



**TAS / CAS**

TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2021/A/8246 Football Club Astana v. Fédération Internationale de Football Association  
& Roman Grygorchuk**

**ARBITRAL AWARD**

delivered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark

in the arbitration between

**Football Club Astana**, Kazakhstan

Represented by Ms Aigul Bakirova, Senior Legal Specialist in Astana, Kazakhstan

**Appellant**

and

**1/ Fédération Internationale de Football Association (FIFA)**, Switzerland

Represented by Mr Miguel Liétard Fernández-Palacios, Director of Litigation, and Ms Cristina Pérez González, FIFA Litigation Department

**First Respondent**

&

**2/ Roman Grygorchuk**, Ukraine

Represented by Mr Dmitrijs Hohlovs and Ms Darina Nikitina, Attorneys-at-Law in Moskow, Russia

**Second Respondent**

## **I. THE PARTIES**

1. Football Club Astana (the “Appellant” or the “Club”) is a professional football club based in Kazakhstan and affiliated with the Kazakhstan Football Federation (the “KFF”), which, in turn, is affiliated with the Fédération Internationale de Football Association. The Club is currently participating in the top tier division in Kazakhstan.
2. The Fédération Internationale de Football Association (“FIFA” or the “First Respondent”) is the world governing body of football, whose headquarters are located in Zurich, Switzerland.
3. Mr Roman Grygorchuk (the “Second Respondent” or the “Coach”) is a professional football coach of Ukrainian nationality.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the relevant facts and allegations as established by the Sole Arbitrator on the basis of the written submissions of the Parties and evidence adduced. Additional facts and allegations found in the Parties’ written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Sole Arbitrator refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.
5. On 1 June 2018, the Club and the Coach signed an employment contract and on 13 January 2020, the same parties concluded an Agreement on termination of employment contract (the “Termination Agreement”), according to which their employment relationship was terminated on the same date and setting out an amount to be paid to the Coach as a result thereof.
6. On 12 October 2020, the same two parties concluded a further agreement (the “Settlement Agreement”), in which it was agreed, *inter alia*, to modify the dates of payment pursuant to the Termination Agreement.
7. By letter of 30 January 2021, the Coach reminded the Club that the deadline for the Club’s payment of all outstanding payments pursuant to the Settlement Agreement was 15 February 2021.
8. On 16 February 2021, and without having received any payments from the Club, the Coach put the Club in default with regard to the overdue payments and additionally requested the payment of an agreed penalty.

## **III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER**

9. On 22 February 2021, the Coach filed his claim against the Club with FIFA and requested FIFA to do as follows:

*“1. To enforce the claim against Football Club Astana (Nur-Sultan, Kazakhstan);*

2. To oblige FC "Astana" to pay Mr. Grygorchuk's bank account actual debt in amount of EUR 1 266 000 (one million two hundred sixty-six thousand) NET, what consist of the following amounts.

2.1 Payment according to the art. 3 of the Settlement agreement in amount of EUR 433 000 (four hundred thirty-three thousand) euro NET;

2.2 Payment according to the art. 4 of the Settlement agreement in amount of EUR 433 000 (four hundred thirty-three thousand) euro NET;

2.3 Penalty payment according to the art. 6 of the Settlement agreement in amount of EUR 200 000 (two hundred thousand) euro NET for the missed payment, mentioned in art. 3 of the Settlement agreement;

2.4 Penalty payment according to the art. 6 of the Settlement agreement in amount of EUR 200 000 (two hundred thousand) euro NET for the missed payment, mentioned in art. 4 of the Settlement agreement;

3. For the periodic and repeated delays and failure of the payments to impose the ban of FC "Astana" for the next 2 (two) transfer windows."

10. By letter of 12 March 2021, FIFA requested the Club to provide its comments on the Coach's claim, stating, *inter alia*, as follows:

*"We refer you to the matter of the reference and herewith provide you with a copy of a claim lodged against you before the Dispute Resolution Chamber, its annexes and relevant correspondence in this matter.*

*In view of the foregoing, we kindly invite you to provide us with your position to the claim, along with any documentary evidence you deem useful in your support, by no later than 1 April 2021 to psdfifa@fifa.org in PDF format in accordance with art. 9 par. 1 lit. e) of the Procedural Rules.*

*In this context, we specifically refer you to art. 9 par. 3 second sentence of the Procedural Rules, in accordance with which, if no statement or reply is received before the time limit expires, a decision shall be taken upon the basis of the documents already on file, and to the third sentence of the aforementioned provision, which stipulates that submissions received outside the time limit shall not be taken into account.*

*In addition, we would like to inform all the parties involved that the present matter is estimated to be submitted to the Players' Status Committee, if need be, in the week of 1 June 2021 Please be informed that the actual date of the meeting as well as the composition of the deciding body will be confirmed to the parties in due time.*

*Finally, we would like to inform all the parties involved in the present matter that the enclosures to this letter may contain privileged and/or sensitive data. Therefore, they are to be treated strictly confidential and may only be used within the scope of the present investigation. In particular/ they should not be anyhow disclosed, in full or in part, to third parties not involved in the dispute at stake.*

*We thank you for your kind attention to the above."*

11. The Club did not reply to FIFA's letter within the given time limit, and on 5 July 2021, the Club and the Coach received the findings of the Single Judge of the Players' Status Committee passed on 29 June 2021 in the case FPSD-1854 (the "PSC Decision").

