CAS 2023/A/9955 FC Zenit v. Solovev Nikolai, OFK Grbalj & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal

Arbitrators: Mr Ulrich Haas, Law Professor in Zurich, Switzerland and Attorney-at-Law in Hamburg, Germany
Mr Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland

in the arbitration between

Football Club Zenit, Saint Petersburg, Russia
Represented by Ms Maria Pryakhina and Ms Anastasia Malyarchuk, Senior Legal Counsels at FC Zenit, Legal Department

– Appellant –

v.

Mr Nikolai Solovev, Moscow, Russia
Represented by Messrs Yury Zaytsev, Ilya Chicherov, Yury Yakhno and Ms Daria Lukienko, Attorneys-at-Law in Moscow, Russia

– First Respondent –

OFK Grbalj, Radanovici, Montenegro
Acting through its President Mr Ivo Magud

– Second Respondent –

and

Fédération Internationale de Football Association, Zurich, Switzerland
Represented by Mr Miguel Liétard-Palacios, Director of Litigation and Mr Saverio Paolo Spera, Senior Legal Counsel, FIFA Litigation Department, Zurich, Switzerland

– Third Respondent –

I. PARTIES

1. **Football Club Zenit** (the "Appellant", the "FC Zenit" or the "Former Club") is a Russian professional football club with headquarters in Saint Petersburg, Russia, affiliated to the Football Union of Russia (the "FUR"), which in turn is a member association of the Fédération Internationale de Football Association (the "FIFA") and currently competing in the Russian First Division of professional football.

2. **Mr Nikolai Solovev** (the "First Respondent" or the "Player") is a professional football player from Russia, born on 10 June 2004, currently playing with the Serbian football club FK Mladost GAT Novi Sad, which competes in the Serbian Second Division of professional football.

3. **OFK Grbalj**, (the "Second Respondent", the "OFK Grbalj" or the "New Club"), is a professional football club with headquarters in Radanovići, Montenegro, affiliated to the Football Association of Montenegro (the "FAM"), which in turn is a member association of FIFA and currently competing in the Montenegrin Second Division of professional football.

4. **Fédération Internationale de Football Association** (the "Third Respondent" or the "FIFA") is an association incorporated under Swiss law with its registered office in Zurich, Switzerland. FIFA is the governing body for football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players worldwide.

5. The Player, OFK Grbalj and FIFA are collectively referred to as the "Respondents".

6. The Appellant and the Respondents are collectively referred to as the "Parties".

II. FACTUAL BACKGROUND

7. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. This factual background information is given for the sole purpose of providing a synopsis of the matter in dispute. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award ("Award") only to the submissions and evidence it considers necessary to explain its reasoning.

(A) The Appealed Decision

8. This appeal case ("Appeal"), which concerns an employment-related dispute between FC Zenit against the Player and OFK Grbalj, is related to the challenge against the decision adopted by the Dispute Resolution Chamber of the FIFA Football Tribunal (the "FIFA DRC")

on 3 August 2023, in which the FIFA DRC concluded not having jurisdiction to hear the FC Zenit's claim against the Player and the OFK Grbalj (the "Appealed Decision").

(B) The FC Zenit's claim against the Player and the OFK Grbalj

9. On 20 June 2022, the FC Zenit and the Player concluded an employment contract valid as from 1 July 2022 until 10 June 2023 (the "Employment Contract"). Among other clauses in the Employment Contract, and in the context of the FC Zenit's claim, it is highlighted the following clauses:

(i) Clause 7.1: *"(...) the* [FC Zenit] *shall pay the* [Player] *(...) the salary of* [RUB 22,000] (…) [and] *a fixed monthly personal allowance in the amount of* [RUB 8,000]."; and

(ii) Clause 11.3: *"if any dispute relating to the Agreement arises between the Parties, it shall be settled through negotiations. If the dispute is not settled by the Parties, it shall be submitted exclusively to the FUR Dispute resolution chamber. The Parties agree that the decision of FUR Dispute Resolution Chamber may be appealed to Court of Arbitration for Sport/Tribunal Arbitral du Sport (Lausanne) in accordance with the FUR Regulations on dispute resolution and in accordance with the Code of Sport-related Arbitration."*

10. On or about 5 October 2022, FC Zenit claimed that the Player left Russia for Serbia without authorization or explanation, and, in consequence, the Player ceased to comply with his employment obligations.

11. On 10 October 2022, FC Zenit sent a notice to the Player putting him in default and requested him to (a) provide an explanation as to his absence; (b) cease breaching the Employment Contract and (c) resume his duties. The Player did not resume his duties and did not give any reasons for the situation.

12. On 17 October 2022, FC Zenit sent an additional notice to the Player, reiterating its previous correspondence and warning him that if he was not resuming his duties within 2 days, or providing valid reasons for his absence, the Employment Contract would be terminated with just cause.

13. On 17 October 2022, the Player decided to terminate the Employment Contract and sent a letter (the "Player's Termination Notice") to FC Zenit informing the following:

"(...)

I, Solovev Nikolai Nikolaevich, with reference to provisions of Article 77, Part 1, Clause 3, Article 80, Article 348.12 of the Labor Code of the Russian Federation, ask to be dismissed of my own free will on 11 November 2022.

The motive for making the decision to be dismissed at my own request was the actual exclusion of me as an athlete from the game process, transfer to participate in training events in the younger training age group, that, in turn, completely blocks the opportunity for me to improve sportsmanship and professional growth, makes the job meaningless.

(...)"

14. On 20 October 2022, FC Zenit sent a letter to the Player terminating the Employment Contract (the "FC Zenit's Termination Notice"), informing, *inter alia*, the following:

"(...)

On 10 October 2022 and 17 October 2022, FC Zenit (…) *sent you the demand to stop breaching the* [Employment Contract] *(...). Nevertheless, you have not resumed execution of your labor obligations; the* [FC Zenit] *has received neither response (...), nor any explanation of the reasons of your absence in the workplace.*

Thus, during the period from 05 October 2022 through 20 October 2022 you were absent from the workplace without just cause and did not fulfil your labor obligations, which is the valid reason for termination of the labor agreement by the Club with just cause. Moreover, on 18 October 2022 the Club received your letter of dismissal on your own will without just cause. We draw your attention that by the date you sent the letter of dismissal to FC Zenit, you had not executed your labor obligations for the long time, to be exact for 13 days.

In light of the above, based on article 81 (6.a) of the Labor Code of the Russian Federation (unauthorized absence), we hereby inform you of termination of the [Employment Contract] *at the* [FC Zenit's] *initiative on 20 October 2022 (the last day of your employment at FC Zenit). We ask you to arrive at the Club immediately to sign the order of dismissal.*

We draw your attention once again that the Club intends to claim compensation from you and/or your future football club, as well as the application of sporting disqualification to you.

