

Decision of the Dispute Resolution Chamber

passed on 7 July 2023

regarding a dispute concerning the player Nikola Djurdjic

BY:

Frans de Weger (The Netherlands), Chairperson

CLAIMANT:

Nikola Djurdjic, Serbia
Represented by Filip Blagojevic

RESPONDENT:

Chengdu Rongcheng FC, China PR

I. Facts of the case

1. The parties to this dispute are the Serbian player, Nikola Djurdjic (hereinafter: **the player** or **the Claimant**); and the Chinese club, Chengdu Rongcheng FC (hereinafter: **the club** or **the Respondent**).
2. As explained in the relevant section below, there was a previous dispute in front of the FIFA Dispute Resolution Chamber (**DRC**) involving the same parties and with the intervention of the Swedish club, Degerfors IF. Such dispute was decided by the DRC in 2021 and subsequently appealed to the Court of Arbitration of Sport (**CAS**).
3. In the dispute at hand, the player thoroughly recalled the facts and submissions of the parties during the previous proceedings before both the DRC and CAS. For the sake of good procedural order, the Chairperson of the DRC explained: all facts and supporting documentation submitted by the player were received and analysed, however, only the ones considered pertinent for the assessment of this specific matter are indicated below.

a. The contractual basis

4. On 23 January 2020, the player and the club concluded an employment contract valid as from 23 January 2020 until 22 January 2022 (hereinafter: **the Employment Contract**).
5. According to the player, the conclusion of the Employment Contract was the result of the cooperation of a group of intermediaries including but not limited to Mr Sunir Panel, owner of the Dutch company Supervision Management (hereinafter: **the Company**).
6. The Company was duly authorized by the player to explore and develop his image rights.
7. In light of the above and also on 23 January 2020, the club and the Company concluded a document titled "*License of Image Rights relating to Nikola Durdic*" (hereinafter: **the IRA**). The player is not a party to the IRA, which is solely signed by the club and the Company.
8. Pursuant to clause 3 of the IRA, the club undertook to pay the Company in consideration of the exploitation of the player's image rights: (i) EUR 588,235 net for the year 2020; (ii) EUR 705,882 net for the year 2021; and (iii) EUR 823,529 for optional year of 2022. Such payments should be remitted to the European bank account of the Company.
9. The IRA also established, *inter alia*, the following, quoted *verbatim*:

"4.1. This Agreement shall have effect on and from the date of signature of this Agreement and shall subsist for as long as [the Employment Contract] subsists unless terminated earlier in accordance with this clause.

[...]

10.2. The termination or expiry of this Agreement shall not affect in any way any provision under [the Employment Contract] (provided that [the Employment Contract] survives such termination or expiry). On termination or expiry of this Agreement (provided that [the Employment Contract] survives such termination or expiry), the club shall agree with [the player] a similar net fee to be paid to [the player] as the remaining amount that still was payable to the Company by the club under this Agreement.

[...]

12. This Agreement is governed by, and shall be construed in accordance with the laws of Switzerland. All disputes with respect to this Agreement, including, without limitation its validity, construction and performance shall belong to the exclusive jurisdiction of the courts of Lausanne, Switzerland”.

b. The previous proceedings in front of the DRC (FPSD-3035)

10. On 20 July 2021, the club lodged a claim against the player in front of the DRC, which was filed under ref. no. FPSD-3035 (hereinafter: **the Previous Claim**). Contextually, the club claimed that it was forced by the player to terminate the employment contract on 10 July 2021, hence that it should be entitled to compensation for breach of contract in line with art. 17 of the FIFA Regulations on the Status and Transfer of Players (**RSTP**).
11. On 23 July 2021, the player was provided with a copy of the Previous Claim and invited by the FIFA general secretariat to submit his reply with any documentary evidence he deemed useful in its support.
12. On 16 August 2021, the player filed his reply to the Previous Claim and lodged a counterclaim against the club. The player argued that the termination of the Employment Contract by the club took place without just cause. He claimed to be the party entitled to receive outstanding remuneration and compensation for breach of contract. No reference was made to the IRA in the player's submissions in the context of the Previous Claim.
13. On 17 August 2021, the club was invited by the FIFA general secretariat to submit its reply to the counterclaim of the player, which it did on 4 September 2021.
14. On 27 September 2021, the FIFA general secretariat acknowledged that the player had entered into a new employment relationship with the Swedish club, Degerfors IF. As such and in light of any potential consequences arising in light of art. 17, par. 2 and 4 of the FIFA RSTP, Degerfors IF was also invited to submit its position on the case file.
15. On 1 November 2021, Degerfors IF submitted its position on the matter.

