



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

**CAS 2023/A/9940 1927 FK Shkupi v. FIFA & FC Aarau & FC Baden**  
**CAS 2023/A/9941 1927 FK Shkupi v. FIFA & FC Aarau & FC Baden**

## **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**

**Club 1927 FK Shkupi**, Northern Macedonia

Represented by Mr Talat Emre Koçak, Attorney-at-Law with Koçak & Nuhoğlu Hukuk Bürosu,  
Istanbul, Turkey

**- Appellant -**

**and**

**Fédération Internationale de Football Association**, Switzerland

Represented by Mr Roberto Nájera Reyes, Senior Legal Counsel, Litigation Department, Zurich,  
Switzerland

**- Respondent 1 -**

**FC Aarau**, Switzerland

**- Respondent 2 -**

**FC Baden**, Switzerland

**- Respondent 3 -**

## **I. THE PARTIES**

1. 1927 FK Shkupi (“FK Shkupi”) is a professional football club based in Northern Macedonia playing in the Macedonian highest division. FK Shkupi is affiliated to the Football Federation of Macedonia (the “FFM”).
2. Fédération Internationale de Football Association (“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.
3. FC Aarau (“FC Aarau”) is a professional football club based in Switzerland that is affiliated to the Swiss Football Association (the “SFV”).
4. FC Baden (“FC Baden”) is a professional club based in Switzerland that is affiliated to the SFV.
5. FIFA, FC Aarau and FC Baden are jointly referred to as “Respondents”. FK Shkupi and the Respondents are hereinafter jointly referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

5. This case revolves around two decisions rendered by FIFA (the “Appealed Decisions”) and notified to FK Shkupi, FC Aarau and FC Baden via the FIFA Transfer Matching System (“TMS”) on 31 July 2023 and 2 August 2023.
6. 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. 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 in the award only to the submissions and evidence he considers necessary to explain his reasoning.

### **A. BACKGROUND FACTS**

- i. *The transfer of the Player and the negotiations between FK Shkupi, FC Aarau and FC Baden*
6. On 16 February 2023, the player Stefan Mitrev (“the Player”) signed his first professional contract (the “Contract”) with FK Shkupi at the age of 20.
7. The Player played as an amateur player with FC Aarau from 22 July 2019 until 30 July 2021 and as an amateur player with FC Baden from 4 August 2017 until 14 July 2019.
8. Prior to signing the Contract, FC Aarau and FC Baden, on 9 December 2022, wrote a letter to FK Shkupi that reads as follows (“Waiver”):

We hereby confirm to you as the advisor of our former player Stefan Mitrev, born 14.02.2003, known to us, that FC Aarau AG [FIFA TMS ID: 869] and FC Baden 1897 [FIFA TMS ID: 50941] agrees in principle under the following conditions to waive the claim of the training compensation due to us (and other compensation in connection with the training and promotion of the player) in the amount of EUR 10'000.00 per calendar year in which the player was qualified for our clubs (until 22.07.2019) in accordance with the present regulations of the respective competent football bodies:

- FC Aarau AG and FC Baden will participate in a possible transfer of the player from FC Shkupi to a third club with 5% of the net transfer amount (sell-on fee) [applies to both a definite transfer and transfers on loan]

9. On 15 December 2022, FK Shkupi responded to FC Aarau's and FC Baden's letter as follows:

I refer to your letter dated 09.12.2022 in which you gave your confirmation and accepted that FC Shkupi is entitled to transfer Stefan Mitrev, born on 14.02.2003, without being obliged to make any training compensation and/or solidarity contribution with a condition that in case the Player is sold or loaned to any other club, FC Aarau and FC Baden are entitled to get a total amount of 5% from the amount (shared by both clubs) that FC Shkupi receives due to this permanent or loan transfer.  
FC Shkupi thanks hereby once again for your understanding and cooperation and looks forward to making new deals in this market with you.

ii. *The procedure according to the FCHR*

10. Article 5 of the FIFA Clearing House Regulations ("FCHR) provides – in its pertinent parts – as follows:

*"5.9 The first registration of a player as a professional at a different member association from that where the player was most recently registered as an amateur shall be entered in TMS as an international transfer as required by the RSTP and its Annexe 3.*

*5.10 TMS will identify, from the information provided in the international transfer instruction, the first registration of a player as a professional, which may trigger an entitlement to training rewards pursuant to the RSTP."*

11. The trigger of an entitlement to training rewards automatically generates a provisional electronic player passport ("provisional EPP"). This follows from Article 8(1) of the FCHR, which reads as follows:

*"When a training rewards trigger is identified as defined in these Regulations and in accordance with articles 20 and 21 of the RSTP, a provisional EPP for the relevant player will be generated by TMS."*

