



**TAS / CAS**  
TRIBUNAL ARBITRAL DU SPORT  
COURT OF ARBITRATION FOR SPORT  
TRIBUNAL ARBITRAL DEL DEPORTE

**CAS 2023/A/9938 José Pedro da Silva Maia Pinho v. FIFA**

## **ARBITRAL AWARD**

**delivered by the**

## **COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

President: Mr Fabio **Iudica**, Attorney-at-Law in Milan, Italy

Arbitrators: Mr João **Nogueira da Rocha**, Attorney-at-law in Lisbon, Portugal  
Mr Juan Pablo **Arriagada Aljaro**, Attorney-at-law in Santiago, Chile

**in the arbitration between**

**José Pedro da Silva Maia Pinho**, Porto, Portugal

Represented by Mr Mário Santos Paiva Attorney-at-Law at in Lisbon, Portugal

**- Appellant -**

and

**Fédération Internationale de Football Association**, Zurich, Switzerland

Represented by Mr Miguel Liétard, Director of Litigation and Mr Alexander Jacobs, Senior Legal Counsel, Litigation Department at FIFA, Zurich, Switzerland

**- Respondent -**

## **I. THE PARTIES**

1. José Pedro da Silva Maia Pinho (the “Appellant” or the “Applicant”) is a former Portuguese intermediary registered at the Portuguese Football Federation (“FPF”) and currently an applicant for the *Fédération Internationale de Football Association* (the “Respondent” or “FIFA”) Football Agent License.
2. FIFA is the international governing body of football. It is an association under Articles 60 *et seq.* of the Swiss Civil Code (“SCC”) with its headquarters in Zurich, Switzerland. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and football players worldwide.
3. The Appellant and the Respondent are jointly referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the main relevant facts and allegations based on the Parties’ written and oral submissions, on the file of the proceedings before the FIFA DRC and the relevant documentation produced. Additional facts and allegations may be set out, where relevant, in connection with the further legal discussion. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in the Award only to the submissions and evidence it considers necessary to explain its reasoning.
5. The Appellant was formerly licensed as a football agent pursuant to the previous FIFA Players’ Agent Regulations (1991, 1995, 2001 or 2008 editions) since 2015.
6. On 22 February 2023, the Appellant submitted an application for a FIFA Football Agent License (the “License Application”) in accordance with Art. 23 of the FIFA Football Agent Regulations (the “FFAR”) through the FIFA Agent Platform (the “Agent Platform”).
7. On 12 May 2023, the FIFA Head of Regulatory Enforcement Department (“RED”) acknowledged receipt of the License Application with a correspondence requesting further information in relation to the compliance with the eligibility requirements under Art. 5 FFAR. The correspondence, reads as follows in the relevant part:

*“According to our records, you have filed a license application before FIFA in line with art. 23 of the FIFA Football Agents Regulations (“the Regulations”). According to par. 1 of said article, “A person formerly licensed as an agent pursuant to the FIFA Players’ Agent Regulations (1991, 1995, 2001 and 2008 editions) is exempt from the requirement to pass the exam established by these Regulations, provided that [...]”*

*c. upon application, they comply with the eligibility requirements under article 5 [...]”*

*In order to confirm that you comply with FIFA’s eligibility requirements cf. the Regulations and, in accordance with arts. 21 par. 3 and 23 par. 3 of the Regulations, we ask that you please provide us with the following information:*

1. *A copy of your criminal records certificate issued by the relevant competent authorities in Portugal;*
  2. *A copy of a decision not to prosecute (if applicable); and/or*
  3. *A copy of a decision charges dismissed (if applicable)”.*
8. On 24 May 2023, the Appellant replied to FIFA via e-mail to the address [regulatory.compliance@fifa.org](mailto:regulatory.compliance@fifa.org), stating the following:

*“We refer to the abovementioned matter and to your correspondence dated 12 May 2023, the contents of which has received our full attention.*

*Therefore, please find enclosed a copy of the criminal record certificate of Mr. José Pedro da Silva Maia Pinho (hereinafter referred to as the “Applicant”) issued by the relevant competent authorities in Portugal as well as the translation of such document from Portuguese to English.*

*Furthermore, the Applicant was convicted by the Local Criminal Court of Guimarães (Portugal), however, such decision is not final once there is a pending appeal before the Guimarães Court of Appeal. (please see Exhibit 2).*

*In fact, the Local Criminal Court of Guimarães (Portugal) issued a certificate whereas it is Stated that such decision is not final. (please see Exhibit 2).*

*Nonetheless, such conviction although not final, and therefore, not binding, does not fall under the scope of article 5 of FIFA Football Agents Regulations”.*

9. The Appellant attached the following documentation to the relevant e-mail:
- a) copy of the certificate of criminal record dated 15 May 2023 with the following statement: *“THE RECORDS HAVE NO REGISTRATION ON THE ABOVE IDENTIFIED PERSON (NO CONVICTIONS)”*; b) copy of the decision of the Judicial Court of the Court District of Braga, Local Criminal Court of Guimarães - Judge 4, rendered on 8 November 2022 in the case 913/21.6T9GMR (the “Criminal Judgement”), accompanied by a Certificate issued by the Guimarães Court of Appeal Criminal Section declaring the following: *“Judgment delivered on 08.11.2022, Citius ref. 181875612, by the Local Criminal Court of Guimarães, Court 4, which is **not final**, whereby the case is pending at the Guimarães Court of Appeal for the assessment of the appeal brought by the Appellant/Defendant José Pedro Silva Maia Pinho”*; c) copy of the Power of Attorney granted to Mr Mário Santos Paiva.
10. The “Criminal Part” of the decision of the Criminal Court of Guimarães (the “Criminal Conviction”), which is relevant for the purpose of the present dispute, reads as follows:
- “a) **Acquit** the Defendant José Pedro Maia Pinho of the practice of the crime of aggravated offence against physical integrity of which he was accused.*

- b) To sentence the Defendant José Pedro Maia Pinho for the practice of a crime of attacking the freedom of information foreseen and punishable by Article 19 paragraph 1 by reference to Article 1 paragraph 1 of Law no. 1/99, of 1 January, to a **prison sentence of 05 (five) months**.*
- c) Sentencing the Defendant José Pedro Maia Pinho for the crime of damage with violence under Articles 212 paragraph 1, and 214 paragraph 1 subparagraph a) of the Criminal Code to **01 (one) year and 10 (ten) months of prison**.*
- d) By cumulating the sentences mentioned in 02 and 03, to condemn the Defendant to a single penalty of **02 (two) years imprisonment, suspended for the same period**.*
- e) Order the Defendant to pay a court fee of 04 UC's and the remaining costs of the proceedings”.*
11. Apparently, on 21 July 2023, the FIFA Agents Department requested the Appellant’s position on the Case Transfer Report dated 20 July 2023, which was enclosed to the relevant correspondence, specifically in relation to the Appellant’s conviction of a criminal charge in breach of Article 5 FFAR. In the same letter, FIFA informed the Appellant “*that [...] should we not receive the requested documents by 31 July 2023, your licence will be rejected*”. However, the Appellant denied having received such communication and pertinent document.
12. On 8 August 2023, via the FIFA Agent Platform, the Respondent informed the Applicant of the decision to reject the License Application for not complying with the eligibility requirements under Article 5 FFAR (the “Appealed Decision”), on the following grounds:
- “In relation to your application to obtain a Football Agent licence in accordance with article 23 of the FIFA Football Agent Regulations (hereinafter “FFAR”), submitted on 22 February 2023 in the FIFA Agent Platform (hereinafter the “Platform”), we hereby inform you that your licence application has been **rejected**. Please find below the reasoning for this decision.*
- As you are aware, article 23 of the FFAR allows individuals interested in being candidates for the Football Agent licence to obtain exemption from the FIFA Football Agent Exam (“Exam”) if they register in the Platform and submit cumulative proof of the following:*
- (i) a player’s agent licence granted in their name, pursuant to the FIFA Players’ Agent Regulations (1991, 1995, 2001 or 2008 edition), before or on 31 March 2015; and*
- (ii) an intermediary registration granted in their name or in the name of a legal person, i.e. registered intermediary agency, they had been affiliated with, both pursuant to the FIFA Regulations on Working with Intermediaries and the relevant national intermediary regulations of any FIFA member association between 1 April 2015 and 16 December 2022.*

