



Arbitration CAS 2018/A/5621 Nicolas Gabriel Franco v. Fédération Internationale de Football Association (FIFA) & Sportovni Klub Slavia Praha, award of 11 June 2019

Panel: Mrs Svenja Geissmar (United Kingdom), Sole Arbitrator

Football

Players' agent fees to be paid by the club

Determination of the proper respondent

Consequences of a request for reimbursement of an advance of costs

1. According to Article R48 of the CAS Code, the appellant has the responsibility to designate **“the name and full address of the Respondent(s)”** in the statement of appeal. It is in line with Article 221 para 1 of the Swiss Code of Civil Procedure according to which a claimant must specify the parties to the proceedings in his or her statement of claim. Once the claimant has identified the respondent, he or she is not allowed to substitute the original respondent by another respondent. Yet, rectification is possible in some limited cases, namely if the real respondent could be identified on the basis of elements of the file or if the claim could not refer to any subject other than the real respondent and not to the respondent mentioned by mistake. It is thus important to distinguish cases in which the denomination of the respondent in the statement of claim is unclear or was affected by a simple “editorial error” and cases which involve an actual modification of the petition.
2. While paying the advance of costs is a requirement *sine qua non* to lodge a claim in front of FIFA, a request for the reimbursement of an advance of costs paid for proceedings before FIFA should *a contrario* be considered an abandonment of a claim.

I. PARTIES

1. Mr Nicolas Gabriel Franco (the “Appellant” or the “Agent”) is a player’s agent. The Appellant holds a license issued by the Football Association of Serbia since 2003.
2. The Fédération Internationale de Football Association (the “First Respondent” or “FIFA”) is the international federation governing the sport of football worldwide. It is headquartered in Zurich, Switzerland.
3. Sportovni Klub Slavia Praha (the “Second Respondent” or “Sportovni Klub Slavia Praha”) is a Czech sports club closely associated with SK Slavia Praha (“SK Slavia”) which is a Czech football club and member of the Football Association of the Czech Republic (“FACR”), which is affiliated with the FIFA. SK Slavia currently competes in the Czech First League, the highest

football division in the Czech Republic.

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions and evidence produced in connection with these proceedings. Additional facts and allegations found in the parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion below. While the Sole Arbitrator has considered all the facts, evidence, allegations and legal arguments submitted by the parties in the present proceedings, she refers in her award only to the submissions and evidence she considers necessary to explain her reasoning.

A. The Agreement between the Agent and SK Slavia in respect of the recruitment of D.

5. On 30 January 2014, the Agent negotiated an employment contract (the "Employment Contract") between his client, D. (the "Player"), and SK Slavia, valid as from 1 February 2014 until 30 June 2016, including an option for SK Slavia to extend the Employment Contract until 30 June 2017.
6. On that same day, the Agent also concluded an agreement (the "Agreement") with SK Slavia to determine the payment of his fees in respect with the recruitment of the Player to SK Slavia, according to which SK Slavia agreed to pay the Agent the fixed amount of EUR 100,000 for the work carried out. Such amount was to be paid no later than 28 February 2014.
7. With respect to the payment of the services provided by the Agent in connection with the Employment Contract, Article 1.1 and Article 2 of the Agreement read as follows:

"Article 1 – Fee

- 1.1 *For the services the Players' Agent provides in connection with the formation of the Employment Contract, the Players' Agent will receive the following fee from Slavia, in which regard the Players' Agent declares that no part of this fee will inure to the benefit of the Player or a natural or legal person designated by the Player:*

a nonrecurring fee (lump sum) in the amount of € 100.000, -. The fee referred to in the preceding sentence will be paid as follows:

** as a lump sum, no later than 28th of February 2014:*

Slavia will pay the fee within 30 days of receipt of the invoice. The Players' Agent will send the invoice to Slavia in accordance with Article 2 of this agreement".

"Article 2 – Itemization of Invoices

- 2.1 *The Players' Agent will send Slavia an invoice for the nonrecurring payment (lump sum) Slavia owes the Players' Agent, in accordance with Article 1 paragraph 1 of this agreement, within 10 days*

after the signing of this agreement. The invoice must specify the services provided by the Players' Agent to which the invoice relates, which services can only be the services defined in Article 1 paragraph 2. Slavia must have paid this invoice within 30 days of receipt of the invoice”.

8. Moreover, Article 1.5 of the Agreement stipulates that *“in case of a future transfer of the Player from Slavia to a third club, the Players Agent is entitled to 5% (in words: five percent) of the Net-indemnification regarding this transfer”*.
9. The Agreement also contains a section entitled *“End of the agreement”*, under which Article 3.2 provides that *“if the Employment contract ends early (i.e. before the agreed end date) for any reason, this agreement and Slavia’s obligation to pay fees pursuant to this agreement will end by operation of law (without notice being required) on the end date of the Employment Contract”*. Furthermore, Article 3.3 of the Agreement repeats the same principle *“if the Employment Contract is renewed (during its term) without involvement of the Players’ Agent”*.
10. On 3 February 2014, the Agent sent his invoice to SK Slavia but never received any payment. Thereafter, the Agent again contacted SK Slavia requesting the payment of his fees.
11. On 23 April 2014, SK Slavia sent a letter to the company Media Sport International LLC, represented by the Agent. In its correspondence, SK Slavia acknowledged the services of the Agent as they related to the recruitment of the Player, as well as the agreement regarding the payment of his fees. SK Slavia further apologized for the delay in payment and undertook to pay the Agent no later than 1 June 2014 the sum of EUR 100,000 plus 5% as compensation from 1 March 2014 until the day of the payment.
12. As of 1 June 2014, the Agent had not received any payment from Slavia. So, on 2 June 2014 he sent an email to SK Slavia requesting it to fulfil its financial obligation under the Agreement. The Agent attached to his email an updated version of his invoice for the amount of EUR 105,000, including the 5% compensation.
13. By 1 September 2014, the Agent’s fees remained unpaid and therefore he again requested payment, namely by notifying SK Slavia through emails dated 5 September 2014, 26 September 2014 and 8 October 2014.

B. Proceedings before the FIFA Players’ Status Committee and FACR bodies

14. According to Article 4.7 of the Agreement, *“each dispute between the Parties arising from or in connection with this agreement, whether legal or factual, must be submitted to the arbitration tribunal of the FACR, as prescribed in the articles of association and the regulations of the FACR”*.
15. On 12 November 2014, the Agent lodged a claim against SK Slavia at the first instance dispute resolution body of the FACR, demanding the sum of EUR 105,000 from SK Slavia in regard to the Agreement.
16. On 22 December 2014, the FACR declared the Agent’s claim inadmissible due to a lack of competence to deal with this dispute (the *“FACR Decision”*). The pertinent points of the

decision rendered by the first instance dispute resolution body of the FACR read as follows:

The Chairman of the Board of Arbitrators considers it proven that the Applicant is a football players' agent registered with the Football Association of Serbia; however, he is not a FACR agent. The decision on competence follows from Article 30 (1) of the FACR Statutes, which reads as follows: 'The members of the FACR Board of Arbitrators shall resolve disputes between FACR members arising from contracts between clubs and players; disputes concerning performance between clubs, concerning severance payments for players; disputes following from the agents' activities; and other similar disputes'. The competence of the Board of Arbitrators is stipulated similarly in Article 5 (1) of the FACR Rules of Arbitration.

The Board of Arbitrators is competent to resolve disputes arising from the relations and activities defined in the cited provision of the FACR Statutes and the FACR Rules of Arbitration. The Applicant is a FIFA agent and the Respondent is a club, where the Applicant is neither a FACR member, nor a FACR agent. The arbitral tribunal believes that the dispute in the case at hand does not fall within the relations and activities defined in the FACR Statutes and the FACR Rules of Arbitration as the dispute receivable did not arise from a relationship between FACR members. Neither the Applicant himself, nor Media Sport Investment International LLC is and was a FACR member at the time of execution of the agreement on arrangement for the transfer.

