

Decision of the Players' Status Chamber

passed on 9 October 2023

regarding a contractual dispute concerning the player Mateus Cardoso Lemos

COMPOSITION:

Javier Vijande Penas (Argentina), Chairperson

Jesús Arroyo (Spain), Member

Castellar Guimarães Neto (Brazil), Member

CLAIMANT:

FC Shakhtar Donetsk, Ukraine

Represented by Josep Vandellos

RESPONDENT:

Olympique Lyonnais, France

I. Facts of the case

The parties

1. The relevant natural or legal persons to the dispute are:
 - the Ukrainian club, FC Shakhtar Donetsk (hereinafter: *Shakhtar* or *the Claimant*);
 - the French club, Olympique Lyonnais (hereinafter: *OL* or *the Respondent*);
 - the English club, Leicester City FC (hereinafter: *Leicester*); and
 - the Brazilian player, Mateus Cardoso Lemos Martins (hereinafter: *the player*).
2. It is to be noted nonetheless that only the Claimant and the Respondent (hereinafter jointly referred to as *the parties*) are parties to the dispute.

The employment relationship between the player and Shakhtar

3. On 24 February 2019, Shakhtar hired the services of the player from the Brazilian club, Gremio Foot-ball Porto Alegre against payment of a compensation of EUR 15,000,000.
4. On 28 February 2019, Shakhtar and the player concluded an employment contract valid as from the date of signature until 31 December 2023 (hereinafter: *the Ukrainian Contract*).
5. Pursuant to the Annexe to the Ukrainian Contract, the Claimant undertook to pay the player *inter alia* the following amounts:
 - EUR 1,500,000 net as sign-on fee;
 - EUR 800,000 during 2019;
 - EUR 900,000 during 2020;
 - EUR 1,000,000 during 2021;
 - EUR 1,100,000 during 2022; and
 - EUR 1,200,000 during 2023.

The war in Ukraine and its aftermath

6. In February 2022, the Russian Federation launched an armed invasion of Ukraine.
7. On 9 March 2022, FIFA issued Circular Letter no. 1787 and Annexe 7 to the Regulations on the Status and Transfer of Players (RSTP), by means of which *inter alia* employment contracts between foreign players and clubs affiliated to the Ukrainian Association of Football (UAF) were automatically suspended until 30 June 2022 unless agreed otherwise.
8. On 15 March 2022, FIFA issued the Interpretative Note to Annexe 7 of the RSTP to provide guidance to the football stakeholders in relation to the provisions and slight amendments

to Annexe 7. The updated wording of Annexe 7 was also confirmed via FIFA Circular Letter no. 1788, issued on 24 March 2022.

9. On 30 March 2022, the player and OL entered into an employment contract valid as from 1 April 2022 until 30 June 2022. Accordingly, OL undertook to pay the player a monthly remuneration of EUR 180,000.
10. According to the information available in the FIFA Transfer Matching System (TMS):
 - On 30 March 2022: (i) OL entered a transfer instruction to permanently engage the player as “*out of contract*” (cf. art. 6, par. 1 of the Annexe 7 of the RSTP); and (ii) the *Fédération Française de Football* (FFF) requested his International Transfer Certificate (ITC) from the UAF;
 - On 31 March 2022, the FIFA general secretariat granted FFF’s request for the special exemption from the “*validation exception*” of the player in the TMS pursuant to art. 6 par. 1 of Annexe 7 of the RSTP; and
 - On 1 April 2022, UAF delivered the player’s ITC and he was registered with OL.
11. On 20 June 2022, FIFA issued the Circular Letter no. 1800 by means of which it extended the effects of the Annexe 7 of the RSTP and *inter alia* provided for further temporary measures concerning employment contracts of foreign players and clubs affiliated to the UAF. Article 2, par. 1 of the RSTP (June 2022 edition) reads as follows: “*unless otherwise agreed between the parties, a contract of an international dimension between a player or a coach and a club affiliated to the UAF can be unilaterally suspended until 30 June 2023 by the player or the coach, provided that a mutual agreement with the club could not be reached before or on 30 June 2022*” (emphasis added).
12. On 30 June 2022, Shakhtar entered a transfer instruction in TMS to engage the player free of payment.
13. On 1 July 2022, the player was deregistered by the FFF in accordance with the information available in TMS.
14. On the same date, OL and the player concluded a second employment agreement valid as from the date of signature until 30 June 2023. Accordingly, OL undertook to pay the player a monthly remuneration of EUR 270,000.
15. On 2 July 2022, FIFA issued the Circular Letter no. 1804 concerning the administrative application of Annexe 7 of the RSTP. Such circular stated *inter alia* as follows: “[...] to ensure that all international transfers involving players registered with the UAF are conducted in compliance with the FIFA regulations and also to protect the legitimate interests of both players and clubs in Ukraine, FIFA wishes to clarify that, should a player be transferred from a club in