*After thoroughly reviewing your application, the FIFA general secretariat has concluded that you are not eligible for the Football Agent licence, i.e. you are not in compliance with the eligibility requirements as specified in article 5 of the FFAR.*

*More specifically, according to the information currently at our disposal, it appears that you were convicted of a criminal charge in Portugal therefore being in breach of article 5 of the FFAR. Further, we note that you did not provide a timely reply to FIFA's request for information of 21 July 2023 by which you were informed that failure to provide your position and any additional information to support your application will lead to your application being rejected.*

*Considering the documents and information currently at our disposal, it appears that you do not fulfill the criteria to be licensed as a Football Agent pursuant to article 23 of the FFAR. Your licence application has therefore been rejected in the Platform.*

*Please be informed that this is a final decision by the FIFA general secretariat for the purposes of article 57 paragraph 1 of the FIFA Statutes.*

*We thank you for your attention to the above”.*

### **III. SUMMARY OF THE PROCEEDINGS BEFORE THE CAS**

13. On 29 August 2023, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Art. R47 of the CAS Code of Sports-related Arbitration (the “CAS Code”) against FIFA with respect to the Appealed Decision. The Appellant nominated Mr João Nogueira da Rocha, Attorney-at-law in Lisbon, Portugal, as an arbitrator and chose English as the language of the present arbitration. In addition, the Appellant requested that the present matter be submitted to an expedited procedure pursuant to Article R52 of the CAS Code. Finally, together with his Statement of Appeal, the Appellant filed an application for provisional measures in accordance with Art. R37 of the CAS Code, requesting that the execution of the Appealed Decision be stayed pending the final outcome of the appeal proceedings.
14. In more details, the requested provisional relief reads as follows:
  - i. *To accept this appeal and enforce CAS jurisdiction as competent to rule on the matter, in accordance with article R37 and R47 of the Code of Sports-related Arbitration as set out above;*
  - ii. *to determine that all relevant criteria for successfully grounding an application for provisional [sic] are fulfilled, therefore, ordering the Respondent to accept the registration of the appellant as a FIFA Football Agent until the final decision on the appeal procedure is rendered.*
  - iii. *To order the Respondent to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS; and,*

- iv. *To order Respondent to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel.*
- 15. On 4 September 2023, the CAS Court Office initiated an appeals arbitration proceeding under the reference *CAS 2023/A/9938 José Pedro da Silva Maia Pinho v. FIFA* and, *inter alia*, invited the Respondent to present its comments to the Appellant's application for provisional measures.
- 16. On the same day, the CAS Court Office invited the Respondent to state, by 6 September 2023, whether it agreed with the Appellant's request to proceed in an expedited manner in the present proceedings. In addition, the CAS Court Office granted the Respondent a time limit until 11 September 2023 to nominate an arbitrator from the list of CAS arbitrators and to file its reply to the Appellant's request for provisional measures until 14 September 2023.
- 17. On 5 September 2023, the Respondent informed the CAS Court Office that it did not agree with the Appellant that the present matter be submitted to an expedited procedure.
- 18. On 6 September 2023, the CAS Court Office informed the Parties that, pursuant to Art. R52 of the CAS Code, in view of the absence of an agreement between the Appellant and the Respondent, no expedited procedure would be implemented, and the deadlines already set in previous CAS Court Office's correspondence were confirmed.
- 19. On the same day, the Appellant requested the CAS Court Office a 15-day extension of the deadline to file his Appeal Brief.
- 20. On 7 September 2023, on behalf of the CAS Director General and pursuant to Art. R32 of the CAS Code, the CAS Court Office informed the Parties that the Appellant's deadline to file his Appeal Brief had been extended by 10 days and that, in the absence of any objection by the Respondent by 8 September 2023, the relevant deadline would be extended by a further 5 days (thus totalling a 15-day extension as requested by the Appellant).
- 21. On 11 September 2023, the CAS Court Office informed the Parties that, as a consequence of the Respondent's silence, the Appellant had been granted a further 5-day extension of the deadline to file his Appeal Brief.
- 22. On 14 September 2023, the Respondent filed its "*Submission on Appellant's Request for Provisional Measures*" and requested CAS "*to reject the Appellant's Request for provisional measures*".
- 23. On 25 September 2023, the Appellant filed his Appeal Brief within the extended time-limit granted for him to do so, in accordance with Art. R55 of the CAS Code.
- 24. On 26 September 2023, the Respondent nominated Mr Juan Pablo Arriagada Aljaro, Attorney-at-law in Santiago, Chile, as an arbitrator in the present matter.

25. On the same day, the Respondent requested the CAS Court Office that the time limit to file its Answer be fixed once the advance of costs had been paid by the Appellant, which was granted according to Art. R55(3) of the CAS Code.
26. On 11 October 2023, the Appellant paid the entire advance of costs of the present arbitration proceeding.
27. On 19 October 2023, the CAS Court Office informed the Parties that the panel appointed to decide the present case had been constituted as follows:  
  
President: Mr Fabio Iudica, Attorney-at-law in Milan, Italy  
Arbitrator: Mr João Nogueira da Rocha Attorney-at-law in Lisbon, Portugal  
Arbitrator: Mr Juan Pablo Arriagada Aljaro, Attorney-at-law in Santiago, Chile.
28. On 1 November 2023, the Respondent filed its Answer in accordance with Art. R55 of the CAS Code.
29. On 2 November 2023, the CAS Court Office invited the Parties to state whether they preferred a hearing to be held in the present arbitration proceeding or for the Panel to issue an award based solely on the parties' written submissions.
30. On 10 November 2023, the CAS Court Office informed the Parties that, after consultation with the latter, the Panel had decided to hold a hearing in the present matter pursuant to Art. R57 of the CAS Code.
31. On 22 November 2023, the CAS Court Office informed the Parties that a hearing would take place in the present case on 8 December 2024, by video-conference.
32. On 27 November 2023, the Panel issued an Order on Request for a Stay of the Appealed Decision, whereby the Appellant's request filed on 29 August 2023 was dismissed based on the failure to satisfy the standard of irreparable harm.
33. The relevant Order on Request for a Stay of the Appealed Decision was notified to the Parties on the same day.
34. Also on 27 November 2023, the CAS Court Office forwarded the Order of Procedure to the Parties, which was returned in duly signed copy by the Respondent on 29 November 2023 and by the Appellant on 4 December 2023.
35. On 6 December 2023, the Respondent requested the Panel to order the Appellant to provide a summary of the expected testimony of the two witnesses who were specified in the Appeal Brief and further confirmed in the list of participants in the upcoming hearing on behalf of the Appellant, in accordance with Art. R51(2) of the CAS Code.
36. On 7 December 2023, on behalf of the Panel, the CAS Court Office invited the Appellant to submit a brief summary of the expected testimony of Mr João Leal and Mr Fernando Pereira by the same day at 8 pm CET. The CAS Court Office informed the Parties that the relevant matter would be addressed by the Panel at the outset of the hearing.