The Board of Arbitrators is competent to resolve only disputes between FACR members following from the specified and similar relations and activities. An extensive interpretation of the FACR Statutes, which would be necessary to extend the competence of the Board of Arbitrators to cover the case at hand, has no support in the FACR regulations or the Czech laws".

17. On 27 January 2015, the Agent appealed the FACR decision before the second instance dispute resolution body of the FACR, insisting on the competence of the FACR to decide this matter.
18. In parallel, on 28 January 2015, the Agent filed a claim with the FIFA Players' Status Committee (the "PSC") against SK Slavia, requesting from the latter the payment of EUR 105,000, plus 5% interest p.a. as well as the reimbursement for the legal costs he incurred.
19. On 7 April 2015, SK Slavia replied to the PSC claim arguing that the Agent had no standing to invoke FIFA's competence over this present case in light of the *litis pendens* principle. SK Slavia also contended that a dispute on the same issue was already opened in the Czech Republic, following a claim filed by the Agent before the FACR.
20. That said, SK Slavia recognized not having paid the sum of EUR 100,000 to the Agent, but disagreed with the payment of additional amount of EUR 5,000. In fact, SK Slavia allegedly only agreed on paying the Agent 5% interest p.a. (emphasis added) on the sum of EUR 100,000. Moreover, SK Slavia noted that it unsuccessfully tried to reach a settlement with the Agent but failed because of financial difficulties.
21. On 17 August 2015, FIFA informed the Parties that it did "*not appear to be in a position to further proceed with the investigation in the present matter*" as a similar request was already pending before the dispute body of the FACR, the Czech National Dispute Resolution Chamber ("CNDRC"). The Parties were also informed that "*as a general rule, [the FIFA] decision-making bodies are not in a position*

to deal and ultimately decide on a dispute, which has also been brought before and that would be decided upon by another instance due to the principles of litis pendens and res judicata”.

22. Since the FACR bodies had declined their competence and had not taken any decision on the merits of the matter, the Agent wrote to FIFA on 20 August 2015, demanding it to resume the proceedings in front of the Single Judge of the PSC.
23. On 4 September 2015, upon request of FIFA, the FACR confirmed that SK Slavia was affiliated to the Czech Premier League and was still participating in the relevant League.
24. On 1 October 2015, the Agent once again contacted FIFA asking it to resume the investigation of the claim filed with the Single Judge of the PSC.
25. On 3 November 2015, FIFA reiterated that its internal bodies could not decide the present matter due to a lack of competence.
26. On 21 March 2016, the FACR Arbitration Panel declared *“that it had no doubts as to its powers (jurisdiction), nor as to the fact that it is a dispute that the FACR Arbitration Board can rule on according to the applicable legal regulations”*. After this statement, the FACR Arbitration Panel examined the merits of the case and concluded that no amounts were to be paid by SK Slavia to the Agent since the Employment Contract between SK Slavia and the Player had been terminated by the latter on 30 July 2015 in accordance with Article 3.2 of the Agreement. The relevant points of the FACR Arbitration Panel resolution read as follows:

“In the opinion of the Arbitration Panel, however, the obligation to pay the remuneration truly did cease in accordance with the provisions of Article 3, paragraph 3.2 of the Contract, in connection with notice served on the Professional Contract, as of the date 30 July 2015 when it was delivered to the Opponent. In making its legal assessment, the Arbitration Panel did not concern itself with the reason for which the player D. terminated the contract between himself and the Opponent, as this was not conclusive for assessing the Petitioner’s claim. This is reflected in the wording of 3.2 of the Contract dealing with the situation whereby the Professional Contract is terminated before the end of the agreed period for any reason.

(...)

The Arbitration Panel thus agreed with the Opponent’s argument stating that in assessing point 3.2 of the Contract, the principle of pacta sunt servanda must be recalled, being explicitly stated in Section 3 (2)(d) of the Civil Code, and the Petitioner is obliged to abide by this principle. The consequence of termination of the Professional Contract, including the loss of the right to payment of the contractual remuneration of EUR 100 000, cannot be placed upon the Opponent, as it was the will of the Petitioner to accede to the conditions of the Contract, and it could and should have considered any potential risks, including the possibility of losing its remuneration, before signing the Contract.

The Petitioner’s argument regarding the conflict between point 3.2 of the Contract and the accepted principles of morality is inapposite in light of its status as a professional player’s agent. (...)

The Arbitration Panel does not consider any loss of remuneration for the Petitioner unreasonable or unjust, as this is the risk of doing business in the specific field in which the Petitioner operates and which it accepted by signing the Contract (...).

For the above reasons the Arbitration Panel decided to rule on the amount of EUR 100,000 by rejecting the proposal. With regard to the legal opinion of the Arbitration Panel, the proposal for payment of a proportional amount of the agreed remuneration – EUR 61 791- calculated by the Petitioner using the duration of the Professional Contract can also not be granted.

For the amount of EUR 5000, the Arbitration Panel took into account the retraction of the proposal contained in the Petitioner's final proposal of 2 March 2016; it expressed its consent to this retraction and on the basis thereof stopped proceedings on this matter.

The Arbitration Panel considers the Petitioner's claim for payment of the legal interest on arrears on the EUR 100 000 for the period from 3 February 2014 until payment justified only in part. In Article 1, paragraph 1.1 of the Contract it is clearly stated that the Opponent is to pay the contractual remuneration by 28 February 2014 at the latest. With regard to the cessation of the Opponent's obligation to pay the remuneration as of 30 July 2015, the Petitioner could not be overdue in paying the remuneration after this date, i.e. 31 July 2015. With reference to this fact, the Arbitration Panel ruled on the interest on arrears as stated in points 1 and 2 of the operative part of this ruling”.

27. On 14 April 2016, the Agent appealed the abovementioned decision before the third instance of the CNDRC, i.e. the FACR Arbitration Committee, on the basis that the arbitral award of 21 March 2016 was not properly issued.
28. On 21 July 2016, the FACR Arbitration Committee declared that the second instance CNDRC award had not been rendered correctly since the FACR deciding bodies were not competent to decide a dispute involving the Parties as the Agent was not “an agent of FACR or a member of FACR”. The relevant points of the FACR Arbitration Committee resolution read as follows:

“(...) Bound by the above definition of powers and jurisdiction of FACR bodies, the FACR Arbitration Committee confronted the content of the case, i.e. the submissions of participants, their oral statements and the evidence submitted thereby, with the legal treatment covering FACR arbitration proceedings and concluded that FACR bodies have no power here, because:

- *as of 30 January 2014, when the contract was signed upon which the claim is to be based,*
- *as of 28 February 2014, when the claim was to be due,*
nor even
- *as of 12 November 2014, when the proposal to initiate proceedings reached the FACR, the Petitioner was not an agent of FACR or a member of FACR.*

Under such circumstances, primarily due to the personal status of the Petitioner, no decisive legal relationship can be subsumed under any of the cases stated in Art 5 (1) of the FACR RAP, and thus no FACR authority can rule on it, as it has neither the authority nor the jurisdiction. In light of the fact that FACR bodies cannot rule on the given matter themselves, no decision could be made between the participants of the proceedings or on proceeding costs, as such a ruling would be an accessorial (dependent)

statement to the operative statement on the matter itself for which (and all the less for a statement on the compensation for proceeding costs) there is no place here”.

