



**Arbitration CAS 2008/A/1468 FC Slovacko v. FC Banik Ostrava, award of 9 February 2009**

Panel: Mr Christian Duve (Germany), President; Mr Bernhard Welten (Switzerland); Mr Vít Horacek (Czech Republic)

*Football*

*Transfer*

*Interpretation contra proferentem*

*Exhaustion of internal legal remedies and appeal to the CAS*

*Arbitration clause contained in the Statutes of a national federation*

*Standing to be sued according to the CAS jurisprudence*

*Standing to be sued according to Article 75 of the Swiss Civil Code*

*Confirmation of a player's release by a club*

1. If a sports federation enacts rules which render unclear which procedure to apply, a judging body of that same federation should adopt the interpretation which could be more favourable to the appealing party, in compliance with the widely recognized interpretative principle *contra proferentem* or *contra stipulatorem*.
2. According to the CAS Code and the FIFA Statutes, a party can only lodge an appeal before CAS within the 21 days deadline after exhausting all other internal channels. In this respect, a decision only becomes final upon notification of the decision of the jurisdictional authorities within the national federation.
3. When dealing with the jurisdiction of the CAS, the arbitration clause contained in the Statutes of a national federation is binding on the parties. Thus, any member of the national federation may lodge an appeal before CAS if the statutes of the national federation so provide.
4. A party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it.
5. A case where a CAS panel is called to settle a financial dispute between parties based on the interpretation of a contract is clearly not a membership related decision, which might be subject to Article 75 of the Swiss Civil Code but a strict contractual dispute.
6. A club may lawfully and according to the FIFA Regulations confirm a player's release to the football association if the contract between the player and the club has been terminated early by mutual agreement.

FC Slovacko (“Slovacko”, the Appellant) is a football club with its registered office in the Czech Republic. It is a member of the Czech Football Association, which is affiliated to FIFA.

FC Banik Ostrava (“Banik Ostrava”, the Respondent) is a football club with its registered office in the Czech Republic. It is a member of the Czech Football Association, which is affiliated to FIFA.

On August 9, 2005, Slovacko and Banik Ostrava signed a contract of transfer of the Czech football player Mr. Mario Lička (the “Player”).

Article 2, para. 2 of the Contract of Transfer (“Transfer Contract”) stipulated the following:

*“The Transferee further undertakes to pay to the Transferor the amount of CZK 4,000,000 + applicable VAT (in words: Four Million Czech Crowns) with maturity within 15 days after the creation of the right, i.e. the Player from the Transferee’s club is transferred to or plays as a guest in another club, or the Player’s Professional Contract in the Transferee’s club is extended. The Transferee shall notify the Transferor about any of the above no later than within one week after the occurrence of such event (duty to notify)”.*

Following the transfer of the Player, Appellant concluded a Professional Contract with Mr. Lička from August 10, 2005 until August 10, 2006 (“Professional Contract”).

On August 3, 2006, however, Appellant confirmed the Application for Release sent by the Football Association of the Czech Republic (“Czech FA”).

On August 1, 2006, Mr. Lička joined the Southampton Football Club (“Southampton”) as a professional player. This is evidenced by the letter of the Secretary of Southampton dated April 3, 2007, in which the Secretary of the English football club confirms that Appellant received no fee for the athlete and states that the athlete had signed for their club as a free agent.

In September 2006, Respondent issued an invoice for the amount of CZK 4,760,000 (VAT inclusive) in accordance with art. 2(2) of the Transfer Contract in view of the fact that the Player had been engaged by Southampton.

Appellant refused to pay the invoice, and therefore, Respondent filed an action before the Arbitration Commission of the Czech FA (“Arbitration Commission”).

On July 20, 2007, the Arbitration Commission imposed on Appellant the duty to pay CZK 4,760,000 including the late payment interests according to art. 2(2) Transfer Contract plus the costs of the arbitration CZK 62,475 (“decision of the Arbitration Commission”). In its reasoning, the Arbitration Commission based its conclusion:

*“namely on the signed instrument ‘Application for release of a player to play abroad’ dated 3 August 2006 and further on the opinion of the Department of legislation and registration of the [Czech FA] dated 23 May 2007”*

[Clarifications made by the Panel].

Consequently, Appellant filed an appeal against the decision of the Arbitration Commission with the Appellate and Review Commission of the Czech FA (“Appellate and Review Commission”) invoking the principle of two-instance proceedings contained in article 22 of the Statutes of the Czech FA.