(...)"

15. At the end of October 2022, Russia announced that its partial mobilization of male citizens to fight in Ukraine had been completed and that around 300,000 men had been successfully recruited.

16. On 14 December 2022, FC Zenit sent a claim to the Player and demanded financial compensation for unilateral termination of the Employment Contract without just cause in the amount of RUB 911,221.00. The compensation amount is claimed and based on FIFA and FUR' regulations. The Player has never replied to this communication.

17. On 8 February 2023, the Player and OFK Grbalj entered into an employment relationship, valid as from the same date until 20 June 2023 (the "New Employment Contract").

18. On 9 February 2023, OFK Grbalj wrote to FC Zenit and enquired it about the Player's status.

19. On 10 February 2022, OFK Grbalj entered a transfer instruction in the Transfer Matching System (the "TMS") to "*engage the player out of contract*" on a permanent basis and the FAM requested the Player's International Transfer Certificate ("ITC").

20. On 11 February 2023, the FUR delivered the Player's ITC to the FAM, without any observations.

21. On 13 February 2023, FC Zenit informed OFK Grbalj that the Player was obliged to pay it compensation for breach of the Employment Contract and warned it that, in the event of the Player's registration, OFK Grbalj would be jointly and severally liable for payment of the compensation due to it. This communication was never answered by OFK Grbalj.

22. On 13 February 2023, the Player was registered with the FAM and OFK Grbalj and, consequently, FC Zenit submitted a claim before the FIFA DRC.

(C) The proceedings before the Dispute Resolution Chamber of the FIFA Football Tribunal

23. On 31 May 2023, FC Zenit filed before the FIFA DRC a claim against the Player and OFK Grbalj based on the argument that the Player terminated the Employment Contract without just cause (the "Claim"). FC Zenit also invoked Article 17(2) of the Regulations on the Status and Transfer of Players (the "RSTP") and claimed that OFK Grbalj had to be found jointly liable for the payment of the requested compensation.

24. On 3 August 2023, the FIFA DRC rendered the Appealed Decision, deciding as follows:

"1. The Football Tribunal does not have jurisdiction to hear the claim of the (...) FC Zenit (...).

2. This decision is rendered without costs."

25. On 14 August 2023, the Appealed Decision was communicated to the Appellant, the First and Second Respondents. In essence, the Appealed Decision's grounds can be summarized as follows:

a. FIFA DRC is competent to deal with employment-related disputes between a club and a player of an *international dimension*, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level.

b. The "*international dimension*" is a mandatory requirement.

c. FC Zenit and the Player have the same nationality and, therefore, Article 22 (1) (b) RSTP cannot apply.

d. Article 22 (1) (a) RSTP grants FIFA DRC the authority to decide on disputes between players and clubs that affect the maintenance of contractual stability, especially when they involve a request for an ITC and a related claim by a party interested in that request, *i.e.* FIFA can intervene when a player wants to be transferred to another club in another member association and there is a conflict with the former club over the contract previously concluded between them.

e. The dispute in relation to the Player's engagement with OFK Grbalj happened long after the termination of the Employment Contract and no dispute has been raised, either by FC Zenit or the FUR on its behalf, in relation to the issue of the ITC from the FUR to the FAM. The Player's transfer to OFK Grbalj is not connected to the contractual dispute that is the basis of the FC Zenit's claim, because this transfer happened several months after the Player's alleged breach of the Employment Contract.

f. Article 22 (1) (a) RSTP cannot apply because the contractual dispute between FC Zenit and the Player is not related to an ITC request.

g. In conclusion, the dispute between the Appellant and the First and Second Respondents does not have the required "*international dimension*".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

26. On 1 September 2023, the Appellant filed with the Court of Arbitration for Sport (the "CAS") a statement of appeal (the "Statement of Appeal"), in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"), challenging the Appealed Decision. The Appellant also nominated as arbitrator Prof. Dr Ulrich Haas, Law Professor in Zurich, Switzerland and Attorney-at-Law in Hamburg, Germany.

27. On 21 September 2023, the Respondents confirmed the joint nomination of Mr Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland, as arbitrator.

28. On 25 September 2023, within the extended time limit, the Appellant filed its appeal brief ("Appeal Brief").

29. On 8 December 2023, FIFA file its Answer, followed on 18 December 2023 by the Answers of the First and Second Respondent (the "Answer" or the "Answers").

30. On 26 January 2024, the Appellant informed that it did not consider it necessary for a hearing to be held given the case at hand could be resolved on the basis of the parties' written submissions.

31. On 29 January 2024, the Third and First Respondents informed the CAS that they also did not consider it necessary for a hearing to be held and preferred the Award to be passed on the basis the parties' written submissions.

32. On 30 January 2024, the Second Respondent also confirmed that it did not consider it necessary for a hearing to be held and it preferred the Award to be passed on the basis of the parties' written submissions.

33. On 8 February 2024, the CAS Court Office informed the Parties that the Panel appointed to decide the above-referenced case was constituted as follows:

President: Mr Rui Botica Santos, Attorney-at-Law in Lisbon, Portugal

Arbitrators: Prof. Dr Ulrich Haas, Professor in Zurich, Switzerland and Attorney-at-Law in Hamburg, Germany
Mr Michele A.R. Bernasconi, Attorney-at-Law in Zurich, Switzerland

34. Considering the Parties' preference for the Award to be issued based on their written submissions, the Panel decided that it was not necessary to hold a hearing.

35. On 6 March 2024, the CAS Court Office issued the Order of Procedure, which was duly signed, without reservations, by the Parties. By signing the Order of Procedure, the Parties accepted that the Panel would decide the present dispute solely based on the Parties' written submissions and that they would waive the holding of a hearing for the oral discussion of the dispute, without this affecting their right to be heard.

IV. THE PARTIES' SUBMISSIONS

36. The following summary of the Parties' positions is illustrative and does not necessarily comprise each contention put forward by the Parties. The Panel, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

(A) The Appellant's Submissions

37. In its Appeal Brief the Appellant submits the following prayers and requests to the CAS:

"(...)

1. *To set aside the* [Appealed Decision], *i.e. to rule that FIFA Football Tribunal had (and still has) the jurisdiction to hear the claim of FC Zenit against the Player and FC Grbalj, and to pass a new decision, which replaces the challenged decision.*

2. *To declare that:*
   2.1. The First Respondent and Second Respondent shall pay FC Zenit EUR 15,077.00 (...) net, being the amount of compensation for the unilateral termination of the labor agreement;
   2.2. The First Respondent and Second Respondent shall pay the annual interest of 5% on the amount of compensation staring from 21 October 2022.