Ukraine to a club affiliated to another member association in application of article 2 of Annexe 7 to the RSTP, the engaging club should enter the relevant transfer instruction in TMS no earlier than 1 August 2022” (emphasis added).

16. According to the information available in the TMS:

- On 4 July 2022, the FFF delivered the player’s ITC to the UAF and the player was registered with Shakhtar;
- On 5 July 2022, OL entered the corresponding instruction in TMS to engage the player permanently and uploaded the corresponding documentation;
- On 1 August 2022, OL confirmed the transfer instruction and the FFF requested the player’s ITC from UAF;
- On 3 August 2022, UAF rejected the ITC request because *“The contract between the former club and the professional player has not expired”*;
- On 3 August 2022, the FFF disputed the rejection of the ITC and uploaded a declaration signed by the player requesting the suspension of the Ukrainian Contract in line with Annexe 7 of the RSTP (June 2022 edition);
- On 4 August 2022, FIFA Players’ Status Chamber (PSC) passed its decision on the request made by the FFF and granted OL the right to register the player with immediate effect. Such decision also stated that it was *“without prejudice to any possible decision from the FIFA Dispute Resolution Chamber (DRC) and/or the competent decision-making body on the substance of the potential or existing contractual dispute between the player and his former club (as well as his new club)”*;
- Also on 4 August 2022, the player was registered with OL.

17. On 5 August 2022, the player (through OL) also addressed Shakhtar via email the player’s declaration concerning the suspension of the Ukrainian Contract.

18. On 8 November 2022, FIFA issued the Circular Letter no. 1816 concerning new amendments to the RSTP. Annexe 7 of the FIFA RSTP however remained unchanged.

The transfer of the player from OL to Leicester

19. On 27 January 2023, the player, OL and Leicester entered into a transfer agreement by means of which the services of the player were transferred from the former to the latter (hereinafter: *the Transfer Agreement*).

20. The recitals of the Transfer Agreement read *inter alia* as follows:

“(d) [Leicester] wishes to acquire the player’s permanent registration from [OL] pursuant to a standard PL Playing Contract on terms acceptable to [Leicester] to expire on 30 June 2023 (the ‘LCFC Contract’), prior to the reversion of his registration to [Shakhtar] with effect from 1 July 2023 in accordance with Annex 7 of the FIFA Regulations. [OL] has agreed to permanently transfer the player’s registration in order that he can be so registered”.

21. Clauses 2 and 3 of the Transfer Agreement read as follows:

“2. In consideration of the Transfer, [Leicester] agrees to pay to [OL], subject to the terms and conditions of this Agreement, including but not limited to the satisfaction of the Conditions (defined below) and the withholdings pursuant to clause 7, the sum of € 1,000,000 (one million Euros) (the ‘Transfer Fee’), payable within 7 (seven) days of the satisfaction of the Conditions (as defined below).

