

Decision of the Players' Status Chamber

passed on 11 July 2023

regarding a dispute concerning the transfer of the player Jaka Bijol

BY:

Javier Vijande Penas, Argentina

CLAIMANT:

PFC CSKA, Russia

RESPONDENT:

Udinese Calcio SPA, Italy

Represented by Monteneri Sports Law

I. Facts of the case

Factual background

1. The relevant parties (hereinafter referred together as ***the parties***) to this dispute are the Russian club, PFC CSKA (hereinafter: ***CSKA*** or ***the Claimant***), and the Italian club, Udinese Calcio SPA (hereinafter: ***Udinese*** or ***the Respondent***).
2. On or around 22 February 2022, the Russian Federation launched an armed invasion of Ukraine.
3. On 23 February 2022, one of the main shareholders of CSKA named Vnesheconombank (VEB) was added to the list of sanctioned natural persons, entities, and bodies in line with the European Law, and following the cited invasion.
4. On 28 February 2022, CSKA itself was also included in the same list of sanctioned entities.
5. On 9 June 2022, CSKA filed a query with FIFA regarding the possibility of entering into a three-sided agreement with other football clubs to settle financial obligations.
6. On 10 June 2022, the FIFA administration replied to CSKA's query and informed that: *"Should the clubs agree on the mentioned form of payment in compliance with the relevant applicable laws, CSKA shall make sure that a valid proof of payment is uploaded in TMS 36286/362759 (cf. art. 4, Annexe 3, RSTP); In addition, we ask that you also upload in TMS the relevant agreement between the clubs which supports this form of payment"*.

Contractual basis: the transfer agreement between CSKA and Udinese

7. On 14 July 2022, the parties concluded a transfer agreement by means of which the services of the player Jaka Bijol (hereinafter: ***the player***) were transferred from CSKA to Udinese (hereinafter: ***the transfer agreement***).
8. According to clause 4 of the transfer agreement, Udinese undertook to pay CSKA the fixed amount of EUR 4,063,200, payable as follows:
 - a. EUR 1,015,800 within 30 days as of the issuance of the player's International Transfer Certificate (***ITC***);
 - b. EUR 507,900 by 31 December 2022;
 - c. EUR 1,523,700 by 30 September 2023; and
 - d. EUR 1,015,800 by 30 September 2024.

9. Furthermore, the same clause 4 of the transfer agreement also read as follows:

“Udinese shall be responsible for the deduction of the solidarity contribution to the entitled clubs, teams, national associations or other entities other than CSKA, whereas Udinese shall be entitled to deduct from the Fixed Transfer Fee, the relevant amounts of solidarity contribution due to third clubs other than CSKA. The solidarity contribution amounts due to CSKA are included in the Fixed Transfer Fee”.

10. Clause 9 of the transfer agreement read as follows, quoted *verbatim*:

“If Udinese fails to pay CSKA any sums due hereunder, Udinese shall pay a default interest of 5% (five percent) per year on the delayed amount accrued from the first day of delay until the date of effective entire payment no later than 10 (ten) days after a written notification of CSKA via e-mail.

In addition, in the event that Udinese fails to pay CSKA any sums due hereunder and such non-payment exists for 30 (thirty) or more days, CSKA shall send via e-mail a written notification giving 10 (ten) days to Udinese for the payment of due and unpaid amounts. In case Udinese will not pay the due and unpaid amounts within 10 (ten) days following the date of receipt of written notification of CSKA, then Udinese shall pay CSKA a penalty of 5% (five percent) of any delayed amount”.

