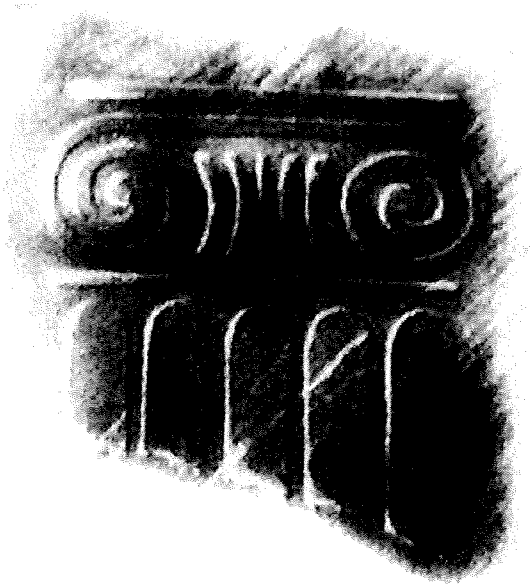
TAS / CAS

Tribunal Arbitral du Sport
Court of Arbitration for Sport
Tribunal Arbitral del Deporte



ARBITRAL AWARD

FK Erzeni, Albania

v.

FC 2Korriku, Kosovo

&

Fédération Internationale de Football Association, Switzerland

CAS 2023/A/9730 - Lausanne, April 2024

CAS 2023/A/9730 FK Erzeni v. FC 2Korriku & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr Ulrich Haas, Professor in Zurich, Switzerland and Attorney-at-Law in Hamburg, Germany

in the arbitration between

FK Erzeni, Shijak, Albania

Represented by Mr Salvatore Civale and Mr Roberto Terenzio, both Attorneys-at-Law with Studio Civale, Nocera Inferiore, Italy

- Appellant –

and

FC 2Korriku, Prishtine, Kosovo

Represented by Mr Shaban Baholli, Director

- Respondent 1 –

Fédération Internationale de Football Association, Zurich, Switzerland

Represented by Dr Jan Kleiner, Director of Football Regulatory and Mr Alexander Jacobs, Litigation Department, Zurich, Switzerland

- Respondent 2 –

I. THE PARTIES

1. FK Erzeni (the "Appellant" or "Erzeni") is a professional football club based in Albania and is affiliated to the Football Association of Albania (the "FSHF").

2. FC 2Korriku ("First Respondent" or "2Korriku") is a professional football club based in Kosovo and is affiliated to the Football Federation of Kosovo (the "FFK").

3. Fédération Internationale de Football Association ("Second Respondent" or "FIFA") is the world governing body of football. It exercises regulatory, supervisory, and disciplinary functions over national associations, clubs, officials and players, worldwide. FIFA is an association under Articles 60 et seq. of the Swiss Civil Code ("CC") with its headquarters in Zurich, Switzerland.

4. 2Korriku and FIFA are hereinafter jointly referred to as the "Respondents" and together with Erzeni as the "Parties", where applicable.

II. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, pleadings and evidence adduced in the course of the present proceedings and at the hearing. Additional facts, allegations and evidence may be set out, where relevant, in other parts of this award. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers its award only to the submissions and evidence it considers necessary to explain its reasoning.

A. BACKGROUND FACTS

6. On 26 January 2023, the Serbian football player Sheki Aliti (the "Player"), born on 27 July 2003, was registered as a free agent with Erzeni on the FIFA Transfer Matching System ("FIFA TMS"). On the same day, the FIFA General Secretariat opened the Electronic Player Passport (the "EPP") review process on the FIFA Transfer matching System ("TMS") in accordance with the FIFA Clearing House Regulations (the "FCHR") and the Player's provisional EPP was generated as per Article 8.1 FCHR.

7. On 15 February 2023, the FKK uploaded the respective "proof of registration" of the Player with its associated club in conformity with Article 9(1) of the FCHR in TMS.

8. On 28 February 2023, Erzeni uploaded in TMS a statement issued by Mr. Shaban Baholli, Director of 2Korriku pursuant to Article 9.7 of the FCHR. The statement, which was in Albanian language, contained a waiver of the claim for training compensation (the "2Korriku Waiver").

9. On 27 April 2023, FIFA sent a message to Erzeni in the relevant tab of the TMS stating as follows:

"We refer to the document uploaded in the EPP of reference as a waiver in the registration

line of the former club.

Please be informed that, in order to consider the said document, you are ***requested to provide a translation*** *of the relevant terms in one of the three official FIFA languages (English, French or Spanish) by no later than the end of the ongoing "completion" phase as currently displayed in TMS.*

Failing in doing so will have as a consequence that the said document will not be considered in the Determination of the EPP of relevance."

10. On 8 May 2023, FIFA sent another message to Erzeni in the TMS portal providing as follows:

> *"We refer to our* ***unanswered message*** *and in particular to the document uploaded in the EPP of reference as a waiver in the registration line of the former club.*
>
> *Please be informed that, in order to consider the said document, you are requested to provide a translation of the relevant terms in one of the three official FIFA languages (English, French or Spanish) by no later than the end of the ongoing "completion" phase as currently displayed in TMS.*
>
> ***Failing in doing so will have as a consequence that the said document will not be considered in the Determination of the EPP of relevance.***"

11. On 23 May 2023, FIFA rejected the 2Korriku Waiver and approved the EPP.

12. On 25 May 2023, the FIFA General Secretariat issued the determination on EPP 16778 (the "EPP Determination"), wherein it was stated as follows:

> "*10. In consideration of the above and in accordance with the FCHR and annexes 4 and 5 to the RSTP, the FIFA general secretariat has determined the entitlement of clubs to training rewards for the above trigger as follows.*
>
> *11. FC 2Korriku is entitled to training compensation for having registered the player at some point in time between the start of the calendar year of the player's 12th birthday and the end of the calendar year of the player's 21st birthday.*
>
> *12. No other club is entitled to training compensation.*
>
> *13. All of the above determinations and decisions are reflected in the EPP in question and/or will be considered in the generation of any Allocation Statement from this EPP for the calculation and distribution of training rewards in accordance with article 13 of the FCHR.*
>
> *14. Pursuant to article 57 paragraph 1 of the FIFA Statutes and in accordance with article 10 of the FCHR, this decision may be appealed before the Court of Arbitration for Sport within 21 days of notification. The final EPP will remain available in TMS.*"

13. On the same day, the FIFA General Secretariat issued the determination on the allocation statement in relation EPP 16778 (the "Allocation Statement Determination"), wherein the following conclusions were stated:

"*7. The new club KF Erzeni (FSHF) shall pay training compensation to the training club(s) of the player in the total amount of EUR 114,575.34.*

8. The following training club(s) shall receive the following payment(s).

8.1. The training club FC 2Korriku (FFK) shall receive training compensation payments from the new club of the player in the amount of EUR 114,575.34.

9. The payments defined in this Allocation Statement shall be made through the FIFA Clearing House entity (FCH), in accordance with articles 12, 13 and 14 of the FCHR. The FCH will contact the new club, the relevant training clubs and the relevant member associations to process these payments.

10. According to the relevant provisions of RSTP and FCHR, it is the new club that will be required to pay training rewards due to the training clubs concerned, and the new club may not assign responsibility to pay the amount requested to any other party.

11. Pursuant to article 57 paragraph 1 of the FIFA Statutes and in accordance with article 10 of the FCHR, this decision may be appealed before the Court of Arbitration for Sport within 21 days of notification. The final EPP will remain available in TMS."

14. On 8 June 2023, the FSHF sent a letter to FIFA stating:

"*On behalf of our member club KF Erzeni, we contact you regarding the Allocation Statement TC-543 corresponding to the Electronic Player Passport 16778 for the player Shefki ALITI (Nationality: Serbia – Male – Date of birth: 27 July 2003 – FIFA ID: 12HB093).*

In this respect, concerning the determination of the FIFA general secretariat on EPP 16778, we note that you have deemed the waiver provided in the EPP by KF Erzeni as not valid because it was uploaded in Albanian language only instead of English thus entitling FC 2Korriku to training compensation.

Through this letter we send the attached translated waiver made by "FC 2 Korriku" in English language and kindly ask for it to be considered valid in light of these procedure in order not to burden our member club disproportionally to circumstances that can have irreparable financial consequences.

On behalf of our member club we apologize for any inconvenience caused by the incomplete filling of the electronic player passport which was primarily due to the lack of awareness regarding the recent updates to FIFA's regulations and also especially to the strict time-limit granted to the Club to provide such a certified translation as well as to the fact that the communication on this regard are managed exclusively via the TMS platform with the result that sometimes the TMS users may result in skip some communication because they did not timely enter into the platform.

Recognizing our club`s clear mistake, we acknowledge that it is crucial to adhere to the new rules and ensure accurate documentation while we kindly request that FIFA considers the circumstances and refrains from taking what could become an excessively strict approach to the regulations which ultimately does not represent the will of the two clubs involved and that can bring disproportionate penalties for our member club.

At same time, we note that KF Erzeni has provided such a waiver in time so by not ignoring the request of the FIFA Clearing House and showing its cooperation to the proceedings.

In fact, KF Erzeni is, absolutely, not in a position to pay such amount to the FIFA Clearing House and therefore it could seriously risk to not continue its sporting activities in the case such a determination is not changed.

Rest assured, we have taken immediate action to rectify the situation and provide the correct and complete instructions for future fulfillment of the players' passport as per the established guidelines by our members. To this end, we are planning to organize a workshop on this topic in order to share the acknowledge on this topic to our members and the practitioners of sports law in Albania."

15. On 13 June 2023, FIFA replied to the FSHF stating that:

"We acknowledge receipt of your submission of 8 June 2023 related to the EPP Determination on EPP 16778 and the related Allocation Statement TC-543, both notified to the relevant participants to the EPP on 25 May 2023.

We took good note of its content and would like to provide you with the following explanations related to the above-mentioned Determination and Allocation Statement.

[...]

Bearing all the above in mind, on the one hand we regret the situation and can understand your affiliated club's disappointment. However, on the other hand, and as recognized in your letter, the club was clearly made aware that a translation of the alleged waiver in the required languages as needed and that failing to submit such translation within the relevant deadlines would mean that the alleged waiver would not be considered in the relevant EPP Determination.

Based on the above, we can confirm that the decisions – EPP Determination and Allocation Statement – remain final and binding, unless appealed at CAS. In fact, we refer your affiliated club KF Erzeni to point 14 of the EPP Determination and point 11 of the Allocation Statement according to which "Pursuant to article 57 paragraph 1 of the FIFA Statutes and in accordance with article 10 of the FCHR, this decision may be appealed before the Court of Arbitration for Sport within 21 days of notification. The final EPP will remain available in TMS.

In addition, please be informed that, according to the FCHR, FC 2Korriku and KF Erzeni will have go to the FIFA Clearing House for compliance assessment and payment processing, given that this is the spirit and the law of the FCHR.

However, nothing prevents clubs to reimburse that amount after the process has been finalized on the basis of a mutual settlement/agreement."

