

3.1 On 28 April 2016, the Appellant filed his Statement of Appeal with the Court of Arbitration for Sport ("CAS") in accordance with articles R47 and R48 of the Code of Sports-related Arbitration (2016 edition) (the "Code") against the Decision rendered by the FIFA PSC on 16 March 2016.

3.2 On 9 May 2016, the Appellant filed his Appeal Brief in accordance with article R51 of the Code.

3.3 By letter dated 3 August 2016, the Parties were informed by the CAS Court Office that the Panel to adjudicate the matter at hand had been constituted as follows: Mr Lars Hilliger, attorney-at-law, Copenhagen, Denmark (President of the Panel), Mr Manfred Nan, attorney-at-law, Arnhem, The Netherlands (nominated by the Appellant), and Dr Michael Gerlinger, attorney-at-law, Munich, Germany (nominated by the Respondent).

3.4 On 22 August 2016, the Respondent filed its Answer in accordance with article R55 of the Code.

3.5 By letter of 13 September 2016, the Parties were informed that the Panel had decided to hold a hearing in this matter.

3.6 By letter of 28 September 2016, and with reference to evidentiary requests contained in the Respondent's Answer, the Appellant submitted his reply to the requests, including new Exhibits A-36 and A-37.

3.7 By letter of 3 October 2016, the Respondent objected to the Appellant's submission, arguing, *inter alia*, that *"the new exhibits adduced by the Appellant together with his unsolicited comments after the deadline for submission of the appeal brief, considering the absence of any exceptional circumstances, leads to the conclusion that they should be disregarded by the Panel and excluded from the case file, pursuant to art. R56 of the Code".*

3.8 By letter of 6 October 2016, the Panel informed the Parties, *inter alia*, that:

"With regard to exhibit n. 36:

Based on the fact that the Draft Commission Agreement itself was already included in the Appeal brief, and with reference to Article R51 of the Code, exhibit n. 36 is admitted to the file.

With regard to exhibit n.37:

Taking into consideration that the WhatsApp message included in exhibit n. 37 is only dated after the filing of his appeal brief, the Panel considers that it is justified to admit the aforementioned exhibits on the basis of exceptional circumstances.

In view of the above, and if so wishes, the Respondent is invited, within five (5) days upon receipt of the present letter by facsimile, to comment on exhibits n. 36 and 37 (and these exhibits only)".

3.9 On 7 October 2016, the Respondent filed its submission on the Appellant's Exhibits 36 and 37.

3.10 Both Parties duly signed and returned the Order of Procedure.

4. HEARING

4.1 On 9 November 2016, a hearing was held at the CAS Court Office in Lausanne, Switzerland.

4.2 At the outset of the hearing, the Parties confirmed that they did not have any objections to the constitution of the Panel.

4.3 In addition to the Panel and Mr Fabien Cagneux, Counsel to the CAS, the following persons attended the hearing:

For the Appellant: Ms Carol Couse (attorney-at-law)

For the Respondent: Mr Georgi Gradev (counsel) and Mr Yuri Zaytsev (attorney-at-law).

Mr Kees Ploegsma, Mr Alexander Kroes, registered Football Agents with the KNVB and employees of SEG, and Mr Ken Watanabe, attorney-at-law in the Netherlands, were heard by conference call. They all gave their testimony after being duly invited by the President of the Panel to tell the truth subject to the sanctions of perjury. The parties and the Panel had the opportunity to examine and cross-examine the Appellant and the witnesses.

4.4 The Parties were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel. After the Parties' final submissions, the Panel closed the hearing and reserved its final award. The Panel took into account in its subsequent deliberation all the evidence and arguments presented by the Parties although they may have not been expressly summarised in the present Award. Upon closure of the hearing, the Parties expressly stated that they had no objections in respect of their right to be heard and to have been treated equally in these arbitration proceedings.

4.5 By letter of 11 November 2016, the Appellant submitted his unsolicited remarks regarding an issue covered by the Respondent's final rebuttal.

4.6 By letter of 16 November 2016, the Parties were informed that the Panel had declared said remarks inadmissible and that the remarks will consequently be disregarded by the Panel.

5. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

5.1 Article R47 of the Code states as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".

5.2 With respect to the Decision, the jurisdiction of the CAS derives from Article 67 par. 1 of the FIFA Statutes (2015 edition) as it determines that *"[a]ppeals 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".*

5.3 In addition, neither the Club nor the Agent objected to the jurisdiction of the CAS, which was further confirmed by the Parties signing the Order of Procedure.

5.4 The Decision with its grounds was notified to the Parties on 7 April 2016 and the Appellant filed his Statement of Appeal on 28 April 2016, *i.e.* within the statutory time limit set forth by the FIFA Statutes, which is not disputed.

5.5 It follows that the CAS has jurisdiction to decide on the Appeal and that the Appeal is admissible.

5.6 Under Article R57 of the CAS Code, the Panel has full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the decision appealed against.

5.7 The Panel noted that the Respondent submitted that the Appellant has no right to sue since he was never a party to an agreement with the Club. The Panel finds that, in accordance with the longstanding jurisprudence of the Swiss Federal Tribunal ("SFT") and the CAS, the arguments relating to the alleged lack of standing to sue are related to the merits of the case and should be dealt with accordingly.

6. APPLICABLE LAW

6.1 Article R58 of the Code states as follows:

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

6.2 Both parties agree that the present matter should be decided according to the various regulations of FIFA and additionally Swiss law.

6.3 Article 66 par. 2 of the FIFA Statutes states as follows: *"The 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".*

6.4 As such, the Panel is satisfied to primarily apply the various regulations of FIFA and, subsidiarily, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

6.5 Finally, the Panel agrees with the FIFA PSC that the FIFA Players' Agents Regulations (2008 edition) are applicable to the present matter.

7. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

7.1 The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, has, however, carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

7.2 The Appellant

7.2.1 In its Appeal Brief, the Appellant requested the following relief from the CAS:

I. "Uphold the present appeal against the Appealed Decision.
II. To set aside and annul the Appealed Decision.
III. PFC CSKA Moscow is liable to pay Kees Ploegsma a total of EUR 250,000 plus 5% interest from the following dates, until the effective date of payment:
- *EUR 150,000 from 31 July 2012;*
- *EUR 100,000 from 31 July 2013.*

IV. PFC CSKA Moscow shall bear all arbitration costs, if any, and shall be ordered to reimburse Mr Kees Ploegsma the minimum CAS Court Office fee of CHF 1,000 as well as any other amounts of advances of costs paid to the CAS.
V. PFC CSKA Moscow shall be ordered to pay Mr Kees Ploegsma a contribution towards the legal and other costs incurred by the latter in relation to these proceedings, in an amount to be determined at the discretion of the Panel".

7.2.2 In support of his requests for relief, the Appellant submitted, *inter alia*, as follows:

a) First of all, the Club and Fileca should be treated as one entity for the purposes of this dispute and, accordingly, the debts of Fileca should be treated as the debts of the Club.

b) The Agent is the creditor of the Agent's fees and, thus, has the right to sue.

c) The Fileca Agreement, which was presented to the Agent by Mr Babaev, provided for the identical payment term as was agreed orally on 30 December 2009 between Mr Goes, Mr Babaev and Mr Kroes at Mr Goes' house in the Netherlands and contained virtually the same terms as the Draft Commission Agreement, which was undisputedly drafted by the Club.

d) It is ludicrous to suggest that Fileca, with no apparent football interest, would enter into an agreement without the involvement of the Club, and it is clear that the Club had a very close relationship with Fileca and only used Fileca as a vehicle in order to discharge the Club's debt to the Agent and in this way attempt to circumvent the regulations of FIFA.

e) Also, it must be noted that the payment of the two first instalments required under the Fileca Agreement was made by Fileca after the matching invoices were in fact addressed to the Club, which proves that the payments were made on behalf of the Club.

f) The Agent never had any other relationship with Fileca.

g) Furthermore, on 13 May 2013, Mr Evmenov, on behalf of the Club, expressly acknowledged the Club's continuing liability to the Agent in accordance with both the oral agreement between the Parties and the Fileca Agreement when he acknowledged the receipt of the third invoice of EUR 150,000 and stated *"we gonna pay you in the first days of June"*.

h) In accordance with CAS jurisprudence, when a club has a close relationship with a private organization, akin to the one between the Club and Fileca, then the two should be considered as one entity. The opposite would set a dangerous precedent as it would allow football clubs to avoid fulfilling their financial obligations to football creditors by simply transferring their financial obligations outside the core club structure.

i) In this case, it is clear that the Club appointed Fileca to discharge the Club's financial obligations and that Fileca acted on behalf and at the behest of the Club. Given the "agency"-like relationship between the Club and Fileca, the actions and financial obligations entered into by Fileca should be considered as actions and financial obligations undertaken by the Club.

j) The Panel should look beyond the formalities of the various agreements and instead focus on the intention and actions of the Parties, from which it follows that the Club engaged the Agent to perform agency services in exchange for a commission of EUR 750,000. The Agent duly performed the required services, and the Parties intended to be bound by their oral agreement. The Fileca Agreement never superseded the oral agreement between the Parties.

k) The oral agreement between the Parties remained valid and binding, and the Fileca Agreement simply provided the Club with a way of discharging the debt via a third party, however, the debts always remained those of the Club. Furthermore, the oral agreement

and the Fileca Agreement, when read together, clearly demonstrate the Club's financial obligations to the Agent.

l) Accordingly, pursuant to the principle of *pacta sunt servanda*, the Club is obliged to pay the Agent the outstanding amount of EUR 250,000.

m) However, without prejudice to the above, and in the alternative, the oral agreement between the Parties is a valid and binding agreement in any case.

n) The oral agreement between the Parties is in fact a combination of the Draft Commission Agreement and the amended dates of payment, which were agreed orally on 30 December 2009 as confirmed by the witness statements.

o) The Draft Commission Agreement outlines the services that the Agent was to provide to the Club, the commission payable, the dates of payment and dispute resolution clauses. And only the dates of payment were amended by the Parties in the oral agreement.

p) The FIFA PSC was wrong when deciding that no written agreement was concluded since the Draft Commission Agreement is in writing, even if not signed by the Parties.

q) Furthermore, in accordance with Article 11 of the Swiss Code of Obligations ("the SCO"), *"the validity of a contract is not subject to compliance with any particular form unless a particular form is prescribed by law"*, which CAS jurisprudence has also confirmed.

r) According to such jurisprudence, the failure to comply with the requirements of the Regulations does not invalidate the entire agency relationship. There is nothing in the Regulations to suggest this interpretation as article 33 of the Regulations merely states that a failure to abide by the rules could result in a sanction.

s) The Club accepted the validity of the oral agreement already by paying the first two instalments via Fileca, just as Mr Evmenov, on behalf of the Club, confirmed its obligation to pay the third instalment after having received the invoice issued to Fileca.

t) Based on that, it is evident that there was a clearly established agency relationship between the Parties for specified services and an agreed amount of commission, and even if the said relationship may not have been proven to exist pursuant to the Regulations, this does not invalidate the agency relationship altogether.

u) Accordingly, pursuant to the principle of *pacta sunt servanda*, the Club is obliged to pay to the Agent the outstanding amount of EUR 250,000.

v) The Agent does not dispute that he provided services to both the Club and the Player in this transfer, *i.e.* dual representation, which in some cases might be in breach of article 19 of the Regulations.