   Or, alternatively (without prejudice and only in case if the prayers under par. 1 and 2 of this Appeal Brief are rejected).

3. *To set aside the* [Appealed Decision], *i.e. to rule that FIFA Football Tribunal had (and still has) the jurisdiction to hear the claim of FC Zenit against the Player and FC Grbalj, and refer the case back to the previous instance.*

4. *In addition to prayers 1, 2 and 3 of this Appeal Brief, the First Respondent and Second Respondent shall pay a contribution to the Appellant of CHF 3,000 towards its legal and other expenses.*

5. *In addition to prayers under par. 1, 2 and 3 of this Appeal Brief the First Respondent and Second Respondent shall bear the entire CAS administration costs and the Arbitrator(-s)'s fees and all additional costs of the proceedings that CAS may deem appropriate to levy as a result of consideration of the case in question.*

(...)"

38. The Appellant advanced the following grounds in support of its position:

(a) The international dimension of the dispute

i) FC Zenit's claim has an international dimension as it involves an international transfer.
ii) FIFA has competence to decide the FC Zenit's claim as per Article 22(1)(a) RSTP.
iii) FC Zenit and OFK Grbalj belong to a different football association and the dispute gained an international dimension when the New Club requested the Player's ITC via the FAM.
iv) The FIFA DRC is competent to hear disputes between clubs and players in relation to the maintenance of contractual stability where there has been an ITC request and a claim from an interested party in relation to said ITC request.

v) When a termination of a contract is followed by an international transfer and a subsequent dispute as to whether the new foreign club must compensate the former one according to Article 17(2) RSTP, then the prerequisites of Article 22(1)(a) RSTP applies, and FIFA has jurisdiction to decide the dispute.

vi) Nothing in the wording of Article 22(1)(a) RSTP leads to the conclusion that FIFA adjudicatory bodies are only competent if the former club has opposed the issuance of an ITC (CAS 2020/A/7054, no. 209).

vii) FIFA DRC position is considered a denial of justice, as the Appellant will not be able to seek financial decision against OFK Grbalj outside FIFA jurisdiction.

(a) The termination of the Employment Contract was caused by the Player's *mala fide* behaviour

i) The sequence of events shows that there is a direct link between the Player's termination of the Employment Contract (without just cause) and his transfer to the OFK Grbalj. The time-lapse between the termination of the Employment Contract (20 October 2022) and the date of the request of the Player's ITC is only 113 days. This period is not significant and is explained by the fact that the registration periods in Europe were closed in October 2022 – December 2022.

ii) The Player left Russia to go to Serbia without authorization and started playing in Montenegro. Serbia borders on Montenegro and shares linguistic, cultural and historic ties with the latter. Serbia and Montenegro used to be one country until 2006.

iii) The Player did not have just cause to terminate the Employment Contract and the Player and OFK Grbalj shall be jointly and severally liable for paying compensation to FC Zenit.

iv) FC Zenit's Termination Notice was a mere formality since the Player had already decided to unilaterally and without just cause terminate the contractual relationship at his own will.

(c) The Player had no just cause to terminate the Employment Contract

i) The Player invoked as just cause *"exclusion from the game process and transfer to participate in training events in the younger training age group"* and, before the FIFA DRC, the Player added as another reason his *"fear for being conscripted in the Russian army."* This latter reason was not invoked in the Player's Termination Notice. This reason was later invoked to justify his breach of contract. It should also be noted that the Russian military operation in Ukraine began at the end of February 2022 and that the Player not only stayed in Russia but signed the Employment Contract on 20 June 2022.

ii) There is a clear contradiction between the Player's invoked causes. On one hand, the Player claims for more gaming practice in Russia and, on the other hand, the necessity to leave Russia because of the war.

iii) FC Zenit did not breach any terms of the Employment Contract. The fact that the Player is not being selected for official matches does not give him just cause for termination. Article 15 RSTP allows an established professional player to terminate the contract for sporting reasons, but the mandatory prerequisites of this provision are not met and have not been invoked.

iv) The Player never sent a warning about the alleged FC Zenit's breach giving it a chance to rectify the situation. According to Swiss and CAS jurisprudence, an employee (or an employer) has a very limited window of time to exercise the right to terminate a contract upon the finding of a just cause (CAS 2020/A/7054, para. 223-226).

(d) The Zenit's right to be compensate

i) FC Zenit is entitled to a compensation in the amount of EUR 15,077.00 (based on the calculation of RUB 911,221.00, being €1 = RUB 60.437), plus 5% *p.a.*, which includes the following items:

- RUB 301,465.00: the salaries and insurance fee that would have been paid during the term of the Employment Contract;
- RUB 113,133.00: the Player's health insurance and the cost of his medical treatment; and
- RUB 496,623.00: training compensation paid by the FC Zenit to Player's former clubs and RFU upon the signature of the Employment Contract, as provided for by the FRU Regulations on the Status and Transfer of Players.

ii) OFK Grbalj shall be jointly and several liable for the payment of the compensation due to the FC Zenit (Article 17(2) RSTP). The "new club" is automatically responsible, together with the player, for paying compensation to the "former club", regardless of any involvement in, or inducement to, the breach of contract. The OFK Grbalj's joint and several liability is not dependent on any fault, guilt, or negligence on the part of the new club (CAS 2014/A/3852).

iii) OFK Grbalj is the one who benefits from early termination of the Employment Contract.

(e) Sporting sanctions

i) The Player was 18 years old when he signed the Employment Contract, and the termination occurred three months after (*i.e.* during the protected period).

ii) FC Zenit highlights that in addition to the obligations to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period (Article 17 RSTP).

iii) The FC Zenit acknowledges that it does not have standing to request sporting sanctions to be imposed on the Player and the OFK Grbalj.

(B) The First Respondent's Submissions

39. The First Respondent submits the following prayers and requests to the CAS:

"(...)

1. *The appeal (...) is rejected.*
2. *The decision of the FIFA Football Tribunal (...) is confirmed.*

   In the alternative, should CAS decide that FIFA had jurisdiction over the dispute:

3. *The football player (...) has no obligation towards* [FC Zenit] *on* [payment] *of compensation for breach of contact and/or any other pecuniary claim.*
4. *No sporting sanctions are imposed on the football player (...).*

   In any event:

5. [FC Zenit] *shall bear all costs incurred with the present procedure.*
6. [FC Zenit]*shall pay the football player (...) a contribution towards* [his] *legal fees and other expenses incurred in connection with the present proceedings, in the amount to be determined at the Panel's discretion.*

(...)"