12. The findings were as follows:

*"1. The claim of [the Coach] is accepted.*

*2. [The Club] has to pay to [the Coach], the following amounts:*

*- EUR 866,000 as outstanding amount*

*- EUR 400,000 as contractual penalty.*

*3. Any further claim of [the Coach] are rejected.*

*4. Full payment shall be made to the bank account indicated in the enclosed Bank Account Registration Form.*

*5. Pursuant to article 8 of Annexe 8 of the Regulations on the Status and Transfer of Players if full payment is not paid within 45 days of notification of this decision, the following consequences shall apply:*

*1. [the Club] shall be banned from registering any new player, either nationally or internationally, up until the due amount is paid. The maximum duration [of] the ban shall be of 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 paid by the end of the three entire and consecutive registration periods.*

*6. The consequences shall only be enforced at the request of [the Coach] in accordance with article 8 of annexe 8 and article 24ter of the Regulations on the Status and Transfer of Players.*

*7. The final costs of the proceedings in the amount of CHF 25,000 are to be paid by [the Club] to FIFA (c.f. note relating to the payment of procedural costs below)."*

13. Furthermore, the Club and the Coach were informed as follows:

*"NOTE RELATED TO THE FINDINGS OF THE DECISION:*

*In accordance with arts. 15 and 18 of the Procedural Rules, this correspondence only communicates the findings of the decision without grounds.*

*Should any of the parties wish to receive the grounds of the decision, a written request must be received by FIFA, within 10 days of receipt of notification of the findings of the decision. Failure to do so within the stated deadline will result in the decision becoming final and binding and the parties being deemed to have waived their rights to file an appeal.*

*Whenever procedural costs are due, the grounds of the decision will only be notified to the party requesting the grounds and upon payment of the relevant procedural costs. If the procedural costs are not paid within 20 days of the notification of the findings, the request for the grounds shall be deemed to have been withdrawn. As a result, the decision will become final and binding and the relevant party will be deemed to have waived their right to file an appeal.*

*No costs shall be charged if a party decides not to ask for the grounds of the decision and, where applicable, the advance of costs will be reimbursed to the relevant party.*

**NOTE RELATING TO THE PAYMENT OF THE PROCEDURAL COSTS:**

*If applicable, payments to FIFA should be made by wire transfer in Swiss francs (CHF) to the following bank account: [...]"*

14. On 15 July 2021, the Appellant wrote to the FIFA Players' Status Committee as follows:

***"Coach Roman Grygorchuk, Ukraine / Club Astana FC, Kazakhstan  
Ref.No. FPSD-1854***

*On behalf of FC Astana (the Respondent), I kindly request the grounds of the decision in the above mentioned matter."*

15. By letter of 29 July 2021, from the Head of FIFA Players Status (the "Appealed Decision"), the Parties were informed as follows:

*"We refer to the above-mentioned matter as well as to the decision passed by the Single Judge of the Players' Status Committee on 29 June 2021 and to our correspondence of 5 July 2021.*

*In this regard, we acknowledge receipt of the Respondents correspondence dated 15 July 2021, according to which it requested the grounds of said decision. A copy of such correspondence is enclosed for the parties" information only.*

*In this regard, we kindly remind you that in accordance with art. 15 par. 4 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Regulation Chamber as well as with the note relating to the findings of the decision concerned, whenever procedural costs are due, the grounds of the decision will only be notified to the party requesting the grounds and upon payment of the relevant procedural costs, If the procedural costs are not paid within 20 days of the notification of the findings, the request for the grounds shall be deemed to have been withdrawn. As a result, the decision will become final and binding and the relevant party will be deemed to have waived their right to file an appeal.*

*In this context, we have noted that no proof of payment of the relevant procedural costs has been received from Astana FC by our services within the relevant deadline.*

*Consequently/ Astana FC's request for grounds is deemed as withdrawn and the above-mentioned decision has become final and binding.*

*Finally, please take note that the above information, based on the documentation we received from Astana FC, is of a general nature only.*

*We thank you for taking note of the above and trust in your understanding.”*

16. On 24 August 2021, and still without having received the claimed amount from the Club, the Coach asked FIFA to:

*“1. Oblige club to pay in full  
2. Activate ban on FC “Astana” from registering any new players, either nationally or internationally, up until the due amount is paid.”*

17. By email of 31 August 2021, the Club, among others, was informed as follows:

*“We refer to the abovementioned matter and acknowledge receipt of the attached correspondence for the parties’ perusal.*

