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

CAS 2023/A/9923 Mezőkövesd Zsóry FC v. Matija Katanec & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Prof. Dr. Eligiusz Krześniak, Attorney-at-Law and Professor of Law in Warsaw, Poland
Arbitrators:	Mr. Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland
	Mr. Manfred Nan, Attorney-at-Law in Amsterdam, the Netherlands

in the arbitration between

Mezőkövesd Zsóry Futball Club, Mezőkövesd, Hungary

Represented by Dr. István Demeter, Attorney-at-Law in Miskolc, Hungary

-Appellant-

v.

Mr. Matija Katanec, Croatia

Represented by Mr. Hrvoje Raić and Mr. Ivan Ostojić in Split, Croatia

-First Respondent-

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

-Second Respondent-

I. PARTIES

1. Mezőkövesd Zsóry Futball Club (the "Appellant" or the "Club") is a professional football club incorporated in Mezőkövesd, Hungary. The Club is registered with the Hungarian Football Federation ("HFF"), which in turn is affiliated with the Fédération Internationale de Football Association.

2. Mr. Matija Katanec (the "First Respondent" or the "Player") is a Croatian professional football player.

3. The *Fédération Internationale de Football Association* (the "Second Respondent" or "FIFA") is the international football governing body. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide. FIFA is an association established in accordance with Article 60 ff. of the Swiss Civil Code and it is incorporated in Zurich (Switzerland).

4. The Player and FIFA are hereinafter jointly referred to as the "Respondents" and together with the Club as the "Parties".

II. FACTUAL BACKGROUND

A. Introduction

5. The present dispute revolves around two decisions rendered by respective bodies of FIFA. The first one has been issued in case file number FPSD-7151 (the "Decision") by the FIFA Dispute Resolution Chamber (the "FIFA DRC") in the merits, on 12 April 2023. The grounds for the Decision were received by the Appellant on 17 August 2023. The second one was issued on 17 August 2023 in case file number FDD-15697 by the FIFA Disciplinary Committee as a follow to an alleged non-compliance with the Decision (the "Registration Ban Decision").

6. The Decision pertains to a contractual dispute between the Appellant and the First Respondent, and it concerns the termination of the Player's employment contract and the consequent financial claim for unpaid remuneration and breach of contract compensation. The Ban Decision introduces a ban from registering new players internationally.

7. The pertinent facts and allegations based on the Parties' written submissions and on the CAS file are summarized below. References to additional facts and allegations found in the Parties' written and oral submissions and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its award only to those submissions and evidence it deems necessary to explain its reasoning.

B. Background facts

8. On 1 July 2021, the Player and the Club signed an employment contract in effect between 1 July 2021 and 30 June 2023 (the "Contract"). According to the Contract, the Club undertook to pay the Player a monthly salary of Hungarian Forint (HUF) 3,000,000.

9. Article II para. 10 of the Contract establishes that: "*the professional management or the management of the Employer may determine in his/her sole discretion at what team -or in line with the content of sub-point 8.a) -individually, or otherwise shall the Employee perform his/her training work, or in the matches of what team he/she is obliged to participate*."

10. Article XI paras. 47 and 49 of the Contract, stipulate as follows:

"*47. The Employee acknowledges that if he/she is not included in the first team of the Employer, or based on the decision of the professional management he/she is transferred to the second or further teams of the Employer, his/her base wage will be reduced to the percentage determined in the Personal Conditions of the amount given in point 15 - but to max. its 50 % • from the 15th day of the month following the decision*."

"*49. The Parties agree that they shall make efforts to settle their possible dispute in amicable way by negotiations. If these efforts fail - in cases determined by the rules of MLSZ and FIFA - the Parties may turn to the organizational units with MLSZ or FIFA scope of authority, in case of labour dispute to the Administrative and Labour Court having competence and scope of authority, and in all other disputes arising out of their legal relationship the Parties stipulate the exclusive jurisdiction of the Sports Standing Arbitration Court based on the Article 4 7 of the Sports Law. The number of arbitrators is three; the procedure is determined by the Procedural Rules of the Arbitration Court*."

11. Article XII of the Contract, *inter alia*, stipulates as follows:

"*Parties agree that if the employee will not play at least the 50% of the league games (at least 720 minutes in the season) in the season of 2021/2022 the employer has the option to terminate this contract until the 30th of June, 2021. Employer has to notify the employee until the 15th of June, 2021.*

The Parties agree that the Employee shall work in time framework and in unequal working time. The Employee acknowledges that the Employer determines his working time in a six months' time frame, based on the 8 hours daily working time. Within the working time framework, the professional management of the Employer has the right to distribute the work."

12. On 8 March 2022, the Club informed the Player, in a letter, that from then on (i.e. as of 8 March 2022) he would be playing for the Club's second team.

13. On 11 March 2022, the Player replied to the Club informing it that he had been taken from "*its first team without any reason and without any prior notice which actions of the Respondent constitute abusive behavio*r", hence he requested that the Club ceases to breach the Contract and immediately reintegrates him into the first team.

14. On 22 April 2022, the Player sent the Club another letter in which he, *inter alia*, asked the Club to continue paying his full monthly salary and to immediately reintegrate him into the first team's training process.

15. On 10 June 2022, the Club notified the Player of the following: "*you <u>as a professional soccer player would not be the member of the first soccer team of Mezőkövesd Zsóry FC Kft</u>. and in accordance with the decision of the management of Mezőkövesd Zsóry Futball Club*

starting on the 10th of June 2022, you would become a member of the Mezőkövesd Zsóry II soccer team. From the aforementioned date you are obligated to train together with the Mezőkövesd Zsóry II soccer team."

16. On 4 July 2022, the Player sent the Club a default notice and reiterated his requests to be reintegrated into the first team, to be allowed to rejoin the first team's training process, and to be paid his May 2022 salary, granting the Club a 15-day deadline to comply, however to no avail.

17. On 12 July 2022, the Player sent the Club a final default notice with a 15-day deadline in which he, *inter alia*, requested that the Club:

i. [to] stop breaching the Employment contract, and

ii. [to] reintegrate him in the training process of the first team of the Club, and

iii. [to] pay him May 2022 salary of net HUF 3,000,000.00 (three million Hungarian Forint), which matured on 10 June 2022, and

iv. [to] pay him June 2022 salary of net HUF 3,000,000.00 (three million Hungarian Forint), which matured (in the meantime) on 10 July 2022.

18. On 28 July 2022, the Player unilaterally terminated the Contract, due to the Club's failure to answer his default notices and its failure to fully comply with his requests (the Club only paid the May 2022 salary of net HUF 3,000,000.00).

19. On 3 August 2022, the Club sent the Player a letter to the effect that:

"*We reject in its entirety the terms of Matija Katanec's termination of his contract sent to us on 28th July 2022, and We do not accept the terms of his termination. Matija Katanec seriously breached the Employment Contract between the parties and the rules of employment law applicable to the employment relationship by unlawfully dismissing the applicant.*

Matija Katanec particularly breached the Chapter IX 39 point of Employment Contract because He would have been entitled to terminate his employment contract with immediate effect if the Employer is in min. 1,5 month (45 days) delay with the payment of the Employee's wage, and the Employee called upon the Employer to fulfill the contract within 15 (fifteen) days deadline and this date has expired without success.

