Decision of the Dispute Resolution Chamber

passed via videoconference, on 18 June 2020,

regarding an employment-related dispute concerning the player Erald CINARI

COMPOSITION:

Geoff Thompson (England), Chairman
Mohamed Muzammil (Singapore), member
Stefano Sartori (Italy), member

CLAIMANT:

NK ISTRA 1961, Croatia
Represented by Mr Vicente Montes & Ms Tayba Jawad

RESPONDENT 1:

ERALD CINARI, Albania

RESPONDENT 2:

FK PARTIZANI, Albania

INTERVENING PARTY:

KF VLLAZNIA SHKODER, Albania

I. FACTS OF THE CASE

1. On 1 August 2017, the Albanian player, Erald Cinari, born on 11 October 1996 (hereinafter: *the player* or *Respondent 1*) and the Albanian club, KF Vllaznia Shkoder (hereinafter: *Vllaznia* or *Intervening Party*) executed an employment agreement valid as from the same date until 31 May 2019.

2. According to the information available on the Transfer Matching System (TMS), on 11 June 2018, Vllaznia allegedly accepted an offer from the Spanish club, Deportivo Alavés (hereinafter: *Alavés*) for the transfer of the player for EUR 20,000, payable by 4 July 2018. No transfer instruction was entered in the TMS by either Alavés or Vllaznia regarding the transfer of the player.

3. According to documentation found in TMS, allegedly on 15 June 2018, the Croatian club NK Istra 1961 (hereinafter: *Istra* or *the Claimant*), the player, and Alavés apparently agreed on a preferential call option for the latter to acquire the services of the player. However, such agreement does not contain the signature of Alavés.

4. On 2 July 2018, the player and the Claimant signed an employment contract valid from 15 June 2018 until 15 June 2021 (hereinafter: *the contract*). According to the contract, the player was entitled to the following:

   - EUR 45,000 for the season 2018/2019;
   - EUR 50,000 for the season 2019/2020;
   - EUR 55,000 for the season 2020/2021.

5. On 26 July 2018, the Claimant announced the player as its new signing to its fans and the media.

6. On 8 August 2018, Vllaznia sent a letter to Alavés requesting information of the alleged transfer of the player, and payment of EUR 20,000, claiming it was determined to *"discover this fraud scheme that is happening to the detriment of our club".*

7. On the same date, the player sent an e-mail to Vllaznia putting it in default of payment of his salaries between April and August 2018.

8. On an unspecified date, but allegedly 8 August 2018, the player filed a claim against Vllaznia before the national dispute resolution chamber of the Football Association of Albania (hereinafter: *the Albanian NDRC*) requesting that his employment agreement with Vllaznia be deemed terminated with just cause by the player.

9. On 10 August 2018, the Claimant requested the player's International Transfer Certificate (ITC) via TMS to be issued by the Football Association of Albania and Vllaznia. According to the information available in TMS, the transfer was initiated as "*engage against payment*". Such transfer instruction remains unanswered to date.

10. On 14 August 2018, Vllaznia issued a public statement via its Facebook page, according to which: (a) it denied having reached an agreement with Alavés for the transfer of the player, indicating that the amount of EUR 20,000 had been paid to an account in Italy which did not belong to Vllaznia; (b) the documentation regarding an agreement with Alavés had been forged; and (c) that no agreement had been reached with the Claimant for the transfer of the player, either on a loan or permanent basis.

11. On 29 August 2018, the Albanian NDRC rendered a decision whereby it rejected the claim of the player to terminate the employment agreement between himself and Vllaznia for just cause.

12. On 31 August 2018, the player, Vllaznia and the Albanian club, FK Partizani (hereinafter: *Partizani* or *the Respondent 2*) a signed a transfer agreement whereby the player's services were transferred from Vllaznia to Partizani against a payment compensation of EUR 40,000 (hereinafter: *the transfer agreement*).