*We take due note that in its correspondence, [the Coach] informs us that [the Club], has not complied with its financial obligations in accordance with the decision of FIFA.*

*In this regard, we wish to inform the parties that a ban from registering new players internationally has been implemented by FIFA as of today.*

*Moreover, and in accordance with the aforementioned decision, [the Club’s] member association (in copy) is requested to immediately implement on [the Club], if not done yet, a ban from registering new players at national level.”*

18. By email to FIFA later on the same date, the Club informed FIFA that *“the decision in the case FPSD-1854 has been appealed before the CAS, therefore the decision is not final and binding. Having this said, I kindly ask you to immediately lift the transfer ban pending the outcome of CAS proceedings.”*
19. Finally, and also on the date, FIFA confirmed that *“In view of the foregoing, please be informed that the present proceedings before the CAS are pending. We will inform the parties of the further steps to be taken regarding the present proceedings as soon as a decision has been rendered by the CAS.”*

#### **IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT**

20. On 19 August 2021, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the “CAS Code”) against the Respondents with respect to the Appealed Decision.
21. On 13 September 2021, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.
22. On 25 October 2021 and 10 November 2021, respectively, the First Respondent and the Second Respondent filed their Answers in accordance with Article R55 of the CAS Code.
23. On 10 November 2021, and in accordance with Articles R33, R52, R53 and R54 of the CAS Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark.

24. By letter of 30 November 2021, and based on confirmation received from the Parties that they preferred or did not object to having an award issued solely on the basis of their written submissions, and since the Sole Arbitrator deemed himself sufficiently informed to decide the case and to render an award based solely on the written submissions, the Parties were informed that the Sole Arbitrator had decided to do so.
25. All Parties signed and returned the Order of Procedure, thereby, *inter alia*, confirming that their right to be heard had been respected.

## **V. PARTIES' REQUESTS FOR RELIEF AND SUBMISSIONS**

### **A. The Appellant**

26. In its Appeal Brief, the Appellant requested the CAS to:
1. *Set aside and annul the decision rendered by FIFA Players' Status Committee on the form of a letter in case Ref.No. FPSD-1854 on July 29, 2021.*
  2. *Order [FIFA] to grant the grounds of the decision FPSD-1854 (Ref.No. FPSD-1843) rendered by the Single Judge of the FIFA Players' Status Committee on June 29, 2021.*
  3. *Set aside and annul the decision FPSD-1854 (Ref.No. FPSD-1843) rendered by the Single Judge of the FIFA Players' Status Committee on June 29, 2021.*
  4. *Order that all claims of [the Coach] against [the Club] are dismissed.*
  5. *Order [FIFA and the Club] to bear the costs incurred with the present procedure."*
27. The Appellant's submissions, in essence, may be summarised as follows:
- FIFA's refusal to provide the grounds of the PSC Decision is to be considered as a denial of justice.
  - Pursuant to CAS 2015/A/4213 "*the absence of any viable opportunity to obtain a legally binding and challengeable clarification might likely have to be treated as or like a denial of justice, which would be treated like a decision subject to an appeal at CAS*".
  - As to the legal nature of the Appealed Decision, the form of the communication has no relevance to determining whether a decision exists or not.
  - In principle, for a communication to be a decision, this communication must contain a ruling whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties (CAS 2015/A/4213).
  - As a consequence, the Appealed Decision is to be treated as a decision in terms of Article R49 of the 2021 edition of the CAS Code.
  - With regard to the merits, the penalty in the amount of EUR 400,000 must be reduced as it is clearly disproportionate and excessive.

- The amount of the fine of EUR 400,000 is unreasonable and clearly exceeds the allowable amounts for reasons of fairness and equity, not least because of the financial situation of the Club, and therefore should be reduced.
- The delay in payments to the Coach was caused by the serious financial difficulties of the Club and was not an act of wilful misconduct by the Club.
- In any case, the Coach found a new job and he did not suffer any financial loss due to the delay in the Club's payments to him.

## **B. The First Respondent**

28. In its Answer, the First Respondent requested the CAS:

*“(a) To declare [the Club’s] appeal inadmissible.*

*Alternatively,*

*(b) To reject [the Club’s] appeal in its entirety.*

*(c) To confirm the content of the Appealed Letter;*

*In any event*

*(d) To order [the Club] to bear all costs incurred with the present procedure.”*

29. The First Respondent's submissions, in essence, may be summarised as follows:

- The appeal is inadmissible because the Appealed Decision is not a decision from a legal perspective, as confirmed by CAS jurisprudence.
- CAS panels have constantly established and confirmed the elements to consider a document as a decision:
  - (i) The form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal.
  - (ii) In principle, for a communication to be a decision, this communication must contain a ruling whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties.
  - (iii) “A decision is thus a unilateral act sent to one or more determined recipients and is intended to produce legal effects”.
  - (iv) An appealable decision of a sport association or federation “is normally a communication of the association directed to a party and based on an “animus decidendi”, i.e. an intention of a body of the association to decide on a matter [...]”. A simple information, which does not contain any “ruling” cannot be considered a decision.
- First of all, the Appealed Decision does not contain any ruling, as it did not resolve any issue in a final way and was of a mere informative nature.