40. The First Respondent advanced the following grounds in support of its position:

(a) The termination of the Employment Contract cannot be considered as with just cause and FC Zenit is not entitled to any compensation due to the specific circumstances of the case.

i) FIFA has taken the view that *"(...) a player's absence from the team's training sessions for a shorter) period, such as a few days, a week or even 10 days, cannot and does not constitutes just cause for a club to unilaterally terminate an employment contract (...)"* (in "*The Jurisprudence of the FIFA Dispute Resolution Chamber – 2nd Edition*", Frans de Weger, Springer - ASSER International Sports Law Series).

ii) FC Zenit only requested the Player's return for training sessions and not for official matches.

iii) FC Zenit had matches on 7 and 14 October 2022 and the Player was not listed to play such matches.

iv) The Player accepts that the FC Zenit terminated the Employment Contract based only on the Player's absence on trainings, which cannot be considered as just cause.

v) FC Zenit was not interested in the Player's services. Both parties had no interest in the continuation of the employment relationship, which precludes any claims on compensation (CAS 2014/A/3642, para 142 and CAS 2020/A/7262, 184 and 185). Another circumstance supporting this understanding is the fact that FC Zenit took 223 days to start a claim against the Player. The maxima that *"(...) a creditor is expected to be vigilant and to take prompt and appropriate legal action to assert his claims (...)"* (CAS 2020/A/7290, para 102) should apply to the present case.

vi) Furthermore, FC Zenit did not challenge the issuance of the ITC. On 9 February 2023, FC Zenit could have notified the FUR that there was a contractual dispute with the Player, preventing the issuance of the ITC, at least, without its consultation.

vii) The Player turned 18 on 18 June 2022 and from this age, he was considered full-aged in terms of Russian law and therefore could be subject to mobilization. These specific circumstances forced the Player to follow his family to move abroad and, even if FC Zenit terminated the employment relationship with just cause, the Player shall be released from any obligation to pay compensation.

(b) <u>In case compensation is awarded to the FC Zenit, the claimed amount (RUB 496,623.06) should be significantly reduced:</u>

i) The Player's salary was denominated in RUB and, in consequence, the compensation should be calculated and award (if due) in this currency and not in EUR.

ii) The rate on the termination date (20 October 2022), which was also offered by the Appellant, should apply: 1 EUR = 60.4371 RUB.

iii) The Player's monthly salary with FC Zenit was RUB 26,100 (net) and with the New Club EUR 450 (i.e. RUB 27,197 = EUR 450 x RUB 60.4371). Consequently, the average salary of the Player, which serves as the basis for calculation, amounts RUB 26,648.50 net (RUB 26,100 + RUB 27,197: 2).

iv) The average remuneration of the Player between the termination date and the end of the Employment Contract (10 June 2023) was RUB 204,878.25. This sum should limit any liability of the Player (if any).

v) Any further pecuniary claims from FC Zenit should be dismissed (*i.e.* the insurance premiums, medical expenses, and training compensation) because these costs have no relevance to the listed criteria of compensation. As per the FIFA Commentary on the Regulations on the Status and Transfer of Players Ed. 2023 (the "Commentary"), p. 187: "(...) *"fees" for the calculation purposes will include the transfer fee paid to acquire the player's services, as well as fees paid to agents in relation to the transfer*

concerned". Furthermore, FC Zenit did not provide any documents confirming that such expenses were effectively paid.

vi) The Player also notes that the training compensation payment is related to the Player's registration as a professional and not to his acquisition by FC Zenit.

vii) FC Zenit claims RUB 496,623.06 as training compensation, but the alleged payment of RUB 248,312 to RFU is not supported by any evidence and the alleged payment of RUB 226,556 to "Kolomyagi" Academy is only supported by 50%, *i.e* RUB 113,278.

viii) The claimed amount paid to the academy "SPB GBU SHOR for football Zenit" should be ignored, since this academy belongs to FC Zenit, and it was not claimed its alleged portion of the training compensation due.

ix) If any training compensation should be paid, the sum should be limited to the following items:

- RUB 76,504, which correspondents to the amount paid to "Kolomyagi" academy (save for any amounts paid to RFU) and amortized over the term of the Employment Contract; or
- RUB 153,008, which correspondents to the amount paid to "Kolomyagi" academy and RFU under the contract between "Kolomyagi" academy and the FC Zenit; or
- RUB 335,400.50, since all amounts claimed should be amortized over the term of the Employment Contract.

(c) <u>Even if the Player terminated the Employment Contract without just cause, sporting sanctions shall not be imposed</u>

i) The Employment Contract was a 1-year employment contract, and FC Zenit cannot claim that it lost the Player's services for a long time.

ii) The Player was barely 18 years old at the time of the termination, and his young age should be taken into consideration while assessing the proportionality of the sanction.

iii) The reasons for the termination were connected not only to the conflict with FC Zenit in respect to the Player's non-listing to the matches, but also to the circumstances relating to the military conflict between Russia and Ukraine.

iv) FC Zenit did not demonstrate any aggravating circumstances on the Player's side.

v) The unjustified delay in filling the claim (223 days) is evidence that the FC Zenit had no interest in the Player's services. The same conclusion is taken by the Player's low remuneration (around EUR 450).

vi) Consequently, in the unlikely case a decision against the Player is passed, no sporting sanctions shall be imposed on him.

(C) <u>The Second Respondent's Submissions</u>

41. The Second Respondent submits the following prayers and requests to the CAS:

"(...)

1. *The appeal (...) is rejected.*

3. *The decision of the FIFA Football Tribunal (...) is confirmed.*

   Or, alternatively,

4. *If the present dispute has international dimension and therefore was subject to FIFA DRC jurisdiction, the appeal filed by FC Zenit shall be rejected on the merits.*

   In any event:

7. *No sporting sanctions are imposed on* [OFK Grbalj].

8. [FC Zenit] *shall bear all costs incurred with the current procedure.*

9. [FC Zenit] *shall pay* [OFK Grbalj] *a contribution towards its legal fees and other expenses incurred in connection with the present proceedings, in the amount to be determined at the Panel/s discretion.*

(...)"

42. The Second Respondent advanced the following grounds in support of its defence:

(a) <u>The Player had just cause to terminate the Employment Contract</u>

i) The Player decided to terminate the Employment Contract on 17 October 2022, with effects on 11 November 2022, since FC Zenit prevented the Player from training and participating in the matches with the teams of relevant age and qualification.

ii) Despite the Player's request to terminate the Employment Contract, FC Zenit decided to terminate it on 20 October 2022 alleging the Player's breach due to his absence from work.

iii) FC Zenit had no interest in the Player's services and only on 14 December 2022 claimed compensation for the termination of Employment Contract. Therefore, FC Zenit shall not be entitled to any compensation even in the event the termination is recognized as being made by the Player without just cause. As such, OFK Grbalj cannot be held jointly and severally liable for the termination of the employment contract.