13. The transfer agreement contained an annex, whereby the player and Vllaznia declared as follows (quoted *verbatim*):

"1. That they have never signed any agreements with third parties, whether natural or legal persons, from which such entities have benefited real or material rights over the Assignment of the player's licence or are entitled to the economic rights to the assignment of the player's licence.
2. That whichever club signing the assignment agreement between Vllaznia Football Club sh.a and the player Erald Çinari, is freely entitled to these rigths without any claims or interference from third parties.
3. That all claims made by a third party shall be subject oly to Vllaznia Football Club sh.a and to the player Erald Çinari."

14. On the same date, i.e. 31 August 2018, the player and Partizani signed an employment contract valid as from 31 August 2018 to 30 June 2021 (hereinafter: *the new employment agreement*), according to which the player is entitled *inter alia* to a salary of EUR 700.

II. PROCEEDINGS BEFORE FIFA

15. On 7 February 2019, the Claimant lodged a claim before FIFA against the player and Partizani for breach of contract. A brief summary of the position of the parties is detailed in continuation.

A. Claim of Istra

16. According to the Claimant, after being presented as part of the squad, the player joined his teammates in regular training.

17. The Claimant explained that during the month of August 2018, and with its authorization, the player returned to Albania for *"family reasons"*, but that only a few weeks later *"shockingly enough, he started playing for FK Partizani, without even having formally communicated his unilateral early termination"*.

18. The Claimant claims that any problem related to Vllaznia and the alleged non-authorized release of the player, as Vllaznia had purportedly announced, is not relevant in regards to the fact that *"the Player was, from 2 July onwards, under employment with* [the Claimant]*"*.

19. The Claimant explained that the player signed the contract after Vllaznia had accepted to let him go in exchange for a fixed amount, "*which was duly paid"* by Alavés to Vllaznia *"on behalf of the Claimant"* in order for Vllaznia to release the player. According to the Claimant, Alavés made the payment *"due to the long and close relationship between both clubs related to the training of players"*.

20. The Claimant claims that it requested the player's ITC to FIFA, but *"what exactly happened next is unfortunately unknown to this party, presumable the former club objected"*. The Claimant claims that before receiving a provisional ITC, the player terminated the contract.

21. Moreover, the Claimant submits that on 29 August 2018, the Albanian NDRC rendered a decision stating that the player was "*not free, and that he remained a player of the Vllaznia*". The Claimant states that during such proceedings the player never submitted a copy of the contract, nor informed that a TMS transfer instruction had allegedly not been answered.

22. Istra further states that "*since the moment the player signed the contact on 2 July 2018, he was not in the position of signing a new employment contract"*. The Claimant claims that since the player signed a new contract with Partizani, he breached the contract.

23. According to the Claimant, it is evident that Partizani is the new club in the sense of Art. 17 par. 2 of the FIFA Regulations on the Status and Transfer of Players. In this regard, the Claimant argued that Partizani acknowledges that a termination without just cause exists and intends to shift the liability for such termination onto Vllaznia. In this respect, the Claimant stated that only Partizani can be considered as the "*new club"*, for it was the Respondent 2 who signed the new employment contract after the contract was executed on 2 July 2018.

24. Additionally, the Claimant referred to the annex to the transfer agreement, and argued that it is "*undisputable that Partizani suspected that some trouble could exist, otherwise they would not have demanded the Player or his former club to sign or guarantee anything"*.

25. According to the Claimant, it cannot be denied that the early termination of the contract took place within the protected period, thus "*the player must face a four month restriction on playing"* in accordance with Art 17 par. 3 of the FIFA Regulations on the Status and Transfer of Players. It further submitted that *"even in the case where* [Partizani] *did not encourage the Player's early termination of his employment contract,* [Partizani] *is still jointly liable and subject to sporting sanctions"*.

26. Accordingly, the Claimant requested the following relief:

- To declare that the player terminated the contract without just cause within the protected period, and therefore the Claimant is owed EUR 220,000 in compensation in accordance with the following breakdown:
    - EUR 150,000 in amount that would have been paid to the Player;
    - EUR 20,000 in amount paid for the release of the Player;
    - EUR 50,000 for breach of contract during the protected period.
- To declare that the player's new club induced said termination of contract and therefore is jointly liable for it;
- To impose the corresponding sporting sanction on both the Respondent 1 and the Respondent 2;
- To declare that all costs to be borne by the Respondent 1 and the Respondent 2.