29. Since the last appeal body within the FACR declined its competence to decide on the contractual dispute between the Parties, the Agent asked FIFA to continue its proceedings against SK Slavia on 21 July and 8 November 2016, requesting from the latter the payment of EUR 100,000 plus 5% interest p.a. as of 28 February 2014.
30. On 13 February 2017, SK Slavia replied to this claim by rejecting its substance, affirming that its obligation to pay the Agent’s remuneration ceased on 30 July 2015 when the Player allegedly terminated the Employment Contract without just cause, pursuant to Article 3.2 of the Agreement.
31. Further, SK Slavia also argued again, the lack of competence of the FIFA to deal with this dispute. In this respect, SK Slavia also specified that the resolution of the FACR Arbitration Committee of 21 July 2016 was *“a final decision against which the Claimant as an agent (intermediary) is generally entitled only to lodge an appeal before CAS in accordance with Article 58 of the FIFA Statutes”.*
32. SK Slavia also indicated that the Agent *“not only expressly demonstrated his consistency in relation to the choice of jurisdiction made, but also waived his right to have the proceedings before FIFA bodies based on the First claim because the Claimant who chose a certain course of legal remedy may not then decide to change the legal forum of the dispute, as this would jeopardize the credibility of the sporting dispute resolution system”.*
33. Moreover, SK Slavia contended that the Agent’s claim before FIFA was time-barred, considering that FIFA was no longer competent to deal with disputes involving players’ agents as from 1 April 2015.
34. On 27 September 2017, the Single Judge of the PSC ruled as follows (the “Decision”):

“1. The claim of the Claimant, Nicola Franco, is inadmissible”.
35. On 22 February 2018, the grounds of the Decision were notified to the Parties. The relevant points of the *“Considerations”* developed by the Single Judge of the PSC in the Decision, read as follows:
 1. *First of all, and even before establishing which edition of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (hereinafter: the Procedural Rules) is applicable to the matter at hand, the Single Judge of the Players’ Status Committee (hereinafter also simply referred to as: the Single Judge) deemed it indispensable to preliminarily and briefly recall, in a chronological order, the main facts of the case, which he considered as essential for the analysis of its admissibility and, eventually, of its substance.*
 2. *In this respect, the Single Judge recalled that, according to undisputed documentation provided in the context of the proceedings, the following facts occurred:*
 - *On 12 November 2014, the Claimant lodged a claim against the Respondent with the “first instance dispute resolution body of the Czech Football Association”, the Body of Arbitrators*

of the FACR, requesting the payment of EUR 105,000 in connection with the agreement;

- *on 22 December 2014, the relevant claim of the Claimant was declared inadmissible by the Body of Arbitrators of the FACR;*
 - *on 27 January 2015, the Claimant appealed the aforementioned decision "before the second instance dispute resolution body of the Czech Football Association", the FACR Arbitration Panel;*
 - *on 28 January 2015, the Claimant lodged a claim with FIFA against the Respondent and requested from the latter the payment of the amount of EUR 105,000 in connection with the agreement;*
 - *on 10 March 2016, the Claimant, after having been informed by FIFA of the implications of the legal principles of *litis pendens* and *res judicata*, withdrew his claim in front of FIFA, having subsequently been reimbursed the advance of costs paid in the relevant proceedings;*
 - *on 21 March 2016, the FACR Arbitration Panel analysed the merit of the dispute between the Claimant and the Respondent and decided that no amounts were to be paid by the Respondent to the Claimant;*
 - *on 14 April 2016, the Claimant appealed the aforementioned decision of the FACR Arbitration Panel at the FACR Arbitration Committee;*
 - *on 21 July 2016, the FACR Arbitration Committee deemed that the arbitral award of the FACR Arbitration Panel had not been issued correctly as the FACR bodies are not considered to be competent to decide upon a matter involving the Claimant and the Respondent, as the Claimant was not "an agent of FACR or a member of FACR";*
 - *on 21 July and 8 November 2016, the Claimant requested FIFA to resume the proceedings on the basis of the aforementioned resolution of the FACR Arbitration Committee, which had rejected the competence of the FACR bodies to decide on the matter at stake.*
3. *Bearing in mind the facts detailed above in a chronological order, the Single Judge noted that the Claimant, on 10 March 2016, having been made aware of the impact of the principles of *res judicata* and *litis pendens* on the present matter, voluntarily decided to withdraw his claim lodged on 28 January 2015 in front of FIFA. Accordingly, the Claimant received the reimbursement of the advance of costs paid in connection with the dispute and the case was consequently closed. By the time the Claimant lodged his first claim in front of FIFA, i.e. on 28 January 2015, the 2014 edition of the Procedural Rules was applicable to the dispute, and the Single Judge was, in principle and as a general rule, competent to deal with a dispute of international dimension involving a club and a players' agent, in the sense of the 2008 edition of the Players' Agents Regulations.*
4. *On 1 April 2015, a new edition of the Procedural Rules came into force. According to its art. 6 par. 1, "Parties are member associations of FIFA, clubs, players, coaches or licensed match agents", the players' agents in the sense of the 2008 edition of the Players' Agents Regulations having been excluded*

from the wording of such article. Furthermore, the Single Judge recalled that, also on 1 April 2015, the new Regulations on Working with Intermediaries came into force replacing the Players' Agents Regulations.

5. *On 21 July 2016, after an unsatisfactory result of the local proceedings pursued by the Claimant in the Czech Republic, the Claimant requested that the previously closed proceedings in front of FIFA be reopened. This request has been reiterated on 8 November 2016 and a new payment of advance of costs was requested by FIFA from the Claimant. The Single Judge considers the Claimant's request of 21 July 2016 as a new claim, which, however, after 1 April 2015, no longer falls under the scope of competence of FIFA, in line with the aforementioned art. 6 par. 1 of the 2015 edition of the Procedural Rules.*
6. *Thus, considering that the new claim of the Claimant was lodged on 21 July 2016, the Single Judge of the Players' Status Committee concluded that the 2015 edition of the Procedural Rules applies to the present matter and, consequently, he is not competent to deal with a claim involving a club and a players' agent in the sense of the 2008 edition of the Players' Agents Regulations. At this point, the Single Judge was satisfied in his conclusion that the claim of the Claimant did not fall under the scope of his competence and, therefore, should be considered as inadmissible”.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

36. On 16 March 2018, the Agent filed his Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “Code”) against the Decision, naming FIFA and Sportovní Klub Slavia Praha as respondents. In his Statement of Appeal, the Agent requested that a Sole Arbitrator be appointed. The Appellant indicated the following address and email for Sportovní Klub Slavia Praha: Vladivostochá 1460/2, 100 05 Praha, Czech Republic / sekretariat@slavia.cz.
37. By letter dated 23 March 2018, SK Slavia acknowledge receipt of the CAS Court Office correspondence in this matter and, noting that the Agent had designated Sportovní Klub Slavia Praha as a respondent, brought to the CAS Court Office's attention that Sportovní Klub Slavia Praha and the SK Slavia were two different entities with different addresses and different registration numbers. SK Slavia also provided the CAS Court Office with the following address for Sportovní Klub Slavia Praha: U Slavie 1540/2a, 10000, Praha 10.
38. On 27 March 2018, FIFA informed the CAS Court Office of its agreement with the appointment of a sole arbitrator.
39. On 29 March 2018, the CAS Court Office confirmed that the Appellant's Statement of Appeal was directed against Sportovní Klub Slavia Praha and that the latter would thus be provided with all previous CAS correspondences since the opening of the present proceedings.
40. While denying knowing the Agent in a letter dated of 4 April 2018, Sportovní Klub Slavia Praha advised the CAS Court Office that it received the Statement of Appeal “probably by mistake” and therefore, “shredded” all the documents relating to this matter.