37. On the same day, the Appellant informed the CAS Court Office of the following: *“the witnesses are expected to elucidate on the differences between FIFA Regulations and the Portuguese Football Federation (FPF) and the conjugations of said Regulations with Portuguese law. The witnesses are also expected to explain the processing of cases in Portuguese courts and to clarify the interpretation of the decision passed on by the Portuguese Court as well as the criminal certificate duly identified on the Appeal Brief and their conjugation with the rules issued by FIFA. Furthermore, the witnesses have direct knowledge of the Appellant’s registration as an intermediary before the FPF as well the Appellant’s disciplinary history”*. The Appellant further specified that *“Mr. Fernando Pereira was the author of the FPF Declaration enclosed with Appeal and is also member of the Portuguese football agents commission foreseen in the FPF Regulations and that Mr João Leal is the head of registration and transfer department at FPF”*.
38. On 8 December 2024, a hearing took place in the present case with the participation of the following persons, in addition to the Panel and Ms Lia Yokomizo, Counsel to the CAS, all attending remotely via videoconference:
- for the Appellant: Mr Mário Santos Paiva, Counsel, Mr João Leal and Mr Fernando Pereira, witnesses;
  - for the Respondent: Mr Alexander Jacobs, FIFA’s Senior Legal Counsel; Mr Luis Villas-Boas Pires, FIFA’s Head of Agents, and Mr Tarik Ajanovic, Senior Legal Counsel at the FIFA Agents Department, intervening as an observer.
39. At the outset of the hearing, the Parties confirmed that they had no objection in relation to the composition of the Arbitral Tribunal and that the Panel has jurisdiction over the present dispute. In their opening statements, the Parties reiterated the arguments already put forward in their respective written submissions.
40. With regard to the summary of the expected testimony submitted by the Appellant on 7 December 2023, the Panel admitted the two witnesses called by the Appellant only with reference to the facts strictly connected to the Agent’s registration with the FPF, excluding any further arguments.
41. During their examination, Mr João Leal and Mr Fernando Pereira confirmed that they knew that the Appellant had been registered as an intermediary with the FPF for a long time until 2023.
42. After the Parties’ opening statements, the Panel asked the Respondent to clarify the legal value, within the hierarchy of sources, of the Football Agent FAQ Document mentioned at para. 70 of the Respondent’s Answer, in relation to the issue of the eligibility requirements under Art. 5(1) FFAR with reference to criminal conviction as an impediment to the issuance of a Football Agent License. As Mr Luis Villas-Boas Pires took the floor in order to reply to the Panel’s question, the Appellant’s Counsel raised an objection to the admissibility of his examination at the hearing, as he was not introduced by the Respondent as a witness in its Answer. The President of the Panel rejected such an objection from Mr Paiva and decided to allow Mr Luis Villas-Boas Pires to testify based on the Panel’s broad evidentiary powers conferred to it by Art. 44.3 of the CAS Code. Therefore, the President of the Panel concluded that Mr Luis Villas-Boas Pires had the right to be heard. At this



- point, Mr Luis Villas-Boas Pires clarified that the Football Agent FAQ Document is a source of additional guidance to the relevant Regulations although it does not prevail over the latter. Furthermore, Mr Luis Villas-Boas Pires explained that, in order to protect the reputation of football, during the process of drafting Art. 5 FFAR, FIFA decided to remove the reference to a “*final and binding*” decision with respect to the criminal conviction and in fact, in the Football Agent FAQ Document it was clarified that a first instance conviction is sufficient for a breach of Art. 5 FFAR.
43. Before the hearing was concluded, the Parties expressly stated that they did not have any objection to the procedure adopted by the Panel and that their rights to be heard and to be treated equally had been duly respected.
  44. On the same day after the conclusion of the hearing and in accordance with the Panel’s instructions, the CAS Court Office invited the Respondent to provide, by 18 December 2023: **i)** proof that an email was sent to the Appellant after the correspondence of 21 July 2023 was uploaded to the Agent Platform and **ii)** a copy of the previous drafts of the FFAR showing the evolution on their wording as a result of the discussions between the relevant stake holders during the drafting stage with regard to Art. 5.
  45. On 18 December 2023, in compliance with the Panel’s request, the Respondent filed two documents (a .txt file and a .json file) with the CAS Court Office aiming at demonstrating that an automatic email notification had been sent to the Appellant on 21 July 2023, together with a copy of three different draft versions of the FFAR and the final version submitted to the FIFA Council for approval.
  46. On the same day, the CAS Court Office invited the Appellant to provide, by 28 December 2023, his comments to the Respondent’s post-hearing production.
  47. On 19 December 2023, on behalf of the Panel, the CAS Court Office invited the Respondent to clarify what the documents sent on 18 December 2023 in .txt and .json format referred to and to resubmit the same documents in .pdf format, if possible.
  48. On 21 December 2023, in reply to the CAS Court Office correspondence of 19 December 2023, the Respondent specified that both the .txt and the .json documents were the same operation logs (in different format) from the online Agent Platform and provided the corresponding .pdf formatted document.
  49. On 28 December 2023, the Appellant submitted his comments to the documents filed by the Respondent.
  50. On 4 January 2024, the CAS Court Office informed the Parties that, according to Art. R59 of the CAS Code, the evidentiary proceedings in the present procedure had been closed.

#### **IV. SUBMISSIONS OF THE PARTIES**

51. The following outline is a summary of the Parties’ arguments and submissions which the Panel considers relevant to decide the present dispute and does not comprise each and every contention advanced by the Parties. The Panel has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in this

summary. The Parties' written and oral submissions, including the post-hearing presentations, as well as documentary evidence and the content of the Appealed Decision were all taken into consideration.

**A. The Appellant's Submissions and Requests for Relief**

52. The Appellant's submissions may be summarized as follows.

**i) FIFA has violated the Applicant's right to defence by failing to notify the correspondence dated 20 and 21 July 2023**

53. As the Appellant has been registered as an intermediary with the FPF at least since 2015, in accordance with Art. 23 (1) lit d. FFAR, he was exempt from passing the exam established under the FFAR in order to obtain a FIFA Football Agent License to act as a football agent.

54. Therefore, on 22 February 2023 he submitted his Licence Application via the FIFA Agent Platform together with the necessary documentation.

55. Following FIFA's request for further information on 12 May 2023, the Appellant submitted additional documents through his lawyer on 24 May 2023, including a power of attorney granted to the mentioned lawyer.

56. Failing any response by FIFA, on 2 June 2023, the Appellant's lawyer requested FIFA an update on the status of the License Application but received no answer.

57. On 8 August 2023, the Appellant was notified of the Appealed Decision by which FIFA rejected his application. In the relevant correspondence, FIFA affirmed that the Applicant *"did not provide a timely reply to FIFA's request for information of 21 July 2023 by which you were informed that failure to provide your position and any additional information to support your application will lead to your application being rejected"*.

58. However, neither the Appellant nor his lawyer received any correspondence from FIFA dated 21 July 2023.

59. In this respect, there is no evidence that the Respondent actually forwarded such correspondence of 21 July 2023 to the Applicant or to his lawyer.

60. Likewise, the Appellant did not even receive FIFA's email dated 20 July 2023 enclosed to the Respondent's Answer to the Appellant's request for provisional measures, whereby FIFA informed that the case was transferred to the FIFA Agents Department (the "Referral Letter"). Nor was such communication meant for the Appellant's lawyer as he is clearly not a recipient of the relevant e-mail.

61. Since it is undisputed that the Respondent was fully aware that the Applicant was duly represented by his lawyer, all the relevant notifications should have been addressed to the latter, but FIFA failed to do so, thus preventing the Applicant from exercising his procedural rights and present his defence with adequate assistance.

62. By failing to duly notify the Applicant and his lawyer of the correspondence dated 20 and

21 July 2023, the Respondent acted in bad faith and violated its obligations towards the Appellant regarding the due process of law, and therefore, the Appealed Decision should be considered null and void.

**ii) Alternatively, the Appealed Decision is flawed in its substance**

63. The Applicant has been registered at least since 2015 as an intermediary with the FPF under the previous FIFA Players' Agent Regulations which were in force before the FFAR and as such, he was eligible to apply for a FIFA Football Agent License in accordance with Art. 23 (1) lit. d FFAR.
64. In the course of the application process, and in complete good faith, the Applicant duly informed FIFA of the Criminal Conviction by the first instance Criminal Court of Guimarães; however, it was clarified that the Criminal Judgement is not final nor binding as the Appellant has filed an appeal before the competent Court of Appeal which is still pending.
65. In fact, according to the Portuguese Code of Criminal Procedure, the appeal of a decision rendered in the first instance proceeding has a suspensive effect on the said decision. Such circumstance is also confirmed by the certificate issued by the Local Criminal Court of Guimarães which was also submitted to FIFA.
66. In any event, the Criminal Conviction is not even falling within the scope of Art. 5 FFAR, since the criminal charge in the present case does not relate to any of the matters listed in the relevant provision.
67. Since the criminal charge attributed to the Appellant is not provided in the FFAR, it cannot be considered for the purpose of Art. 5 of the same Regulations, as it is clarified under the FFAR FAQs Document, para. 3.7.
68. As a matter of interpretation, the literal meaning of Art. 5 is clear and does not leave any doubt as to the types of criminal charges which prevent an applicant from obtaining the FIFA Football Agents Licence.
69. As a consequence, the Respondent's rejection of the Appellant's License Application based on the fact that the Applicant was convicted "*of a criminal charge in Portugal*" finds no support in the provision of Art. 5 FFAR, since the relevant rule does not provide that all convictions for any crime indistinctly constitute an obstacle to obtaining a license, but only those in relation to the matters listed therein:  
  
*"Therefore, the non-inclusion of crimes related to the freedom of information or the crime of damage in the scope of application of article 5 par. 1 lit. a) ii. of the FFAR was clearly intentional and was not a matter of forgetfulness".*
70. In this respect, the Respondent did not present any argument that could support its interpretation of Art. 5 FFAR.
71. Moreover, the Appealed Decision does not present any argument or legal grounds to support the rejection of the License Application.