3. In the event that any claim is brought by [Shakhtar] (and/or by any other entity entitled to act on behalf of [Shakhtar] against [OL] before FIFA and/or the Court of Arbitration for Sport in relation to the amount received by [OL] hereunder (a ‘Shakhtar Claim’), then [Leicester] shall indemnify [OL] in respect of any sum(s) [OL] is ordered to, and actually does, pay to [Shakhtar] following the final determination of the Shakhtar Claim (the ‘Shakhtar Liability’), up to a maximum aggregate sum of € 1,000,000 (one million Euros), provided that the [OL] shall:

- (a) Immediately notify (within 3 business days) [Leicester] upon [OL] becoming aware of any such Shakhtar Claim and provide [Leicester] copies of all correspondence, communications, information and/or other materials relating to such matter in a timely manner;*
- (b) To the extent that [Leicester] has legal standing in any proceedings relating to the Shakhtar Claim, give full control of such matter to [Leicester], including the right to respond to, contest, appeal and/or settle the matter (and, in such circumstances and at [Leicester]’s cost, provide such assistance and procure the provision of such assistance from third parties as [Leicester] may require in respect of its handling of such matter), provided that [Leicester] shall keep [OL] reasonably informed of the progress of such matter.*
- (c) To the extent that [Leicester] does not have legal standing in any proceedings relating to the Shakhtar Claim, give full conduct of such matter to [Leicester] (notwithstanding that, due to reasons of legal standing, communications may need to be sent by or on behalf of [OL]), including the right to respond to, contest, appeal and/or settle such matter. Further, [OL] shall comply with [Leicester]’s reasonable decisions in respect of the handling of the same (and in such circumstances and at [Leicester]’s cost, provide such assistance and procure the provision of such*

assistance from third parties as [Leicester] may require in respect of the handling of such matter), provided that [Leicester] shall keep [OL] reasonably informed of the progress of such matter; and

- (d) Without prejudice to the foregoing, not take any material action whatsoever (including but without limitation accepting jurisdiction of the forum in which the Shakhtar Claim is brought or making a payment, compromise, settlement or admission in respect of the Shakhtar Claim) without the prior written approval of [Leicester].*

Any sums due under this clause 3 shall be payable by [Leicester] within 7 (seven) days of receipt of: (i) appropriate evidence of Shakhtar Claim Liability having been paid by [OL] to [Shakhtar]; and (ii) an appropriate invoice from [OL] in respect to the Shakhtar Claim Liability (subject to the provisions of this clause 3 and clause 6)".

22. Clause 7 of the Transfer Agreement reads *inter alia* as follows:

"7. It is acknowledged and agreed that:

- (a) [Leicester] shall withhold from each sum payable to [OL] hereunder a sum equal to 5% (five percent) of that sum (the 'Withheld Amount'), i.e. so that [OL] will actually receive 95% (ninety five percent) of the sum payable;*
- (b) [Leicester] shall thereafter pay from the Withheld Amount the total applicable Solidarity amount due under the FIFA Regulations to the Player's training clubs (including [OL], if applicable) as specified in the relevant Payment Notification issued by FIFA Clearing House (or as otherwise ordered by FIFA) (the 'Training Rewards Payment'), such payment to be made by [Leicester] to the FIFA Clearing House Regulations from time to time in force (or as otherwise directed by FIFA)".*

23. Clause 8 of the Transfer Agreement reads *inter alia* as follows:

"8. [OL] hereby represents, warrants and undertakes to [Leicester] at the date hereof, and where applicable on a continuing basis, that:

- (a) The player has validly suspended [the Ukrainian Contract] until 30 June 2023 in accordance with Annex 7 of the FIFA Regulations (i.e. the player was considered as 'out of contract' until 30 June 2023 at the time [OL] registered him) and, accordingly, [OL] is not party to any agreement with [Shakhtar] regarding the transfer of the player's registration such that this Agreement could constitute a breach of article 10 (1) (f) of the FIFA Regulations;*

(b) *Without prejudice to clause 8 (a) and the future reversion of the player's registration to [Shakhtar] with effect from 1 July 2023 in accordance with Annex 7 of the FIFA Regulations, it holds the player's registration absolutely and is free from any contractual obligations and/or relationships with any other club, intermediary or any other legal entity or person in respect of the player and it is fully entitled to transfer the player's permanent registration unencumbered to [Leicester] so that [Leicester] shall become the absolute beneficial owner of all interests and rights in connection therewith up to and including 30 June 2023".*

24. Clause 10 of the Transfer Agreement reads *inter alia* as follows:

"It is acknowledged that [Leicester] has entered into this Agreement and has agreed to make payments to [OL] under this Agreement in reliance on the representations and warranties given by [OL] hereunder. [OL] shall indemnify [Leicester] on demand against all liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, penalties and legal costs (calculated on a full indemnity basis) and all other professional costs and expenses) suffered or incurred by [Leicester] arising out or in connection with: (a) any breach of the representations and warranties given by [OL] hereunder; and/or (b) any claim (other than a claim for Solidarity in respect of the Transfer) made against [Leicester] in respect of the player's registration with [Leicester]".