As previously informed to Matija Katanec in detail on several occasions that his performance during the fall/spring season He could not included to the first team of the MEZŐKÖVESD ZSÓRY FC. The decision of the professional management of MEZŐKÖKÖVESD ZSÓRY FC according to which Matija Katanec obliged to train with the second team of MEZŐKÖVESD ZSÓRY FC and to play in its matches is a temporary measure, which would have lasted only until Matija Katanec was fit and healthy enough to return to the first team."

20. According to the FIFA Transfer Matching System, the Player signed with the Croatian club, NK Varazdin, for the period between 23 August 2022 and 15 June 2023 at a monthly salary of HRK 33,000. The contract was mutually terminated on 10 January 2023.

21. The Player then signed with the Romanian club, Politehnica Lasi, for the period between 15 January 2023 and 15 June 2023 at a monthly salary of RON 24,630.

C. Proceedings before FIFA

22. On 22 August 2022, the First Respondent lodged a claim against the Appellant before FIFA. The First Respondent claimed just cause for terminating the Contract, citing financial breaches and exclusion from team training by the Appellant. The relief sought included a declaration of just cause termination, payment of net HUF 5,709,677.60 in outstanding amounts, net HUF 33,290,322.40 in compensation, provision of tax certificates, and a 5% per year default interest on the overdue amounts.

23. On 13 September 2022, the Appellant asserted that the Hungarian law governs the employment relationship, contending that it is the Miskolc Labour Court, rather than FIFA, that holds jurisdiction over the case. Moreover, it maintained that the Player's removal from the first team was a temporary measure due to health concerns, and that he had been informed about his transfer to the second team until meeting the required fitness levels. The Appellant argued that it had not breached the Contract, emphasizing that the salary delay was within the acceptable limits upon termination. The Appellant refuted any salary reduction allegations, asserting that it had fulfilled its payment obligations. Finally, the Appellant requested that the proceedings before FIFA be discontinued, urging reliance on the Contract and on the Hungarian labour law, and if the proceedings were to continue, it sought rejecting the Player’s claim in its entirety and reimbursing for the associated costs.

24. On 28 October 2022, the First Respondent emphasized that the Appellant's prayers for relief did not constitute a counterclaim and should be treated as a response to the Player's claim. The First Respondent rejected all of the Club’s allegations as unfounded attempts to avoid payment. After receiving the outstanding remuneration of net HUF 5,709,677.60, the First Respondent revised the relief sought, emphasizing just cause termination, default interest, breach of contract compensation of net HUF 33,290,322.40, tax certificates, and sporting sanctions against the Appellant. The First Respondent requested that the FIFA Football Tribunal reject all prayers for relief sought by the Club.

25. On 14 November 2022, the Appellant contested the Player’s argument that the counterclaim dated 13 September 2022 should not be deemed as such. The Appellant maintained that its counterclaim precisely outlined the factual and legal circumstances, urging the FIFA DRC to reject the Player's unestablished claim based on specific grounds. The Appellant reiterated its request to discontinue the proceedings or reject the Player’s claim, qualifying the dispute as a labour matter governed by the Contract and the Hungarian labour law, and prayed that the First Respondent cover the costs if the FIFA DRC should elect not to terminate or stay the proceedings.

26. On 12 April 2023, the FIFA Tribunal ruled as follows:

"*1. The Football Tribunal has jurisdiction to hear the claim of the Claimant, Matija Katanec.*

2. The claim of the Claimant, Matija Katanec, is partially accepted.

3. The Respondent, Mezokovesd Zsory FC, must pay to the Claimant the following amount(s):

*- **only 5% interest p.a.** on the late payment of the amount of HUF 3,000,000 as from 11 July 2022 until 19 September 2022;*

*- **only 5% interest p.a.** on the late payment of the amount of HUF 2,709,677.60 as from 28 July 2022 until 19 September 2022;*

*- **HUF 25,989,106.58 as compensation for breach of contract without just cause** plus 5% interest p.a. as from 28 July 2022 until the date of effective payment.*

4. Any further claims of the Claimant are rejected.

*5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.*

*6. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:*

1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.

2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.

*7. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*

8. This decision is rendered without costs."

27. The Decision, along with its grounds, was communicated to both the Appellant and the First Respondent by way of the notification dated 9 June 2023, but – as transpired later – it was only successfully communicated to the Appellant on 17 August 2023.

28. On 16 August 2023, the Player requested that FIFA impose the sanctions provided for in the Decision pursuant to Article 24 RSTP, as the Club had failed to pay the amounts provided for therein. Given the above, "a ban from registering new players internationally" was imposed on the Appellant as of 17 August 2023 by virtue of the Registration Ban Decision.

29. On 24 August 2023, the Appellant decided to appeal both the Decision and the Registration Ban Decision to CAS, alleging, *inter alia*, that it had only been notified of the FIFA DRC Decision on 17 August 2023.

30. On 11 September 2023, FIFA confirmed that even though the grounds for the FIFA DRC Decision were uploaded to the Legal Portal on 9 June 2023, they only became visible to the Appellant on 17 August 2023. As a consequence, FIFA lifted the Registration Ban Decision on 8 September 2023. In other words, the Registration Ban Decision ceased to have any effect as of that date.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

31. On 24 August 2023, the Appellant filed with CAS the Statement of Appeal against the Decision pursuant to Article 57 (1) of the FIFA Statutes and to Article R47 and Article R48 (1) of the Code of Sports-Related Arbitration (the "CAS Code") and requested that the appeal be submitted to a sole arbitrator.

32. On 29 August 2023, the CAS Court Office acknowledged receipt of the Statement of Appeal and provided the other Parties with a copy. The Respondents were also invited to inform the CAS Court Office, within five days following receipt of the letter, whether they agree to the appointment of a sole arbitrator.

33. On 30 August 2023, the Second Respondent informed that it agrees to submitting the matter to a sole arbitrator, appointed by the President of the CAS Appeals Division if he/she is selected from the football list, as provided for in Article R54 of the CAS Code. That letter was acknowledged by the CAS Court Office on the same day.

34. On 31 August 2023, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code.

35. On 1 September 2023, the CAS Court Office acknowledged receipt of the Appeal Brief and informed the Respondents that the document is available. Pursuant to Article R55 of the CAS Code, the Respondents were given 20 days to submit their answers.

36. On 1 September 2023, the First Respondent requested to have the deadline to file his position extended until 15 September 2023 and informed that he agrees to submitting the case to a sole arbitrator. On 4 September 2023, the CAS Court Office granted the extension as requested (i.e., until 15 September 2023).

37. On 4 September 2023, the CAS Court Office also informed that the Second Respondent requested, on 1 September 2023, that the deadline to file its answer be set once the Appellant has paid its share of the costs advance. Pursuant to Article R55 (3) of the CAS Code, the deadline for the Second Respondent to file its answer was set aside and a new deadline was to be fixed upon the Appellant's payment of its share of the costs advance.

38. On 5 September 2023, the CAS Court Office informed that the First Respondent requested, on 4 September 2023, that the deadline to file his answer be set once the Appellant has paid its share of the costs advance. Pursuant to Article R55 (3) of the CAS Code, the deadline for

the Second Respondent to file its answer was set aside and a new deadline was to be fixed upon the Appellant's payment of its share of the costs advance.