16. On 28 June 2023, Mr. Shaban Baholli, Director of 2Korriku, issued a further document (the "Additional Waiver") wherein he stated:

"In light of the above, taking into account that the Club has already waived to the training

compensation, and to avoid any procedural and legal costs, the amateur Club FC 2Korriku, by means of the present written declaration:

1) confirms that it waives any claim for training compensation as foreseen by the FIFA RSTP and FCHR, related to the Player Mr. Shefki Aliti, born in Serbia on 27 July 2003;

2) confirm its waiver in front of both the FIFA Clearing House Department and in front of the Sole Arbitrator appointed by the Court of Arbitration for Sport to decide the case;

3) waive any request of the enforcement of the above determination before the FIFA Disciplinary bodies for the reason that as final recipient of the training compensation it has waived such amount and confirms once again its intention. " (emphasis as in original)

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 15 June 2023, the Appellant filed a Statement of Appeal against the EPP Determination and the Allocation Statement Determination (cumulatively the "Appealed Decisions") with the CAS in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (the "Code"). The Appellant also requested the CAS for a 30-day extension of the time limit to submit the Appeal Brief and requested that the case be submitted to a Sole Arbitrator.

18. On 20 June 2023, the CAS Court Office notified the Statement of Appeal to the Respondents and invited them to state whether they consent to the Appellant's requests for extension of the time-limit to submit the Appeal Brief and for the appointment of a Sole Arbitrator.

19. On 21 June 2023, the Second Respondent informed the CAS Court Office that it agreed to the appointment of a sole arbitrator as long as he/she is selected from the football list. The Second Respondent further stated that it did not object to the Appellant's request for a 30-day extension to file its Appeal Brief.

20. On 29 June 2023, the CAS Court Office informed the Parties that – following the agreement of the Second Respondent and the First Respondent's silence – the Appellant's request for a 30-day extension to file its Appeal Brief was granted. Furthermore, the Parties were informed that since the First Respondent failed to comment on the Appellant's request for a sole arbitrator, it was for the Division President to decide the issue.

21. On 25 July 2023, the CAS Court Office informed the Parties that pursuant to Article R50 Code, the President of the CAS Appeals Arbitration Division has decided to submit the present case to a sole arbitrator.

22. On the same day, in accordance with Article R51 Code, the Appellant filed its Appeal Brief.

23. On 26 July 2023, the CAS Court Office invited the Respondents to file their Answers within twenty days.

24. On the same day, the Second Respondent requested that the deadline for filing of its Answer be fixed once the advance of costs has been paid by the Appellant. This request was granted on the same day.

25. Still on the same day, the CAS Court Office set aside the time limit for the Second Respondent to file it answer and advised the parties that a new time limit will be set once the Appellant has paid its share of the advance on costs.

26. On 22 August 2023, the CAS Court Office informed the Parties that the Appellant had paid its share of the advance on costs and that, therefore, a deadline of twenty days was set for the Second Respondent to file its Answer. The letter continued to state that the First Respondent had failed to submit its Answer within the prescribed deadline and had not requested any extension of the deadline pursuant to Article R55(3) of the Code.

27. On 4 September 2023, the Second Respondent requested a 30-day extension of its deadline to submit the Answer in accordance with Article 32(2) Code.

28. On the same day, the Appellant agreed to the Second Respondent's request following which the CAS Court Office, on 5 September 2023, granted the Second Respondent's request for an extension of the deadline by 30 days.

29. On 11 October 2023, the Second Respondent filed its Answer in accordance with Article R55 of the Code.

30. On the same day, the CAS Court Office acknowledged receipt of the Second respondent's Answer and informed the Parties that in light of Article R56 of the Code the exchange of submissions was herewith closed. The letter invited the Parties to indicate whether they wanted a hearing and/or a case management conference to be held in this matter.

31. Still on the same day, the CAS Court Office informed the Parties that in accordance with Article R54 Code, the President of the CAS Appeals Arbitration Division had decided that the Panel appointed to decide the present matter was constituted as follows:

Sole Arbitrator:	Prof. Dr Ulrich Haas, Professor in Zurich and Attorney-at-Law in Hamburg, Germany

32. Still on the same day, the Second Respondent informed the CAS Court Office that it requested a hearing to be held in this matter.

33. On 13 October 2023, the Appellant informed the CAS Court office that it left it to the Sole Arbitrator whether to hold a hearing.

34. On 19 October 2023, the CAS Court Office acknowledged receipt of the Appellant's and the Second Respondent's letter. The letter further noted that no communication has been received from the First Respondent in this regard.

35. On 26 October 2023, the CAS Court Office informed the Parties that the Sole Arbitrator has decided to hold a hearing in this matter, in person, in Lausanne and proposed dates to this effect.

36. On 26 October 2023, the Appellant informed the CAS Court Office that it would be available for a hearing on 20 December 2023.

37. On 30 October also to the Second Respondent informed the CAS Court Office that it would be available for a hearing on the dates proposed by the Sole Arbitrator.

38. On 1 November 2023, the CAS Court Office informed the Parties that a hearing will be held on 20 December 2023 at the premises of the CAS Court Office in Lausanne. The letter also invited the Parties to communicate by 20 November the names of the persons that will attend the hearing on their behalf.

39. On 3 November 2023, the First Respondent informed the CAS Court Office that it "*will not take part on this process and will not attend on the hearing of December 20th*".

40. On 6 November 2023, the CAS Court Office took note of the First Respondent's letter and reminded the Parties of Article 57(4) of the Code according to which "[i]*f any of the parties, or any of its witnesses, having been duly summoned, fails to appear, the Panel may nevertheless proceed with the hearing and render an award.*"

41. On 7 November 2023, the Second Respondent communicated the names of the persons that will attend the hearing on its behalf.

42. On 13 November 2023, the CAS Court Office issued the Order of Procedure ("OoP") and invited the Parties to return a signed copy thereof by 20 November 2023.

43. On 14 November 2023, the Appellant and the Second Respondent returned their signed copy of OoP to the CAS Court Office.

44. On 15 November 2023, the Appellant communicated to the CAS Court Office the names of the persons that will be attending the hearing on its behalf.

45. On 16 November 2023, the First Respondent returned a signed copy of the OoP.

46. On 20 December 2023, a hearing was held at the offices of the CAS in Lausanne. Besides the Sole Arbitrator and the Counsel to the CAS Attorney-at-Law Giovanni Maria Fares, the following persons attended the hearing:

    - For the Appellant
      Mr Salvatore Civale, Counsel (in person);
      Mr Roberto Terenzio, Counsel (in person);
      Mr Tomaso Sica, Counsel (in person).

