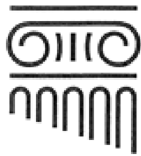

TAS / CAS
TRIBUNAL ARBITRAL DU SPORT
COURT OF ARBITRATION FOR SPORT
TRIBUNAL ARBITRAL DEL DEPORTE

CAS 2024/A/10299 FK Velez Mostar v. Frane Ikic

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Ken E. Lalo, Attorney-at-Law in Gan-Yoshiyya, Israel

in the arbitration between

FK Velez Mostar, Mostar, Bosnia and Herzegovina
Represented by Mr Sanel Masic and Mr Hugo Paris, Attorneys-at-Law in Monchengladbach, Germany

Appellant

and

Frane Ikic, Zadar, Croatia
Represented by Mr Fedja Dupovac, Attorney-at-law, Sarajevo, Bosnia and Herzegovina

Respondent

I. PARTIES

1. FK Velez Mostar (the "Club" or the "Appellant") is a professional football club affiliated to the Football Federation of Bosnia and Herzegovina ("FFBH"), which participates in the top tier of Bosnian Football.

2. Mr France Ikić (the "Player" or the "Respondent") is a professional football player.

3. The Appellant and the Respondent may each be referred to as "Party" and are jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. The present appeal was initiated against a decision issued by the Dispute Resolution Chamber of the Federation Internationale de Football Association ("FIFA") (the "FIFA DRC") on 26 October 2023 in regard to a claim of the Player against the Club.

5. Below is a summary of certain key facts and allegations drawn from the Parties' written submissions as well as the oral pleadings and evidence adduced at the hearing. Additional facts and allegations may be set out, where relevant, in later sections of this award (the "Award"), in particular in connection with the Sole Arbitrator's discussion of the merits of the case. The Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings. The Sole Arbitrator, nonetheless, refers in this Award only to those submissions and evidence that he considers necessary to explain the Award's reasoning and conclusions.

6. On 1 July 2022, the Club and the Player executed an employment contract (the "Contract") with a monthly salary of 2,000.00 Bosnian Marks ("BAM"), payable on the "*10th day of the month for the previous month of work*".

7. On the same day, the Club and the Player also executed an Annex to the Contract (the "Annex"; the Contract and the Annex, together, the "Agreement") by means of which the remuneration of the Player was supplemented, including through an increase of the monthly salary, inclusion of various performance bonusses, a signing bonus, various other allowances and agreed payments and an increase of amounts during the second year of employment.

8. Under the Agreement the Player was entitled to the following compensation, in additions to certain performance bonusses and other allowances and benefits:

   a. 6,825.00 BAM as monthly salary during the 2022/2023 season;
   b. 8,775.00 BAM as monthly salary during the 2023/2024 season;
   c. 11,700.00 BAM as signing bonus, payable until the start of the season:
   d. 5,850.00 BAM as bonus due at the beginning of the second season.

9. The term of the Agreement is in dispute between the Parties.

10. On 31 August 2022, the Club's president requested the Club's disciplinary commission

to implement "*suitable sanctions*" against the players and staff due to the poor sporting results.

11. On 1 September 2022, the Club's disciplinary commission decided to sanction players and staff with a reduction of 30% of the August 2022 salary.

12. On 2 September 2022, the decision was notified to the Club's players and staff and everyone accepted it in writing, apart from the Player and another player.

13. On 26 December 2022, the Player sent an email to the Club expressing his request to terminate the Agreement by mutual consent, stating, *inter alia*, as follows:

> *"Unfortunately, I am unable to attend tomorrow's meeting due to family obligations, and I am sending you in writing my proposal for the mutual termination of the contract as proposed by the above.*
> *My suggestion for the mutual termination of the contract:*
> *Payment of all outstanding wages for 2022 and payment of salaries for January, February, March, April for the year 2023."*

14. Between 26 December 2022 and 29 December 2022, the Player and the Club exchanged correspondence and agreed to meet on 30 December 2022.

15. On 19 January 2023, the Player sent a default notice to the Club (the "Default Notice"), requesting the payment of outstanding remuneration for the months of August, November and December 2022, as well as part of the signing bonus, in the total amount of 20,325.00 BAM and demanding to be immediately reinstated to the first team of the Club. The Player granted the Club fifteen (15) days in which to remedy the breaches. The Notice of Default reads in the main part as follows:

> *"We contact you with regard to the situation of Mr. Frane Ikić, who we represent. Mr Ikić and your club have an employment contract valid from 1 July 2022 valid until June 2024.*
>
> *The player has been demoted and forced to train alone since January 2023 without any justification. We hereby remind you that Mr. Ikić is an experienced international footballer, who has been hired as a professional player. Surprisingly, the club expressly informed the player that he will not play for the first team any longer as they wish to find a way to let him go despite the player's request to be reinstated with the first team. Hence, by acting as such, the club is breaching the player's fundamental rights as a footballer.*
>
> *We thus formally request that you to* ***<u>immediately</u>*** *reinstate the player with the first team.*
>
> *What is more, the club is also in breach of its essential obligation of payment towards the player, only partial payments were received in August, November and December 2022 and part of the signing bonus hasn't been paid. The following amounts remain outstanding:*

- 4 825 BAM for the salary of August 2022
- 4 825 BAM for the salary of November 2022
- 4 825 BAM for the salary of December 2022
- 5 850 BAM for part of the signing bonus.

*The player is not willing to accept such continuous breaches and we thus kindly invite you to proceed to the payment of 20 325 BAM within the **next 15 days**.*

For the sake of clarity, we kindly refer you to articles 12bis, 14, 14bis and 17 of the FIFA RSTP and reserve the player's rights to enforce if the various violations are not remedied within the given deadlines."

16. The Club did not reply to the Default Notice.

17. On 27 January 2023, the Player picked up his December 2022 salary at the Club's premises.

18. On 28 January 2023, the Player's then legal representative sent to the Club a new proposed annex to the Contract, seeking to reduce part of the Player's individual bonuses and, in exchange for this reduction, having the possibility to be a free agent in the event of an offer from any foreign third club.

19. On 10 February 2023, the Player terminated the Agreement by sending a termination notice (the "Termination Letter") reading, in the main part, as follows:

"Reference is made to our letters dated 19th January 2023. We unfortunately note that the letter was [not] answered and without effect.

To date, the following amounts consequently remain outstanding:

- 4 825 BAM for the salary of August 2022

- 4 825 BAM for the salary of November 2022

- 4 825 BAM for the salary of January 2023

- 5 850 BAM for part of the signing bonus.

The player was demoted to the reserve team without any justification for the past few weeks [/] months, in breach of the player's fundamental rights as footballer. Your club did not respond to our letters requesting an immediately reinstallation of the player to the first professional team.

Hence, Mr Ikić's trust in your club's intention to maintain and honour the contractual relationship is lost.

In light on these contractual breaches, we hereby inform you of the unilateral termination of the employment contract with just cause, effective immediately.

Mr Ikić reserves his right to file a claim with the FIFA DRC."

20. On the same day, 10 February 2023, the Club replied to the Player, providing the position of the Club in regard to the amounts claimed and advising that the November 2022 salary can be picked up at the Club's premises and that the January 2023 salary "*will be paid during this month, following the normal dynamics of salary payments in the Club*".

21. On 26 April 2023, FIFA informed the Club that the Player lodged a claim, dated 13 April 2023, before the FIFA DRC.

22. On 26 May 2023, the Club provided the FIFA DRC with its answer to the claim and a counterclaim.

23. On 6 July 2023, the Player executed a new employment contract (the "New Contract") with Buxoro FK, from Uzbekistan (the "New Club"), for a term commencing on 6 July 2023 and ending on 21December 2023 and a monthly salary of 8,000.00 USD net as well as certain bonuses.

24. On 7 July 2023, the Player provided the FIFA DRC with his answer to the counterclaim.

25. On 26 July 2023, the FIFA DRC invited the New Club to provide its position on the counterclaim.

26. On 2 August 2023, the New Club submitted its position on the counterclaim, as an intervening party, and provided the New Contract.

27. On 31 October 2023, the FIFA DRC informed its decision in the matter, taken on 26 October 2023 by a three-member panel, in which it accepted the claim of the Player and decided, *inter alia*, as follows:

   "*2. The Respondent / Counter-Claimant, FK Velez Mostar, must pay to the Claimant the following amount(s):*
   - *Bosnian Mark (BAM) 8,400 as outstanding remuneration plus 5% interest p.a. as from 11 September 2022 until the date of effective payment;*
   - *BAM 4,825 as outstanding remuneration plus 5% interest p.a. as from 11 December 2022 until the date of effective payment;*
   - *BAM 4,825 as outstanding remuneration plus 5% interest p.a. as from 11 February 2023 until the date of effective payment;*
   - *BAM 88,475 as compensation for breach of contract without just cause plus 5% interest p.a. as from 10 February 2023 until the date of effective payment.*

   3. Any further claims of the Claimant / Counter-Respondent are rejected."

28. On 31 October 2023, the Club requested the grounds of such decision.

29. On 22 December 2023, FIFA notified the grounds of such decision (such decision,

including the grounds thereof, the "Appealed Decision").

III. Proceedings before the Court of Arbitration for Sport

30. On 11 January 2024, the Appellant filed with the Court of Arbitration for Sport (the "CAS") a Statement of Appeal against the Respondent in respect to the Appealed Decision pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (2023 edition) (the "CAS Code").

31. On 17 January 2024, the CAS Court Office initiated the present arbitral procedure and, *inter alia*, informed the Parties that the present arbitration proceedings had been assigned to the Appeals Arbitration Division of the CAS.

32. Also on 17 January 2024, the CAS Court Office advised FIFA that these proceedings were initiated with respect to the Appealed Decision rendered by the FIFA DRC, providing FIFA with the Statement of Appeal. While this appeal was not directed at FIFA, FIFA could have decided to intervene in these proceedings pursuant to Article R41.3 of the CAS Code. In any event, pursuant to Article R52 para. 2 of the CAS Code, FIFA was to receive a copy of the Appeal Brief.

33. On 30 January 2024, FIFA advised the CAS Court Office that:

> *"FIFA renounces its right to request its possible intervention in the present arbitration proceedings (cf. arts. R52 par. 2 and R41.3 of the Code of Sports-related Arbitration)."*

FIFA did provide a clean copy of the Appealed Decision and confirmed that it will remain at the disposal of CAS and the panel "*in order to answer to specific questions regarding the case at issue*".