39. On 11 September 2023, the CAS Court Office acknowledged receipt of the First Respondent's letter of 8 September 2023 in which the First Respondent requests that his matter be submitted to a three-member panel and nominates Mr. Manfred Nan as an arbitrator. Therefore, the CAS Court Office invited the Parties to state their positions on the three-member panel, the costs and the nomination proposal by 14 September 2023.

40. On 12 September 2023, the CAS Court Office acknowledged receipt of the Second Respondent's letter of 11 September 2023 and noted that the Registration Ban Decision was lifted on 8 September 2023 and the Appellant is requested, by 15 September 2023, to state whether it withdraws its challenge against the FIFA letter which implemented the Registration Ban Decision and whether it maintains its appeal against the Decision.

41. On 14 September 2023, the CAS Court Office noted that the Appellant – in its letter of 12 September 2023 – objects to the First Respondent's request to submit the present proceedings to a three-member panel. It was also noted that the Appellant withdraws its challenge against the FIFA letter which implemented the Registration Ban Decision but maintains its appeal against the Decision. The Respondents were invited to ignore the deadline set in the CAS letter of 29 August 2023 and the following deadline extension.

42. That same day, the First Respondent confirmed that he will cover his share of the costs advance in this matter if it should be referred to a three-member panel, and the CAS Court Office communicated the First Respondent's letter on that to the other Parties.

43. Also that same day, the Second Respondent informed that FIFA does not object to the First Respondent's request to submit this matter to a three-member panel and to the nomination of Mr. Manfred Nan as an arbitrator, which was noted by the CAS Court Office on 15 September 2023.

44. On 19 September 2023, the CAS Court Office informed that pursuant to Article R50 (1) of the CAS Code, the Deputy Division President decided to submit this matter to a three-member panel, provided that the First Respondent pays his share of the costs advance. Therefore, the Appellant was invited to nominate an arbitrator by 25 September 2023.

45. On 26 September 2023, the CAS Court Office noted that the Appellant, in its letter of 25 September 2023, nominates Mr. Michele A.R. Bernasconi as an arbitrator in this matter.

46. On 6 October 2023, the CAS Court Office provided the Parties with the copies of both "Arbitrators' Acceptance and Statement of Independence" forms completed by the nominated arbitrators and informed that the Parties may challenge the arbitrator nomination pursuant to Article R34 of the CAS Code.

47. On 24 October 2023, the CAS Court Office informed that the Appellant and the First Respondent have both paid their shares of the costs advance and, therefore, set a 20-day deadline for the Respondents to submit their answers in this matter.

48. On 1 November 2023, the CAS Court Office noted that no challenges have been filed against the nominations of Mr. Michele A.R, Bernasconi and Mr. Manfred Nan.

49. On 8 November 2023, the Second Respondent requested a 20-day extension of the deadline to file its Answer, which was noted by the CAS Court Office. Therefore, the Appellant was invited to comment on that request no later than by 9 November 2023, while its silence will be deemed acceptance.

50. On 9 November 2023, the CAS Court Office acknowledged receipt of the First Respondent's letter of 8 November 2023, in which he requested a 10-day extension of the deadline to file his Answer. Pursuant to Article R32 (2) of the CAS Code, the request was granted.

51. On 10 November 2023, the CAS Court Office noted that the Appellant does not oppose to the Second Respondent's deadline extension request and, therefore, it was granted, i.e. the Second Respondent was invited to submit its answer by 4 December 2023.

52. On 4 December 2023, the CAS Court Office acknowledged receipt of the Second Respondent's correspondence regarding the request for an extension of the deadline to submit the Answer by 14 December 2023, which was granted.

53. On 13 December 2023, the CAS Court Office acknowledged receipt of the Respondents' Answers. The Parties were invited to inform the CAS Court Office, by 20 December 2023, whether they prefer a hearing to be held in this matter and whether they request a case management conference with the Panel. Pursuant to Article R54 of the CAS Code, the Parties were informed that the Panel appointed to decide the case is constituted as follows: President – Prof. Dr. Eligiusz Krześniak, Arbitrators – Mr. Michele A.R. Bernasconi and Mr. Manfred Nan.

54. On 18 December 2023, the CAS Court Office noted that the Appellant – in its letter of 15 December 2023 – did not request holding a hearing in this matter and that the Panel may issue an award based on the Parties' written submissions.

55. On 21 December 2023, the CAS Court Office acknowledged receipt of the Respondents' letters of 20 December 2023. The Second Respondent considered that a hearing is not necessary, while the First Respondent preferred for a hearing to be held.

56. On 27 December 2023, the CAS Court Office invited the Parties to indicate their preferences for a hearing in this matter to be held in person or by videoconference.

57. On 28 December 2023, the CAS Court Office noted that the Second Respondent – in its letter of 27 December 2023 – preferred to hold a hearing by videoconference.

58. On 4 January 2024, the CAS Court Office noted that the Appellant – in its letter of 2 January 2024 – preferred to hold a hearing by videoconference.

59. On 8 January 2024, the CAS Court Office noted that the First Respondent – in his letter of 8 January 2024 – preferred to hold a hearing by videoconference.

60. On 12 January 2024, the CAS Court Office notified the Parties that the hearing had been scheduled for 11 March 2024.

61. On 30 January, the CAS Court Office sent the Parties the Order of Procedure, which was returned duly signed by the Parties within the prescribed deadline.

62. On 11 March 2024, the scheduled hearing was held by videoconference before the Panel. Apart from the Panel and Mr. Fabien Cagneux, Managing Counsel, the hearing was attended by:

For the Appellant:

- Dr. Ádám Gyökér, Counsel
- Dr. Hajnalka Ritter, Counsel

For the First Respondent:

- Mr. Matija Katanec, Respondent
- Mr. Tomislav Kasalo, Counsel
- Mr. Ivan Ostojić, Counsel

For the Second Respondent

- Mr. Roberto Nájera Reyes, Senior Legal Counsel

63. At the outset of the hearing, the Parties confirmed that they had no objections in respect to the Panel and that the Panel had jurisdiction over the present dispute. In their opening statements, the Parties reiterated the arguments already put forward in their respective written submissions.

64. At the conclusion of the hearing, the Parties expressly stated that they had no objections in respect of the Panel's formation, nor of their right to be heard and to be treated equally in the arbitration proceedings.