w) The Agent played a critical role for both the Club and the Player, and, *inter alia*, facilitated the contact between the parties of the transfer, managed to lower the transfer amount

payable to the Player's former club and persuaded the Player to sign the Employment Agreement, which were all done in the interests of both the Club and the Player.

x) However, the dual representation was never provided without the acceptance of the Club and the Player, and, in fact, the Player signed the Consent Agreement, literally accepting that the Agent would also be representing the Club in connection with the future transfer of the Player to the Club.

y) In the Consent Agreement it was further confirmed that the Agent would only be receiving fees from the Club and not from the Player.

z) As such, the Agent was avoiding all conflicts of interest in accordance with article 19 paragraph 8 of the Regulations since both the Player and the Club were fully aware of and consented to the transaction and the Agent's role in it.

aa) In any case, a possible breach of the Regulations due to dual representation does not invalidate the oral agreement, even if the Agent is subject to sanctions according to the Regulations.

bb) In accordance with the Regulations, a players' agent may organise his occupation as a business as long as his employees' work is restricted to administrative duties connected with the business activity of the agent, and as long as the players' agent activity is only carried out by a natural person who is licensed by the relevant association.

cc) The Appellant is a part of the company SEG, however, the Appellant was always the leading agent in connection with the transfer of the Player to the Club, and any colleague of his who was involved in the said transfer acted on his behalf in accordance with the Regulations.

dd) In that context, it is irrelevant whether the invoices were issued by SEG, whether SEG was in charge of collecting these payments, and whether it was mentioned, in connection with the negotiations and the signing of the various agreements, that the Appellant was acting in his own name or on behalf of SEG, for the very reason that only a licensed players' agent is allowed to carry out agency activities.

ee) The third instalment is not time-barred since the two-year limitation period set out in the Regulations, pursuant to the mandatory Swiss law rules, was interrupted in May 2013 in connection with the Parties' *bona fide* negotiations of an amended payment schedule, and as a result of Mr Emvenov's acceptance to pay the said instalment. Moreover, the two-year time limit must only be calculated from early June 2013 as the Club failed to pay in accordance with the amended payment terms of May 2013.

ff) The Appellant never unconditionally renounced his right to the last instalment of EUR 100,000 when referring to the "final payment on K." in the e-mail to the Respondent and when requesting the payment of the third instalment. The e-mail constituted an offer according to which the Appellant was ready to accept the payment of the third instalment

of EUR 150,000 as the last payment on condition that this payment was made within a very short time.

gg) However, the Club never paid the said instalment, and the offer was therefore never accepted, which is why the last installment is still due together with the instalment of EUR 150,000. The Respondent never discharged the burden of proof to show that the last instalment was unconditionally renounced by the Appellant.

hh) The agent's fee of EUR 750,000 payable to the Appellant is not excessive and should not be reduced.

ii) Within the world of football, a direct correlation does not always exist between the extent of services rendered by the agent in terms of hours spent and the value of such services for the parties involved. In this case, it was the Appellant who managed, *inter alia*, to establish the contact between Venlo and the Club and also managed to induce Venlo to accept a reduction in the transfer amount, which was instrumental in ensuring that the transfer of the Player was eventually carried into effect. In the light of these circumstances alone, the agent's fee should not be reduced, which is incidentally not for the Panel to decide.

jj) Finally, and pursuant to Article 104 of the SCO, the outstanding amount of commission should be subject to interest at the rate of 5% *p.a.* as from the dates the amounts were due until the effective date of payment.

7.3 The Respondent

7.3.1 In its Answer, the Respondent requested the CAS:

"1 To reject the appeal filed by the Appellant against the decision passed on 16 March 2016 by the Singe Judge of the FIFA Players' Status Committee to the extent it is admissible.
2. To order the Appellant to bear all the costs incurred with the present procedure.
3. To order the Appellant to pay the Respondent a contribution towards his legal and other costs in the amount of EUR 20,000".

7.3.2 In support of its requests for relief, the Respondent submitted, *inter alia*, as follows:

a) The main issue of the dispute is whether the Appellant is the person entitled to receive the agent's fees allegedly owed to him by the Respondent regarding the transfer of the Player from Venlo to the Club.

b) In order to succeed his appeal, the Appellant has to prove primarily that a contract was concluded between the Parties regarding agency activity in connection with the transfer of the Player.

c) No written or oral agency contract related to the said transfer was ever entered into between the Parties and the Appellant has rendered no agency services for the Club.

d) The Appellant never managed to discharge the burden of proof to show that any agreement, whether written or oral, was ever concluded with the Club or to present the terms that would allegedly be in such agreement. Furthermore, such alleged agreement cannot in any way be based on the Draft Commission Agreement, which was undisputedly never signed by the Club.

e) Based on the foregoing, the Appeal must be dismissed without any further consideration on the merits since the Appellant does not have a right to file a claim against the Respondent on the basis of an alleged agency contract with the Club.

f) Furthermore, the Appellant has failed to produce documents proving which kind of agency services he allegedly provided to the Club, for which he now claims to be entitled to payment by the Club. The Appellant never acted on behalf of the Club, and he was never involved in any negotiations between the Club and Venlo regarding the transfer fee or other issues, which means that the Appellant is not entitled to receive any commission from the Respondent.

g) The Appellant only acted on behalf of the Player in connection with the negotiations of the Employment Contract, and the Panel must consequently reject the Appellant's claim against the Respondent for an agency fee based on the Player's transfer agreement.

h) Since the Appellant, or SEG, never acted on behalf of the Club, this is not a case of dual representation, which would, in such case, lead to the complete denial of the Appellant's claim in accordance with Article 415 of the SCO.