B. Position of the player

27. The player, for his part, rejected the Claimant's claim. He argued that, following a failed transfer to Alavés, he was informed by Vllaznia that its intention was to "*surrender* [him]*, given the relegation to the league*".

28. According to the player, he was informed that the Claimant wanted to "*borrow*" him for one year. The player claims he received a contract and asked for a translation as he did not understand Spanish or Croatian, but that this was allegedly refused.

29. The player further claims that he thought that the contract signed with the Claimant was an annual loan, and that after "*signing*" with the Claimant, the latter informed him that he had to return to Albania as Vllaznia failed to deliver documents to complete the loan. Subsequently, the player claims that he followed the direction of Vllaznia and signed with Partizani.

30. Additionally, according to the player, all he did was trust the instruction of Vllaznia, since he had confidence in his old club, trusted it, and followed its instructions. The player is of the position that *"my card was always owned by* [Vllaznia], *until the transfer to* [Partizani]*"*.

31. The player did not make any particular request for relief.

C. Position of Partizani

32. The Respondent 2, for its part, also rejected the Claimant's claim.

33. According to Partizani, it was interested in engaging the player from Vllaznia for the season of 2018/2019. Partizani states that on 31 August 2018 it approached Vllaznia in order to initiate a negotiation for the permanent transfer of the player.

34. Partizani further explained that, on 31 August 2018, it concluded the transfer agreement and paid a compensation of EUR 40,000 to Vllaznia for the transfer of the player. Moreover, the Respondent 2 argued that such transfer agreement included a "*warranty*" that Vllaznia was the sole party having the right to transfer the "*player's card",* and that it would be the sole responsible in case of any claims raised by any third parties.

35. In this regard, Partizani deems that it was assured that Vllaznia was the only party entitled to transfer the *"player's card"* and that the player had never signed a contact with any other party.

36. According to Partizani, upon receiving notice from FIFA about the existence of the claim at hand, it contacted the Football Association of Albania, which provided a statement according to which *"no requests for the release of the player Erald Cinari (…) [were] made by any other association*" between 1 June 2018 and 31 August 2018.

37. In regards to the contract, Partizani underlined that *"it appears that the player had signed a contract with the Claimant, but, our party was not in a position to know this fact. As we have proved, in the local media was only reported that the Player was to join the Spanish club, Deportivo Alavés, not the Claimant. In the circumstance that no requests for the issuance of the International Transfer Certificate for the Player was made by any association to the Albanian Football Association, our party objectively, could have not been aware of the fact that the Claimant and the Player had concluded an employment agreement. In other words, our club was in complete bona fidae towards all the involved parties*". Additionally, the Respondent 2 contests the authenticity of the contract in light of the fact that no original versions of such document were produced.

38. Partizani brought forward evidence that the player had submitted a claim in front of the Albanian NDRC requesting from the national body to determine that he had unilaterally terminated the employment relationship with Vllaznia with just cause, and that this body should consider him a "*Free Player".* According to Partizani, if the Claimant and the player had signed the contract, why did the player file a claim in front of the NDRC, on 8 August 2018, against Vllaznia?

39. Moreover, Partizani is of the opinion that it is "*completely inconsistent*" with the Claimant's claim that an agreement for the transfer of the player was concluded by the Claimant with Vllaznia, presumably on 2 July 2018, with the fact that the player submitted a claim against Vllaznia for the termination of the employment relationship with the latter on 8 August 2018. *Ergo*, Partizani deems that the main issue of this case is: which club was the holder of the economic and federative rights over the *"Player's Card"* during the period between 02 July 2018 and 31 August 2018?