25. On 28 January 2023, the player and Leicester also entered into an employment contract valid as from the date of signature until 30 June 2023. Accordingly, Leicester undertook to pay the player *inter alia* GBP 100,000 per week *"payable by monthly instalments in arrear from 28 January 2023 to 30 June 2023"*.

26. According to the information available in the TMS:

- On 28 January 2023, OL entered a transfer instruction to release the player to Leicester permanently;
- Also 28 January 2023, Leicester entered a matching counter instruction;
- On 30 January 2023, the English Football Association (the FA) requested the player's ITC from the FFF, which was delivered on the same date; and
- On 31 January 2023, the player was registered with Leicester.

27. On 29 January 2023, OL announced in its official website that it had agreed to the player's request to finish their relationship and transfer him to Leicester.

The new edition of Annexe 7 of the RSTP

28. On 31 March 2023, FIFA issued the Circular Letter no. 1839 concerning new amendments to the RSTP. Annexe 7 of the RSTP remained unchanged.
29. On 22 May 2023, FIFA issued the Circular Letter no. 1849 by means of which it communicated further amendments to the Annexe 7, addressing the exceptional situation deriving from the war in Ukraine. Within the package of amendments, the new edition of Annexe 7 included the following provision:

“8. International transfer of players

1. A player whose contract has been suspended on the basis of this annexe may, during the period of suspension, not be subject to a transfer (whether permanent or on loan) against payment.

2. A player who has suspended their contract on the basis of this annexe may not sign a new contract with another club affiliated to the UAF or FUR during the time of the suspension”.

The exchange of correspondences between the parties

30. On 6 June 2023, Shakhtar sent OL a default notice by means of which it (i) acknowledged that the player had been irregularly transferred to Leicester; and (ii) requested payment of the EUR 950,000 “illicitly” received from Leicester within 10 days.
31. On 19 June 2023, OL replied to Shakhtar and denied having incurred in any violation of the FIFA regulations. In particular, OL argued that the amount received from Leicester was merely a compensation for the loss of the player’s services (due to his own will), as well as there was no reason for Shakhtar to receive any amount as a consequence.

The subsequent contractual situation of the player

32. According to the information available in the TMS:
- On 4 July 2023, Shakhtar entered a transfer instruction in TMS to engage the player from Leicester and submitted supporting documentation;
 - On 5 July 2023, the UAF requested the ITC of the player from the FA, which was delivered on the same date; and
 - On 12 July 2023, the player was registered with Shakhtar.

33. On 10 August 2023, the player and the Turkish club, Galatasaray A.S. concluded an employment agreement valid as from the date of signature until 20 June 2027. Accordingly, the player would be entitled to the following amounts:
- a. EUR 3,100,000 as signing fee;
 - b. EUR 2,800,000 for the season 2023/2024 season;
 - c. EUR 2,800,000 for the season 2024/2025 season;
 - d. EUR 2,800,000 for the season 2025/2026 season; and
 - e. EUR 2,800,000 for the season 2026/2027 season.
34. According to the information available in the TMS:
- On 11 August 2023, the Turkish club, Galatasaray A.S. entered a transfer instruction to engage the player permanently. On the same date, the Turkish Football Federation (TFF) requested the player's ITC;
 - On 17 August 2023, the UAF requested the cancellation of the transfer based on the *"Wrong reason selected for last contract end date"*. The UAF added the following remark to the instruction: *"FC Shakhtar considers the suspension of the Player's employment contract on the basis of Annexe 7 null and void per se and without any legal effect. The employment contract was unilaterally terminated by FC Shakhtar on 7 August 2023."*;
 - On 21 August 2023, FIFA rejected the cancellation of the transfer;
 - On 23 August 2023, the FIFA acknowledged that the UAF had failed to respond the ITC request within 7 days and *"the registration process was invoked as per art. 11 par. 6 of Annexe 3 of the Regulations on the Status and Transfer of Players"*; and
 - Also on 23 August 2023, the TFF confirmed the registration of the player with Galatasaray A.S.