IV. SUBMISSIONS OF THE PARTIES

65. This section of the Award does not exhaustively list the Parties' contentions, its aim being to summarize the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including the allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant's Position

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

i. The Club has been denied its right to appeal due to the circumstances of delivering the Decision, the detailed notification of the grounds for the Decision and the Registration Ban Decision.

ii. Emphasizing the international labour law principles and the Contract, the Club argues for Hungarian law's governance due to the work being conducted in Mezőkövesd,

Hungary. It asserts clarity of the Contract's jurisdiction clause, exclusively designating the Hungarian Administrative and Labour Court for labour disputes and highlights its mandatory nature for Hungarian football teams. The Club contends that any deviation from the Contract's provisions is invalid, citing CAS jurisprudence (CAS 2022/A/8571) to challenge the FIFA DRC's competence in deciding the employment-related dispute. Summarizing, the Club insists that the Decision violates the exclusive jurisdiction of the Hungarian Administrative and Labour Court. The Appellant is disputing the FIFA DRC's competence in this employment matter.

iii. The Club contends that temporarily transferring the Player to the second team aligns with the terms of the Contract, emphasizing that the Club provided detailed reasons for the decision. The Club argues that the transfer was a lawful and justified measure, citing the compulsory nature of the Contract terms established by the Hungarian Football Federation. The measure was explicitly temporary, of which the Player had been well aware, as the Appellant had been continuously assuring him about the first team's reliance on his contributions. The Club maintains that it would consistently acknowledge the Player's value and communicate the temporary nature of the transfer, aiming at his return to the first team.

iv. The Club asserts that the immediate termination initiated by the Player was unlawful, as the Club was not in default of any payment, a prerequisite for such termination according to the Contract and the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP"). The Appellant asserts that when the Contract was terminated, the payment was only 18 days late, concluding that the First Respondent had no legitimate reason to terminate the Contract so abruptly. Despite ongoing verbal communications, the Player opted for exchanging notice letters instead of cooperating with his employer.

v. The Appellant contends that the Player breached the Contract in that he did not make every effort to improve his physical condition and perform at his best, as he scored well below the team average in the physical and health assessment.

vi. Additionally, the Club opposes the Player's compensation claim, requesting information on his contract with NK Varazdin to determine the appropriate deductions. The Appellant questions the realism of the Player's claim in that regard and notes the absence of any contractual provisions having been referenced.

vii. The Club contends that it upheld all of its contractual obligations, adhering to FIFA and Hungarian Football Federation regulations and legal provisions, and it did not obstruct the Player's ability to continue his employment.

67. In its Appeal Brief, the Appellant submitted the following requests for relief [verbatim transcription]:

"The Appellant kindly requests the CAS:

1., annuls and set aside in its entirety the Decision issued by the Council of the FIFA DRC (Ref. Nr. FPSD-7151) received on 17th August 2023 having regard Matija Katanec had his employment terminated unlawfully and in the labour law dispute the Hungarian national

labor court has jurisdiction according to the Employment Contract between the Parties and the stipulated law

2., determine that the decision of the FIFA DRC FPSD 7151 was not communicated to MEZŐKÖVESD ZSÓRY FC within the time-limit set by FIFA and FIFA therefore infringed the to MEZŐKÖVESD ZSÓRY FC's right to apply for judicial review and unlawfully imposed sanctions as a legal consequence

3., annuls and set aside in its entirety the Decision issued by the FIFA Disciplinary Committee (Ref. no. FDD-15697) on 17th August 2023 having regard to the fact that our appeal against the decision under case number FPSD 7151 has not yet been considered in the present proceedings, and that therefore no sanction or decision can be imposed as a result.

4., grants the relief sought by Appellant,

5., release the Appellant from the financial obligation to pay laid down in the Decision issued by the Council of the FIFA DRC (Ref.Nr. FPSD-7151),

6., suspend the execution issued by the FIFA Disciplinary Committee (Ref. no. FDD-15697) on 17th August 2023 given that the notification of the grounds of the decision under case number FPSD 7151 has not been sent to the MEZŐKÖVESD ZSÓRY FC before as of 17th August 2023 neither by e-mail nor by FIFA Legal Portal, therefore, the contested decision cannot be final and binding, since the Appellant did not have the opportunity to exercise right of appeal earlier than 17th August 2023

7., to charge all costs of these proceedings to Matija Katanec, FIFA."

B. The First Respondent's Position

68. The First Respondent's submissions may be summarized as follows:

i. The Player does not contest CAS' jurisdiction in this matter according to the applicable CAS Code and FIFA Statutes, and in his opinion, the FIFA Regulations shall be primarily applicable to the substance of this matter, as it was rightfully sustained in the Decision, along with the subsidiarily applicable Swiss law.

ii. The First Respondent argues that FIFA has jurisdiction over international employment disputes, unless the parties opt for a national arbitration tribunal. The Player challenges the Club's interpretation of the Arbitration Clause, asserting it provides alternative forums, including FIFA. He emphasizes that filing the claim before FIFA was a binding choice. The Player questions the Club's lack of evidence for bringing the matter before an unspecified court and cites CAS jurisprudence supporting FIFA's jurisdiction. He contends that any contractual ambiguity should be interpreted against the Club. Ultimately, the Player asserts that FIFA was competent due to the international nature of the dispute and his choice of forum.

iii. As to the salary payment and the Contract termination, the Player challenges the Club's assertion that a 45-day salary payment delay was necessary for unilateral termination. He cites specific clauses from the Contract and the FIFA Regulations, emphasizing that

the Club's failure to fully comply with his financial requests, as outlined in the default letter, constituted just cause for termination under the FIFA Regulations.

iv. Concerning his exclusion from the first team, the Player disputes the Club's argument that such exclusion was a temporary measure, presenting evidence that it lasted for almost five months. He argues that the Club's statements about his alleged poor physical performance were unfounded, especially considering he was fit and not injured during the exclusion period.

v. The Player cites relevant provisions from the Contract, FIFA RSTP, and CAS jurisprudence to support his position. He underscores the mandatory nature of certain FIFA RSTP provisions, such as the requirement for clubs to fully remedy any salary payment default within 15 days to avoid players unilaterally terminating their contracts.

vi. The Player argues that the Club's conduct, including persistent exclusion and failure to comply with financial obligations, amounted to a breach of contract. He asserts that such behaviour not only violated FIFA RSTP, but also his personal right to train and play with the first team, constituting a "*per se*" just cause for contract termination.

vii. Concluding, the Player contends that the Club's actions, both in terms of financial obligations and exclusion from the first team, provided him with legitimate grounds to terminate the Contract with just cause, as per FIFA Regulations and established CAS jurisprudence. Consequently, the Player contends that the Club is now obligated to make the payments determined in the Decision.

69. In the Answer to the Appeal Brief, the First Respondent submitted the following requests for relief [verbatim transcription]:

"In view of the foregoing, the First Respondent respectfully requests the honorable CAS Panel:

- to deem the Appeal as inadmissible,

- to order the Appellant to pay all the costs of the proceedings before CAS, and

- to order the Appellant to pay a significant contribution towards the legal fees and other expenses incurred by the First Respondent in connection with these proceedings of at least CHF 10,000.00.

or, in the event that the Appeal shall not be deemed as inadmissible:

- to reject all reliefs sought by the Appellant in its Requests for Relief from the Appeal Brief, and

- to order the Appellant to pay all the costs of the proceedings before CAS, and

- to order the Appellant to pay a significant contribution towards the legal fees and other expenses incurred by the First Respondent in connection with these proceedings of at least CHF 10,000.00."

