



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2018/A/5693 Riga FC v. FC Partizan & FIFA**  
**CAS 2018/A/5694 FC Partizan v. Riga FC & FIFA**

## **ARBITRAL AWARD**

pronounced by

## **COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

President: Mr Ulrich Haas, Professor of Law, Zürich, Switzerland  
Arbitrators: Mr Patrick Lafranchi, Attorney-at-Law, Bern, Switzerland  
Dr Bernhard Heusler, Attorney-at-Law, Basel, Switzerland  
Ad Hoc Clerk: Mrs Marianne Saroli, Attorney-at-Law, Montreal, Canada

in the arbitration between

### **Riga FC, Latvia**

Represented by Mr Evgeny Krechetov, Attorney-at-Law with EKSPORTS Law in Moscow, Russia

- as Appellant in CAS 2018/A/5693 and  
First Respondent in CAS 2018/A/5694 -

and

### **FC Partizan, Serbia**

Represented by Dr Marco Del Fabro, Attorney-at-Law with Grendelmeier Jenny & Partner in Zürich, Switzerland

- as First Respondent in CAS 2018/A/5693 and  
Appellant in CAS 2018/A/5694 -

### **Fédération Internationale de Football, Switzerland**

Represented by Mr Emilo Garcia, Chief Legal Officer and Mr Jaime Cambreleng Contreras, Head of Litigation

- Second Respondent in CAS 2018/A/5693 and CAS 2018/A/5694 -

## **I. PARTIES**

1. Riga Football Club or Riga FC (“Riga”) is a Latvian football club based in Riga and founded in 2014. It is currently participating in the top division of the Football Association of Latvia (i.e. the Latvian Higher League or Virslīga), which is affiliated with the Fédération Internationale de Football Association (“FIFA”).
2. FC Partizan (“Partizan”) is a Serbian professional football club based in Belgrade, which currently plays in the top division of the Football Association of Serbia, which is affiliated with the FIFA.
3. The FIFA is the international federation governing the sport of football worldwide. It is headquartered in Zurich, Switzerland.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the relevant facts and allegations based on the parties’ submissions and evidence produced in connection with these proceedings. Additional facts and allegations found in the parties’ submissions and evidence may be set out, where relevant, in connection with the legal discussion below. While the Panel has considered all the facts, evidence, allegations and legal arguments submitted by the parties in the present proceedings, it refers in its award only to the submissions and evidence it considers necessary to explain its reasoning.

### **A. The Partizan Contract**

5. On 16 January 2016, Mr Cédric Gogoua Kouame (“Mr Kouame” or the “Player”) and Partizan concluded an employment contract (the “Partizan Contract”), valid from 17 January 2016 until the end of 2019. Mr Kouame is a professional football player and a citizen of Ivory Coast, born on 10 July 1994. According to the Partizan Contract, the Player was entitled to guaranteed remuneration of EUR 9,000.00 per month for the year 2016 and EUR 12,500.00 for the years 2017 to 2019.
6. More specifically, according to Article 5 of the Partizan Contract, Mr Kouame was entitled to receive the total amount of EUR 600,000.00 net for the entire period of the Partizan Contract, payable as follows:
  - an instalment of EUR 25,000.00, due “after the receiving of the ITC”;
  - an instalment of EUR 35,000.00, due at the “end of the February 2016”;
  - the amount of EUR 90,000.00, payable in ten (10) equal instalments, due on the “starting March 2016 ending December 2016”;
  - the amount of EUR 450,000.00, payable in thirty-six (36) equal instalments, due on the “starting January 2017 ending December 2019”.
7. With respect to bonuses/rewards, Article 5 par. 2 of the Partizan Contract provides as follows:

*“Reward for achieved results in the national championship, Cup of Serbia and UEFA Cup competitions based on the decision of the Board of FK Partizan which is applied*

*for all professional football players of FK Partizan: (...) EUR 5,000 for the first place in Serbian Cup (...) Rewards will be calculated according to the player's appearances in correspondent competitions”.*

8. Article 5 par. 3 of the Partizan Contract indicates that Mr Kouame was also entitled to an “*Apartment and car on use*” and Article 5 par. 4 provided that the Player was entitled to “*two return flight tickets Belgrade -- Ivory Coast per year*”.
9. The Partizan Contract does not contain any provision on the due date on which Partizan had to pay the player's monthly salary.
10. From February to July 2016, Partizan paid Mr Kouame the following amounts:
  - EUR 25,000 on 22 January 2016;
  - EUR 35,000 on 26 January 2016;
  - EUR 9,000 on 25 February 2016;
  - EUR 9,000 on 25 March 2016;
  - EUR 9,000 on 25 April 2016;
  - EUR 9,000 on 16 May 2016;
  - EUR 2,000 on 13 July 2016; and
  - EUR 9,000 on 25 July 2016.
11. On 1 September 2016, Mr Kouame sent a letter to Partizan putting it in default and claiming the outstanding payment for his salaries of July and August 2016, together with various other debts. Mr Kouame warned Partizan that he would terminate the Partizan Contract with just cause to the extent it failed to pay the debt by 8 September 2016.
12. On 5 September 2016, Partizan paid Mr Kouame the additional sum of EUR 9,000.00.
13. On 8 September 2019, Mr Kouame sent a second letter to Partizan again putting it in default and claiming payment of his salary for July 2016. The Player warned Partizan that he would terminate the Partizan Contract with just cause to the extent it failed to pay the outstanding debt within a 10-day deadline.
14. On 12 September 2016, Partizan paid Mr Kouame the sum of EUR 2,000.00.
15. On 3 October 2016, Mr Kouame sent to Partizan another notice of default, which *inter alia* reads as follows: “*The Player expects to receive the overdue salary payments in the amount of EUR 18,000 net in full and the housing/rental allowance in the total amount of EUR 2,000 net in full by 7 October 2016 12:00 CET at the latest. (...) In the event that the above-mentioned amounts are not received in full within the deadline set above, the Player reserves the right to take legal action against your Club, including the possibility to terminate the Contract with just cause*”.
16. On 7 October 2016, Mr Kouame unilaterally terminated the Partizan Contract with immediate effect, arguing that he had just cause to do so as Partizan did not comply with its financial obligations as of 7 October 2016.

**B. The Proceedings before the FIFA DRC**

**(i) Mr Kouame v. Partizan**

17. On 20 October 2016, Mr Kouame filed a claim against Partizan for breach of contract without just cause with the FIFA Dispute Resolution Chamber (“FIFA DRC”). Generally speaking, the basis of Player’s claim was that Partizan failed to pay him (a) the salaries for July and September 2016, and (b) four (4) monthly payments of EUR 500.00 relating to housing allowances between June and September 2016, thereby the just cause termination of the Partizan Contract. Consequently, the Player sought the following relief:

- Outstanding remuneration in the total amount of EUR 22,145.00, detailed as follows:

- EUR 20,032.00, plus 5% interest p.a. as from 7 October 2016, corresponding to (2) monthly salaries for July and September 2016, in the amount of EUR 9,000 each, as well as the amount of EUR 2,032.00, corresponding to the period between 1 and 7 October 2016; and
- EUR 2,113.00 plus 5% interest p.a. as from 7 October 2016, corresponding to the payment of the agreed amount for “housing/rental amounts”, corresponding to four (4) monthly payments of EUR 500.00 each related to the period between June and September 2016, as well as EUR 113.00 corresponding to the period between 1 and 7 October 2016.

- Compensation for breach of contract in the total amount of EUR 540,000.00, as follows:

- EUR 90,000.00, plus 5% interest p.a. as from 7 October 2016, representing the residual value of the Partizan Employment Contract in the period between March and December 2016, corresponding to ten (10) instalments of EUR 9,000.00 each;
- EUR 450,000.00, plus 5% interest p.a. as from 7 October 2016, representing the residual value of the Partizan Employment Contract in the period between January 2017 and December 2019, corresponding to 36 instalments of EUR 12,500 each.

- Sporting sanctions be imposed on Partizan and to order it the payment of his legal fees.

**(ii) Partizan v. Mr Kouame**

18. On 21 November 2016, Partizan filed a claim against Mr Kouame for breach of contract without just cause with the FIFA DRC. Generally speaking, the basis of Partizan’s claim was that the Player terminated the Partizan Contract without just cause on 7 October 2016 since only one salary remained outstanding (i.e. September 2016) and it was due only since 30 September. Consequently, Partizan sought the following relief:

- The payment of EUR 887,500, plus 5% interest p.a. as from 7 October 2016, specified as follows:

- the amount of EUR 496,500 as residual value of the contract “until the expiry of the contract”;
- the amount of EUR 325,000 as “non-amortized transfer fee”, according to Partizan corresponding to (39/48) of the total value of the contract, as in 39 months out of the 48 of the total contractual duration, the Player did not train or play for the club;
- EUR 75,000 as “indemnity amount” in line with “the specificity of the sport”, corresponding to 6 monthly payments of EUR 12,500 each;
- minus the amount of EUR 9,000, to which the Player is still entitled as salary for September 2016.

- Furthermore, Partizan requested that the Player be imposed sporting sanctions as well as being ordered to pay its legal fees.

**(iii) Mr Kouame signs with Riga**

19. On 23 February 2017, during the pendency of the procedure before the FIFA DRC, Mr Kouame signed an employment contract with Riga, valid as from 23 February 2017 until 30 November 2017 (the “Riga Contract”). According to the Riga Contract, the Player was entitled to a monthly salary of EUR 820.00.
20. On the same day, FIFA wrote a letter to the Player and to Partizan. The letter reads in its pertinent part as follows:

*In this respect, we would like to kindly inform the parties involved that the investigation-phase of the present matter has been concluded and that we will proceed to submit the present affair to the Dispute Resolution Chamber for consideration and a formal decision. This is, no further submissions from the parties will be admitted to the file.*

21. The Player, following the above letter, informed FIFA of the Riga Contract.
22. On 6 July 2017, the Player and Riga entered into a termination contract. The latter provides – *inter alia* – that the Riga Contract is terminated by mutual consent and that the termination becomes effective on 6 July 2017.
23. On 10 August 2017, FIFA wrote to Riga as follows:

*We would like to inform Riga FC of the procedure pending before the Dispute Resolution Chamber between the Ivorian player, Mr Cedric Gogoua Kouame and the Serbian club, FC Partizan.*

*In this respect, considering that the club, FC Partizan, lodged a counterclaim against the player, Mr Cedric Gogoua Kouame, and considering that the player of the reference and Riga FC apparently concluded an employment contract on 23 February 2017, valid as from 23 February 2017 until 30 November 2017, we would like to provide Riga FC enclosed with a copy of the entire file for Riga FC’s information.*

*In view of the above and taking into account the relevant provisions of the Regulations on the Status and Transfer of Players, in particular its art. 17 par. 2 & 4, Riga FC is kindly invited, should it wish to do so, within 20 days as of receipt of the present letter by DHL, to provide us with its comments on the present affair along with any documentary evidence it might deem useful in its support in the original version and, if need be, duly translated into one of the four official FIFA languages (English, Spanish, French or German). In this regard, we also draw Riga FC's attention to the fact that failure to provide the necessary translation may result in the document in question being disregarded by the decision-making body.*

*In this connection, we kindly refer Riga FC to the contents of art. 12 par. 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber – edition 2015 (hereinafter: Procedural Rules), according to which any party claiming a right on the basis of an alleged fact shall carry the burden of proof.*

*Upon receipt of Riga FC's comments, or in the absence thereof, within the above-mentioned time limit, we will proceed to submit the present matter to the Dispute Resolution Chamber for its consideration and decision.*

24. Riga did not respond to the above letter.

**(iv) FIFA DRC Decision**

25. On 30 November 2017, the FIFA DRC issued the following decision (the "Decision") on the claims brought by the Player and Partizan:

- 1. The claim of the Claimant / Counter-Respondent, Cédric Gogoua Kouame, is partially accepted.*
- 2. The Respondent / Counter-Claimant, FC Partizan has to pay to the Claimant / Counter-Respondent within 30 days as from the date of notification of the present decision, outstanding remuneration in the amount of EUR 11,032, plus 5% interest p.a. as from 8 October 2016 until the date of effective payment.*
- 3. In the event that the amount due to the Claimant / Counter-Respondent under point 2. is not paid within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
- 4. Any further claim lodged by the Claimant / Counter-Respondent is rejected.*
- 5. The Claimant / Counter-Respondent is directed to inform the Respondent / Counter-Claimant immediately and directly of the account number to which the remittance under point 2. above is to be made and to notify the Dispute Resolution Chamber of every payment received.*
- 6. The counter-claim of the Respondent / Counter-Claimant is partially accepted.*

7. *The Claimant / Counter-Respondent has to pay to the Respondent / Counter-Claimant, within 30 days as from the date of notification of the present decision, compensation for breach of contract in the amount of EUR 579,490, plus 5% interest p.a. as from 21 November 2016 until the date of effective payment.*
  8. *The Intervening Party, Riga FC, is jointly and severally liable for the payment of the amount mentioned under point 7.*
  9. *In the event that the amount due to the Respondent / Counter-Claimant under point 7. is not paid within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
  10. *Any further claim lodged by the Respondent / Counter-Claimant is rejected.*
  11. *The Respondent / Counter-Claimant is directed to inform the Claimant / Counter-Respondent immediately and directly of the account number to which the remittance under point 7. is to be made and to notify the Dispute Resolution Chamber of every payment received.*
26. On 27 March 2018, the grounds of the decision were notified to the parties. The relevant points of the “*Considerations*” developed by the FIFA DRC in the Decision, after the indication of the applicability to the case of the 2015 edition of the Regulations on the Status and Transfer of Players (the “RSTP”), read as follows:
6. *In continuation, the Chamber acknowledged that it had been uncontested by the parties that the player prematurely terminated the employment contract on 7 October 2016, by means of a termination letter.*
  7. *Within this context, the members of the DRC took note that the player considered the contract as terminated with just cause as from 7 October 2016, based on the alleged fact that the club apparently had a debt of EUR 22,145 towards him, consisting of two monthly salaries and more than four monthly payments of housing allowances.*
  8. *On the other hand, the Chamber acknowledged the club's argument, according to which the player prematurely terminated the contract without just cause.*
  9. *In this regard, the members of the Chamber noted that the club confronted the player's argument on the existence of the aforementioned debt in the amount of EUR 22,145 since, according to the club, on 7 October 2016, only the salary for September 2016, in the amount of EUR 9,000, remained outstanding for a couple of days. Furthermore, the club pointed out that the player had two bank accounts, one so-called the 'Dinar-account and one 'foreign currency-account and that it only made payments to the Dinar-account.*
  10. *Moreover, the members of the Chamber further took into account that the player did not contest that the club made several payments to him as from 22 January 2016, but that he only contested the nature of said payments and the payments the club alleges to have made in September 2016. What is more, the player*