12. As a consequence of the above, a provisional EPP was generated for the Player on 16 February 2023, which was notified – *inter alia* – to FK Shkupi through TMS.
13. Following the issuance of a provisional EPP, the FCHR provide for an inspection and a review period. The provisions related to the inspection period provide as follows:

*"8.2 The provisional EPP will be available for inspection in TMS by all member associations and clubs for ten (10) days after generation (inspection period).*

*8.3 During the inspection period:*

*a) a member association that is not listed in the provisional EPP and believes that one or more of its affiliated clubs should be included in the final EPP may request to be included in the EPP review process;*

*b) a club that is not listed in the provisional EPP and believes that it should be included in the final EPP may request its member association to be included in the EPP review process and to provide pertinent registration information. Member associations must act in good faith when responding to this request.*

*8.4 Upon completion of the inspection period, the FIFA general secretariat will assess the provisional EPP for accuracy and relevance. It may discard a provisional EPP in cases where, according to the registration information available in the provisional EPP, there is no indication that the player was registered with a different member association. Upon the substantiated request of an interested member association or club, and even after a provisional EPP has been discarded, the FIFA general secretariat may, at its discretion, reopen a provisional EPP at any time.”*

14. The relevant provisions related to the Electronic Player Passport (“EPP”) review process read as follows:

*“9.1 Upon completion of the inspection period and after assessment by the FIFA general secretariat as per article 8, the FIFA general secretariat will open an EPP review process in TMS and invite the following parties to participate:*

- a) the member associations that have provided registration information relating to the player through the FIFA Connect interface;*
- b) their relevant affiliated club(s);*
- c) the new club and its member association;*
- d) any member association that has requested or been requested to be included (cf. article 8 paragraph 3) and their relevant affiliated club(s), at the discretion of the FIFA general secretariat; and*
- e) any other member association(s) deemed relevant by the FIFA general secretariat, at its discretion.*

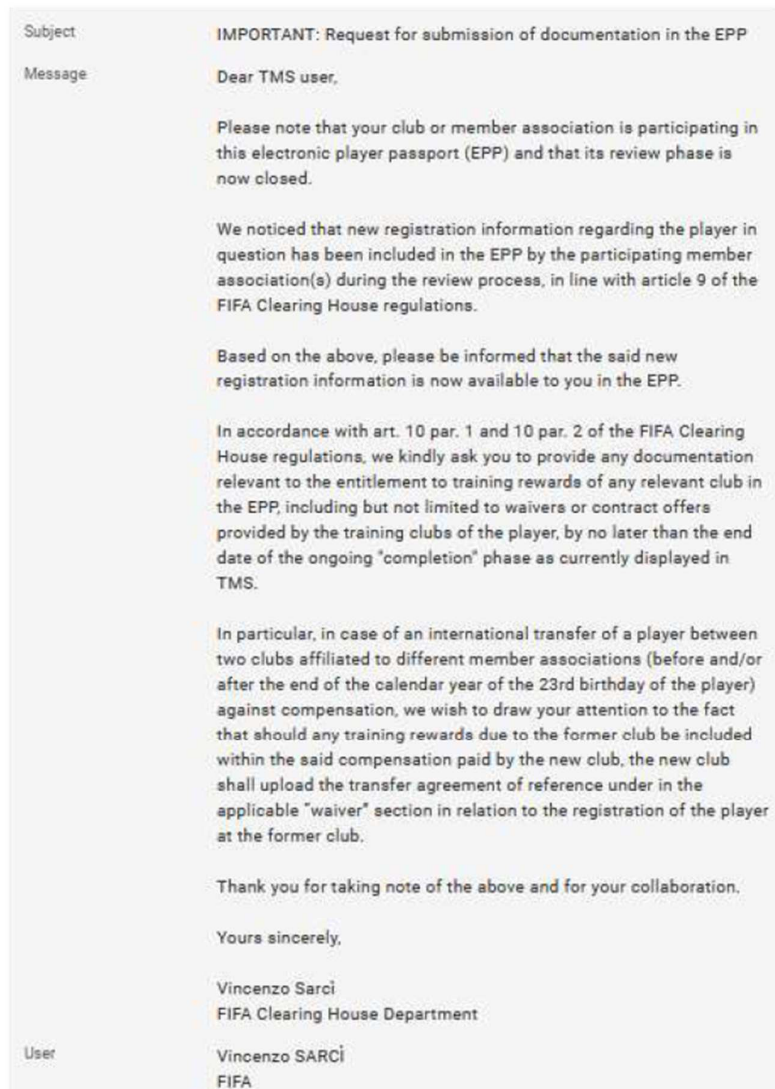
*9.2 The EPP review process shall last ten (10) days. The FIFA general secretariat may, at its discretion, exceptionally extend its duration.*

*9.3 Member associations may review and/or request the amendment of any registration information.  
...*

*9.4 Any request to amend registration information shall be submitted in TMS by the relevant member association. Such requests shall include, without limitation:*