i) Furthermore, the Club never assumed any payment obligations from the Player or on behalf of the Player, and in any case, pursuant to the Regulations, any alleged agreement with the Club according to which the Club allegedly took over any payment obligations from the Player or on his behalf, is only allowed after the conclusion of the relevant transaction, which is not the case.

j) However, even if the Appellant was somehow involved in the talks relating to the transfer agreement between the Club and Venlo, the Appellant never acted in his own name, but only on behalf of SEG.

k) Therefore, in any case, if the Panel finds that if an agency contract has been concluded with the Respondent at all, SEG was the counterparty and not the Appellant.

l) Similarly, if the Appellant claims commission from the Club for his assistance to the Player in the negotiations of the Employment Contract, the Agent never carried out such agency activity in his own name, but always on behalf of SEG.

m) For instance, it was SEG which was a party to the Representation Agreement and to the Consent Agreement with the Player, and the Appellant signed the Employment Agreement *"on behalf of SEG Netherlands BV"*. Furthermore, the correspondence with the Club was always forwarded from the e-mail addresses of SEG.

n) Furthermore, when Mr Evmenov asked to receive a copy of the third invoice issued by SEG, he was acting on behalf of the Player, who subsequently instructed the Club not to make any payments on his behalf.

o) According to the Appellant, the alleged oral agreement was negotiated by Mr Kroes, who is also with SEG, the effect of which is, if the Panel finds that an oral agreement was concluded, that SEG, and not the Appellant, must in any case be the party to such alleged agreement.

p) In accordance with the Regulations, a players' agent is *"a natural person"* and *"players' agents' activity may only be carried out by natural persons who are licensed by the relevant associations to carry out such activity"*. Furthermore, the Regulations state that *"A players' agent may organise his occupation as a business as long as his employees' work is restricted to administrative duties connected with the business activity of a players' agent. Only the players' agent himself is entitled to represent and promote the interests of players and/or clubs in connection with other players and/or clubs"*. Finally, the Regulations state that *"A players' agent shall be permitted to represent a player or a club only by concluding the relevant written contract with that player or club"* and *"Such a representation contract must contain the following minimum details; the names of the parties; the duration and the remuneration due to the players' agent; the general terms of payments; the date of completion and the signature of the parties"*.

q) The Appellant is an experienced agent and could not ignore the rule that, if he was acting in his own name, he would be required to sign a written representation contract with the Respondent and subsequently have such contract registered with the competent national associations, which requirement, among many, he never fulfilled. In this case, the Appellant cannot seek protection for his own breach of the formal requirements of the Regulations.

r) And when the Appellant was named a party to the Fileca Agreement, the said agreement included the bank details of SEG, just as all invoices in this connection were issued by SEG and made reference to this agreement between SEG and Fileca.

s) In any case, the Fileca Agreement does not provide grounds for the Appellant to request a commission from the Respondent, either. The Appellant is not a party to the Fileca Agreement, and the Appellant never produced any document proving that the Respondent had authorised or licensed Fileca to act on its behalf, which is disputed. There was no agency relationship between Fileca and the Club.

t) Furthermore, there is no such, even close, relationship between Fileca and the Club, which would lead to considering the two entities as one entity, thus making the Appellant responsible for paying any debt that Fileca might owe to the Appellant or to SEG. Also, the Respondent never assumed the financial obligations of Fileca.

u) Moreover, for the sake of completeness and assuming that both an oral agreement and the Fileca Agreement have been validly entered into, the latter would in any case supersede the oral agreement.

v) However, it must be noted that according to the Representation Agreement between SEG and the Player; *"the amount of the commission concerning the labour contract of the player with a club in a foreign country will not exceed 11% of the player's gross annual income"*. 11% of the Player's gross salary according to the Employment Contract amounts to EUR 505,747, which matches the amount paid in total by Fileca to SEG. Based on that, SEG has already been paid in full for any agency services provided in accordance with the Representation Agreement, which payments seem to be related only to the Player.

w) It must also be noted that the Appellant and his colleagues during the entire time used the words "we", "our" and "us" when referring to the agency activity and the alleged claim against the Club, substantiating the fact that it was SEG, and not the Appellant personally, who took part in the agency activity in connection with the transfer of the Player.

x) By definition, SEG is a legal entity distinct from its members, shareholders, owners and employees, and since the Appellant, together with his colleagues, acted on behalf of SEG at all times, SEG should have been a party to the FIFA proceedings.

y) The fact that only a licensed agent, and not a company, is allowed to file a claim before the FIFA regarding agent's fees, does not imply that a person is entitled to bring a claim before FIFA in his own name where such a claim belongs to a company of which he is an employee, partner or even an owner.

z) In any case, and without prejudice, the claim for payment of EUR 150,000 is time-barred in accordance with article 30 paragraph 4 of the Regulations, since more than two years have elapsed from the said instalment allegedly fell due on 31 July 2012 until the time when the Appellant filed his claim on 31 March 2015.

aa) It is underlined that, for the resolution of claims under the Regulations, the Regulations explicitly provided for a time limit, making the recourse to Swiss law unnecessary. However, in any case, the Club never acknowledged a debt towards either the Appellant or to SEG, which is why Article 135 of the SCO does not and cannot come into play under any circumstances.

bb) With regard to the alleged instalment of EUR 100,000, the Appellant and/or SEG unconditionally renounced its right to the amount when referring to the "final payment on K." in an e-mail to the Respondent when requesting the payment of the third instalment.

cc) In any case, the claimed commission is excessive and should be reduced as disproportional in accordance with Swiss law since a commission of EUR 500,000 has already been paid to SEG in relation to the transfer of the Player.