40. According to Partizani, "*By the agreement of date 31.08.2018, the club which apparently was the owner of the economic and federative rights over the Player's Card assumed all responsibilities for* any *claims presented by any club concerning the transfer of Respondent 1 at our club. In this perspective, in the quality of correspondent should be called Vllaznia, not our party".*

41. In continuation, Partizani provided the following arguments to demonstrated that it had not induced a unilateral termination of the contract by the player with the Claimant:

- it never illegally approached the player or any other club. On 14 August 2018, Vllaznia issued a public statement by the means of which it was clarified that Erald Cinari was still a player of Vllaznia, and that no agreements for his transfer was concluded with any club, including the Claimant or Alavés;
- on 15 August 2018, the player responded to this statement, by claiming that he was a player of Alavés, not of the Claimant, and because of the divergences with Vllaznia, he would have never returned to the latter;
- the fact that no request for the issuance of the ITC was made to the Football Association of Albania, supposedly corroborated Vllaznia's public statement that no agreements were signed with any club for the transfer of the player;
- the fact that the player had submitted a claim against Vllaznia in front of the Albanian NDRC, on 8 August 2018, supposedly corroborated Vllaznia's claim that no agreement was signed with any club for the transfer of the player;
- The fact that the Albanian NDRC rejected the player's claim concerning the unilateral termination with just cause of the employment relationship with Vllaznia, corroborated Vllaznia's statement that the Respondent 1 was a player of the latter and that the parties had a valid contract between them.

42. In continuation, Partizani presented the following perspective in order to substantiate its position that it was not to be considered the player's new club:

43. Finally, Partizani claimed it had acted with the utmost caution concerning the negotiation for the player with Vllaznia. The Respondent 2 concluded its submissions by requesting the "*complete rejection of the claim or alternatively, the considering of our party as non-responsible for any inducement towards the Player for the breach of contract with the Claimant and consequently, the exclusion of our party from the responsibility to pay compensation towards the Claimant and the exclusion from any eventual disciplinary sanction*".

D. Position of Vllaznia

44. Vllaznia, for its part, did not make any substantive submissions. It limited itself to file copies in Albanian of the employment contract executed with the player, and the transfer agreement executed with Partizani and the player.

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

A. Competence and applicable legal framework

45. First of all, the Dispute Resolution Chamber (hereinafter referred to as *DRC* or *the Chamber*) analysed whether it was competent to deal with the matter at hand. In this respect, it took note that the present matter was submitted to FIFA on 7 February 2019. Taking into account the wording of art. 21 of the June 2020 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.

46. Subsequently, the DRC referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b of the Regulations on the Status and Transfer of Players (edition June 2020), it is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Croatian club, an Albanian player, and two Albanian clubs.

47. In continuation, the DRC analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with art. 26 par. 1 and par. 2 of the Regulations on the Status and Transfer of Players (edition June 2020), and considering that the present claim was lodged on 7 February 2019, the June 2018 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.

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

B. Burden of proof

49. The Chamber recalled the basic principle of burden of proof, as stipulated in art. 12 par. 3 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the DRC stressed the wording of art. 12 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties.

50. In this respect, the Chamber also recalled that in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, FIFA's judicial bodies may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in TMS.

C. Merits of the dispute

I. Main legal discussion and considerations

51. The Chamber started by taking note of the facts regarding the player's move to Alavés, and observed that the case lacks sufficient evidence in support of the facts surrounding the player's relation to such club as the parties brought them forward. In particular, the documentation available was found by the Chamber to be either absent or inconsistent. Consequently, the Chamber was of the opinion that it remained unclear what, if any, transaction was agreed between the player, Vllaznia, the Claimant, and Alavés.

52. Consequently, given the uncertainty of the facts that took place, the Chamber concluded that this could only be considered as a failed transfer, as the player indeed never executed any employment contract, nor played, for Alavés.

53. In continuation, the Chamber entered into the substance of the matter and, by doing so, it outlined that the facts detailed in continuation remained proven in light of the parties' submissions and the evidence on file.

54. Firstly, the DRC considered that it was proven that the player signed the contract with the Claimant on 2 July 2018. In particular, the DRC observed that the player himself does not deny having executed the contract, but rather claims he believed it to be a loan agreement, as he did not speak Spanish nor Croatian. The submissions by the Claimant and the Respondent 1, in the Chamber's view, also confirmed the execution of the contract, as a copy of such document had been filed by the Claimant with its statement of claim and uploaded, by the Claimant, to TMS in connection with the transfer instruction of the player.