34. On 11 February 2024, in accordance with Article R51 of the CAS Code and within the prescribed time limit as extended by CAS letter of 22 January 2024, the Appellant filed its Appeal Brief with the CAS Court Office.

35. On 8 April 2024, the Respondent filed his Answer, in accordance with Article R55 of the CAS Code and within the time limit as extended by CAS letter of 23 February 2024.

36. On 9 April 2024, the CAS Court Office informed the Parties that the Arbitral Panel appointed to decide the present procedure was constituted as follows:

Sole Arbitrator: M. Ken E. Lalo, Attorney-at-Law in Gan-Yoshiyya, Israel.

37. Also on 9 April 2024, the Parties were invited to inform the CAS Court Office whether they prefer a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

38. On 15 April 2024, the Respondent requested that a hearing be held in this matter and requested that such hearing be held online.

39. On 16 April 2024, the Appellant requested that a hearing be held in this matter, indicating that "*the Appellant strongly prefers a hearing to be held in the present proceedings and considers that it is even necessary in order to receive the full witness testimonies as explained in the Appeal Brief.*"

40. Also on 16 April 2024, the Appellant indicated that it disagreed with the Respondent's position in his Answer that the testimony of Mr Glibo should not be allowed or is at least irrelevant to these proceedings, highlighting that "*the testimony of the latter is of paramount importance to bring light to the communications between the Respondent and the Bosnian Football Federation regarding the second year of the contract between the parties*."

41. On 24 April 2024, the Appellant clarified that it also requests that the hearing be held online.

42. On 13 May 2024, the CAS Court Office advised the Parties that "*the Sole Arbitrator has decided to hold a hearing in this matter, by videoconference*".

43. On 19 June 2024, the CAS Court Office issued an order of procedure (the "Order of Procedure") in the present matter and requested each of the Parties to return a completed and signed copy. The duly signed Order of Procedure was returned by both the Appellant and the Respondent on 24 June 2024.

44. On 11 July 2024, a hearing was held in the present matter by videoconference. In addition to the Sole Arbitrator and Mr Giovanni Maria Fares, CAS Counsel, the following persons attended the hearing:

For the Appellant:
Mr Sanel Masic, counsel
Mr Hugo Paris, counsel
Mr. Zlatan Buljko, expert witness
Mr Fazlija Puzic, witness
Mr Oliver Glibo, witness
Mr Fazlija Puzic, witness
Ms Maja Tepic, translator

For the Respondent:
Mr Feda Dupovac, counsel
Mr Frane Ikić, the Respondent
Renata Merzić, translator

45. At the outset of the hearing, the Parties declared that they had no objections as to the constitution of the panel and the case being decided by the Sole Arbitrator.

46. At the hearing, the Parties were given full opportunity to present their respective cases, submit their witnesses, evidence and arguments and answer questions raised by the Sole Arbitrator.

47. At the end of the hearing, the Parties confirmed that they were satisfied with the procedure throughout the hearing, and that their respective rights to be heard have been fully respected.

IV. THE PARTIES' SUBMISSIONS AND REQUESTS FOR RELIEF

48. The aim of this section of the Award is to provide a summary of the Parties' main arguments rather than a comprehensive list thereof. Additional elements of the Parties' claims may be discussed in subsequent sections of the Award. As stated above, the Sole Arbitrator reiterates that in deciding upon the Parties' claims he has carefully considered all the submissions made and all the evidence adduced by the Parties, whether or not expressly referred to in this section of the Award or in the discussion that follows.

A. The Appellant

49. In his Appeal Brief, the Appellant requested the following relief:

> *"Based on the factual and legal arguments that shall be explained and specified in the Appeal Brief, the Appellant hereby submits the present Statement of Appeal with the petition for the order of the following pleas for relief:*
>
> *a) That the CAS accepts the present appeal;*
>
> *b) That the Appealed Decision be set aside and that the Panel or the Sole Arbitrator renders an award establishing that:*
>
> *i. The Respondent, Mr. Frane Ikic, did not have just cause to terminate his contract with the Appellant, FK Velez Mostar;*
> *ii. The Respondent, Mr. Frane Ikic, shall pay compensation to the Appellant, FK Velez Mostar, in the amount of* ***BAM 16,927.00*** *(sixteen thousand nine hundred twenty-seven marks), plus 5% interests p.a. as from 10 February 2023 until the date of effective;*
> *iii. The Respondent, Mr. Frane Ikic, shall undergo sporting sanctions.*
>
> ***Subsidiarily***
> *The Respondent, Mr. Frane Ikic, had just cause to terminate his contract with the Appellant, FK Velez Mostar, but the amounts due to the Respondent shall be limited to the maximum amount of* ***BAM 42,450.50*** *(forty-two thousand four hundred fifty marks and fifty cents), broken down as follows:*
>
> - ***BAM 17,198.00*** *as outstanding remuneration breakdown as follows:*
>   - *BAM 8,116.00 plus 5% interests p.a. as from 11 September 2022 until the date of effective payment;*
>   - *BAM 4,541.00 plus 5% interests p.a. as from 11 December 2022 until the date of effective payment;*
>   - *BAM 4,541.00 plus 5% interests p.a. as from 11 February 2023 until the date of effective payment;*
>
> - ***BAM 25,252.50*** *as compensation for breach of contract, plus 5% interest p.a. as from 10 February 2023 until the date of effect payment.*

Very Subsidiarily

*The Respondent, Mr. Frane Ikic, had just cause to terminate his contract with the Appellant, FK Velez Mostar, but the amounts due to the Respondent shall be limited to the maximum amount of **BAM 62,925.50** (sixty-two thousand nine hundred twenty-five marks and fifty cents) broken down as follows:*

- ***BAM 17,198.00** as outstanding remuneration breakdown as follows:*
    - *BAM 8,116.00 plus 5% interests p.a. as from 11 September 2022 until the date of effective payment;BAM 4,541.00 plus 5% interests p.a. as from 11 December 2022 until the date of effective payment;*
    - *BAM 4,541.00 plus 5% interests p.a. as from 11 February 2023 until the date of effective payment;*

- ***BAM 45,725.50** as compensation for breach of contract, plus 5% interest p.a. as from 10 February 2023 until the date of effect payment.*

In any event

c) that the Respondent be ordered to bear the entire cost and fees of the present arbitration;

d) that the Respondent be ordered to pay the Appellant a contribution towards its legal fees and other expenses incurred in connection with the proceedings in the amount of CHF 10,000, or in the amount deemed fair by the Panel or the Sole Arbitrator."

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

- The Player terminated the Agreement without just cause.
- The Player did not prove any of his allegations regarding the Player's demotion from the first team, constituting an abusive conduct entitling to terminate the Agreement with just cause pursuant to Article 14 of the FIFA's Regulations on the Status and Transfer of Players (May 2023 Edition) (the "FIFA RSTP").
- The burden of proof was upon the Player to prove such allegations in accordance with Article 12 par. 5 of the Procedural Rules governing the Procedural Rules Governing the Football Tribunal (March 2023 Edition) and Article 8 of the Swiss Civil Code.
- The Player did not lodge an appeal against the Appealed Decision, and as such he accepted it and thus acknowledged that he had no just cause to terminate the Agreement due to an abusive conduct and pursuant to Article 14 of the FIFA RSTP.
- The Player had no just cause to terminate the Agreement pursuant to Article 14bis of the RSTP, since there was no situation in which the Club failed to pay the Player "*at least two monthly salaries on their due dates*".

- Pursuant to Article 4 of the Contract the Player was due a monthly salary in the net amount of 2,000.00 BAM payable "*no later than the 10th of the month for the previous month of work*."
- The Player's full monthly salary (Contract + Annex) amounted to 6,825.00 BAM and, therefore, two monthly salaries (the minimum for just cause to terminate pursuant to Article 14bis of the FIFA RSTP) equalled 13,650.00 BAM.
- The Club has always paid for the Player's accommodation and meals and has fulfilled its obligations in accordance with Article 2 of the Annex and such amounts were not outstanding or overdue.
- On 19 January 2023, the Player provided the Default Notice and on 10 February 2023 he provided the Termination Letter.
- Both the Default Notice and the Termination Letter sought the same amounts, with the exception of the December 2022 salary requested in the Default Notice but not referenced in the Termination Letter which referenced instead the salary for January 2023 which was not yet due at such time.
- The salary for December 2022 was picked up by the Player on 27 January 2023 and was not overdue.
- Conversely to what is alleged by the Player, the Player was not entitled to the full second half of his signing fee (5,850.00 BAM), but only to the amount of 3,575.00 BAM, as he received a payment of 2,275.00 BAM on account of the signing fee on 22 July 2022.
- The Player was only entitled to receive 4,541.00 BAM as Annex payment, as he was receiving 2,284.00 BAM as Contract payment. Hence, for the month of November 2022, the Player did not have overdue payables of 4,825.00 BAM but had overdue payables of only 4,541.00 BAM.
- The Player, along with the rest of the team, was sanctioned according to the Disciplinary Rules of the Club, to a reduction of 30% of his salary for August 2022, corresponding to a reduction of 2,047.50 BAM (6,825.00*30%).
- Such disciplinary decision was accepted and confirmed in writing by all players and staff members of the Club, with the exception of the Player and one additional player.
- The Player received the amount of 2,284.00 BAM on account of the month of August 2022, and his claim for August 2022 could only have been for 2,493.50 BAM (6,825.00 (total amount) – 2,047.50 (reduction) – 2,284.00 (already received) = 2,493.50 BAM).
- Therefore, on 19 January 2023, conversely to what was alleged by the Player in the Default Notice, the Player did not have overdue payables of 20,325.00 BAM, but only of 10,609.50 BAM (2,493.50 BAM (August salary) + 4,541.00 BAM (November salary) + 3,575.00 BAM (partial signing bonus)); these amounts fell short of the amount of two monthly salaries, namely, 13,650.00 BAM.