*denies the club's allegations as to the alleged different bank accounts and states that the club only used the foreign currency-account, to make payments to him.*

- 11. In view of aforementioned dissent between the parties in respect of the basic question as to which amounts the player was entitled to as per the signed contract were actually paid by the club, the members of the Chamber firstly referred to art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. The application of the said principle in the present matter led the members of the Chamber to conclude that it was up to the club to provide documentary evidence of the payment of the remuneration claimed as outstanding by the player.*
- 12. In this respect, the Chamber wished to point out that, regarding the alleged outstanding salaries, the player states that, although said amounts had already fallen due, his salaries for July and September 2016 remained unpaid which circumstance is contested by the club.*
- 13. In relation to said allegedly unpaid salaries, the club explains that it paid the salary for July 2016 on 25 July 2016, and submitted a payment instruction for an amount of EUR 9,000, to be paid on 25 July 2016 to the player. In relation to said alleged payment, the members of the Chamber noted that in his replica, the player confirmed to have received an amount of EUR 9,000 on 25 July 2016, without further contesting the club's arguments. Based on the foregoing, and irrespective of which bank account said payment was made to, the members of the Chamber had no other choice than to establish that the player, on 25 July 2016, had received the salary for July 2016.*
- 14. What is more, regarding the salary for September 2016, the club explained that said salary indeed remained outstanding on 7 October 2016, the day of the termination of the contract by the player, however only because this salary payment had not yet fallen due as per Serbian employment law.*
- 15. In this respect, the members of the Chamber noted that the contract does not specify a due date on which the club should pay the player's salary, and that, in line with its well-established jurisprudence, without a provision to the contrary, the monthly salaries are presumed to fall due on the last day of the month. Turning to the matter at hand, the Chamber established, that the salary for September 2016, had fallen due on 30 September 2016 the latest. Moreover, the Chamber wished to point out that when deciding a dispute before the DRC, FIFA's regulations and the DRC's jurisprudence prevail over national law, and thus the club's allegation that based on Serbian employment law, the September 2016 was not yet due, could not be followed. Based on the foregoing circumstances, the members of the Chamber deemed that on 7 October 2016, the salary for September 2016 had indeed remained outstanding, for a total of 7 days.*
- 16. In addition, the members of the Chamber turned their attention to the housing allowances in the total amount of EUR 2,113 and related to the period between 1 June and 7 October 2016, which according to the player remained outstanding on 7 October 2016. The club, on the other hand, had contested such allegation*

*and provided two payment instructions, based on which it concludes that it paid all the housing allowances the player was entitled to until the date of termination of the contract. In this respect, the club points out that it paid the player the total amount of EUR 4,000 (i.e. 8 payments of EUR 500 each), in two instalments of EUR 2,000 each (cf. point 1./1 1. above). The Chamber also noted that, even though a specific amount referring to house allowances is not defined in the contract, the parties appear to agree that this payment amounted of EUR 500 per month. In addition, in his replica, the player confirmed that he received the total amount of EUR 4,000, however pointed out that said amount was related to alleged match bonuses he was entitled to.*

- 17. As to the player's argument that the two payment of EUR 2,000 each were related to match bonuses and not to housing allowances, the Chamber noted that the player did not substantiate his defence, as he did not present any documentary evidence of his alleged entitlement to the such bonuses.*
- 18. What is more, the Chamber noted that the player, in his replica, only explained that he should have been entitled to a bonus in the amount of EUR 5,000 for winning the Serbian cup, which amount was however not claimed by him in his claim lodged on 20 October 2016. Irrespective of the foregoing, the Chamber noted that the club, on the other hand, had submitted documentary evidence that the player was only entitled to a bonus in the amount of EUR 3,333 and that it timely paid said amount to the player.*
- 19. Consequently, the DRC considered that the player had not sufficiently substantiated this part of his claim to the Chamber's satisfaction, as he did not present any conclusive documentary evidence, which could corroborate that the two payment of EUR 2,000 each were only related to match bonuses, and therefore could not be considered as housing allowances. As a result, the members of the Chamber were of the opinion that the two payment instructions submitted by the club and related to the above-mentioned payments, up to the total amount of EUR 4,000, are to be regarded as the payment of housing allowances. In conclusion, the Chamber deemed that at the day of the termination of the contract, no housing allowances were outstanding.*
- 20. In view of all the above, the members of the Chamber concluded that on the day the contract was terminated by the player, 7 October 2016, only one monthly salary in the amount of EUR 9,000, i.e. the salary for September 2016, had been outstanding for 7 days. In this respect, the Chamber deemed it fit to point out that, in general, that is, regardless of specific circumstances surrounding a matter, solely the non-payment of one monthly remuneration cannot be considered as a just cause for a player to unilaterally terminate the contract 7 days after such amount felt due. In such situations, there would have been other measures to be taken by the player, in order to find a remedy to the situation.*
- 21. Overall, the Chamber decided that on 7 October 2016, the player had no just cause to unilaterally terminate the employment relationship between him and the club and that, therefore, the player had breached the employment contract without just cause.*

22. *Bearing in mind the previous considerations, the Chamber went on to deal with the consequences of the early termination of the employment contract without just cause by the player.*
23. *In doing so, the first of all established that, in accordance with art. 17 par. 1 of the Regulations and in view of the counterclaim lodged by the club, the player is liable to pay compensation to the club. Furthermore, in accordance with art. 17 par. 2 of the Regulations, the Chamber established that the player's new club, i.e. Riga FC, shall be jointly and severally liable for the payment of such compensation.*
24. *Subsequently, 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 a player under an existing contract and/or the new contract(s), 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. In addition, the DRC recalled that the list of objective criteria is not exhaustive and that the broad scope of criteria indicated tends to ensure that a just and fair amount of compensation is awarded to the prejudiced party.*
25. *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 means of 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.*
26. *The Chamber further recalled that the club had claimed compensation in the amount of EUR 887,500, calculated on the basis of the residual value of the contract, as well as the 'non-amortized transfer fee' and an additional indemnity amount in relation to the specificity of the sport.*
27. *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, which 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.*
28. *Following the documentation provided by the parties, it appears that in accordance with the contract, which was to run for thirty-nine more months at the moment when the breach of contract occurred, the player was to receive a total remuneration equalling to EUR 477,000. On the other hand, the value of the new employment contract, concluded between the player and Riga FC over the aforementioned period of time, appears to amount to EUR 31,980. On the*

*basis of the aforementioned financial contractual elements at its disposal, the Chamber concluded that the average of the remuneration of the player with his former and his new club during the remaining contractual period of time amounted to EUR 254,490.*

- 29. The members of the Chamber then turned their attention to the essential criterion relating to the fees and expenses paid by the club for the acquisition of the player's services insofar as these have not yet been amortised over the term of the relevant contract. The Chamber recalled that a transfer compensation of EUR 400,000 had been paid by the club to the Finnish club, SJK, for the player's transfer, documentation of which has been presented by the club. According to article 17 par. 1 of the Regulations, this amount shall be amortised over the term of the relevant employment contract. As stated above, the player would still be bound to the club for thirty-nine further months when he terminated the relevant contract, which was signed for a total duration of forty-eight months (i.e. 4 years). As a result of the player's breach of contract on 7 October 2016, the club has thus been prevented from amortising the amount of EUR 325,000, relating to the transfer compensation that it paid in order to acquire the player's services, which, at that time, the club counted to be able to make use of during forty-eight months.*
- 30. Based on the foregoing, the Chamber considered that the basis for the amount of compensation for breach of contract without just cause to be paid by the player to the club is composed of the amount of EUR 325,000 related to non-amortised expenses incurred by the club when engaging the services of the player, as well as the amount of EUR 254,490 being the reflection of the average remuneration and other benefits due to the player under the previous and the new contract, leading to a total amount of EUR 579,490.*
- 31. In sum, the Chamber decided that the player should pay compensation in the amount of EUR 579,490, plus 5% interest p.a. as of 21 November 2016, i.e. the date of the club's counterclaim, until the effective date of payment to the club, as compensation for breach of contract without just cause. Moreover, in strict application of art. 17 par. 2 of the Regulations, the Intervening Party is jointly and severally liable for the payment of the relevant compensation.*
- 32. In continuation, the members of the Chamber noted that that the club had not yet paid the player his salary for the month of September 2016, corresponding to an amount of EUR 9,000, as well as the salary for the period between 1 October and 7 October 2016, amounting to EUR 2,032, as established by the parties in the contract. The Chamber decided that, in accordance with the general legal principle of "pacta sunt servanda", the player is entitled to those aforementioned payments. The Chamber concurred that, therefore, the club shall pay the amounts of EUR 11,032 to the player.*
- 33. Moreover, taking into account the player's request as well as its longstanding jurisprudence, the Chamber decided that the club must pay to the player interest of 5% p.a. on the amount of EUR 11,032 as from 8 October 2016 until the date of effective payment.*

27. It is from this Decision that the parties now appeal to the Court of Arbitration for Sport.

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

28. On 17 April 2018, Riga filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against Partizan, the Player and the FIFA with respect to the Decision. In its statement of appeal, Riga suggested the names of three arbitrators that would be suitable, or otherwise that it agreed to refer this procedure to Sole Arbitrator.
29. On 17 April 2018, Partizan filed a statement of appeal with the CAS against Mr Kouame, Riga, and FIFA with respect to the Decision.
30. On 20 April 2018, the CAS Court Office initiated separate appeals arbitration procedures under the references *CAS 2018/A/5693 Riga FC v. FC Partizan & Cédric Kouame Kouame & FIFA* and *CAS 2018/A/5694 FC Partizan v. Cédric Kouame Kouame & Riga FC & FIFA*.
31. On 27 April 2018, the CAS Court Office, upon request of Riga and Partizan, forwarded all communications and submissions in these two procedures to Mr Kouame c/o FC Kairat at the following address: Maylina str. 230, 050054 Almaty, Kazakhstan.
32. On 9 May 2018, the CAS Court Office confirmed that its letter dated 27 April 2018 was delivered on 2 May 2018 to FC Kairat for Mr Kouame, but that no response was provided by FC Kairat or Mr Kouame.
33. On 24 May 2018, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division (the “Division President”) and in accordance with Article R52 of the Code of Sports-related Arbitration (“Code”), consolidated these two procedures.
34. On 20 June 2018, following confirmed extensions of time in accordance with Article R32 of the Code, Riga and Partizan filed their appeal briefs in accordance with Article R51 of the Code.
35. On 26 June 2018, the parties were informed that the Division President had decided to submit these proceedings to a Panel composed of three arbitrators and, in accordance with Article R41.1(3) of the Code, were invited to agree on the method of their appointment.
36. On 24 August 2019, the parties were informed that, since they did not reach an agreement, all arbitrators would be appointed by the Division President.
37. On 20 September 2018 and following confirmed extensions of time, FIFA filed its answer in accordance with Article R55 of the Code.
38. On 21 September 2018 and following confirmed extensions of time, Riga filed its answer in accordance with Article R55 of the Code.
39. On 24 September and following confirmed extensions of time, Partizan filed its answer in accordance with Article R55 of the Code.
40. Mr Kouame did not file an answer.

41. On 5 October 2018, the CAS Court Office, on behalf of the President of the Appeals Arbitration Division, confirmed the appointment of the Panel as follows:  
  
President: Prof. Dr Ulrich Haas, Professor of Law, Zürich, Switzerland  
Arbitrators: Mr Patrick Lafranchi, Attorney-at-Law, Bern, Switzerland  
Dr Bernhard Heusler, Attorney-at-Law, Basel, Switzerland
42. On 12 October 2018, the CAS Court Office wrote to FC Kairat seeking confirmation that all correspondence for Mr Kouame from the CAS Court Office had been duly forwarded to him, including the dates on which such correspondence was forwarded to him.
43. On the same, the parties were informed that the Panel had decided to hold a hearing in this case and to dismiss Riga's request of 28 September 2018 to substitute the hearing by a second round of written submissions.
44. On 16 October 2018, the CAS Court Office confirmed the appointment of Ms Marianne Saroli, Attorney-at-Law in Montreal, Canada as *ad hoc* clerk.
45. On 16 October 2018, FC Kairat wrote to the CAS Court Office confirming that Mr Kouame's contract with FC Kairat had been terminated on 19 April 2018 and therefore, none of the CAS Court Office correspondence in this procedure had been forwarded to his attention.
46. On 30 October 2018, the CAS Court Office requested that all parties use their best endeavors to provide the CAS with a new postal address for Mr Kouame before 6 November 2018.
47. On 30 October 2018, the CAS Court Office wrote to FC Kairat requesting new contact details for Mr Kouame.
48. On 6 November 2018 and 31 October 2018, Riga and Partizan, respectively, provided provided a new postal address for Mr Kouame : c/o FC SKA-Khabarovsk, Stadion Lenia, 680028, Khabarovsk, Russia, and emails, as follows: [fcska-khv@yandex.ru](mailto:fcska-khv@yandex.ru) and [skawnergia@mail.ru](mailto:skawnergia@mail.ru).
49. On 6 November 2018, FC Kairat informed the CAS Court Office that Mr Kouame moved to FC SKA Khabarovsk and provided his email, as well as the telephone number, of his agent.
50. On 7 November 2018, the CAS Court Office sent a letter to Mr Kouame c/o FC SKA-Khabarovsk at the address provided by the parties (including all known emails) enclosing the entire case file to date and set a new deadline for him to file his answer.
51. On 15 November 2018, FC SKA Khabarovsk informed the CAS Court Office that the file sent by the CAS Court Office on 7 November 2018 was not delivered to Mr Kouame as he left the club effective 14 November 2018, the same day the CAS letter arrived, and moreover, all emails sent to Mr Kouame's attention were refused by Mr Kouame.