- The only decision containing a ruling is the PSC Decision, and the Appealed Decision merely referred to this decision and confirmed that it had become final and binding.
- Secondly, the Appealed Decision did not produce legal effect as it only referred to the PSC Decision, which in turn clearly referred to the provisions of Article 15(4) of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules"), according to which, "*if the procedural costs are not paid within 20 days of the notification of the findings, the request for the grounds shall be deemed to have been withdrawn*".
- The Appealed Decision did not set a starting period for the Club to pay the amounts due according to the PSD Decision, and the Appealed Decision did not establish that the Club would be banned from registering new players, but simply provided information that the PSC Decision had become final and binding.
- Such information did not provoke legal effects on the Club, since the only legal effects in the case at hand arise solely from the PSC Decision, which is final and binding and has not been appealed against.
- In any case, the Club never provided evidence demonstrating that it had paid the relevant procedural costs within the notified deadline.
- Thirdly, the Appealed Decision does not have "animus decidendi"/an intention to decide on the matter, since the Appealed Decision was merely recalling the contents of the PSC Decision.
- The PSC Decision was a communication directed to the parties and "based on the intention of a body of the association to decide on the matter", including but not limited to informing the parties of their possibility to request the grounds of the said decision pursuant to the provisions of Articles 15 and 18 of the Procedural Rules, as well as the requirement to pay the procedural costs within 20 days in case such a request for grounds is made.
- The Appealed Decision only recalls the obvious effect of not having paid the relevant procedural costs in accordance with the contents of the PSC Decision.
- Following this, it cannot be concluded that the Appealed Decision is to be considered as an appealable decision understood as a ruling that puts an end to the dispute or even a part of it.
- Based on the above mentioned elements, it must be concluded that the Appealed Decision is not a decision in accordance with the CAS jurisprudence and, therefore, the appeal must be declared inadmissible.
- Moreover, there is no denial of justice in the case at hand.
- The Club was duly informed of the consequences of not paying the relevant procedural costs within the regulatory time limit stipulated under Article 15 par.4 of the Procedural Rules, which leaves no room for different interpretations.

- As the Club was duly informed about the possible consequences of its failure to pay the relevant procedural costs, it cannot be considered that the Appealed Decision constituted a situation of denial of justice.
- As FIFA did not commit denial of justice towards the Club, the Club's argument in this respect must be dismissed.
- With regard to the merits of the appeal, firstly it must be stressed that the appeal was lodged against the Appealed Decision and not against the PSC Decision.
- As the PSC Decision is not under appeal in these proceedings and has become final and binding, any argument or request to this decision or the underlying contractual dispute is inadmissible and cannot be subject to review in these proceedings.

### **C. The Second Respondent**

30. In his Answer, the Second Respondent requested the Sole Arbitrator:

- “1. To declare the present appeal against the correspondence issued by FIFA Administration on 29 July 2021 inadmissible due to the lack of challengeable decision.*
- 2. To declare the present appeal against the FIFA Decision dated 29 June 2021 inadmissible.*
- 3. Alternatively, to reject the present appeal as to the substance and to confirm; in its entirety, the contents of the correspondence of FIFA Administration dated 29 July 2021 and FIFA Decision dated 29 June 2021.*
- 4. In any event, to order [the Club] to bear all the costs incurred with the present procedure.*
- 5. In any event, to order [the Club] to cover all legal expenses, including expenses on legal representatives, of the Respondent, related to the present procedure, in an amount to be determined at the discretion of the Sole Arbitrator, but not less than CHF 9,000.”*

31. The Second Respondent's submissions, in essence, may be summarised as follows:

- The Appealed Decision only contains information of a general nature and is not a decision from a legal perspective affecting the rights of the addressees or establishing an order or a ruling that can be appealed to the CAS.
- Pursuant to established CAS jurisprudence, the characteristic features of a “decision” are the following:
  - o The form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal.
  - o In principle, for a communication to be a decision, this communication must contain a ruling whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties.
  - o A decision is thus a unilateral act sent to one or more determined recipients and is intended to produce legal effects.