55. In this regard, the Chamber addressed the player's argument that he did not understand the terms of the contract as said contract was drafted in Spanish and Croatian, both languages that he allegedly does not understand. In this regard, the Chamber was eager to refer to its longstanding and well-established jurisprudence, and emphasised that a party signing a document of legal importance without knowledge of its precise contents, as a general rule, does so on its own responsibility. In light of the above, the Chamber concluded that the player's argument of reported ignorance of Spanish/Croatian cannot be upheld.

56. Moreover, the Chamber found no reason to doubt the authenticity of the contract as argued by the Respondent 2, given the fact that both parties to such contract, i.e. the player and Istra, expressly confirmed its existence and execution. Accordingly, the Chamber decided to reject the argumentation of the Respondent 2 in this regard.

57. Secondly, the DRC found that it was undisputed that the player, Partizani, and Vllaznia executed the transfer agreement on 31 August 2018. The Chamber underlined that all parties explicitly recognized such fact.

58. Thirdly, the Chamber concluded that it was also undisputed that the player and Partizani executed the new employment agreement on 31 August 2018. Equally to the transfer agreement, the parties in their submissions confirmed the execution of such new contract.

59. Having established the above, the Chamber observed that the fundamental disagreement between the parties, at the basis of the present dispute, is in fact the consequence of the execution of both the transfer agreement and the new employment contract.

60. On the one hand, Istra claims that the contract concluded with the player was valid, and was breached by the player. In other words, the Claimant is of the position that the player unilaterally terminated the contract without just cause by signing the new employment agreement with Partizani. Istra also claims that Partizani is to be held jointly liable for such breach, as it is the player's new club.

61. On the other hand, the Chamber noted that the Respondent 2 deems that it was in fact Vllaznia, and not the Claimant, who allegedly had the rights regarding the registration of the player, i.e. the so-called "federative rights" or "player's card", as explained by Partizani. What is more, Partizani argued that it acted diligently to hire the player, and that it did not induce him to breach the contract. In particular, the Respondent 2 deems not to be the player's new club, as he was supposedly registered with Vllaznia before joining Partizani, as the transfer agreement denotes.

62. In view of the diverging positions of the parties, the Chamber deemed that it first would have to address the issue of the validity of the contract *vis-à-vis* the issue of the registration of the player.

63. In this sense, the DRC considered the parties' submissions, and wished to emphasize, once again, that the contract was indeed executed between the parties.

64. The Chamber then recalled its longstanding jurisprudence, according to which the validity of an employment contract cannot be made subject to administrative formalities, such as, *in casu*, the registration of a player.

65. Consequently, the Chamber decided that the issue of the registration of the player cannot be considered for the purposes of assessing the validity of the contract, and the consequences thereof. In other words, the DRC was of the firm position that whether the relevant clubs/associations correctly proceeded with regards to the player's registration with Istra has no relevance on the validity of the contract.

66. In this particular issue, the DRC deemed important to clarify that it seems that Istra and the Croatian Football Federation, to which the Claimant is affiliated, apparently did not properly request the intervention of FIFA once the Claimant did not receive a reply from Vllaznia. This conclusion derives, in the Chamber's view, from the fact that Istra only uploaded to TMS a request for provisional registration, instead of requiring the Croatian Football Association to file a request in line with articles 8 and 6, Annexe 3, of the Regulations, and articles 9 and 9bis of the Procedural Rules. Nonetheless, the Chamber stressed, once again and for the sake of

completeness, that a supposed failure by the parties concerned to adequately conclude the transfer of the player has no impact on the validity of the contract.

67. On account of the above, the Chamber came to the firm conclusion that the arguments of the player and Partizani cannot be upheld and that the contract signed by and between the Claimant and the player was a valid employment contract binding the parties thereto as from 15 June 2018 until 15 June 2021.

68. Having so found, the Chamber followed its analysis and turned its attention to the question of the alleged breach of contract without just cause by the player.

69. The DRC turned to the argument of the player that he was "*sent back*" to Albania by the Claimant, which would amount to a termination of the contract by the Claimant. However, the DRC emphasized that the player filed no evidence whatsoever in support of this allegation. Therefore, the DRC concluded that it could only dismiss such reasoning.