52. On 19 November 2018, the CAS Court Office wrote to FC SKA Khabarovsk inquiring when Mr Kouame would return to the club and moreover, requesting a personal address for Mr Kouame.
53. On 21 November 2018, FC SKA Khabarovsk informed the CAS Court Office that Mr Kouame would not return to the club as his contract was terminated as from 9 November 2018 and moreover, that it did not have a personal address for him.
54. On 22 November 2018, the CAS Court Office invited the parties to provide a new address for Mr Kouame within one week, failing which the Appellants were invited to (1) withdraw their appeals against Mr Kouame; (2) stay the procedure pending receipt of an updated address for Mr Kouame; or (3) stay the procedure only as to Mr Kouame pending receipt of an updated address for Mr Kouame.
55. On 27 November 2018, Riga confirmed that it had no further contact details for Mr Kouame and suggested that this procedure be suspended for a certain time until further information about Mr Kouame's whereabouts become known.
56. On 29 November 2018, Partizan provided contacts details for Mr Kouame's intermediary and separately, noted its position that it was for the Panel to ultimately decide how to proceed if no contact details for Mr Kouame are found.
57. On 29 November 2018, FIFA confirmed that it had no further contact details for Mr Kouame.
58. On 7 December 2018, the CAS Court Office wrote to the office of Mr Kouame's alleged intermediary (World Sports and Entertainment Group) seeking contact details for Mr Kouame.
59. On 20 December 2018, the CAS Court Office informed the parties that DHL was unable to deliver the CAS Court Office letter dated 7 December 2018 since the World Sports and Entertainment Group moved and their telephone number is out of service. The CAS Court Office again requested the parties to provide updated contact details for Mr Kouame by 31 January 2019 failing which it was noted that the Panel may have to terminate the procedure with regard to Mr Kouame.
60. On 18 January 2019, Riga filed a new document regarding its average budget and requested that it be taken on file.
61. On 22 January 2019, the CAS Court Office acknowledged receipt of Riga's letter and forwarded it to the other parties' attention.
62. On 23 January 2019, FIFA objected to the late filing of the document by Riga.
63. On 23 January 2019, the CAS Court Office acknowledged receipt of FIFA's objection and informed the parties that Riga's letter dated 19 January 2019 and FIFA's objection have been forwarded to the Panel.

64. On 25 January 2019, also Partizan objected to the late filing of the new document by Riga.
65. On 29 January 2019, the CAS Court Office acknowledged receipt of Partizan's objection.
66. On 4 February 2019, Riga provides a new address for Mr Kouame as follows: Bp 331, VICIDEXO 1, Abidjan, Cote-d'Ivoire.
67. On 12 February 2019, the CAS Court Office sent a letter to Mr Kouame at the new address in Cote-d'Ivoire enclosing the entire case file to date and set a new deadline for him to file his answer.
68. On 14 February 2019, the CAS Court Office informed the parties that the address provided for Mr Kouame in Cote-d'Ivoire was incorrect and requested that Riga provide a new address by 21 February 2019.
69. On 27 February 2019, the CAS Court Office wrote to the parties noting that no new contact details were provided for Mr Kouame and to the extent no new contact details were provided by 6 March 2019, the Panel would decide whether to terminate this procedure against Mr Kouame.
70. On 11 March 2019, Riga provided updated contact details for Mr Kouame c/o Latvian Club BFC Daugavpils, Saules 69-3, LV-5401 Daugavpils (Latvia)
71. On 13 March 2019, the CAS Court Office informed the parties that it would make one final attempt to contact Mr Kouame at the addresses provided by FIFA and Riga and to the extent such notification was unsuccessful, and barring an objection to the contrary, the appeals filed by Riga and Partizan as directed against Mr Kouame would be deemed withdrawn.
72. On 15 March 2019, the CAS Court Office sent a letter to Mr Kouame at the new address in Latvia enclosing the entire case file to date and set a new deadline for him to file his answer.
73. On 15 March 2019 and on 22 March 2019, the CAS Court Office wrote to Latvian Club BFC Daugavpils seeking confirmation that the CAS Court Office letter of 15 March 2019 was indeed forwarded to Mr Kouame.
74. On 3 April 2019, the CAS Court Office confirmed with the parties that it did not receive confirmation that its letter dated 22 March 2019 reached Mr Kouame and consequently, as confirmed with and agreed upon by the parties, this procedure would be deemed withdrawn insofar as directed against Mr Kouame.
75. With letter dated the same day, the CAS Court Office confirmed that a hearing will be held in the present matter on 24 June 2019 at the CAS Court headquarters in Lausanne.
76. On 12 April 2019, the Panel issued a Partial Termination Order and ruled *in camera* that the procedures *CAS 2018/A/5693 Riga FC v. FC Partizan & Cédric Kouame Kouame &*

*FIFA and CAS 2018/A/5694 FC Partizan v. Cédric Kouame Kouame & Riga FC & FIFA* were deemed withdrawn and terminated as against Mr Kouame.

77. The procedure then continued against the viable parties remaining in the procedure.
78. On 11 June 2019, the CAS Court Office issued an Order of Procedure, it was returned duly signed by Partizan on 14 June 2019, by Riga on 18 June 2019 and by FIFA on 21 June 2019.
79. On 20 June 2019, the CAS Court Office informed the parties that the Panel in application of Article R56 of the Code had decided to admit the new document filed by Riga on 18 January 2019 to the file.
80. On 24 June 2019, a hearing was held in the consolidated appeals. The Panel was assisted throughout the procedure by Ms Pauline Pellaux, Legal Counsel to the CAS, and Ms Saroli, *ad hoc* clerk. At the hearing, the Panel was joined by the following:

For Riga:

Mr Evgeny Krechetov, Counsel for Riga  
Ms Elena Katkova, Counsel for Riga  
Mr Alexander Romashin, witness  
Mr Victor Berezky (Interpreter)

For Partizan:

Mr Zoran Damjanovic  
Ms Ksenija Damjanovic  
Ms Tatjana Otkovic (Interpreter)  
Mr Marco Del Fabro

For FIFA:

Mr Marco Amezcua, Legal Counsel of Players' Status  
Mr Jaime Cambreleng Contreras, Head of Litigation for FIFA

81. At the outset of the hearing, the parties confirmed that they had no objection to the appointment of the Panel. At the conclusion of the hearing, the parties confirmed that their right to be heard had been fully respected.

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

82. This section of the award does not contain an exhaustive list of the parties' contentions, its aim being to provide a summary of the substance of the parties' main arguments. In considering and deciding upon the parties' claims in this award, the Panel has accounted for and carefully considered all of the submissions made and evidence adduced by the

parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

**A. The Position of Riga**

83. In its statement of appeal, Riga seeks the following relief:

1. To uphold the present appeal against the Decision of the Dispute Resolution Chamber of FIFA dated 30 November 2017;
2. To rule that FC Riga is not jointly and severally liable for the payment of any compensation that may be due by the Respondent 2 to the Respondent 1;
3.
  - 3.1. To issue an award annulling points 6-11 of the Decision and replacing them with the following:
    - 3.1.1. The counter-claim of the Respondent/Counter-Claimant is rejected. or, alternative/v (without prejudice and only in the case if the prayers under par. 3.1.1 of this Statement of Appeal are rejected):
    - 3.1.2.
      - (a) The Claimant/Counter-Respondent has to pay to the Respondent/Counter-Claimant, within 30 days, compensation for the breach of contract in the amount of EUR 325,000; and
      - (b) FC Riga is not jointly and severally liable for the payment of the amount mentioned under point 7 of the Decision; and
      - (c) Any further claim lodged by the Respondent/Counter-Claimant is rejected.
  - 3.2. To issue an award annulling point 8 of the Decision and holding that:
    - 3.2.1. FC Riga is not jointly and severally liable for the payment of the amount mentioned under point 7 of the Decision.
4. To rule that the Respondents shall contribute to the legal and other costs incurred by the Appellant in relation to these proceedings, in the amount the CAS finds appropriate;
5. To rule that the Respondents shall bear the entire costs of this arbitration and reimburse the Appellant the minimum CAS Court Office fee of CHF 1000 as well as any other amounts of advances of costs paid to the CAS.

84. In its appeal brief, Riga amended its request for relief as follows:

1. To uphold the present appeal against the Decision of the Dispute Resolution Chamber of FIFA dated 30 November 2017;
2. To rule that Riga FC is not jointly and severally liable for the payment of any compensation that may be due by the player Cedric Gogoua Kouame to FC Partizan;
3.
  - 3.1. To confirm that the player Cedric Gogoua Kouame terminated the employment contract with FC Partizan with just cause.  
or, alternatively (without prejudice and only in the case if the prayers under par. 3.1 of this Request for Relief are rejected):
  - 3.2. To rule that the player Cedric Gogoua Kouame shall pay no compensation to FC Partizan.  
or, alternatively (without prejudice and only in the case if the prayers under par. 3.1 and 3.2 of this Request for Relief are rejected):
  - 3.3. To determine the amount of compensation that shall be paid by the player Cedric Gogoua Kouame to FC Partizan, but in any case no more than EUR 102,490.
4.
  - 4.1. To issue an award annulling points 6-11 of the Decision and replacing them with the following:
    - 4.1.1. The counter-claim of the Respondent/Counter-Claimant is rejected or alternatively (without prejudice and only in the case if the prayers under par. 4.1.1 of this Request for Relief are rejected):
    - 4.1.2.
      - (a) The Claimant/Counter-Respondent has to pay to the Respondent/Counter-Claimant, within 30 days, compensation for the breach of contract in the amount of EUR (to be determined at the discretion of the Panel, but in any case no more than of EUR 102.490); and
      - (b) FC Riga is not jointly and severally liable for the payment of the aforementioned amount of compensation; and
      - (c) Any further claim lodged by the Respondent/Counter-Claimant is rejected.

or alternatively (without prejudice and only in the case if the prayers under par. 4.1 (including the ones under par. 4.1.1 and 4.1.2) of this Request for Relief are rejected):
  - 4.2. To issue an award annulling point 8 of the Decision and holding that:
    - 4.2.1. FC Riga is not jointly and severally liable for the payment of the amount mentioned under point 7 of the Decision.
5. To rule that the Respondents shall contribute to the legal and other costs incurred by the Appellant in relation to these proceedings, in the amount the CAS finds appropriate;

6. To rule that the Respondents shall bear the entire costs of this arbitration and reimburse the Appellant the minimum CAS Court Office fee of CHF 1000 as well as any other amounts of advances of costs paid to the CAS.

85. Riga's submissions, in essence, may be summarized as follows:

**a. Choice of Law**

- No express choice of applicable law was agreed upon by the parties. As this dispute was referred to the FIFA DRC (with the possibility of appeal to CAS), the only applicable regulations are those of FIFA, with Swiss law applying subsidiarily. This said, even if there was an express choice of applicable law in favour of Serbian law, FIFA rules and Swiss law must still apply (internal citations omitted).

**b. Extra Petita; No Standing to be Sued**

- The FIFA DRC wrongly nominated Riga as an "Intervening Party" to the underlying proceedings after the closure of the investigatory phase *sua sponte*, and without a request from either Mr Kouame or Partizan that Riga should be held jointly and severally liable for Mr Kouame's outstanding compensation.
- Partizan never reserved any right to request that Riga be jointly and severally liable for payment of any compensation to Mr Kouame, despite the parties being aware that Mr Kouame joined Riga by latest 24 February 2017, i.e. when the ITC was requested by the Latvian FA.
- CAS has no jurisdiction to rule on the Partizan appeal as against Riga because Partizan has not exhausted any legal remedies available at the lower level and cannot seek anything before Riga at the CAS. Such potential remedy is limited to those claims pursued in the "previous litigation" (international citation omitted).
- The FIFA Rules govern the FIFA DRC procedures, and nothing contained therein allows for FIFA bodies to nominate parties and pronounce decisions beyond the parties' prayers for relief. It is simply up to the claiming party to call a person or entity to be a respondent in a procedure and to formulate its/his requests for relief.
- A party has standing to sue only if it has a legally protected interest (see CAS 2014/A/3855). Here, FIFA had no legally protected interest. The only parties with interest in obtaining compensation and interest in having the "new" club jointly and severally liable for payment of such compensation in order to facilitate the payment and share any risks are Mr Kouame and Partizan. Moreover, joint and severally liability of a "new" club does not include "*hierarchical relationships between FIFA and its (direct and indirect members)*", but rather contractual relationships between clubs and players (internal citations omitted). As such, FIFA had no standing to name Riga as an "Intervening Party" and pronounce that it had to be jointly and severally liable for payment of the compensation in favour of Partizan.

- Such a procedural mistake by FIFA cannot be remedied by the CAS on the basis of a *de novo* principle.

**c. Joint and Several Liability**

- Article 17 para. 2 of the RSTP provides as follows: “*If a professional is required to pay compensation, the professional and his new club **shall be jointly and severally liable for its payment.***” (emphasis added). The wording of this provision reads as though the new club “*shall*” be jointly and severally liable, but such language is not a mandatory requirement. Such position is supported by recent CAS jurisprudence whereby CAS Panels have deviated from the literal meaning of Article 17 para. 3 and 4 RSTP when assessing sporting sanctions against a player (internal citations omitted) and of Article 17 para. 2 when deeming that it should not applied, even in the future, when the player has no new club at the time of the FIFA decision.
- As a result, joint and several liability of a “new” club is not mandatory and Article 17 para. 2 RSTP is subject to interpretation. The imposition of joint and several liability of the “new” club shall be decided on a case-by-case basis, taking into account all particular circumstances.

**d. Legal Nature of Article 17 para. 2 RSTP**

- The legal nature of joint and several liability under Article 17 para. 2 RSTP has been scrutinized in the well-known case CAS 2013/A/3365 & 3366 (internal quotations omitted). Based on this decision, there is no contractual relationship between Riga and Partizan. Even if there were such a relationship, Article 17 para. 2 RSTP does not constitute a guarantee under Article 111 Code of Obligations (“CO”) nor a suretyship under Article 492 CO, nor can it establish an assumption of debt under Article 143 CO.
- As to strict liability, in a non-contractual context (as in the case here), there may be liability without fault, but there may not be liability without causation. It is fundamental under Swiss law that obligations do not arise in the absence of a valid cause (*see* SFT 105 II 183 *et al.*). In the case at hand, the valid cause stems from Riga’s alleged status as Mr Kouame’s “new” club, which is untenable.

**e. The Meaning of Article 17 para. 2 RSTP and its Balance with the Freedom of Workers’ Movement**

- The aim and meaning of joint and several liability should be considered in conjunction with the balance of the interest, protected by this liability, and the freedom of workers’ movement. This issue was analysed in the case CAS 2013/A/3365 & 3366 and summarized as follows:
  - Joint and several liability of a “new” club is designated to protect contractual stability;
  - There must be a balance between the principle of contractual stability and the players’ fundamental right to free movement;

- Joint liability cannot be imposed automatically and unconditionally without a finding of fault or negligence and without a contractual basis;
- Players would not be able to find a new employer if the “new” club had to pay compensation even bearing no fault in the breach of the employment contract;
- Joint liability cannot be imposed upon a “new” club in the absence of (a) the “new” club being proven to have induced the player’s breach, or (b) the “new” club being at fault; and
- Joint responsibility does not apply when a player had no intention to leave a club to sign with another club and the “new” club was not involved in the termination of the player’s employment relationship with the old club.