41. On 5 April 2018, the CAS Court Office confirmed to the Parties that all its correspondence had not been sent “by mistake” to Sportovni Klub Slavia Praha’s address and that Sportovni Klub Slavia Praha had indeed been named as the Second Respondent in the procedure filed by the Agent. The CAS Court Office further informed the Parties that it would continue to send all correspondence to Sportovni Klub Slavia Praha and would not re-send any of the allegedly shredded previous communications.
42. On 6 April 2018, following an extension of time granted in accordance with Article R32 of the Code, the Agent filed his Appeal Brief pursuant to Article R51 of the Code.
43. On 20 April 2018, Sportovni Klub Slavia Praha filed its Answer in accordance with Article R55 of the Code. In its answer, Sportovni Klub Slavia Praha challenged its standing to be sued in respect of the Agent’s appeal, arguing he failed to designate the proper club when he named Sportovni Klub Slavia Praha as the second respondent.
44. Moreover, in its answer, and to the extent “relevant”, Sportovni Klub Slavia Praha requested that a Sole Arbitrator be appointed.
45. On 30 April 2018, FIFA filed its Answer in accordance with Article R55 of the Code.
46. On 8 June 2018, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of Ms Svenja Geissmar, Attorney-at-Law in London, United Kingdom, as Sole Arbitrator.
47. On 26 June 2018, the CAS Court Office invited the Appellant to comment on Sportovni Klub Slavia Praha’s objections on its standing to be sued in this appeal.
48. On 10 July 2018, the Agent filed his submissions on Sportovni Klub Slavia Praha’s objections its standing to be sued.
49. On 19 July 2018, the CAS Court Office invited Sportovni Klub Slavia Praha and FIFA to reply to the Agent’s comments on Sportovni Klub Slavia Praha’s alleged lack of standing to be sued.
50. On 24 July 2018, FIFA responded to the CAS Court Office that it did not have any comments on the issue at stake, specifying that Sportovni Klub Slavia Praha’s lack of standing to be sued was never raised during the Player’s Status Committee. In this respect, FIFA informed the CAS Court Office that it did “*not have any comments to add on the matter*” and the Second Respondent failed to provide any comments.
51. On 23 August 2018, the CAS Court Office confirmed the appointment of Ms Marianne Saroli, Attorney-at-Law in Montreal, Canada as *ad hoc* clerk.
52. On 6 September 2018, the CAS Court Office informed the Parties that a hearing in the proceeding would be held in Lausanne on 1 November 2018.
53. On 13 September 2018, Sportovni Klub Slavia Praha *inter alia* sought a re-scheduling of the hearing, based on the assertion it was not expecting the holding of a hearing.

54. On 14 September 2018, the Sole Arbitrator granted an extension to Sportovní Klub Slavia Praha until 20 September to provide the CAS Court Office with its list of attendees and confirmed the hearing scheduled on 1 November 2018.
55. On 12 October 2018, the CAS Court Office informed the Parties that if Sportovní Klub Slavia Praha failed to announce its attendees for the hearing, despite having been repeatedly invited to do so on 6, 14, 25 September 2018 and on 2, 3 October 2018, where it was granted a final deadline to provide its list by 8 October 2018, the Sole Arbitrator may proceed with the hearing and render an award even in the event that any of the parties, or any witnesses, fail to appear, in accordance with Article R57 of the Code.
56. On 17, 22 and 24 October 2018, FIFA, Sportovní Klub Slavia Praha and the Agent respectively, signed and returned the order of procedure in this appeal.
57. On 22 October 2018, Sportovní Klub Slavia Praha reiterated its request for the re-scheduling of the hearing and filed a “*request for security for costs*”.
58. On 24 October 2018, the CAS Court Office advised the Parties that Sportovní Klub Slavia Praha’s request for the re-scheduling of the hearing and “*request for security for costs*” was dismissed by the Sole Arbitrator
59. On 1 November 2018, a hearing was held in Lausanne. The Sole Arbitrator was assisted at the hearing by Mr Daniele Boccucci, CAS Counsel, and by Ms Marianne Saroli, *ad hoc* clerk. At the hearing, the Sole Arbitrator was joined by the following:
- | | |
|----------------------------------|---|
| For the Agent: | the Agent in person, and Mr Santiago San Torcuato, counsel; |
| For FIFA: | Ms Livia Silva Kägi, counsel. |
| For Sportovní Klub Slavia Praha: | Ms Anna Vejmelkova, counsel, and Ms Michaela Miliskova, interpreter and translator. |
60. At the outset of the hearing, the Parties confirmed that they had no objections to the appointment of the Sole Arbitrator.
61. At the conclusion of the hearing, the Parties confirmed that their right to be heard had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

62. This section of the award does not contain an exhaustive list of the Parties’ contentions, its aim being to provide a summary of the substance of the Parties’ main arguments. In considering and deciding upon the Parties’ claims in this award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the

claims below.

A. The Agent

63. The Agent's Statement of Appeal names Sportovní Klub Slavia Praha as the Second Respondent. In response to the Second Respondent's assertion that it lacks the standing to be sued (and that SK Slavia is the correct respondent), the Agent makes a series of arguments as to why the Second Respondent and SK Slavia are the same entity, including an analysis of the "sporting name" of the entities and the shared executive personnel; shield, flag and colours, and stadium and headquarters of the two entities.

64. In its Statement of Appeal, the Agent seeks the following relief:

- “1. To accept this appeal against the Decision of Single Judge of the Players' Status Committee dated 27 of September 2017.*
- 2. To adopt an award annulling the said decision and adopting a new one declaring that:*
 - a) 3. The decision of the Dispute Resolution Chamber dated 21 September 2017 is annulled; and*
 - b) 4. The intermediary is entitled to receive the amount EUR 120.000,00 arising from the contractual obligations accepted and assumed by the Club.*
- 3. To fix a sum of 10,000 CHF to be paid by the Respondents to the Appellant, to help the payment of its legal fees and costs.*
- 4. To condemn the Respondents to the payment of the whole CAS administration costs and the Arbitrator fees.*

In addition, the Appellant reserves the right to amend and/or expand upon the above prayers for relief in its Appeal Brief”.

65. In his Appeal Brief, the Agent amended his request for relief as follows:

- “a) The Sole Arbitrator would accept this Brief of Appeal against FIFA & SK SLAVIA PRAHA before CAS.*
- b) The Sole Arbitrator would uphold this Appeal, and pursuant to the terms presented, would render a final Award whereby it will be determined that Respondent has to pay to the Appellant the amount of EUR one hundred thousand (€ 100,000) plus the rate of five (5) per cent (%) p.a. as in accordance to the longstanding FIFA and CAS jurisprudence since 1 March 2014*
- c) Respondent is therefore held liable for breach of the Agreement signed between the Parties with the inherent legal consequences;*

d) Respondent is ordered to pay the amount of one hundred and twenty thousand four hundred seventy-nine and forty-five of EUR (€ 120.479,45), as follows:

- One Hundred thousand EUR (€ 100.000) corresponding to the fee owed according to the Agreement.
- Twenty thousand four hundred seventy-nine and forty-five of EUR (€ 20.479,45) as interest of 5% per annum;

e) Respondent is ordered to pay the entire sum related to CAS administration costs and Panel fees;

f) The Sole Arbitrator to render a decision whereby Respondent shall be disbursing Appellant a sum in order to cover the legal defence fees, expenses and costs in the FIFA proceeding in the amount of fifteen thousand Swiss Francs (CHF 15.000);”

a. The Agent’s position on the various claims filed with FIFA and the FACR

66. The Agent disagrees with the Decision, arguing it was the absence of a conclusive ruling on the issue from the various FACR governing bodies that led him to bring his case before FIFA, not the unsatisfactory result of the local proceedings he pursued in the Czech Republic.
67. In this respect, the Agent recalls that his first claim was declared inadmissible by the Board of Arbitrators of the FACR in a resolution dated of 22 December 2014. This claim was originally filed with the Board of Arbitrators of the FACR on 12 November 2014 by the Agent, following SK Slavia’s failure to pay his fees as stipulated in the Agreement. On 27 January 2015, that decision was appealed before the second instance dispute resolution body of the FACR.
68. The Agent argues that his claim could apparently never have been successful before the judicial bodies of the FACR, due to its own Status and Regulations, since neither the Agent, nor Media Sport Investment International LLC is or was a FACR member at the time of conclusion of the Agreement, and that he was not aware of the detail of these regulations at the time of entering into the Agreement or when bringing the proceedings in accordance with a provision in the Agreement which he believed to be operable.
69. SK Slavia, as a member of the FACR, was aware of the FACR’s provisions and drafted the Agreement in which Article 4.7 provides that: “each dispute between the Parties arising from or in connection with this agreement, whether legal or factual, must be submitted to the arbitration tribunal of the FACR, as prescribed in the articles of association and the regulations of the FACR”.
70. The Agent is not and has never been a member of the FACR. Hence, the Agent highlights that he spent more than a year and seven months trying to get the FACR’s legal bodies to issue a ruling on a dispute it apparently had no competence to resolve.
71. Taking into account that SK Slavia drafted the Agreement, such incompetence cannot consequently be used to the detriment of the Agent. In this respect, the Agent refers to the legal principle “*in dubio contra stipulatorem*”, which is recognized by the jurisprudence of the CAS and FIFA.