- The Appealed Decision considered that the Disciplinary Sanction of 30% reduction of the August 2022 salary was unlawful. Even in such case, the full overdue amount at the date of the notice of default was still less than two monthly salaries, as it was at maximum only 12,657.00 BAM (4,541 BAM (August without the sanction) + 4,541.00 BAM (November salary) + 3,575.00 BAM (partial signing bonus)).
- Therefore, on 19 January 2023, the date of the Default Notice, at least two monthly salaries have not been overdue and there was no basis to terminate the Agreement.
- There is a discrepancy between the Default Notice and the Termination Letter, as the month of December 2022 in the Default Notice became January 2023 in the Termination Letter. This means that the Player acknowledged having received the December 2022 salary, and thus, the Default Notice was erroneous.
- When the Termination Letter was sent on 10 February 2023, the salary for January 2023 was not yet overdue, as it was payable "*no later than the 10th of the month for the previous month of work*", per Article 4 of the Contract. It would have become overdue only on 11 February 2023.
- The Appealed Decision confirmed that, under the Agreement, the monthly salaries became overdue only on the 11th of the following month.
- Therefore, the January 2023 salary was not overdue when the Player terminated the Agreement on 10 February 2023.
- Moreover, the three partial monthly salaries allegedly overdue are entitlements foreseen in the Annex to the Contract, and not in the Contract itself. Contrary to the Contract, the Annex does not foresee a deadline for the payment of the monthly entitlements.
- It is common practice within the Club for the players to receive these entitlements at the end of the following month for the previous month of work.
- The Player ignored all the Club's invitations and declined the requests to pick up his salary for August 2022, but he did pick up all other subsequent salaries, constantly refusing to accept the salary for August 2022.
- Considering the foregoing, on the date of the Termination Letter, i.e. on 10 February 2023, the Player did not have at least two monthly salaries of overdue payables.
- The Player did not have just cause to terminate the Agreement based on Article 14 or on Article 14bis of the FIFA RSTP, and thus, the Player terminated the Agreement without just cause. Therefore, the Club is entitled to compensation from the Player pursuant to Article 17 of the FIFA RSTP.
- The Agreement does not foresee any contractual penalty or liquidated damages in the event a party terminates it without just cause.
- As to the compensation due by a player to his former club following a termination of the contract without just cause, according to the jurisprudence of FIFA and of CAS and to the Commentary to the FIFA RSTP (page 197) "*each case has its own characteristics*" and "*each case should be dealt with its own merits*".

- As the market value of the Player, who arrived as a free agent to the Club, is difficult to establish, the Club deems that it should be entitled to the residual value of the Agreement.
- The Appealed Decision erred in considering that the Agreement was in force until 31 May 2024. In essence, the second year of the Agreement was only optional.
- Pursuant to Article 2 of the Annex, the second season (2023/24) was conditional upon a mutual agreement of the Parties.
- "*The Player, in utter bad faith (the Player's lawyer being an attorney-at-law of Bosnian nationality, he perfectly knew the meaning of that clause), wrongly translated in the FIFA proceedings the above sentence as follows: 'The Club and the Player activate the second year of the Contract, which ends on 31.05.2024'.*"
- *"[T]he Player – who did not provide an official translation of the Annex – simply 'forgot', in utter bad faith, to translate the part which makes the whole clause conditional, i.e. 'subject to mutual consent and agreement' (!)"*
- Not only is this translation erroneous, but translated in that way by the Player, the clause is deprived of any meaning.
- A correct translation of that clause, made by a certified and registered translator, reads as follows: "*Subject to mutual consent and agreement, the Club and the Player activate the second year of the Contract, which ends on 31 May 2024*."
- A literal translation of the Annex from Bosnian into English makes no sense and the expert interpreter clarified that in Bosnian the conditional meaning of such sentence is clear; had the Annex just repeated the Contract term this would have made no sense and would have served no purpose.
- The relevant sentence could have perhaps been better drafted, but still it is clear that mutual agreement of the Parties was needed in order to continue the contractual relationship for a second year.
- The sentence was written in the conditional sense, using the Bosnian word "*uz*" which has several meanings including "*subject to*" or "*upon*" in the context of the relevant sentence.
- Pursuant to Article 18 par. 1 of the Swiss Code of Obligations ("SCO"):

  > *"When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations."*

- In interpreting a contractual clause, one should try to discover the true and mutually agreed intention of the parties, without regard to incorrect statements. A contract must be interpreted according to the requirements of good faith (see, CAS 2021/A/7673, CAS 2021/A/7699 and CAS 2019/A/6525).
- Although the clause could have been written in the future tense, such as "*subject to*

mutual consent and agreement, the Club and the Player will activate", one should realize that the entire Annex is drafted in present tense.

- There is no doubt that the Parties' intention, by inserting this clause, was to make the second year of their contractual relationship conditional upon a future mutual agreement. Any other reading makes this clause redundant and "*simply nonsensical*".
- Mr Puzic is the one who drafted the Contract and the Annex. He has no legal education but testified about the clear intent of the Parties to make the second year optional and conditional on the Parties' agreement.
- Article 3 par 1. of the Contract states that "*this contract is concluded for the period from 01.07.2022 to 31.05.2024*". Therefore, the clause in the Annex regarding the activation of the second year of the Contract would be redundant had it simply confirmed what the Contract already stated. The Annex, therefore, amended the Contract and confirmed the term of the Agreement.
- Making the second-year conditional makes sense since the Player's income during the second year was relevantly higher than during the first year.
- The Parties agreed to make the second year conditional, and did not activate the second year of the Agreement.
- This is further evidenced by an exchange of emails between the Player and the FFBH on 6 and 7 July 2023, wherein the Player sought clearance to allow his international engagement and expressly stated, in an email dated 6 July 2023 that his Agreement with the Club "*expired*".
- When Mr Glibo of the FFBH responded that the Agreement ends only on 31 May 2024, the Player wrote back on 6 July 2023 that:

  "Attached herewith you will find the Annex to the Contract entered into by and between FK Velez and me. As you can see, Article 2 stipulates the option of the Contract extension till 2024, only in the case of mutual agreement between the club and the player. The employer FK Velez may also provide this Annex for your verification."

- Mr Glibo responded that:

  "We only have a certified contract, and we do not have a certified annex to the contract signed by you and the Club.

  Article 3 of the Contract stipulates its validity through 31/05/2024.

  For us to issue a player clearance letter, the contract has to be terminated first (by mutual termination agreement, through Players' Status Committee, by a FIFA decision ...)".

- This exchange was not provided to the FIFA DRC because it took place after the submission of the Club's answer and counterclaim before the FIFA DRC (26 May

2023) and the FIFA DRC did not grant a second round of submissions before closing the investigation phase on 26 July 2023.

- The context of the emails exchanged between the Player and the FFBH took place at the time the Player signed the New Contract with the New Club and sought a "*player clearance letter*", in order for the New Club to request the International Transfer Certificate of the Player.
- The email of 6 July 2023 shows that the Player understood that the second year was optional. The only other alternative is that the Player was lying in his email of 6 July 2023 as he was also lying when he signed the Agreement while still having a contract with a Hungarian club and when he signed with the New Club while still being bound (according to him) by the Agreement.
- Therefore, the Agreement was only in force until the end of the 2022/2023 season, i.e. until 31 May 2023, and not until 31 May 2024.
- Hence, the residual value of the Agreement should be calculated as follows:
    - Date of Termination of the Agreement: 10 February 2023
    - Official term of the Agreement: 31 May 2023
    - Days remaining: 111 days
    - Value for 111 days: 111/30*6,825 = 25,252.50 BAM

- To such amount due the Club one should add undue amounts paid to the Player for the month of February 2023 in the amount of 2,284.00 BAM, and then deduct the amounts that the Club actually owes the Player, i.e. 10,609.50 BAM, for a resulting amount of 16,927.00 BAM (25,252.50 + 2,284.00 – 10,609.50 = 16,927.00 BAM).
- Based on Article 104 par. 1 of the SCO, the Club is entitled to interest at the rate of 5% per annum on that amount, as from the date of termination of the Agreement, i.e. 10 February 2023.
- Finally, as the Agreement was terminated without just cause by the Player during the protected period, the Player shall receive sporting sanctions, pursuant to Article 17 of the FIFA RSTP.

Subsidiarily, the amounts due to the Player shall be reduced

- In the event that CAS considers that the Player did have just cause to terminate the Agreement, the Appellant deems that the amounts granted in the Appealed Decision (both 18,050.00 BAM as outstanding amounts and 88,475.00 BAM as compensation for breach of Agreement), should be reduced.
- Out of the total monthly salary of 6,825.00 BAM, the Player was de facto receiving 2,284.00 BAM for the Contract and 4,541.00 BAM for the Annex.
- Hence, the outstanding remuneration for the months of August 2022, November 2022 and January 2023 is not 4,825.00 BAM for each month, but only 4,541.00 BAM for each month.

- The FIFA DRC correctly calculated the partial bonus payment 3,575.00 BAM due the Player.
- Therefore, the correct outstanding remuneration due to the Player is the total outstanding consideration of 4,541.00 BAM * 3 + 3,575.00 BAM = 17,198.00 BAM, plus 5% interest per annum from the date each part of such amount became due.
- Regarding the compensation for the breach of the Agreement, if found, the amount should not include any compensation for the period following 31 May 2023, as the second year of the Agreement was conditional and never activated by the Parties.
- Hence, the amounts corresponding to the second season of the Agreement taken into consideration in the Appealed Decision cannot be included in the "*basis for the determination of the amount of compensation for breach of contract*".
- Only the residual value of the first season of the Agreement should be taken into consideration, i.e. the value from 10 February 2023 until 31 May 2023. This equals 25,252.50 BAM, plus 5% interests p.a. as from 10 February 2023.
- Therefore, subsidiary, the Player is entitled to a maximum total amount of 42,450.50 BAM (corresponding to the sum of the outstanding remuneration of 17,198.00 BAM plus the compensation for breach in the amount of 25,252.50 BAM), plus 5% interests p.a. as from the date each part of such amount became due.

Subsidiarily, reduction of the amounts due to the Player: further mitigation

- Subsidiarily, in the event that CAS considers that the second year of the Agreement was not conditional and thus, the Agreement's end date was 31 May 2024, the amounts granted by the Appealed Decision should still be further mitigated.
- The Appealed Decision should have deducted the full value of the New Contract of the Player with the New Club which ran from 6 July 2023 until 21 December 2023, in the amount of 48,000.00 USD (equal to 88,800.00 BAM), as the New Contract was supposed to end before the end of the Agreement with the Appellant (assuming the second year was not conditional), i.e. 31 May 2024.
- Pursuant to Article 17.1 ii of the FIFA RSTP:

> *"In case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation")."*

- The Appealed Decision wrongly considered that only the period from July to December of the Contract with FK Velez shall be mitigated, instead of the full remaining period of the Agreement. Furthermore, it wrongly calculated the amounts to be mitigated based on the New Contract. The Appealed Decision should have mitigated the full value of the New Contract, i.e. 88,800.00 BAM, and not only 58,500 BAM.

