



**Arbitration CAS 2017/A/5352 FK Sileks v. GFK Dubočica Leskovac, award of 24 April 2018**

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

*Football*

*Waiver of training compensation*

*Standing to be sued*

**Under Swiss law, as a principle, a party has standing to be sued (“*légitimation passive*”) only if it has some stake in the dispute because something is sought against it in the CAS proceeding and if it is personally obliged by the “disputed right” at stake.**

**I. PARTIES**

1. FK Sileks is a football club with its registered office in Kratovo, FYROM. It is a member of the Football Federation of FYROM, itself affiliated with the Fédération Internationale de Football Association (“FIFA”).
2. GFK Dubočica Leskovac is a club with its registered office in Leskovac, Serbia. It is a member of the Football Association of Serbia (“FAS”), which is, in turn, affiliated with FIFA.

**II. FACTUAL BACKGROUND**

**A. Background facts**

3. Below is a summary of the relevant facts and allegations based on the Parties’ written submissions and evidence adduced. References to additional facts and allegations found in the Parties’ written submissions and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he deems necessary to explain his reasoning.

**B. D.’s background**

4. The player D. (hereinafter the “Player”) is of Serbian nationality and was born in 1995.
5. According to the player passport issued by the FAS, the Player was registered as an amateur with:

- GFK Dubočica Leskovac between 23 August 2005 and 2 February 2011;
  - FK Sloga Leskovac between 27 January 2011 and 1 August 2012;
  - FK Jedinstvo Bošnjace between 12 August 2015 and 17 February 2016;
  - FK Tabane 1970 between 17 February 2016 and 14 June 2016.
6. It is undisputed that the Player first turned professional, when he entered into an employment relationship and signed a contract with FK Sileks on 27 June 2016.

**C. The Proceedings before the Single Judge of the sub-committee of the FIFA Dispute Resolution Chamber**

7. In April 2017, FK Tabane 1970, FK Sloga Leskovac, GFK Dubočica Leskovac and FK Jedinstvo Bošnjace (the “Training Clubs”) each filed a separate claim with FIFA against FK Sileks, requesting the payment of training compensation. In four distinct decisions, the same Single Judge of the sub-committee of the FIFA Dispute Resolution Chamber (“FIFA Single Judge”) fully accepted the respective claims of the Training Clubs.
8. More specifically, on 6 April 2017, GFK Dubočica Leskovac filed a claim with FIFA against FK Sileks, requesting the payment of training compensation amounting to EUR 35,833, plus interest at a rate of 5% *p.a.* as from 24 September 2016. The case was recorded under TMS 1442/pam.
9. In spite of having been duly invited to do so, FK Sileks did not submit any reply before the FIFA Single Judge to the claim filed by GFK Dubočica Leskovac.
10. In a decision issued on 18 July 2017, the FIFA Single Judge awarded training compensation to GFK Dubočica Leskovac based upon the following considerations:
- the Player had signed his first professional contract with FK Sileks;
  - the number of months that he considered the Player had been registered with the claimant, *i.e.* from 23 August 2005 until 2 February 2011;
  - the fact that FK Sileks is a category III club, under the terms of the applicable FIFA Regulations on the Status and Transfer of Players (“RSTP”);
  - the parameters and indicative amounts reflected in Annex 4 of the RSTP.
11. Consequently, in his decision of 18 July 2017, the FIFA Single Judge ordered FK Sileks to pay:
- to GFK Dubočica Leskovac “***within 30 days*** of the date of notification of this decision, the amount of EUR 35,833 plus 5% interest *p.a.* on said amount as of 24 September 2016 until the date of effective payment”;
  - to FIFA “The final costs of the proceedings in the amount of CHF 5,000 (...) ***within 30 days*** as from the date of the notification of the present decision (...)”.