b. The Agent's position on the claim lodged on 21 July 2016

72. According to the Agent, SK Slavia misled him by using a contractual clause that established the competence of the FARC to resolve “*each dispute between the Parties arising from or in connection with this agreement*” whereas such procedure would have never been possible. Therefore, SK Slavia introduced a procedural maze in which all claims filed by the Agent would necessarily lead to failure. Therefore, the Agent was left with no other choice but to re-open his claim before FIFA. However, despite the numerous requests for a decision and the time that has elapsed since this dispute initially arose, FIFA did not act on the claim.
73. In this respect, the Agent disagrees with FIFA asserting that he never voluntarily withdrew his claim filed on 28 January 2015.
74. Moreover, FIFA erroneously assumes that the applicable law (2008 Edition of the FIFA Players' Agents Regulations) is determined from the moment a claim is filed, rather than from the moment of occurrence of the “*event giving rise to the dispute*”.
75. For the Agent, it is clear that the 2008 Edition of the FIFA Players' Agents Regulations explicitly recognizes this interpretation at Article 30.4:
- “The Players' Status Committee or Single judge (as the case may be) shall not bear 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”.*
76. Nevertheless, the Agent is of the opinion that FIFA used the wrong framework to determine the applicable law to this dispute. In fact, the Agent considers FIFA's behaviour equivalent to a denial of justice. Since the implementation of the new FIFA Regulations on Working with Intermediaries and the reform of the FIFA Procedural Rules in 2015, FIFA's approach has been to waive its authority in cases concerning Players' Agents, even if the facts that gave rise to the disputes existed prior to the enactment of the new regulations on 1 April 2015.
77. According to the Agent, the Single Judge was incorrect in deciding that there was a new claim and also incorrect in deciding that such “new claim” fell outside of FIFA's jurisdiction. The Agent also argues that it was wrong to decide that the 2015 edition of the Procedural Rules was already in force at the time the allegedly new claim was filed and to exclude the applicability of the law to the time the dispute arose, i.e. SK Slavia's failure to comply with the Agreement since 1 March 2014.
78. Moreover, the Agent emphasises that the case reference code applied by FIFA for his claims within FIFA has never been changed demonstrating that there was only one claim which was capable of being continued.
79. FIFA erroneously supposed that the Agent's request for the reimbursement of the advance on costs meant the withdrawal of his claim. By doing so, FIFA disregarded CAS jurisprudence and Swiss Law as a simple written request for the reimbursement of the advances of costs paid

should not be considered as a waiver of the claim.

c. *The Agent's position on the legitimacy of his fees*

80. The Agent notes that he provided a service for SK Slavia, making it possible for them to enter into the Employment Contract with the Player. According to Article 2 of the Agreement, SK Slavia was obliged to pay the Agent the total amount of EUR 100,000, which was to be paid no later than 28 February 2014, one month after the signing of the Agreement. On top of this, the Agent is entitled to request interest of 5% per annum since 1 March 2014 on the amount of EUR 100,000, given SK Slavia agreed to this in correspondence with the Agent even though the Agreement has no provision regarding the payment of interest.
81. The Agent highlights that SK Slavia acknowledged not only the work carried out by the Agent to its complete satisfaction, but also an agreement regarding his fees. SK Slavia further apologized for the delay in payment and undertook to pay the Agent the agreed fees in May 2014 and no later than 1 June 2014, plus 5% of annual interest as compensation from 1 March 2014 until the day the payment is made. Further, under Swiss law, as supplementary to the applicable law to this case, there is the recognition of debt in Article 17 of the Swiss Code of Obligations, according to which: *"an acknowledgement of debt is valid even if it does not state the cause of the obligation"*.

d. *The Agent's position on the conclusion of the Agreement*

82. The Agent is well aware of the content of Article 3.2 of the Agreement, which reads as follows: *"if the Employment Contract ends early (i.e. before the agreed end date) for any reason, this agreement and Slavia's obligation to pay any fees pursuant to this agreement will end by operation of law (without notice being required) on the end date of the Employment Contract"*.
83. The Agent disputes that Article 3.2 of the Agreement should have enabled SK Slavia to obtain a favourable resolution from the FACR Arbitration Panel. The Arbitration Panel applied the provisions of Article 3 of the Agreement to conclude that SK Slavia's obligation to pay the Agent's fees ceased on 30 July 2015, i.e. when the Employment Contract between the Player and SK Slavia terminated. The Agent is of the opinion that the resolution of the FACR Arbitration Panel is characterised by a high degree of subjectivity and thus, by favouring the interests of the "locals" to the detriment of the "foreigners". In fact, this approach limits the analysis of the present dispute to only one of the five provisions set out in Article 3 with regard to the "End of the agreement". In this respect, the Agent believes that Article 3.1 has been deliberately ignored by the FACR Arbitration Panel in its reasoning since it was expressly stipulated that the Agreement would end, without any notice being required, on the day after the payment of the invoice by SK Slavia.
84. The failure to pay the invoice of the Agent prevented the condition set out in Article 3.1 of the Agreement from ever being fulfilled by SK Slavia. Consequently, if SK Slavia had paid the fees to the Agent on the stipulated date, the condition laid down in 3.1 would have been satisfied and the Agreement would have automatically terminated on the following day. And, if SK Slavia

had respected its contractual obligation to pay the invoice of the Agent within 30 days of its receipt, Article 3.2 would have never applied to the present dispute.

85. Following the principles of “*in dubio contra stipulatorem*” and of procedural economy, the Agent reiterates that the Agreement was drafted by SK Slavia and unclear conditions in a contract must be interpreted against the party that drafted it because it is the responsibility of its author to choose its formulation with adequate precision. The principle of confidence must serve as a basis to interpret the real intention of the Parties whereby the weakest party should benefit of an accrued protection (*CAS 2009/A/1773*; *CAS 2009/A/1774*).

B. FIFA

86. In its Answer, FIFA requests the following relief:

- “1. That the CAS rejects the present appeal and confirms the decision passed by the Single Judge of the Players’ Status Committee (...) on 27 September 2017 in its entirety.
2. That the CAS orders the Appellant to bear all the costs of
3. That the CAS orders the Appellant to cover all legal expenses of FIFA related to the proceedings at hand”.

a. FIFA’s position on the substance of the Agent’s claim

87. Since FIFA is not concerned by the relevant dispute as to the substance, it is not able to issue any statement in this respect since the Single Judge did not express any opinion thereto in the Decision.

b. FIFA’s position on the *lis pendens* and the risk of *res judicata*

88. FIFA disagrees with the conclusion of the Agent, according to which there was never a risk of *res judicata* between the parallel proceedings in FIFA and in Czech Republic, since a final and binding decision of the last instance of the Czech National Dispute Resolution System declared the Appellant’s claim inadmissible.
89. On 28 January 2015, the Agent filed his first claim before FIFA, but failed to mention he had the day before filed an appeal against the decision of inadmissibility rendered by the first instance of the FACR on 22 December 2014.
90. On 17 August 2015, FIFA informed the Agent that, from the documentation provided by SK Slavia, it did not appear to be in a position to deal with his first claim since similar parallel proceedings were pending before the second instance of the CNDRC.
91. It was therefore obvious that *lis pendens* applies to the present dispute since parallel claims, involving the same parties and dealing with the same contractual issue, were pending as of 17 August 2015 before FIFA and the CNDRC, even though at different stages.