II. Proceedings before FIFA

35. On 11 July 2023, Shakhtar filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of Shakhtar

36. In its claim, Shakhtar recalled the background of the case and, in particular, the suspension of the Ukrainian Contract due to the war in Ukraine. In doing so, it argued that *"the registration of the player with the Respondent is equivalent to having any player on loan"*, entailing that OL incurred in a direct violation of art. 10 par 1, lit. f) of the RSTP.

37. Shakhtar argued that OL's illicit behaviour triggered its liability in tort by preventing it to loan the player to Leicester directly, as well as earning the financial benefits derived thereto. Shakhtar referred to the Swiss Law in support of its argumentation.
38. In parallel, Shakhtar claimed that OL's behaviour amounted to unjust enrichment. In this respect, Shakhtar referred to the jurisprudence of the Court of Arbitration for Sport (CAS) and especially to *CAS 2022/A/9016 Shakhtar Donetsk v. FIFA* and highlighted that the Panel, in such opportunity and while analysing the contents of Annexe 7, expressly conveyed that certain situations would constitute abuse of rights and amount to unjust enrichment.
39. Furthermore, Shakhtar pointed out that the following conditions required by the Swiss Law were met in the case at hand:

"i. Enrichment of one party – the Respondent enriched itself at the expense of the Claimant as it is only the Claimant who had the right to authorize the loan and/or transfer the Player to a third club against payment;

ii. Impoverishment of another party – the Claimant lost the opportunity to transfer the Player against payment to [Leicester] and receive such payment only because the Respondent went behind the Claimant's back about such a transfer and circumvented the rules under the RSTP;

iii. Absence of cause for enrichment – the Respondent being the club who owned the registration of the Player on a temporary basis and free of charge was never allowed by RSTP to dispose / sell such registration and have any financial benefits; this position is reinforced in the May 2023 edition of Annexe 7 by inserting the express prohibition from transferring the Player to a third club against the payment (see art. 8 (1) of Annexe 7, May 2023 edition). Therefore, the Respondent had no cause to transfer the Player against the payment;

iv. Link of causation between enrichment and impoverishment – the Claimant would not have been impoverished if the Claimant did not transfer the Player against payment (i.e. not enriched itself) since it had no right or entitlement to transfer the Player".

40. Shakhtar also pointed out to the wording of Annexe 7 of the RSTP and its *men legis*. Even if not express in the previous editions of the Annexe 7 of the RSTP, Shakhtar stated that the current art. 8, par. 1 (May 2023 edition) leaves a clear message that *"the sale of players registered with Ukrainian clubs is an example of misuse of Annexe 7, bad faith and abusive behaviour"*.
41. In conclusion, Shakhtar stated that OL should be liable to the consequences of its bad faith and breach of the FIFA regulations. Shakhtar requested to be awarded the amount that OL

illicitly received from Leicester, namely EUR 950,000 net plus 5% interest *p.a.* as from the date of receipt of such amount by OL until the date of effective payment.

42. Shakhtar also filed evidentiary requests to be provided with (i) a copy of the Transfer Agreement; and (ii) the information included in the TMS concerning such transfer of the player from OL to Leicester. In the alternative, it requested FIFA *“to take note of all the said documents and analyze them whilst deciding this matter and requests FIFA Players’ Status Department to disclose the relevant articles of the Transfer Agreement and relevant parts of the TMS report which it considers shall suffice for the Claimant to defend its legitimate rights in this matter”*.
43. Shakhtar’s requests for relief were as follows, quoted *verbatim*:

“On these grounds [Shakhtar] hereby respectfully requests the FIFA Players’ Status Chamber to rule that:

- 1) *The Respondent is in breach of Article 10 and Annexe 7 of the FIFA RSTP and/or legal principle of good faith.*
- 2) *The Respondent is obliged to pay the Claimant the following amounts:*
 - a. *An amount of EUR 950.000 NET (nine hundred fifty thousand euros) along with an interest of 5% p.a. from the date it received such amount from [Leicester] until the date of effective payment of the said amount to the Claimant.*
 - b. *Alternatively, an amount to be decided at the discretion of the Football Tribunal on the basis of the circumstances of the case”*.

b. Position of OL

44. OL failed to reply to the claim, in spite of being invited to do so by the FIFA general secretariat.

III. Considerations of the Players’ Status Chamber

a. Competence and applicable legal framework

45. First of all, the PSC (hereinafter also referred to as *Chamber*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 11 July 2023 and submitted for decision on 9 October 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.

46. Furthermore, the members of the Chamber 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. g) of the RSTP (May 2023 edition), the PSC is competent to deal with the matter at stake, which concerns a contractual dispute between clubs affiliated to different member associations.
47. Subsequently, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the RSTP (May 2023 edition) and considering that the present claim was lodged on 11 July 2023, the cited edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance. Nevertheless, bearing in mind that the war in Ukraine is the *crux* of the matter, the Chamber outlined that the October 2022 edition of the Annexe 7 of the RSTP shall also be taken into consideration given the particular circumstances of the case and the timeline of the facts that led to the present dispute.

b. Burden of proof

48. The Chamber 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 Chamber stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the TMS.

c. Merits of the dispute

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

i. Main legal discussion and considerations

50. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that it pertains to a claim for damages lodged by Shakhtar against OL in connection with the transfer of the player (and its consequences) during the exceptional circumstances involving the war in Ukraine.

51. As a departure point, the PSC acknowledged that the claim stands undisputed insofar as OL failed to submit its reply within the deadline granted by the FIFA general secretariat. Therefore, the Chamber highlighted that the assessment of the case shall be based on the documentation provided by Shakhtar only (*cf.* art. 21, par. 1 of the Procedural Rules).
52. On this note, the PSC underscored that the following events remained undisputed and are relevant to the case at hand:

Date	Event
28 February 2019	The player and the Shakhtar concluded the Ukrainian Contract, valid until 31 December 2023.
February 2022	The Russian Federation launched an armed invasion of Ukraine.
9 March 2022	FIFA issued the first edition of Annexe 7 of the RSTP, according to which <i>inter alia</i> the contracts between foreigner players and Ukrainian clubs were automatically suspended until 30 June 2022 unless agreed otherwise.
30 March 2022	The player and OL entered into an employment relationship valid as from 1 April 2022 until 30 June 2022.
June 2022	FIFA issued the June 2022 edition of the RSTP and established <i>inter alia</i> that contracts between foreigner players and Ukrainian clubs " <u>can be unilaterally suspended until 30 June 2023 by the player or the coach, provided that a mutual agreement with the club could not be reached before or on 30 June 2022</u> ".
July 2022	The player and OL decided to continue their employment relationship and concluded a new agreement valid until 30 June 2023. In parallel, the player notified Shakhtar of the suspension of the Ukrainian Contract in line with Annexe 7 of the RSTP (June 2022 edition).
October 2022	FIFA issued a new edition of the RSTP, however the wording of Annexe 7 remained unchanged.
27 January 2023	OL, Leicester, and the player entered into the Transfer Agreement, by means of which the services of the player were permanently transferred from the former to the later against payment of <i>inter alia</i> EUR 1,000,000 as transfer fee. In parallel, the player and Leicester concluded an employment agreement valid until 30 June 2023, when the player's registration was supposed to return to Shakhtar.
May 2023	FIFA issued a new edition of Annexe 7 of the RSTP, which included further limitations and guidance to the parties' involved. Contextually, the May 2023 edition of the RSTP established in its art. 8 that " <u>A player whose contract has been suspended on the basis of this annexe may, during the period of suspension, not be subject to a transfer (whether permanent or on loan) against payment</u> ".