- It appears that the Player still plays for the New Club, which means that the Player and the New Club must have signed a new contract, or an extension to their first contract.

- Pursuant to CAS awards including CAS 2020/A/6985 and CAS 2021/A/7714:

  "Given the de novo power of review conferred on CAS panels by Article R57 of the CAS Code, a panel is able to take into account in mitigation any new playing contracts entered into after the first instance decision".

- Even though the Club is not aware of the financial conditions of any new contract or any extension signed between the Player and the New Club, the Club deems that during the period from 21 December 2023 (term of the first contract between the Player and the New Club) and 31 May 2024, i.e. more than five months, the Player would have earned more than 37,700.00 BAM (= 20,700.00 USD) from the New Club.

- Hence, the full residual value of the second year of the Contract should be mitigated by such amount.

- In such case, the Player shall be entitled to the outstanding remuneration in the amount of 17,198.00 BAM, an Additional Compensation corresponding to three monthly salaries per Article 17 para. 1 ii of the FIFA RSTP, i.e. 20,475.00 BAM, and compensation for breach of the Agreement in the amount of 25,252.50 BAM (residual value of the first season), for a maximum total amount of 62,925.50 BAM, plus interest.

51. The testimony of the Appellant's witnesses who testified at the hearing may, in essence, be summarized as follows:

Mr Zlatan Buljko

Mr Zlatan Buljko testified that:

- He is a certified court interpreter including from Bosnian to English (among other languages) with an experience expanding over decades, in addition to vast experience with government offices, NGOs and top tier international and Bosnian companies.

- He has no relationship with the Club or the Player.

- The Annex was written in the present tense and therefore in the sentence *"Subject to mutual consent and agreement, the Club and the Player activate the second year of the Contract, which ends on 31 May 2024"* the word "*activate*" as it relates to the second year of the Agreement, in essence means "*will activate*" in the future.

- The sentence "*Klub i lgrac uz obostranu saglasnost i dogovor aktiviraju drugu godinu Ugovora, koja zavrsava 31.05.2024. godine*" means in English *"[s]ubject to mutual consent and agreement, the Club and the Player activate the second year of the Contract, which ends on 31 May 2024*".

- The word "*uz*" in Bosnian literally means "*with*" but can also mean "*upon*" or

"*subject to*".

- While literal translation of the sentence to English may be read differently, an experienced Bosnian speaker would read the sentence as meaning *"[s]ubject to mutual consent and agreement*" or "*upon mutual consent and agreement*", meaning that the activation of the second year of the Agreement was conditional on an agreement between the Club and the Player.
- Perhaps the sentence could have been drafted better, but this is the clear contractual meaning of that sentence.

Mr Fazlija Puzic

Mr Fazlija Puzic testified that:

- He is acting as General Secretary of the Club, among his other roles at the Club. He was not officially appointed to such role, but "*I do the job*". Started at the Club in January of 2016.
- He is an Economist Manager and not educated as a lawyer or any other legal professional.
- Was the person that drafted both the Contract and the Annex at the request of the Sports Director of the Club. Both were prepared at the same time.
- Was not there at signing, but believe that the Contract and Annex where signed on the same day.
- The Contract was for two years but the Annex clarified that the Parties need to meet and agree together to implement the second year by "*mutual consent and agreement*".
- The intention was that, upon conclusion of the first season, the Parties sit and discuss the second season. The second season was conditional and subject to activation.
- It could have perhaps been better drafted, but this was the meeting and the intention of the Parties.
- The registration of the Contract was only around mid-July as the Player did not provide the needed release document from the Hungarian club with whom he had an agreement. Apparently, he signed the Contract and Annex when he was still employed by the Hungarian club. He had two contracts at the same time (with the Hungarian club and the Club).
- The reason there is a Contract and an Annex is that only the Contract is provided to the authorities when registering a player. The difference in salary and the bonusses per the Annex are paid in cash to the players (including the Player) and without social contributions which are paid only on the much lower Contract amount.
- Could not respond to cross examination by the Player's attorney regarding any exact mechanism to activate the second year or the alleged conditions; no exact process, dates, deadlines or indication what happens if the second year is not activated or how the Agreement is then terminated.

- Understood it to imply that the activation should happen between the two seasons. Further steps should have been decided "*after mutual agreement*".
- If agreement regarding the second season is not reached, the Agreement ends "*by mutual agreement*".

Mr Oliver Glibo

Mr Oliver Glibo testified that:

- He serves as the Secretary of the Football Association of Herzegovina-Neretva Canton, a local federation within the FFBH.
- He knows the Club as it is one of the clubs in the league and an important one at that, but has no bias towards the Club or Player.
- Explains the process of obtaining a clearance letter for players and its importance and relevance. All based on FFBH rules and regulations.
- To obtain a release, a player needs contract termination and clearance.
- Confirms the exchange of emails with the Player on 6 and 7 July 2023.
- He did not send the release letter because the Agreement was for two years based on the federation records and was still an active Agreement at the time. Releasing the Player would have violated the rules, and a release could not have been provided.
- The Player then provided him with the Annex arguing a conditional second year and indication that the Agreement expired at the end of the 2022/2023 season, but this was not valid for him since we only had the Contract on file, which was a two year contract to 31 May 2024.
- The Club was included in the correspondence after being approached by the Player, since the Player's approach concerned the Club and the Club had to resolve the issue with the Player. The Club is one of "*our*" clubs and needed to be informed.
- On redirect examination when asked whether he would have issued the requested clearance if he had the Annex on file, advised that he would not have granted the release since the Contract stated that the term of the Agreement was to 31 May 2024. The Annex merely states that the Player and the Club need to agree the relationship is terminated or extended.
- Was not aware at the time about the ongoing FIFA proceedings between the Player and the Club. He has many clubs and players to handle and does not follow such items.

B. The Respondent

52. In his Answer, the Respondent requested the following relief:

> *"67. After the insight into the entire documentation, it is clearly visible that the claim of the Appellant is unfounded and there are no grounds for acceptance of such claim.*

68. Taking in consideration all above mentioned, the Respondent proposes to the CAS to reach the following:

D E C I S I O N

1. The appeal filed by the Appellant against the decision of the FIFA DRC no FPSD-9924 dated 26 October 2023 is dismissed and rejected.

2. The decision rendered by the FIFA DRC no FPSD-9924 dated 26 October 2023 is confirmed.

3. The costs of the present arbitration proceedings shall be borne by the Appellant in their entirety

4. The Appellant shall pay to the Respondent an amount as contribution towards the legal fees and other expenses incurred in connection with these arbitration proceedings.

5. Any other motions or prayers for relief are dismissed."

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

Termination of the Agreement

- The Player terminated the Agreement with just cause and in accordance with the FIFA RSTP. The Club has seriously neglected its financial obligations towards the Player, which constituted a just cause for termination of the Agreement. The persistent failure of a club to pay the salary of a player without just cause should be considered as unjustified breach of an employment contract by a club.
- The facts of the case are irrefutable. The Club did not fulfil its contractual obligations towards the Player as the Player did not receive his contractual salaries in full and when due. Therefore, the Player placed the Club in default and provided a deadline of 15 days to cure the defaults or otherwise allowing termination of the Agreement.
- Pursuant to Article 14bis of the FIFA RSTP and in accordance with well-established CAS jurisprudence an employment contract may be unilaterally terminated with just cause by a player for outstanding salaries, provided that the player places the club in default (see, CAS 2021/A/8214 and CAS 2021/A/8215).
- The Club has seriously neglected its financial obligations towards the Player, which constituted a just cause for termination of the Agreement. The persistent and repetitious failures of a club to pay the salary of a player without just cause should be considered an unjustified breach of an employment contract by the club, entitling the player to terminate the contract (see, CAS 2008/A/1517, and CAS 2008/A/1589).

- The employer's payment obligation is its main obligation towards the employee. If it fails to meet this obligation, the employee can no longer be expected to continue to be bound by the contract (see, CAS 2006/A/1180).
- In this case there is evidence of persistent failures of the Club to pay the salary. The Club confirms having repeatedly failed to remunerate the Player. The Club is focused on various calculations to show that the amounts due in total are less than two monthly salaries, but does not argue that certain payments due to the Player remain unpaid.
- Under Article 14bis of the FIFA RSTP the amounts due at the time of the Default Notice are crucial. It is uncontested that on 19 January 2023, the salaries of August, November and December 2022 and half of the signing bonus were due.
- Whether one monthly salary was paid in the meantime is irrelevant since the Club had the obligation to fully remedy the breach within the 15-day deadline provided in the Default Notice, which it acknowledged having failed to do. The Club is confirming the existence of debt at the moment of termination of the Agreement, but wrongly concludes that Article 14bis of the FIFA RSTP requires the existence of debt in amount of at least two monthly salaries at the moment of termination of a contract.
- This principle is not only in line with the wording of the FIFA RSTP but is also recognised by the well-established jurisprudence that a player still has just cause to terminate the employment contract if only a partial payment is made during the 15-day notice period (see, FIFA decision no. REF 20-00783 dated 10 December 2020 and CAS 2021/A/8087).
- This represents an undisputed just cause for termination of an employment contract (see, CAS 2021/A/8087).
- The Club is arguing that Article 14 and Article 14bis of the FIFA RSTP represent two separate termination bases, which is contrary to CAS jurisprudence and clear wording of these provisions (see, CAS 2020/A/6889).
- The Club wrongly interprets Article 14 FIFA RSTP and refers to it only in regard to abusive behaviour. Article 14 of the FIFA RSTP stipulates that "*A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause*". Within this definition, outstanding salaries are included and do not represent a separate basis for termination.
- Ultimately, one important difference between the two venues for terminating an agreement lays in the fact that Article 14bis of the FIFA RSTP provides a player with an automatic right to terminate his playing contract, whereas any player invoking Article 14 of the FIFA RSTP has to prove to the panel that he had just cause to terminate the contract (see, CAS 2022/A/8891).
- The Player referenced Article 14 of RSTP in the Default Notice, therefore providing him with the possibility of terminating the Agreement regardless of the provisions of Article 14bis of the FIFA RSTP.