- An appealable decision of a sport association or federation is normally a communication of the association directed to a party and based on an *animus decidendi*, i.e. an intention of a body of the association to decide on a matter [...]. A simple information which does not contain any 'ruling' cannot be considered a decision.
- In order to appeal a decision to the CAS, the very decision needs to meet the above-mentioned criteria applicable to an “appealable decision”.
- Based on the above, the Appealed Decision does not constitute a challengeable decision as it does not contain a ruling affecting the rights of the Club or the Coach.
- Moreover, it seems clear that the Head of FIFA Players’ Status did not intend such communication to be a decision issued on behalf of FIFA, and its wording insisted on the purely informative nature.
- As the Appealed Decision is therefore not an appealable decision, the Club does not have a decision to appeal against as provided for in Article R47 of the CAS Code, and the appeal is consequently inadmissible.
- In any case, a decision issued by FIFA can only be appealed to the CAS if the appealing party has requested the grounds of such a decision in accordance with the rules set out in the Procedural Rules.
- As the Club failed to pay the relevant procedural costs in connection with the FIFA proceedings, the Club failed to validly request the grounds of the PSC Decision, and the said decision is therefore not appealable to the CAS.
- Moreover, the appeal against the Appealed Decision infringes the principle of *venire contra factum proprium non valet* as the appeal was lodged in contravention of the Club’s conduct with regard to properly requesting the grounds of the PSC Decision.
- By failing to request the grounds of the PSC Decision, the Club has not exhausted the legal remedies available to it within the FIFA system, and therefore, pursuant to the applicable FIFA regulations and Article R47 of the CAS Code, the appeal is inadmissible.
- With regard to the possible appeal of the PSC Decision, pursuant to Article R49 of the CAS Code and Article 58 of the FIFA Statutes, an appeal against a decision passed by FIFA’s legal bodies must be lodged with CAS within 21 days of receipt of the decision.
- The PSC Decision was notified to the Club and the Coach on 5 July 2021, but in addition to not having requested the grounds of the said decision, the Club, in any case, failed to lodge an appeal against it within 21 days of its receipt.
- With regard to the alleged denial of justice, it must be stressed that a viable opportunity to obtain a challengeable decision did in fact exist for the Club.

- A denial of justice cannot take place without the observance of the proper rules governing the procedure for the exercise of rights, and the Club's failure to properly observe the FIFA regulations is not per se a reason to disregard the applicable rules.
- Finally, there are no legal grounds for setting aside and annul the PSC Decision as requested by the Club for the mere reason that the said decision has become final and binding, i.e has *res judicata effect*.
- As the PSC Decision is final and binding, the Sole Arbitrator is not in a position to deal with the requests of the Club on the subject, which has already been decided on by FIFA and, thus, has *res judicata effect* on the parties.

## VI. JURISDICTION AND ADMISSIBILITY

32. The Sole Arbitrator initially notes that the present proceedings are governed by chapter 12 of the Swiss Private International Law Act (the "PILA"), pursuant to which the Sole Arbitrator is entitled to rule on his own jurisdiction in accordance with Article 186(1) ("Kompetenz-Kompetenz").

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

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

while Article 58 par. 1 of the FIFA Statutes sets out that:

*"[a]ppeals 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."*

34. While the Parties to these proceedings do not contest the jurisdiction of the CAS in relation to the appeal filed by the Appellant, both Respondents dispute the admissibility of the appeal filed by the Appellant.

35. In that regard, the Respondents argue that the appeal is inadmissible because the Appealed Decision does not fall within what constitutes a "decision" within the meaning of Article R47 of the CAS Code under CAS jurisprudence.

36. Should the Sole Arbitrator find that the Appealed Decision does in fact constitute an appealable decision, then the Parties, as the Sole Arbitrator understands it, do not dispute the capacity of the Sole Arbitrator to deal with this appeal.

37. While the Sole Arbitrator is aware that some might debate whether the Respondents' arguments relate to the question of jurisdiction or admissibility, the Sole Arbitrator is satisfied to deal with this issue as a question of admissibility in this particular case where the jurisdiction of the CAS is not contested by the Parties.