53. While considering the above, the PSC acknowledged that at the time the Transfer Agreement was concluded between OL and Leicester, the October 2022 edition of the RSTP was applicable. As such and despite the claim at hand being only lodged at a future stage, the Chamber stressed that the circumstances of the case should be analysed *vis-à-vis* the applicable legal framework at the time of the controversial transfer and, in particular, taking into account that such rules did not foresee any express limitation to the international transfer players against payment of compensation.
54. It followed from the above, in the PSC's opinion, that any argumentation by Shakhtar regarding the illegality of the player's transfer between OL and Leicester lacks not only contractual but also a clear regulatory basis. For the Chamber, a different conclusion could also not be reached while considering Shakhtar's argumentation as to the application by analogy of the rules on loans.
55. *In casu*, Shakhtar claims that the contractual constellation in the case at hand is similar to the one found on the loans where OL would be the loanee club and Shakhtar the loaner (or parent club), therefore still entitled to its rights as the ultimate owner of the player's registrations rights. Nevertheless, the PSC was firm to determine that admitting such a comparison would constitute an *ultra legem* interpretation of FIFA regulations – thus, in jeopardy of the parties' legal certainty.
56. For the Chamber, whilst it is true that the war in Ukraine constitutes a *sui generis* situation, it is also true that FIFA engaged in extensive discussions with the football stakeholders and issued a set of provisions, *i.e.*, the Annexe 7, which aim at providing appropriate guidance and recommendations to affected parties to both mitigate the consequences of disruptions caused by the war and ensure that any response is harmonised in the common interest. Consequently, the PSC deemed that it is not in a position to depart from the strict observance of such rules or to decide on the grounds of analogy, entailing that the position of Shakhtar to this extent should be set aside.
57. The PSC remarked that the abovementioned conclusion suffices to justify that Shakhtar's claim for compensation based on the alleged breach of the FIFA regulations has no legal basis, therefore should be rejected.
58. Nonetheless, the Chamber was also mindful that Shakhtar alternatively based its *petitum* on the general institutes of tort and unjust enrichment. In particular, Shakhtar claimed that OL abused its rights by profiting from the transfer of the player to Leicester – hence, caused it damages that should now be compensated.
59. On these merits, the PSC once again concluded that Shakhtar's argumentation is flawed.
60. In this respect, the Chamber found it decisive that, even one would consider that OL acted against the spirit of Annexe 7 of the RSTP and abused its rights, leading to alleged damages

suggested by Shakhtar – there is no *nexus causalis* between the alleged misconduct and Shakhtar’s entitlement to receive a compensation for damages.

61. In other words, despite feeling unimpressed with the behaviour of OL and Leicester in the case at hand, the PSC decided that there is no link between a potential breach by OL (or unjust enrichment, such as addressed by the Shakhtar) and the latter’s entitlement to the transfer fee earned by OL. Admitting otherwise, in the PSC’s view, would imply admitting that (i) the player’s situation would be exactly the same in case no war existed, (ii) he was still bounded to Shakhtar, and (iii) the transfer to Leicester would take place in the same manner, conditions and timeline, which the Chamber deemed to be both uncertain and speculative.
62. In view of the foregoing, the PSC decided that, from any angle, the claim of Shakhtar should be rejected.

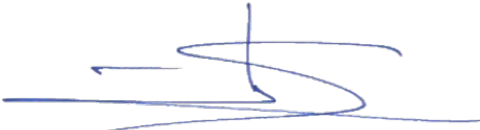
d. Costs

63. Finally, the Chamber referred to art. 25 par. 5 of the Procedural Rules, according to which *“[t]he chamber will decide the amount that each party is due to pay, in consideration of the parties’ degree of success and their conduct during the procedure, as well as any advance of costs paid. In exceptional circumstances, the chamber may order that FIFA assumes all procedural costs.”*
64. Accordingly, and while having in mind that the backdrop of the dispute is connected to a regrettable circumstance of war, the Chamber found that because of the exceptional nature of these proceedings, the procedural costs should be borne by FIFA.
65. Likewise, and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.
66. Lastly, the PSC concluded its deliberations by rejecting any other requests for relief made by the Claimant.

IV. Decision of the Players' Status Chamber

1. The claim of the Claimant, FC Shakhtar Donetsk, is rejected.
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 Governing the Football Tribunal).

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