- It is evident that the Club did not plan to fulfil its obligations and pay in full various amounts due the Player. In CAS 2022/A/8891, the panel concluded that failure to meet payment obligations without a sign of remedy of the breach provides the player with just cause for termination in accordance with Article 14 of the FIFA RSTP, stating that:

  "That noted, the Panel is satisfied from the evidence that substantial sums of arrears of salary had built up almost from the start of the employment relationship, and that there was no sign of these being brought up to date, and as such the Player terminated the BKD Employment Contract."

- Article 337 para. 2 of the SCO provides a definition of circumstances that render continuation of employment "*unconscionable*". The Player warned the Club regarding the breaches and provided it with a chance to remedy and comply with its contractual obligations (see, CAS 2019/A/6626, CAS 2018/A/6605 and ATF 108 II 444,446). It is evident that the breaches committed by the Club were serious and repetitive and were not cured following delivery of the Default Notice. The financial obligations of the Club were not fulfilled from the moment of establishment of the employment relationship, and it only further deteriorated with arbitrary reductions of certain amounts by the Club and a continuous and persistent debt to the Player. When notified through the Default Notice, the Club simply ignored matters and had no intention of rectifying the breach.

- The Player had just cause to terminate the Agreement. The possibility of termination of a contract is assessed on case-to-case basis and is not tied to explicit provisions (see, CAS 2020/A/6889).

- Consequently, the Player had just cause to terminate the Agreement, solely based on non-payment, let alone the overall behaviour of the Club.

Disciplinary proceedings

- The Club tries to justify part of the debt with disciplinary proceedings and monetary fine imposed on the Player, whereby the players and coaching staff of the Club, including the Player, were fined with 30% of wage reduction for August 2022. An analysis of this decision provides numerous breaches that render this sanction void.

- For a disciplinary sanction to be valid, the Club had to respect the principle of due process, which implies that the violation is proven, the sanction is proportionate and that a procedure respects the Player's right of defence. In this case, none of these conditions were respected.

- The Player was not provided with the disciplinary rules before the sanction was imposed.

- The Player could not be fined for alleged poor performance.

- The decision of the Club did not provide any information regarding the manner of determination of the Player's performance, which needs to be based on objective criteria and an impartial system of review and cannot be arbitrary (see, CAS 2016/A/4846).

- The Club acted in an abusive manner, and its disciplinary decision must therefore be rejected (see, CAS 2021/A/8139).
- Therefore, such decision is void and cannot be accepted as lawful reduction of the salary for August 2022. The only effect that such fine had, was to damage further the mistrust that the Player had towards the Club.

Non-payment of the Club's obligations

- From the beginning of the employment relationship, the Club failed to meet its payment obligations by not paying the monthly salaries and other payment obligations in full and on time.
- There was no basis for partial payments by the Club and there was persistent debt during the employment relationship. The Club was in default, and it did not remedy the breaches.
- In accordance with Article 8 of the SCO, it is up to the Club to discharge the burden of proof to establish that it had in fact fulfilled its financial obligations pursuant to the Agreement. On burden of proof see CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71.
- The Club does not dispute the existence of debt (rather the amount of such debt). It is undisputed that the Club has failed to establish that it has fulfilled its payment obligations in full and cured the financial obligation breaches as advised in the Default Notice.
- The Club does not provide clear overview of amounts due and amounts paid with exact due dates and dates of payment. The Club merely provides an unclear, not fully translated and unspecific list of payments, which makes the outcome of the calculation rather uncertain despite the burden of proof being on the Club to demonstrate what was effectively paid.
- The common practice is to pay salaries at the end of the month for which the work was performed and at the latest within the first few days of the following month and not at the end of the following month as suggested by the Club.
- The obligations of the Club remained unfulfilled, and the Player had every right to terminate the Agreement with just cause. The Club confirmed in the Appel Brief that the Player had overdue payables both when the Default Notice was sent and when the Termination Letter was sent.
- The Club does not dispute the fact that the Player has put it in default and that the debt was not fulfilled in full. This suffices to allow for termination with cause; see, CAS 2014/A/3900.
- In this case, the Club has neglected its financial obligations, and the Player, acting in accordance with the FIFA regulations, followed prescribed procedures of termination of the Agreement with just cause.

The Parties' relationship

- The Club was acting in an abusive manner towards the Player.
- The Club took certain negative actions towards the Player, forcing him to train alone, separated from the team and at different times, even though he is an experienced international player.
- This in and of itself provides a separate and additional reason allowing the Player to terminate the Agreement with cause.

Duration of the Agreement

- Article 3 of the Contract states that the Contract is concluded for the period from 1 July 2022 until 31 May 2024. This is thus a fixed-term agreement.
- The Annex states that Parties activate the second year of the Contract and provides an increase in compensation during the second year.
- The Club provided an incorrect and rather "creative" translation of the Annex.
- The Annex states that the Parties, with mutual consent and agreement, activate the second year of the Contract.
- There is simply no phrase in such clause indicating a "conditional" agreement and the need for the consent of the Parties to activate the second year. The words "*subject to*" or the like are not present.
- The interpretation suggested by the interpreter presented by the Club at the hearing as an expert witness is wrong; the witness suggested to add words to the sentence which do not exist in the Bosnian text. The meaning of the Bosnian word "*uz*" is "*with*" and not "*subject to*".
- Pursuant to Article 18 of the SCO, the meaning of contractual provisions should be interpreted based on "*how a reasonable man would have understood his declaration*" CAS 2022/A/8796 and CAS 2015/A/4057.
- The Contract should be interpreted in favour of the Player, since it is the weaker Party and the Agreement was drafted by the Club and in case of unclear terms should be interpreted against the party that drafted it (see, CAS 2018/A/5950).
- The will of the Parties is evident. It is evident that the duration of the Agreement was not changed or influenced by the provisions of the Annex. The Annex prescribed additional monetary conditions with increased payments during the second year of the Agreement. The Annex was not an amendment of the contractual term, but rather additions to the Contract.
- The Annex was signed on the same day as the Contract. There could not have been a reason to sign a Contract for a duration of two years and at the same time sign an Annex making the second year conditional or requiring its pre-activation (as it has already been agreed to).
- The SCO defines conditional obligations (see, Articles 151, 152 and 156 of the

SCO) and these are also recognized by CAS jurisprudence (see, CAS 2020/A/7276; CAS 2022/A/8890).

- The clause in question is not a conditional clause in accordance with the provisions of the SCO and relevant jurisprudence. Analysis of the wording of the clause shows that this is not a conditional clause as it is rather a constatation clause. The Parties are constating that they are mutually activating the second year of the Agreement. No condition is present or evident, despite the efforts of the Club to construct it through its interpretation.

- If activation of the second year of the Agreement was subject to prior approval and/or agreement, then it would have been defined as such and would have included the time limits and process for its activation, as well as terms that define the rights and obligations of the Parties in case no agreement regarding the second year is reached.

- If this clause were to be interpreted as conditional, then it would represent a clause allowing the Club to unilaterally terminate the Agreement, which would make it null and void in accordance with Article 20 of SCO and CAS jurisprudence (see, CAS 2020/A/7581). This would then constitute an unfair dismissal of the Player which is not allowed (see, CAS 2017/A/5402 paras. 110 to 128 and TAS 2021/A/7824).

- Had such clause been deemed as conditional and valid, the Club did not act in accordance with Article 152 of the SCO, since it acted in bad faith and has prevented even the possibility of fulfilment of the "condition" (see, CAS 2020/A/7442). Under the circumstances, the "condition" can also be deemed as fulfilled in accordance with Article 156 of the SCO.

- "*The Appellant statements on the correspondence of the Player, with regards to his deregistration in order to be able to conclude the contract after being unemployed for 5 months and with debt from the Appellant, are rather malicious*." The Player was in strained circumstances at the time, left unemployed due to the actions of the Club for a period of 5 months and needed to obtain a clearance letter from the competent local football authority in order to sign with the New Club. The FFBH confirmed that the duration of the Agreement was two years and refused to provide the clearance letter. Acting under duress and in strained circumstances, the Player had to confirm to the FFBH that the Agreement had expired.

- Similar procedures and practices were deemed excessive by the CAS and confirmed that players in such positions are acting under duress. In CAS 2022/A/8881 at para. 108 it is stated:

  > *"[…] is a textbook example for duress within meaning of Article 21 of SCO….It is undisputed that the at that time the Player had offer to join a new club, but that his registration with new club required confirmation from the Respondent…because of the Club refusal to confirm the Players registration with new club, the player had to give up his claim for payment of unpaid salary in the amount of 30.000 EUR… while the Club in exchange only confirmed the registration of the Player with the new club*."

- The FFBH may lack impartiality, as it has disclosed to the Club internal communication with the Player which does not have any relation to the Club.
- The Player never received his clearance papers from the FFBH and was eventually registered through FIFA procedure.
- Thus, the duration of the Agreement was defined and fixed to 31 May 2024 and was not changed or made conditional through the signing of the Annex.

Calculation of compensation

- The Agreement does not contain a liquidation damages clause in favour of the Player and thus the compensation should be computed based on the provisions of Article 17 of the FIFA RSTP by calculating the residual value of the Agreement while taking into consideration mitigation of damages.
- The principle of "positive interest" applies, under which compensation for breach must be aimed at reinstating the injured party to the position it would have been at, had the contract been fulfilled to its end (see, CAS 2012/A/2698; CAS 2015/A/4217; CAS 2017/A/5164).
- According to long-standing CAS jurisprudence, the criteria set out in Article 17 (1) of the FIFA RSTP are to be considered as a non-exhaustive list. The judging authority has, therefore, a considerable scope of discretion when establishing the amount of compensation due, as long as it is set in a fair and comprehensible manner (see, CAS 2008/A/1519 &1520, para. 82).
- Under Article 17 the calculation of the compensation can be done in various ways and is done on a case-by-case basis.
- The Appealed Decision in this regard is not incorrect and/or disproportionate, and the request for reduction of compensation from the amounts decided in the Appealed Decision is baseless and as such should be rejected.
- The same applies with regard to the additional compensation rightfully awarded by the Appealed Decision in accordance with Article 17 of the FIFA RSTP, which is not disputed by the Club.
- It is up to the Sole Arbitrator to determine how much to mitigate from the continuation of the New Contract in 2024. Such calculations are always done on a case-by-case basis.

Request for compensation

- Subsidiarily, if it is determined that the Player did not terminate the Agreement with just cause, the Club shall not be granted any compensation given that the Club's breaches throughout the employment relationship contributed to the Player's unilateral termination.
- The application of Article 44 (1) of the SCO is justifiable and no compensation should be granted to the Club since it was in default at the time of the termination of the Agreement and it cannot benefit from a situation that it had triggered itself

(see also, CAS 2019/A/6444 & 6445 at para. 138 and CAS 2020/A/7242 at paras. 196 & 197).