8. DISCUSSION ON THE MERITS

8.1 Initially, the Panel notes that it is undisputed that the Player, following negotiations in November and December 2009 and then January 2010, signed the Employment Contract with the Club on 13 January 2010, in which connection the Club and Venlo signed a transfer agreement regarding the transfer of the Player. It is also undisputed that the Agent was involved in the negotiations in connection with the said transfer, at least assisting the Player in the negotiations of his terms of employment with the Club.

8.2 Furthermore, the Panel holds that the Player signed the Consent Agreement, making the Player aware that the Appellant wished to assist the Club also in connection with the transaction, and that the Player accepted this arrangement, just as it is established that, on 29 December 2009, the Club forwarded the Draft Commission Agreement to the Appellant, which was followed by a meeting on 30 December 2009 between Mr Goes and Mr Kroes and with Mr Babaev participating by telephone conference.

8.3 Moreover, it is undisputed that the Appellant signed the Fileca Agreement on 13 January 2013 after the signing of the Employment Agreement and the transfer agreement between Club and Venlo. Finally, it is undisputed that Fileca, on 7 April 2010 and on 5 July 2011, paid EUR 250,000 to the bank account of SEG, meaning that SEG has received EUR 500,000 from Fileca in connection with the Player's transfer to the Club.

8.4 However, the Parties disagree over a range of issues, *inter alia*, whether any oral or written agreement was ever entered into between the Parties, and thus, whether the Appellant has a right to sue, whether the Agent ever assisted or acted on behalf of the Club in connection with the transaction, whether the Club due to its alleged close relationship to Fileca must be considered responsible for the actions and financial obligations of Fileca and, depending on the answers to these issues, the financial consequences.

8.5 Based on the Parties' submissions and the facts of the case, the Panel finds that the main issues to be resolved by the Panel are:

a) Did the Parties ever conclude a valid agreement according to which the Appellant assisted or acted on behalf of the Club and, if so, what were the terms of such agreement?

b) In case the answer under a) is in the negative, is the Club, due to its alleged close relationship to Fileca, to be considered responsible for the actions and financial obligations of Fileca?

c) Subject to the answer to the questions under a) and b), what are the financial consequences for the Parties?

a. Did the Parties ever conclude a valid agreement according to which the Appellant assisted or acted on behalf of the Club and, if so, what were the terms of such agreement?

8.6 To reach a decision on this issue, the Panel has conducted an in-depth analysis of the facts of the case and of the information and evidence garnered during the proceedings, including from the witness statements.

8.7 The Panel initially notes that the Appellant argues that the Parties entered into an agreement, oral or/and written, according to which the Appellant should render services to the Club until, *inter alia*, a transfer agreement between Venlo and the Club concerning the Player was signed and an employment agreement between the Club and Player was signed and came into force while, on the other side, the Club disputes that any agreement regarding such services was ever entered into between the Parties.

8.8 Based on the facts of the case and the Parties' submissions, the Panel finds that it is up to the Appellant to discharge the burden of proof to establish that such alleged agreement was ever concluded and, in the affirmative, the content of the relevant provisions of such agreement.

8.9 In doing so, the Panel adheres to the principle established by CAS jurisprudence that *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (...). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (*e.g.* CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).

8.10 The Panel further notes that the Respondent, in relation to the question as to whether a contract can be assumed to have been concluded between the Parties, argues that the Appellant never acted in his own name, but always on behalf of SEG, for which reason alone no agreement can be considered to have been concluded between the Club and the Player.

8.11 The Panel notes in this connection that the Regulations state, *inter alia*, as follows:

In the definitions:

> *"Players' agent: a natural person, who, for a fee, introduces players to clubs with a view to negotiation an employment contract or introduces two clubs to one another with a view to concluding a transfer agreement, in compliance with the provision set forth in these regulations".*

Article 3:

(1) *"Players' agents' activity may only be carried out by natural persons who are licensed by the relevant associations to carry out such activity.*

(2) *A players' agent may organise his occupation as a business as long as his employees' work is restricted to administrative duties connected with the business activity of a players' agent. Only the players' agent himself is entitled to represent and promote the interests of players and/or clubs in connection with other players and/or clubs".*

8.12 Based on the facts of the case and of the information and evidence garnered during the proceedings, including from the witness statements, the Panel finds that documentation has been submitted to prove that the Appellant has organized his business in such way that he is a partner in or a member of SEG, which implies, *inter alia*, that a substantial part of the Appellant's administrative duties, including duties pertaining to accounting and invoicing, are carried out by SEG. Besides, it has been stated to the Panel that fees for agency activities performed by registered Players' Agents under the auspices of SEG are invoiced by and paid to SEG, after which these fee payments are transmitted to the individual players' agents.

8.13 Given these circumstances, the Panel finds that it is not, *per se*, significant to the question as to who is the party to the contract and the legal person, whether the Appellant must be considered to have acted in his own name or, as for instance in the Representation Agreement with the Player, it is merely stated that SEG is "represented by" or, as in the Employment Contract where the Appellant has signed "on behalf of" SEG, if only it is the Appellant personally who is the responsible players' agent in the present matter. Similarly, the Panel finds that it is not, *per se*, of significance whether the correspondence, invoices, etc. contain the words "we", "us" and "our", even if it may formally be the Appellant who should be the sender of such correspondence. Thus, within the existing framework, the Appellant must be given a certain degree of freedom to organize his practical work.

8.14 The Panel notes in this connection that the Draft Commission Agreement drafted and forwarded by the Club on 29 December 2009 to the Appellant designated the Appellant as the party to the agreement.

8.15 As regard the question as to whether the Parties can be considered to have entered into an agreement on the Appellant's assistance to the Club in connection with the specific transaction, the Panel initially finds that the Draft Commission Agreement provides sufficient evidence to prove that the Club, at least at this point in time, intended to enter into an agreement with the Appellant on such assistance.