    - The First Respondent was not represented at the hearing

    - For the Second Respondent
      Dr Jan Kleiner, Director of Football Regulatory (via videoconference);
      Mr Alexander Jacobs, Senior Legal Counsel (in person).

47. At the beginning of the hearing the Parties did not express any objections as to the jurisdiction of the CAS and the constitution of the panel. At the end of the hearing, the Parties acknowledged that their right to be heard had been fully respected in these proceedings.

IV. PARTIES' POSITIONS AND RESPECTIVE PRAYERS OF RELIEF

48. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

A. The Appellant

49. In its Statement of Appeal, Erzeni sought the following relief:

> *"On a procedural basis*
>
> *(1) Confirm the admissibility of the present appeal and the CAS' jurisdiction over the present dispute;*
>
> *On the merits of the case*
>
> *(2) Accept the Appeal of FK Erzeni against the decisions adopted by FIFA on 23 May 2023, namely the Determination of the FIFA General Secretariat on EPP 16778 and the Determination of the FIFA general secretariat on Allocation Statement TC-543 corresponding to EPP 16778 and set aside said FIFA Decisions in full;*
>
> *(3) Order the Respondents to bear in full the procedural costs of these arbitration proceedings as well as a contribution for the legal costs and expenses borne by the Appellant, in relation to this appeal, in an amount to be determined at the discretion of the Sole Arbitrator;*
>
> *(4) Grant any other relief or orders it deems reasonable and fit to the case at stake."*

50. In its Appeal Brief, Erzeni requested as follows:

> *"a) to annul in full the appealed decisions adopted by FIFA on 23 May 2023, namely the Determination of the FIFA General Secretariat on EPP 16778 and the Determination of the FIFA general secretariat on Allocation Statement TC-543 corresponding to EPP 16778;*
>
> *b) considering that the First Respondent is keeping a cooperative approach by confirming to the Appellant, to FIFA and to CAS its waiver to receive such amount following to the FIFA decisions, the Appellant respectfully requests that the Sole Arbitrator should order the Second Respondent only to bear in full the procedural costs of these arbitration proceedings as well as a contribution for the legal costs and expenses borne by the Appellant, in relation to this appeal, in an amount to be determined at the discretion of the Sole Arbitrator;*
>
> *c) to grant any other relief or order it deems reasonable and fit to the case at stake."*

51. In support of the above prayers for relief, Erzeni submits as follows:

a) 2Korriku waived the right to receive training compensation and hence, Erzeni should not be forced to pay it:

- It is undisputed that: (i) 2Korriku, by means of the 2Korriku Waiver, and the Additional Waiver, waived the training compensation in relation to the Player; (ii) Erzeny duly uploaded the 2Korriku waiver on the TMS platform; (iii) 2Korriku has not objected to the content of, or the signature on, the 2Korriku Waiver, during the EPP review process but confirmed it by means of the Additional Waiver; and (iv) FIFA received the translation of the 2Korriku Waiver, in English language, on 8 June 2023, i.e., a few days after the issuing of the Appealed Decisions.
- 2Korriku clearly waived the entitlement to the training compensation three times i.e., through the 2Korriku Waiver, by not objecting during the EPP review process and through the Additional Waiver.
- Due to Erzeni's economic situation, paying the amount to 2Korriku and then 2Korriku reimbursing the amount, as suggested by FIFA, will result in Erzeni having to suspend its sporting activity and cause it to lay off employees.

b) Erzeni was not required to submit a translation of the 2Korriku Waiver:

- Section II of the FCHR, as well as the Explanatory Notes concerning the Player Passport, do not require the submission of a translation of the documents. Hence, Erzeni submitted, as per Article 9.7 of the FCHR, the 2Korriku Waiver on the FIFA TMS platform in Albanian language.
- Only Article 15.5 of Section IV "Compliance Assessment" of the FCHR states that the documents shall be in English, Spanish or French language, but without specifying if it is necessary also in relation to EPP procedure, i.e., Section II, or only in relation to the process described in Section IV of the FCHR.

c) The delay in submitting the translation was justified:

- The "delay" on the part of Erzeni, in submitting the translation, is minor and not sufficient to condemn it to pay the huge amount of EUR 114,575.34.
- FIFA sending official notices only in the "message box in the EPP in the TMS" and not via email, creates a problem for small clubs with little resources, like Erzeni. Only if a club accesses the EPP in the TMS it will note communications sent by FIFA.
- In the present case, Erzeni only became aware of FIFA's communications around the middle of May 2023. Once Erzeni became aware of FIFA's notices, it immediately contacted a translator to get the 2Korriku Waiver translated. Furthermore, it contacted a notary to obtain the relevant certification. Erzeni received the translation only on 8 June 2023 i.e., after the notification of the Appealed Decisions. It then sent the translated document to FIFA via the FSHF. FIFA did not take into account the explanations provided by Erzeni or the FSHF.
- The deadline by FIFA for Erzeni to submit an English translation of the document was too short. Erzeni did not find any term or date "displayed in TMS". Even if

Erzeni had read FIFA's notices on time, it would have been impossible for it to obtain the translation of the 2Korriku Waiver within such deadline.

d) Issues concerning the application of the FCHR in the present case:

- The Appealed Decisions are based on a wrong application and interpretation of the sports rules and principles, in particular in relation to the contractual freedom of the clubs. The rules provided in the FCHR are uncertain and wrongly applied and interpreted by FIFA.
- FIFA, without considering the will of Erzeni and 2Korriku, considered the 2Korriku Waiver to be invalid and subsequently, in spite of receiving the relevant translation in June 2023, did not annul the Appealed Decisions in good faith.
- Erzeni is a small club with limited economic resources. The club has little experience in international transfers and will suffer severely from FIFA's strict and unrealistic application of the FCHR.
- More particularly, the Appellant criticizes the following aspects:
  - Limited time to provide FIFA with the documentation requested;
  - Official communications are sent by FIFA only by means of the FIFA TMS platform. As a consequence, if a club – as in the case at stake – does not check the TMS, it will not be aware of any communications;
  - There is a contradiction between the strict application of the new FCHR rules by FIFA and the reality of small clubs;
  - There is a risk that Erzeni's sporting activities may be interrupted due to the economic and financial hardships triggered by the Appealed Decisions;
  - FIFA has the financial resources to translate the documents submitted in TMS *sua sponte*. It should have done so before and issuing the Appealed Decisions;
  - FIFA could have requested FSHF to confirm the meaning of the 2Korriku Waiver before passing the Appealed Decisions;
  - The approach by FIFA is unreasonable. In light of the two waivers confirming that 2Korriku has no claim for training compensation, the First Respondent cannot enforce the Appealed Decisions;
  - Since the ultimate beneficiary i.e., 2Korriku, has signed a waiver, there is no ground for Erzeni to pay the huge amount of EUR 114,575.34.
- In this case, FIFA has acts contrary to the scope and objectives as provided for in Article 1 of the FCHR. FIFA has based the Appealed Decisions on the sole and exclusive basis that Erzeni did not upload the translation of the 2Korriku Waiver on the TMS portal within the deadline fixed.
- The FCHR entered into force on 16 November 2022. FIFA only conducted a webinar for the clubs to explain and clarify the FCHR on 22 June 2023. This was necessary because clubs all over the world had serious difficulties in applying the

FCHR. This webinar was only organized after the present dispute arose.

- If FIFA deemed the 2Korriku Waiver to be false or improper, it should have referred the matter to the Dispute Resolution Chamber (the "DRC") of the FIFA Football Tribunal as per Article 10.3 of the FCHR. This failure of FIFA constitutes a violation of Erzeni's right to defence.

B. The First Respondent

52. 2Korriku did not participate in the present proceeding and did not file any requests.

C. The Second Respondent

53. In its Answer, FIFA sought the following prayers for relief:

> *"Based on the foregoing, FIFA respectfully requests the Sole Arbitrator to issue an award:*
>
> *(a) rejecting the requests for relief sought by the Appellant;*
>
> *(b) confirming the Appealed Decision;*
>
> *(c) ordering the Appellant to bear the full costs of these arbitration proceedings."*

54. In support of the above prayers for relief FIFA submits as follows:

a) The present matter results from Erzeni's failure to comply with multiple FIFA requests to upload a translated version of the 2Korriku Waiver in TMS. Erzeni was warned multiple times that failure to comply with FIFA's request would result in the waiver not being considered in the EPP Determination.

b) Adherence to the FCHR is necessary to preserve the fundamental objectives of the FIFA Clearing House (the "FCH") i.e., process payments, protect the integrity of the system, enhance and promote financial transparency and prevent fraudulent conduct. FIFA seeks to guarantee that the system functions properly, safeguarded by strict compliance with the FCHR. To effectively preserve these objectives and principles, the FCH operates in a clearly defined and equal manner for all the football stakeholders.

c) FIFA cannot accept documents that are not in conformity with the rules and/or non-compliant with its requests and/or the relevant time limits. Doing so, to accommodate one party, would render the entire system obsolete. That is a scenario which is simply unacceptable. Whereas Erzeni's focus is clearly on its own situation, FIFA's interest is safeguarding a system that goes far beyond the interest of an individual party but that of all football stakeholders.

d) Background of the FCH and the requirement for strict application of the FCHR:

- FIFA introduced the FCH as a key element of the transfer system reform package adopted by the FIFA Council in 2018 in order to promote and protect the integrity of professional football.

- The FIFA Football Stakeholder Committee proposed to establish a clearing house and gave the FIFA Council the relevant input on the basis of the simple observation that there was still a significant imbalance in the international football landscape and insufficient rewards for training clubs.
- The FCH was created to remedy this situation and ensuring that training rewards were effectively paid to the clubs that were entitled to them.
- Although the system is entirely automatized, it still requires a compliance assessment in accordance with Article 1.3 FCHR. Moreover, there is a review process that requires the participation of the relevant clubs and member associations, to enable FIFA to determine the final EPP, thereby creating transparency, ensuring accuracy, and facilitating the calculation of the training rewards.
- The objectives of the FCH include financial transparency and prevention of fraudulent conduct as per Article 1.2 FCHR. FIFA processes around 400 EPPs every week. Coping with such a case load is only possible when applying the rules strictly.
- From a purely administrative point of view it is simply impossible for FIFA to allow exceptions to the rules (such as Article 15.5 FCHR) each and every time a club does not observe the relevant provisions and does not comply with the directions. More importantly, this would, inter alia, undermine one of the main purposes of the introduction of an automatized system i.e., the efficiency of the payment system.
- The 'flexibility' invoked by Erzeni creates uncertainty in the system and inevitably risks undermining crucial goals of the FCH, i.e. the prevention of fraudulent conduct.
- Once the final decisions on the EPP and the allocation statement are issued by the FIFA Secretariat and communicated to the parties, they are also shared with the FIFA FCH entity. This is an independent and regulated payment service institution based in France, licensed and supervised by the French Prudential Supervision and Resolution Authority in accordance with the EU Payment Service Directive and relevant French regulation. The FCH entity performs a full due diligence and compliance assessment on all the parties involved before any payments are processed. Failure to comply leads to sanctions, as stated in Article 17 FCHR.
- Nothing prevents (nor does FIFA object to) the relevant parties from agreeing on the (partial or total) reimbursement of the amounts paid after such payment has been processed in accordance with the FCHR. This would still guarantee that no circumvention of the FCHR occurs and that the objectives of the system are complied with.
- The matter at stake is very simple and straightforward, no matter by how many different avenues Erzeni seeks to undermine the clear FCHR process. The bottom line is simply that FIFA cannot allow exceptions to a strict application of the FCHR to accommodate Erzeni failure to comply with the FCHR. To do so would undermine the entire system.

e) Erzeni failed to comply with the provisions of the FCHR:

- Erzeni had sufficient opportunities to ensure compliance with the FCHR. FIFA requested Erzeni on two occasions (on 27 April 2023 and 8 May 2023), to provide a

translation of the 2Korriku Waiver in one of the three official FIFA languages. On each of those two occasions, Erzeni was advised and warned that failure to comply with the request would have as a consequence that the waiver would not be disregarded in the context of the EPP Determination.