11. Clause 18 of the transfer agreement read as follows: *“The parties expressly agree that CSKA is entitled to assign the financial rights due to it under the present Contract to third parties of which it shall notify Udinese accordingly”.*

Other facts

12. According to the information available in the FIFA Transfer Matching System (**TMS**), on 27 July 2022, the ITC of the player was issued, and he was registered with Udinese.
13. On 29 July 2022, CSKA sent Udinese a letter informing that its credit regarding the first instalment of the transfer agreement should be paid to the company *“AVO-Capital”* pursuant to the invoice therein enclosed (*cf.* clause 4 of the transfer agreement).
14. On 11 August 2022, Udinese contacted the bank named BancaTER Credito Cooperativo FVG (hereinafter: **BancaTER**) and requested information regarding the possibility to perform a payment to Avo-Capital. According to Udinese, the sole owner of Avo-Capital was also the president of CSKA, therefore preventing the payment because of international sanctions.
15. On 12 August 2022, BancaTER replied to Udinese’s email and informed that such transaction could not be completed. The statement by BancaTER stated *inter alia* as follows, quoted *verbatim*:

*"[...] with reference to the proposed transaction, I confirm that the foreign counterparty falls within the sanctions plan established by both the EU and OFAC for the USA, thus **not allowing the execution of the requested transaction.**"*

In fact, the CSKA team, as confirmed by the press reports that I enclose of Russian military origin was sold in 2020 to the Russian state bank VEB (Vnesheconombank); the VEB is sanctioned by EU Reg. 833/2014 (Art. 5 – Annex III) which inhibits any financial activity against it, by Reg. 269/2014 in which it appears as a subject listed for freezing of capital and inhibition of any transaction by the US Treasury Department – OFAC pursuant to Executive Order 14024 [...] which provides for the prohibition of carrying out any transaction with Vnesheconombank and its subsidiaries which include CSKA".

(emphasis in the original)

16. On 17 August 2022, CSKA served Udinese with a notice by means of which it acknowledged that the first instalment of the transfer agreement should be paid by 27 August 2022.
17. On 20 August 2022, Udinese replied to CSKA's email and informed that it received compliance remarks from its bank (*i.e.*, BancaTER) for the payment of the transfer fee to CSKA's bank, hence requesting a meeting to be take place for further discussions.
18. On 23 August 2022, the parties attended an online videoconference.
19. On 23 August 2022, CSKA sent an email to Udinese stating *inter alia* as follows, quoted *verbatim*:
 - "1) I am sending you the extract from the club's shareholders list together with its English translation.*
 - 2) In order to proceed and to discuss our options please also send us the reply from your bank.*
 - 3) We will also later send you the list of the clubs and/or intermediaries to which Udinese may possibly pay and cover the debts of CSKA within the amounts under the transfer contract between our clubs.*

We remain at your disposal for any further information".
20. According to Udinese, a copy of CSKA's list of shareholders was forwarded to BancaTER to look for a way to perform the payment.
21. On 26 August 2022, the BancaTER issued the following statement, quoted *verbatim*:

"Re: Bank transfer agreement in favor of the company AVO-Capital Limited Liability Company with an account at the MTS Bank of Moscow

With reference to your request to verify the possibility of carrying out the operation in question, given that the same falls within the scope of application of EU Regulations Ref. UE 833/2014 and Reg. 269/2014 being the sanctions established by the European Union as well as from OFAC for the United States of America, we inform you that any request for a transaction could not be executed at our Institute".

22. On 24 August 2022, CSKA sent Udinese a draft of an "Assignment Agreement" between them and the Norwegian club, Sbaetek Fotball (hereinafter: **Sbaetek**), which was signed by all three parties on 30 August 2023 (hereinafter: **the Assignment Agreement**).
23. The recitals of the Assignment Agreement read as follows, quoted *verbatim*:

"RECITALS:

- A. *On 5 February 2021 CSKA and Sbaetek entered into the Player Transfer Agreement as amended by the Amendments dated 17 September 2021 and 28 April 2022 respectively (hereinafter together – the 'Agreement-1') regarding the definitive transfer of the player Emil Bohinen.*
- B. *Pursuant to the Agreement-1 the following amounts are due by CSKA to Sbaetek within the year of 2022:*
- i. 3rd instalment of the Transfer Fee of € 407,784.32 (four hundred and seven thousand, seven hundred and eighty-four euros 32 cents);*
 - ii. Delay interest on the above amount calculated up to 5 August 2022 (inclusive) of € 8,821.93 (eight thousand, eight hundred and twenty-one euros 93 cents);*
 - iii. The portion of the sell-on amount of € 89,384.33 (eight-nine thousand, three hundred and eighty-four euros 33 cents);*
 - iv. 4th instalment of the transfer fee of € 397,838.36 (three hundred and ninety-seven thousand, eight hundred and thirty-eight euros 36 cents).*
- C. *The total amount due by CSKA to Sbaetek within the year of 2022 is € 903,828.94 (nine hundred and three thousand, eight hundred and twenty-eight euros 94 cents).*
- D. *On 14 July 2022 CSKA and Udinese entered into [the transfer agreement].*
- E. *Pursuant to [the transfer agreement] Udinese shall pay to CSKA [€] 1,015,800 (one million, fifteen thousand, eight hundred // 00 Euros) which after deduction of the*

solidarity contribution under the FIFA Regulations correspond to € 983,701.82 (nine hundred and eighty-three thousand, seven hundred and one euros 82 cents) as the 1st instalment of the fixed transfer fee (hereinafter: 'the Credit').

F. Sbaetek wishes to obtain, and CSKA wishes to grant, assign, transfer and set over unto Sbaetek its entire right, title and interest in and to the Credit up to the amount of € 903,828.94 upon the terms and conditions contained in this Agreement”.

24. Furthermore, the relevant provisions of the Assignment Agreement read as follows, quoted *verbatim*:

“1. CSKA represents, warrants and covenants to Sbaetek and to Udinese that:

- a. the above premises are true and complete;*
- b. CSKA is the sole owner of the Credit;*
- c. The Credit has not been prepaid in full or in part;*
- d. CSKA now has a good right, full power and absolute authority to assign its right, title and interest unencumbered in and to the Credit in the manner set out in the Article 3 hereof according to the true intent and meaning of this Agreement.*

2. Sbaetek and Udinese has entered into this Agreement and Udinese has agreed to make payments to Sbaetek in reliance on the representations and warranties given to it by CSKA hereunder. In the event that CSKA shall be in breach of the said representations and warranties, CSKA shall indemnify Sbaetek and Udinese for any and all liabilities, costs, expenses, damages and losses suffered or incurred by Sbaetek or Udinese arising out of or in connection with (a) any breach of the representations and warranties given by CSKA hereunder; and/or (b) any claim made against Sbaetek and Udinese in respect of the payment to be made by Udinese to Sbaetek under the present Agreement.

3. CSKA grants, assigns, transfers and sets over to Sbaetek its entire right, title and interest in and to the Credit up to the amount of € 903,828.94 (nine hundred and three thousand, eight hundred and twenty-eight euros 94 cents), including, without limitation, all rights, benefits and advantages of CSKA to be derived therefrom and all burdens, obligations and liabilities to be derived thereunder.

[...]

6. Upon the above payment being made by Udinese to Sbaetek,

- i. The remaining part of the sell-on amount to be paid by CSKA to Sbaetek will be € 99,459.59 (ninety-nine thousand, four hundred and fifty-one euros 59 cents);*

- ii. *The remaining part of the 1st instalment of the fixed transfer fee to be paid by Udinese to CSKA will be € 79,872.88 (seventy-nine thousand, eight hundred and seventy-two euros 88 cents). CSKA and Udinese agree that this amount is not overdue and shall be paid by Udinese on or before 30 September 2022 either to CSKA or to a football club which is a creditor of CSKA under similar separate agreement, in line with the agreement that CSKA and Udinese will mutually take".*
25. On 6 September 2022 and upon trying to complete the payment to Sbaetek per the Assignment Agreement, the Respondent received the following letter from BancaTER, quoted *verbatim*:

"With reference to your request made by email communication referred to in the subject line hereinabove, and pursuant to our letter of the 26/08/2022, considering the substantial link that can be seen between your previous request having AVO as the beneficiary and the present one to be made in favour of the new transferee of the same credit – the Norwegian club [Sbaetek] – we wish to inform you that the Bank considers a transfer order by yourselves inappropriate recognising a clear justified reason preventing its execution".
26. On 7 September 2022, Udinese reached out to Sbaetek and CSKA via email and notified them of the bank's refusal to proceed with the payment. Udinese also added: *"We are trying to make the payment through another bank, but are currently waiting from the feedback from this bank. We will keep you updated about the developments in this respect".*
27. On 13 September 2022, Udinese informed Sbaetek and CSKA that its attempt to perform the payment from the second bank, Civibank, was also unsuccessful. Civibank's reply read as follows, quoted *verbatim*:

"With reference to your email dtd. 6 September 2022, we confirm the impossibility to carry out the operation you requested as detailed in the subject.

It is believed that the underlying transaction, albeit indirectly, involves [CSKA], which is according to public information is owned by [VEB], Russian State Bank sanction by the EU regulation 833/2014 (art. 5 – Annex III) and by EU regulation 269/2014 (Annex 1). Best regards".
28. On 14 September 2022, CSKA replied to Udinese's email and informed that VEB was no longer one of its shareholders. As such, CSKA requested Udinese to double check its banks' position in this regard.
29. On 19 September 2022, Udinese confirmed to CSKA that no payment could be completed insofar as the entity CSKA was still sanctioned.

30. On 5 October 2022, CSKA contacted Udinese via email and stated *inter alia* as follows, quoted *verbatim*:

"Please be informed that PFC CSKA entered into a trilateral agreement between itself, FC Union Espanola (Chile) and US Salernitana (Italy) which is similar to the one entered into between Udinese, [Sbaetek] and CSKA. According to that agreement US Salernitana managed to transfer the funds to the Chilean club.

So, as far as we are aware, it is possible to actually wire the money under such kind of transaction. Moreover, as we stated and proved earlier, such kind of transaction is permitted by FIFA. More than that, currently among the club's stakeholders there are no any entities or person subject to any sanctions. Taking into account, that we have signed valid and binding agreement, we kindly ask you once again to fulfill obligations of Udinese.

Maybe an option is to open a bank account in the same bank as Salernitana (Bank Fideuram) and use your best efforts in this regard.

In our turn we are ready to facilitate your contact with Salernitana.

We thank you for cooperation and remain at your disposal for any further matters".

31. On 6 October 2022, Udinese replied to the abovementioned letter as follows, quoted *verbatim*:

"I take note of the contents of your email and particularly that you state that 'we have signed a valid and binding agreement, we kindly ask you once again to fulfill obligations of Udinese'.

The wording that you are using is very unfortunate. Just to be clear, Udinese has tried with two banks to proceed with the payment, but both banks have refused to proceed with the transaction because of the international sanctions imposed on CSKA.

We do not know the details of the transactions your club made with other clubs and we deem that they are anyway irrelevant for solving our concrete matter. We need to refer exclusively to our set of documents and to the fact that to date, two banks independently of each other have refused to proceed with the transaction with favour of [Sbaetek].

Contacting a third and possibly even a fourth bank for attempting to make the payment would represent nothing else than trying to elude clear restrictions on payments to which your club is currently subject. You may appreciate that I am not ready to expose myself or Udinese to any sort of risks linked to such a payment, which according to the opinion of the compliance department of two banks, cannot be made in a licit manner.

The fact that 'such kind of transaction is permitted by FIFA' is as well irrelevant. The permission of FIFA does not make the banks change their decision.

We will ask in regular intervals the two banks with which our club has accounts to assess again the situation of CSKA and to proceed with the payment in the moment the restrictions against your club are cancelled".