(b) <u>The Player's employment relation with the OFK Grbalj</u>

i) The employment relationship between OFK Grbalj and the Player started on 8 February 2023 (valid until 20 June 2023).
ii) Until the beginning of February 2023, no communication whatsoever had taken place between the Player and OFK Grbalj.
iii) On 9 February 2023, OFK Grbalj inquired FC Zenit about the Player's status and, until the end of the registration period in Montenegro (11 February 2023), no answer was received, and the Player's registration was successfully made via TMS.
iv) Only on 8 June 2023, OFK Grbalj was notified on the claim lodged by FC Zenit against it and the Player before the FIFA DRC.

(c) FIFA´s lack of jurisdiction

i) FC Zenit's dispute lacks an international dimension.
ii) The Employment Contract referred the dispute to the exclusive jurisdiction of FUR (Clause 11.3 of the Employment Contract).
iii) FC Zenit decided to be silent when the ITC request was made, meaning that it was not interested to be involved in a dispute with the new club following the Player's termination.

(d) The FC Zenit claim against the OFK Grbalj

i) The Employment Contract was terminated on 20 October 2022. At that time, OFK Grbalj had no contacts with the Player regarding his potential transfer.
ii) In the perspective of FIFA and UEFA, the escalation of the situation in Ukraine shall be considered "urgent matters" or "exceptional circumstances" and the mobilization in Russia must be treated as "exceptional circumstances". It is evident that the Player had a definitive, valid and urgent reason to leave Russia in the beginning of October 2022 (see para. 40 (a) (vii)).
iii) OFK Grbalj's liability cannot be presumed but should be analyzed on a case-by-case basis (CAS 2015/A/3953 & 3954, paras. 56-65).
iv) The location of OFK Grbalj and the place where the Player went to in October 2022 are not identical. Serbia and Montenegro are two different independent and sovereign states. The fact that these two countries have common borders and share linguistic, cultural and historic ties is not legally relevant.
v) OFK Grbalj shall not be held jointly and severally liable for the termination of the Employment Contract.
vi) Once a former club files a claim against its former player and a new club (long after it refused to challenge an ITC request) the *principle of venire contra factum proprium* applies.

vii) Even if the dispute has an international dimension, the FC Zenit's claim for compensation should be significantly reduced as per the Player's Answer (see para. 40, b), above).

viii) Sporting sanctions shall not be imposed since there is no inducement to breach the Employment Contract.

(D) The Third Respondent's Submissions

43. The Third Respondent submits the following prayers and requests to the CAS:

"(...)

(a) Reject the Appellant's appeal in its entirety;
(b) Confirm the Appeal Decision of 3 August 2023;
(c) Order the Appellant to bear all costs incurred with the present procedure;
(d) Alternatively, order that the case be sent back to the DRC for evaluation on the merits.

(...)"

44. The Third Respondent advanced the following grounds in support of its position:

(a) The DRC jurisdiction pursuant to Article 22 (1) (a) RSTP

i) FIFA has jurisdiction to entertain a claim brought before its Football Tribunal in accordance with Article 22 RSTP if the relevant dispute (i) is employment related and (ii) has an international dimension.

ii) The dispute between FC Zenit and the Player lacks an international dimension, as they are both Russian nationals.

iii) Despite this, FIFA may still be competent to decide on *"disputes between clubs and players in relation to the maintenance of contractual stability (...) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract."*. The legal doctrine, FIFA and the Football Tribunal have interpreted this provision in the sense that the FIFA DRC is competent only when the dispute has its grounds directly in the ITC request (in "*Dispute resolution at the Federation Internationale de Football Association (FIFA) and its judicial bodies*", Ongaro O. / Cavaliero M., Football Legal #4, December 2015.)

iv) FC Zenit's claim is not linked to the issuance of the ITC for the registration of the Player in favor of OFK Grbalj.

v) The original contractual dispute has no international dimension, and the relevant national authority is competent to deal with it.

vi) As per the FC Zenit's interpretation, any domestic dispute could assume an international dimension if at any point (during the 2-year status limitation of FIFA to decide a dispute) a new foreign club decided to sign the Player.

(b) There is no link between the termination of the Employment Contract and the Player's subsequent registration with the OFK Grbalj

i) It is extremely difficult to conclude that the Player decided to leave Russia solely with the desire to join another club.

ii) It is difficult to understand a "sporting logic" in the Player's choice to terminate the employment relationship with one of the most prestigious Russian clubs to join a club competing in the Montenegrin Second League, even more so given the time lapse between the Player's movement and the contract with the new club.

iii) In other words, it is difficult to dissociate the Player's decision to terminate the Employment Contact from the military situation in the country and link it to a pure sporting decision to join OFK Grbalj.

iv) The FC Zenit's argument that the 4-month time-lapse to register the Player in favor of the New Club was only due to the transfer window in Montenegro (implying that the Player and OFK Grbalj were only waiting for that) is not acceptable. If this had been the only reason, there would have been no motive to wait until the last days to conclude the transfer of the Player, running the risk of even ending out of the transfer window.

v) The timeline of the events shows that there is no real connection between the two matters: termination of the Employment Contract and the employment relationship with OFK Grbalj. These events are not sequential, but instead reveal an inherent segmentation.

vi) The above understanding is also supported by the fact that neither the FUR nor FC Zenit objected to the issuance of the ITC.

(c) The jurisdiction clause in favor of the FUR

i) As per Clause 11.3 of the Employment Contract, the intention of the Player and FC Zenit was not to have the FIFA DRC hear any claim arising out of their employment relationship, as they appear to indicate the "FUR Dispute Resolution Chamber" as the competent body to adjudicate on the matter.

ii) FC Zenit and the Player have, as such, considered their relationship to be a domestic one.