**f. Absence of Causation – Just Cause Termination**

- Mr Kouame could not have wanted to leave Partizan considering that following his employment relationship with them, he remained unemployed for 5 months and when he did get another contract, it was in a weaker league for only 9 months instead of employment for 39 months. Moreover, the value of contract with Partizan was almost EUR 500,000 as opposed to his new contract valued at less than EUR 7,500. There was simply no logic for such a voluntary change in his contractual situation.
- Moreover, before he terminated the Partizan Contract, he served 3 termination notices on Partizan. While it is understood that Mr Kouame’s expected amounts were wrong, it can be said that he tried to save the contractual relationship. Termination was the last resort.
- Partizan lost interest in Mr Kouame after just 5 official matches and as a result, it stopped paying him. Mr Kouame proceeded to serve Partizan with 3 termination notices should the club not pay him his outstanding monthly salaries (and other debt). Partizan had to know that Mr Kouame would soon unilaterally terminate the relationship if they did not pay the outstanding sums (or correct Mr Kouame’s understanding the debt amount). If Partizan wanted to save the relationship with Mr Kouame, it could have simply replied to the warnings and provide Mr Kouame with correct calculations of the amounts actually owed. Instead, Partizan ignored the player giving the impression that the debt was accurate. Put simply, Partizan acted in bad faith.
- Riga was not involved in the termination of the Partizan Contract and in fact, was not even aware of Mr Kouame until his agent contacted Riga in January 2017. Mr Kouame was used to playing in higher leagues, so it is likely that he had never heard of Riga as well.
- In order to induce a player, a club must at least (a) approach the player; and (b) make a competitive offer to interest the player. Riga never approached the player

and he was unemployed for 5 months before Riga signed him. Moreover, the agreed-upon (non-guaranteed) salary was EUR 820/mo. to play in one of the weakest leagues in Europe, as opposed to EUR 9,000-12,500/mo. to play for Partizan.

- Riga was not at fault for Mr Kouame's termination as Riga only signed him as a favour so he was able to train with the team while looking for a contract. The Riga Contract was only executed as a formality prescribed by Latvian legislation. Moreover, Riga was assured that Mr Kouame has terminated his contract with Partizan for good cause.
- There was an ITC request made on 24 February 2012 but Partizan failed to respond (as evidenced by the TMS report). This establishes that Partizan intentionally failed to inform the Serbian FA about the pending contractual dispute, initiated by Partizan, thus intentionally making Riga unaware of the conflict. If Riga was aware of the claim, it could have taken measures to avoid this situation. Instead, Partizan intentionally opened a path to claim joint and several liability of the "new" club.
- Partizan contributed to the termination of the Partizan Contract as if it terminated the contract itself. This is similar to the role of Chelsea FC in the CAS 2013/A/3365 & 3366 case.
- Riga is not the new club of Mr Kouame *strictu sensu* in line with Article 17 para. 2 of the RSTP. In this respect, you must look to whether the club actually benefitted from the services of the respective player to determine whether a player/club relationship existed. This is aligned with the approach taken by panels to determine whether registration by a club leads to an obligation for a club to pay training compensation (internal citations omitted). The same approach is applicable when determining the identity of the "former" club.
- The true aim of joint and several liability seeks to protect contractual stability and does not apply when there is no causation, and in some cases, aims to avoid undue enrichment of the "new" club and undue sporting benefits. Here, Riga never obtained any benefit from Mr Kouame's registration and never planned to use his services to benefit the team. Furthermore, Riga never aimed to get any profit from the future transfer of the player (his contract allowed him to leave at any time and without any compensation). Riga simply obtained no benefit from him.
- The RSTP does not define the basis for a just cause termination. Thus, the Panel must look to Swiss law which, as noted above, requires the Panel to examine the overall circumstances of the case.
- Even if a club formally exercises its contractual obligations, it may be that a player has just cause to terminate a contract if he believes in good faith that the club breached its obligations and the continuation of the contract is impossible. Important in this consideration is whether the facts of the situation lead to the loss of trust between the contracting parties, a vital consideration in an employment contract.

- Mr Kouame terminated the Partizan Contract with just cause based on the overall circumstances of the case (internal citations omitted). As noted above, Mr Kouame was mistaken as to the amount owed to him under his contractual relationship and sent 3 notices to the club in this respect. But the club did not respond or correct his misunderstanding and allegations, and their response to this inquiry during the FIFA proceeding in this respect is telling: *“Furthermore, taking into consideration that only one monthly salary was outstanding since three days, Respondent had no motive or reason to contest such an obviously wrong statement.”* Partizan just had no *bona fide* desire to save the player as their desire was to have Mr Kouame leave the club and pay them compensation (recalling that Partizan had not even used his services for the prior 8 matches). And, Partizan’s consideration of when such salary payments should be made under Serbian law is not sufficient to save their actions and use of the player’s “delusion”.
- Nevertheless, even if the Panel considers that Mr Kouame terminated his contract without just cause, Partizan is not entitled to compensation because it had no interest in his services and intentionally used his accidental omission to induce his termination of the Partizan Contract. Partizan benefitted from the termination and no compensation can be awarded when no damage occurred. However, if Partizan is entitled to compensation, it should be limited to the unamortized part of the transfer fee incurred by Partizan. According to the FIFA DRC’s calculation, the average remuneration of the player with Partizan and Riga during the remaining contractual period of time amounted to EUR 254,490. The difference between EUR 477,000 and EUR 254,490, which is EUR 222,510, is the amount that was effectively saved by FC Partizan and therefore, the amount of unamortized costs of EUR 325,000 shall be reduced by this amount of EUR 222,500, and therefore the actual damage is EUR 102,490.
- In addition, Partizan’s inducement of the breach should contribute to the reduction any compensation owed.
- Finally, Partizan’s assertion that Mr Kouame was a “leading player” for the club is false. One only need to look at the statistics to see that the club was not playing him and, indeed, the last official match he played for Partizan was on 7 August 2016 – 2 months before termination. The savings in his salary exceeded the loss in his participation.

**g. Absence of Mr Kouame during the Warning Period**

- The absence of Mr Kouame during his “warning period” is not relevant to the determination of whether there was just cause to terminate the Partizan Contract. When an employer is in default, the employee may suspend execution of his contractual duties and withhold any performance of his obligations.

**B. The Position of Partizan**

86. In its Statement of Appeal and Appeal Brief, Partizan seeks the following relief:

1. *To set aside paras. 1.-5. of the Appealed Decision of the FIFA Dispute Resolution Chamber passed on 30 November 2017 and dismiss the claim of the Player Cédric Gogoua Kouame entirely.*
2. *To modify para 7. of the Appealed Decision of the FIFA Dispute Resolution Chamber passed on 30 November 2017 to the effect that the Claimant / Counter-Respondent (the Player Cédric Gogoua Kouame) is ordered to pay to the Respondent/ Counter-Claimant (FC Partizan), within 30 days as from the notification of the CAS Award, the amount of EUR 821.156,31, plus 5 % interest p.a. as from 21 November 2016 until the date of effective payment.*
3. *To set aside para 10. of the Appealed Decision of the FIFA Dispute Resolution Chamber passed on 30 November 2017 and impose a sanction on Respondent 1 in accordance with art. 17 para. 3 of the FIFA Regulations on the Status and Transfer of Players.*
4. *In any event, to order that the Respondent 1 and Respondent 2 shall bear the costs of the arbitration and that the Respondents 1 and Respondent 2 shall joint by and severally contribute to the legal fees incurred by Appellant in an overall amount of CHF 25'000.*

87. In the hearing, Partizan amended no. 2 of its requests as follows (emphasis added):

2. *To modify para 7. of the Appealed Decision of the FIFA Dispute Resolution Chamber passed on 30 November 2017 to the effect that the Claimant / Counter-Respondent (the Player Cédric Gogoua Kouame) would have to be ordered to pay to the Respondent/ Counter-Claimant (FC Partizan), within 30 days as from the notification of the CAS Award, the amount of EUR 821.156,31, plus 5 % interest p.a. as from 21 November 2016 until the date of effective payment.*

88. According to Partizan, this change of the prayers for relief follows from the fact that Mr Kouame no longer is a party to these proceedings and that, therefore, the amount of the damages owed by the Player (for which Riga is jointly and severally liable) can only be determined incidentally. None of the other Parties objected to the amendment of the prayers for relief.

89. Partizan's submissions, in essence, may be summarized as follows:

**a. Termination without just cause**

- The RSTP edition 2016 does not define the concept of “just cause”. Since 1 June 2018, however, a new Article 14bis has been introduced to the RSTP, which enables players to unilaterally terminate an employment contract if a club fails to pay salaries for two months. While this provision does not apply to the present case, it should serve as a reference point.
- The Partizan Contract does not contain any provision about late payments, but it refers at Article 8 para. 2 to Article 64 of the Regulations of the Football Association of Serbia (FAS), which reads as follows:

*Terminating a Contract for Just Cause*  
*Article 64*

*A contract may be terminated by either without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.*

*The parties may request termination of contract for just cause at any time during the competition season.*

*The existence of just cause shall be established on a case-by-case basis. A just cause for unilateral contract termination is usually a breach of contract by the other party. The basic principle in case of termination for just cause is that there exist a breach of contractual provisions and that such breach lasts for at least three months.*

*In case the competent body has established a just cause, the party terminating the contract for just cause is not obliged to pay compensation or to be subject to sporting sanctions.*

*The party in breach which is responsible for contract termination shall indemnify any loss suffered due to early termination of the contract and may be subject to sporting sanctions.*

- The Partizan Contract includes a clause according to which either party is entitled to terminate the existing contract if a breach persists for at least three months. Consequently, Mr Kouame was only able to lawfully terminate the Partizan Contract in the event Partizan owed him at least three monthly salaries. *In casu*, this condition was not met because only the salary of September 2016 was outstanding.
- Separately, Mr Kouame failed to render his services or at least offer to fulfil his contractual obligations during the “warning period” (see FIFA DRC 28 September 2007, no. 97545). In this respect, Mr Kouame breached the contract.
- In sum, Mr Kouame terminated the Partizan Contract without just cause resulting a contractual breach.

**b. Consequences of breach of contract and amount of compensation**

- Pursuant to Article 17 para. 1 of the RSTP, if the employment contract has been terminated by one of the parties without just cause, the party in breach shall pay compensation. In this respect, the Partizan Contract does not contain any provision concerning the amount owed in case of a breach of contract by one party and therefore, the criteria of compensation laid down in the Article 17 para. 1 RSTP must apply.
- The objective criteria derive, in addition, from the jurisprudence of the FIFA DRC and especially the CAS. While the FIFA DRC concluded that Mr Kouame

terminated the Partizan Contract without just cause and that Partizan was entitled to a compensation, Partizan disagrees with the calculation of the FIFA DRC.

- According to Partizan, the FIFA DRC incorrectly evaluated the total amount of compensation for breach of contract without just cause to be paid by Mr Kouame to EUR 579,490.00. More precisely, the FIFA DRC wrongly calculated the awarded compensation to Partizan, notably at paragraphs 7 and 28 of their findings. For instance, at paragraph 28, the FIFA DRC erroneously alleges that:
  - the average remuneration of Mr Kouame between his previous club and the new club over the remaining period of the Partizan Contract corresponds to EUR 254,490.00;
  - the Riga Contract has the same expiration date as the Partizan Contract.
- Since the Riga Contract was valid from 23 February 2017 to 30 November 2017, the average value of the previous and new contract can only be taken for March, April, May, June, July, August, September, October and November 2017, as well as for the period from 23 February to 28 February 2017, whereas the remuneration for the first 22 days of February must be accounted for the Partizan club.
- In the present case and according to Article 17 par. 1 of the RSTP, the correct compensation for breach of contract committed by Mr Kouame is composed of 1) the value of the Partizan Contract until its expiry; 2) the non-amortized transfer fee paid by Appellant; and 3) an additional amount based on the specificity of sport. This compensation does not correspond to EUR 579,490.00, but rather to an amount of EUR 821,155.88 detailed as follows:

### **1) The Non-Amortized Transfer**

- Partizan hired Mr Kouame during the winter transfer window 2015/2016 and had to pay a transfer fee in the amount of EUR 400,000.00 to his former club in Finland, namely Seinajoen Jalkapallokerho. According to Article 17 para. 1 of the RSTP, the non-amortized transfer compensation can also be included in the calculation of the compensation due by the player to the club as a result of the contractual breach.
- Because of Partizan's tight financial situation and the requirements regarding the immediate payment of any transfer fee for a substitute player, Partizan was not able to sign in January 2017 (the next transfer window) a comparable substitute player for Mr Kouame, who was not only an extraordinary player with a wide experience but was also foreseen as pillar and natural born leader of the young team for the next few years.
- In accordance with the Transfer Agreement of 16 January 2016, Riga requests EUR 325,000.00, which corresponds to the amount for the period of October 2016 until December 2019.

## 2) The Average Remuneration

- Compensation should be calculated based on the average between the remuneration due until the expiry of the former contract and the remuneration due under the new contract for the same period. The “remuneration” is composed of the monthly salary and of any benefits due to the player.
  - In the present case, the Partizan Contract was valid for 4 years and at its expiry, Mr Kouame would have received a total remuneration of EUR 477,000.00. From 23 February 2017 until 30 November 2017, Mr Kouame had an employment relationship with Riga. The average of the remuneration is only applicable from 23 February 2017 until 30 November 2017:
    - From 23 February until 28 February 2017: [EUR 2,678.57 (6 days x the monthly value of the Partizan Contract of EUR 12,500.00) + EUR 175.71 (6 days x the monthly value of the Riga Contract of EUR 820.00)] / 2 = EUR 1,427.14
    - From 1 March to 30 November 2017: [EUR 112,500.00 (9 months x the monthly value of the Partizan Contract of EUR 12,500.00) + EUR 7,380.00 (9 months x the monthly value of the Riga Contract of EUR 820.00)] / 2 = EUR 59 940.00
- ⇒ EUR 61,367.14
- The residual value of the Partizan Contract is detailed as follows:
    - From 8 October until 31 October 2016 (24 days x the monthly value of the Partizan Contract of EUR 9,000.00) = EUR 6,967.74
    - From 1 November until 31 December 2016 (2 months x the monthly value of the Partizan Contract of EUR 9,000.00) = EUR 18,000.00
    - From 1 January until 31 January 2017 (1 month x the monthly value of the Partizan Contract of EUR 12,500.00) = EUR 12,500.00
    - From 1 February until 22 February 2017 (22 days x the monthly value of the Partizan Contract of EUR 12,500.00) = EUR 9,821.00
    - From 1 December 2017 to 31 December 2019 (25 months x the monthly value of the Partizan Contract of EUR 12,500.00) = EUR 312,500.00

⇒ EUR 359,788.74

### 3) The additional compensation under specificity of sport

- Mr Kouame breached the Partizan Contract after nine months and, therefore, within the Protected Period. It shall also be considered that Mr Kouame was not a free agent back in January 2016 and that the signing fee of EUR 60,000.00 payable in two instalments was an advance payment on the annual salary of EUR 150,000.00.
- According to the CAS jurisprudence, a breach of contract occurring within the Protected Period is an aggravating factor taken into account in increasing the compensation to be awarded pursuant to the “specificity of sport” (CAS 2012/A/3033).
- With regard to the “specificity of sport”, the panel in CAS 2008/A/1519 and 2008/A/1520 found that the status and the behavior of the player shall also be taken into account while setting an additional indemnity amount equal to 6 months of salary paid by the former club. Such finding follows the content of Article 337c para. 3 of the Swiss Code of Obligation.
- Hence, the additional compensation under the criterion of specificity of sport and the unjustified breach of the contract by Mr Kouame during the protected period being 6 monthly remunerations (*6 months x the monthly value of the Partizan Contract of EUR 12,500.00*) amounts to EUR 75,000.
- Pursuant to Article 120 para. 1 of the SCO, Partizan sets off this debt in the amount of EUR 11,032.00 with its claim as calculated above. Therefore Mr Kouame has to pay to Partizan the amount of EUR 810,012.88 (in particular EUR 821,155.88 - 11,032.00).