8.16 Based on the statements given during the proceedings and the fact that the Club has failed to call witnesses who were capable of rebutting such statements, the Panel further finds that evidence has been produced to prove that the terms of the Draft Commission Agreement had been agreed by the Appellant and Mr Babaev before the meeting apart from a few unresolved points, which were negotiated and concluded on 30 December 2009 at the meeting between Mr Goes, Mr Kroes and Mr Babaev participating by telephone conference.

8.17 The Panel also finds that sufficient evidence has been produced to prove that Mr Kroes, who is incidentally himself a registered Players' Agent with SEG, negotiated at this meeting on behalf of the Appellant and that it was solely the issue of payment dates that remained unresolved between the Parties prior to this meeting.

8.18 The Appellant argues that the Parties agreed at this meeting to advance the second, third and fourth payment dates from 31 December 2011, 31 December 2012 and 31 December 2013, respectively, to 31 March 2011, 31 July 2012 and 31 July 2013, respectively. This is disputed by the Respondent, which argues, *inter alia*, that the Respondent would in all circumstances have no logical grounds for accepting an agreement to advance the payment dates.

8.19 The Panel notes in relation to this that it has been submitted during the proceedings that the reason for amending the payment dates in question was that the last payment would in that case coincide with the expiry of the Player's Employment Contract with the Club, and the Appellant did not want to have an outstanding balance with the Club after the expiry of the Player's contract, as it would typically be problematic to collect payments from clubs where amounts were still outstanding after the expiry of an employment contract.

8.20 The Panel further notes that the amended payment dates are explicitly set out in the Fileca Agreement, and the Panel finds it has been proven that the Appellant was presented with the said agreement by Mr Babaev in Moscow on 13 January 2010 after the signing meeting.

8.21 In the light of these circumstances, and although the Panel sees no additional evidence to prove that a relationship exists between Fileca and the Club, the Panel finds that the Appellant has discharged the burden of proof to establish that the Parties entered into an oral agreement at the meeting on 30 December 2009, in which the Parties agreed that the Appellant should assist the Club in connection with the specific transaction.

8.22 The Panel finds, *inter alia* because the Appellant is named as a party to the Draft Commission Agreement drafted by the Respondent, that the Appellant is a party to this oral agreement, notwithstanding that the few unresolved terms were negotiated and concluded by Mr Kroes, on behalf of the Appellant. As such, the Panel is satisfied that the Appellant entered into an agreement with the Club, which entitles the Appellant to file a claim against the Club related to this agreement. Consequently, the Panel dismisses the Club's allegations that the Appellant has no right to sue.

8.23 The Panel further finds that the Appellant has discharged the burden of proof to show that the content of this oral agreement in essence corresponds to the terms set out in the Draft Commission Agreement since the payment dates for the last three instalments are instead considered to have been agreed for 31 March 2011, 31 July 2012 and 31 July 2013, respectively.

8.24 On the other hand, the Panel finds that the Appellant failed to discharge the burden of proof to show that a written agreement has been concluded between the parties. Further, the Panel finds no evidence to prove that such relationship exists between Fileca and the Club to establish that the Club must be treated as one entity for the purposes of this dispute and, accordingly, the debts of Fileca should be treated as the debts of the Club, as submitted by the Appellant.

8.25 Similarly, as a consequence of this, the Panel finds the fact that the Appellant has signed the Fileca Agreement and the fact that Fileca, until now, has paid EUR 500,000, do not imply that the oral agreement between the Parties must be deemed to have lapsed.

8.26 With regard to the oral agreement thus concluded between the Parties, the Panel subsequently notes that it appears in Article 11 of the Swiss CO that *"the validity of a contract is not subject to compliance with any particular form unless a particular form is prescribed by law"*.

8.27 The CAS has confirmed this point of departure, see for instance CAS 2013/A/3091 & 3093, in which the Panel stated: *"The Panel considers, that, absent any express rule to the contrary, an agreement between two parties does not have to follow any specific form and may, in fact, simply result for example, from a verbal agreement"*.

8.28 The Respondent refers in this connection to the Regulations, which state as follows:

Article 19:

"1) A players' agent shall be permitted to represent a player or a club only by concluding the relevant written contract with that player or club.

(…)

8) Players' agent shall avoid all conflicts of interest in the course of their activity. A players' agent may only represent the interest of one party per transaction. In particular, a players' agent is forbidden from having a representation contract, a corporation agreement or shared interests with one of the other parties' players' agent involved in the player's transfer or in the completion of the employment contract".

8.29 The Respondent submits that the Appellant, being an experienced players' agent, could not ignore that he was required to sign a written representation contract with the Club and subsequently to have such contract registered with the competent national association.

8.30 Furthermore, the Respondent argues that, assuming that the Parties entered into a valid oral agreement, such agreement would be in breach of the Regulations since it would constitute dual representation, which, even assuming the validity of the Consent Agreement, is not allowed pursuant to the Regulations.

8.31 The Respondent maintains that, in this case, the Appellant cannot seek protection for his own breach of the formal requirements of the Regulations.

8.32 The Panel initially agrees with the Respondent that the absence of a written agreement between the Parties implies non-compliance with the requirement of written form set out in the Regulations, and the Panel also agrees that, regardless of the content of the Consent Agreement, this is a case of dual representation.

8.33 However, the Panel agrees with the Appellant that the lack of form in the oral agreement and the fact that the latter is apparently in breach of the provision regarding dual representation does not invalidate the entire oral agreement between the Parties.

8.34 Pursuant to Article 31 of the Regulations, *"Sanctions may be imposed on any players' agent, player, club or association that violates, these regulations, their annexes or the statutes or any other regulations of FIFA, the confederations or the associations"*.