(d) The relevant CAS case law

i) CAS 2021/A/7865, paras. 138 to 141: This decision focused on whether the ITC request was intrinsically connected to the consequences resulting from the potential

breach of the contractual stability to consider FIFA's jurisdiction. As the domestic employment dispute had no relationship with the ITC, the decision concluded by excluding the applicability of Article 22(1)(a) RSTP.

ii) CAS 2020/A/7054, para. 206: this case does not serve the Appellant's position. This case started to recall that *"(...) the claim must be in relation with the ITC request by an interested party."* This case, also known as the "Leão Case", reinforced and elaborated the need of a connection between the ITC and the dispute as a prerequisite of the FIFA DRC's jurisdiction.

iii) CAS 2020/A/7030 & CAS 2020/A/7051, para. 69: The Appellant's comments in relation to this decision are misplaced. Considering the specificities of this case, the referred award cannot be used as a CAS jurisprudence for the ensuing discussion on the interpretation of Article 22(1)(a) RSTP. This award never took position on whether the DRC correctly retained jurisdiction on the grounds of Article 22 (1) (a) RSTP.

iv) CAS 2019/A/6621, paras. 121 to 123: *"(...) if a football player unilaterally terminates an employment agreement with his club as a result of the inducement of a third club belonging to a different national association, or because he has planned to move to this third club, and the latter requests the insurance of the player's ITC, these circumstances could trigger the applicability of* [Article 22(1)(a) RSTP] *and confer jurisdiction to the FIFA DRC".*

v) CAS 2009/A/1996, para. 199*: "The panel appreciates that after thirteen months, it is difficult to accept that the employment contract with the new club leaves a significant fingerprint on the matter in dispute. Under such circumstances, the termination of the old contract, the international transfer and the conclusion of a new contract do not form as single life transaction falling under Article lit. a of the RSTP."*

vi) CAS 2009/A/1881, paras. 23 to 25 of the extract published on the CAS website: *"The Panel remarks that* [Article 22(1)(a) RSTP] *links the request for and the issuance of an ITC to the possible imposition by FIFA of sporting sanctions or compensation for breach of contract (...)."*

(e) Conclusion

i) The timeline of events shows that there is no link between the termination of the Employment Contract with the Player's subsequent registration with the New Club (affiliated to a different national association) in order to ground FIFA DRC's jurisdiction pursuant to Article 22 (1) (a) RSTP. The Player's contract with the OFK Grbalj is considered a single life transaction.

ii) The FC Zenit – as an indirect member of FIFA – does not have standing to request the imposition of sanctions (CAS 2016/A/4826, para. 123; CAS 2014/A/3568, para. 96; and CAS 2013/A/3444, para. 118 et seq.).

iii) If the Panel considers that the FIFA DRC had indeed jurisdiction pursuant to Article 22 (1) (a) RSTP, the case should be sent to such deciding body, as FIFA never issued a decision on the merits. Another two reason in favour of sending the case back to the

FIFA DRC for evaluation are the following: (i) there is no urgency to resolve the dispute; and (ii) FIFA would be a party "*without a position to defend*" and without do a correct assessment of the merits of the dispute.

V. JURISDICTION

45. In accordance with Article 186 of the Swiss Private International Law Act (the "PILA"), the CAS has the power to decide upon its own jurisdiction.

46. Article R47 of the CAS Code states the following:

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

(…)"

47. Article 56 (1) of the FIFA Statutes ed. May 2022 reads as follows:

"FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, members associations, confederations, leagues, clubs, players, officials, football agents and match agents."

48. Article 57 (1) of the FIFA Statutes ed. May 2022 reads as follows:

"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."

49. The present appeal is directed against a final decision of the FIFA DRC and therefore, the CAS, considering the above provisions, has jurisdiction to rule on the appeal filed by the Appellant. Moreover, the Panel notes that the jurisdiction of the CAS, which is not disputed, is also confirmed by the Order of Procedure duly signed by the Parties.

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

VI. ADMISSIBILITY

51. The Appealed Decision was notified to the Appellant on 14 August 2023 and the Statement of Appeal was filed on 1 September 2023.

52. It follows that the appeal was filed within the 21 days set by Article 57.1 of the FIFA Statutes and Article R49 of the CAS Code, which reads as follows: *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. (...)."*

53. The Statement of Appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

54. The Panel also notes that the admissibility of the Appeal has not been contested by the Parties.

55. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

56. Article R58 of the CAS Code reads 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 absence of such 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*".

57. In addition, Article 56 (2) of the FIFA Statutes ed. May 2022, provides as follows:

"*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*".

58. Considering the above, the Panel is satisfied that the various regulations of FIFA, and more specifically, the RSTP, as in force at the relevant time of the dispute (Edition May 2023), constitute the applicable law to the matter, and Swiss law shall be applied on a subsidiary basis. The Parties also concur on this matter and did not dispute this conclusion.

VIII. MERITS OF THE APPEAL

(A) INTRODUCTION

59. Before assessing the legal issues at stake, the Panel deems it useful to clarify the scope of the Appeal.

60. The issue in dispute relates to whether FIFA DRC correctly denied jurisdiction to hear the Claim on the ground of the non-applicability of Article 22(1)(a) RSTP. In other words, the main object of the Appeal is to analyse whether the Claim has the required "*international dimension*" to be analysed and decided by the FIFA DRC.

61. Based on the facts and the circumstances of the case, the Panel observes that the main issues to be resolved are the following:

a) Did FIFA DRC incorrectly deny jurisdiction to entertain the Claim on the grounds of the non-applicability of Article 22(1)(a) RSTP?

b) What are the legal consequences of the determinations relating to the previous issue?

(B) THE DECISION

62. The fundamental question that needs to be addressed in this Appeal is if the FIFA DRC had competence to hear the Claim on the basis of Article 22(1)(a) RSTP. After this issue has been clarified and determined, the appropriate legal consequences will have to be drawn in relation to the decision on the merits of the Claim.

63. The Respondents have taken the view that FIFA's jurisdiction under Article 22(1)(a) RSTP is dependent on the existence of the criterion of the "international dimension" of the conflict, an element which, in the present case, they consider not to have been met. In the Respondents' opinion, FC Zenit and the Player have the same nationality (undisputed fact) and the signing of the Player by the OFK Grbalj has nothing to do with the termination of the Employment Contract, due to the lapse of time between the Player's departure from Russia to Serbia (20 October 2022) and his signing by the Montenegrin club OFK Grbalj (8 February 2023). This time lapse, in the opinion of the Respondents, clearly demonstrates that there is no link between the two events. The lack of connection is also confirmed by the fact that FC Zenit did not oppose the issuance of the Player's ITC when he signed with the New Club and by the fact that the conflict between FC Zenit and the Player was not related to the issuance of the Player's ITC to FAM/OKF Grbalj.

64. From the opposite perspective, the FC Zenit defends the competence of the FIFA DRC to decide the Claim. FC Zenit justifies the existence of the "international dimension" requirement of the Claim as it concerns the transfer of the Player to the national association of a third country and because the Claim incorporates the request for joint and several liability of the New Club under Article 17(2) RSTP. FC Zenit further adds that the only way to extend the liability of the New Club to pay the compensation claimed is through the involvement of FIFA DRC. In this case, FC Zenit seeks to rely on the joint and several liability of the OFK Grbalj as satisfying the prescribed criteria in Article 22(1)(a) RSTP.