#### c. Joint and Several Liability

- Article 17 para. 2 of the RSTP being mandatory, FIFA had to apply it even if it was not requested by the former club: FIFA hence did not rule *ultra petita* and the new club has standing to be sued before CAS.
- Riga was invited to submit its comments before FIFA but it failed to do so. In any event even if its rights would have been infringed before FIFA, the CAS *de novo* proceedings would cure such breaches.
- The case CAS 2013/A/3365 & 3366 does not help Riga FC since in this case the Panel chose the wrong approach since Article 17 para. 2 of the RSTP has its origin in the law of the association and the duties of their direct and indirect members may, within the framework of its aim and autonomy, be determined at the discretion of the association, articles 111, 143 and 492 CO having thus no relevance.

- Since it is the Player who decided to terminate the Partizan Contract, an infringement to the right of freedom of workers' movement cannot be validly invoked.
- Under Article 17 para. 2 of the RSTP, if a player is obliged to pay compensation, his new club shall be jointly and severally liable for the payment. Pursuant to the definitions provided in the RSTP, the new club is "*the club that the player is joining*". Thus, Riga is the "new" club as it was the club that Mr Kouame joined after leaving Partizan.
- According to the FIFA Commentary for Article 17 RSTP, the new club remains responsible regardless of any involvement or inducement to breach the contract. This conclusion is also confirmed by well-established jurisprudence of the FIFA DRC and the CAS.
- For example, in CAS 2014/A/3852, it was ruled that "*liability under article 17.2 RSTP is of an objective nature and does not require that the new club be considered as the instigator of the player's breach. As long as a club can be identified as the 'new club' of the player, joint liability can be established.*"
- Riga and Mr Kouame entered an employment relationship in February 2017. Accordingly, Riga is jointly and severally liable for the entire amount that Mr Kouame is ordered to pay.
- With respect to sporting sanctions to be imposed on the new club, Article 17 para. 4 of the RSTP provides that if a player terminates his contract without just cause and is signed by a new club, there is a rebuttable presumption that the new club induced the player to breach his contract with his former club. Any club found guilty of a breach of contract, or inducing a breach of contract, shall be subject to the sporting sanctions identified.
- Riga is presumed to have induced Mr Kouame to terminate the Partizan Contract without just cause during the Protected Period, and therefore shall be banned from registering any new players for two registration periods.

**C. The Position of FIFA**

90. In its Answer, FIFA seeks the following relief:

1. *That the CAS rejects the present appeals against the decision of the Dispute Resolution Chamber (hereinafter also referred to as the DRC or the Chamber) dated 30 November 2017 and to confirm the relevant decision in its entirety.*
2. *That the CAS orders the Appellants to bear all the costs of the present procedure.*
3. *That the CAS orders the Appellants to cover all legal expenses of FIFA related to the proceedings at hand.*

91. FIFA's submissions, in essence, may be summarized as follows:

*a. Extra petita*

- Riga wrongly asserts that the FIFA DRC decided *extra petita*. In this respect, the CAS jurisprudence has frequently recognized an obligation for parties to raise any procedural or jurisdictional objections in front of the FIFA DRC first (see CAS 2012/A/2899 & CAS 2015/A/4083). Because Riga failed to raise this issue before the FIFA DRC, it is now prevented from raising this procedural violation.
- While relying upon the decision of the Swiss Federal Tribunal ("SFT") 4A\_530/2011, FIFA stresses that Riga is acting against the fundamental principle of good faith. In this decision, the SFT stated the following: "*It must be recalled that a party considering that it is the victim of a violation of its right to be heard or of any other procedural violation, must raise it immediately in the arbitral proceedings under penalty of forfeiture. It is indeed contrary to good faith to invoke a procedural violation only in the context of the appeal against the arbitral award when the violation could have been raised during the proceedings (judgment 4A 348/2009 of January 6, 2010 at 4)*".
- On a different note, the FIFA DRC did not violate the principle of *extra petita* as it strictly followed the usual and longstanding practice applied in cases in which a club lodges a claim against a player for breach of contract. FIFA provides a copy of the entire file to the player's new club at the end of every investigation procedure in connection with a contractual dispute between a club and a player. The basic rationale for the joinder of a third party is that, by operation of the applicable rules, its rights may be affected by a decision. Consequently, the player's new club is informed about the pending procedure and referred to Article 17 para. 2 of the RSTP.
- In the present case, Riga became aware of its joining to the proceedings by means of FIFA's letter of 20 August 2017, in which FIFA provided it with a copy of the entire file and made a reference to Article 17 para. 2 of the RSTP. By doing so, FIFA undisputedly offered the possibility to Riga to raise an objection to its joinder to the proceedings and to allege a potential violation of its right to be heard.
- Riga was perfectly aware that should Mr Kouame be found to have terminated the Partizan Contract without just cause, it could be jointly and severally liable for any potential compensation to be paid. Riga's absolute silence before the FIFA DRC should be considered as an acceptance to its joinder to these proceedings.
- Contrary to Riga's statement, the application of the joint and several liability does not stem from a particular claim, but by operation of the applicable law, in particular Article 17 para. 2 of the RSTP. Subjecting the application of the joint and several liability to the existence of a specific claim would go against the spirit and purpose of Article 17 para. 2 RSTP and by doing so, the FIFA DRC would be acting against its own laws and regulations. Consequently, the FIFA DRC is obliged to apply Article 17 para. 2 RSTP irrespective of whether a claim for its application exists or not.

- The clear and unambiguous wording of Article 17 para. 2 RSTP leaves no room for interpretation. In accordance with the principle of *iura novit curia*, arbitrators are requested to apply the law *ex officio*, without limiting themselves to the reasons advanced by the parties. Hence, the application of Article 17 para. 2 RSTP is not subject to the existence of a particular request but rather it is a rule which should be applied *ex officio* by the FIFA DRC in every case where a player is condemned to pay compensation for breach of contract to his/her former club.
- It was materially impossible for Partizan to lodge a specific claim against Riga as Mr Kouame signed the Riga Contract on 23 February 2017, i.e. after Partizan had presented all its submissions to the FIFA DRC. By lodging its claim for breach of contract on the basis of Article 17 RSTP, Partizan inevitably and implicitly requested for the joint and several liability of the player's new club. A request for the application of Article 17 para. 2 RSTP, even if not explicitly made, is subsumed within or at least reasonably related to, the general request for compensation for breach of contract on the basis of Article 17 RSTP.

**b. Joint and Several Liability**

- Contrary to Riga's assertion, the joint and several liability is mandatory, and the FIFA DRC has strictly applied it to the player's new club every time that he/she is ordered to pay compensation for breach of contract to his/her old club.
- The only exception would be when it is materially impossible to apply the joint and several liability, namely when a player did not sign any new contract after the breach and until the moment a decision from the FIFA DRC is rendered.
- While Riga alleges that the joint and several liability only concerns the horizontal relationship of FIFA's (in)direct members, FIFA asserts it was rather outlined to provide for legal security, certainty and predictability to all football stakeholders (i.e. a vertical relationship between FIFA and its indirect members).

**c. Legal nature of Article 17 para. 2 RSTP**

- One of the main arguments of Riga relates to its misunderstanding of the legal nature of the current Article 17 para. 2 RSTP. Riga's argument in this regard is chiefly based on the CAS 2013/A/3365 & 3366 case. However, this case has a different factual background than the dispute at hand and refers to Article 14 para. 3 of the 2001 edition of the *Regulations governing the Application of the Regulations for the Status and Transfer of Players*, which no longer exists and which structure is different from the current Article 17 para. 2 RSTP.
- At the time of the CAS 2013/A/3365 & 3366 case, Article 14 para. 3 of the RSTP provided that if a player had registered for a new club and had not paid a sum of compensation within one month, the new club shall be deemed jointly responsible for payment of the amount of compensation. This is different from the current version of Article 17 para. 2 of the RSTP, which was introduced in 2005.

- Furthermore, as set out in the CAS 2013/A/3365 & 3366 case “*that Article 14.3 does not apply in cases where it was the employer's decision to dismiss with immediate effect a player who, in turn, had no intention to leave the club in order to sign with another club (...)*”. Here, it was not Partizan's decision to terminate the contract, rather it was Mr Kouame who chose to leave the club on his own free will.
- As a result, the CAS 2013/A/3365 & 3366 case cannot serve as basis to reach a decision in the present matter. Riga incorrectly attempted to transpose the facts of this case to those of the dispute at hand by arguing that “*FC Partizan contributed to the termination as if it terminated the contract itself*”.
- With respect to the so-called legal nature of Article 17 para. 2 RSTP and the alleged impossibility under Swiss law to impose a joint and several liability in the absence of “fault and causation”, FIFA believes Riga is wrong as there is no room for the application of Swiss Law when analyzing Article 17 para. 2 of the RSTP. Indeed, the application of Swiss Law in a CAS appeal of a FIFA decision only serves for either interpretative purposes or to fill in *lacunae* of the FIFA Regulations might have (see CAS 2016/A/4846).
- In the decision 4A\_32/2016, the SFT recognized that Article 17 para. 2 of the RSTP “*has been applied for a long time, is self-sufficient, so that it is not necessary (...) to apply Swiss law subsidiarily in accordance with art. 58 of the [Code]*”.
- The legal nature of Article 17 para. 2 of the RSTP is extraneous when analyzing the matter at hand. Pursuant to the principle of autonomy of association, the only limit is the application of an article that is incompatible with Swiss substantive public policy, understood in the context of an international arbitration in accordance with Article 190(e) of the Federal Act on Private International Law (PILA).
- It is irrelevant whether Riga acted with or without “fault or causation” in order to be declared as jointly and severally liable for the payment of the compensation due by the player.
- In CAS 2016/A/4408, the Panel explained that “*the liability stems simply from (...) [a] Club's status as the Player's 'new club'. The joint and several liability is not dependent on (...) [the] Club's being proven to have induced the Player's breach or otherwise being at fault (...)*”.

**d. Meaning of Article 17 para. 2 RSTP**

- FIFA has a particular interest for the joint and several liability to be strictly applied in all cases as it is intrinsically connected with one of the pillars of worldwide professional football, i.e. contractual stability.
- The concept of a joint liability was introduced in the 2001 edition of the RSTP, as a means to protect the interests of both main football stakeholders, i.e. clubs and players, while ensuring a spirit of solidarity within the football community.

- The intention behind the joint and several liability is not a punitive one. Rather, it is a mechanism aimed at ensuring that the club victim of the breach of contract without just cause has recourses against either the player or his new club for the full amount of the compensation. In fact, the right of the new club to seek redress against a player has often been recognized by the CAS, for instance in CAS 2009/A/1851.

**e. Alleged absence of Causation –Termination without just cause**

- Pursuant to the well-established jurisprudence of the FIFA DRC and of the CAS, the termination of a contract is always an *ultima ratio* measure.
- A party can terminate a contract with just cause only when there are objective criteria which do not reasonably permit, in good faith, the continuation of the employment-relationship. But this is not the case here.
- FIFA refers to CAS 2016/A/4403, which stated that: “*not every breach of a contractual obligation by a party justifies the early termination of a contract. Rather, the breach of contract must have a certain degree of seriousness to constitute 'just cause'. This is in line with [the] jurisprudence of the Swiss Federal Tribunal (ATF 104 II 28 JT 1978 I 514) which provides: (...) 'the facts must be so severe as to cause the irremediable loss of confidence necessary between the parties'*”. In light of this decision, FIFA contends that Mr Kouame did not have just cause to terminate the Partizan Contract on 7 October 2016 as only one salary was outstanding for 7 days, i.e. the salary of September.
- In this context, the burden of proving that Mr Kouame had just cause to terminate the Partizan Contract lies on Riga. To this end, Riga submits that Partizan lost interest in Mr Kouame after 5 official matches and as a result, stopped paying him. Riga also argues that Partizan never replied to Mr Kouame’s requests for payment. In response, FIFA points out that following Mr Kouame’s warning of 1 September 2016, Partizan made a payment of EUR 9,000 on 5 September 2016.
- FIFA is of the opinion that Riga’s assertions are based on pure speculation and no evidence is available to corroborate them. The analysis of a contract termination with just cause should always be done objectively without utilizing hypothetical “what if” situations to consider what a third person (i.e. Riga) would do should certain events occur.
- While Riga reasons that it was not at fault for Mr Kouame’s termination because it only signed him as a formality prescribed by Latvian legislation, FIFA disagrees as an employment contract is not subject to any formal requirement under Latvian Labour Law.
- Moreover, Riga registered Mr Kouame and completed his transfer in the TMS. If the intention of the parties was for Mr Kouame to only train with the club, one wonders why Riga decided to register the player.