8.35 According to Article 33 of the Regulations, such sanctions may be *"a reprimand or a warning; a fine of a least CHF 5,000; a suspension of license for up to 12 months; a license withdrawal; a ban on taking part in any football-related activity. These sanctions may be imposed separately or in combination"*.

8.36 The Panel finds that no such sanction is thus available in the Regulations that would lead to the invalidation of the entire agreement, and the oral agreement between the Parties is therefore considered valid regardless of the Appellant's failure to comply with the Regulations. This is in line with CAS jurisprudence (see CAS 2011/A/2660 and CAS 2013/A/3443). Thus, the Panel confirms that, as a party to a valid agreement, the Appellant has the right to sue in this case.

b. In case the answer under a) is in the negative, is the Club, due to its alleged close relationship to Fileca, to be considered responsible for the actions and financial obligations of Fileca?

8.37 In view of the statements provided under a) above, in particular paragraph 8.22, any additional statements to address this question are no longer relevant.

c. What are the financial consequences for the Parties of the oral agreement?

8.38 As mentioned above (paragraph 8.21), the Panel bases its decision on the premise that the Parties have agreed that the Appellant is entitled to receive remuneration for his services in connection with the transaction regarding the Player's transfer from Venlo to the Club, in an amount of EUR 750,000, of which the Appellant acknowledges to have received payment of the first two instalments in a total amount of EUR 500,000.

8.39 The Panel finds in this connection that it is not significant to the Parties' agreement, nor to the Club's resulting payment obligations, whether the various aspects of the services rendered by the Appellant were made on behalf of or in the interests of the Player and/or the Club since the Parties agreed that the Club alone should pay the Appellant for his services. Similarly, the Panel finds it of no significance that the Appellant has received payment via Fileca as it is considered that the two payments from Fileca were made in partial fulfilment of the Appellant's claim for remuneration relating to the specific transaction.

8.40 Based on the above, the Appellant has lodged a claim for payment of the remaining two instalments of EUR 150,000, which fell due on 31 July 2012, and EUR 100,000, which fell due on 31 July 2013, respectively.

8.41 The Respondent subsidiarily argues that the total remuneration of EUR 750,000 is excessive, in conflict with the content of the Representation Agreement, and must be reduced as disproportional pursuant to Swiss law or, alternatively, that the instalment of EUR 150,000 is

time-barred in accordance with article 30 paragraph 4 of the Regulations and, finally, that the Appellant in any case has renounced its right to the fourth instalment of EUR 100,000.

8.42 With regard to the submission that the total remuneration of EUR 750,000 is excessive and must be reduced as disproportionate pursuant to Swiss law, the Panel initially notes, as mentioned by the Appellant, that within the world of sport, a direct correlation does not always exist between the extent of services rendered by an agent in terms of hours spent and the value of such services for the parties involved.

8.43 The Panel further notes that the current recommendations for the size of payments to intermediaries, as later adopted by FIFA (Regulations for Working with Intermediaries), partly are recommendations alone, partly do not apply to the specific agreements, and the Panel finds moreover that the Respondent cannot rely on the provision of the Representation Agreement, which has only been entered into between the Appellant and the Player concerning the size of remuneration to the Appellant for providing assistance to the Player.

8.44 Based on the foregoing, and since the Panel also finds that evidence has been produced to prove that the Respondent was even very interested in ensuring the Player's transfer to the Club, which was carried into effect with the assistance of the Appellant, and with reference to the specific values involved in such transfer, the Panel finds no grounds for reducing the remuneration payable to the Appellant pursuant to the oral agreement between the Parties.

8.45 With regard to the Respondent's submission that the instalment of EUR 150,000 is time-barred in accordance with article 30 paragraph 4 of the Regulations, the Respondent submits that more than two years have elapsed from the alleged due date, 31 July 2012, before the Appellant filed his claim with FIFA on 31 March 2015.

8.46 In this connection, the Panel notes that article 30 paragraph 4 of the Regulations states as follows: *"The Players' Status Committee or single judge (as he case may be) shall not hear any case subject to these regulations if more than two years have elapsed from the event giving rise to the dispute or more than six months have elapsed since the players' agent concerned has terminated his activity. The application of this time limit shall be examined ex officio in each individual case".*

8.47 The Appellant, on the other hand, refers to Article 135 of the SCO, which states, *inter alia*, *"The limitation period is interrupted: 1) if the debtor acknowledges the claim"*, which means that the limitation period is interrupted by Mr Emvenov by e-mail of 15 May 2013, in which Mr Emvenov, on behalf of the Club, acknowledges to pay the instalment concerned *"in the first days of June"*. The effect of this is that the limitation period, under all circumstances, must only be calculated from early June 2013 when it became clear that the Club also failed to comply with these new terms of payment.

8.48 Given the undisputed application of the Regulations to determine this case (paragraphs 6.6 – 6.11), and given the fact that the Regulations do not provide for the consequences of a possible acknowledgement to be prepared to pay an outstanding debt, the Panel admits that, in compliance with CAS 2012/A/2929, it may in certain cases be relevant to consider that the

Regulations must be deemed to contain a gap, or at least an ambiguity, which might lead to the subsidiary application of Swiss law.

8.49 The Panel finds, that the Regulations contain a *lacuna*, or at least an ambiguity, as there is no provision providing for the consequences of a possible acknowledgement of the debt. Nor is there any provision providing for the possible interruption of the time limitation period or a provision specifically stating that the limitation period of two years set out in article 30 paragraph 4 of the Regulations can under no circumstances be interrupted.

8.50 The Panel finds that under certain circumstances, unless clearly determined otherwise, the basic rule of Swiss law contemplated in Article 135 of the SCO is also applicable to relations between football clubs. In the spirit of good relations that should be encouraged in the world of sport, it must be possible for a limitation period to be interrupted in case the debtor has acknowledged its debt and states that the outstanding amount is to be paid within a particular period of time, and if the *bona fida* creditor relies on such new payment date (see CAS 2012/A/2919 paragraphs 58-70).