92. Moreover, there was a clear risk of *res judicata* as the Agent both in front of FIFA and of the CNDRC sought a decision on the merits of the contractual dispute between him and SK Slavia. FIFA recalls that on 21 March 2016, the second instance of the CNDRC declared itself competent to deal with the dispute, but rejected it as to the substance. On 14 April 2016, the Agent appealed again this decision before the third instance of the CNDRC, which issued a final and binding decision on 21 July 2016, overturning the decision of the second instance and considering the Agent's claim as inadmissible.
93. Therefore, FIFA acted in absolute procedural and legal correctness, when it informed the Agent of the blatant situation of *lis pendens* on 17 August 2015 and of the very concrete risk of violating the principle of *res judicata*.
94. The existence of parallel proceedings before the deciding bodies of the FACR was only brought to FIFA's attention for the first time on 7 April 2015 by SK Slavia.
95. Even after FIFA sent a letter to the Parties on 17 August 2015, the Agent kept insisting on pursuing his claim before FIFA. Yet, FIFA argues he only disclosed the first instance decision of the FACR regarding the inadmissibility of his claim and deliberately hid the existence of the appeal proceedings he initiated before the second instance of FACR.

c. FIFA's position on the existence of a new claim lodged by the Agent on 21 July 2016

96. The Agent lodged his first claim before FIFA on 28 January 2015, paying the relevant advance of costs, in accordance with Article 9 par. 1 lit. h) and Article 17 of the Procedural Rules.
97. On 17 August 2015 and 3 November 2015, FIFA advised the Agent that it did not appear to be in a position to deal with his dispute. Thereafter, the Agent withdrew his first claim before FIFA on 10 March 2016 and he duly performed all the required steps to end the proceedings related to claim. For instance, the Agent requested the reimbursement of the advance of costs paid to file the first claim and provided his bank details for the reimbursement.
98. On 11 April 2016, the advance of costs was promptly reimbursed by FIFA, in accordance with the "*Payment Order for Players' Status and Governance (PST) Refunds*" issued for the Finance & Accounting department. The case was consequently considered by FIFA as closed.
99. On 21 July 2016, the Agent contacted FIFA to file a further claim, requesting the re-opening of his first claim, following the decision of the final instance of the CNDRC.
100. On 23 November 2016, the Agent was once again advised by FIFA of the primary formal prerequisites for filing a claim before one of its deciding bodies. The Agent proceeded accordingly, with the missing payment of the advance of costs, after which the second claim was duly forwarded to SK Slavia for its position.
101. Considering the chronology of the facts, FIFA argues it is logical to stress that on 10 March 2016 the Agent voluntarily withdrew his first claim dated of 28 January 2015. In order to have the investigation of his second claim considered by the Single Judge, the Agent had to comply

anew with all the necessary requirements for successful completion of the claim. Thus, the Single Judge was correct to consider this second claim, dated of 21 July 2016, as a new one.

102. According to FIFA, the two claims are distinct since they were filed separately by the Agent, each following its own path of requirements for eligibility.
103. FIFA asserts that a waiver has the effect of *res judicata* whereas a withdrawal does not generally allow the refiling of the claim at a later stage, under specific circumstances. In this respect, FIFA expresses that CAS jurisprudence and legal provisions have no relation whatsoever with the determination by the Single Judge of the date of claim, of the applicable rules to the dispute at stake and of his competence to deal with it. Not to mention that the inadmissibility of the second claim due to the *res judicata* deriving from the filing of his first identical claim before FIFA was never raised by the Agent in front of the Single Judge and as a result, it was never addressed by the latter.

d. FIFA's position on the PSC's competence as well as on the applicable rules and regulations to the dispute

104. The Agent submits that FIFA erroneously assumes that the applicable law (2008 Edition of the FIFA Players' Agents Regulations) is determined from the moment a claim is filed, rather than from the moment of occurrence of the "*event giving rise to the dispute*". The Agent uses Article 30 par. 4 of the 2008 Edition of the FIFA Players' Agents Regulations to make such assessment. However, FIFA submits that this article deals with the time limitation for filing a dispute, not with the applicable rules and regulations based on which such dispute shall be analysed.
105. FIFA argues that the applicable edition of the rules and regulations to a specific dispute lodged in front of FIFA's deciding bodies takes into consideration the date on which the claim is submitted to FIFA. Pursuant to Article 39 par. 1 and 4 and Article 40 par. of the 2008 Edition of the FIFA Players' Agents Regulations as well as Article 11 of the 2015 FIFA Regulations on Working with Intermediaries, "*any case that [was] pending at FIFA*" should be assessed in accordance with the previous edition of the Players' Agents Regulations and "*all other cases [lodged as from 1 January 2008] shall be assessed according to these regulations¹*" up until the date of the 2015 FIFA Regulations on Working with Intermediaries "*supersede[d] the Players' Agents Regulations [...] and c[a]me into force on 1 April 2015²*".
106. Similarly, Article 21, par. 2 of the Procedural Rules (2014 and subsequent) mentions that "*these*

¹ **Article 39** Transitional provisions:

1. Any case that is pending at FIFA when these regulations come into force shall be dealt with in accordance with the Players' Agents Regulations dated 10 December 2000.

4. All other cases shall be assessed according to these regulations. This refers, in particular, to article 17 of these regulations.

Article 40 Enforcement:

1. These regulations were adopted by the FIFA Executive Committee on 29 October 2007 and come into force on 1 January 2008.

² **Article 11** Transitional measures:

These provisions, which were approved by the FIFA Executive Committee on 21 March 2014, supersede the Players' Agents Regulations first amended on 29 October 2007 and come into force on 1 April 2015.

rules are applicable to proceedings submitted to FIFA on or after the date on which these rules came into force". Article 26 par. 1 of the Regulations on the Status and Transfer of Players, (2015 and subsequent) establishes that "any case that has been brought to [i.e. lodged at] FIFA before these regulations come into force shall be assessed according to the previous regulations".

107. Any assessment of the applicable rules and regulations to a dispute pending in front of one of FIFA's deciding bodies is made by referring to the date on which the claim was submitted. Here, it is the date on which the Agent lodged his second claim to FIFA, i.e. 21 July 2016. On that date, the 2015 FIFA Regulations on Working with Intermediaries were in force and applicable to the present dispute as well as the provisions of the 2015 edition of the Procedural Rules and the 2016 edition of the FIFA Regulations (valid as from 1 June 2016 until 31 December 2017; amended to bring the relevant texts in line with the Intermediary Regulations).
108. More specifically, FIFA refers to Article 6 par. 1 of the Procedural Rules, in force since 1 April 2015, stating that *"parties are member associations of FIFA, clubs, players, coaches or licensed match agents"*. In this regard, FIFA underlines that the former licensed players' agents under the 2008 Edition of the FIFA Players' Agents Regulations were deleted from the list of parties entitled to seek redress before the decision-making bodies of FIFA. Not to mention the importance of Article 23 par. 2 of the Regulations on the Status and Transfer of Players to the present case, according to which, *"the Players' Status Committee has no jurisdiction to hear any contractual dispute involving intermediaries"*. Consequently, FIFA submits that the Players' Status Committee rightfully declared its lack of competence to deal with the present case.

C. Sportovní Klub Slavia Praha

109. In its Answer, Sportovní Klub Slavia Praha requests the following relief:

- (i) to dismiss/reject the Mr. FRANCO's appeal in full.*
- (ii) to condemn the agent Mr. FRANCO to payment of the whole CAS administration costs and Arbitrators' fees.*
- (iii) to fix a sum of 20,000 CHF to be paid by the agent Mr. FRANCO to the club SLAVIA as a partial compensation of its legal fees and other expenses (incl. translation services) incurred in connection with the this proceeding".*

110. Sportovní Klub Slavia Praha maintains that, *"due to the lack of standing to be sued of the club Slavia,"* the Agent's appeal *"is inadmissible, or more precisely (...) admissible but without merit"*, arguing he failed to designate the proper club when he named Sportovní Klub Slavia Praha as the Second Respondent. In fact, Sportovní Klub Slavia Praha highlights that Sportovní Klub Slavia Praha is a different legal entity to SK Slavia. Sportovní Klub Slavia Praha submits that SK Slavia Praha – Fotbal A.S, is registered under 639 99 609 in the Czech Commercial Register whereas Sportovní Klub Slavia Praha is registered under 005 48 693 in Czech Commercial Register. Therefore, Sportovní Klub Slavia Praha has no standing to answer a relief requested by the Agent against a different legal entity, i.e. SK Slavia Praha – Fotbal A.S.