- Riga's assertion that it has never been Mr Kouame's "new" club is an act of simulation. Such behavior constitutes a clear violation of the principle *Nemo auditur propriam turpitudinem allegans*. The intention of the parties when signing the Riga Contract was for Riga to employ Mr Kouame as a professional football player in order to benefit from his services. In fact, they signed a document named "Labour Contract No. F38", including a term of validity of almost one year, a detailed description of the player's obligations, a detailed description of the Riga's obligations as well as non-reciprocal unilateral termination clauses and dispute-resolution clause.
- In addition, Article 2.2 of the RSTP provides that a professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs.
- Overall, Riga has not acted without fault or negligence as it failed to exercise the necessary due diligence which can be expected from a professional club. Riga was conscious that a dispute existed between Mr Kouame and Partizan before signing him and that he had unilaterally terminated the Partizan Contract before its natural expiration. They should have acted accordingly before signing him.
- With respect to Riga's allegation that its average annual budget is of EUR 850,000.00, this is unproven and therefore should not be taken into account. Riga failed to demonstrate that the payment of the compensation due to Partizan would endanger its economic existence in any way.

**f. Partizan's amended prayers for relief**

- Partizan's request for the annulment of paragraphs 1 to 5 of the Decision is incompatible with its own acknowledgement that it never paid to Mr Kouame the relevant amount.
- On a different note, Partizan's criticism in relation to the FIFA DRC's calculation of the amount due as compensation is clearly misconceived. When calculating the relevant amount due as compensation by a player to a club, the FIFA DRC always considers the average of the player's old and new contract, for the same period of time. The Partizan Contract's remaining period was from October 2016 until "*the end of 2019*". The FIFA DRC correctly calculated the amount due as compensation following its long standing and well-established practice and as such should be confirmed by the CAS.

**V. JURISDICTION**

92. The jurisdiction of the CAS derives from Article R47 of the Code in connection with Article 58 para 1 of the FIFA Statutes.
93. Article R47 of the Code provides as follows:

*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said*

*body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.*

94. Article 58 para. 1 of the FIFA Statutes 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 notification of the decision in question.*

95. The jurisdiction of the CAS is, in principle, not contested by the Parties. It is true that Riga objects to the jurisdiction of the CAS (in relation to Partizan's appeal) based on the argument that Partizan has failed to exhaust the legal remedies. The Panel is, however, of the view that the requirement that all internal remedies be exhausted is not an issue of jurisdiction and will, therefore tackle this issue separately. In addition, the Panel notes that all Parties confirmed CAS jurisdiction by execution of the Order of Procedure. It follows, therefore, that CAS has jurisdiction in this appeal.

## **VI. ADMISSIBILITY**

96. Article R49 of the Code provides as follows:

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

97. As noted above, Article 58 para 1 of the FIFA Statutes provides that appeals “*shall be lodged with CAS within 21 days of notification of the decision in question.*” The same 21-day deadline is mentioned on the last page of the FIFA Decision (“*The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision [...]*”)

98. The Decision was rendered on 30 November 2017, however, the grounds of the Decision were notified to the parties by facsimile on 27 March 2018. Riga's statement of appeal and Partizan's statement of appeal were both filed on 17 April 2018, i.e. before the expiry of 21 days after notification of the Decision. Furthermore as these appeals comply with all other requirements of Article R47 of the Code, it follows that these appeals are admissible.

## **VII. MANDATE OF THE PANEL**

99. The mandate of the Panel follows from Article R57 para. 1 of the Code. According thereto, the Panel has full power to review the facts and the law of the consolidated proceedings. The procedure before the CAS, thus, is a procedure *de novo*.

### **VIII. APPLICABLE LAW**

100. Article R58 of the Code provides as follows:

*The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*

101. The Panel recognizes that Article 57 para. 2 of the FIFA Statutes provides the following:

*The provisions of the CAS Code of Sports related Arbitration shall apply to the proceedings. CAS shall apply the various regulations of FIFA and additionally Swiss law.*

102. The Parties agree to the application of Article 57 para. 2 as set forth above.

103. During the course of the procedure, the Parties referred to and relied upon the FIFA regulations in their submissions. While the Parties did not dispute over the application of any subsidiary law, it is worth mentioning Partizan referred to Serbian law in its written submissions. Furthermore, also Riga referred to Latvian law in its appeal brief.

104. The Panel, therefore, finds that the relevant FIFA rules and regulations, and more specifically the FIFA RSTP, as in force at the relevant time of the dispute, shall be applied primarily, and Swiss law shall be applied subsidiarily.

### **IX. MERITS**

#### **A. Main Issues**

105. The Panel has identified the following main questions, which it will address in sequence below:

- (a) Is the CAS entitled to adjudicate Partizan's (alleged) claim against Riga? If yes,
- (b) Did Mr Kouame terminate his employment contract with Partizan without "just cause" on 7 October 2016? If yes,
- (c) Is Mr Kouane liable for compensation? If yes,
- (d) Is Riga jointly and severally liable together with the Player for compensation according to Art. 17 para. 2 RSTP? If yes,
- (e) What is the amount of damages for which Riga is liable?

#### **B. Is the CAS entitled to adjudicate Partizan's alleged claim against Riga?**

106. In principle, the CAS has the identical adjudicatory powers as the previous instance. This follows from Article R57 para. 1 of the Code. Consequently, if the FIFA DRC was

entitled to award Partizan an alleged claim against Riga or to issue an order against Riga, so is the CAS. Conversely, even if it would appear that FIFA was not entitled to issue any decision against Partizan, one would still have to examine whether the CAS could be entitled to do so

**a) The starting point of the analysis**

107. The Panel notes that despite the fact that Article 17 para. 2 RSTP provides for joint liability of a player and the new club, both claims, i.e. the one against the player and the one against the new club are, from a procedural point of view, two different matters in dispute. This clearly follows from the jurisprudence of the SFT. In ATF 140 III 520, E. 3.2.2, the SFT held that “[in the procedure before the DRC] *the [new club] and the Player were necessary joint defendants on the merits (...). According to case law and legal literature, the presence of joint defendants does not affect the plurality of the matter in dispute and the parties. The joint defendants remain independent from each other (...)*”.
108. If, however, the claims against joint defendants constitute separate matters in dispute, then necessarily point 8 of the operative part “*Considerations*” of the Decision, which states that Riga is jointly and severally liable, is not covered by the claim filed by Partizan before the FIFA DRC.

**b) The principle that the parties delimit the scope of the proceedings (“Dispositionsgrundsatz”)**

109. It is undisputed that Partizan on 21 November 2016 filed a claim before the FIFA DRC only against the Player. Nevertheless, the Decision holds in its operative part “*Considerations*” (point 8) as follows: “*The Intervening Party, Riga FC, is jointly and severally liable for the payment of the amount mentioned under point 7.*”
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 *principe de disposition* (Dispositionsgrundsatz) and opposed to the *maxime d’office* (Offizialgrundsatz).
111. The Parties dispute whether the Decision was tainted with a procedural flaw when the FIFA DRC ruled beyond the scope of the request filed by Partizan. The answer to this question depends primarily on the contents of the procedural rules applicable before the FIFA DRC, i.e. whether such rules follow the principle according to which the parties delimit the scope of the proceedings (“Dispositionsgrundsatz”, “principe de disposition”) or not. The contents of the “Dispositionsgrundsatz” is described in Article 58 para. 1 of the Swiss Code of Civil Procedure (“CCP”), which states as follows:

*“The court may not award a party anything more than or different from what the party has requested, nor less than what the opposing party has acknowledged.”*

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.

However, and as it appears from Article 58 para. 2 CCP, there are exceptions to the rule. The provision states that there may be “*statutory provisions under which the court is not bound by the parties’ requests.*” Such principle, whereby the court is not bound by the requests of the parties, is referred to as “*Offizialgrundsatz*” or “*maxime d’office*”. The latter principle applies particularly to matters involving a public interest (e.g. childcare, etc.).

**i. The Procedural Rules**

113. At the outset, the Panel notes that it is within FIFA’s autonomy to regulate the procedure before its instances. FIFA, therefore, is free to decide which principle (“*Dispositionsgrundsatz*” or “*Offizialgrundsatz*”) shall apply in its internal proceedings. FIFA has regulated the procedure before the FIFA DRC in the *Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber* (the “*Procedural Rules*”).
114. Whether these rules follow the “*Dispositionsgrundsatz*” or the “*Offizialgrundsatz*” appears questionable. The Panel observes that the Procedural Rules do not explicitly address this question. Thus, the Panel must determine through interpretation whether the “*Dispositionsgrundsatz*” or the “*Offizialgrundsatz*” applies.
115. The above issue has been analyzed by the panel in CAS 2015/A/4176, which held in para 60 *et seq.* as follows:

*60. In relation with who must be considered a party, article 6, paragraphs 1 are 3 of the Procedural Rules provides that:*

*“1. Parties are members of FIFA, clubs, players, coaches or licensed match players’ agents.*

*3. Parties requesting the opening of proceedings shall be sent written confirmation when the request has been received. Parties affected by the opening of proceedings must be notified thereof without delay”.*

*61. This provision establishes that parties affected by the proceedings must be notified without delay.*

*62. Article 9, paragraphs 1. a), c) and f) of the Procedural Rules reads as follows:*

*“Petitions shall be submitted in one of the four official FIFA languages via the FIFA general secretariat. They shall contain the following particulars:*

*“a) the name and address of the parties;*

*“c) the motion or claim;*

*“f) the name and address of other natural and legal persons involved in the case concerned (evidence)”.*

*63. This provision requires that claimants determine who are respondents (i.e. against whom the claim is directed) to the proceedings before FIFA. It also makes a*

*distinction between a party and other persons that may be involved in the relevant case.*

64. *Even though the Procedural Rules do not give an explicit and detailed definition of the meaning of “parties”, the Panel has analysed the main elements to be taking into account to reach a decision, and will apply them in the following paragraphs.*

*a.2) The proceedings in front of FIFA*

65. *The Panel considers that the main issues of the FIFA procedure to be taken into account for solving this dispute are the following:*

- *When Trencin filed its claim in front of FIFA (documents dated 4 March 2013 and 8 April 2013), the First Respondent exclusively directed such claim against the Second Respondent only. It never mentioned or filed any claim against the Appellant.*
- *There is evidence that in August 2013, the First Respondent was aware that the Second Respondent engaged in pre-season with the Appellant. Despite knowing that, Trencin did not file any claim against River or ask FIFA to consider River as a party (i.e. Respondent).*
- *FIFA had not included River in the file until it received a letter from the Player’s representative informing that the Second Respondent had joined River. This occurred on 15 January 2015.*
- *On 19 January 2015, FIFA informed River of the existence of the procedure. Although the content of the letter sent by FIFA to River has been reproduced above, the most important part of the letter is reproduced again:*

*“In view of the above and taking into account the relevant provisions of the Regulations on Status and Transfer of Players, in particular its art. 17 par. 2& 4, we kindly invite you to provide us, by no later than 9 February 2015, with your comments on the present affair, if any, along with any documentary evidence you might deem useful in your support, if need be, duly translated into one of the four official FIFA languages (English, Spanish, French or German). In this regard, we kindly draw your attention to the fact that failure to provide the necessary translation may result in the document in question being disregarded by the decision-making body”.*

- *For the Panel, this is only a notification from FIFA to River of the existence of the procedure and an invitation to provide comments. River answered FIFA on 6 February 2015 and expressed that there was no claim against it and that the Appellant had been unaware of the facts related to said procedure, which the Panel considers accurate.*
- *Thereafter, FIFA closed the proceedings and then rendered a decision. In the Appealed Decision and with no other arguments in relation with River as a join debtor, FIFA established that:*

*“Furthermore, in accordance with the unambiguous content of article 17 par. 2 of the Regulations, the Chamber established that River shall be jointly and severally liable for the payment of compensation. In this respect and in relation to River’s argumentation, the Chamber was eager to point out that the joint liability of a player’s new club is independent from the question as to whether this new club has committed an inducement to contractual breach and finds a clear legal basis in art. 17 par. 2 of the Regulations. This conclusion is in line with the well-established jurisprudence of the Chamber that was repeatedly confirmed by the Court of Arbitration for Sport (CAS). Hence, the Chamber decided that River is jointly and severally liable for the payment of the relevant compensation”.*

66. *In view of the above, the Panel does not find any evidence in the proceedings before FIFA that could lead to consider that River was named as a Respondent to such proceedings. The Panel therefore concludes that:*

*a) Although River was indirectly interested in the outcome of the proceedings in front of FIFA, it was never a party to said proceedings because:*

*i) Neither Trencin nor the Player presented a claim against River in front of FIFA. Neither at the beginning of the proceedings nor when Trencin was aware of the employment agreement entered into by the Player and River.*

*ii) In light of the Procedural Rules and general principles of law, there are essential requirements that must be fulfilled in order to consider a person (natural or legal) as a party (i.e. Respondent) to a legal proceedings:*

- There must be a direct claim from the claimant to that person (i.e. the Claimant shall clearly identified who is the Respondent).*

- The existence of “standing to be sued”.*

- The jurisdictional body must notify the Respondent of the existence of the claim and that his/her/its legal interest is affected by such claim.*

*iii) In the case at stake, River was never a party to the proceedings before FIFA. In this regard, FIFA did never call River as a party. First of all because, in accordance with the Procedural Rules, FIFA did not have the power to call River as a party since it is for Claimants to name Respondents. Furthermore, the Panel notes that Trencin did not file any claim against River before FIFA. In any event, FIFA’s letter of 19 January 2015, cannot be considered as a notification that River was a party.*

*b) In relation with the non ultra petita principle, the Panel has noticed that even though it was argued by the Appellant in front of FIFA, the DRC did not analyze it in the Appealed Decision. However the Panel, acting de novo has analyzed it, finding that it is correct, as expressed by the Appellant, that any jurisdictional body may not award a party anything more than or different from what the party has requested. Contrary to the arguments of the First Respondent, the Panel considers*

*that any possible liability for River derived from the proceedings before FIFA could only had been established from a specific and previous claim of Trencin. Even though said principle is not explicitly contained in the Procedural Rules, the Panel considers that it is implicit in them and that it is also a basic principle of law present in all legal systems which shall be applicable in order to respect the due process. For example, article 58 of the Swiss Civil Procedure Code recognizes such principle.*

*c) There is no provision in the FIFA Regulations that allows FIFA to act ex-officio to condemn a person that has never been called as a party or to consider a so-called “Intervening Party” (as named in the Appealed Decision) as a party to the proceedings.*

*d) As there was not a claim from Trencin or the Player in front of FIFA against the Appellant, the Panel considers that FIFA did not have the power to call the Appellant as a party to the proceedings. Consequently, River was never a party to the proceedings before FIFA and the latter has no power to condemn River to pay compensation to Trencin based on a claim that was never directed against River.*

*e) There is another argument presented by the Appellant and contested by the First Respondent in relation with the training compensation. The Appellant contends that the recognition by Trencin of the obligation to pay it to River, was a proof that the First Respondent never intended to file a complaint against the Appellant before FIFA. This argument has become moot, given that the Panel has recognized that River was not party to the FIFA proceedings.*

116. It follows from the above that the panel in CAS 2015/A/4176 found that the Procedural Rules are based on the “Dispositionsgrundsatz” and that, therefore, the FIFA DRC is bound by the requests filed by the parties. The FIFA DRC is, therefore, not entitled to amend the matter in dispute or add additional matters of its own choosing. The Panel is convinced by the arguments raised by the panel in CAS 2015/A/4176.