C. The Second Respondent's Position

70. The Second Respondent's submissions may be summarized as follows:

i. The jurisdiction of the CAS over the Appellant's appeal, as per Article 57 (1) of the FIFA Statutes and Article R47 of the CAS Code, is undisputed, with the Second Respondent not contesting the admissibility of the appeal against the Decision, which became available to the Club on 17 August 2023. Nevertheless, FIFA considers the appeal against the Registration Ban Decision moot, since the ban was lifted on 8 September 2023, rendering the decision ineffective as of that date.

ii. FIFA rebuts the Club's allegations, asserting the Contract's non-exclusive jurisdiction, dismissing *lis pendens*, and demonstrating the Player's just cause due to the Club's abusive conduct.

iii. Due to FIFA confirming that the Decision was not accessible for the Appellant until 17 August 2023, and the subsequent lifting of the Registration Ban Decision, rendering it moot, the Second Respondent asserts that the Appellant's requests for relief numbers 2, 3, 4, and 6 are moot.

iv. FIFA asserts its jurisdiction in the dispute between the Appellant and the Club, highlighting Article 22 FIFA RSTP, which establishes FIFA's authority in international disputes. The jurisdiction clause in the Contract is considered unclear and non-exclusive, as it allows filing claims with five different forums, failing to exclude FIFA's competence. FIFA contends that the Parties' behaviour and communications demonstrate their intention to leave open the possibility of filing claims with FIFA, supporting the Decision to retain jurisdiction. Additionally, FIFA disagrees with conclusions from the award CAS 2022/A/8571, emphasizing the need to consider party intent, reliance, and the principle of interpreting ambiguous clauses against the drafter.

v. The Second Respondent rejects the Appellant's *lis pendens* claim, asserting that the Appellant has not provided convincing evidence to meet the "triple-identity" criteria, which requires the same parties, object, and facts in other proceedings. Moreover, FIFA emphasizes that even if there was another legal dispute, the Appellant failed to prove the serious reasons required for a stay, highlighting the absence of any serious inconvenience.

vi. FIFA asserts that the dispute falls under its jurisdiction, with its regulations, especially the FIFA Statutes and FIFA RSTP, serving as the applicable law. The Appellant's claim for the Hungarian law to govern the employment relationship is rejected, as FIFA highlights the voluntary submission to FIFA's jurisdiction, implying acceptance of FIFA's regulations and jurisprudence. FIFA emphasizes the consistent global application of its regulations to ensure equal treatment and maintain predictable justice administration in football disputes.

vii. The Second Respondent argues that the Player had just cause to terminate the Contract based on Article 14 of FIFA RSTP, emphasizing the provision allowing termination in case of abusive conduct by a party aiming to force the counterparty to terminate or alter the contract terms. FIFA cites instances of the Club's abusive behaviour, such as

unilaterally demoting the Player to the second team without justifiable reasons and failing to communicate the alleged temporary nature of the demotion. Referring to a similar CAS decision, FIFA contends that the Player's exclusion from the first team, coupled with delayed salary payments, constituted a breach of trust, providing just cause for contract termination. The Club's recurrent pattern of such behaviour only strengthens the Player's case. Consequently, FIFA asserts that the Player had valid grounds to terminate the Contract due to the Club's abusive, bad-faith, and unjustifiable conduct.

viii. The Second Respondent asserts that its involvement in the proceedings is a result of the Appellant's attempt to challenge FIFA's jurisdiction and discredit its authority. Having established jurisdiction and confirmed the Club's abusive behaviour, FIFA deems the dispute 'horizontal' and expresses disinterest in debating its financial aspects, directing the Panel to uphold the Decision.

ix. Summarizing, FIFA contends that the appeal should be rejected in its entirety.

71. In the Answer to the Appeal Brief, the Second Respondent submitted the following requests for relief [verbatim transcription]:

"Based on the foregoing, FIFA respectfully requests CAS to issue an award on the merits:

(a) rejecting the reliefs sought by the Appellant and dismissing the appeal in full;

(b) confirming the Appealed Decision;

(c) ordering the Appellant to bear the full costs of these arbitration proceedings".

V. JURISDICTION OF THE CAS

72. Pursuant to Article 186 (1) of the Swiss Private International Law ("PILA"), the CAS has the power to decide upon its own jurisdiction.

73. Article R47 of the CAS Code states that:

> "*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*."

74. Article 57 (1) of the FIFA Statutes (2022 edition) provides as follows:

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

75. In addition, the Appealed Decision provides as follows:

> *"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."*

76. As a result, CAS has jurisdiction to hear and adjudicate the present matter.

VI. ADMISSIBILITY OF THE APPEAL

77. Pursuant to Article R49 of the CAS Code:

> "*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*."

78. Article 57 (1) of the FIFA Statutes (2022 edition) provides as follows:

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

79. The Decision was issued on 12 April 2023 and notified to the Appellant with the grounds on 17 August 2023. The Appellant filed its Statement of Appeal on 30 August 2023. FIFA confirmed the notification date, and thus the timely filing of the appeal.

80. Therefore, the Appeal is admissible.

VII. APPLICABLE LAW

81. 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."*

82. Since FIFA is incorporated in Switzerland, the Panel deems the applicable regulations to be the FIFA Statutes, the various regulations of FIFA, and subsidiarily the Swiss law.

VIII. MERITS

83. The very first issue to determine is the scope of the appeal.

84. The second issue to address is whether the FIFA DRC had jurisdiction to rule in this case. Only after this has been established will it be possible to proceed to assessing whether the Contract had been breached and whether the compensation claims are valid.

A. What is the scope of the appeal

85. During the CAS proceedings, the Appellant withdrew its challenge against the FIFA letter which implemented the Registration Ban Decision but maintained its appeal against the Decision.

86. This leads to the conclusion that the Appellant's requests for relief numbers 2, 3, 4, and 6 have been withdrawn. The Appellant confirmed the above during the hearing. Therefore, only the requests for relief 1, 5 and 7 remain to be addressed.

B. What does this matter concern?

87. The Appellant objects to the FIFA jurisdiction and finds that the competence to decide employment-related disputes rests exclusively with the Hungarian courts because of the jurisdiction clause in the Contract. The Respondents, on the contrary, challenges the Club's interpretation of the Arbitration Clause, asserting it provides for alternative forums, including FIFA. Furthermore, the Respondents assert that FIFA was competent due to the international nature of the dispute.

88. Article 22 of FIFA RSTP provides – in its pertinent parts – as follows:

> "*Without prejudice to the right of any player, coach, association, or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:*
>
> *b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs;* [...]."

89. Additionally, Article 23 (1) of FIFA RSTP reads as follows:

> "*The Dispute Resolution Chamber of the Football Tribunal shall adjudicate on any of the cases described in article 22 paragraphs 1 a), b), d), e) and f)*."

90. Furthermore, Clause XI.49 of the Contract states as follows:

> "*The Parties agree that they shall make efforts to settle their possible dispute in amicable way by negotiations. If these efforts fail — in cases determined by the rules*

of MLSZ and FIFA - the Parties may turn to the organizational units with MLSZ or FIFA scope of authority, in case of labour dispute to the Administrative and Labour Court having competence and scope of authority, and in all other disputes arising out of their legal relationship the Parties stipulate the exclusive jurisdiction of the Sports Standing Arbitration Court based on the Article 47 of the Sports Law. The number of arbitrators is three: the procedure is determined by the Procedural Rules of the Arbitration Court."