- a) a document corroborating the registration of the player, issued by the member association;*
- b) a copy of any relevant International Transfer Certificate, if applicable; and*
- c) a copy of any relevant employment contract, if applicable.”*

15. In the case at hand the EPP for the Player was released for review on 28 February 2023. Therein, FK Shkupi was identified as a “party” within the meaning of Article 9.1 of the FCHR and informed via TMS that the EPP was open for review.
16. On 20 July 2023, FK Shkupi was informed through an automated message in TMS as follows:



17. The “*end date of the of the ongoing completion phase as currently displayed in TMS*” referred to in the above message is 26 July 2023.
18. Two automated emails were generated to inform FK Shkupi of the message sent through TMS.
19. A further automated email was sent to FK Shkupi on 25 July 2023, advising the latter that the Completion period was about to expire in the next 24 hours.
20. Despite the above messages, FK Shkupi did not upload any amendments of the registration information in TMS.
21. On 31 July 2023, the FIFA General Secretariat approved the EPP for the Player and issued the FIFA determination on the Electronic Passport 18779 for the Player (“Determination Statement”) which reads – in its pertinent parts – as follows:

**Conclusion**

13. 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.
14. FC Aarau 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.
15. FC Baden 1897 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.
16. No other club is entitled to training compensation.

22. On the same date, the Determination Statement was notified to FK Shkupi.
23. Still on the same date, the FIFA General Secretariat “generated” the Allocation Statement TC-1454 corresponding to the Player’s EEP (“Allocation Statement”). The pertinent parts of the Allocation Statement read as follows:

**Conclusion**

8. The new club FK SHKUPI- 1927 AD (FFM) shall pay training compensation to the training club(s) of the player in the total amount of EUR 90,876.72.
9. The following training club(s) shall receive the following payment(s).
- 9.1. The training club FC Baden 1897 (SFV/ASF) shall receive training compensation payments from the new club of the player in the amount of EUR 30,136.99.
- 9.2. The training club FC Aarau (SFV/ASF) shall receive training compensation payments from the new club of the player in the amount of EUR 60,739.73.
10. 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.
11. 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.

24. On 2 August 2023, the Allocation Statement was notified to FK Shkupi.
25. The Determination Statement and the Allocation Statement are jointly referred to as the “Appealed Decisions”.

iii. *Events following the FCHR-process*

26. On 11 August 2023, a representative of FK Shkupi wrote to FIFA as follows:



I refer to your determination dated 31.07.2023 in which you kindly asked our Club, FK Shkupi 1927, to pay 90.876,72.-EUR to the clubs FC Aarau and FC Baden despite there was no claim from the clubs.

The amount decided can cause the bankruptcy of the Club and the player is now playing in the 2<sup>nd</sup> league of Macedonia. Due to this reason on 09.12.2022, the mentioned Clubs, FC Aarau and FC Baden gave a letter to our Club which we present it hereby and they declared and announced that 5% of the transfer amount belongs to them and they have waived any claim related to training compensation.

As this allocation was related to the training compensations of the clubs and as they waived their right to claim it, I kindly ask FIFA to annul it.

The reason I could not submit this letter before any allocation was made and notified, all the correspondences of FIFA came to my email address that I cannot use due to a failure.

To this end, I kindly ask you to cancel the allocation statement and inform the parties herein.

27. Attached to the above letter to FIFA was the Waiver.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 22 August 2023, FK Shkupi filed a Statements of Appeal against the Appealed Decisions with the Court of Arbitration for Sport (“CAS”) in accordance with Articles R47 et seq. of the CAS Code of Sports-related Arbitration (the “Code”). In the Statements of Appeal FK Shkupi requested that the matters be submitted to a sole arbitrator in order to reduce the costs of the proceedings. The cases were docketed with the CAS under the procedure number CAS 2023/A/9940 and CAS 2023/A/9941.
28. On 24 August 2023, the CAS Court Office acknowledged receipt of FK Shupki’s Statement of Appeal and advised FK Shupki as follows:

As an initial matter, I note that you are challenging two separate decisions of Fédération Internationale de Football Association rendered on 31 July 2023 and 2 August 2023, respectively. Accordingly, your Statement of Appeal contains two separate appeals. As a consequence, while the CAS Court Office accepts a consolidated Statement of Appeal, two separate CAS Court Office fees have to be paid, one for each appeal procedure. Therefore, I invite you to pay an additional CAS Court Office fee of CHF 1’000 and to provide a copy of the proof of payment to the CAS within three (3) days from the receipt of the present letter by courier.