72. As a consequence, the Appealed Decision unreasonably deprives the Appellant of his fundamental right to work and to freely exercise his professional activity as a football agent, in violation of Art. 58 of the Portuguese Constitution, Art. 15 of the EU Charter of fundamental rights (the “CFREU”) and Art. 27 of the Swiss Constitution.
73. In his Appeal Brief, the Appellant submitted the following requests for relief:
- i. *“Reverse the Decision of FIFA - considering the facts and legal arguments giving rise to the appeal stated on the Appeal Brief;*
  - ii. *To determine that the Appellant fulfils all requirements to be accepted as a FIFA Football Agent under FIFA Agent Regulations, and to order FIFA to register the appellant as a FIFA Football Agent.*
  - iii. *To order the Respondent to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS; and;*
  - iv. *To order the Respondent to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel.*

***Alternatively, and only in the event the above is rejected:***

- v. *To accept this appeal and enforce CAS jurisdiction as competent to rule on the matter, in accordance with article R47 of the Code of Sports-related Arbitration as set out above;*
- vi. *To set aside the Appealed Decision;*
- vii. *To determine that the Appellant fulfils all requirements to be accepted as a FIFA Football Agent under FIFA Agent Regulations, and to order FIFA to register the appellant as a FIFA Football Agent.*
- viii. *To order the Respondent to pay all arbitration costs and be ordered to reimburse the Appellant the minimum CAS court office fee of CHF 1,000 and any other advance of costs paid to the CAS; and;*
- ix. *To order Respondent to pay to the Appellant any contribution towards the legal and other costs incurred and regarding the ongoing proceedings in an amount to be duly established at discretion of the Panel”.*

**B. The Respondent’s Submissions and Requests for Relief**

74. The Respondent’s submission may be summarized as follows.

**i) Factual background**

75. FIFA first pointed out that, at the moment of the Appellant’s registration in view of the Licence Application, the Appellant agreed to be bound by the Agent Platform’s Term of Service (the “Agent Platform Terms”), as well as by the FIFA regulations in accordance with Art. 1.4.1 of the Agent Platform Terms.
76. As to the correspondence contested by the Appellant, FIFA maintained that both communications were duly notified directly via email or through the Agent Platform.

77. In particular, on 20 July 2023, the RED forwarded via e-mail, to the Appellant's e-mail address ([pedropinho@ppsports.pt](mailto:pedropinho@ppsports.pt)), the Referral Letter by which the Appellant was informed that his file had been transferred for consideration by the FIFA Agents Department in accordance with Art. 21 and Art. 23 for pre-licensed agents of the FIFA Football Agent Regulations.
78. Subsequently, on 21 July 2023, the FIFA Agents Department requested the Appellant, via the Agent Platform, to provide his position to the enclosed Case Transfer Report dated 20 July 2023, specifically in relation to the Applicant's Criminal Conviction in breach of Art. 5 FFAR. In the same communication, the Applicant was informed that his reply should have been provided "[...] *exclusively in the submission form found in the "Licensing" section of the Platform [...]" and that [...] should we not receive the requested documents by 31 July 2023, your license application will be rejected*".

**ii) As to the substance**

79. In brief, the substance of this matter is that FIFA's correspondence on 20 and 21 July 2023 was duly notified to the Appellant directly via e-mail or through the Agent Platform and that the Applicant was convicted of a violent crime, resulting in a breach of Art. 5 FFAR.
80. The aim of the FFAR is to ensure that the conduct of football agents is consistent with the core objectives of the football transfer system which includes the objective of "*raising and setting minimum professional and ethical standards for the occupation of Football Agent*".
81. The consequence is that the Appellant's violent attack of a journalist at a football stadium does not fit the requirements of a FIFA licensed football agent.

**iii) The historic background of the FFAR**

82. The reintroduction of a mandatory licensing system (with the relevant eligibility requirements) was one of the key elements of the adoption of the FFAR, as a consequence of FIFA's decision to depart from its previous choice to cease to regulate the activities of players' agents on an international basis as from 2014.
83. Since then – while the relevant task of regulating the agents' activities was delegated to the member associations –, FIFA had nonetheless kept monitoring the role played by football agents in the international transfer market. In this context, it finally resulted that there were many concerning trends as a consequence of the de-regulation and that one of the main issues was related to the emergence and increase of abusive, excessive unethical and sometimes even illegal practices in the work of some football agents in the de-regulated market.
84. As a consequence, FIFA became conscious of the need to raise professional and ethical standards within the profession of football agents in order to protect the good functioning of the international transfer system and football players, too, notably minor players. This led FIFA to reconsider its previous stance and to establish a new regulatory framework and adopt new regulations, which process culminated in the FIFA's Council's adoption of the FFAR on 16 December 2022.

85. In such context, Art. 4(1) FFAR establishes that a natural person can become a FIFA football agent provided that the eligibility requirements are satisfied, including that the applicant must never have been convicted of a criminal charge in accordance with Art. 5 FFAR.

86. In the present case, the Applicant was convicted of the crime of “damage with violence” which qualifies as a “violent crime” as per Art. 5(1) FFAR, therefore he is not eligible for the FIFA Football Agent License on the basis of not meeting one of the eligibility requirements.

**iv) The correspondence of 20 and 21 July 2023 was duly notified to the Appellant**

87. The argument that neither the Applicant nor his lawyer ever received FIFA’s correspondence dated 20 and 21 July 2023, is first and foremost irrelevant and should be dismissed as moot in view of the fact that any potential irregularity that occurred during the FIFA proceedings (*quod non*) would be cured by the CAS within the scope of the present arbitration proceedings in considering the Panel’s full power of review in accordance with Art. R57 of the CAS Code.

88. Without prejudice to the above, the Appellant’s argument in this respect are unfounded: **a)** the Referral Letter dated 20 July 2023, by which FIFA informed the Applicant that the investigation had been transferred to the Agents Department was submitted directly via email to [pedropinho@ppsports.pt](mailto:pedropinho@ppsports.pt); **b)** the letter dated 21 July 2023 with the enclosed Case Transfer Report and the request to provide the Applicant’s position was submitted via the Agent Platform.

89. In this regard, it should be noted that any submission via the Agent Platform is regularly followed by an additional automatic e-mail to the relevant user, and a mandatory pop-up notification appears in the Licensing section of the Agent Platform whenever the user logs in. Accordingly, the Applicant received such automatic notification to the e-mail address [pedropinho@ppsports.pt](mailto:pedropinho@ppsports.pt) communicated by the latter during the registration to the Agent Platform in relation to his License Application.

90. Incidentally, the Appealed Decision (the knowledge of which, by the Appellant, is beyond doubt) was also uploaded via the Agent Platform following the same procedure and was in fact retrieved by the Appellant. Likewise, there is no doubt that the previous letter dated 12 May 2023 submitted by FIFA RED to the same e-mail address was also duly received by the Applicant.

91. Therefore, by using the same e-mail address provided by the Applicant at the time of registration to the Agent Platform, FIFA also correctly notified the Referral Letter on 20 July 2023.

92. The FFAR establishes that the Agent Platform plays an important role in the licensing process as the means through which the process is carried out, in accordance with the definition of the Agent Platform (page 1 FFAR) as well as Art. 4(1)(a). Moreover, Art. 21(3)(b) FFAR clearly stipulates that notifications through the Agent Platform or sent by

email to the address provided on the Agent Platform are considered valid means of communication.