C. International aspect

91. A player's nationality is an important factor when determining whether a dispute qualifies as international under Article 22 (b) of FIFA RSTP. There is CAS case law denying the case an international aspect if the player or coach holds the same nationality as the club or a dual citizenship at the time of the event giving rise to the dispute (see e.g. CAS 2016/A/4441).

92. The First Respondent is and had been a Croatian national and the Club is incorporated in Hungary, hence this case does have an international aspect.

D. The Parties' agreement in Clause XI.49 of the Employment Contract

93. As a point of departure, the Panel notes that both Parties are indirectly affiliated with FIFA and, therefore, subject to the FIFA regulations (including the FIFA RSTP). Furthermore, the Panel notes that the Parties have contractually submitted themselves – inter alia – to FIFA regulations. Therefore, Articles 22 *et seq*. of FIFA RSTP apply, in principle, to this matter.

a) Were the Parties at liberty to opt out of Article 22 (b) of FIFA RSTP?

94. According to Article 22 (b) of FIFA RSTP, FIFA's competence in employment-related disputes is not absolute. According to the first sentence of Article 22 of FIFA RSTP, FIFA is only competent subject to "*to the right of any player, coach, association, or club to seek redress before a civil court*." Article 22 of FIFA RSTP, thus, entitles the Parties to seek redress either before the FIFA's adjudicatory bodies or before local courts. Should the Parties opt for a local forum, the FIFA adjudicatory bodies are no longer competent.

95. The question is whether the parties to a contract can limit the choice provided for in Article 22 of FIFA RSTP by entering into an agreement that obligates the party seeking judicial recourse to do so only before the local forum. The Panel finds that parties, in principle, do have such autonomy (cf. also CAS 2016/A/4554 paras 60 *et seq*.). This follows from Article 22 (b) of FIFA RSTP, whereby the parties can substitute the FIFA adjudicatory bodies for "an independent arbitration tribunal". If, however, the parties can substitute one option for the other, better arguments speak in favour of granting the parties full autonomy with respect to choosing the competent adjudicatory instance. Thus, the Panel finds that the parties may enter into a contractual or procedural agreement that excludes recourse to FIFA and obliges them to seek judicial redress only before the local courts. Merely for informative purposes and as a digression, the Panel refers to CAS 2013/A/3278, where the panel found in paras 66 *et seq*. as follows:

"*66. At the same time, under the freedom of contract and Swiss provisions on choice-of-forum clauses (e.g. article 5 of the PIL Act and article 17 of the CPC) parties to an international contract are entitled to include a choice-of-forum clause in their contract;*

and under Swiss law, a choice-of-forum clause is deemed exclusive, unless expressly provided otherwise.

67. Consequently, in light of the above legal framework, the question here is whether in the circumstances of this case, the Appellant and the Respondent could validly include a choice-of-forum clause in their Second Agreement and, if so, whether it also had the effect of excluding the competence of the FIFA internal bodies (in this case the Single Judge of the FIFA PSC) as the primary instance to pronounce itself on a dispute deriving from their contract.

68. With respect to the first aspect, given that we are dealing with an international contract between indirect members of FIFA and a purely contractual dispute which does not involve FIFA as a party or any sanctions taken by FIFA, the Panel finds that under Swiss law the Appellant and Respondent were entitled to validly adopt between themselves a choice-of-forum clause in favour of State courts (here the common courts of Funchal's Judicial District).

69. Concerning the second aspect, i.e. the scope of the parties' contractual choice-of-forum clause/exclusion of FIFA's competence, the majority of the Panel finds that the intent of the parties to the Second Agreement was clearly to choose the common courts of Funchal's Judicial District as the only body to decide any contractual dispute between them, since clause 5 of the Second Agreement refers to those courts 'For all legal consequences...' and there is no wording included which indicates the parties deemed the Portuguese courts in question would merely be an appellate body against a primary decision by FIFA; while at the same time this was a commercial contract and there is a presumption under Swiss law that a choice-of-forum is exclusive.

70. For the above reasons, the majority of the Panel finds that when including clause 5 in the Second Agreement the parties' intention was to exclude – in favour of the common courts of Funchal's Judicial District – any resort to a FIFA body in case of a dispute, and finds that such choice of the parties was valid under Swiss law."

96. The Panel further digresses referring to the FIFA Dispute Resolution Chamber decision dated 25 February 2020 (Petkovski v/ Vicente et al.), in which the adjudicatory body found as follows:

"*II.6. Taking into account all the above, the Chamber emphasised that in accordance with art. 22 of the Regulations, FIFA is competent to hear employment-related disputes between a player and a club with an international dimension 'without prejudice to the right of any player or club to seek redress before a civil court for employment related disputes.*

II.7. In the present matter, the FIFA DRC duly noted that the player and the club had unambiguously and exclusively decided that any dispute that would arise from the contract would be the 'Labor Court of the Judicial Court of Barcelos'.

II.8. The DRC recalled that parties may freely agree to give jurisdiction to a civil court, and that such choice shall always prevail. In fact, the Chamber, recalling its jurisprudence as well as CAS jurisprudence in this regard, and in particular CAS

2013/A/3278, highlighted that even if the choice of law does not specify which courts are competent (e.g. a generic reference is made to a region/city), FIFA is not competent when the parties have exclusively agreed to the jurisdiction of a civil court. In addition, the DRC emphasized that art. 22 of the Regulations provide a clear hierarchy in favor of contractual autonomy.

II.9. In view of all the above, the Chamber concluded that it was not competent to hear the dispute between the player and club, and consequently declared the claim of the player inadmissible."

97. The Panel is well aware that Article 22 of FIFA RSTP is the cornerstone of the legal protection to which football professionals are entitled. Thus, opting out of Article 22 (b) of FIFA RSTP should not be accepted easily. The Parties may only opt out if they do so freely and willingly, and only then will such arrangement be accepted, so as to avoid any misuse undermining the Parties' access to due process under Article 22 of FIFA RSTP.

b) Did the Parties opt out of Article 22 (b) of FIFA RSTP?

98. Whether the Parties had wanted the employment-related dispute to be decided solely and exclusively by the Hungarian courts needs to be assessed through interpreting the relevant language of the Contract while taking into account all relevant facts. The Panel applies Swiss law to the interpretation question, since the adjudicatory body that had allegedly been derogated from (the FIFA DRC) is located in Switzerland. Furthermore, the Parties did not make any submissions indicating that applying the Hungarian law to this interpretation question would have led to a different outcome.

99. Now, moving to the Contract itself the relevant part of Clause XI.49 of the Contract reads as follows:

"*[...] the Parties may turn to the organizational units with MLSZ or FIFA scope of authority, in case of labour dispute to the Administrative and Labour Court having competence and scope of authority, and in all other disputes arising out of their legal relationship the Parties stipulate the exclusive jurisdiction of the Sports Standing Arbitration Court based on the Article 47 of the Sports Law*."