- The Player was forced to terminate the Agreement due to the actions of the Club. The Player left the Club and remained unemployed for 5 months. The wording of the panel in CAS 2015/A/4057 may also be relevant here:

  "This was not a case of a player looking to leave one club to join a new club on a better contract."

- The New Contract was signed by the Player only after several months of being unemployed.

The Club's request for sporting sanctions against the Player

- The Club's request for sporting sanctions against the Player are not admissible under Article R57 of the CAS Code. There is no legitimate interest of the Club in such sanctions.

54. The testimony of the Player, who testified at the hearing, may, in essence, be summarized as follows.

The Player testified that:

- The Player agreed the terms of employment with the then director of the Club.
- The Agreement was for a 2-year term.
- Repeats the key financial conditions per both the Contract and the Annex (combined and in euros), including the conditions for the second season.
- The reason for the Annex was that the Annex' amounts were paid in cash (picked at the Club premises), although the Contract and the Annex constituted one agreement.
- The Contract and the Annex were signed as one and at the same time.
- The Annex added to the contractual amounts, but no one told him that the Annex changed or modified in any way the contractual term of two seasons.
- He received the draft Annex before signing it. Does not recall how many drafts were exchanged but confirms that at least twice is an accurate statement. He had enough time to familiarize himself with such draft.
- He had no legal counsel to review that Annex on his behalf before signing.
- Responded on cross examination that he agreed with the Club a two-year Agreement. This was the basis of the agreement with the Club, and this was evidenced in the Contract. Had he thought that the second year was only optional, he would not have signed and would have fought for better conditions.
- Explains the process relating to the disciplinary actions and the 30% salary reduction from the August 2022 payment, which he could not understand (apparently related to the bad results of the Club) and did not agree to.

- He was advised that he can collect the August 2022 salary, but only against signing an acceptance of the 30% salary reduction to which he did not agree.
- At the end of the first half of the season, at around 10 December 2022, there were some talks at the Club about a change of contractual commitments and reduction of salaries. It was advised that players may be called for talks about reduction of salary after 10 December 2022.
- There was a change in the Club's management structure (President and Manager) around that time, towards the end of calendar year 2022.
- The new management called him on 27 December 2022 and suggested a reduction of salary. This was by phone and not in text.
- He was advised that if he did not accept the reduced salary, he would be removed from the first team as from January 2023.
- He did not agree to the reduction.
- The Club then required both him and another player to train separately from the team for some 15 to 20 days.
- These two players were told that if they accepted the reduced salaries they would go back to the main team. They he agreed to a reduction of the premiums from the Agreement and as a result was brought back to the main team and travelled with the team to the camp in Turkey.
- While he got back to training with the team, he felt a distance with the coaches and understood that he was not in the coaches' plans beyond the first half of the season.
- He then played only in the 1st of three team matches.
- On cross examination he acknowledges that the Agreement did not contain a clause that he had to be included in Club matches.
- He contacted the FFBH in July 2023, as he had a proposal from a club in Uzbekistan.
- Confirms that he wrote the letter dated 6 July 2023 to Mr Glibo, Secretary of the Football Association of Herzegovina-Neretva Canton.
- Nr Glibo advised that he had a Contract with the Club through the end of May 2024 and could not get the requested clearance despite efforts to do so.
- He was desperate trying to obtain all the papers. Therefore and even though the Agreement was for two years, he advised Mr Glibo that the second year was not activated ("*only from the papers I said the contract expired*").
- At such time he already moved to the New Club. He signed with the New Club despite not having the release, since at such time he had no income for seven months and had a wife and a child at home that he had to support. He was afraid that if he did not have all the papers for the transfer, the New Club would not sign with him.
- He finally joined the New Club on 8 July 2023. He was finally able to join the New

Club by receiving temporary registration from FIFA.

- Being pushed on cross examination he agrees that the email of 6 July did not convey the truth and that he did so out of desperation to be employed and sign with the New Club.
- When he signed the Agreement in July 2022 he had another agreement with a Hungarian club.
- Prior to such time, he had no situation of having parallel agreements with two clubs at the same time. The Club was pressuring him to sign as soon as possible before the qualifiers to the European Cup, so he signed while still not released from the Hungarian club.
- He left the Club because of the continuous amounts due him as well as the understanding that the Club did not have plans for him in the future.
- Responded on cross examination that he believes (although not 100% positive) that the amounts owed to him were all per the Annex and not the Contract. On termination of the Agreement all amounts were amounts due to him per the Annex.
- Responded on cross examination that he was contacted to pick up the cash payments only after he ended the Agreement (except for the August payment which could have been picked up but only against signing a waiver).
- Responding to the Sole Arbitrator, he confirmed that the New Contract was extended and that he is still employed by the New Club. The extension was for somewhat reduced salary of 7,500.00 USD per month.

V. JURISDICTION

55. Article R47 of the CAS Code provides as follows:

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

56. Article 57 of the FIFA Statutes (May 2022 Edition) (the "FIFA Statutes") provides, *inter alia*, as follows:

> *"1.*
>
> *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 receipt of the decision in question.*

> *2.*
>
> *Recourse may only be made to CAS after all other internal channels have been exhausted."*

57. Furthermore, it is expressly specified in the Appealed Decision that:

> *"According to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision."*

58. Therefore, Article 57 of the FIFA Statutes as well as Article 47 of the CAS Code confer jurisdiction on the CAS.

59. The jurisdiction of the CAS is not contested by the Respondent and is confirmed by the execution of the Order of Procedure by both Parties.

VI. ADMISSIBILITY

60. Article R49 of the CAS 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties. […]"*

61. Pursuant to Article 57 of the FIFA Statutes, an appeal to CAS should "*be lodged with CAS within 21 days of receipt of the decision in question*."

62. The Statement of Appeal was filed on 11 January 2024, thus within twenty-one days from the notification of the grounds of the Appealed Decision, which were notified on 22 December 2023.

63. Hence, the Statement of Appeal was timely submitted.

64. The Sole Arbitrator notes that the further conditions set out under Article R48 of the CAS Code are also met.

65. The Sole Arbitrator therefore finds that the present appeal is admissible.

VII. APPLICABLE LAW

66. Article R58 of the CAS Code provides as follows:

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

67. The appeal is directed against the Appealed Decision which was rendered by the FIFA DRC, under the FIFA Statutes and Regulations.

68. The Parties do not dispute that the Appealed Decision was issued under the FIFA Statutes and Regulations.

69. The Sole Arbitrator further notes that: (i) Article 2 of the Contract stipulates, inter alia, that *"[b]y signing this Contract, the Contracting Parties hereby certify by consensus: (a) that they will act in accordance with the law, the internal acts of the Club and the General Acts of FIFA, UEFA, FA of B&H and this contract*" and (ii) Article 17 (2) of the Contract stipulates that *"[f]or anything not provided for in this contract, the relevant provisions of the Labour Act and the General Acts of FIFA, UEFA, FA of B&H and the club shall apply.*"

70. Accordingly, consistent with Article R58 of the CAS Code, the Sole Arbitrator concludes that the FIFA Statutes and Regulations and, in particular, the FIFA RSTP apply to the merits of the present appeals proceedings. The rules and regulations of UEFA and the FFBH apply on a subsidiary basis and in order to fill in any gaps or lacuna stemming from the primary applicable law, or to assist the reading and interpretation of the primary applicable law.

71. Since FIFA is domiciled in Switzerland, Swiss law applies subsidiarily under Article R58 of the CAS Code.

VIII. PROCEDURAL ISSUES

72. The Appellant in its Answer raised two issues relating to testimony to be provided at the hearing by the Respondent:

    a. That Mr Buljko does not represent any special expertise in comparison with the translators presented by the Parties and, as such, his testimony would not be relevant, nor provided in accordance with Articles R44.3 and R57.3 of the CAS Code regarding appointment of an independent expert.

    b. That the Appellant's witness Mr Glibo cannot provide any testimony which may be relevant to the proceedings and that his "understanding" of a certain email exchange between him and the Player is not relevant since one needs to ascertain the understanding of the Parties rather than unrelated third parties.

73. The Sole Arbitrator established at the hearing the accreditations of the translators presented by the Parties as well as of Mr Buljko. The Sole Arbitrator allowed the

testimony of Mr Buljko, not as an independent expert appointed by the Sole Arbitrator but as a translator using his expertise to explain what in his opinion is a proper translation of a contractual sentence which is in dispute.

74. The Sole Arbitrator allowed the testimony of Mr Glibo since he testified as to an exchange between the Player and himself and which relates to his function at the FFBH regional body.

IX. MERITS

75. The main questions in these proceedings, to be addressed by the Sole Arbitrator, are:

- Did the Player have just cause to terminate the contract?
- If answered in the positive, what is the compensation due the Player for such termination?

Termination of the Agreement

76. Article 14 of the FIFA RSTP states:

> *"1. A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.*
>
> *2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause."*

77. Article 14bis paras. 1 & 2 of the FIFA RSTP states:

> *"1. In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.*
>
> *2. For any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered. Delayed payment of an amount which is equal to at least two months shall also be deemed a just cause for the player to terminate his contract, subject to him complying with the notice of termination as per paragraph 1 above."*

78. Article 14bis of the FIFA RSTP presents a particular and specific event of termination of an employment contract under the more general principles of Article 14 of the FIFA RSTP.

79. The official commentary to the FIFA RSTP states in this regard at page 149 that:

> *"The introduction of article 14bis in 2018 was a reaction to the persistent malpractice of clubs failing to make payments on time. The vast majority of employment-related disputes between clubs and professional players brought before the DRC relate to late or non-payment of salary and other remuneration. Equally, the most common reason for the premature unilateral termination of a contract by a player is not being paid (on time) by their club. This should not be a surprise considering an employer's obligation to provide payment is its main obligation towards an employee."*

80. Outstanding salaries or other remuneration payable to a player constitute a reason for termination of contract for just cause and may represent an "abusive conduct" under Article 14 of the FIFA RSTP. At the same time, if they amount to at least two monthly salaries and are not paid in full at the expiration of at least 15 days from the date the club was placed on notice by the player, they may also allow for automatic termination pursuant to Article 14bis of the FIFA RSTP.