12. On 4 September 2017, the Parties were notified of the decision issued by the FIFA Single Judge (hereinafter the “Appealed Decision”).
13. The decisions in the cases opposing FK Sileks and FK Tabane 1970 (recorded under TMS 1474/pam), FK Sileks and FK Sloga Leskovac (recorded under TMS 1446/pam) as well as FK Sileks and FK Jedinstvo Bošnjace (recorded under TMS 1422/pam) were also issued on 18 July 2017, and the interested Parties were notified on 4 September 2017.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

14. On 21 September 2017, FK Sileks lodged its Statement of Appeal and Appeal Brief with the CAS in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (the “Code”). In this document, FK Sileks requested that the procedure be referred to a Sole Arbitrator.
15. It must be observed that, with the same Statement of Appeal and Appeal Brief, FK Sileks challenged the four decisions issued by the FIFA Single Judge, for the purpose of consolidating the four procedures initiated against the Training Clubs. Eventually, the CAS Court Office informed the Parties that a consolidation was not possible as the requirements of Article 52, para. 4, of the Code had not been met. As a consequence, the procedure initiated against FK Tabane was recorded under CAS 2017/A/5350, the procedure initiated against FK Sloga Leskovac was recorded under CAS 2017/A/5351, the procedure initiated against GFK Dubočica Leskovac was recorded under CAS 2017/A/5352 and the procedure initiated against FK Jedinstvo Bošnjace was recorded under CAS 2017/A/5353.
16. On 6 October 2017, the CAS Court Office acknowledged receipt of the Statement of Appeal and Appeal Brief of FK Sileks as well as of its payment of the CAS Court Office fee. It granted GFK Dubočica Leskovac a deadline of twenty days from receipt of the Appeal Brief to file its Answer. The CAS Court Office also invited:
  - GFK Dubočica Leskovac to comment within five days on the request of FK Sileks to submit the present matter to a Sole Arbitrator;
  - the Parties to state within three days whether they agreed to submit the present procedure to the same Panel/Sole Arbitrator as in the proceedings CAS 2017/A/5350, CAS 2017/A/5351 and CAS 2017/A/5353.
17. On 10 October 2017, FK Sileks expressly accepted that the present procedure and the proceedings CAS 2017/A/5350, CAS 2017/A/5351 and CAS 2017/A/5353 be submitted to the same Panel/Sole Arbitrator.
18. On 13 October 2017, GFK Dubočica Leskovac sent a document entitled “STATEMENT OF DEFENCE” to the CAS Court Office, which reads, *inter alia*, as follows (“Statement of Defence”):

*“(…) GFK Dubocica inherited the entire traditin of the old FK Dubocica, a bunch of obligations stemming from the old FK Dubocica, and they thought they have some rights inherited from the old FK Dubocica.*

*Hereby we wish to inform Court that we do not have money to continue with the proceedings before CAS and use the opportunity to apologize to FK Sileks if we have done any damage to them.*

***In accordance with the above we acknowledge that the Appellant’s request has been established”.***

19. On 25 October 2017, GFK Dubočica Leskovac sent a document entitled “RESPONDENTS LETTER” to the CAS Court Office, which reads, *inter alia*, as follows (“Letter of 25 October 2017”):

*“(…) We agree with each claim except with the sugestion relating to the costs of the proceedings.*

*Our club did not want to enter into the proceedings before CAS. We didn’t know about new evidence, we did not know about that dokument until the start of this procedure. The moment the complainant filed an appeal and presented new proofs, the Respondent immediately acknowledged the merits of the request of FK Sileks.*

*FK Sileks so far did not inform respondent that they have a document that does not require training compensation to be paid for the player, neither in the procedure before FIFA not before or after the case.*

*In accordance with the above, I ask you to releas us from the obligation to pay the costs of the proceedings”.*