32. On 31 October 2022, CSKA put Udinese in default for overdue payables amounting to EUR 903,828.94, corresponding to the first instalment of the transfer fee (cf. transfer agreement and Assignment Agreement). CSKA granted Udinese with a 10 days' deadline in order to cure the breach and complete the payment to Sbaetek.
33. On 3 November 2022, Udinese replied to CSKA's default notice and insisted that no payment could be completed due to the international sanctions. It also referred to the several attempts to solve the issue, with no success.
34. On 23 December 2023, Udinese contacted UniCredit Bank in order to arrange the payments to CSKA (via Avo-Capital or Sbaetek). Such parties also exchanged further correspondences on 2 January 2023.
35. On 5 January 2023, UniCredit Bank replied to Udinese and stated that: *"Based on our checks, the transactions must be rejected, as the payment would be to a sanctioned entity"*.
36. On 17 January 2023, Udinese requested UniCredit Bank to confirm the impossibility of performing payments considering the new ownership of CSKA.
37. On 27 January 2023, UniCredit Bank replied to Udinese and stated that: *"at the moment it is our understanding that the Russian company is still sanctioned. As for the ownership change, we have no record of it at the moment"*.
38. On 1 February 2023, Udinese contacted UniCredit Bank once again, highlighted the change in the list of sanction, and requested the bank to submit a new request to the trade department.
39. On 3 February 2023, CSKA put Udinese in default for the second time. Contextually, CSKA requested the following payments to be completed within the following 10 days:
 - EUR 903,828.94 to Sbaetek, in line with the Assignment Agreement;
 - EUR 79,872.88 to CSKA, as the balance of the first instalment of the transfer fee, also in inline with the Assignment Agreement;
 - EUR 491,580.91 to CSKA, as the second instalment of the transfer fee.

40. On 6 February 2023, UniCredit Bank replied to the Udinese's email of 1 February 2023 and stated as follows: *"I confirm that the CSKA company is still sanctioned by OFAC and therefore, as far as we are concerned, any transaction in their favour is not permitted"*.
41. On 11 February 2023, Udinese replied to CSKA's default notice and reiterated that it was *"in constant contact with its Italian banks in order to keep under control any development of the international financial situation that would allow the immediate arrangement of the payments"*. Udinese insisted that the payments could not be completed due to the fact that the entity CSKA was sanctioned, hence *"Udinese cannot and shall not get involved in the circumvention of the international sanctions"*. In conclusion, Udinese stressed that it would continue monitoring the situation and remained available for a videoconference between the parties.
42. Also on 11 February 2023, Udinese informed Sbaetek of its exchanges with UniCredit Bank. It explained, in this regard, that no payment could also be done to such club due to the clear contractual link with CSKA. Udinese also reiterated that it would continue monitoring the situation and remained available for a videoconference between the parties.

II. Proceedings before FIFA

43. On 15 February 2023, CSKA filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of CSKA

44. In its claim, CSKA recalled the extensive negotiations between the parties and the numerous attempts to enable the payment. In its view, Udinese acted against the principle of good faith: it has not tried to solve the problem and waited for CSKA to seek solutions by its own.
45. In light of the above, CSKA referred to the principle of *pacta sunt servanda* and requested to be awarded the outstanding remuneration plus interests. In particular, CSKA's requests for relief were as follows, quoted *verbatim*:

"In view of the foregoing, the Claimant respectfully asks the Players' Status Chamber of the Football Tribunal to rule as follows:

1. *To establish that the Respondent shall pay to the Claimant € 79,872.88 (seventy-nine thousand, eight hundred and seventy-two euros 88 cents) together with a 5% interest p.a. proportionately per diem from 1 October 2022 until the date of the effective entire payment.*