38. As such, the Sole Arbitrator must decide whether the appeal was filed against a decision within the meaning of Article R47 par. 1 of the CAS Code and Article 58 par. 1 of the FIFA Statutes, i.e. a final decision passed by FIFA against which the internal legal remedies have been exhausted.
39. In this regard, the Sole Arbitrator endorses the definitions of a “decision” and the characteristic features of a “decision” as identified in the CAS jurisprudence as set out below:
- “[T]he form of the communication has no relevance to determine whether there exists a decision or not. In particular, the fact that the communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal” (CAS 2008/A/1633 para. 31; CAS 2007/A/1251 para. 30; CAS 2005/A/899 para. 63; CAS 2004/A/748 para. 90).”
  - “In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties” (CAS 2008/A/1633 para. 31; CAS 2007/A/1251 para. 30; CAS 2005/A/899 para. 61; CAS 2004/A/748 para. 89).
  - “A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects” (CAS 2008/A/1633 para. 31; CAS 2004/A/748 para. 89; CAS 2004/A/659 para. 36).
  - “[a]n appealable decision of a sport association or federation “is normally a communication of the association directed to a party and based on an *animus decidendi*, i.e. an intention of a body of the association to decide on a matter (...). A simple information, which does not contain any *ruling*, cannot be considered a decision.” (CAS 2008/A/1633 para. 32; BERNASCONI M., “When is a ‘decision’ an appealable decision?” in: RIGOZZI/BERNASCONI (eds), *The Proceedings before the CAS*, Bern 2007, p.273)” (CAS 2015/A/4266, para. 51 of the abstract published on the CAS website).
40. Based on the specific circumstances of this dispute, the Sole Arbitrator finds that the Appealed Decision does in fact meet the said criteria.
41. Initially, the Sole Arbitrator finds that the fact that the Appealed Decision is in the form of a letter is of no particular relevance in the case at hand *since the form of the communication has no relevance to determine whether there exists a decision or not*.
42. With regard to the additional characteristic features of a “decision” as identified in the CAS jurisprudence as set out above, the Sole Arbitrator finds that these must be assessed in light of any other decisions or communication in close connection with the Appealed Decision.
43. The Sole Arbitrator initially notes that the PSC Decision contains the findings of the FIFA PSC and determines that the Club is obliged to pay a certain outstanding amount to the Coach together with a contractual penalty and that these payments must be made within 45 days of notification of the decision.
44. Moreover, the PSC Decision sets out a potential disciplinary consequence for the Club in case of failure to pay the outstanding amounts to the Coach.

45. Furthermore, the PSC Decision sets out that “[t]he final costs of the proceedings in the amount of CHF 25,000 are to be paid by [the Club] to FIFA (cf. note relating to the payment of the procedural costs below.”
46. In addition, the Note Related To The Findings of the Decision informs the Club and the Coach, *inter alia*, as follows:
- “In accordance with arts. 15 and 18 of the Procedural Rules, this correspondence only communicates the findings of the decision without grounds.*
- Should any of the parties wish to receive the grounds of the decision, a written request must be received by FIFA, within 10 days of receipt of notification of the findings of the decision. Failure to do so within the stated deadline will result in the decision becoming final and binding and the parties being deemed to have waived their rights to file an appeal.*
- Whenever procedural costs are due, the grounds of the decision will only be notified to the party requesting the grounds and upon payment of the relevant procedural costs. If the procedural costs are not paid within 20 days of the notification of the findings, the request for the grounds shall be deemed to have been withdrawn. As a result, the decision will become final and binding and the relevant party will be deemed to have waived their right to file an appeal.*
- No costs shall be charged if a party decides not to ask for the grounds of the decision and, where applicable, the advance of costs will be reimbursed to the relevant party.”*
47. The Sole Arbitrator understands this note to be of a solely informative nature, informing the Club and the Coach of the potential consequences of requesting or not requesting, respectively, the grounds of the PSC Decision, including but not limited to informing both parties about the fact that the PSC Decision would become final and binding in case of failure to validly requesting the grounds within the deadline, and further informing, *in casu*, the Club that if no (valid) request for the grounds is made by the Club within the set time limit, then no costs will be charged to the Club.
48. Based on that, the Sole Arbitrator finds that it is the Appealed Decision, when informing the Club and the Coach that since FIFA has not received from the Club any proof of payment of the relevant procedural costs within the set time limit, that determines that the Club’s request for the grounds is deemed withdrawn, which makes the PSC Decision final and binding, and, *in casu*, makes the Club’s obligation to pay the procedural costs pursuant to the findings a moot point.
49. As such, in the Sole Arbitrator’s view, not only does the Appealed Decision rule on whether or not the timely request for the grounds as submitted by the Club is to be considered withdrawn or not, subject to the obligation to pay the relevant procedural costs on time, but this ruling does also indirectly affect the potential obligation of the Club to pay the procedural costs in the amount of CHF 25,000 as set out in the PSC Decision.
50. As such, a final decision with regard to the procedural costs was in fact only issued (indirectly by the Appealed Decision.

51. Based on that, the Sole Arbitrator finds that the Appealed Decision carries all the above-mentioned additional characteristic features of a “decision” as identified in the CAS jurisprudence set out above as it contained a ruling based on an “*animus decidendi*” directed to the parties to the dispute with the intention to produce legal effect on (at least) one of the parties.
52. Therefore, the Sole Arbitrator in this particular case agrees with the Club, that the Appealed Decision constitutes a decision,
53. With regard to the exhaustion of internal remedies as far as the Appealed Decision is concerned, the Sole Arbitrator finds that the applicable rules and regulations of FIFA do not provide for any further recourse against such a decision.
54. Thus, the Sole Arbitrator finds that no internal legal remedy against the Appealed Decision within the meaning of Article R47 of the CAS Code and Article 58 of the FIFA Statutes was available to the Appellant.
55. The Appealed Decision was notified to the Club on 29 July 2021, and the Statement of Appeal was lodged on 19 August 2021, *i.e.* within the statutory time limit of 21 days set out in Article 58 par. 1 of the FIFA Statutes, which is not disputed.
56. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.
57. It follows that the appeal of the Appealed Decision is admissible.