- Erzeni acknowledges that it only filed a translation after the Appealed Decisions were rendered.
- The biggest beneficiaries of the FCHR are the so-called "smaller training clubs" who were suffering the most from the imbalance in the international football landscape and were receiving insufficient rewards for their role as training clubs. The entire system is designed to ensure that training rewards are effectively paid to these smaller clubs with "limited economic resources and inexperience".

f) Erzeni was required to submit a translation of the 2Korriku Waiver:

- In accordance with Article 6 (2) lit. n) of Annexe 3 of the FIFA Regulations on Status and Transfer of Players ("FIFA RSTP"), "Club and associations shall always: [...] n) if requested by the FIFA general secretariat, upload a translation of a document (or an excerpt thereof) into one of the following official languages of FIFA: English, French or Spanish. [...]". The translation requirement is clearly established in this provision.
- The FCHR also clearly establish that the Secretariat may request any party involved to provide further information at any time. This is exactly what the Secretariat did on two separate occasions. Not only that, but the time limits of the proceedings are also equally clearly established. Erzeni's delay can under no circumstance be considered "venial".

g) The delay by Erzeni in filing the translation was not justified:

- Erzeni had 2.5 months between the moment it uploaded the initial waiver on 28 February 2023 and the EPP moving "into validation" on 17 May 2023. In those 2.5 months, Erzeni also received two requests for completion from FIFA. Hence, Erzeni had more than sufficient time to provide the translation.
- Though Erzeni complains about the official communications only being sent via TMS, it managed to successfully upload the initial waiver on 28 February 2023, which was also triggered by a communication that was submitted via TMS. The system functions perfectly fine and Erzeni's argument is irrelevant. FIFA can provide a detailed log of Erzeni's activities in TMS upon request, should the Sole Arbitrator consider such information useful. According to Article 21.1 FCHR and Article 10 (3) of the Procedural Rules of the Football Tribunal, all parties have the obligation to review TMS on a daily basis. Had Erzeni complied with this obligation, it would not be in this position of being procedurally disadvantaged.
- Erzeni was granted sufficient time and received two reminders. Thus, it could have submitted the "real will of the parties" and thereby act in accordance with the FCHR. Erzeni was also warned twice by FIFA of the consequences in case it would fail to comply with the relevant requests.

- Erzeni's objection that t had insufficient time to obtain a certified translation (allegedly 30 days) is misplaced. The FCHR do not require that a certified translation be submitted. Instead, a simple translation would have sufficed. Clearly, such translation does not take 30 days.
- Erzeni effectively had 20 days to submit a translation (taking into account the initial request on 27 April 2023, the second request on 8 May 2023 and the fact that the EPP eventually was moved "into validation" for the second time on 17 May 2023 only).

h) Other arguments raised by Erzeni cannot be considered:

- Erzeni's submission that the enforcement of the Appealed Decisions would put the club in jeopardy and risk interrupting its sporting activities is entirely unsubstantiated. Such consequences – even if proven – would be exclusively the result of Erzeni's own incompliance with the FCHR.
- Erzeni's argument that FIFA should have translated the 2Korriku Waiver sua sponte must be dismissed. FIFA deals with around 400 EPPs per week. This makes it entirely impossible to translate all the documents submitted by the various parties. This would undermine the efficiency of an automized system. For the same reasons, it is simply impossible for FIFA to involve the respective member associations in order to clarify the meaning and contents of documents submitted by other stakeholders.
- The Additional Waiver has no impact on the present proceeding. It was issued after the notification of the Appealed Decisions. The Additional Waiver cannot rectify Erzeni's failure to upload the correct document in TMS.
- FIFA's webinar on 22 June 2023 served to present the "*key learnings and best practices related to the project, from creation and review of an electronic player passport (EPP) to the centralised payments via the FIFA Clearing House entity*". The purpose of the seminar, thus, was to present a current state of affairs rather than a response to alleged "serious difficulties" or any "uncertainty" as submitted by the Appellant.
- Failure to upload a translated document does not qualify as a situation "of legal or factual complexity". Consequently, Article 10.3 FCHR does not come into play and the Secretariat was not required to refer the matter to the FIFA Dispute Resolution Chamber ("FIFA DRC").

V. JURISDICTION

55. Article R47 of the Code provides as follows:

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

56. The jurisdiction of CAS derives from Article 57(1) of the FIFA Statutes and Article 10.5 lit. b) of the FCHR which state that:

> Article 57(1) of the FIFA Statutes
>
> *"1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question."*
>
> Article 10.5 lit. b) of the FCHR
>
> *"This notification shall be considered a final decision by the FIFA general secretariat for the purposes of article 57 paragraph 1 of the FIFA Statutes and may be appealed to the Court of Arbitration for Sport (CAS)."*

57. The jurisdiction of CAS is not contested and is further confirmed by the OoP duly signed by all Parties.

58. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

59. Article R49 of the Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late."*

60. The Appealed Decision constitutes a "decision" within the meaning of Articles R47 and R49 of the Code. As for the deadline to file an appeal, in accordance with Article R49 of the Code, Article 57 of the FIFA Statutes and Article 10.5 lit. b) of the FCHR, the time limit for filing the appeal is 21 days. The present appeal was filed within this deadline since Erzeni was notified of the Appealed Decisions on 25 May 2023. The appeal complied with all other requirements of Article R48 of the Code, including payment of the CAS Court Office fee, and is therefore admissible.