29. The letter also noted that, according to the evidence on file, the Determination Statement was notified to FK Shkupi on 31 July 2023 and that the deadline for filing an appeal therefore expired on 21 August 2022. Accordingly, the letter invited FK Shkupi to provide the CAS Court Office with a proof of sending of the Statement of Appeal in relation to the Determination Statement within three days from the receipt of this letter.
30. On 28 August 2023, FK Shupki informed the CAS Court Office that it had paid a further CAS Court Office fee. The email further advised the CAS Court Office that “*there is one decision of FIFA which was delivered us on 02.08.2023 and application to CAS can be made on 23.08.2023 instead of 21.08.2023. We made the necessary application on 22.08.2023. That date shall be within the appeal time*”.
31. On 30 August 2023, the CAS Court Office reiterated its initial request that FK Shkupi provide proof of notification of the Determination Decision.

32. On 31 August 2023, the CAS Court Office forwarded FK Shkupi's Statement of Appeal to the Respondents and, *inter alia*, informed the Parties that FK Shkupi had filed two appeals against the same Respondents that were docketed as CAS 2023/A/9440 and CAS 2023/A/9941. In addition, the CAS Court Office invited the Parties to inform the CAS Court Office, within 5 days as of receipt of the letter, whether they agreed to refer both proceedings to the same panel.
33. On 1 September 2023, FIFA informed the CAS Court Office that according to it the Allocation Statement and the Determination Statement constitute "*one single Appealed Decision in accordance with Article 10.5(b) and (d) of the [FCHR]*". In addition, FIFA wished the matters CAS 2023/A/9940 and CAS 2023/A/9941 to be consolidated and did "*not object to the cases being dealt with by the same Panel*". However, FIFA objected to the dispute being dealt with by a sole arbitrator.
34. On 2 September 2023, FK Shkupi filed its consolidated Appeal Brief with the CAS Court Office in the matters CAS 2023/A/9940 and CAS 2023/A/9941 in accordance with Article R51 of the Code.
35. On 4 September 2023, the CAS Court Office invited the Respondents to file their respective Answers within the deadline provided for in Article R55 of the Code. In addition, the CAS Court Office informed the Parties that it did not share FIFA's view according to which the Determination Statement and the Allocation Statement would constitute a single decision and that the CAS Court Office would therefore continue to consider both proceedings to be separate appeals.
36. On 5 September 2023, FIFA requested that its time limit for filing its Answer be set aside and fixed after the payment of FK Shkupi's share of the advance on costs in accordance with Article R55 para. 3 of the Code.
37. On the same date, the CAS Court Office accepted FIFA's request to set aside the time limit for the filing of the Answer.
38. On 26 September 2023, the CAS Court Office informed the Parties that the Deputy President of the CAS Appeals Arbitration Division had decided to submit both matters to the same sole arbitrator. In addition, the CAS Court Office informed the Parties that no Answer had been filed by FC Aarau and FC Baden in these proceedings and that the Panel may nevertheless proceed with the arbitration and deliver an award also in case a respondent fails to submit an Answer in accordance with Article R55 of the Code.
39. On 27 October 2023, FC Baden requested that "*the Second and the Third Respondents are to be excluded from the proceeding*" and that the "*costs of the proceedings an any party costs are to be awarded to the Appellant.*" The letter continued to state as follows:



In this matter, we confirm that we have reached an agreement with the Appellant and have waived training compensation for this case. We have uploaded this document to FIFA's online platform during the transfer. After consultation with the Appellant, it appears that the problem is that they uploaded this waiver to FIFA's online platform too late. Which is not the fault of the Second and Third Respondents.

However, we inform the court that we waive the training compensation claimed by FIFA in the sense of the agreement reached and ask you to exclude the Second and Third Respondents from the proceeding. The costs incurred are therefore to be paid exclusively by the Appellant.

40. On 30 October 2023, the CAS Court Office acknowledged receipt of the FC Baden's letter and invited FK Shkupi to provide the CAS Court Office with its position in relation to the above request.
41. On 3 November 2023, the CAS Court Office informed the Parties that FK Shkupi had paid its share of the advance of costs and that FIFA's deadline to file an Answer was therefore set in accordance with Article R55 of the Code.
42. On the same date, the CAS Court Office noted that it had not received any comments from FK Shkupi on FC Baden's request and that FC Baden and FC Aarau shall therefore remain a party to the present proceedings.
43. On 10 November 2023, FIFA requested a 20-day extension of the deadline to file its Answer.
44. On the same date, the CAS Court Office granted FIFA a 10-day extension to file its Answer. In addition, the CAS Court Office invited FK Shkupi to comment on FIFA's request for an additional 10-day extension within 3 days.
45. On 17 November 2023, the CAS Court Office informed the Parties that it had not received any response from FK Shkupi in relation to its letter dated 10 November 2023 and that FIFA's deadline to file its Answer was therefore extended by a further 10 days.
46. On 11 December 2023, FIFA requested a further extension of the deadline to file the Answer until 23 December 2023.
47. On 12 December 2023, the CAS Court Office invited FK Shkupi to comment on FIFA's request for an extension of the deadline.
48. On the same date, FK Shkupi informed the CAS Court Office that it did not agree to extend FIFA's deadline to file its Answer.
49. Still on the same date, the CAS Court Office informed the Parties that, absent an agreement between the Parties, FIFA's request for an extension of the deadline would be submitted to the President of the CAS Appeals Arbitration Division, or her Deputy, in accordance with Article R32 para. 2 of the Code.
50. On 13 December 2023, the CAS Court Office informed the Parties that FIFA is granted an additional 5-day extension of the deadline to file its Answer.
51. On 18 December 2023, FIFA filed its consolidated Answer in the matters

CAS 2023/A/9440 and CAS 2023/A/9441.