## **VII. APPLICABLE LAW**

58. Pursuant to Article 57 par. 2 of the FIFA Statutes

*“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss Law.”*

59. 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.”*

60. With reference to the above, and given that the Appealed Decision was issued by the FIFA Head of Player Status and refers to a decision issued by the FIFA PSC, the Sole Arbitrator agrees with the Parties and is satisfied that the various rules and regulations of FIFA are primarily applicable, in particular the Regulations on the Status and Transfer of Players and the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber and, subsidiarily, Swiss law should the need arise to fill a possible gap in the various regulations of FIFA.

## VIII. MERITS

61. Initially, the Sole Arbitrator notes that the factual circumstances of this case are in essence undisputed by the Parties, including the content of the PSC Decision and the information provided to the Club and the Coach regarding the possibility of requesting the grounds of the said decision, subject to the payment of any relevant procedural costs within 20 days of the notification of the finding of the decision (see paras 11 - 13 above).
62. It is further undisputed that by email of 15 July 2021 to the FIFA Players' Status Committee, the Club requested the grounds of the PSC Decision.
63. Furthermore, it is undisputed that the Club failed to pay the costs of the proceedings before FIFA in the amount of CHF 25,000, as set out in the findings of the PSC Decision, which led to the Appealed Decision dated 29 July 2021 from the Head of FIFA Players' Status.
64. Finally, it is undisputed that by the Appealed Decision of 29 July 2021, the Parties were informed, *inter alia*, as follows:

*"[...] In this regard, we acknowledge receipt of the Respondents correspondence dated 15 July 2021, according to which it requested the grounds of said decision. A copy of such correspondence is enclosed for the parties" information only.*

*In this regard, we kindly remind you that in accordance with art. 15 par. 4 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Regulation Chamber as well as with the note relating to the findings of the decision concerned, whenever procedural costs are due, the grounds of the decision will only be notified to the party requesting the grounds and upon payment of the relevant procedural costs, If the procedural costs are not paid within 20 days of the notification of the findings, the request for the grounds shall be deemed to have been withdrawn. As a result, the decision will become final and binding and the relevant party will be deemed to have waived their right to file an appeal.*

*In this context, we have noted that no proof of payment of the relevant procedural costs has been received from Astana FC by our services within the relevant deadline.*

*Consequently/ Astana FC's request for grounds is deemed as withdrawn and the above-mentioned decision has become final and binding.[...]"*

65. The Club, on its side, submits that FIFA's refusal to provide the grounds of the PSC Decision is to be considered as a denial of justice as, pursuant to CAS 2015/A/4213, *"the absence of any viable opportunity to obtain a legally binding and challengeable clarification might likely have to be treated as or like a denial of justice, which would be treated like a decision subject to an appeal at CAS"*.
66. The Respondents, on their side, submit, *inter alia*, that there is no denial of justice in the case at hand since the Club was duly informed about the potential consequences of not paying the relevant procedural costs within the set time limit and since the Club failed to properly observe the applicable rules and regulations governing the procedure for the exercise of its right.
67. The Sole Arbitrator initially notes the content of Articles 15 and 18 of the Procedural Rules, which state as follows:



“15. Decisions without grounds

1. *As a general practice and unless otherwise provided, the Players’ Status Committee, the DRC, the single judge and the DRC judge communicate only the findings of the decision (without grounds).*

2. *Following the notification of the findings of the decision, the parties are entitled to request the grounds of the decision within ten calendar days as from the notification of the findings of the decision. Failure to do so will result in the decision becoming final and binding and the parties being deemed to have waived their right to file an appeal.*

3. *If a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full, written form. The time limit to lodge an appeal begins from the date of notification of the motivated decision to the parties.*

4. *Whenever procedural costs are due, the grounds of a decision will only be notified to the party requesting the grounds and upon payment of the relevant procedural costs. If the procedural costs are not paid within 20 days of the notification of the findings, the request for the grounds shall be deemed to have been withdrawn. As a result, the decision will become final and binding and the relevant party will be deemed to have waived their right to file an appeal.*

5. *All decisions that lead to sporting sanctions may only be communicated with grounds. Without prejudice to the contents of paragraph 1 above, the Players’ Status Committee, the DRC, the single judge and the DRC judge may, at their own discretion, decide to notify a decision with grounds.*

18. Costs

1. *Costs in the maximum amount of CHF 25,000 are levied in connection with proceedings of the Players’ Status Committee and the single judge (with the exception of proceedings relating to the provisional registration of players), as well as for proceedings before the DRC relating to disputes regarding training compensation and the solidarity mechanism. Costs are to be borne in consideration of the parties’ degree of success in the proceedings. In special circumstances, the costs may be assumed by FIFA. Should a party generate unnecessary costs on account of its conduct, costs may be imposed upon it, irrespective of the outcome of the proceedings, subject to the temporary exceptions below.*

i. *For any claim or counter-claim lodged between 10 June 2020 and 31 December 2020 (both inclusive), no procedural costs shall be levied.*

ii. *For any claim or counter-claim lodged prior to 10 June 2020 which has yet to be decided at the time of this temporary amendment, the maximum amount of procedural costs levied shall be equivalent to any advance of costs paid.*