VII. APPLICABLE LAW

61. Article R58 of the 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."*

62. Article 56(2) of the FIFA Statutes states that:

> *"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."*

63. Accordingly, the applicable regulations in the present case are the various regulations of FIFA including the FCHR and subsidiarily, Swiss law.

VI. MANDATE OF THE SOLE ARBITRATOR

64. According to Article R57 of the Code, the Sole Arbitrator has full power to review the facts and the law of the case. Furthermore, the Sole Arbitrator may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

D. The Position of the Parties

65. The Parties are in dispute whether a translation of the 2Korriku Waiver or the Additional Waiver can be submitted as evidence before the CAS in these proceedings. The Respondent submits that the power of the CAS is limited to the issues before the previous instance. It is not admissible – according to the Respondent – to reintroduce a waiver before the CAS that has been dismissed before the FIFA. The Respondent submits that the Sole Arbitrator, thus, is limited to reviewing whether the Appealed Decisions were correct. The Appellant on the contrary submits that the Sole Arbitrator is not limited to the facts before FIFA and thus may consider the translation of the 2Korriku Waiver and/or the Additional Waiver in these proceedings.

E. The Finding of the Sole Arbitrator

66. The Sole Arbitrator is mindful of the decision in the matter CAS 2018/A/5808 where the panel at no 130 et seq. found as follows:

> *"The present procedure is an appeal arbitration procedure. Thus, this Panel must examine whether or not the Decision is factually and legally correct. Whether the Decision is factually correct or not may depend also on the relevant reference date. The Parties disagree on the latter. The Respondent submitted that the legality of the Decision must be assessed on the basis of the facts and information available at the time when the decision in question was taken. The Respondent figuratively spoke of a "photo finish" that cannot be called into question at the later stage. The Appellant, on the contrary, submitted that the decisive reference date for assessing the correctness of a decision is the date of the CAS hearing. The Appellant submitted that assessing the financial situation of a club is an "ongoing process" and that it would be "wrong to ignore today's reality".*
>
> *Article R57 of the Code provides for a de novo hearing. Such concept implies – in principle – that also new evidence may be taken into account that was not presented or available before the first instance. Thus, in principle, the correct reference to judge the correctness of the Decision is the date of the CAS hearing. However, there are exceptions to this rule. Article R57(3) of the CAS Code e.g. provides that evidence may be excluded in the CAS*

> *procedure if such evidence was available before the first instance and the Appellant did not act diligently or acted in bad faith. The Respondent does not avail itself of this exception in the present case.*
>
> *The Panel is aware that the above concept of a de novo hearing results somehow in a moving target and that the insecurity that comes with it may be troubling in a situation where under tight time restraints a federation must decide whether or not to admit a club to a certain competition and where such decision not only affects the direct addressee, but also other competitors. The Panel notes that access to justice may be restricted (by freezing the relevant reference date) for just cause, i.e. in the interest of good administration of justice. Whether to do so or not is, in principle, in the autonomy of the relevant federation. The Panel notes that the Procedural Rules do not provide for a specific reference date in order to assess the correctness of a decision. Instead, the Procedural Rules provide that – once a case is referred to the CFCB Adjudicatory Chamber – the latter may hold a hearing (Article 21 Procedural Rules) and hear evidence (Article 23 of the Procedural Rules) that was not before the CFCB Investigatory Chamber. Thus, the Procedural Rules provide that the decision to be taken by the Adjudicatory Chamber may be based on an evidentiary bases different from the one of the CFCB Investigatory Chamber. The same principle applies – absent any rules to the contrary – in relation between the CAS and the CFCB Adjudicatory Chamber."*

67. The Sole Arbitrator adheres to the above. Consequently, evidence that was not presented or available before the first instance may be taken into account by the CAS unless the applicable rules and regulations dictate otherwise or unless Article R57(3) of the Code applies.

i. *The Applicable Regulations do not deviate from Article R57 of the Code*

68. The applicable regulations in the case at hand neither explicitly nor implicitly deviate from the *de novo* principle in Article R57(1) of the Code. More particularly, Article 10(3) of the Procedural Rules Governing the Football Tribunal ("Procedural Rules") cannot be construed in such a way. The provision reads as follow:

> *"Parties must review TMS and the Legal Portal at least once per day for any communications from FIFA. Parties are responsible for any procedural disadvantages that may arise due to a failure to properly undertake such review. The contact details indicated in TMS are binding on the party that provided them."*

69. First, the scope of the Procedural Rules is limited. According to Article 1(1) of the Procedural Rules the scope of the provisions only governs the "*organisation, composition and functions of the Football Tribunal.*" The Procedural Rules, thus, do not deal with proceedings before the CAS. Furthermore, Article 10(3) of the Procedural Rules only refers to "procedural disadvantages" that arise from failing to properly reviewing the TMS. The Provision, however, does not state that the mandate of the appeal instance, i.e. the CAS is limited when reviewing the decision under appeal.

70. Also, Article 10.5 of the FCHR does not appear to deviate from the *de novo* principle. The provision reads as follows:

> *"The FIFA general secretariat will notify the final EPP and the Allocation Statement to all parties in the EPP review process.*
> ...
> *b) This notification shall be considered a final decision by the FIFA general secretariat for the purposes of article 57 paragraph 1 of the FIFA Statutes and may be appealed to the Court of Arbitration for Sport (CAS)."*

71. The provision does neither restrict nor provide an exception to the *de novo* principle normally applicable before the CAS. The same is true when looking at Article 18 of the FCHR, which reads in its pertinent part as follows:

> *"(1) Any final decision, as identified in these Regulations, may be appealed to CAS in accordance with the FIFA Statutes, unless otherwise specified in these Regulations. ...*
> *(3) Any party that fails to provide accurate and up-to-date information as required under these Regulations may be subject to disciplinary proceedings pursuant to the FIFA Disciplinary Code."*

72. Nothing different follows from Article 10.7 of the FCHR. The provision requires that "[w]*here a training club has waived its right to receive training rewards, proof of a valid waiver shall be uploaded in TMS by the new club*." The provision does not deal with the proceedings before the CAS and does not state that a waiver to a claim to training compensation can only be considered by the CAS if it was previously uploaded in TMS.