81. One important difference between Articles 14 and 14bis of the FIFA RSTP, is that Article 14bis provides a player with an automatic right to terminate his employment contract, whereas any player invoking Article 14 has to prove that he had just cause to terminate the contract (see, CAS 2022/A/8891).

82. Therefore, following the enactment of Article 14bis of the FIFA RSTP, the possibility of termination of a contract for outstanding compensation based on the general language of Article 14 of FIFA RSTP remains and is assessed on case-to-case basis (see, CAS 2020/A/6889).

83. For example, CAS 2020/A/6889 confirmed that:

> *"138. In this regard, the Sole Arbitrator points out that, aside from the new provision of Article 14bis specifically ruling on the termination of an employment contract with just cause for outstanding salaries, the FIFA RSTP still provides for a general rule according to which any party to an employment contract would not be considered in breach in case of unilateral termination with just cause.*
>
> *139. As it has been underlined by scholars, "Art. 14bis of the RSTP comes as a kind of lex specialis to the principle that a contract can be terminated with just cause" providing specification with respect to what has to be considered a just cause based on "what undisputedly is the source of the (vast) majority of disputes between professional players and clubs brought before the DRC: unpaid or overdue payables" (see ONGARO O., "FIFA Regulations on the Status and Transfers of Players – The Latest Developments, International Sports Law and Policy Bulletin I/2020 – International Transfer of Players, Sports Law and Policy Center, 2020."*

84. Prior to the introduction of Article 14bis of the FIFA RSTP, termination for outstanding

compensation to a player was possible under Article 14 of the FIFA RSTP provided that the outstanding amounts were not negligible and that, as a general rule and subject to exceptions, the player has placed the club on notice of default of its failure to abide by its contractual obligations and provided the club an opportunity to remedy the situation (see, CAS 2006/A/1180; CAS 2018/A/6029; CAS 2016/A/4884; CAS 2015/A/4327; CAS 2013/A/3091; CAS 2013/A/3398; CAS 2016/A/4403).

85. The rationale allowing termination by a player in such circumstances is that an employer's payment obligation is its main obligation towards an employee. If it fails to meet this obligation, the employee can no longer be expected to continue to be bound by the contract in future. See, for example, in CAS 2006/A/1180:

> *"The non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated [...] - constitute 'just cause' for termination of the contract [...]; for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non- payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be 'insubstantial' or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract."*

86. In assessing whether there are sufficient grounds for termination of a contract for just cause pursuant to the general language of Article 14 of the FIFA RSTP, the pertinent circumstances of each specific case need to be assessed and, in particular, factors such as the amounts outstanding, the extent of the delays, the general attitude of the parties in each specific case and other relevant factors.

87. In this case, the Player did not receive his salaries and other remuneration in full and on time over an extended period. Therefore, the Player placed the Club on notice by providing the Default Notice, which referenced Article 14 of the FIFA RSTP, and provided a deadline of 15 days to cure the default before unilaterally terminating the Agreement. The Club did not pay the amounts due the Player in their entirety and the Player terminated the Agreement.

88. The payment delays committed by the Club in the present case were serious and repetitive and were not cured in full despite the provision of the Default Notice providing a deadline in which to cure. These form sufficient grounds for termination of the Agreement for just cause pursuant to the general language of Article 14 of the FIFA RSTP and were proven in this case, even if they did not amount to overdue amounts in

excess of two monthly salaries invoking the provisions of Article 14bis of the FIFA RSTP.

89. The Club did not contest that part of the August 2022 salary, part of the November 2022 salary, part of the December salary (for a certain period and until picked up by the Player) and part of the signing bonus were not paid when due and were not paid upon the termination of the Agreement by the Player. This is also evident from the Club's own filings.

90. The Club's explanations that according to its calculation amounts due did not total at least two monthly salaries when the Default Notice and the Termination Letter were provided and, therefore, falling short of the requirement of Article 14bis of the FIFA RSTP, cannot cure a continuous failure to pay the compensation due the Player.

91. The Club continued to have certain overdues and outstanding financial obligations to the Player, throughout many months, including part of the signing fee and certain salary obligations.

92. In CAS 2022/A/8891, the panel concluded that keeping salary overdues from the start of the employment relationship without remedying the situation provides the player with just cause for termination:

> *"That noted, the Panel is satisfied from the evidence that substantial sums of arrears of salary had built up almost from the start of the employment relationship, and that there was no sign of these being brought up to date, and as such the Player terminated the BKD Employment Contract*."

93. Reducing the amount due per the Default Notice to below two monthly salaries at the time of termination does not constitute compliance with the Default Notice and does not require the Player to start the process of sending a default notice all over again prior to terminating the Agreement. This was also confirmed by the FIFA DRC (see for example FIFA decision no REF 20-00783 dated 10 December 2020) and by CAS (see for example CAS 2021/A/8087).

94. The Sole Arbitrator does not need to conclude whether some amounts due by the Club to the Player were later paid or whether additional amounts became due. It suffices that on 19 January 2023 when the Default Notice was sent the Player evidenced continuous failures by the Club to pay salaries and other remuneration when due resulting in continuous breaches of the contractual terms and that the Club did not remedy in full such obligations as outlined in the Default Notice by the time that the Termination Letter was sent.

95. The facts of this case clearly show that the Club has seriously neglected its financial obligations towards the Player, which constitutes a just cause for termination of the Agreement. The Club had repeatedly and for a significant period of time been in breach of its contractual obligations towards the Player. The Club's persistent failure to pay the full salary amounts and other contractual compensation to the Player without just cause should be considered an unjustified breach of the Agreement by the Club. In CAS

2008/A/1517 and CAS 2008/A/1589, the CAS panels confirmed that the players were entitled to terminate their employment contracts due to the seriousness and the repetition of the violations by the clubs concerned. Thus, the Club in this case is liable for the early termination of the Agreement by the Player.

96. Furthermore, this is not a case in which the Player tried to get out of the contractual relationship in order to sign with the New Club. The Player left the Club and remained unemployed for some 5 months. This is therefore a similar situation in this aspect to the one in CAS 2015/A/4057, in which the panel stated that: "[*t]his was not a case of a player looking to leave one club to join a new club on a better contract*."

97. Consequently, the Player had just cause to terminate the Agreement.

98. The Sole Arbitrator is, therefore, not required to decide if the Club's obligations towards the Player also amounted to at least two monthly salaries at the relevant times, permitting the termination of the Agreement pursuant to of Article 14bis of the FIFA RSTP.

99. The Sole Arbitrator is also not required to decide if there was also just cause for the Player to terminate the Agreement based on other reasons, such as the overall behaviour of the Club, alleged discrimination of and abusive behaviour towards the Player, such as requiring him to train alone, demoting the Player to the reserve team and more.

100. Given these determinations, the Sole Arbitrator also does not need to conclude whether the Club rightfully invoked disciplinary proceedings against its players including the Player or rightfully imposed disciplinary sanctions on the Player reducing his salary for a certain period by 30%, whether a due disciplinary process in this regard was followed by the Club respecting the Player's right to be heard and whether such a sanction is proportionate and not arbitrary.

101. In this regard the Sole Arbitrator accepts the determination by the FIFA DRC that "*the imposition of a fine, or any other available financial sanction in general, shall not be used by clubs as a means to set off outstanding financial obligations towards players*."

Calculation of compensation

102. The Sole Arbitrator thus needs to determine the consequences of the unjustified breach of the Agreement committed by the Club.

103. Neither the Contract nor the Annex include a liquidation damages clause.

104. In the absence of a compensation clause in the Agreement and in accordance with Article 17 (1) of the FIFA RSTP, the amount of compensation shall be calculated with due consideration for the law of the country concerned, the specificity of the sport and further objective criteria. Article 17 provides for non-exhaustive criteria to be taken into consideration when calculating the amount of compensation payable. This may include in particular the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a

maximum of five years, and depending on whether the contractual breach falls within the protected period.

105. More specifically, Article 17(1) of the FIFA RSTP reads as follows:

> *"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.*
>
> *Bearing in mind the aforementioned principles, compensation due to a player shall be calculated as follows:*
>
> *i. In case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.*
>
> *ii. In case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract.*
>
> *iii. Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in the points i. and ii. above. The terms of such an agreement shall prevail."*

106. Pursuant to Article 17 of the FIFA RSTP the compensation due the Player includes the amounts due under the Agreement upon its termination as well as the residual value of the Agreement while taking in consideration mitigation of damages and, in particular, amounts paid or payable to the Player under the New Contract.

107. Such provision is aimed at reinstating the Player, as the injured party, to the position it would have been at, had the Agreement been fulfilled to its end (see CAS 2012/A/2698). According to long-standing CAS jurisprudence, the criteria set out in Article 17 (1) of the FIFA RSTP are to be considered as a non-exhaustive list. The judging authority has therefore a considerable scope of discretion when establishing the amount of compensation due, as long as it is set in a fair and comprehensible manner (see CAS 2008/A/1519 & 1520, para. 82). This was also accepted by the Player's counsel during the hearing.

108. The Player, as the party not being in breach of the Agreement, should be restored to the position in which he would have been had the employment contract been properly fulfilled (see CAS 2015/A/4217).

109. This was confirmed, for example, in CAS 2017/A/5164, stating in its relevant part that:

> *"Calculation of damages where a contract is breached, the injured party must be awarded both the (i) outstanding remuneration due up to the date of termination, and (ii) remuneration owed under the employment contract from the date of termination until its expiry, with deduction of any income earned elsewhere because of the early termination of the employment contract. Such a deduction is in line with Article 337c(2) SCO and is on the basis that the injured party must not be enriched or over- compensated."*

110. The Sole Arbitrator concludes that the Club was not able to substantiate that the FIFA DRC erred in concluding that the outstanding remuneration due the Player by the Club at the time of termination of the Agreement amounted to 18,050 BAM. The Sole Arbitrator points that pursuant to Article 13 par. 5 of the FIFA Procedural Rules a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Therefore, the Club bore the burden of proving that it indeed complied with its financial obligations under the Agreement. The Club was not able to substantiate that such amounts have been paid at the time of termination of the Agreement.

111. The Sole Arbitrator also confirms the FIFA DRC's decision to award the Player additional compensation in the amount of 20,475 BAM, which equals three times the monthly remuneration of the Player, in accordance with Article 17 (1) (ii) of the FIFA RSTP applicable when the termination of an employment contract results from overdue payables by a club.

Duration of the Agreement

112. In order to determine the amounts due the Player until the end of the term of the Agreement, one should determine the expiration date of the Agreement, a matter which is disputed by the Parties.