2. *DRC proceedings relating to disputes between clubs and players in relation to the maintenance of contractual stability as well as international employment-related disputes between a club and a player are free of charge.*

3. *No fees shall be charged if a party decides not to ask for the grounds of a decision once the findings have been communicated (cf. art. 15).*

*4. No procedural compensation shall be awarded in proceedings of the Players' Status Committee and the DRC."*

68. The Sole Arbitrator further notes that the Club has neither disputed the validity and legality of these provisions, nor their application to the present dispute, and that the Club does not dispute that it was duly informed about the content of the said provision on 5 July 2021.
69. Finally, the Sole Arbitrator notes that the Club never submitted any explanation for its failure to pay the relevant procedural costs in the amount of CHF 25,000.
70. Based on the above, the Sole Arbitrator initially finds that the Club was granted ample opportunity to request and receive the grounds of the PSC Decision subject to the applicable Procedural Rules, the legality and application of which are not in dispute.
71. However, as the Club, without any explanations, failed to duly respect the relevant provisions of the Procedural Rules, i.e. failed to pay the amount of CHF 25,000 to FIFA as procedural costs in accordance with the findings of the PSC Decision within the set time limit, the Club, by its own conduct, was precluded from receiving the grounds of the decision, which furthermore became final and binding.
72. The Sole Arbitrator does not disagree with the Panel in CAS 2015/A/4213, that “[t]he absence of any viable opportunity to obtain a legally binding and challengeable clarification might likely have to be treated as or like a denial of justice, which would be treated like a decision subject to an appeal at CAS”.
73. However, in this particular case, the alleged absence of a viable opportunity to obtain a challengeable clarification was only caused by the failure of the Club itself to respect the applicable Procedural Rules and was only manifested subsequently after the expiration of the time limit set out in the said rules.
74. As such, the alleged absent of a viable opportunity to obtain a challengeable clarification in any case did not exist from the beginning of the dispute and was only caused by the Club’s own conduct.
75. The Sole Arbitrator finds that it is not possible for a party to rely on an alleged denial of justice in case the same party, had it properly observed the applicable rules and regulations, would have enjoyed and could have taken advantage of the same right as it now, due to its own conduct, considers denied without justice.
76. As such, the Sole Arbitrator dismisses the Club’s submission regarding the alleged denial of justice and the related request for relief regarding the Appealed Decision.
77. The Sole Arbitrator further notes that in its Appeal Brief, the Club submits, *inter alia*, that the penalty in the amount of EUR 400,000 must be reduced, which submission is related to the merits of the original dispute as dealt with in the PSC Decision.
78. As the present appeal is solely lodged against the Appealed Decision, and not (also) against the PSC Decision, any argument or requests relating to the merits of the original contractual dispute between the Club and the Coach are inadmissible and not subject to review by the Sole Arbitrator.

79. Moreover, the PSC Decision has become final and binding, which is why, in any case, the Sole Arbitrator is not in a position to even consider the merits of such a dispute.

## **IX. COSTS**

80. Article R64.4 of the CAS Code provides as follows:

*“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*

*- the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters.*

*The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs.”*

81. Article R64.5 of the CAS Code provides as follows:

*“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”*

82. In the present case, in consideration of the outcome of the proceedings, the Sole Arbitrator rules that the costs of arbitration, as calculated by the CAS Court Office, must be borne by the Appellant, in their entirety.

83. Furthermore, as a general rule, the Award may grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. Taking into consideration the fact that FIFA was not represented by outside counsel, the Sole Arbitrator rules that the Appellant must pay a contribution towards the Second Respondent’s legal fees in the amount of CHF 3,000 (three thousand Swiss Francs) while the First Respondent must bear its own legal fees and expenses.

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules that:

1. The appeal filed by Football Club Astana on 19 August 2021 against the letter dated 29 July 2021 from the Head of Players' Status is admissible.
2. The appeal filed by Football Club Astana on 19 August 2021 against the letter dated 29 July 2021 from the Head of Players' Status is rejected.
3. The content of the letter dated 29 July 2021 from the Head of Players' Status is confirmed.
4. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne entirely by Football Club Astana.
5. Football Club Astana is ordered to pay to Mr Roman Grygorchuk an amount of CHF 3,000 (three thousand Swiss Francs) as a contribution towards the expenses incurred in connection with these arbitration proceedings.
6. Football Club Astana and the Fédération Internationale de Football Association shall bear their own legal fees and expenses incurred in connection with these arbitration proceedings.
7. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 8 November 2023

## THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger  
  
Sole Arbitrator