70. In continuation, the Chamber was eager to highlight, once again, that based on the parties' respective statements and the documentation available on file, it was undisputed that the player and Partizani signed the new employment agreement.

71. Therefore, on account of all the above, the Chamber concurred that the player had acted in breach of the contract without just cause.

72. Given these circumstances, the Chamber recalled that, according to art. 18 par. 5 of the Regulations, if a player enters into an employment contract with different clubs for the same period of time, the provisions of Chapter IV of the Regulations regarding the maintenance of contractual stability between professionals and clubs shall apply.

73. The members of the Chamber then referred to item 7. of the "Definitions" section of the Regulations, which stipulates inter alia that the protected period comprises *"three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional".* In this regard, the DRC pointed out that given the facts of the present case, the unjustified breach of contract by the player had obviously occurred within the applicable protected period.

II. Consequences

74. Having stated the above, the members of the Chamber turned their attention to the question of the consequences of such unjustified breach of contract committed by the Respondent 1 during the protected period.

75. In continuation, the Chamber turned its attention to art. 17 par. 1 of the Regulations, according to which the player is liable to pay compensation to Istra. Furthermore, pursuant to the

unambiguous contents of art. 17 par. 2 of the Regulations, the Chamber established that the player's new club, i.e. Partizani, shall be jointly and severally liable for the payment of compensation. In this respect, the Chamber was eager to point out that the joint liability of the player's new club is independent from the question as to whether the new club has committed an inducement to contractual breach or any other kind of involvement by the new club. This conclusion is in line with the jurisprudence of the DRC, which has been repeatedly confirmed by the Court of Arbitration for Sport (CAS). Notwithstanding, the Chamber recalled that in accordance with art. 17 par. 2 of the Regulations, it should be assumed that, unless otherwise proven, any club that signs a contract with a professional player who has terminated his/her contract without just cause has induced the player to terminate such contract.

76. Moreover and although being confident of the exhaustiveness of the foregoing line of reasoning, the members of the Chamber, for the sake of completeness, deemed important to address the issues raised by Partizani, namely that (a) it was not the player's new club, which was supposedly Vllaznia and (b) it did not induce the player to breach the contract.

77. In this regard, the Chamber firstly recalled that it was incumbent on Partizani to be diligent when hiring a player, as per the DRC's well-established jurisprudence. As such, the Chamber turned the evidence produced on file, and noted, firstly, that Partizani admits to have only inquired the Football Association of Albania on the issuance of the player's ITC *after* it had been requested by FIFA to present its position on the claim at hand, and not *before* signing the player.

78. Secondly, the DRC observed that Partizani argued that the annex of the transfer agreement contained a clause which, in short, (a) established on that Vllaznia was the sole party having the right to transfer the "*player's card",* and (b) and that Vllaznia would be the sole responsible in case of any claims raised by any third parties.

79. Accordingly, the Chamber highlighted, as established above, that the contract was valid and binding on the parties thereto, irrespective of ancillary questions such as the player's registration. Moreover, the DRC referred to the principles of *inter partes* and *erga omnes,* and was adamant that the transfer agreement, to which the Claimant is not a party to, cannot have its terms enforced against it.

80. Furthermore, the Chamber noted that the contents of such clause, as inserted in the annex to the transfer agreement, demonstrate that Partizani knew, at least to some extent, that it could bear consequences for hiring the player, therefore contractually, and privately, obtaining a particular form of a warranty against such consequences from both the player and Vllaznia.

81. Lastly, the DRC considered the argument by Partizani that the player continued to be registered with Vllaznia after leaving the Claimant, and once again firmly stressed that the issue of the registration of a player refers merely to an accessory condition to the employment relation, which, as outlined before, has no impact on the validity of a contact. In other words, the Chamber empashized, apart from the fact that there is no evidence on file that the player played for Vllaznia after 2 July 2019, if Vllaznia/the Claimant did not take the steps to properly register

the player, that does not change the fact that he signed two employment contracts with two different clubs at the same time.

82. For the sake of completeness, the Chamber outlined that, on a hypothetical basis, if Vllaznia bears any responsibility regarding the deeds that took place, such responsibility arises from the *transfer agreement* executed with Partizani, while, in turn, Partizani's liability regards the *new employment agreement* executed with the player.