52. On 19 December 2023, the CAS Court Office informed the Parties that, in accordance with Article R54 of the Code, the Deputy 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, Switzerland and Attorney-at-law in Hamburg, Germany

53. The letter also invited the Parties to inform the CAS Court Office by 27 December 2023 whether they preferred a hearing to be held in this matter and/or whether they requested a case management conference (“CMC”) to be held.
54. On 20 December 2023, FK Shkupi informed the CAS Court Office about its preference for the Sole Arbitrator to issue the award based solely on the Parties’ written submissions.
55. On 26 December 2023, FIFA informed the CAS Court Office that it considered a hearing to be unnecessary and that it did not request the holding of a CMC.
56. On 8 January 2024, the CAS Court Office informed the Parties that the Sole Arbitrator had decided, in light of the comments of the Parties, to issue an award based on the Parties’ written submissions, without the need to hold a hearing or a CMC. In addition, the CAS Court Office invited the Parties to state whether they agreed that the Sole Arbitrator renders one award encompassing both proceedings and that a party’s silence would be deemed acceptance of one award encompassing both proceedings.
57. On the same date, FIFA informed the CAS Court Office that it agreed to a single award encompassing both proceedings.
58. On 9 January 2024, FK Shkupi agreed that the Sole Arbitrator issues a single award covering both proceedings.
59. On 10 January 2024, the CAS Court Office issued the Order of Procedures (“OoPs”) in both proceedings and invited the Parties to return signed copies hereof on or before 17 January 2024.
60. On 11 January 2024, FIFA returned signed copies of the OoPs to the CAS Court Office.
61. On 12 January 2024, the CAS Court Office acknowledged receipt of FIFA’s letter and noted that the Second and Third Respondent had failed to respond to the CAS Court Office letter dated 8 January 2024. Accordingly, the Second and Third Respondents’ silence was construed as consenting to the issuance of a single award encompassing both proceedings.
62. Also on the same date, FK Shkupi returned a signed copy of the OoP in the procedure CAS 2023/A/9940.
63. Still on the same date, the CAS Court Office acknowledged receipt of the OoP in the matter CAS 2023/A/9940 and invited FK Shkupi to return a signed copy of the OoP in

the other proceeding, i.e. CAS 2023/A/9941.

64. On 15 January 2024, the CAS Court Office acknowledged receipt of FK Shkupi signed copy of the OoP in CAS 2023/A/9941.

#### **IV. PARTIES' POSITIONS AND RESPECTIVE PRAYERS FOR RELIEF**

65. 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. FK Shkupi**

66. In its Statement of Appeal (that is identical for CAS 2023/A/9440 and CAS 2023/A/9441), FK Shkupi sought the following relief:

*"1. To set aside the decision of the FIFA,  
2. To condemn ... [FIFA] and ... [FC Aarau] to bear all the costs of the arbitration and to pay an attorneyship fee of CHF 4.000."*

67. In support of the above prayers for relief, FK Shkupi submits as follows:

- a) It has received on 9 December 2022 from FC Aarau and FC Baden a letter "*which clearly states that they have no claim regarding training compensation and in case the Player ... is sold in return for an amount 5% of the mentioned amount will be shared by ... [FC Aarau and FC Baden].*"
- b) FC Baden and FC Aarau did not apply to FIFA for any payments for training rewards. Despite of this FIFA decided that FK Shkupi must pay EUR 60,739.73 to FC Aarau and EUR 30,136.99 to FC Baden.
- c) FK Shkupi did not receive any correspondence from FIFA.

##### **B. FIFA**

68. 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."*

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

- a) CAS has jurisdiction to hear the present appeal.
- b) The CAS shall primarily apply the various regulations of FIFA (in particular the

FIFA Statutes and the FCHR) and, additionally, Swiss law.