20. On 19 October 2017, FK Sileks sent a letter to the CAS Court Office whereby it highlighted the fact that, with its Statement of Defence, GFK Dubočica Leskovac was accepting the “*appeal in full as justified [and recognized] that it [was] not entitled on training compensation regarding the registration of the player*”. In this document, FK Sileks also amended the requests for relief contained in its Statement of Appeal and Appeal Brief.
21. As GFK Dubočica Leskovac failed to provide its position on the request of FK Sileks for a Sole Arbitrator as well as on the submission of the present procedure to the same Panel/Sole Arbitrator as CAS 2017/A/5350, CAS 2017/A/5351 and CAS 2017/A/5353, the issue was referred to the President of the CAS Appeals Arbitration Division.
22. On 30 October 2017, the CAS Court Office advised the Parties that the President of the CAS Appeals Arbitration Division decided to submit the present matter to a Sole Arbitrator, who would also be appointed for the cases CAS 2017/A/5350, CAS 2017/A/5351 and CAS 2017/A/5352.
23. On 6 November 2017, the CAS Court Office observed that GFK Dubočica Leskovac failed to submit an Answer (distinct from its Statement of Defence or from its Letter of 25 October 2017) within the given time limit and invited the Parties to state by 13 November 2017 whether their preference was for a hearing to be held in the present matter.
24. On 7 November 2017, FK Sileks confirmed to the CAS Court Office that it preferred for the matter to be decided solely on the basis of the Parties’ written submissions, whereas GFK Dubočica Leskovac failed to express its position with regards to a hearing.

25. On 24 November 2017, the CAS Court Office advised the Parties that the President of the CAS Appeals Arbitration Division appointed Mr Petros C. Mavroidis, Professor, Commugny, Switzerland, as Sole Arbitrator.
26. On 13 December 2017, the CAS Court Office informed the Parties that the Sole Arbitrator considered himself to be sufficiently well informed to decide this matter without the need to hold a hearing. Mr Patrick Grandjean was appointed and acted as ad hoc clerk.
27. On 28 December 2017, the CAS Court office sent the parties the Order of Procedure which was returned duly signed by FK Sileks on 29 December 2017. GFK Dubočica Leskovac did not return a duly signed copy of the said document within the prescribed deadline.

#### IV. SUBMISSIONS OF THE PARTIES

##### A. The Appellant

28. FK Sileks submitted the following requests for relief:
  - “ To accept and upheld the current appeal before the CAS in full.
  - Issue a new decision which will replace and set aside the challenged decisions case nr. TMS 1442/pam in which it would be stated that the claim of the Respondent is without grounds for claim and void, therefore the Appellant should be released from the obligation to pay the before awarded sum of money in the before mentioned FIFA challenged decision.
  - The final amount of the costs, including the Court Office fee, the administrative costs of the CAS, the costs and fees of the Sole Arbitrator and a contribution to the expenses of the CAS, as well as the Appellant contribution towards the legal fees and other expenses incurred in connection with this proceeding in the fixed sum of EUR 7.200,00 : 4 = EUR 1.800,00 (divided equally to every of all 4 (four) Respondents) shall be bear by the Respondent.
  - The Appellant is not liable to pay the procedural costs awarded against it in the Appealed Decisions”.
29. The submissions of FK Sileks, in essence, may be summarized as follows:
  - Before signing the employment contract with the Player, FK Sileks made sure that no training compensation would be claimed. In this regard, it is FK Sileks position that GFK Dubočica Leskovac “has stopped working (“ceased to exist”) as a football club as of April 2012 for which it’s not understandable with what base or how within the scope of the applicable law and procedural rules is entitled to file a claim at all (...)”. In support of its allegation, FK Sileks filed a confirmation dated 13 June 2016, obtained by the Player and issued by the City Football Association Leskovac, according to which “FC “Dubochica” (Leskovac) with no re-registration in APR April 2012, has stopped working”.