2. *To establish that the Respondent shall pay to the Claimant € 3,993.64 (three thousand, nine hundred and ninety-three euros 64 cents) as a 5% penalty with regard to the overdue amount referred to in Clause 1 above.*
3. *To establish that the Respondent shall pay to the Claimant € 491,820.91 (four hundred and ninety-one thousand, eight hundred and fifty euros 91 cents) together with a 5% interest p.a. proportionately per diem from 1 January 2023 until the date of the effective entire payment.*
4. *To establish that the Respondent shall pay to the Claimant € 24,592.55 (twenty-four thousand, five hundred and ninety-two euros 55 cents) as a 5% penalty with regard to the overdue amount referred to in Clause 3 above.*
5. *To impose on the Respondent an applicable sanction(s) pursuant to art. 12bis (par. 4) of the RSTP.*
6. *To order that all costs in connection with these proceedings shall be borne by the Respondent”.*

b. Position of Udinese

46. On 9 June 2023, Udinese filed its reply to the claim.
47. In its reply, Udinese strongly dispute CSKA's position that it lacked initiative to honour its financial duties. In particular, Udinese recalled the numerous attempts to complete the payment and alleged that it acted *“Udinese at all times diligently and to the best of its efforts strove to discharge its economic obligations towards CSKA. Nevertheless, for the objective reasons independent of and unrelated to Udinese but immanently concerning CSKA, it became practically and effectively impossible to arrange for the bank transfers in favour of the latter.”*
48. Udinese also highlighted that CSKA was fully aware of the difficulty to perform payments when the transfer agreement was signed, for that it included a clause concerning assignment of credits (*cf.* clause 18 of the transfer agreement). As such, CSKA assigned the credits to Avo-Capital, intending to avoid the international sanctions, however without success as the sole shareholder of such company is the president of CSKA.
49. According to Udinese, unsuccessful was also the attempt to settle the financial obligations via the Assignment Agreement. It pointed out, to this extent, that all three contacted banks (*i.e.*, BancaTER, Civibank, and UniCredit Bank) stated that the transaction could not be made due to the sanctions – even with the change of ownerships.
50. Given the above, Udinese requested FIFA *“to acknowledge that at the moment there is an objective temporarily impossibility of Udinese to make the payments in question as per [the transfer agreement] and/or [the Assignment Agreement]”*. Udinese insisted that it has *“no*

fault of its own for the non-payment, it cannot and shall not be held responsible for the objective impossibility to meet the payment obligations [...] Therefore, no consequences related to default can imposed on Udinese, i.e. by no means any default interest, penalty, compensation of damage, etc. shall be applicable to Udinese while CSKA remains blacklisted.” Udinese also referred to the Swiss Law and the jurisprudence of the Swiss Federal Tribunal (SFT) in support of its argumentation.

51. Udinese further detailed its request as follows:

“90. Hence, as soon as Udinese will be able to proceed with the payment, it will be entitled to obtain an additional period of time for the performance in order to duly comply to with its obligation. In other words, Udinese shall be granted an additional period of time for complying with its obligation in order to prepare and release the necessary cash flow for the transaction.

91. Considering the important amount at stake, such kind of operation cannot be made from one day to the other, since the bank will have to go through the due diligence and compliance procedure before being able to release the funds in favour of CSKA.

92. For this reason, the Players Status Chamber is respectfully requested to confirm that once the two conditions for the payment in favour of CSKA are fulfilled, i.e. CSKA is excluded from the sanctions’ list and the banks permit the payments in favour [of] CSKA again, a period of time of 45-days shall be granted to Udinese for proceeding with the payment, without Udinese being in default of payment during this timeframe.

2) Permanent objective impossibility to fulfil the Contract

93. Without prejudice to the foregoing, Udinese submits that for the time being it is hardly possible to foresee how long the temporarily complication related to the international sanctions will last.

94. The impossibility to perform the contractual obligations shall be considered as permanent, if it is definitive and irrevocable or the performance cannot be made within a reasonable period of time. In other words, if the temporarily impossibility last for a certain period of time and its end is not to be foreseen, then it becomes a permanent impossibility.

[...]

Consequently, notwithstanding the duration of the objective impossibility in question, where it is temporary or potentially could be recognized as becoming permanent, Udinese cannot and shall not be sanctioned or bear any sort of consequences. Neither default interest nor the penalty requested by CSKA pursuant to clause 9 of the Contract can be applied to Udinese in the given circumstances”.