111. In addition, Sportovní Klub Slavia Praha argues that it has never been involved in the proceedings before the PSC of FIFA and, consequently, it is not affected by the Decision. Sportovní Klub Slavia Praha further indicates it has also never been a contractual party of the Agreement and as a result, it has never been liable for the payment of the Agent's fees.
112. SK Slavia Praha – Fotbal A.S. was part of the proceedings before FIFA, not Sportovní Klub Slavia Praha. For that reason, Sportovní Klub Slavia Praha, is not competent to submit counter-arguments on the merits, but only to object the lack of its standing to be sued in the present CAS proceeding.
113. In summary Sportovní Klub Slavia Praha objects to the admissibility of the Agent's appeal as it has no standing to be sued in this CAS proceeding due to the fact that the Agent's appeal is obviously directed against the wrong legal entity. Consequently, the Agent's appeal must be dismissed, or rejected in full.

V. JURISDICTION

114. The jurisdiction of the CAS derives from Article R47 of the Code in connection with Article 58 para 1 of the FIFA Statutes.
115. Article R47 of the Code provides as follows:

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

116. Article 58 para. 1 of the FIFA Statutes reads as follows:

Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question.

117. The jurisdiction of the CAS is not contested by the Parties. Moreover, all Parties confirmed CAS jurisdiction by the execution of the Order of Procedure, and no party objected to the proceedings or the jurisdiction of the CAS. It follows, therefore, that CAS has jurisdiction in this appeal.

VI. ADMISSIBILITY

118. Article R49 of the Code provides as follows:

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

119. As noted above, Article 58 para 1 of the FIFA Statutes provides that appeals “*shall be lodged with CAS within 21 days of notification of the decision in question*”. The same 21-day deadline is mentioned on the last page of the FIFA Decision (“*The Statement of Appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision [...]*”).
120. The Decision was rendered on 27 September 2017, however, the grounds of the Decision were notified to the Parties on 22 February 2018. The Agent’s statement of appeal was filed on 16 March 2018, i.e. within the expiry of 21-day deadline to file with the CAS. The statement of appeal comply with the requirements set by Article R48 of the Code. No party objects otherwise.
121. It therefore follows that the appeal is admissible.
122. Notwithstanding the foregoing, the Sole Arbitrator notes Sportovní Klub Slavia Praha’s objection to its standing to be sued and obligation to respond to the Agent’s claims. The Sole Arbitrator determines that Sportovní Klub Slavia Praha’s arguments in this regard are suited for the merits for this dispute and consequently, will be addressed below.

VII. MANDATE OF THE SOLE ARBITRATOR

123. According to Article R57 para. 1 of the Code, the Sole Arbitrator has full power to review the facts and the law of the case submitted to her. As a result, the Sole Arbitrator hears these consolidated proceedings *de novo* and is not limited to the examination of the submissions or of the evidence that were adduced before the PSC.

VIII. APPLICABLE LAW

124. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and 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.

125. The Sole Arbitrator recognizes that Article 57 para. 2 of the FIFA Statutes provides the following:

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

126. The Parties agree to the application of Article 57 para. 2 as set forth above and such is evident in their written and oral submissions – having never strayed away from the FIFA Regulations and CAS jurisprudence in their presentations to the Sole Arbitrator.
127. Notwithstanding the foregoing, the Sole Arbitrator notes the content of Article 4.6 of the

Agreement, which provides that “*the articles of association and regulations of the FACR and the FIFA Players’ Agents Regulations*” shall govern the Agreement and that “*in the event of contrariety between the regulations of the FACR and the FIFA Players’ Agents Regulations, the regulations of the FACR will prevail*”.

128. Accordingly, noting that the regulations of the FACR only concerns FACR members (and noting the undisputed fact that the Agent is not a FACR member), the Sole Arbitrator considers the FIFA regulations primarily applicable, with Swiss law applying to fill in any gaps or lacuna, where appropriate.

IX. MERITS

129. At the outset, the Sole Arbitrator notes that neither Respondent issued any written pleadings on the actual merits of the dispute - FIFA alleges not being concerned by the dispute; Sportovní Klub Slavia Praha denies its involvement in the present proceedings. Nevertheless, the Sole Arbitrator must assess this appeal based on the evidence presented in respect of the dispute and the law as applied thereto.

a. Determining the Proper Respondent: “SK Slavia” or “Sportovní Klub Slavia Praha”

130. On a preliminary basis, the Sole Arbitrator must determine whether the Agent filed his claim against the proper entity. Here, Sportovní Klub Slavia Praha contends the Agent incorrectly designated “*Sportovní Klub Slavia Praha, Full Adress Vladivostocka 1460/2, (100 05) Slavia, Czech Republic*” as a respondent, and not “SK Slavia”. Consequently, Sportovní Klub Slavia Praha asserts it has no standing to answer a relief requested by the Agent against a different entity.
131. Relying upon Article R48 of the Code, the Sole Arbitrator hereby opines that the Appellant has the responsibility to designate “*the name and full address of the Respondent(s)*” in the statement of appeal. In fact, Article R48 of the Code is in line with Article 221 para 1 of the Swiss Code of Civil Procedure (the “Swiss CCP”) according to which a claimant must specify the parties to the proceedings in his or her statement of claim. Once the claimant has identified the respondent, he or she is not allowed to substitute the original respondent by another respondent (SUTTER-SOMM, *Schweizerisches Zivilprozessrecht*, 2nd ed., 2012, No. 1031; see also in the same sense KuKo-ZPO/NAEGELI/RICHERS, 2nd ed., 2014, Art. 221 no. 4; SUTTER-SOMM/HASENBÖHLER/LEUENBERGER, *Kommentar zur Schweizerischen Zivilprozessordnung*, 2nd ed., 2013, Art. 221 no. 15 et seq.).
132. Based on the foregoing, the respondent is normally the party identified by the claimant in the statement of claim. Yet, rectification is possible in some limited cases, namely if the real respondent could be identified on the basis of elements of the file or if the claim could not refer to any subject other than the real respondent and not to the respondent mentioned by mistake (see, e.g. ATF 131 I 57, E. 2.4). It is thus important to distinguish cases in which the denomination of the respondent in the statement of claim is unclear or was affected by a simple “editorial error” and cases which involve an actual modification of the petition (*Id.*).

133. The Sole Arbitrator is of the opinion that the Agent intended by implication to name SK Slavia as a respondent to the appeal which he lodged, despite the indication of a different address. Since the two entities in question SK Slavia and Sportovní Klub Slavia Praha have a similar name, the Sole Arbitrator finds that the incorrect identification of Sportovní Klub Slavia Praha as a respondent does not exclude the possibility that SK Slavia was to be the intended respondent. The salient features of this case indicate the identification of SK Slavia as the subject obliged to answer the appeal filed by the Agent. In addition, Sportovní Klub Slavia Praha's conduct in advance of and during the hearing did not lend itself to an entity who had no knowledge of this claim (such that it would allegedly "shred" documents from the CAS Court Office). For example, the Sole Arbitrator observes that Sportovní Klub Slavia Praha whilst arguing that it was not the correct respondent presented oral evidence at the hearing in defence of the Agent's appeal, in particular in regard to the interpretation of Article 3.1 of the Agreement. Sportovní Klub Slavia Praha's presentation of such evidence and arguments on the merits of the case at the hearing raised material questions of credibility and fully undermined its submissions on its own standing in the appeal. It is clear to the Sole Arbitrator that the two entities act in relevant and material respects as one and the same in sufficient capacity such that the mistake in identification in the statement of appeal appears to be a mere "editorial error". Hence, the Second Respondent has standing to be sued in the present arbitration.