## **ii. Exception based on “Public Interest”**

117. As previously stated, there are exceptions to the “Dispositionsgrundsatz” under the CCP when important issues of public interest are at stake. The Respondents argue that Article 17 para. 2 RSTP is of such vital importance (i.e. mandatory and public importance in the football industry) that it must be applied *ex officio*. The Panel concurs with the view that Article 17 para. 2 RSTP is an important provision and that such provision has a significant impact on the football industry. The purpose of this provision and its importance for the football industry are well described in CAS 2016/A/4408 at para 140, where it is stated as follows:

*140. The termination of a contract without just cause is a serious violation of the obligation to respect an existing contract and triggers the consequences set out in Article 17 RSTP. The purpose of Article 17 RSTP is basically nothing else than to reinforce contractual stability, i.e. to strengthen the principle of pacta sunt servanda in the world of international football, by acting as deterrent against unilateral contractual breaches and terminations. This, because contractual stability is crucial for the well functioning of the international football. The deterrent effect of Article*

*17 RSTP shall be achieved through the impending risk for a party to incur disciplinary sanctions, if some conditions are met, and the risk to have to pay a compensation for the damage caused by the breach or the unjustified termination (CAS 2008/A/1519 - 1520 para. 80 et seq; CAS 2014/A/3707 para. 108).*

118. The Panel remarks that Article 17 para. 2 RSTP is not the only provision designed to ensure contractual stability, but that none of them will lead to the application of the “Offizialgrundsatz” in the context of “horizontal disputes”.
119. Furthermore, the Panel observes that FIFA acknowledged at the hearing that Article 17 para. 2 RSTP shall not be applied *ex officio*, if a player signs with a new club after the closure of the investigation phase in front of the FIFA DRC. In such case, the old club must file a new petition against the new club before the FIFA DRC. Consequently, the Respondents accept that the enforcement of Article 17 para. 2 RSTP in such a case purely depends on the old club’s initiative. Whether in the case at hand the Riga Contract was sent before or after the closure of the investigation phase is not clear, since both are dated 23 February 2017.
120. Be it as it may, the Panel finds that in view of the importance of Article 17 para. 2 RSTP it appears rather strange that this provision encompasses different procedural approaches, depending on the purely coincidental moments on which the contract with the new club is executed by the player and the investigation phase before the FIFA DRC is closed.
121. In addition, the Panel notes that nothing in the applicable rules prevents the holder of a claim (in relation to Article 17 para. 2 RSTP) from waiving such a claim. The RSTP only precludes the assignment of a third party for a claim of this nature. However, it is difficult to conclude that the “Dispositionsgrundsatz” shall not apply in the procedure before the FIFA DRC if, on a substantive law level, the old club is entitled to waive (and thereby dispose of) the claim against the new club pursuant to Article 17 para. 2 of the RSTP. If the old club can freely dispose of the claim on a substantive law level, the same must apply on a procedural level.
122. Thus, the Panel is not prepared to allow an exception of the “Dispositionsgrundsatz” based on the alleged public importance of Article 17 para. 2 RSTP. Consequently, the Panel finds that – subject to the exceptions listed thereafter – the Decision breaches the “Dispositionsgrundsatz” by awarding a claim to Partizan without a respective request being filed by the latter.

**iii. Exception based on the principle *iura novit curia***

123. FIFA asserts that the application of the “Offizialgrundsatz” follows from the principle *iura novit curia* under which the court is assumed to know the law. This principle entails that an adjudicatory body has authority to ascertain the law independently of the parties’ allegations. Therefore, the parties to a legal dispute do not need to plead or prove the law that applies to their case.
124. The Panel accepts that the principle of *iura novit curia* applies but finds that the powers on an adjudicatory body deriving from such principle are limited to the dispute before it. The principle of *iura novit curia* does not entitle the adjudicatory body to amend or alter a dispute before it or add new matters during the proceedings independently from the

parties' requests. Since the alleged claim of Partizan against Riga was never validly submitted before the FIFA DRC, the FIFA DRC had no obligation to apply Article 17 para. 2 RSTP *ex officio*.

**iv. Exception based on Customary Practice**

125. FIFA also submits that the application of the "Offizialgrundsatz" in the case at hand follows from a corresponding, long-standing customary practice. It is true that Swiss doctrine and jurisprudence recognizes the potential importance of customary law within an association (i.e. in German the so-called "*Vereinsübung*" or "*Observanz*" and in French the so-called "*droit coutumier*"; cf. RIEMER, *Berner Kommentar*, 1990, Syst. Teil, before Art. 60-79 Swiss Civil Code, N 321, 351 ff.; HEINI/SCHERRER, *Basler Kommentar*, 2006, Preface to Art. 60-79 Swiss Civil Code, N 23) and that the CAS has recognized in many decisions the relevance of customary law for an association (e.g. CAS 2004/A/589).
126. Nonetheless, under Swiss association law, customary law can only represent a valid set of rules of an association provided that (i) the applicable regulations contain a loophole which may be supplemented by customary law, (ii) there is a constantly and consistently applied practice of the association (*inveterata consuetudo*), and (iii) the members are convinced that such practice is legally mandatory or necessary (*opinio juris sive necessitatis*) (cf. CAS 2008/A/1622, 1623 & 1624, no. 32 *et seq.*; CAS 2017/A/5003, no. 206).
127. In light of the clear and rather recent decision CAS 2015/A/4176, the Panel finds that no unanimous *opinio juris* has yet materialized to allow FIFA to decide *extra petita* (in relation to the requests filed before it).
128. In the eyes of FIFA, the decision CAS 2015/A/4176 is wrong and must be qualified as an outlier in comparison of other CAS decisions. During the hearing, the FIFA submitted some CAS jurisprudence to substantiate its position. However, the Panel is not convinced by FIFA's argument after having examined this jurisprudence.
129. For instance, in CAS 2016/A/4408, the new club (unlike Riga) had not objected to the FIFA DRC deciding *extra petita*. Thus, the panel in CAS 2016/A/4408 did not need to address this issue. In CAS 2013/A/3149, the new club objected to the FIFA DRC deciding *extra petita*. However, the CAS panel only examined the issue in consideration of the new club's right to be heard and did not examine the question whether or not the FIFA DRC was entitled to amend or change the dispute before it according to the applicable Procedural Rules.
130. On the basis of the aforesaid, the Panel finds that there is no customary practice to apply the "Offizialgrundsatz" in the case at hand.
131. In fact, when Partizan filed its claim before the FIFA DRC, it never mentioned Riga as it exclusively directed its claim against Mr Kouame. The Panel remarks that Mr Kouame signed the Riga Contract on 23 February 2017, which was during the pendency of the procedure before the FIFA DRC. On 23 February 2017, FIFA sent a letter to the Player and to Partizan to inform them that the investigation-phase had been concluded and that the dispute would be submitted to the FIFA DRC for consideration and a formal decision. It appears that Mr Kouame advised FIFA of the existence of the Riga Contract after

receiving the aforesaid letter. On 10 August 2017, FIFA wrote to Riga, informing it of the pending procedure against Mr Kouame before the FIFA DRC and made mention of the following:

*In view of the above and taking into account the relevant provisions of the Regulations on the Status and Transfer of Players, in particular its art. 17 par. 2 & 4, Riga FC is kindly invited, should it wish to do so, within 20 days as of receipt of the present letter by DHL, to provide us with its comments on the present affair along with any documentary evidence it might deem useful in its support in the original version and, if need be, duly translated into one of the four official FIFA languages (English, Spanish, French or German). In this regard, we also draw Riga FC's attention to the fact that failure to provide the necessary translation may result in the document in question being disregarded by the decision-making body.*

*In this connection, we kindly refer Riga FC to the contents of art. 12 par. 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber – edition 2015 (hereinafter: Procedural Rules), according to which any party claiming a right on the basis of an alleged fact shall carry the burden of proof.*

*Upon receipt of Riga FC's comments, or in the absence thereof, within the above-mentioned time limit, we will proceed to submit the present matter to the Dispute Resolution Chamber for its consideration and decision.*

132. Based on the foregoing, the Panel notes that even if there was a customary practice (*quod non*), FIFA would have been obliged to inform Riga of such practice properly in its letter dated of 10 August 2017. It is not clear from this letter that Riga was mandatorily joined by the FIFA DRC to the pending procedure between the Player and Partizan and that Riga risked to be found jointly and severally liable for damages vis-à-vis Partizan regardless of a request filed by Partizan against Riga.
133. As it was held in CAS 2015/A/4176, this letter from FIFA constitutes a mere notification of the existence of a pending procedure before the FIFA DRC as well as an invitation to comment on it, but it was not an obvious notification that Riga was a party to the procedure and that it had to answer a claim against it.

#### **v. Conclusion**

134. The Panel concludes that there was a breach of the applicable procedural rules before the FIFA DRC (violation of the “Dispositionsgrundsatz”) and that, therefore, the Decision is flawed.

#### **c) What are the consequences of the procedural violation before the FIFA DRC on the procedure before the CAS?**

135. Having established that a breach of the applicable procedural rules occurred before the FIFA DRC, the Panel must now assess the consequences of such violation on the procedure before the CAS.
136. The Panel finds that the breach of the applicable Procedural Rules as such does not render the Decision null and void from the outset, but would rather render it (only) appealable.

However, since the breach that occurred before the FIFA DRC is of procedural nature, the Panel must examine whether and to what extent such procedural breach may be cured before the CAS.

137. When looking for guidance in the CAS jurisprudence, the Panel observes that in CAS 2015/A/4176, the question as to whether a *de novo* hearing before the CAS may cure a violation of the “Dispositionsgrundsatz” at the previous instance has not been addressed. In CAS 2013/A/3159, the panel accepted that a decision *extra petita* of the FIFA DRC may be cured before the CAS, but only examined the issue in light of the appellant’s right to be heard.
138. The Panel notes that the hearing before the CAS is *de novo* and that panels in the past have extensively ruled that procedural breaches at a previous instance may in principle be cured before the CAS. Nevertheless, any healing effect of a *de novo* hearing requires that the party’s right (that has been breached at the previous instance) is fully respected before the CAS.
139. In order to cure the procedural breach before the FIFA DRC (breach of the “Dispositionsgrundsatz”) and contrary to what has been held in CAS 2013/A/3149, the Panel believes it is not sufficient that Riga be granted the right to be heard in front of the CAS with respect to the claim arising from Article 17 para. 2 RSTP. Instead, any healing effect of a *de novo* hearing can only be accepted if the respective dispute, i.e. the alleged claim arising from Article 17 para. 2 RSTP, has been validly introduced in the proceeding before the CAS.
140. In this context, the Panel recognises that it is itself bound by the “Dispositionsgrundsatz” and that it cannot, with the exception of the decision on costs of the arbitration proceedings (cf. Article R64.4, R65 of the Code), decide on matters that have not been requested by the Parties. Just like the FIFA DRC, this Panel has no power to amend the dispute before it.
141. *In casu*, however, the procedural breach of the “Dispositionsgrundsatz” in the previous instance was cured on the initiative of Partizan. On 17 April 2018 (*inter alia*), Partizan filed a claim against Riga in the matter CAS 2017/A/5694 with respect to Article 17 para. 2 RSTP.
142. This curing effect is not excluded by Article 25 para. 5 RSTP. According to Article R57 of the Code, the CAS has the same adjudicatory powers as the FIFA DRC. The latter however is prevented to adjudicate a matter if a certain time period has elapsed. Article 25 para. 5 RSTP reads as follows:

*The Players’ Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge (as the case may be) shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined ex officio in each individual case.*

143. The incident that gave rise to the present dispute between Partizan and Riga occurred when Riga signed an employment contract with the Player on 23 February 2017, *i.e.* after the introduction of Partizan’s claim against the Player before FIFA. Partizan filed its

appeal with the CAS against the Decision on 20 April 2018. Consequently, the two year-period has not elapsed at the time Partizan filed its appeal before the CAS. Since the alleged claim of Partizan against Riga has been properly filed before the CAS, the Panel finds that the procedural breach before the FIFA DRC has been cured and that it is entitled to adjudicate the present dispute. In view of the above, the Panel finds that Riga's objection that the internal remedies within FIFA have not been exhausted, must be rejected. In particular, the Panel finds that Partizan could validly introduce its claim against Riga before CAS by appealing the Decision and did not need to introduce such a claim before the FIFA DRC first.

**C. Did Mr Kouame terminate the Partizan Contract without just cause on 7 October 2016?**

144. In light of the Parties' submissions, the Panel addresses the question as to whether Mr Kouame terminated the Partizan Contract on 7 October 2016 without just cause based on late payments of his salary.

145. While the FIFA RSTP does not contain any specific definition of what represents a "just cause", the Commentary to the FIFA RSTP (N2 to Article 14) serves as reference point:

*"The definition of «just cause» and whether «just cause» exists shall be established in accordance with the merits of each particular case. Behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist over a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally".*

146. Pursuant to Article 14 RSTP, the parties to an employment contract can agree on what constitutes "just cause". In fact, the Partizan Contract includes a clause according to which either party is entitled to terminate the existing contract if a breach persists for at least three months.

147. Considering further, that pursuant to Article 14 RSTP the non-payment of a salary is a severe breach, the party who is suffering the breach is, in principle, entitled to unilaterally terminate a contract with "just cause". This is also in line with the well-established CAS jurisprudence, according to which non-payment or late payment of a player's salary by his club may constitute "*just cause*" to terminate the employment contract (CAS 2006/A/1180; CAS 2008/A/1589; CAS 2013/A/3165; and CAS 2014/A/3643).