113. Article 3 of Contract states that the Contract is concluded for the period of 1 July 2022 until 31 May 2024 (two seasons).

114. The Annex refers to the duration of the Agreement, stating in the Bosnian language as

follows: "*Klub i Igrač uz obostranu saglanost i dogovor aktiviraju drugu godinu Ugovora, koja završava 31.05.2024. godine*".

115. The Parties are in dispute as to whether this sentence literally translated reads that "*the Club and the Player activate the second year of the Contract, which ends on 31 May 2024*" or whether the sentence translated as an experienced Bosnian speaker would read it states that "[*s]ubject to [*OR *upon] mutual consent and agreement, the Club and the Player activate the second year of the Contract, which ends on 31 May 2024*".

116. While the evidence established that the word "*uz*" in Bosnian literally means "*with*", Mr Buljko testifying that in the context of the entire sentence an experienced Bosnian speaker may interpret it to mean or "*subject to*" or "*upon*".

117. The Club argued that it made the second year of the Agreement optional and conditional, while the Player argued that it did not change the two-year term under the Contract. The Club thus argued that the second year required a future activation by the Club making it an optional second year, with the Club having the sole option to extend the Agreement into its second year. The Player argued that the sentence is a connotational clause, indicating that the Parties are mutually activating the second year of the Agreement.

118. Since a common intention as to the term of the Agreement cannot be determined with certainty, one needs to examine the wording of the Agreement and any information surrounding its execution in order to interpret the Agreement and define the Parties subjective common intention. As stated, for example, in CAS 2018/A/5950:

> *"Under Article 18 of the Swiss Code of Obligations, the parties' common intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention. This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them. The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation. By seeking the ordinary sense given to the expressions used by the parties, the real intention of the parties must be interpreted based on the principle of confidence. This principle implies that a party's declaration must be given the sense its counterparty can give to it in good faith, based on its wording, the context and the concrete circumstances in which it was expressed. Unclear declarations or wordings in a contract will be interpreted against the party that drafted the contract: it is of the responsibility of the author of the contract to choose its formulation with adequate precision (in dubio contra stipulatorem). Moreover, the interpretation must – as far as possible – stick to the legal solutions under Swiss law, under which the accrued protection of the weakest party."*

119. The Player also argued that the Annex was drafted by the Club and should hence be interpreted against the Club and in favour of himself also as the weaker party.

120. The Annex was signed on the same day and apparently at the same time as the Contract and as part of the same Agreement. The Annex was designed to document the additional compensation amount agreed by the Parties. The Parties have divided the Agreement into a Contract provided to the authorities and an Annex which was not disclosed to third parties, whereby additional amounts specified in the Annex were paid in cash to the Player without any withholdings, taxes or social benefits. The Annex also provided some increase of the compensation due to the Player during the second year of the Agreement. Hence, the Annex was not to impact the term of the Agreement.

121. The Annex provision states that the Parties with mutual consent and agreement activate the second year of the Contract. The sentence uses the present tense; namely, "*activate*", rather than "*may activate*" or the like.

122. Acceptably, this sentence serves no purpose if interpreted in this way. However, had it provided for an amendment of the Contract term, which is worded very clearly and unambiguously, it should have been drafted differently which was a most simple exercise in drafting.

123. The various translations suggested by the Parties were all offered by official court translators duly certified in Bosnia. The Sole Arbitrator cannot conclude that the testimony of Mr Buljko, a certified court translator introduced by the Club as an expert, trumps translations offered by the other interpreters merely due to his vast experience and record.

124. The relevant sentence in dispute does not refer to an outside condition which ought to be met prior to the activation of the second year.

125. The relevant sentence mentions no mechanism or timelines as to the activation of the second year of the Agreement which would have been required to make this an operational clause had its interpretation been in line with the Club's contention.

126. The Sole Arbitrator concludes that the Annex did not modify the term of the Agreement as clearly specified in the Contract. The wording in argued sentence do not include the explicit words "*subject to*" or other words referring to conditional status of the second year of the Contract. It was an easy exercise in drafting to include such specific words indicating a clear amendment to the term defined in the Contract as well as a mechanism and timeline for activation of the condition.

127. The Sole Arbitrator agrees with the conclusion of the FIFA DRC on point, which stated in the Appealed Decision at para. 67 that:

> "*The Chamber pointed out that in case the parties wished to limit the duration to 31 May 2023, they should have clearly stated so".*

128. The Club placed substantial weight on the Player's email of 6 July 2023 to Mr Glibo, Secretary of the Football Association of Herzegovina-Neretva Canton, whereby the Player, in order to receive clearance to join the New Club, advised Mr Glibo that the second year of the Agreement was not activated. The Club argued that this provides the Player's own acknowledgment and confirmation that the second year of the Agreement

was optional and conditional. The Club also argued that this, as well as joining both the Club and the New Club while still not having clearances and being employed by other clubs, evidences the lack of integrity of the Player.

129. The Player acknowledged on cross examination that his email of 6 July 2023 did not convey the truth and that he did so out of desperation to be employed and sign with the New Club, since he was unemployed and without a salary for some 5 months and desperately needed income to support his young family.

130. Having heard the evidence on point, the Sole Arbitrator is of the clear opinion that the Player was certain that he was employed by the Club under an Agreement with a term of two seasons through 31 May 2024. The Player did not advise the truth in this regard to the FFBH, but this in and of itself cannot modify the term of the Agreement.

131. The Sole Arbitrator concludes that, having due regard to all of the documents and evidence in this case and especially to the clear wording of the Contract and the fact that the Annex did nor specify in clear and ambiguous terms that it is modifying the duration of the Contract, the Agreement was for a term ending on 31 May 2024.

Computation of the amount of compensation

132. The Sole Arbitrator has already confirmed the Appealed Decision's finding that the Club had to compensate the Player for outstanding remuneration at the time of termination in the amount of 18,050 BAM, as well as the award of compensation to the Player in the amount of 20,475 BAM, which equals three times the monthly remuneration of the Player, in accordance with Article 17 (1) (ii) of the FIFA RSTP.

133. Pursuant to Article 17 (1) of the FIFA RSTP and decisions of the FIFA DRC and the CAS, the remaining amounts due to the Player should equal the sums payable to the Player under the Agreement from the date of its unilateral termination until its end date, less amounts mitigated through the New Contract.

134. The FIFA DRC concluded in the Appealed Decision that:

> "*the amount of BAM 126,500 serves as the basis for the determination of the amount of compensation for breach of contract. Such amount corresponds to:*
>
> > *BAM 24,125 as salaries as of February 2023 until June 2023;*
> > *BAM 58,500 (salaries July 2023 [until] December 2023, and instalment 2nd season);*
> > *BAM 43,875 (Salaries as of January 2024 until May 2024).*"

135. As confirmed by the Appealed Decision "*[a]ccording to the constant practice of the DRC as well as art. 17 par. 1 lit. ii) of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the player's general obligation to mitigate his damages*."

136. The monthly remuneration under the New Contract exceeded the monthly remuneration under the Agreement and as a result the Appealed Decision "*concluded that the player mitigated his damages completely between July and December 2023*" and deducted 58,500 BAM from amounts due the Player by the Cub.

137. In view of the evidence provided at the hearing that the New Contract was extended and covered also the period to and including 31 May 2024 and the confirmation that despite the somewhat reduced monthly salary under the New Contract for the period after December 2023, such amount still exceeds the monthly compensation under the Agreement, the Sole Arbitrator concludes that the Player has additionally mitigated his damages completely between January 2024 and the end of May 2024 and that the amount of 43,875 BAM should also be deducted from amounts due the Player by the Cub.

138. The Sole Arbitrator thus deducts from the compensation due the Player the amount of the salaries due the Player under the Agreement for the period of 1 January 2024 until 31 May 2024 in their entirety.

139. Consequently, the Sole Arbitrator decides that the Club must compensate and pay the Player the amount of 24,125 BAM as salaries as of February 2023 until June 2023, for a total gross compensation of 62,650 BAM (i.e., 18,050 BAM plus 20,475 BAM, plus 24,125 BAM), which is a reasonable and justified amount of compensation for breach of the Agreement in the present matter.

140. The Sole Arbitrator further confirms the award to the Player by the FIFA DRC of an interest at the rate of 5% p.a. on the outstanding amounts as from the respective due dates as to the remuneration amounts and as of 10 February 2023 in regard to all other amounts, until the date of effective payment, which is in line with the constant practice of the FIFA DRC as confirmed by CAS awards.

141. Therefore and as each part of the payment was due on a different date and thus interest started to accrue on different dates in regards to portions of the overall due amount, the Sole Arbitrator finally concludes that the Appellant must pay to the Respondent the following amounts:

- 8,400 BAM plus 5% interest p.a. as from 11 September 2022 until the date of effective payment; plus
- 4,825 BAM plus 5% interest p.a. as from 11 December 2022 until the date of effective payment; plus
- 4,825 BAM plus 5% interest p.a. as from 11 February 2023 until the date of effective payment; plus
- 44,600 plus 5% interest p.a. as from 10 February 2023 until the date of effective payment.

X. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FK Velez Mostar on 11 January 2024 against Frane Ikic with respect to a decision by the Dispute Resolution Chamber of the Federation Internationale de Football Association on 26 October 2023 is partially upheld.
2. Point 2 of the decision rendered by the Dispute Resolution Chamber of the Federation Internationale de Football Association on 26 October 2023 is partially modified and shall read as follows:

   "FK Velez Mostar must pay to Frane Ikic the following amount(s):
   - *Bosnian Mark (BAM) 8,400 as outstanding remuneration plus 5% interest p.a. as from 11 September 2022 until the date of effective payment; plus*
   - *BAM 4,825 as outstanding remuneration plus 5% interest p.a. as from 11 December 2022 until the date of effective payment; plus*
   - *BAM 4,825 as outstanding remuneration plus 5% interest p.a. as from 11 February 2023 until the date of effective payment; plus*
   - *BAM 44,600 as compensation for breach of contract without just cause plus 5% interest p.a. as from 10 February 2023 until the date of effective payment."*
3. The decision rendered by the Dispute Resolution Chamber of the Federation Internationale de Football Association on 26 October 2023 is confirmed in all other points.
4. (…).
5. (…).
6. (…).
7. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 25 February 2025

THE COURT OF ARBITRATION FOR SPORT

Ken E. Lalo
Sole Arbitrator