100. Moreover, the relevant part of the FIFA Commentary on the Regulations on the Status and Transfer of Players (2023 edition) reads as follows:

"*The DRC unambiguously recognises the right to bring certain cases before ordinary courts, and refrains from accepting jurisdiction where the parties to a dispute have explicitly chosen to have employment-related cases heard by a civil court. CAS has confirmed this approach and has acknowledged that a club and a player may agree in their contract to refer any employment-related disputes to state employment tribunals. If the parties in a case opt for it to be heard before a state court, this decision must be respected. […]*

However, jurisprudence dictates that jurisdiction clauses must be sufficiently clear, including at the very least the designation of a specific place or (civil) court. This requirement ensures that the parties involved have a clear understanding of the agreed forum for resolving potential disputes, thereby promoting predictability and certainty

> *in the resolution of disputes. The relevant clause must also be exclusive, in favour of the relevant court to exclude the jurisdiction of the FT. […]*
>
> *Where a clear and exclusive jurisdiction clause has been agreed upon by the parties, the case will still be heard by the DRC provided that the international dimension is present and both parties agree (even tacitly) that the DRC should adjudicate. In other words, despite the existence of a jurisdiction clause in the contract, if a claim is lodged before the FT and the respondent does not challenge the jurisdiction of the FT, the DRC will accept jurisdiction to hear the matter. A challenge to the competence of the DRC in principle must therefore be invoked by the respondent, otherwise it is deemed that the jurisdiction of the DRC is accepted by both parties."*

101. At first glance, the language of the Clause is quite unclear. It refers to several different adjudicatory bodies, i.e. MLSZ, FIFA, the Administrative and Labour Court and to the Sports Standing Arbitration Court. As expressed in the Clause, the different bodies have each a different competence. This follows from the language of the Clause, whereby, for instance, the departments of FIFA and MLSZ are only competent to the extent of their "*scope of authority*". In view of the factual circumstances of the present case, the majority of the Panel does not consider it necessary to assess what may have been the intention of the Parties with the reference to FIFA and MLSZ, i.e. which types of disputes would fall under the competence of FIFA and MLSZ. Furthermore, the Clause provides that the Hungarian Administrative and Labour Court are supposedly competent for "*labour disputes*" and that the Sports Standing Arbitration Court has venue "*in all other disputes*". On one hand, the construction of the Clause might dictate that each different forum is only competent for specific types of disputes yet on the other hand it not entirely clear from the Contract itself whether this was indeed the intention of the Parties.

102. The pertinent question is which jurisdiction prevails if the fora's competences should overlap - contrary to the Parties' assumption - i.e. if not only the state courts, but also the FIFA adjudicatory bodies can, in principle, be competent to handle the labour disputes (Article 22 of FIFA RSTP). Such jurisdictional conflicts may be resolved - in principle - either by giving preference to the FIFA bodies or to the local courts.

103. If interpreted only in literal terms, the majority of the Panel finds that one should conclude that in Clause XI.49 of the Contract the Parties had bindingly granted the competent Hungarian Administrative Court and the Labour Court jurisdiction to adjudicate and settle the matter which is the object of the present case between them. This is because the present matter is a labour dispute and the local courts' competence had not been restricted to national or local disputes. Instead, Clause XI.49 of the Contract seems to stipulate that Hungarian courts are competent for all labour disputes.

104. The Panel further notes that several CAS Panels have already scrutinized similar, but not identical contractual clause in a number of previous matters under different factual circumstances and with different outcomes.

105. Starting with CAS 2021/A/7775, the CAS Panel opined that the parties had, in fact, opted out of FIFA jurisdiction and found as follows:

"The Panel finds that – when interpreting the clause in light of the principle of good faith – the latter interpretation best reflects the interests and intentions of the Parties. By referring explicitly to "labour disputes" and conferring jurisdiction for such disputes expressly to the state courts, the Parties wanted to establish exclusive jurisdiction in favour of such courts. Since the present case is – undisputedly – an employment-related dispute, it follows from Clause XI.4 of the Employment Contract that the Parties bindingly conferred jurisdiction to the competent Administrative and Labour Court in Hungary to adjudicate and decide the matter between them. In addition, the Panel notes that the competence of the local court was not restricted to national or local disputes. Instead, the Clause XI.4 of the Employment Contract states that Hungarian courts are competent for all matters pertaining to labour disputes. Thus, based on the principle of reasonableness and good faith, the Panel finds that the Parties by agreeing on Clause XI.4 excluded the option to seek redress before the FIFA organs in labour-relate disputes and opted for a single forum, i.e. the competent national "Administrative and Labour Court in Hungary". Such agreement shall override the FIFA rules and regulations, particularly Articles 22 and 23 of the FIFA RSTP."

106. Further, the Panel refers to CAS 2022/A/8571, where the CAS Sole Arbitrator concluded that *"the Contract established the exclusive jurisdiction of the Administrative and Labour Courts in employment-related disputes between the Parties. This clear and unequivocally agreement between the Parties to refer employment-related decision exclusively to Administrative and Labour Courts must be respected by the FIFA DRC".*

107. The CAS Sole Arbitrator in CAS 2022/A/8571 further reasoned, *inter alia*, as follows:

"When analysing the wording of Article 49 of the Contract, the Sole Arbitrator notes that it refers to four possible different fora of dispute resolution, competent to decide in case of a contractual dispute between the Parties. These fora are (i) the "organizational units of MLSZ", (ii) the "organizational units of FIFA", (iii) the "Administrative and Labour Court" and (iv) the "Sports Standing Arbitration Court". In view of the Sole Arbitrator, the jurisdiction clause is not clear on its face. However, a closer look at the wording of Article 49 of the Contract reveals that the provision itself distinguishes between different types of disputes upon which the jurisdiction of the respective fora is to be determined. More specifically, the Administrative and Labour Court has exclusive competence "in case of labour dispute", whereas the Parties may file claims before FIFA "in cases determined by the rules of MLSZ or FIFA" that are not of an employment-related dispute. Consequently, when agreeing on Article 49 of the Contract, the Parties opted out of Article 22 lit. b) of the FIFA RSTP and, at the same time, clearly and exclusively opted in Article 22 of the FIFA RSTP in favour of the jurisdiction of the Administrative and Labour Court.

Against this background, the Sole Arbitrator finds that the national ordinary court was exclusively competent to examine the dispute at hand, irrespective of whether or not a claim had already been filed with the Labour Tribunal in Miskolc. Accordingly, the FIFA DRC had no competence to deal with the dispute between the Parties in first instance pursuant to Article 22 of the FIFA RSTP in conjunction with Article 49 of the Contract. The Appellant further objected to the jurisdiction of the FIFA DRC in the proceedings before FIFA."

108. However, contrary to the outcomes in CAS 2021/A/7775 and CAS 2022/A/8571, in a previous CAS award CAS 2018/A/6016, a Sole Arbitrator concluded that the FIFA bodies had correctly accepted jurisdiction.

109. The Panel further notes that there is not only ample CAS jurisprudence concerning the issue at hand, but it has also been addressed by the Federal Tribunal of Switzerland (4A_2/2023, Judgment of 6 October 2023,), which heard the appeal against one of the above-mentioned CAS awards (i.e. CAS 2021/A/7775).