93. The fact that the Referral Letter was never sent to the Appellant's lawyer has no substantive relevance (since it was a purely informative letter) and beyond that, unlike the proceedings before the FIFA Football Tribunal or the Disciplinary Committee, the legal representation is not applicable to the football agent licensing process which is conducted directly with the applying candidate through the Agent Platform, with no direct involvement of any legal representative.
94. Any account registered on the Agent Platform is strictly personal in accordance with Art. 3.1 FFAR and the applicant is the only point of contact for FIFA, regardless of any power of attorney; therefore, the Appellant's allegation that "*all notifications must necessarily be sent to the appellants' lawyer*" is irrelevant and inapplicable.
95. In any event, both correspondences of 20 and 21 July 2023 successfully entered the sphere of control of the Appellant, which Swiss legal doctrine considers sufficient for a successful notification, irrespective of the recipient's effective knowledge: "*As a basic rule, it is unanimously recognized by the Swiss legal doctrine and the Swiss Tribunal Federal that under Swiss law a decision or other legally relevant statement are notified, if a person had the opportunity to obtain knowledge of the content irrespective of whether such a person as in fact obtained knowledge [...]*". Such principle is also confirmed by CAS jurisprudence (CAS 2019/A/6253, CAS 2020/A7494 citing CAS 2006/A/1153; 2008/A/1548, par. 17).
96. In the present case, the Appellant was given the possibility to become acquainted with both the content of the Referral Letter (which was sent to his registered e-mail address) and the correspondence of 21 July 2023 (which was uploaded in the Agent Platform), beside the fact that the Applicant should have expected communications from FIFA at that time in relation to his License Application and should have been aware of the means of such communications.

**v) The Appellant is ineligible for a Football Agent License**

97. With regard to the Appellant's argument that his Criminal Conviction is not final pending the appeal before the Guimarães Court of Appeal, it should be noted that the FFAR FAQs Document clearly establishes in point 3.7 that a conviction at the court of first instance for one of the criminal charges established under FFAR inevitably renders it impossible for the Appellant to apply for a FIFA Football Agent License due to his failure to comply with the eligibility requirements. The fact that the conviction is under appeal or suspended has no relevance and only in the unlikely event of an acquittal, the Appellant would be eligible again.
98. Secondly, the Appellant's allegation that his Criminal Conviction does not fall under the scope of Art. 5 FFAR is unfounded considering that he was also convicted of "*damage with violence*" in breach of Art. 212(1) and Art. 214(1)(a) of the Portuguese Criminal Code, which qualifies as a violent crime under Art. 5(1)(a) FFAR.

99. The Appellant appears to exclude that violently and physically attacking a journalist qualifies as a violent crime, and that idea itself and the normalization of criminal behaviour should be sufficient to disqualify the Appellant from the occupation as a FIFA football agent, especially considering that the violent attack of a journalist occurred at a football stadium, *i.e.*, is directly linked to his involvement in football.
100. Additionally, the eligibility requirements have to be applied strictly and the mere appearance or perception of wrongdoing in itself would already be sufficient to declare an applicant ineligible as is the case with candidates for a position on a FIFA body. Cases involving violations of the professional and ethical standards for football agents should be treated with extreme cautiousness in order to safeguard the international transfer system. To grant the Applicant's appeal would irreparably harm FIFA and the community of international football.
101. Finally, contrary to the Appellant's allegations, FIFA is legitimately preventing the latter from carrying out his activity as a football agent as a result of his own failure to comply with the minimum professional and ethical standards set by the FIFA licensing system, while the Appellant's still maintains his right to work and choose an occupation.
102. In such regard, the legal framework invoked by the Appellant and especially EU Competition Law and EU Free Movement Rules are inapplicable to FIFA as a private party as it has already been confirmed by a CAS panel in a recent case where the claims brought by the Professional Football Agents Association (PROFAA) against FIFA licensing system and the FFAR on the same basis were dismissed (CAS 2023/O/9370 PROFAA v. FIFA).
103. In its Answer, the Respondent submitted the following requests for relief:
  - a. *reject the Appellant's request for relief;*
  - b. *confirm the Appealed Decision in its entirety;*
  - c. *order the Appellant to bear the full costs of these arbitration proceedings.*

**C. The Parties' post-hearing submissions**

104. As already mentioned above under Section III of the present Award, after the hearing was concluded, the Respondent was requested to provide additional documentation and, notably, i) proof that an e-mail was sent to the Appellant after the correspondence of 21 July 2023 was uploaded to the Agent Platform and, ii) copy of the previous drafts of the FFAR. On the other side, the Appellant was invited to submit his position and comments on the Respondent's post hearing production.

**i) The documentation produced by the Respondent after the hearing**

105. With regard to the issue of notification of the disputed correspondence, FIFA submitted a "log file", allegedly related to the operations on the Agent Platform following the upload of FIFA communication of 21 July 2023. According to FIFA, the relevant logs show that the upload triggered an automatic e-mail which was forwarded to the address of the Applicant, [pedropinho@ppsports.pt](mailto:pedropinho@ppsports.pt) on 21 July 2023 at 7h51 am.



106. Secondly, regarding the issue of eligibility requirements with respect to criminal convictions, as a matter of interpretation of Art. 5 FFAR, FIFA submitted 3 different drafts of the Regulations (November 2020, July 2021 and December 2021, *i.e.*, the final version submitted to the FIFA Council) accompanied by a Briefing Document and a comparison between the different texts, showing the evolution of the relevant wording.

**ii) The Appellant's position on the Respondent's production after the hearing**

107. In response, the Appellant contested the log files submitted by the Respondent, insisting that neither himself nor his lawyer ever received any correspondence from FIFA. The Appellant reiterated his argument with respect to legal representation, stressing that his attorney should have been duly notified of the correspondence of 20 and 21 July 2023 in order to be able to fully carry out his duty and powers. In addition, the Appellant argued that there is no proof that the alleged e-mail dated 21 July 2023 was sent to the Appellant and, in fact, no copy was enclosed to the Answer, unlike the email of 12 May 2023. Moreover, the logs submitted by the Respondent are contradictory as to the time when the relevant e-mail was allegedly forwarded to the Applicant (7h15 or 9h38 or 9h51) and additionally, there is no reference to the FIFA case number 3750. Finally, the relevant documentation is not suitable to prove that a notification was served. As a consequence, the Appellant maintained he was never notified of any Case Transfer Report, nor was he given the opportunity to submit his position.
108. With regard to the FFAR drafts, the Appellant noted that the wording of the previous version of the Regulations (Art. 6, first draft and Art. 4 second draft) acknowledged in fact the importance of the conviction being final and binding, which is the basis of any criminal/punitive system in a democratic country. Moreover, from the relevant versions of the FFAR, it results that the non-inclusion of crimes related to the freedom of information or the crime of damage under Art. 5 was clearly intentional and not a matter of forgetfulness.
109. Finally, the Appellant briefly mentioned that the application of the FFAR has given rise to significant litigation in several EU countries (Germany, the Netherlands, Belgium and Spain), as well as in the UK and in Switzerland and that “*several courts at a national level have suspended the full application of FFAR*”.

**V. JURISDICTION**

110. Art. R47 of the CAS Code states, *inter alia*, as follows:
- “An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body.”*
111. In the present case, the Appellant relies on Art. 57 para. 1 of the FIFA Statutes, which notably provides in relevant part:

*“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 notification of the decision in question.*

112. In addition, para 2 of Art. 57 of the FIFA Statutes reads as follows: *“Recourse may only be made to the CAS after all other internal channels have been exhausted.”*
113. The Respondent agrees that CAS has jurisdiction to hear the present case based on Art. 57(1) of the FIFA Statutes and Art. 47 of the CAS Code.
114. In view of the above, the Panel is satisfied that CAS has jurisdiction in the present proceedings.

## **VI. ADMISSIBILITY**

115. According to Art. R49 of the CAS Code,
- “In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.”*
116. In the present case, Art. 57 para. 1 of the FIFA Statutes provides that appeals shall be lodged with the CAS within 21 days of notification of the appealed decision.
117. The Appealed Decision was published via the FIFA Agent Platform on 8 August 2023. The Appellant filed his Statement of Appeal on 29 August 2023. The Statement of Appeal complied with all the other requirements of Art. R48 of the CAS Code.
118. In addition, the Respondent does not dispute the admissibility of the appeal.
119. Therefore, the Panel is satisfied that the appeal is admissible.