b. Admissibility of the Appellant's Financial Claim

134. Having determined that Sportovní Klub Slavia Praha has standing to be sued in the case at dispute, the Sole Arbitrator next turns to whether the Single Judge of the PSC was justified in finding the Agent's financial claim inadmissible, namely on the ground that FIFA is no longer competent to hear claims lodged by players' agents since the enactment of the FIFA Regulations on Working with Intermediaries on 1 April 2015.
135. In order to do so, the Sole Arbitrator focuses her award on the following issues, namely: did the Agent file his claim prior to 1 April 2015? More precisely, should the claim filed by the Agent on 21 July 2016 be considered as a new claim or as the continuation of the claim he lodged on 28 January 2015?
136. To begin with, the Sole Arbitrator agrees with the Single Judge of the PSC in regard to FIFA's absence of jurisdiction over disputes relating to intermediaries under the new FIFA Regulations on Working with Intermediaries. In this respect, the Sole Arbitrator relies upon CAS 2016/A/4477, where it was pointed out that: *"FIFA will not accept any more cases post 1 April 2015 and agents, intermediaries, clubs and players would be better looking elsewhere to deal with their disputes. (...) FIFA as a Swiss organisation has the power to determine whether it takes jurisdiction over disputes and FIFA have chosen to absolve their responsibility over these particular disputes. As such, post 31 March 2015, intermediaries have to look at other dispute resolution forums or to the courts to deal with any disputes arising from agency/representation contracts"*.
137. Based on the facts and circumstances of this case, the answer to the above questions requires careful examination.
138. The Sole Arbitrator recognizes that the Parties entered the Agreement prior to 1 April 2015.

But, in determining the applicable FIFA regulations to the present matter, the Sole Arbitrator's main task is to ascertain whether the claim filed by the Agent on 21 July 2016 (after the 1 April 2015 cut-off period) should be considered as a new claim or as the continuation of the claim he lodged on 28 January 2015 (prior to the 1 April 2015 cut-off period). The determination in this regard being potentially detrimental to the Appellant's appeal.

139. At the hearing, FIFA specified that there were no transitional arrangements applicable when the new regulation took place. For FIFA, the applicable law was to be assessed by the date of the Agent's new claim (i.e. 21 July 2016) in accordance with the 2015 FIFA Regulations on Working with Intermediaries. The Agent, however, asserts that the applicable law shall be determined from the moment of occurrence of the "*event giving rise to the dispute*" in the sense of the 2008 Edition of the Players' Agents Regulations.
140. The Sole Arbitrator acknowledges that the Agent turned to PSC to resolve his dispute with SK Slavia, by filing a claim on 28 January 2015 (i.e. before the 1 April 2015 cut-off period). So, on its face, and at this time, the 2015 FIFA Regulations on Working with Intermediaries applied to the Agent's claim. However, following the receipt of this claim, FIFA advised the Parties on 17 August 2015 and on 3 November 2015 that it did "*not appear to be in a position to further proceed with the investigation in the present matter*" and that "*as a general rule, [the FIFA] decision-making bodies are not in a position to deal and ultimately decide on a dispute, which has also been brought before and that would be decided upon by another instance due to the principles of *litis pendens* and *res judicata**". In other words, while the Agent's claim was filed in time for purposes of the application of 2015 FIFA Regulations on Working with Intermediaries, FIFA was not competent to resolve the Agent's claim at that time.
141. And as it follows, on 10 March 2016, the Agent requested the reimbursement of the advance of costs he paid on 28 January 2015 to initiate the proceeding before PSC.
142. FIFA argues that this reimbursement request constitutes a withdrawal of the claim made on 28 January 2015; the Agent is of the opinion that FIFA's assertion is wrong. In considering the parties' submissions the Sole Arbitrator remains cognisant of the following factual context:
 - On 21 March 2016, the second instance dispute resolution body of the FACR considered the Agent's claim admissible and as a result, a decision on the merits was issued, but no amounts were found to be due.
 - On 14 April 2016, the Agent appealed this decision in front of the third instance of the CNDRC, which rendered a final and binding decision on 21 July 2016. The decision of the second instance was consequently overturned and the Agent's claim was deemed inadmissible.
 - On 21 July 2016 and on 8 November 2016, the Agent requested FIFA to resume his claim.
 - On 23 November 2016, FIFA requested the Agent to pay the advance of costs for proceedings before the PSC.

- On 6 December 2016, the Agent paid the advance of costs.
143. At the hearing, the Sole Arbitrator sought some clarification from FIFA about the existence of any written protocol or any procedural rule that states exactly what a party must do to close a file before the PSC and what precise procedures FIFA follows in closing a file before the PSC. FIFA explained that there was no written protocol or procedure but submitted that the reimbursement of the advance of costs constituted one aspect of the withdrawal of a case.
 144. Upon further questioning, FIFA reiterated that the Agent was informed of its limited competence to deal with his dispute due to the principles of *lis pendens* and *res judicata*. And in its opinion, this alone was sufficient to consider the Agent's actions as a withdrawal of his claim, especially considering that the Agent's then lawyer, Mgr. Markéta Haindlová, sought reimbursement of the Agent's request for the advance of costs on 10 March 2016 as follows: "(...) *my client paid advance of costs in accordance with Article 17 of the Procedural Rules. However, the proceedings were soon discontinued due to a lack of competence of FIFA bodies, as stated in a letter form 3 November 2015. In this respect, I would like to kindly ask whether the advance of cost amounting 300 CHF might be refunded to my Client's bank account. (...)*". Mr. Haindlová was not called as a witness in his procedure and the Agent did not otherwise provide any evidence supporting his argument that his attorney's request for reimbursement did not constitute a withdrawal of his claim.
 145. In consideration of the foregoing, and following Articles 9 para 1 lit. h) and 17 para 1, 3 and 5 of the Procedural Rules, the Sole Arbitrator concludes that while paying the advance of costs is a requirement *sine qua non* to lodge a claim in front of FIFA, a request for the reimbursement of an advance of costs paid for proceedings before FIFA should *a contrario* be considered an abandonment of a claim.
 146. Hence, the Sole Arbitrator concludes that the claim lodged by the Agent on 28 January 2015 was abandoned on 10 March 2016. The only valid and subsisting claim is the one filed on 21 July 2016, which falls outside of FIFA's jurisdiction (i.e. after the cut-off date of 1 April 2015) and the Sole Arbitrator cannot apply the 2008 Edition of the FIFA Players' Agents Regulations to this present case.
 147. Moreover, the Sole Arbitrator's decision is supported by the fact that on 6 December 2016, the Agent paid a new, separate advance of costs so as to file a new claim against the same respondent on the same issue as in the claim he had previously abandoned. Although the Agent argues he was resurrecting the original claim he made the Sole Arbitrator is of the opinion that the evidence does not support this argument. Considering such new claim was forwarded by FIFA to SK Slavia for its comments on 26 January 2017 (without any reference to the reinstatement of the prior claim), the Sole Arbitrator is further convinced that the prior claim was abandoned and that FIFA was correctly treating this as a new claim.
 148. In consideration of the foregoing, and for purposes of judicial economy, the Sole Arbitrator refrains from addressing the merits of the Agent's underlying financial claim against the Second Respondent. This said, it is emphasized that this decision should not hamper the Agent in seeking redress before competent ordinary courts where the Agent should remain entitled to seek the protection of his alleged rights under the Agreement.

X. CONCLUSION

149. In light of the foregoing, the Sole Arbitrator finds that the appeal filed by the Agent is dismissed. As a result, the Decision is affirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Nicolas Gabriel Franco on 16 March 2018 against Fédération Internationale de Football Association and Sportovní Klub Slavia Praha concerning the Decision issued by the Players' Status Committee of the FIFA on 27 September 2017 is dismissed.
2. The Decision issued by the Players' Status Committee of the FIFA on 27 September 2017 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.