65. The Panel starts by quoting the wording of the provision in question, i.e. Article 22(1)(a) RSTP, which states that FIFA is competent to hear:

"disputes between clubs and players, in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract."

66. The above provision sets out the following four requirements for the FIFA DRC to be considered competent:

a) The dispute must be between *clubs* and *players*;
b) The dispute must be in relation to the maintenance of *contractual stability*;
c) There must have been a *request for an ITC related to the player in question*, a circumstance that confirms that a player will be registered with a club affiliated with a national association different from his previous club; and
d) There must be a "*claim*" filed by an interested party related to the *request for an ITC*, in particular its issuance, sporting sanctions, or potential compensation for breach of contract.

67. Taking into account the formulation of the Claim and the aforementioned regulatory provision, it seems clear that, in the case at hand, the first three requirements mentioned above are met, given that (i) the parties to the dispute are a club and a player, (ii) the dispute concerns the maintenance of contractual stability, and that (iii) there has been an ITC request by FAM/OKF Grbalj. The dispute ultimately comes down to the interpretation of the fourth requirement, i.e. whether the FC Zenit's Claim is related to the "ITC request", since it is undeniable that there is a request related to compensation for a "breach of contract" allegedly committed by the Player.

68. FC Zenit believes that Article 22(1)(a) RSTP should be interpreted in a broader sense, allowing the FIFA DRC to make a ruling whenever the dispute is related to the transfer of a player to a club affiliated with a different football association and the new club's liability is in question. On the other hand, the Respondents have a restrictive interpretation of this provision and argue that the jurisdiction of the FIFA DRC depends on the existence of a conflict regarding the issuance of the ITC for the player in question: "(...) *a claim from an interested party in relation to said ITC request* (...)".

69. In the Panel's view, the competence of the FIFA DRC is not dependent on the existence of a specific challenge of the issuance of the ITC in question – as argued by the Respondents –, but rather on the "*consequence*" of the issuance of such ITC, i.e. a dispute that results from an "international transfer" of a player in which – *in abstract* – his new club may be jointly liable for any compensation payable by him to the former club. The provision in question

supports this interpretation by giving weight not only to the challenge of the ITC, but also to other "causes of action" such as the transfer of a player to another football association in result of an alleged breach of contract. This understanding is drawn from Article 22(1) (a) *in fine*: "*(...) in particular regarding the issue of the ITC, sporting sanctions, or* ***compensation for breach of contract***" (emphasis added).

70. The need for a club to oppose the issue of the ITC is not a decisive element in the context of the jurisdictional question at stake here and does not necessarily follow from the interpretation of Article 22(1)(a) RSTP. Any dispute in which a club requests the payment of compensation for a player's alleged breach of contract, extending that liability, by virtue of Article 17(2) RSTP, to the new club, is normally implicitly related to the issue of that player's ITC.

71. Considering the rule of "presumption of inducement", it would not make sense to limit the FIFA DRC's jurisdiction to cases in which there has been an objection to the issuance of the ITC, as the previous club would be completely unprotected in its right to see the player's liability extended to the new club.

72. That being said, the Panel questioned itself whether the lapse of time between the termination of the Player's employment with FC Zenit and his signing with OFK Grbalj is enough to exclude ad priori any liability under Article 17(2) RSTP,

73. Firstly, it should be said that it is not up to this Panel to determine the minimum period of time that must occur in order to rebut the presumption of inducement by the New Club.

74. Secondly, that the Panel is satisfied that a period of 4 months between the termination of the Employment Agreement and the signature of the New Employment Contract, does not seem sufficient to automatically rebut the presumption of inducement. In any event, in line with the below outcome of the present case, it is not for this Panel to decide whether or not a rebuttal of the presumption of inducement shall be accepted or rejected.

75. In relation with the jurisdictional issue, the Panel is satisfied that in the present case, the jurisdiction of the FIFA DRC should only have been excluded (i) if the filing of the Claim against the New Club was an obvious "abuse of rights"; or (ii) if the period of time between the termination of the Employment Contract and the signature of the New Employment Contract was so totally, manifestly long as to reveal that the relation between those events is without any doubt inherently "segmented" (see, among others, CAS 2009/A/1996, para. 38, in which the Panel decided that thirteen months constituted a sufficiently long period to conclude no foreign club had been involved in the controversy; on the other hand, see CAS 2020/A/7054, para. 203, in which that Panel concluded that Article 22(1)(a) RSTP might be subject to an exception in case where a lot of time passes between the termination of the old contract and the international move to a new club).

76. The international dimension of the Claim was generated, and FIFA DRC acquired competence to deal with it, from the moment the Player is transferred abroad, and signed with the New Club that thereby – potentially – assumes joint and several liability – Article 17(2) RSTP. This understanding is also supported by the Commentary (p. 457): *"(...) the issuance of the ITC and the fact that the new club is affiliated to a different member association creates the international dimension, regardless of the player's nationality.*"

77. Therefore, the Panel follows a wider interpretation of Article 22(1)(a) RSTP, which aligns with the power of the parties to shape the subject matter of the action (principle of disposition):

> *"(...)*
>
> *110. Under Swiss Law, it is for the parties to define the scope of their dispute through their requests and factual allegations. This applies where the determination of the dispute by the parties is referred to as the principle de disposition (Dispositionsgrundsatz) and opposed to the máxime d'office (Offizialgrundsatz)*
>
> *(...)*
>
> *112. The "Dispositionsgrundsatz" is the prevailing principle in civil disputes and is rooted in the principle of party autonomy, which grants the parties the substantive right and power to control the proceedings. If the parties are free to dispose of their claims, then they must also have the autonomy to determine the dispute that shall be submitted for adjudication. (...)."*

(See CAS 2018/A/5693 and CAS 2018/A/5694)

78. In light of the above, the Panel determines that the international dimension of a dispute primarily arises, as it must, from the way the "claim" is presented and constructed by the "claimant". It is up to the "claimant" to configure the scope of the dispute/claim, specifically by presenting the facts and the legal reasons underlying their request and by calling upon the parties they believe have the standing to be sued to be included in the claim. In other words, it is admitted that in an horizontal case, a claim by a former club that is arguing a violation of Article 17(2) RSTP by a former player, must be directed against two respondents, i.e. the player and the respective new club as co-respondent, because otherwise no joint liability can be imposed on the two respondents. If the new club is a club of a different national football association, the international nature of the dispute is established (subject to the exceptions identified by the Panel *supra ad* para. 74).

79. FIFA itself seems to agree with this, if one reads the following statements made in the Commentary (p. 458):

"If a player wishes to transfer internationally (i.e. to a club affiliated to another member association) and this leads to a contractual dispute between the player and the club they wish to leave, it makes sense for the international decision-making body deciding on the registration of a player to also have jurisdiction to hear the employment-related dispute in question."