52. As a formal remark, Udinese also outlined that the bank used by CSKA in the FIFA Bank Account Registration Form (**BARF**) *i.e.*, Promsvyazbank PJSC, is also sanctioned. Therefore, no payment could be directed to such account either.
53. The requests for relief of Udinese were as follows, quoted *verbatim*:

"1. To establish that Udinese:

- a. Has in good faith and diligently attempted several times to make the payments, and*
- b. Has no fault for the default.*

2. To establish that the default does not cause any consequences to Udinese, such as without limitation application of the default interest and/or imposition of any other sanctions or penalties;

3. To establish that as long as CSKA is on the sanctions list and the banks refuse to make payment to CSKA or third parties related to CSKA, Udinese is not obligated to proceed with the payment;

4. To establish that once the payment will be feasible, Udinese shall be granted an additional period of time of at least 45 days in order to comply with its obligations towards CSKA;

5. In any case, to establish that the costs of the present procedure shall be borne by CSKA entirely".

c. Additional comments of Udinese

54. On 9 June 2023, Udinese filed unsolicited additional comments informing that (i) another bank (Banca Fideuram) refused to make the payment to CSKA; and (ii) the amount under dispute and the debt with Sbaetek were deposited in an escrow account of the Italian "Lega Serie A".

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

55. First of all, the Single Judge of the Players' Status Chamber (hereinafter also referred to as *the Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was presented to FIFA on 15 February 2023

and submitted for decision on 11 July 2023. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.

56. Subsequently, the Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 par. 1 lit. f) of the Regulations on the Status and Transfer of Players (May 2022 edition), the Players' Status Chamber is competent to deal with the matter at stake, which concerns a dispute between two clubs belonging to different members associations.
57. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (May 2023 edition), and considering that the present claim was lodged on 15 February 2023, the October 2022 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

b. Burden of proof

58. The Single Judge recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Single Judge stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which he may consider evidence not filed by the parties, including without limitation the evidence generated by or within the TMS.

c. Merits of the dispute

59. The competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, the Single Judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Single Judge emphasised that in the following considerations he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

60. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact it pertains to a claim for outstanding remuneration in which the dissent of the parties lies in the Udinese's ability to pay the amounts due because of international sanctions imposed on CSKA.

61. In this context, the Single Judge confirmed that the amount claimed is not disputed. Therefore, he considered that the determination of the matter in essence stands in the analysis of the parties' contractual undertakings per the transfer agreement as well as weighing the evidence filed by Udinese in support of its position that it could not make payments to the CSKA.
62. On this note, the Single Judge found it remarkable that:
- On or around 22 February 2022, the Russian Federation launched an armed invasion of Ukraine;
 - On 23 and 28 February 2022, VEB and CSKA, respectively, were added to the list of sanctioned entities;
 - On 10 June 2022, CSKA consulted with FIFA regarding the possibility of assigning credits to third parties in transfer-related matters; and
 - On 14 July 2022, the parties entered into the transfer agreement.
63. Against this background, the Single Judge was observant of Udinese's argumentation in the sense that, when concluding the transfer agreement, CSKA was already aware of the international sanctions, therefore should already expect that payments could be (at the least) delayed. Nevertheless, the Single Judge was of the opinion that Udinese's reasoning backfires against itself. In his view, Udinese was the party who undertook to perform payments to a sanctioned party; hence it was the one assuming a huge risk of being held liable for its default.
64. The Single Judge added that the above was even clearer when considering that, at the time the transfer agreement was concluded by and between the parties, both (i) the ongoing war; and (ii) the international sanctions on CSKA and its shareholders were already in place. As such and as opposed to the argumentation of Udinese, the Single Judge determined that it should have been aware the background involved and its potential consequences. Mostly, he highlighted that:
- Udinese should have conducted its due diligence and adopted the necessary precautions before entering into the transfer agreement. Likewise, it was also for Udinese (as the debtor in such a specific constellation) to include adequate contractual protections such as the one taken by CSKA (*i.e.*, clause 18 for the assignment of credits; and clause 9 for interest and penalty); and
 - there were no new facts arising following the signature of the transfer agreement. Put differently, as the extraordinary circumstances regarding the war were already known before the conclusion of the transfer agreement, there was no room to argue that an upcoming / unexpected situation took place, let alone

that it constitutes a *force majeure* situation and/or justifies the departure from the contractually agreed arrangement.