83. In conclusion, the Chamber affirmed its position that Partizani is undoubtedly the player's new club in the sense of art. 17 par. 2 of the Regulations.

84. In continuation, the members of the Chamber recapitulated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years as well as the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

85. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contains a provision by which the parties had beforehand agreed upon an amount of compensation payable by either contractual party in the event of breach of contract. Upon careful examination of said contract, the members of the Chamber assured themselves that this was not the case in the matter at stake.

86. The Chamber further recalled that the Claimant had claimed compensation in the amount of USD 220,000, broken down as follows:

- EUR 150,000 in amount that would have been paid to the player;
- EUR 20,000 in amount paid for the release of the player;
- EUR 50,000 for breach of contract during the protected period

87. In the calculation of the amount of compensation due by the player, the Chamber firstly turned its attention to the remuneration and other benefits due to the player under the existing contract and/or any new contract(s), a criterion that was considered by the Chamber to be essential. The members of the Chamber deemed it important to emphasise that the wording of art. 17 par. 1 of the Regulations allows the Chamber to take into account both the existing contract and any new contract(s) in the calculation of the amount of compensation.

88. According to the documentation provided by the parties, it appears that in accordance with the contract, which was to run until 15 June 2021, the player was to receive a total remuneration of EUR 142,500. This amount includes the remainder of the player's salaries of between September 2018 and June 2019, as well as the player's remuneration for the seasons 2019/2020 and 2020/2021.

89. On the other hand, the value of the new employment agreement, concluded between the player and Partizani, appears to amount to EUR 23,800.

90. In view of all of the above, the Chamber concluded that bearing in mind art. 17 par. 1 of the Regulations, after having duly taken into account the specificities of the present case, the compensation considering the player's both existing contract and any new contract(s) amounts to EUR 83,150, which is the average between the amounts the player is entitled to both under the contract and new employment agreement, a sum the Chamber found to be fair and proportionate.

91. The members of the Chamber then turned to the essential criterion relating to the fees and expenses paid by Istra for the acquisition of the player's services insofar as these have not yet been amortised over the term of the relevant contract.

92. The Chamber recalled that Istra argued that Alavés paid on its behalf a transfer compensation of EUR 20,000. However, the Chamber observed that the Claimant has produced no documentation in support of this allegation. What is more, the DRC was adamant that, in any event, such monies were paid, if at all, by Alavés, and not by the Claimant itself. As such, the DRC decided that the amount of EUR 20,000 as fees and/or expenses incurred by Istra cannot be taken into consideration.

93. On account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the player must pay the amount of EUR 83,150 to Istra as compensation for breach of contract. Furthermore, Partizani is jointly and severally liable for the payment of the relevant compensation.

III. Sporting sanctions

94. In continuation, the Chamber focused its attention on the further consequences of the breach of contract in question and, in this respect, it addressed the question of sporting sanctions against the player in accordance with art. 17 par. 3 of the Regulations. The cited provision stipulates that, in addition to the obligation to pay compensation, sporting sanctions shall be imposed on any player found to be in breach of contract during the protected period.

95. In this respect, the Chamber referred to item 7 of the "*Definitions*" section of the Regulations, which stipulates, inter alia, that the protected period shall last "*for three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional*". In this regard, the DRC pointed out that independent of the player's age, the breach occurred before the contract had run for 2 entire seasons or 2 years, entailing that the unilateral termination of the contract occurred within the protected period.

96. With regard to art. 17 par. 3 of the Regulations, the Chamber emphasised that a suspension of four months on a player's eligibility to participate in official matches is the minimum sporting sanction that can be imposed for breach of contract during the protected period. This sanction, according to the explicit wording of the relevant provision, can be extended in case of aggravating circumstances. In other words, the Regulations intend to guarantee a restriction on the player's eligibility of four months as the minimum sanction. Therefore, the relevant provision does not provide for a possibility to the deciding body to reduce the sanction under the fixed minimum duration in case of mitigating circumstances.

97. Consequently, taking into account the circumstances surrounding the present matter, the Chamber decided that, by virtue of art. 17 par. 3 of the Regulations, the Respondent 1 had to be sanctioned with a restriction of four months on his eligibility to participate in official matches.