## **VII. APPLICABLE LAW**

120. Art. R58 of the CAS Code provides the following:
- “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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
121. Pursuant to Art. R56 para. 2 of the FIFA Statutes:
- “The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.”*

122. In order to solve the present case, the Panel will examine the main applicable rules regarding FIFA football players agents licensing, namely, the FFAR, which were approved by the FIFA Council on 16 December 2022, and which now govern the occupation of football agents within the international transfer system, including the issuance of the necessary Football Agent License.
123. In particular, the Panel will decide the present matter according to the rules governing the processes for obtaining a licence enshrined in Articles 1 to 10 and Articles 22 to 27 FFAR, which entered into force on 9 January 2023.
124. In their submissions, the Parties expressly agreed that the various FIFA Regulations – in particular the FFAR – and, subsidiarily, Swiss law apply to the present dispute.
125. In consideration of the above and pursuant to Art. R58 of the CAS Code, the Panel holds that the present dispute shall be decided primarily according to FIFA rules and regulations, in particular, the FIFA FFAR, with Swiss law applying subsidiarily.

## **VIII. LEGAL ANALYSIS**

### **i.) Preliminary matters**

126. Before entering into the substance of the matter, the Panel first addresses the issue raised by the Appellant at the hearing, with regard to the admissibility of Mr Luis Villas-Boas Pires's examination, as he was not introduced as a witness by the Respondent in its Answer. The Panel recalls that Mr Luis Villas-Boas Pires is Head of the FIFA Agents Department and his participation at the hearing was announced by the Respondent to the CAS Court Office on 22 November 2023. In this respect, the Panel notes that the Appellant has not raised any objections to the participation of Mr Luis Villas-Boas Pires until the day of the hearing. During the hearing, the Panel asked the Respondent to clarify the legal value, within the hierarchy of sources, of the Football Agent FAQ Document, in relation to the issue of the eligibility requirements under Art. 5(1) FFAR with reference to criminal conviction. In this context, Mr Luis Villas-Boas Pires was allowed to answer the Panel's question on behalf of FIFA, in consideration of his knowledge of the drafting process of the FFAR. In this respect, the Panel recalls that pursuant to Article R44.3 of the CAS Code it has broad discretionary powers with regard to the possibility to order the production of documents or the examination of witnesses or appointment of experts if it deem it appropriate to supplement the presentations of the parties. In this case, the Panel found that the examination of Mr Luis Villas-Boas Pires was necessary to clarify a key issue in discussion and therefore allowed his testimony in accordance with Art. 44.3 CAS Code.

### **ii.) Introduction to the merits of the case**

127. The present case deals with the refusal of the License Application filed by the Appellant on 22 February 2023 pursuant to Art. 23 FFAR, based on FIFA's assessment that the Appellant's eligibility requirements under Art. 5 FFAR were not met. In particular, FIFA claims that the Applicant does not satisfy the requirement of Art. 5(1)(a) ii. FFAR due to

the Criminal Conviction.

128. In this regard, the Panel recalls that, based on the judgement delivered by the Local Criminal Court of Guimarães on 8 November 2022, the Appellant was found guilty of the crime of attacking the freedom of information and the crime of damage with violence in accordance with the Portuguese Criminal Code and sentenced to a cumulative penalty of 2 years imprisonment. The sentence has been suspended for the same period in accordance with Art. 50 of the Portuguese Criminal Code and, in addition, the relevant decision has been appealed by the Appellant before the Court of Appeal of Guimarães and its execution is therefore suspended.
129. In essence, the Appellant challenges the Appealed Decision on the basis of three main arguments:
- a) that, in the course of the application process, FIFA has failed to notify him or his lawyer of the Referral Letter dated 20 July 2023 as well as of the Case Transfer Report and relevant letter of transmission dated 21 July 2023, preventing him from submitting his position in that regard;
  - b) that FIFA's allegation that he is not in compliance with the eligibility requirements in accordance with the FFAR is wrong and unfounded since the Criminal Conviction is not final and binding (pending an appeal before the Court of Appeal of Guimarães) and moreover, because the Criminal Conviction does not concern any of the crimes listed under Art. 5(1)(a) ii. FFAR;
  - c) as a consequence, the Appellant claims that the Appealed Decision is unlawfully preventing him to perform his professional activity in the capacity of an intermediary, in violation of the following rules of law:
    - Art. 58 of the Portuguese Constitution "*that determines that no citizen may be illegally deprived of the exercise of their professional activity that is, no citizen may be the victim of an unequal, discriminatory, disproportionate and completely inappropriate suspension of duties*";
    - Art. 15 of the CFREU establishing that "*Everyone has the right to engage in work and pursue a freely chosen or accepted occupation. Every citizen of the Union has the freedom to seek employment, to work, to exercise the right of establishment and to provide services in any Member State*". Such fundamental right to choose an occupation has also been recognized in the Court of Justice case law;
    - Art. 27 of the Swiss Federal Constitution which guarantees the right of economic freedom, including the freedom to choose an occupation and to pursue a private economic activity.
130. In addition, the Panel observes that the Appellant generically and briefly referred to the litigation arisen against the application of the FFAR in some EU countries and also in the UK and Switzerland and to the fact that several courts at a national level have suspended

the application of the FFAR. However, the Panel points out that such reference was ultimately included in the Appellant's reply to the Respondent's post hearing submissions and that the Appellant failed to submit any sort of allegation, objection or argument in this respect, nor did he file any specific request for relief in connection with the issue of the validity or the legality of the FFAR.

131. On the other side, the Respondent objects:

**a)** that both correspondences of 20 and 21 July 2023 were duly notified to the Appellant via e-mail or via the Agent Platform and entered the Appellant's sphere of control;

**b)** that the Appellant's conviction for the crime of damage with violence falls within the category of "violent crimes" listed under Art. 5 FFAR and that a first instance decision is sufficient to prevent the issuance of a FIFA Football Agent License;

**c)** that FIFA is legitimately preventing the Appellant from carrying out his activity as a football agent as a result of his own failure to comply with the minimum professional and ethical standards required under the FFAR.

132. With regard to the litigation around the application of the FFAR mentioned by the Appellant, the Respondent maintained that CAS has already taken a position on the validity and proportionality of the FFAR and, in CAS 2023/A/9370, the PROFAA's claims based on competition laws and EU free movement rules were entirely dismissed.

**iii.) The issues to be addressed by the Panel**

133. In view of the above, the main issues to be resolved by the Panel in order to decide the present dispute are the following: **a)** the alleged violation of the Appellant's right of defence during the licensing process; **b)** the alleged lack of legitimacy and foundation of the rejection of the License Application based on the application of Art. 5(1)(a) ii. FFAR.

134. With regard to the issue under lit. **b)** above, the Panel recalls that in his relevant request for relief, the Appellant requested the Panel to decide as follows: *"To determine that the Appellant fulfils all requirements to be accepted as a FIFA Football Agent under FIFA Agent Regulations, and to order FIFA to register the appellant as a FIFA Football Agent"*.

135. In this respect, the Panel points out that the above-mentioned request indirectly implies the assumption that the applicability of the FFAR, or, at least, of Art. 5(1)(a) ii. FFAR to the present case is not disputed by the Appellant, so that there is no issue of legitimacy or validity in question here. In fact, the Appellant merely claims that FIFA should have not rejected his License Application on the basis of Art. 5(1)(a) ii., since all the requirements under such provision were allegedly met, contrary to the FIFA's assessment.

136. The same reasoning applies to the Appellant's argument summarized under lit. **c)** in para. 129 above. In fact, the Appellant assumes that FIFA has violated his right to engage in work and to choose an occupation through an abusive application or interpretation of Art. 5(1)(a) ii FFAR, while he is not challenging the legality of the said provision for non-

compliance with the Portuguese Constitution, Swiss Federal Constitution or the CFREU. This conclusion is supported by the wording of the Appellant's request for relief mentioned above.