65. In light of the above, the Single Judge concluded that by signing the transfer agreement – and committing to short-term payments while being aware of the risks involved – Udinese has undertaken a high hurdle to comply with the obligations. As such, the Single Judge deemed that Udinese could not in good faith withdraw from its responsibility nor argue that CSKA was the party giving cause to the dispute.
66. Consequently, the Single Judge decided that CSKA shall be entitled to the principal amount claimed based on the general legal principle of *pacta sunt servanda* (i.e., EUR 79.872.88 plus EUR 491,850.91).
67. Nevertheless, in light of the specific factual framework and proactive behaviour of the Udinese, the Single Judge also determined that (i) the contractual penalty included in the transfer agreement should not be applied; and (ii) 5% interest *p.a.* on the overdue amount should be applied as from the date of the decision until the date of effective payment.

ii. Compliance with monetary decisions

68. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 24 par. 1 and 2 of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
69. In this regard, the Single Judge highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
70. Therefore, bearing in mind the above, the Single Judge decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 45 days of notification of the decision, failing which, at the request of the Claimant, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the Respondent in accordance with art. 24 par. 2, 4, and 7 of the Regulations.
71. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.

72. The Single Judge recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24 par. 8 of the Regulations.

d. Costs

73. Finally, the Single Judge referred to art. 25 par. 2 of the Procedural Rules, according to which in proceedings before the Players' Status Chamber including its single judge, costs in the maximum amount of USD 25,000 are levied and according to which the costs are to be borne in consideration of the parties' degree of success in the proceedings and are normally to be paid by the unsuccessful party.
74. Taking into account that the responsibility of the failure to comply with the payment of the amount as agreed in the contract can entirely be attributed to Udinese, which led the claim to be accepted in great extent, the Single Judge concluded that Udinese alone should be liable to bear the costs of the current proceedings before FIFA.
75. According to Annexe 1 of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute. As such and taking into account the particular context of the dispute at hand, the Single Judge concluded that the amount of costs of the proceedings should be USD 5,000 and paid by the Respondent.
76. Subsequently, the Single Judge reverted to art. 25 par. 3 and 6 of the Procedural Rules, and observed that the advance of costs paid by a party shall be duly considered in the decision regarding costs. Therefore, he decided that the amount of the advance of costs paid by CSKA at the start of the proceedings should be reimbursed.
77. Lastly, the Single Judge concluded the deliberations by rejecting any other requests for relief made by any of the parties.

IV. Decision of the Players' Status Chamber

1. The claim of the Claimant, PFC CSKA, is partially accepted.
2. The Respondent, Udinese Calcio SPA, must pay to the Claimant **EUR 571,723.79 as outstanding remuneration** plus 5% interest *p.a.* as from 11 July 2023 until the date of effective payment.
3. Any further claims of the Claimant are rejected.
4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
5. 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.
6. 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.
7. The final costs of the proceedings in the amount of **USD 5,000** are to be paid by the Respondent to FIFA. FIFA will reimburse to the Claimant the advance of costs paid at the start of the present proceedings (cf. note relating to the payment of the procedural costs below).

For the Football Tribunal:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

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.

NOTE RELATED TO THE PUBLICATION:

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 17 of the Procedural Rules Governing the Football Tribunal).

CONTACT INFORMATION

Fédération Internationale de Football Association
FIFA-Strasse 20 P.O. Box 8044 Zurich Switzerland
www.fifa.com | legal.fifa.com | psdfifa@fifa.org | T: +41 (0)43 222 7777