98. Finally, the Chamber turned its attention to the question of whether, in view of art. 17 par. 4 of the Regulations, the player's new club, i.e. Partizani, must be considered to have induced the player to unilaterally terminate his contract with the Claimant without just cause during the protected period, and therefore shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods.

99. In this respect, the Chamber recalled that, in accordance with art. 17 par. 4 of the Regulations, it shall be presumed, unless established to the contrary, that any club signing a professional player who has terminated his previous contract without just cause has induced that professional to commit a breach. Consequently, the Chamber pointed out that the party that is presumed to have induced the player to commit a breach carries the burden of proof to demonstrate the contrary.

100. In light of the aforementioned and the evidence of file, and in particular: (a) the admission by Partizani that it was interest in the player's services before he had joined the Claimant, and (b) the lack of diligence by Partiani in connection with signing the player, the DRC had no option other than to conclude that Partizani had not been able to reverse the presumption contained in art. 17 par. 4 of the Regulations. Accordingly, the Chamber decided that Partizani had induced the player to unilaterally terminate his employment contract with the Claimant.

101. In view of the above, the Chamber decided that in accordance with art. 17 par. 4 of the Regulations, Partizani shall be banned from registering any new players, either nationally or internationally, for the two entire and consecutive registration periods following the notification of the present decision. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exception and the provisional measures stipulated in art. 6 par. 1 of the Regulations in order to register players at an earlier stage.

102. In accordance with the Circular no. 1686 of 8 August 2019, art. 24bis of the Regulations does not apply to decisions whereby sporting sanctions (registration ban or restriction to play in official

matches) are imposed on the basis of art. 17 of the Regulations, the execution of which will still continue to be carried out by the FIFA Disciplinary Committee.

IV. Conclusion

103. As a result of the aforementioned considerations, the Chamber decided to partially accept the claim of Istra and to order the player and Partizani to, jointly and severally, pay to Istra EUR 83,150 as compensation for breach of contract.

104. A restriction of four months on his eligibility to play in official matches is imposed on the Respondent 1, Erald Cinari. This sanction applies with immediate effect as of the date of notification of the present decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs.

105. The Respondent 2, FK Partizani, shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.

106. The Chamber concluded its deliberations in the present matter by establishing that the claim of Istra is partially accepted, and rejecting any other requests for relief of any of the parties.

V. Costs

107. The Chamber referred to article 18 par. 2 of the Procedural Rules, according to which *"DRC proceedings relating to disputes between clubs and players in relation to the maintenance of contractual stability as well as international employment related disputes between a club and a player are free of charge"*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.

108. Likewise and for the sake of completeness, the Chamber recalled the contents of art. 18 par. 4 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.

IV. DECISION OF THE DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant, NK ISTRA 1961, is partially accepted.

2. The Respondent 1, ERALD CINARI, has to pay to the Claimant **within 30 days** as from the date of notification of this decision compensation for breach of contract in the amount of EUR 83,150.

3. The Respondent 2, FK PARTIZANI, is jointly and severally liable for the payment of the aforementioned compensation.

4. Any further claim lodged by the Claimant is rejected.

5. The Claimant is directed to inform the Respondent 1 and the Respondent 2, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent 1 and the Respondent 2 must pay the amount mentioned under point IV.2. above.

6. The Respondent 1 and the Respondent 2 shall provide evidence of payment of the due amount in accordance with point IV.2. to FIFA to the e-mail address psdfifa@fifa.org, duly translated into one of the official FIFA languages (English, French, German, Spanish).

7. If the aforementioned sum is not paid within the above-mentioned time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and a formal decision.

8. A restriction of four months on his eligibility to play in official matches is imposed on the Respondent 1, ERALD CINARI. This sanction applies with immediate effect as of the date of notification of the present decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs.

9. The Respondent 2, FK PARTIZANI, shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.

10. No procedural costs are imposed on the parties.

For the Dispute Resolution Chamber:

Emilio García Silvero
Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 20 of the Procedural Rules).

CONTACT INFORMATION:

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