16. On 25 November 2021, the Previous Claim was submitted to a decision by the DRC, the grounds of which were notified to the parties on 11 January 2022 (hereinafter: **the DRC Decision**).

17. According to the DRC Decision:

- the Employment Contract was prematurely terminated by the club on 13 July 2021;
- the termination took place without just cause; and
- considering the particularities of the case, the club should be liable to pay the player EUR 496,525.47 as compensation for breach of contract plus 5% interest *p.a.* as from 10 August 2021 until the date of effective payment.

18. No reference was made in the DRC Decision to the IRA.

c. Previous CAS proceedings (CAS 2022/A/8621)

19. On 30 January 2022, the player filed an appeal against the DRC Decision in front of CAS, which was filed under ref. no. CAS 2022/A/8621 *Nikola Djurdjic v. Chengdu Rongcheng Football Club LTD*. *Inter alia*, he requested: (i) the amount of compensation to be increased considering the automatic extension of the Employment Contract; and (ii) to be awarded additional monies per the IRA, insofar as it is an integral part of his employment relationship, as well as it became disputed after his counterclaim was lodged in front of the FIFA DRC. Degerfors IF was not a party to the cited CAS proceedings.

20. The player's requests for relief at CAS were as follows, quoted *verbatim*:

"1. The appeal filed on 30 January 2022 by Mr. Nikola Djurdjic against the decision issued on 25 November 2021 by the Football Tribunal - the Dispute Resolution Chamber of the Federation Internationale de Football Association is upheld.

2. The decision issued on 25 November 2021 by the Football Tribunal - the Dispute Resolution Chamber of the Federation Internationale de Football Association is confirmed, save for paragraph 4 of the operative part, which shall be amended as follows:

Chengdu Rongcheng Football Club LTD has to pay to Mr. Nikola Djurdjic:

- an amount of EUR 496,525.47, plus interest of 5% per annum from 10 August 2021 until the payment is effectively made;

- an amount of EUR 181.818, plus interest of 5% per annum from 13 January 2022 until the payment is effectively made;

- an amount of EUR 2,082,922.13, plus interest of 5% per annum from 13 July 2021 until the payment is effectively made;

- an amount of EUR 2,522,075 plus interest of 5% per annum from 13 July 2021 until the payment is effectively made.

3. Chengdu Rongcheng Football Club LTD shall bear its own costs and is ordered to pay Mr. Nikola Djurdjic a contribution towards his legal fees and other expenses incurred in connection with these arbitration proceedings, the amount of which will be specified at a later stage;

4. The entire costs of the CAS administration costs and the arbitration fees shall be borne in their entirety by Chengdu Rongcheng Football Club LTD."

21. On 19 April 2022, the club filed its reply brief at CAS and opposed to the position of the player. *Inter alia*, the club challenged CAS' jurisdiction over the IRA.
22. On 30 December 2022, the CAS issued its award in connection with the abovementioned matter (hereinafter: **the CAS Award**). The operative part of the CAS Award read as follows:

"The Court of Arbitration for Sport rules that:

1. The appeal filed on 30 January 2022 by Nikola Djurdjic against the decision rendered on 11 January 2022 by the FIFA Dispute Resolution Chamber is partially upheld.

2. Point 4 of the operative part of the decision issued on 11 January 2022 by the FIFA Dispute Resolution Chamber is amended as follows:

Chengdu Rongcheng Football Club LTD has to pay to Nikola Djurdjic

a. an amount of EUR 18 1,818, plus interest of 5% per annum from 13 January 2022 until the payment is effectively made;

b. an amount of EUR 2,082,922.13, plus interest of 5% per annum from 13 July 2021 until the payment is effectively made.

3. The costs of the arbitration, to be determined and served separately to the Parties by the CAS Court Office, shall be borne by Nikola Djurdjic and Chengdu Rongcheng Football Club LTD in equal shares.

4. Nikola Djurdjic and Chengdu Rongcheng Football Club LTD shall each bear their respective legal fees and expenses.

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

23. The CAS Appeal read *inter alia* as follows regarding its jurisdiction over the IRA, quoted *verbatim*:

"A. No competence of the CAS deriving from the IRA

[...]

It follows from a literal construction of Article 12 of the IRA that the competent forum to decide disputes arising from the IRA are 'the courts of Lausanne'. The Appellant is of the view that this term does not only cover state courts in Lausanne, but also includes arbitral tribunals having their seat in Lausanne. The Sole Arbitrator does not agree with such construction of the clause. The term 'courts' typically refers to state courts. In addition, the Sole Arbitrator notes that unlike the clause contained in Article 8(2) of the Contract - Article 12 of the IRA does not provide for an 'express waiver to the national courts'. Furthermore, the clause in Article 12 of the IRA does not foresee - e.g. - first-instance proceedings before the FIFA adjudicatory bodies. Absent any clear indication or evidence submitted by the Appellant that the parties to the IRA intended the term 'courts of Lausanne' to cover also arbitral tribunals, the Sole Arbitrator is not prepared to construe the provision as granting a mandate to CAS to adjudicate disputes arising from the IRA. While the word 'Court' appears in the English version of CAS' name, CAS is not a court in the proper sense under domestic law but rather an arbitral tribunal.