- c) The Allocation Statement and the Determination Statement constitute a single decision as per Article 10.5 of the FCHR. This is further confirmed by the fact that once the Determination Statement is issued, the Allocation Statement is automatically generated. It therefore does not come as a surprise that both “decisions” in the case at hand were issued on the same date and subsequently jointly notified via TMS. Qualifying the Allocation and the Determination Statement jointly as the matter in dispute is also in conformity with CAS jurisprudence.
- d) FIFA introduced the Clearing House as a key element of the transfer system reform package adopted at the FIFA Council in 2018 in order to promote and protect the integrity of professional football (cf. Article 1.2 of the FCHR). In particular, the new system is designed to ensure that training rewards (training compensation and solidarity contribution) are effectively paid to the clubs that are entitled to them. The specificities of the new system are as follows:
- Even though the system is largely automatised, it provides for a review process that requires the participation of the relevant clubs and member associations, to enable FIFA to determine the final EPP.
  - In order to achieve the objectives, i.e. to enforce claims for training rewards in favor of clubs entitled to such payments, an extremely large number of player passports have to be processed. Since November 2022, more than 14,500 EPPs have been generated.
  - It is of outmost importance that the rules be applied strictly. This follows from an administrative point of view in light of the high numerical context. It is impossible for FIFA to allow exceptions to the rules in case a club does not respect the relevant administrative deadlines or the relevant conditions established therein. The efficiency of the system is linked to its automatisation. Thus, FIFA cannot allow for a “flexible approach”.
  - Once the Determination Statement and the Allocation Statement are issued, they are also shared with the FIFA Clearing House Entity (“FCH Entity”). The latter is an independent and regulated payment service institution based in France and licensed and supervised by the French Prudential Supervision and Resolution Authority. The FCH Entity performs a due diligence and compliance assessment on all parties involved before any payments are processed.
  - FIFA does not prevent, nor does it 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, since such agreements do not circumvent the objectives of the system.
- e) Article 9 of the FCHR imposes on a player’s new club the obligation to upload into TMS any waiver to training rewards during the EPP review process.
- Such obligation is mandatory.
  - It is uncontested that FK Shkupi did not comply with its obligation.

- FK Shkupi had ample opportunities to participate in the EPP process and to upload any waiver. This is evidenced by the following timeline:
  - On 16 February 2023, the provisional EPP was generated and FK Shkupi was included by “default” as a participant in the EPP process. FK Shkupi received a notification of this event in its TMS dashboard and, additionally, an automated EPP email notification.
  - On 28 February 2023, the EPP was released for review in which FK Shkupi was able to participate. FK Shkupi received a notification of this event in its TMS dashboard and, additionally an automated EPP email notification.
  - The TMS user of FK Shkupi accessed the section related to the EPP 18779 on 3 March 2023 and was able to view the relevant information.
  - On 8 March 2023, the SFV uploaded the “proof of registration” of the Player with the clubs FC Aarau and FC Baden.
  - On 20 July 2023, FIFA informed FK Shkupi that the review phase “is now closed” and that, despite of the above, FK Shkupi had until 26 July 2026 to upload in TMS any documentation relevant to the entitlement to training rewards “including but not limited to waivers”.
  - Still on 20 July 2023, FK Shkupi received two automated EPP notification emails informing it of the aforementioned message and the opening of the Completion Period within the meaning of Article 10 of the FCHR. Once again, FK Shkupi was invited to upload the relevant documentation such as “waivers of training rewards”.
  - On 25 July 2023, FK Shkupi was advised that the Completion period was about to end within the next 24 hours.
- f) Article 10.1 of the FCHR provides that “failure to comply with FIFA’s request within the time limit shall result in the request being disregarded”. As FK Shkupi failed to upload any waiver within the deadline applicable, FIFA was correct in issuing the Appealed Decisions.
- g) FK Shkupi is precluded from submitting new documents (or any document that could and should have been presented during the administrative EPP process). Any other approach would constitute a circumvention of the applicable rules and the FCH system as a whole.
- h) FIFA holds that the CAS must consider and decide, despite its *de novo* power of review whether the Appealed Decisions are correct in accordance with the information given by the Parties during the relevant EPP administrative process. It is not permissible to introduce alleged evidence which could and should have been provided during the administrative EPP process. FIFA requests the Sole Arbitrator to apply Article R57 para. 3 of the Code according to which 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.*” Such application of Article R57 para. 3 of the Code is justified in order to protect the objectives of the FCH and the well-functioning of the administrative process.