148. In CAS 2006/A/1180, it was declared that:

*"The non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated as in the present case - constitute "just cause" for termination of the contract (...) for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of the obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is*

*a substantial breach of a main obligation such as the employer's obligation to pay the employee", (...)the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be 'insubstantial' or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract".*

149. As a starting point, the Panel must analyse why Mr Kouame terminated the Partizan Contract. When Mr Kouame terminated the Partizan Contract on 7 October 2016, the only outstanding remuneration was for September 2016. It is undisputed between the Parties that the remuneration was due at the end of the month and therefore, Partizan was late for only seven days. This was also the understanding of Mr Kouame, since his lawyer wrote on the notice of 1 September 2016, that the remuneration fell due at the end of each month. In consideration of the above, the Panel is of the opinion that, on 7 October 2016, Mr Kouame was owed salaries for September 2016 and for the period of 1-7 October 2016.
150. The Panel explains that only significant breaches of contractual obligations entitle to terminate a contract for just cause, because early termination of the contract, is the *utlima ratio*. In this respect, the Panel adheres to CAS 2016/A/4403, where it was held that: *"before analysing whether the Player had just cause to terminate the Contract, the Panel notes that not every breach of a contractual obligation by a party justifies the early termination of a contract. Rather, the breach of contract must have a certain degree of seriousness to constitute "just cause". This is in line with jurisprudence of the Swiss Federal Tribunal (ATF 104 II 28, JT 1978 I 514) which provides: "Les faits doivent être si graves qu'ils ont pour effet de rompre irrémédiablement le rapport de confiance nécessaire". This can be informally translated into English as follows: "the facts must be so severe as to cause the irremediable loss of confidence necessary between the parties".*
151. In the Panel's view, the fact that Partizan failed to pay the salary of September 2016 and of the period of 1-7 October 2016 does not mean that Mr Kouame had just cause to terminate the Partizan Contract. In the case at hand, the Panel notes that the non-payment or late payment of the salary by Partizan constitutes an insubstantial contractual breach as late payments had not accumulated over a certain period of time. Furthermore, also the absence of any reaction by Partizan to the warnings of the Player does not constitute just cause either. Therefore, the Panel concludes that the above-mentioned contractual breaches by Partizan did not justify the termination of the Partizan Contract by Mr Kouame. The Panel, therefore, considers that Mr Kouame terminated the Partizan Contract without "just cause" on 7 October 2019.

**D. Is Mr Kouame liable for compensation?**

152. Art. 17 para. 1 RSTP provides as follows:

*"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria include, 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, 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.”*

153. It follows from the above that the party in breach of its obligation shall pay compensation to the other party as a consequence of terminating a contract without just cause. Thus, Mr Kouame is liable for compensation vis-à-vis Partizan.

**E. Is Riga jointly and severally liable together with Mr Kouame for compensation according to Article 17 para. 2 RSTP?**

154. Article 17 para 2 RSTP reads as follows:

*“Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.”*

155. The Panel notes that the wording of Article 17 para. 2 RSTP is rather straightforward as it does not *prima facie* restrict the new club’s liability (see also CAS 2014/A/3852).
156. Riga claims that the word “shall” in Article 17 para. 2 RSTP must be construed to mean “may”, i.e. that joint and several liability cannot be imposed mandatorily. According to Riga, the CAS shall deviate from the literal wording and take into account the individual circumstances of the case when applying the provision. Riga submits that the following circumstances must be considered in its favor:
157. First, there must be a valid cause for the joint and several liability imposed due to the legal nature of Article 17 para. 2 RSTP. Riga refers in this regard to the case CAS 2013/A/3365 & 3366. Here, the Panel notes that this decision does not refer to Article 17 para. 2 RSTP. Moreover, the Panel finds that FIFA is not bound to the “types of contracts/obligations” enshrined in the Swiss Code of Obligations when regulating the football market in the RSTP. Instead, in view of its autonomy, it may (subject to the *ordre public*) rule that the only valid cause for holding a new club jointly and severally liable derives from its status as the player’s “the new club”. Furthermore, the Panel takes note of the fact that the SFT has not qualified Article 17 para. 2 RSTP as a provision that violates Swiss public policy.
158. Next, Riga claims that it cannot be held liable for compensation since it did not contribute or induce the Player to terminate the Partizan Contract. The wording of Article 17 para. 2 RSTP does not require any inducement by the new club. The purpose of the provision is to hold liable any club that took (or could take) advantage of the breach committed by the player. It follows from the aforesaid that whether or not Riga was at fault is immaterial for the question of joint and several liability according to Article 17 para. 2 RSTP.
159. Riga further explains that an exception to the wording of Article 17 para. 2 RSTP must be made with respect to the purpose of the provision, i.e. to protect contract stability. The Panel is not persuaded by Riga’s argument. Instead, the Panel finds that if a new club could take advantage of an unlawful termination of an employment contract of a player

without encountering any consequences this would constitute a significant risk to contractual stability in the football market.

160. Riga then submits that it is not a “new club” within the meaning of Article 17 para. 2 RSTP. The Panel does not follow Riga’s assertion. As an initial matter, the Panel notes that Riga entered into a professional work contract within the meaning of the RSTP. The mere fact that it did not field the Player in official matches is not decisive, since it could have done so if it wanted to. This is, however, enough to be considered a “new club” that could have taken advantage of the Player’s breach. This is all the more true considering that the Player was registered with the national federation.
161. Finally, Riga’s contention that it has a small budget and is not able to pay such amounts is no lawful reason to reject the claim. Even if Riga was under an impossibility to pay, such excuse would not constitute a valid objection to the claim.
162. To conclude, the Panel finds that Riga is the new club within the meaning of Article 17 para. 2 RSTP and therefore, is jointly and severally liable for the compensation to be calculated according to Article 17 para. 1 RSTP.

**F. What is the amount of compensation for which Riga is liable?**

163. The amount of compensation for which Riga is liable is to be calculated according to Article 17 para. 1 RSTP. In this respect, the Panel examines the following:

**a. Non-amortised expenses**

164. In accordance with the standing jurisprudence, the club found victim of the breach is entitled to compensation relating to the non-amortised expenses. The FIFA DRC decided as follows with respect to the non-amortised transfer fee:

*29. The members of the Chamber then turned their attention to the essential criterion relating to the fees and expenses paid by the club for the acquisition of the player's services insofar as these have not yet been amortised over the term of the relevant contract. The Chamber recalled that a transfer compensation of EUR 400,000 had been paid by the club to the Finnish club, SJK, for the player's transfer, documentation of which has been presented by the club. According to article 17 par. 1 of the Regulations, this amount shall be amortised over the term of the relevant employment contract. As stated above, the player would still be bound to the club for thirty-nine further months when he terminated the relevant contract, which was signed for a total duration of forty-eight months (i.e. 4 years). As a result of the player's breach of contract on 7 October 2016, the club has thus been prevented from amortising the amount of EUR 325,000, relating to the transfer compensation that it paid in order to acquire the player's services, which, at that time, the club counted to be able to make use of during forty-eight months.*

*30. Based on the foregoing, the Chamber considered that the basis for the amount of compensation for breach of contract without just cause to be paid by the player to the club is composed of the amount of EUR 325,000 related to non-amortised expenses incurred by the club when engaging the services of the player ... ”.*

165. The Panel concurs with this calculation and Partizan, as the victim of the breach, is entitled to compensation relating to the non-amortised expenses in the amount of EUR 325,000.

**b. Value of the services**

166. With respect of the value of the lost services, the FIFA DRC decided as follows:

*27. 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, which 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.*

*28. Following the documentation provided by the parties, it appears that in accordance with the contract, which was to run for thirty-nine more months at the moment when the breach of contract occurred, the player was to receive a total remuneration equalling to EUR 477,000. On the other hand, the value of the new employment contract, concluded between the player and Riga FC over the aforementioned period of time, appears to amount to EUR 31,980. On the basis of the aforementioned financial contractual elements at its disposal, the Chamber concluded that the average of the remuneration of the player with his former and his new club during the remaining contractual period of time amounted to EUR 254,490.*

167. Partizan objects to this calculation and submits that the FIFA DRC erroneously concluded that the average remuneration of Mr Kouame between his previous club and the new club over the remaining period of the Partizan Contract corresponds to EUR 254,490 and that the Riga Contract has the same expiration date as the Partizan Contract. Partizan rather asserts that compensation should be calculated based on the average between the remuneration due until the expiry of the former contract and the remuneration due under the new contract for the same period, corresponding to the total amount of EUR 421,155.88. Since the Riga Contract was valid from 23 February 2017 to 30 November 2017, the average value of the previous and new contract should only be taken for March, April, May, June, July, August, September, October and November 2017, as well as for the period from 23 February to 28 February 2017, whereas the remuneration for the first 22 days of February should be accounted for the Partizan club.

168. The Panel is not persuaded by this argument. The remuneration paid by the new club is an objective criterion for how the market values the services of a player. Thus, what needs to be compared are the monthly salaries (actually paid by both club). In this context, the average salary cannot be calculated based on the average between the remuneration due until the expiry of the former contract and the remuneration due under the new contract for the same period. Consequently, the Panel follows the calculation of the FIFA DRC and that the value of the services corresponds to the amount of EUR 254,490.00.

169. The Panel is also not convinced by Riga's argument according to which the value of the services should not be taken into consideration when assessing the damage. According to

Riga the amount of the damage should “*be limited to the unamortized part of the transfer fee*”. In the view of Riga the Player’s services “*cannot constitute a damage, ... because ... Partizan ... also saved the amounts of salaries that it would have to pay should the Player not leave the club.*” If one were to follow this line of argument a club that has been victim of the breach – in principle – would never incur a damage. Furthermore, the view held by Riga contradicts also the clear wording of Article 17 para. 1 FIFA RSTP according to which one of the objective criteria on which the calculation of the damage shall be based is “*the remuneration and other benefits to the player under the existing contract and/or the new contract.*” In addition, the view held by Riga is not in line with the standing jurisprudence of the CAS (CAS 2008/A/1519 & 1520, para. 91 *et seq.*). To conclude, therefore, the Panel follows the approach adopted by FIFA when calculating the value of the services of the Player.

**c. Other criteria**

**i. Specificity of Sport**

170. The Panel is mindful of the principles associated with the “specificity of sport” and the parties’ arguments in this regard. The Panel adheres to the reasoning of a previous CAS panel in CAS 2007/A/1358, where it took into account the following about the “specificity of sport”:

*“[...] The criterion of specificity of sport shall be used by a Panel to verify that the solution reached is just and fair not only under a strict civil (or common) law point of view, but also taking into due consideration the specific nature and needs of the football world (and of parties being stakeholders in such world) and reaching therefore a decision which can be recognised as being an appropriate evaluation of the interests at stake, and does so fit in the landscape of international football.”*

171. Additionally, the Panel refers to CAS 2013/A/3411, where the panel outlined the following on the “specificity of sport”:

*“According to CAS case law, the “specificity of sport” is not an additional head of compensation, nor a criteria allowing to decide in ex aequo et bono, but a correcting factor which allows a panel to take into consideration other objective elements which are not envisaged under the other criteria of Article 17.”*

172. The Panel finds that no correcting factor is necessary in favor of Partizan in the case at hand. The Player was at the time of the termination of the Partizan Contract no longer a key player. He had not been fielded in the last 8 matches before the termination of the contract. The Panel is, thus, of the view that the calculation based on the average salary of the old and new club adequately reflects the true value of the services of the Player.

**ii. Contributory Negligence**

173. While the behavior of the Partizan does not rise to the level of granting the Player just cause to terminate the Partizan contract, it is an element to be taken into account when calculating the damages due by Mr Kouame. The Panel believes that any contributory negligence of the contractual partner (of the terminated contract) must be taken into account when calculating the damages pursuant to Art. 17 para. 1 FIFA RSTP. This is also backed by the CAS jurisprudence (*see CAS 2015/A/4067&4068 para. 171 et seq.*;

CAS 2014/A/3735 para. 111 *et seq.* and CAS 2014/A/3647-3648 para. 121).

174. The Panel, therefore, determines that in the case at hand the compensation must be reduced for contributory negligence of Partizan's behaviour. It appears from Partizan's behaviour, notably by not explaining the mistake made by Player and not trying anything to save the employment relationship, that Partizan wanted to take advantage and let Mr Kouame leave. The Panel is of the opinion that the mistake made by Mr Kouame was easily detectable by Partizan and that by pointing to the mistake made, Partizan could have very likely avoided the termination of the Partizan Contract.
175. Partizan never contested its failure to recognize the Player's mistake, but rather argued that it did not feel the need to react to the notices of Mr Kouame. This is troubling considering that the notices were sent by the Player's lawyer and that several notices were sent. It was, thus, clear to Partizan that the Player was acting seriously and that the notices will result in consequences being taken. Hence, Partizan ignored Mr Kouame, giving the impression that the alleged debt was accurate. Moreover, this finding is supported by the fact that Mr Kouame was no longer fielded after 5 matches. In view of the above, the Panel rules a 40% reduction of the amount in damages (i.e 40% of EUR 579,490) is warranted. Consequently, the amount for which Riga is jointly and severally liable is EUR 347,694.

#### **G. Summary**

176. In conclusion, the Panel finds that Riga is jointly and severally liable to pay to Partizan the amount of EUR 347,694. All further claims, including Partizan's cross-appeal must be dismissed.

#### **X. COSTS**

177. Article R64.4 of the Code provides:

*“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.”*

178. Article R64.5 of the Code provides:

*“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.”*

179. Bearing in mind the outcome of the arbitration with respect to the claim and the counterclaim, i.e. that Riga lost in the amount of EUR 347,694, Partizan in the amount of EUR 473,462.31 and FIFA in the amount of EUR 231,796 and taking into account the Termination Order of 12 April 2019 as well as the time spent on the various arguments submitted by the Parties, the Panel finds it fair that the costs of this appeal shall be borne by Riga the amount of 35%, by Partizan in the amount of 50% and by FIFA in the amount of 15%. Furthermore, the costs of the Termination Order date the actual amount will be determined and notified to the Parties by the CAS Court Office.

180. Pursuant to Article R64.5 of the Code, in consideration of the outcome of the present proceedings, the conduct and financial resources of the Parties, the Panel finds it reasonable that all parties bear their own legal fees and expenses.

## ON THESE GROUNDS

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

1. The appeal filed by Riga FC against FC Partizan & FIFA on 17 April 2018 concerning the Decision issued by the Dispute Resolution Chamber of the FIFA on 30 November 2017 is partially upheld.
2. The Decision of the Dispute Resolution Chamber of the FIFA of 30 November 2017 is confirmed, with the exception of item 8 which shall read as follows:  
  
*8. The Intervening Party, Riga FC, is jointly and severally liable for the payment of the amount mentioned under point 7, up to an amount of EUR 347'694.*
3. The appeal filed by FC Partizan v. Riga FC & FIFA on 17 April 2018 concerning the Decision issued by the Dispute Resolution Chamber of the FIFA on 30 November 2017 is dismissed.
4. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne by Riga FC in the amount of 35%, by FC Partizan in the amount of 50% and by FIFA in the amount of 15%.
5. Each party shall bear his/its own legal and other costs.
6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland  
Date: 15 October 2019

**THE COURT OF ARBITRATION FOR SPORT**

Prof. Dr Ulrich Haas  
President of the Panel