80. To such statement the Panel wishes to add that the above rationale cannot depend on the mere issue of timing, respectively on whether or not the former club raises in time an issue with the ITC.

81. In conclusion, the Panel agrees with the Appellant that the case has taken on an "international dimension" due to the fact that the Player was signed by OFK Grbalj, and that this new club has assumed, by virtue of Article 17(2) of the RSTP, the presumption of joint and several liability towards FC Zenit in the event that the Player is ordered to pay any compensation for breach of the Employment Contract. This is a regulatory presumption that can be reversed when the merits of the Claim are analysed and decided.

(C) THE LEGAL CONSEQUENCES

82. Pursuant to Article R57(1) of the Code, "[t]*he Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. (...).*"

83. As repeatedly stated in the CAS jurisprudence (*e.g.* CAS 2007/A/1394, among others), with reference to the previous provision, in the CAS appeals arbitration procedures, the Panel has the power to conduct a *de novo* review of the merits of the case and is not limited to merely deciding whether the appealed decision was correct or not.

84. The FIFA DRC did not analyze the Claim from a substantive point of view. The facts and evidence analyzed in the FIFA proceedings were made for the only purpose of establishing whether the dispute had an international dimension, for the effects of determining the jurisdiction of the FIFA DRC under Article 22(1)(a) RSTP.

85. The FIFA DRC also chose not to rule, as it could have done, on the joint and several liability of OFK Grbalj in relation to any compensation to be paid (eventually) by the Player to FC Zenit. As mentioned in the previous section, the FIFA DRC's findings in this regard were limited, by the assessment of the sequence of events, to concluding that there was no link between the Player's departure from the Former Club and his signing for the New Club. However, this analysis was done in the context of establishing jurisdiction without ruling on the actual merits of the dispute.

86. In the Panel's view, the decision of the Claim requires a more detailed assessment of the facts, the circumstances, the sequence of events and the evidence that the parties to the conflict may present in defense of their respective positions. It would be incorrect to decide on the merits of the Claim based on the limited evidence available in the present arbitration appeal procedure which, it must be said, does not meet the conditions to adequately reach a decision and, if necessary, determine whether the Player should pay any compensation and how it should be calculated.

87. Furthermore, it is understood that, given the nature and the specificities of the issues in question, it would not be appropriate to decide the Claim in this procedure, without a better knowledge, assessment and debate of the facts and evidence. Relevance is also given to the nature of the Claim and FIFA's interest in defending the principle of contractual stability at first instance. As the governing body of the world of football, it is important that there is a first decision by FIFA on the conflict and that, within its decision-making parameters, analyze and decide the dispute at first instance. Only in this way, it will be possible to achieve the desired harmony and uniformity of reasoning in FIFA's decisions.

88. In this decision, the Panel is also attentive to the arguments put forward by FIFA to the effect that (i) FC Zenit's claim for compensation is not urgent or materially relevant for a club with its recognized financial capacity; and that (ii) FIFA loses the possibility of having a more active and participative role in the analysis and decision of the elements that make up the "horizontal conflict", namely (i) the determination of the alleged violations by FC Zenit and/or the Player; (ii) the additional just cause alleged by the Player in his abrupt departure from Russia, (iii) the calculation of the eventual compensation to be paid to the FC Zenit; and (iv) the eventual liability of OFK Grbalj, based on the sequence of events, in particular the fact that FC Zenit did not object to the issue of the requested ITC and did not timely respond to OFK Grbalj's notification of 9 February 2023 in which it questioned FC Zenit about the Player's status (see above paras. 18-21)

89. Considering the above, and notwithstanding the CAS's powers to proceed with a decision on the merits of the case, the Panel considers that the most appropriate decision, in these particular proceedings, is to apply Article R57(1) of the Code and refer the case back to FIFA DRC so that FIFA can assess and decide the Claim from a substantive point of view at first instance.

(D) CONCLUSIONS

90. In light of the above, the Panel is of the opinion that Article 22(1)(a) RSTP includes the cases in which there exists a shared nationality between the player and the former club, and in which the former club of the player files a contractual claim against the player and his new club. It is for these reasons that the Panel finds that Article 22(1)(a) RSTP is applicable.

91. Based on the foregoing, the Panel holds that FIFA has jurisdiction to hear and decide the Claim and that the case shall be referred back to the previous instance (FIFA DRC) for determination.

92. Against the above conclusion, all other and further motions or prayers for relief are dismissed.

IX. COSTS

93. Article R64.4 CAS Code provides as follows:

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

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

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

94. Article R64.5 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.*"

95. Having taken into account the outcome of the arbitration, the Panel considers it reasonable and fair that the arbitration costs of these proceedings, in an amount to be determined and notified by the CAS Court Office, shall be borne by FIFA in their entirety.

96. Furthermore, and pursuant to Article R64.5 of the CAS Code, the Panel rules that the Parties shall bear their own costs. This ruling is based on the nature and specificities of this case, namely the fact that it is limited to the decision on FIFA's jurisdiction to decide on the FC Zenit's claim against the Player and OFK Grbalj, and on the fact that the decision was taken based on the Parties' written submissions. Furthermore, the Panel notes that neither the Appellant nor the First and Second Respondents considered, even on a subsidiary basis, any request for FIFA to contribute to their legal and administrative expenses. In this decision, the

Panel also took into account the fact that the Appellant had recourse to its in-house counsel and that the hearing was held virtually.

*****

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 1 September 2023 by Football Club Zenit against the decision passed on 3 August 2023 by the Dispute Resolution Chamber of the Football Tribunal of the *Fédération Internationale de Football Association* is upheld.

2. The decision passed on 3 August 2023 by the Dispute Resolution Chamber of the Football Tribunal of the *Fédération Internationale de Football Association* is set aside.

3. The Dispute Resolution Chamber of the Football Tribunal of the *Fédération Internationale de Football Association* has jurisdiction to decide the Football Club Zenit's claim for compensation against Mr Nikolai Solovev and OFK Grbalj.

4. The matter is referred back to the Dispute Resolution Chamber of the Football Tribunal of the *Fédération Internationale de Football Association* that shall decide on the Football Club Zenit's claim for compensation against Mr Nikolai Solovev and OFK Grbalj.

5. The costs of these arbitration proceedings, to be determined and served to the Parties by the CAS Court Office, shall be borne entirely by the *Fédération Internationale de Football Association.*

6. Each party shall bear its own costs and other expenses incurred in connection with this arbitration.

7. 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

Rui Botica Santos
President of the Panel

Ulrich Haas
Arbitrator

Michele A.R. Bernasconi
Arbitrator