137. In such context, the Panel observes that in the present matter, there is no further need to address any possible issue relating to the legitimacy/applicability of the FFAR in general, in consideration of the fact that the Appellant did not challenge the Appealed Decision in terms of the legality of the provisions in the FFAR which were applied to the present case.
138. Therefore, any reference to the disputes which has been brought so far by football agents or by football agents' associations at national and international level in order to challenge the validity of the FFAR is irrelevant for the purpose of deciding the present dispute and, as a consequence, the Panel does not need to enter into the merits of the relevant litigation. For the sake of completeness, the Panel recalls that on 24 May 2023, the District Court of Dortmund, Germany, in the procedure LG Dortmund, 24.5.2023, 8 O 1/23 (Kart) has issued a preliminary injunction requesting FIFA to suspend the application and enforcement of certain provisions of the FFAR which does not include Art. 5(1)(a) ii.<sup>1</sup>
139. It follows that the application of Art. 5(1)(a) ii. is undisputed.

**a) The alleged violation of the Appellant's right of defence**

140. The Appellant argues that he has not received both the Referral Letter and the communication of 21 July 2023 enclosing the Case Transfer Report. According to the Appellant, such circumstance deprived him of his right to full defence during the licensing process.
141. In this regard, the Panel recalls that, under Art. R57 of the CAS Code, it has full power to review the facts and the law. According to CAS legal doctrine and jurisprudence, "*the full power of review has a dual meaning: first, CAS admits new prayers for relief and new evidence and hears new legal argument [...] Second, the full power of review means that procedural flaws, which occurred during the proceedings of the previous instance, can be cured by the CAS Panel*" (see DESPINA MAVROMATI & MATTHIEU REEB, *The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials*, Wolters Kluwer, pag. 508).
142. In particular, violations which can be cured include, *inter alia*, violations of the right to be heard (CAS 2012/A/2913) as well as deficiencies in the investigation proceedings, being the panel allowed to order the production of additional documentation and other measures

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<sup>1</sup> The relevant provisions affected by the injunction of the District Court of Dortmund are the following articles: 15(1)(4); 14(6)(8)(11); 14(2)(10); 14(7)(12); 12(8)(10); 16(2)h, j, k; 16(4); 19; 4(2); 16(2)b; 3(2)c, d; 20; 21; 14(13). The relevant decision has been appealed by FIFA to the Higher Regional Court of Düsseldorf. Although the injunction was meant to apply only in connection with transfers having a link to the EU, on 30 December 2023, FIFA decided the world temporary suspension of the FFAR rules affected by the Dortmund Decision until the Court of Justice invested with the matter renders a final decision in the pending procedures concerning the FFAR, following the referral of the Regional Court of Mainz, Germany. The latter had stayed proceedings initiated by a players' agent challenging the validity of the FFAR and referred to the European Court of Justice the question whether various rules included in the FFAR, are compatible with EU competition law, notably Articles 101 and 102 TFEU.

of inquiry (CAS 2003/A/524).

143. As a consequence, it has been established that “*any allegation of denial of natural justice or any defect or procedural error even in violation of the principle of due process which may have occurred at first instance, whether within the sporting body or by the Ordinary Division CAS panel, will be cured by the arbitration proceedings before the appeal panel and the appeal panel is therefore not required to consider any such allegations*” (among others, CAS 2008/A/1574; CAS 2012/A/2702).
144. In the present proceedings, the Appellant was granted full right to provide his position, submit evidence and rebut the Respondent’s arguments and evidence both in writing and presenting his oral pleadings at the hearing. In this regard, at the hearing, the Appellant confirmed that his right to be heard had been duly respected in the present arbitration proceedings. In addition, the Appellant had the opportunity to reply to the Respondent’s post hearing submissions.
145. As a consequence, the Panel believes that the Appellant’s allegations that his right to full defence had been violated in the previous instance as a consequence of the failure by FIFA to notify him the communications of 20 and 21 July 2023 shall be considered moot and are therefore rejected.
146. Notwithstanding the above, for the sake of completeness, the Panel incidentally observes the following.
147. First of all, the Panel recalls that according to Art. 21 (3)(b) FFAR, which is not disputed by the Appellant, “*Electronic notifications through the Platform or TMS or sent by email to the address provided on the Platform or TMS by the parties are considered valid means of communication and will be deemed sufficient to establish time limits*”.
148. With regard to the communication 20 July 2023, FIFA produced copy of an e-mail letter enclosing the Referral Letter apparently forwarded to the address [pedropinho@ppsports.pt](mailto:pedropinho@ppsports.pt) referable to the Appellant. Since the Appellant does not dispute having provided the address [pedropinho@ppsports.pt](mailto:pedropinho@ppsports.pt) upon registration on the Agent Platform for the purpose of the licensing process, any communication notified by FIFA to that address in such context must be considered valid and effective. Moreover, from the documentation on file, it also results that the Appellant duly received other correspondence to the same e-mail address. Incidentally, the Panel observes that the Appellant’s argument that the relevant communication was not addressed to his lawyer, who was conferred with legal representation, is irrelevant in the present case. In fact, there is no rule within the FFAR providing that applicants should be represented by a lawyer acting on their behalf with power of attorney. As a consequence, any correspondence which is directly served to the Applicant must be considered valid.
149. However, the Respondent did not enclose any return receipt of the e-mail 20 July 2023 or other alternative evidence, and as a result, there is no rigorous proof that the relevant e-mail was actually delivered to the Appellant.

150. Nevertheless, the Panel observes that a copy of the above-mentioned email appears having been enclosed, among other documents, to the communication of 21 July 2023, which was served to the Appellant through the Agent Platform.
151. In view of the provision of Art. 21 (3)(b) FFAR mentioned above, the Panel can conclude that the communication of 21 July 2023, (enclosing, *inter alia*, the Referral Letter, the Case Transfer Report and requesting the Applicant to provide his position), which was notified through the Agent Platform, was validly served to the Appellant.
152. In this regard, the Panel notes that the Appellant does not dispute that the relevant communication was uploaded to the Platform, since he only argues that he or his lawyer did not receive any e-mail in this respect. However, according to Art. 21(3)(b) FFAR above, notifications through the Agent Platform shall be considered in itself a valid and sufficient means of communication, considering that e-mail transmission is envisaged as an alternative means of communication (as well as notifications through the TMS).
153. With regard to the log files submitted by the Respondent after the hearing in order to demonstrate that an automatic e-mail was also sent to the Appellant after the correspondence of 21 July 2023 was uploaded to the Agent Platform, they consist in a printout of a multiple series of codes of programming language that are not immediately readable to a layperson. Since the Panel lacks specific technical knowledge that would be necessary to decipher the relevant documentation, no convincing element can be drawn by the relevant documentation for the Respondent's evidentiary purpose.
154. In any case, the Panel holds that, in accordance with the FFAR, the notification of the relevant communication through the Agent Platform was validly performed.
155. As a result, the Panel believes that the Appellant's allegations that he was not notified of the relevant correspondences are also unfounded.

**b) The alleged lack of legitimacy and foundation of the rejection of the License Application**

156. In order to solve the present issue, the Panel shall assess whether the Appellant's Criminal Conviction entails a failure to fulfil the condition laid down in Art. 5(1)(a) ii. FFAR which reads as follows:

*1. An applicant must:*

- a) upon submitting their licence application (and subsequently thereafter, including after being granted a licence):*

*[...]*

- ii. never have been convicted of a criminal charge, including any related settlements, regarding matters related to: organised crime, drug trafficking, corruption, bribery, money laundering, tax evasion, fraud, match manipulation, misappropriation of funds, conversion, breach of fiduciary duty, forgery, legal*



*malpractice, sexual abuse, violent crimes, harassment, exploitation or child or vulnerable young adult trafficking.*

157. The Panel recalls that the compliance with the eligibility requirements under Art. 5 FFAR is one of the conditions set by Art. 23 FFAR which regulates the issuance of a FIFA License to Agents who were formerly licensed pursuant to the FIFA Players' Agent Regulations, as is the case of the Appellant.