[...]

To conclude, therefore, the Sole Arbitrator finds that the competence of the CAS to adjudicate on claims arising from the IRA cannot be based on Article 12 of the IRA.

B. The IRA is not an integral part of the Contract

[...]

Contrary to what the Appellant states, it follows from Article 6 of the Contract that any regulation pertaining to the use of the Appellant's image rights will not be dealt with in the Contract, but remains reserved for a 'separate' contract. Furthermore, the Sole Arbitrator notes that the parties to the Contract and to the IRA are different. Thus, for all of these stated reasons, it cannot be assumed that the contents of the IRA is an integral part of the Contract.

C. Article 8(2) of the Contract does not extend to the disputes arising from the IRA

[...]

In the case at hand, the fact that the IRA contains a separate and different dispute resolution clause clearly speaks against extending the scope of Article 8(2) of the Contract to disputes arising from the IRA. In light of Article 12 of the IRA, there is no indication on file that the parties to the IRA and the Contract (that again are not identical) wanted to submit all disputes arising from these contracts to the CAS. The Appellant submits that the IRA was a sham and that for this reason Article 12 of the IRA shall not be attributed any relevance. However, the Sole Arbitrator, based on the evidence before him, is not prepared to follow this. Consequently, the Sole Arbitrator finds that CAS' competence for the Appellant's claim based on the IRA cannot be derived from Article 8(2) of the Contract.

D. Summary

To conclude, therefore, the Sole Arbitrator finds that - absent any arbitration agreement of the Parties in favor of the CAS - CAS is not competent to adjudicate any claims arising from the IRA. Thus, Appellant's claim for payment in the amount of EUR 2,522,075.00 including interest must be rejected".

(emphasis in the original)

II. Current proceedings before FIFA

24. On 20 June, the player filed the claim at hand before FIFA.
25. In his claim, the player recalled the contents of the contracts signed between the parties – especially the IRA – as well as the factual background behind its conclusion. In doing so, he explained in length that such contract was an integral part of his relationship with the club despite being signed with the Company, entailing that it should also be taken into consideration while assessing his outstanding remuneration and compensation for the unlawful termination by the club.
26. The player also recalled the previous proceedings before the DRC and, in particular, explained that at the time he filed his counterclaim against the club, the image rights for 2021 were still not due (*i.e.*, deadline for payment until 10 December 2021). Therefore, he argued that the amounts now claimed could not have been requested at that time.
27. In continuation, the player referred to the CAS Award, however suggested that the Sole Arbitrator misinterpreted the facts and arrived in a wrong conclusion as to the lack of jurisdiction. In support of his position, the player made reference *inter alia* to: (i) a decision passed by the DRC in the dispute involving the player Daniel Quintana Sosa against the same club; (ii) multiple CAS awards concerning image rights agreements; (iii) Swiss Law and practice of the Swiss Federal Tribunal (**SFT**).
28. Against this background and provided that the IRA was not discussed in the DRC Decision, the player claimed that FIFA still has jurisdiction over the IRA and should then adjudicate on the matter. He requested to be awarded the outstanding image rights plus the residual value of the IRA as part of compensation for breach of contract.
29. The player's requests for relief were as follows, quoted *verbatim*:

"1. Chengdu Rongcheng Football Club LTD has to pay to Mr. Nikola Djurdjic EUR 55,555.50 as outstanding remuneration, plus 5% interest p.a. on this amount as from 21 July 2021 until the date of effective payment;

or, in the alternative

Chengdu Rongcheng Football Club LTD has to pay to Mr. Nikola Djurdjic EUR 30,555.52 net as outstanding remuneration, plus 5% interest p.a. on this amount as from 21 July 2021 until the date of effective payment.

2. Chengdu Rongcheng Football Club LTD has to pay to Mr. Nikola Djurdjic EUR 2,994,649.56 a compensation for early termination, plus 5% interest p.a. on this amount as from 13 July 2021 until the elate of effective payment;

or, in the alternative,

Chengdu Rongcheng Football tub LTD ha to pay to Mr. Nikola Djurcljic EUR 1,647,058 net a compensation for early termination, plus 5% interest p.a. on this amount as from 13 July 2021 until the elate of effective payment”.