- Under these circumstances, GFK Dubočica Leskovac had no right to claim training compensation and the proceedings initiated before FIFA came as a surprise to FK Sileks. GFK Dubočica Leskovac had manifestly acted, in its view, in bad faith.
- In view of the Statement of Defence sent by GFK Dubočica Leskovac to the CAS Court Office on 13 October 2017, *“it is very easy and without any complexity to conclude that the Respondent acknowledges and accepts the Appellant’s appeal in full as justified with legal grounds and recognizes that it is not entitled on training compensation regarding the registration of the player D. for FK Sileks Kratovo on 27 June 2016. Therefore, there is no room to enter into further discussion about the Respondent’s claim for training compensation. This recognition and confession by the Respondent leads to the clear factual and legal situation about the case at hand”*.

## **B. The Respondent**

30. GFK Dubočica Leskovac did not file any submission other than the Statement of Defence and its Letter sent to the CAS Court Office on 13 October 2017 and 25 October 2017, respectively.

## **V. JURISDICTION**

31. The jurisdiction of CAS, which is not disputed, derives from Articles 57 *et seq.* of the applicable FIFA Statutes (April 2016 edition) and Article R47 of the Code.
32. It follows that CAS has jurisdiction to decide on the present dispute.
33. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

## **VI. ADMISSIBILITY**

34. The appeal is admissible as FK Sileks submitted it within the deadline provided by Article R49 of the Code as well as by Article 58 para. 1 of the applicable FIFA Statutes. It complies with all the other requirements set forth by Article R48 of the Code.

## **VII. APPLICABLE LAW**

35. Article R58 of the Code provides the following:

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

36. The present case was submitted to FIFA on 6 April 2017, *i.e.* after 1 January 2017, 27 April 2016 and 1 June 2016, which are the dates when a) the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, edition 2017, b) the FIFA Statutes, edition 2016 and c) the RSTP, edition 2016, came into force. These are the editions of the rules and regulations under which the present case shall be assessed.
37. Pursuant to Article 57 para. 2 of the applicable FIFA Statutes, "[t]he provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".
38. As a result and in light of the foregoing, subject to the primacy of applicable FIFA's regulations, Swiss Law shall apply complementarily, whenever warranted.

## VIII. MERITS

39. FK Sileks is asking the CAS to set aside the Appealed Decision, which awarded GFK Dubočica Leskovac training compensation in the amount of "EUR 35,833 plus 5% interest *p.a.* on said amount as of 24 September 2016 until the date of effective payment" and ordered FK Sileks to bear the "final costs of the proceedings [before FIFA] in the amount of CHF 5,000 (...) **within 30 days** as from the date of the notification of the present decision".
40. In support of its submissions, FK Sileks claims that GFK Dubočica Leskovac does not exist anymore, and, therefore, it cannot be awarded any training compensation. If the argument by FK Sileks were to be followed, it would imply that GFK Dubočica Leskovac obviously lacks the capacity to be sued. Under these circumstances, the Sole Arbitrator observes that there is some contradiction in the position adopted by FK Sileks, which, on the one hand claims that GFK Dubočica Leskovac has ceased to exist, but, on the other, has filed an appeal before the CAS against this club.
41. In light of the above considerations, the main issues to be resolved by the Sole Arbitrator in deciding this dispute are the following ones:
  - Has GFK Dubočica Leskovac the standing to be sued?
  - Has GFK Dubočica Leskovac waived all rights to claim training compensation?

### A. Has GFK Dubočica Leskovac the standing to be sued?

42. If GFK Dubočica Leskovac would not exist, it would obviously lack the capacity to be sued.
43. According to the Swiss Federal Tribunal, the prerequisite for the standing to be sued is to be treated as an issue of merits, and not as a question for the admissibility of an appeal (Decision of the Swiss Federal Tribunal ATF 136 III 365 at. 2.1). This jurisprudence has been followed by numerous CAS Panels (see DE LA ROCHEFOUCAULD E., *Standing to be sued, a procedural issue before the [CAS]*, in CAS Bulletin 1/2010, p. 51 and references).