8.51 Article 135 of the SCO provides as follows:

"Die Verjährung wird unterbrochen:

1. durch Anerkennung der Forderung von seiten des Schuldners, namentlich auch durch Zins- und Abschlagszahlungen, Pfand- und Bürgschaftsbestellung;

2. durch Schuldbetreibung, durch Schlichtungsgesuch, durch Klage oder Einrede vor einem staatlichen Gericht oder einem Schiedsgericht sowie durch Eingabe im Konkurs".

Or, in an unofficial English translation:

The limitation period is interrupted:

1. if the debtor acknowledges the claim and in particular if he makes interest payments or part payments, gives an item in pledge or provides surety;

2. by debt enforcement proceedings, an application for conciliation, submission of a statement of claim or defence to a court or arbitral tribunal, or a petition for bankruptcy.

While Article 137(1) of the SCO reads:

"Mit der Unterbrechung beginnt die Verjährung von neuem".

Or, in an unofficial English translation:

"A new limitation period commences as of the date of the interruption".

8.52 The Panel observes, that it is undisputed that an invoice regarding the third instalment of EUR 150,000 was sent on 31 July 2012 by SEG to Fileca stating, *inter alia, "In accordance with the Agreement between SEG Netherlands and Fileca Trading Limited signed 13.01.2010 we herewith provide you with the third instalment in relation to the services provided by SEG"*. The said invoice was never paid and, on 13 May 2013, following several reminders to the Club by the Agent and by Mr Kroes, the latter received an e-mail from Mr Evmenov of the Club, stating, *inter alia*, as follows: *"Hi Alex. Any news? Please send us the invoice for K. one more time, so we can make the payment"*.

8.53 Mr Kroes forwarded the invoice to Mr Evmenov on the same date, and on 15 May 2013, Mr Evmenov replied by e-mail as follows: *"Hey, Alex. Thanks for the invoice. We gonna pay you in the first days of June"*. However, according to the Club, the Player later instructed the Club not to make any payment on his behalf.

8.54 Based on that, the Panel finds that the content of Mr Evmenov's e-mail of 15 May 2013 wherein reference is made specifically to the invoice regarding the third instalment confirming that *"we gonna pay you in the first days of June"* is evidently a recognition of the debt of EUR 150,000 to the Appellant, which, since Mr Evmenov has no connection to Fileca, must be considered to have been made on behalf of the Respondent.

8.55 The Panel notes, that the fact that the e-mail was forwarded to Mr Kroes, and not directly to the Appellant, has no relevance in this case, since the Respondent had previously accepted that Mr Kroes was in fact acting on behalf of the Appellant, *e.g.* at the meeting on 30 December 2009.

8.56 Thus, the Panel finds that the acknowledgement by Mr Evmenov in his e-mail of 15 May 2013 acting as a representative of the Respondent constitutes an act interrupting the limitation period, which, pursuant to Article 137(1) of the SCO, triggers the consequence that a new two-year limitation period commenced as from the first days of June 2013.

8.57 Given these circumstances, combined with the fact that the Appellant on 31 March 2015, *i.e.* within the new limitation period running from the first days of June 2013, lodged his claim with the FIFA PSC against the Respondent requesting from the latter the payment of EUR 250,000, the Panel finds that the Appellant's claim to pay the instalment which initially fell due on 31 July 2012, EUR 150,000, should be deemed admissible.

8.58 With regard to the Respondent's submission that the Appellant in any case has renounced its right to the fourth instalment of EUR 100,000 by referring to the "final payment on K." in an email dated 26 July 2013 to the Respondent when requesting the payment of the third instalment of EUR 150,000, the Panel finds that the Respondent has failed to discharge the burden of proof to show that this was not solely, as alleged by the Appellant, an offer to reduce the Club's payment obligation in case the amount of EUR 150,000 was paid immediately, which never happened.

8.59 Based on the above, the Panel finds that the Appellant has not renounced its right to be paid the last outstanding instalment of EUR 100,000, which amount the Respondent is therefore obliged to pay to the Appellant.

8.60 Finally, and since the Appellant's claim for interest was not disputed by the Respondent, the Panel finds that the outstanding instalment of EUR 150,000 owed to the Appellant is subject to interest at the rate of 5% *p.a.* from the due date, *i.e.* from 31 July 2012, while the instalment of EUR 100,000 owed to the Appellant is subject to interest at the rate of 5% *p.a.* from the due date, *i.e.* from 31 July 2013

9. SUMMARY

9.1 Based on the foregoing and after taking into consideration all the evidence produced and all arguments made, the Panel finds that the Parties entered into a valid oral agreement regarding the Appellant's assistance to the Club in connection with the Player's transfer from Venlo to the Club, according to which the Respondent shall pay the amount of EUR 750,000 to the Appellant.

9.2 Considering that the Appellant already received EUR 500,000, the Panel concludes that the Appellant is entitled to receive EUR 250,000 from the Respondent.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 28 April 2016 by Mr Kees Ploegsma against the decision rendered on 16 March 2016 by the Players' Status Committee of the *Fédération Internationale de Football Association* is upheld.

2. The decision rendered on 16 March 2016 by the Players' Status Committee of the Fédération Internationale de Football Association is set aside and replaced by this arbitral award.

3. PFC CSKA Moscow is ordered to pay to Mr Kees Ploegsma an amount of EUR 250,000 (two hundred fifty thousand Euro), subject to interest at the rate of 5% p.a. as follows:

   - EUR 150,000 from 31 July 2012;
   - EUR 100,000 from 31 July 2013.

(…)

6. All further and other requests for relief are dismissed.