**i. Was the Appellant convicted of a “violent crime”?**

158. First of all, the Panel addresses the issue related to the type of criminal charge attributed to the Appellant in order to establish whether it falls within the provision of Article 5(1)(a) ii. FFAR. In this respect, although the crime of attacking the freedom of information shall not be taken into consideration, as it clearly does not correspond to any of the categories covered by the relevant rule, the same does not apply to the crime of “*damage with violence*” of which the Appellant was also convicted.
159. In contrast with the Appellant's allegations that the crime of damage is not included in the list of criminal charges under Art. 5 FFAR, the Panel points out that the Appellant was not convicted of the crime of simple damage but of the crime of damage “with violence”, which qualifies the offence as a violent crime.
160. In fact, the Panel believes that, in the context of Art. 5 FFAR, since there is no direct reference to specific offences or to a precise criminal law classification, the category of “violent crimes” reasonably includes all crimes involving the exercise of violence by the author. In other words, it is the opinion of the Panel that crimes of all types that result in detrimental force being used or threatened against a victim may constitute a “violent crime” within the extent and for the purposes of Art. 5 FFAR.
161. This conclusion, beyond being consistent with the literal wording of the relevant provision, is also in line with the main stated objectives underlying the FFAR, and, in particular, with the establishment and improvement of minimum professional and ethical standards for the activities of football players agents, in accordance with Art. 1(2) FFAR, in order to protect the integrity of football.
162. The grounds of the decision of the Criminal Court of Guimarães confirms the use of violence and the threatening behaviour by the Appellant in committing the relevant crime.
163. In this regard, the Panel draws the attention to the following section of the reasoning which finally led the Criminal Court to establish that the Appellant's conduct violated Articles 212(1) and 214(1)(a) of the Portuguese Criminal Code and was therefore sentenced for the crime of “damage with violence”:

*“The Defendant is furthermore charged with being the author of committing a crime of damage with violence foreseen and punishable by Articles 212 paragraph 1 and 214 paragraph 1 subparagraph a) of the Criminal Code.*

*This normative provision sets forth that "if the facts described in Articles 212 and 213 are committed with violence against a person, or threatening imminent danger to life or physical integrity, or putting the person in the impossibility of resisting, the perpetrator is punished, in the case of Article 212, with a prison sentence of between 1 and 8 years".*

*On the other hand, Article 212 paragraph 1 of the Criminal Code states that "whoever destroys, in whole or in part, damages, disfigures or renders unusable something belonging to another person, is punished with a prison sentence of up to 3 years or with a fine".*

*In the crime of simple damage of Article 212 of the Criminal Code, only the protection of values of a patrimonial nature is in question. In the crime of damage with violence, of Article 214 paragraph 1 of the Criminal Code, to the damage, the typical element is added of "violence against persons or threat with imminent danger to life or physical integrity". (our emphasis)*

*The crime of damage with violence constitutes a dependent and qualified form of the infractions provided for in Articles 212 and 213 of the Criminal Code. Between the damage with violence and the latter there is a relation of continuity as regards the structural elements of the typical factuality.*

*Now, from the facts given as proven, it is clear that the Defendant threatened the Assistant with the expression mentioned in 19) and afterwards grabbed him by the neck and while doing so grabbing and damaging the film camera and the tripod attached to it, with the aim of preventing him from continuing to film, which caused the injuries described in the medical-legal expert report. Furthermore, the Defendant acted freely, voluntarily and knowingly and had full knowledge that his conduct was prohibited".*

164. In view of the above, the Panel concludes that the Appellant's conviction for the crime of "damage with violence" in accordance with Art. 212 (1) and Art. 214 (1)(a) of the Portuguese Criminal Code falls within the provision of Art. 5(1)(a) ii. FFAR in relation to "violent crimes".

**ii. Does Art. 5(1)(a) ii. FFAR only apply to final and binding convictions?**

165. According to the Appellant, regardless of the crime for which he was charged, the Criminal Conviction would still not prevent him from obtaining the FIFA Football Agent Licence since the relevant decision of the Criminal Court of Guimarães has been appealed and is now suspended. Therefore, since it is not a final and binding decision, it would not fall within the provision of Art. 5 FFAR.
166. The Appellant's arguments are not substantiated and shall be dismissed.
167. In fact, the provision of Art. 5(1)(a) ii. does not make any reference to the fact that the conviction of a criminal charge must have become final or no longer appealable and the wording "*never have been convicted of a criminal charge*" suggests the contrary.
168. The Appellant was **convicted** by the Criminal Court of Guimarães. It is admissible in

- theory that the Appeals Court change the first instance decision. However, the literal wording of Art. 5 (1) states that the Applicant must never have been convicted of a criminal charge and this mandatory request was not fulfilled. He was convicted by the First Instance Court.
169. In the event that the Appeals Court Of Guimarães, in its future decision, decides to overturn the Sentence of the Criminal Court of Guimarães and declare the Appellant not guilty, the Appellant can present a new Application taking into account that the reason for the non-eligibility would no longer exist.
170. In addition, the Panel notes that the comparison between the first and the subsequent drafts of the FFAR which were submitted by the Respondent after the hearing, clearly shows that a previous reference to a “*final and binding decision*” in the very first draft of the Regulations, was deleted in the following drafts, including in the last version which was finally approved by the FIFA Council.
171. This circumstance confirms in the Panel’s mind that the absence of any reference to a “*final and binding decision*” in the current version of Art. 5(1)(a) ii. FFAR is not purely coincidental but the result of a specific and deliberate choice.
172. Such conclusion is also corroborated by the indications provided in the FFAR FAQs Document, published by FIFA in March 2023. Under paragraph 3.7 of the FAQ Document, the relevant question regards the conviction in first instance of a criminal charge connected with corruption. The answer has a general scope and can also apply to the present case: “*3.7 Can an individual convicted of a criminal charge connected with corruption in a court of first instance apply for a licence? No. If a court of first instance convicts an individual of one of the criminal charges established in the FFAR, the individual may not apply for a licence. FIFA may request the disclosure of the criminal record of a relevant candidate/applicant to prove that they meet the eligibility requirements*”.
173. As a consequence, the Panel is persuaded that, although the decision of the Criminal Court of Guimarães has been appealed by the Appellant and is currently still under appeal, at present, the Appellant is not in the position to comply with the eligibility requirements under Art. 5(1)(a) ii. FFAR as a consequence of the Criminal Conviction.

### **Conclusion**

174. In view of the arguments expressed above, the Panel is satisfied that the Appealed Decision was rendered in compliance with the relevant applicable rules, that no violation of the Appellant’s right of defence occurred in the course of the licencing process, beyond the fact that the Appellant has also been granted full right to present his case in the present proceedings, present arguments, raise objections, rebut the Respondent’s allegations, in writing and at the hearing, and that the refusal of the Appellant’s License Application was justified by the failure of the Appellant to comply with the requirements under Art. 5(1)(a) ii FFAR. As a consequence, the Panel rejects the appeal lodged by the Appellant and confirms the Appealed Decision.

**IX. COSTS**

175. With regard to the cost of the proceedings, the Panel observes that the present case shall be governed by Article R64 of the CAS Code. According to Article R64.4 *“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”*.
176. Moreover, Article R64.5 of the CAS Code provides as follows:  
  
*“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”*
177. Given the outcome of these proceedings and considering that the appeal filed by José Pedro da Silva Maia Pinho is dismissed, the Panel is of the view that the costs of this appeal shall be borne entirely by the Appellant, in an amount to be notified by the CAS Court Office. In consideration of the fact that FIFA was not represented by an external counsel, the Panel deems it fair and reasonable for each party to bear their own legal costs and other expenses incurred in relation to these proceedings.

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## ON THESE GROUNDS

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

1. The appeal filed by Mr José Pedro da Silva Maia Pinho against FIFA with respect to the Decision rendered by the FIFA Agents Department on 8 August 2023 rejecting the Appellant's License Application is dismissed.
2. The decision rendered by the FIFA Agents Department on 8 August 2023 is entirely upheld.
3. The entire costs of the arbitration, including the costs in relation to the Order on Request for a Stay of the Appealed Decision, to be determined and served to the Parties by the CAS Court Office, shall be borne by Mr José Pedro da Silva Maia Pinho.
4. Mr José Pedro da Silva Maia Pinho and FIFA shall bear their own legal costs and other expenses respectively incurred in connection with these arbitration proceedings.
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland  
Date: 26 April 2024

## THE COURT OF ARBITRATION FOR SPORT

Fabio Iudica  
President of the Panel

João Nogueira da Rocha  
Co-arbitrator

Juan Pablo Arriagada Aljaro  
Co-arbitrator