110. The Federal Tribunal upheld the CAS award and pointed in its reasoning that the primary factor in interpreting an arbitration agreement is the parties' actual mutual intention. The Swiss Federal Tribunal then went on to say if no such intention can be established regarding the arbitration agreement, it ought to be interpreted on a trust basis, i.e. the presumed intention is to be established as what the respective declaration recipient could and should have understood in good faith. In interpreting an arbitration agreement, one must consider its legal nature, particularly, that waiving common courts' jurisdiction significantly restricts appeal avenues. Per the Federal Tribunal case law, such a waiver may not be easily assumed, which is why a restrictive interpretation is required if in doubt. In other words, the Federal Tribunal said that in case of doubt, one must not assume that the parties' intention was to go to arbitration. On the contrary, one should in such case assume that the parties' intention was to go for the two-stages (first instance and then appeal proceedings) process, which the majority of the Panel finds to be typical in common courts and atypical in arbitration.

111. Having referred to the existing CAS jurisprudence and the Swiss Federal Tribunal body of rulings, the Panel will - nevertheless - examine the matter at hand in detail. In the Panel's view, the very fact of the preexisting CAS jurisprudence - even that upheld by the Swiss Federal Tribunal - does not automatically warrant a similar ruling in a different matter. Simply put – bad judgments should not be followed.

112. Ultimately, the specific facts and circumstances of each case may render it necessary to issue a different ruling. Although in both the above matters (CAS 2021/A/7775 and CAS 2022/A/8571), the adjudicating authorities found that such clauses override the FIFA rules and regulations, particularly Articles 22 and 23 of FIFA RSTP, the Panel believes it important to examine whether there had been any extraordinary circumstances in the present matter that would justify a departure from the two afore-mentioned CAS Awards and a confirmation of the CAS Award in CAS 2018/A/6016. Accordingly, the Panel indicates below which circumstances of the present matter should be additionally considered.

113. First, the Panel notes that it is possible for a less experienced party to be unaware of the implications and meaning of a similar clause. The present dispute is between the Club and the Player, not between a club and a football coach (as was the case in CAS 2021/A/7775). Football coaches, in principle, have much more life and football-related experience, hence they are more aware of the language and ramifications of the contracts they enter into. They may have a particularly better understanding of whether a certain clause may also extend jurisdiction to national courts or if it may limit FIFA's authority. However, the matter at hand did not involve a young or inexperienced player, but an experienced professional, with many years of football career. Advanced and skilled players should be aware of the importance and ramifications of any legal documents they sign (an experienced player was also a party in CAS 2022/A/8571).

114. Second, the Panel considers the Parties' equality circumstances, it being understood that vague phrasing may not be interpreted against the affected party. Based on the submissions made and the evidence offered by the Parties, the majority of the Panel is satisfied that the relationship between the Parties was not divergent. In particular, as it concerns the jurisdiction Clause, the circumstances of the matter indicate that although such a provision had been a standard one from which the Parties were not expected to deviate, the majority of the Panel finds that the Player could have requested clarification or questioned such a provision. However, no such actions have been demonstrated.

115. Further, the language itself of the Clause, even if it is as clear as it could have been, understrikes the competence for state judiciary bodies for labour disputes.

116. Considering the above, the majority of the Panel does not recognize that there had been unequal bargaining power between the Parties, that the choice of forum had been arbitrary or detrimental from the outset for either of the Parties, that the Player had been unaware that despite the reference to disputes within the competence of FIFA and the competence of the FIFA DRC set forth in Article 22(b) of FIFA RSTP, FIFA would nonetheless not be competent in a labour dispute, or that undue influence (whether economic or otherwise) had been exercised to pressure the Party into accepting the Contract terms and conditions.

117. The Panel further agrees with the Swiss Federal Tribunal that waiving the chosen jurisdiction should not be interpreted extensively. Thus, unless there are no extraordinary circumstances that would justify objecting to the chosen jurisdiction, the Parties' preference should be honoured. The majority of the Panel finds that the starting point for such analysis is Clause XI.49 of the Contract and not Article 22 (b) of FIFA RSTP. In the present matter, neither Party has pointed to any circumstances that might obstruct a fair ruling in the Hungarian Administrative and Labour Court. Nor did the Panel itself note any such circumstances. The majority of the Panel finds that, the Parties willingly opted for the Administrative and Labour Court as the competent authority to adjudicate labour disputes. That said, insufficient evidence has been shown to indicate the Parties' willingness to deviate from their choice.

118. Having analyzed all the circumstances, such as the literal wording of the Clause, the circumstances of entering into the Contract, the actual intentions and behaviour of the Parties, the majority of the Panel finds that FIFA had no jurisdiction, because the Parties did validly opt out of Article 22 (b) of FIFA RSTP.

c) Did the Appellant forego its right to object to FIFA's jurisdiction?

119. The First Respondent submits that the Appellant, in any event, forewent its right to object to FIFA's jurisdiction due to exceeding the deadline prescribed by the applicable FIFA Statutes, i.e. within 21 days as of the Decision notification date. The Panel disagrees. According to FIFA, the Decision was notified to the Appellant with the grounds on 17 August 2023. The Appellant filed its Statement of Appeal on 30 August 2023. The Panel notes that the Appellant, in its letter to FIFA, raised this body's incompetence in the matter and consequently requested discontinuation of the proceedings, which indicates that the Appellant did not accept FIFA's jurisdiction. Nevertheless, FIFA continued the proceedings and issued the Decision.

120. The Panel also contemplated whether the Appellant forewent its right to object to FIFA's competence by accepting the CAS's jurisdiction. The Panel, however, finds that this is not the case. First, the Panel notes that the Appellant stated that "*the FIFA DRC incorrectly decided to have jurisdiction to deal with the dispute between the Parties*" and its principal claim is to annul and set aside in its entirety the Decision having regard that "*in the labour law dispute the Hungarian national labor court has jurisdiction according to the Employment Contract between the Parties and the stipulated law"*. Thus, by appealing to CAS, the Appellant did not accept the previous instance's jurisdiction. Second, the Panel finds that such procedural behaviour on the part of the Appellant is not contradictory. If the FIFA adjudicatory body had wrongly accepted jurisdiction, there must be an option to guarantee the Appellant due process by way of setting aside the Decision. This is all the more true considering that a FIFA decision can be enforced against a party outside the court enforcement system.

E. Conclusion

121. Concluding, the majority of the Panel finds that the Parties have contractually derogated from the default competence of the FIFA DRC pursuant to Article 22 (b) of FIFA RSTP. Clause XI.49 of the Contract explicitly gives precedence to the jurisdiction of the competent Hungarian Administrative and Labour Court in employment-related disputes. Consequently, the FIFA DRC did not have jurisdiction to decide the matter and the Decision must be set aside.

122. Since the Panel, in appeals arbitration proceedings, is only mandated to decide the dispute within the limits of the previous instance, it cannot enter into the merits of the case but must accept the appeal and set aside the Decision.

123. Against the above background, all further requests and prayers submitted shall be dismissed.

IX. COSTS

(…).

*****

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 24 August 2023 by Mezőkövesd Zsóry Futball Club against the decision rendered on 12 April 2023 by the Dispute Resolution Chamber of the FIFA Football Tribunal is upheld.

2. The decision issued on 12 April 2023 by the Dispute Resolution Chamber of the FIFA Football Tribunal is set aside.

3. (…).

4. (…).

5. (…).

6. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 17 December 2024

COURT OF ARBITRATION FOR SPORT

Eligiusz Krześniak
President of the Panel

Michele A.R. Bernasconi
Arbitrator

Manfred Nan
Arbitrator