30. On 29 June 2023, the FIFA general secretariat (i) acknowledged receipt of the statement of claim of the player together with its supporting documentation; and (ii) informed the player that his claim raised a preliminary procedural matter that should be analysed by the DRC *ex officio*.

III. Considerations of the DRC

31. First of all, the Chairperson of the DRC (hereinafter: *the Chairperson*) analysed whether he was competent to deal with the case at hand.
32. In this respect, he took note that the present matter was presented to FIFA on 20 June 2023 and submitted for a preliminary decision on 7 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.
33. The Chairperson confirmed that, in accordance with art. 19 of the Procedural Rules, he is competent to decide, in an expedited manner, whether the case at stake is affected by any preliminary procedural matter. Likewise, the Chairperson highlighted that, in case the claim is not affected by any preliminary procedural matters, the FIFA general secretariat would be ordered to continue the procedure (cf. art. 19 par. 3 of the Procedural Rules).
34. Subsequently, the Chairperson referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 par.1 lit. b) of the FIFA RSTP (May 2023 edition), the DRC would – **in principle** – be competent to deal with the matter at stake, which concerns dispute with international dimension between a Serbian player and a Chinese club.
35. The Chairperson further observed that the claim *sub judice* was lodged by the player against the club pertaining to outstanding image rights and compensation for breach of

contract in connection with the early termination of the employment relationship previously maintained between them. Specifically, and provided that the DRC had already decided that the termination of the Employment Contract by the club took place without just cause, the player now claims that he should also be awarded the monies included in the IRA.

36. While considering the above, the Chairperson confirmed that the claim at hand raises a preliminary procedural matter that shall be analysed *ex officio*.
37. In particular, the Chairperson was observant that before submitting this matter to FIFA, the player had already claimed the same amounts in front of CAS. Additionally, he took due consideration that the CAS Award goes at great length to establish that it has no jurisdiction over the IRA, which the player now intends to rediscuss. *Mutatis mutandis*, the Chairperson remarked that if CAS lacks jurisdiction to rule the dispute between the parties as to the IRA, the DRC equally cannot entertain it.
38. Accordingly, the Chairperson recalled that, on the basis of the principle of *res judicata*, a decision-making body is not in a position to deal with the substance of a case in the event that another – competent – deciding body has already dealt with the same matter by passing a final and binding decision.
39. The cited principle of *res judicata* ensures that whenever a dispute has been defined and decided upon, it becomes irrevocable, confirmed, and deemed to be just – *res judicata pro veritate habetur*. This principle applies whenever three elements are concurrently present, namely:
 - The same persons - *eadem personae*;
 - The same object - *eadem res*; and
 - The same cause - *eadem causa petendi*.
40. On this note, the Chairperson went on to analyse the evidence on file regarding previous dispute between the parties. In this respect, he turned his attention to the DRC Decision and, mostly, to the CAS Appeal, which was final and binding by now.
41. Subsequently, the Chairperson underlined that the principle of *res judicata* is applicable if cumulatively and necessarily the parties to the disputes and the object of the matter in dispute are identical. In this respect, he noted that both the player and the club were the parties in the proceedings leading to the CAS Award as well as in the dispute at stake. Consequently, the Chairperson concluded that the condition of the identity of parties is fulfilled.
42. In addition, the identity of the object is fulfilled if the reason to claim and the relevant requests of the two claims are similar. When comparing the player's appeal at CAS to the

claim at hand, the Chairperson confirmed that both discuss *inter alia* the player's entitlement to the amounts under the IRA. Consequently, both legal actions were based on the club's alleged violation of the same contract and materially contained the very same request for relief. Thus, the Chairperson underscored that the condition of identity of the object of the matter in dispute is also fulfilled.

43. In conclusion, the Chairperson determined that both legal actions not only concern identical parties to the dispute but also identical objects and (partial) requests for relief. Therefore, he decided that as CAS has already dealt with the exact same matter, passing a final and binding decision, the present case is affected by *res judicata* and the DRC is not in a position to deal again with the substance of the dispute.
44. For the sake of completeness, the Chairperson also wished to outline that the fact that the player did not refer to the IRA in the Previous Claim is immaterial to the abovementioned conclusion due to CAS' *de novo* power of review. In the Chairperson's view, as the matter was already decided upon by the appeal body, the player is prevented for reopening the same discussion.
45. Therefore, the Chairperson decided that the claim at hand is inadmissible.
46. Lastly, the Chairperson referred to art. 25 par. 1 of the Procedural Rules, according to which "*Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent*". Accordingly, the Chairperson decided that no procedural costs were to be imposed on the player.

IV. Decision of the Dispute Resolution Chamber

1. The claim of the Claimant, Nikola Djurdjic, is inadmissible.
2. This decision is rendered without costs.

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).

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