44. CAS Panels have consistently noted that neither the CAS Code nor the FIFA Regulations contain any specific rule regarding the standing to be sued issue (see DE LA ROCHEFOUCAULD E., *op. cit.*, p. 51 and references). Therefore, the question of whether or not GFK Dubočica Leskovac has the standing to be sued must be derived from the Swiss law, which applies on subsidiary basis.
45. Under Swiss law, as a principle, a party has standing to be sued (*“légitimation passive”*) only if it has some stake in the dispute because something is sought against it in the CAS proceeding (see for instance CAS 2015/A/4335 para. 51) and if it is personally obliged by the “disputed right” at stake (ATF 107 II 82 consid. 2a - CAS 2013/A/3301 para. 93).
46. FK Sileks claims that GFK Dubočica Leskovac does not exist anymore and therefore cannot be awarded any training compensation. In support of its submission, it filed a statement released by the City Football Association Leskovac.
47. The Sole Arbitrator notes that there is no further elaboration regarding the identity of the City Football Association Leskovac, nor any explanation of where it derives its legitimacy to confirm in binding manner that *“FC “Dubochica” (Leskovac) with no re-registration in APR April 2012, has stopped working”*.
48. It is unquestionable though, that GFK Dubočica Leskovac exists. This legal entity appeared before FIFA and was awarded training compensation in a decision issued by the FIFA Single Judge on 18 July 2017. Whether this club is the same one as the club which trained the Player from 23 August 2005 to 2 February 2011, or whether it is its legal successor can remain unanswered in view of the outcome of the present proceedings. The fact is that GFK Dubočica Leskovac was awarded training compensation in the first instance and, therefore, has a “legitimate interest” to appear before the CAS in view of the financial implications at stake. Recall that, as a matter of fact, FK Sileks has submitted that the Appealed Decision must be set aside, that it is not obliged to pay to GFK Dubočica Leskovac the awarded training compensation, and that the latter club must bear the costs of the present arbitral proceedings.
49. Accordingly, the Sole Arbitrator holds that GFK Dubočica Leskovac has standing to be sued.

**B. Has GFK Dubočica Leskovac waived all rights to claim training compensation?**

50. In its Statement of Defence filed on 13 October 2017, GFK Dubočica Leskovac *“acknowledge that the Appellant’s request has been established”*. Furthermore, in its Letter of 25 October 2017, it declared that *“[it agreed] with each claim except with the suggestion relating to the costs of the proceedings. (...) [GFK Dubočica Leskovac] didn’t know about new evidence, [it] did not know about that dokument until the start of this procedure. The moment the complainant filed an appeal and presented new proofs, the Respondent immediately acknowledged the merits of the request of FK Sileks. (...)”*.
51. In view of the content of the above Statement of Defence and the Letter of 25 October 2017, the Sole Arbitrator finds that GFK Dubočica Leskovac accepts the fact that it is not entitled to the payment of any training compensation with respect to the Player. These documents were printed with the letterhead of GFK Dubočica Leskovac and were sent to the CAS Court Office

with the reference number of the present dispute (CAS 2017/A/5352). Moreover, GFK Dubočica Leskovac has not doubted their authenticity, implicitly thus, acquiescing to their content. Under these circumstances, the Sole Arbitrator does not see any reason to question either the authenticity or the accuracy of the Statement of Defence and of the Letter of 25 October 2017 as well as the submissions contained therein.

52. On the basis of the above findings, it is clear that the Appealed Decision was incorrect and should be set aside.

## **ON THESE GROUNDS**

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

1. The appeal filed by FK Sileks against the decision issued by the Single Judge of the sub-committee of the FIFA Dispute Resolution Chamber (TMS 1442/pam) on 18 July 2017 is upheld.
2. The decision issued by the Single Judge of the sub-committee of the FIFA Dispute Resolution Chamber (TMS 1442/pam) on 18 July 2017 is set aside.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.