- The submission of documents during a CAS appeal procedure that could have been submitted during the EPP process raises concerns as to the authenticity and credibility of such documents.
  - Admitting new documents at this late stage opens the door for abuse, i.e. to potential forgery of waivers, backdated agreements and other fraudulent activities. It also creates an opportunity for clubs to bypass the system and avoid using the FCH for payments, including undergoing the relevant compliance assessment.
  - FIFA also refers to the process for an international player’s transfer. International Transfer Certificates are processed through TMS where the relevant clubs need to upload several documents.
  - It follows from all of the above that the Appealed Decisions cannot be modified at CAS level. Such approach is not excessively formalistic, since the relevant EPP process requires strict compliance and approach with the rules.
- i) FK Shkupi was aware that all communications related to the EPP process are exchanged through TMS. This clearly follows from the FCHR.
- All parties have the obligation to review the TMS on a daily basis in accordance with Article 2.1 of the FCHR and Article 10 of the Procedural Rules of the Football Tribunal (“Procedural Rules”) to which Article 21.1 of the FCHR refers.
  - FK Shkupi has not alleged or proven that it did not have access to TMS or that it could not participate in the EPP process.
  - When looking at TMS activity of FK Shkupi in the period from February to August 2023 it becomes apparent that FK Shkupi was able to access the TMS and the notifications contained therein. FK Shkupi logged on to TMS on a regular basis, performed various activities on the platform and even accessed the EPP in question (on 1, 2 and 15 March 2023).
  - Furthermore, FK Shkupi received various reminders and notifications. In order for these reminders / notifications to be successfully notified it suffices, according to the Swiss legal doctrine, that the addressee of the statement *“had the opportunity to obtain knowledge of the content irrespective of whether such a person has in fact obtained knowledge ... Thus, the relevant point in time is when a person receives the decision and not when it obtains actual knowledge of its content.”* This principle has been retained also by CAS jurisprudence, most recently in CAS 2022/A/8598.

#### **C. FC Aarau and FC Baden**

70. Apart from the letter sent by FC Baden on 27 October 2023 to the CAS Court Office, FC Aarau and FC Baden did not participate in these proceedings.

## V. JURISDICTION

71. Article R47 para. 1 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.”*

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

Article 57 para. 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).”*

73. The jurisdiction of CAS is not contested and is further confirmed by the OoPs in both proceedings duly signed by FK Shkupi and FIFA. Furthermore, FC Aarau and FC Baden have not contested the CAS jurisdiction in their letter dated 27 October 2023.

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

## VI. ADMISSIBILITY

75. 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.”*

76. As for the deadline to file an appeal, in accordance with Article R49 of the Code, Article 57 para. 1 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 on 22 August 2023. The question, thus, is what the relationship is between the Determination Statement and the Allocation Statement, more particularly whether they constitute a single decision or two separate appealable “decisions” within the meaning of Article R47 of the Code. In the latter case the deadline for appealing the Determination Statement would have expired by the time FK Shkupi filed its appeal, since the Determination Statement was notified to FK Shkupi on 31 July 2023.

77. In this regard, the Sole Arbitrator is of the view that the Determination Statement and the Allocation Statement constitute two distinct decisions. The reference number of both decisions is different (“EPP 18779” and “TC 1454”), their contents is different, and both decisions contain a separate notice of legal remedies. In the Determination Statement at para. 19, it is stated that “this decision may be appealed before the Court of Arbitration



*for Sport within 21 days of notification*” (emphasis added). Similarly, para. 12 of the Allocation Statement states that “*this decision may be appealed before the Court of Arbitration for Sport within 21 days of notification*” (emphasis added). If, however, both decisions contain separate notices of legal remedies, both decisions must be separately appealable.

78. The above stands somehow in contrast to the provisions in the FCHR. Article 10.5 of the FCHR 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 ...*

*d) A valid and timely appeal to CAS shall suspend the legal effects of an EPP and of the corresponding Allocation Statement for the duration of the respective proceedings before the CAS.” (emphasis added)*

79. Thus, when reading the FCHR it appears – contrary to what is expressed in the notice of legal remedies – that the time limit for appealing the decisions (i.e. the 21 days) does not start with the notification of the decision in question, but only starts running once *both* decisions (i.e. the Determination Statement and the Allocation Statement) have been notified to the addressee. This contradiction between the contents of the Determination Statement / Allocation Statement and the applicable rules cannot go to the detriment of FK Shkupi. The latter relied on the wording of Article 10.5 of the FCHR and must therefore be protected in this trust. Consequently, the Sole Arbitrator finds that since FK Shkupi received the second decision only on 2 August 2023, the deadline for appealing both the Determination Statement and the Allocation Statement only expired on 23 August 2023. It follows from the above that the Statement of Appeal against both decisions was filed within the applicable deadline.

## VII. OTHER PROCEDURAL ISSUES

80. FC Aarau and FC Baden (apart from the letter sent on 27 October 2023) did not participate in these proceedings. More particularly, they did not file an Answer neither in procedure CAS 2023/A/9940 nor in procedure CAS 2023/A/9941. However, in accordance with Article R55 para. 2 of the Code, this does not prevent the Sole Arbitrator to proceed with the arbitration and to issue an award.

## VIII. APPLICABLE LAW

81. 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.”*

82. Article 56 para. 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.”*

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

#### **IX. MANDATE OF THE SOLE ARBITRATOR**

84. According to Article R57 para. 1 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.

##### **A. The Position of the Parties**

85. The Sole Arbitrator recalls that the Parties are in dispute whether the Waiver can be submitted as evidence before the CAS in these proceedings. FIFA submits that the power of the CAS is limited to the issues before the previous instance. It is not admissible – according to FIFA – to reintroduce a waiver before the CAS that has not been uploaded in TMS in the EPP process. FIFA submits that the Sole Arbitrator is thus limited to reviewing whether the Appealed Decisions were correct. FK Shkupi, on the contrary, submits that the Sole Arbitrator shall set aside the Appealed Decisions based on the Waiver.