73. The Sole Arbitrator notes and endorses the purpose of FIFA's FCH and the rules applicable to it, i.e. to ensure the good functioning of the transfer system and to enhance transparency. The Sole Arbitrator is also aware of the administrative challenges for implementing a system that deals with many thousand EPP per year. However, it does not follow from the purpose and the good administration of the EPP that the *de novo* principle before the CAS must be suspended.

74. To conclude, therefore, the Sole Arbitrator finds that there is no provision or principle enshrined in the FIFA regulations that demands an exception from the de novo principle in the case at hand.

ii. *The exception in Article R57(3) of the Code*

75. Article R57(3) of the Code reads as follows:

> *"The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. ..."*

76. It follows from the above, that the question whether to admit evidence on file that was available already before the previous instance is within the discretion of the Sole Arbitrator. Furthermore, the Sole Arbitrator is mindful of the fact that CAS panels in the past have been reluctant to make use of this provision and have confined its application to cases of abuse. This is evidenced – e.g. – in the decision in the matter CAS 2020/A/6753, where the sole arbitrator found as follows (no. 95 et seq.):

> *"As such, R57(3) is discretionary and allows for the exclusion of certain evidence to prevent abuse. While the Panel may exclude certain evidence if its nature is such that it would be inappropriate to admit it, it may do so.*
>
> *In the instant case, the Sole Arbitrator finds that while at least some of the evidence referred to by the Appellant could have, and perhaps should have been produced before the FIFA DRC proceedings, fairness is nevertheless better served by admitting it and giving it appropriate weight.*
>
> *The Respondents' request to exclude the specified exhibits to the Appeal Brief is therefore dismissed."*

77. The Sole Arbitrator follows the above approach. It is beyond dispute that the Appellant acted negligently by not providing a translation of the 2Korriku Waiver even though being invited to do so on two occasions by FIFA. Despite of this, the Sole Arbitrator is of the view that justice is better served by admitting the evidence that was already available at the time when the Appealed Decisions were issued.

VII. MERITS

78. The Sole Arbitrator accepts that FIFA acted factually and legally correct when issuing the Appealed Decisions. It was entitled according to the applicable rules to request a translation of the 2Korriku Waiver and to disregard the 2Korriku Waiver in case its request was not complied with. More particularly, there was no obligation by FIFA to refer the matter to the FIFA DRC according to Article 10.3 of the FCHR. Also, FIFA's approach to apply the rules and regulations applicable to the EPP strictly is perfectly legitimate.

79. However, as previously explained, the decisive reference date for the Sole Arbitrator's assessment whether FIFA acted (factually) correct is the date when the hearing took place (and not the moment in time the Appealed Decisions were issued). The evidence before the Sole Arbitrator at such reference date is that there was a waiver of the claim for training compensation by FC 2Korriku. There is noting on file that could indicate that such a waiver may be invalid. It is undisputed that such waiver is possible under the applicable rules. Furthermore, FIFA has not contested the authenticity of the documents submitted by the Appellant.

F. Summary

80. In view of all of the above, the appeal must be upheld, i.e. the Appealed Decisions must be set aside.

VIII. COSTS

81. Article R64.4 of the Code, which is applicable to this proceeding, provides that:

> *"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."

82. In line with this, Article R64.5 of the Code provides that:

> *"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."*

83. The Sole Arbitrator is aware that the proceedings before the CAS were provoked by the Appellant who did not act in compliance with its procedural obligations before the previous instance. The proceedings before the CAS were, thus, initiated to cure this procedural mistake committed at the previous instance. Therefore, in principle it would be appropriate that the Appellant bear the costs of these proceedings. However, the Sole Arbitrator is also mindful that FIFA, instead of accepting the Appellant's claim contested the latter. Consequently, the Sole Arbitrator finds it fair and appropriate that FIFA also bear part (50%) of the costs of these proceedings, in the amount that will be determined and notified to the Parties by the CAS Court Office. FC 2Korriku neither gave rise to initiation of these proceedings nor did FC 2Korriku contest the Appellant's claim. Thus, the Sole Arbitrator finds that FC 2 Korriku shall not bear any costs.

84. Furthermore, pursuant to Article R64.5 of the Code, the Sole Arbitrator has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings. In this regard, the Sole Arbitrator has considered the complexity and finds it fair and appropriate that each Party shall bear its own legal fees and expenses incurred in these proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by FK Erzeni against the Determination issued on 25 May 2023 by the FIFA General Secretariat on the Electronic Player Passport 16778 and Allocation Statement TC-543 corresponding to the Electronic Player Passport 16778 is upheld.

2. The Determination issued on 25 May 2023 by the FIFA General Secretariat on the Electronic Player Passport 16778 and Allocation Statement TC-543 corresponding to the Electronic Player Passport 16778 are set aside.

3. The costs of the arbitration, to be determined and served on the Parties by the CAS Court Office, shall be borne 50% by FK Erzeni and 50% by the Fédération Internationale de Football Association.

4. Each Party shall bear its own legal fees and expenses.

5. All other motions or prayers for relief are dismissed.

Date: 22 April 2024
Seat of arbitration: Lausanne, Switzerland

THE COURT OF ARBITRATION FOR SPORT

Ulrich Haas
Sole Arbitrator