##### **B. The Finding of the Sole Arbitrator**

86. The Sole Arbitrator is mindful of the decision in the matter CAS 2018/A/5808 where the CAS panel at para. 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 ‘on-going 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.”*

87. 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 para. 3 of the Code applies.

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

88. The applicable regulations in the case at hand neither explicitly nor implicitly deviate from the *de novo* principle in Article R57 para. 1 of the Code. More particularly, Article 10 para. 3 of the 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.”*

89. First, the scope of the Procedural Rules is limited. According to Article 1 para. 1 of the Procedural Rules, the scope of the provisions only governs the “*organisation, composition and functions of the Football Tribunal*.” Thus, the Procedural Rules do not deal with proceedings before the CAS. Furthermore, Article 10 para. 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.

90. Also, Article 10.5 of the FCHR does not appear to deviate from the *de novo* principle. The Sole Arbitrator recalls that this 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).”*

91. 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 parts – 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.”*

92. 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 to TMS.
93. 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.
94. In the light of the above, 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 para. 3 of the Code*

95. Article R57 para. 3 of the Code provides – in its relevant parts – 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.”*

96. 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 at para. 95, where the sole arbitrator found as follows:

*“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.”*

97. The Sole Arbitrator follows the above restrictive approach. It is beyond dispute that FK Shkupi acted negligently by not uploading the information pertaining to the Waiver even though being invited to do so on numerous occasions by FIFA. Despite of this, the Sole Arbitrator is of the view that – absent a case of abuse – justice is better served by admitting the evidence that was already available at the time when the Appealed Decisions were issued.

**X. MERITS**

98. 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 issue the Appealed Decisions and the latter were factually and legally correct based on the evidence before FIFA.

99. However, as previously explained, the decisive reference date for the Sole Arbitrator's assessment of the case at hand is the date when the Parties were advised that the Sole Arbitrator deems himself sufficiently informed and decided to issue an award based on the Parties' written submissions. The evidence before the Sole Arbitrator at such reference date is that there was a waiver of the claim for training compensation by FC Aarau and FC Baden. There is nothing 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. Finally, there is no evidence on file that FK Shkupi tried to circumvent the FCHR.

## **XI. SUMMARY**

100. In view of all of the above, the appeal must be upheld and, consequently, the Appealed Decisions must be set aside.

## **XII. COSTS**

101. 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."*

102. 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."*

103. The Sole Arbitrator is aware that the proceedings before the CAS were provoked by the FK Shkupi 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. However, the Sole Arbitrator is also

mindful that FIFA instead of accepting FK Shkupi's claim contested the latter. Consequently, FIFA must bear the costs of these proceedings in the amount that will be determined and notified to the Parties by the CAS Court Office. FC Aarau and FC Baden neither gave rise to the initiation of these proceedings nor did they participate in these proceedings. Thus, the Sole Arbitrator finds that FC Aarau and FC Baden shall not bear any costs.

104. 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 outcome of the arbitration, the fact that no hearing was necessary and, in addition, the conduct and the financial resources of the Parties and finds that FIFA shall pay a contribution towards of FK Shkupi's legal fees and other expenses incurred in connection with these arbitration proceedings in the amount of CHF 2,000. FC Aarau and FC Baden shall bear their own legal fees and expenses incurred in these proceedings, if any.

## **ON THESE GROUNDS**

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

1. The appeals filed on 22 August 2023 by FK Shkupi against the FIFA Determination on the Electronic Player Passport 18779 for the Player Stefan Mitrev dated 31 July 2023 and the FIFA Allocation Statement TC-1454 corresponding to the Electronic Player Passport 18779 for the player Stefan Mitrev dated 2 August 2023 are upheld.
2. The FIFA Determination on the Electronic Player Passport 18779 for the Player Stefan Mitrev dated 31 July 2023 and the FIFA Allocation Statement TC-1454 corresponding to the Electronic Player Passport 18779 for the player Stefan Mitrev dated 2 August 2023 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 in their entirety by the Fédération Internationale de Football Association.
4. Fédération Internationale de Football Association shall bear its own costs and is ordered to pay to FK Shkupi a total amount of CHF 2,000 (two thousand Swiss francs) as contribution towards its legal fees and other expenses incurred in connection with these arbitration proceedings. FC Aarau and FC Baden shall bear their own legal fees and expenses.
5. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 6 May 2024

## **THE COURT OF ARBITRATION FOR SPORT**

Ulrich Haas  
Sole Arbitrator