On September 6, 2007, the Appellate and Review Commission decided to discontinue the appeal proceeding and declined to rule on the merits because it lacked jurisdiction to review the decisions of the Arbitration Commission (“decision of the Appellate and Review Commission”). The Appellate and Review Commission based its decision on the fact that the two-instance principle contained in art. 22(1) of the Statutes of the Czech FA had not been implemented yet. The Appellate and Review Commission reasoned that:

*“Neither the Statutes of the Football Association of the Czech Republic, nor the said Statutes [the Statutes and Rules of the Arbitration Commission or those of the Appellate and Review Commission] suggest that the Appellate and Review Commission is authorized to review decisions of the Arbitration Commission. Such powers are granted neither on the subject-matter level (decision making in disputes arising namely out of contract, which powers belong to the Arbitration Commission), nor the functional level, i.e. the Appellate and Review Commission is not specified as the appellate body of the Arbitration Commission in the Statutes of the Football Association of the Czech Republic or any of the said Statutes.*

*The power of the Appellate and Review Commission to review decisions of the Arbitration Commission is not constituted by any other rules of order or regulations valid and effective within the [Czech FA]”*

[Clarifications made by the Panel].

Subsequently, Appellant filed a motion for a new trial against the decision of the Arbitration Commission on the basis that only one piece of evidence had been considered by the Arbitration Commission. This motion was dismissed by the Arbitration Commission by a decision dated December 10, 2007, which was served on Appellant on December 28, 2007.

On January 17, 2008, Appellant filed its appeal of the Arbitration Commission’s decision before CAS, requesting the following relief:

*“the decision of the Arbitration Commission of the Football Association of the Czech Republic dated 20 July 2007, Ref. No. AK 108/06, which imposed on the Claimant a duty to pay the amount of CZK 4,760,000, including late payment interest according to par. 2 of Article II of the Contract of Transfer and further the cost of the arbitration fee in the amount of CZK 62,475 is discharged;*

*Respondent is obliged to return to the Claimant the amount of CZK 4,760,000, including late payment interest, and further the cost of the arbitration fee in the amount of CZK 62,475, which the Claimant was obliged to pay to Respondent on the basis of the decision of the Arbitration Commission of the Football Association of the Czech Republic;*

*Respondent is obliged to pay to the Claimant the cost of the fee of opening of these proceedings and all other costs, which the Claimant may incur in connection with these proceedings before the Arbitration Court for Sport”.*

On January 30, 2008, the CAS Court Office received Appellant’s proof of jurisdiction of the CAS.

On February 1, 2008, the CAS Court Office invited Appellant to appoint an arbitrator.

On February 1, 2008, the CAS Court Office notified the Czech FA of the present arbitration proceedings even though the appeal was not directed against it.

On February 1, 2008, the CAS Court Office served Respondent with the statement of appeal on behalf of Appellant. Moreover, the CAS Court Office invited Respondent to appoint an arbitrator and reminded it that if it failed to do so, the President of CAS Appeals Arbitration Division would apply article R53 of the Code of Sports-related Arbitration (“CAS Code”) and proceed with the appointment in lieu of Respondent.

On February 4, 2008, Appellant appointed Mr. Bernhard Welten as an arbitrator and asked CAS to accept its statement of appeal as a combined statement of appeal and appeal brief. Moreover, it also provided CAS with the English translation of the documents it had referred to in earlier submissions.

Based on the delivery confirmation receipt provided by DHL, on February 11, 2008, the CAS Court Office noted the appointment made by Appellant and invited Respondent once again within ten days to appoint an arbitrator under warning that article R53 of the Code would be applied. Furthermore, the CAS Court Office noted that Appellant wanted its statement of appeal to be accepted as a combined statement of appeal and appeal brief. Consequently, the CAS Court Office gave Respondent twenty days from the receipt of that correspondence to submit an answer pursuant to article R55 of the CAS Code.

On February 12, 2008, Respondent received the correspondence from the CAS Court Office dated February 11, 2008.

On April 4, 2008, the CAS Court Office noted that Respondent had failed both to nominate an arbitrator and to file an answer within the prescribed deadline. Moreover, the CAS Counsel invited the parties to inform the CAS Court Office before April 11, 2008 whether their preference was for a hearing to be held or for the Panel to issue an award solely on the basis of the written submissions.

On April 10, 2008, Appellant informed CAS that that even though it did not insist on the holding of an arbitration hearing, it would be prepared to personally participate if the Panel would consider it useful or if the written submissions were found insufficient.

On April 10, 2008, the President of CAS Appeals Arbitration Division appointed Mr. Vit Horacek as arbitrator for Respondent pursuant to article R53 and confirmed Mr. Welten’s appointment.

On April 11, 2008, Respondent contacted the CAS Court Office for the first time via fax saying the following:

*“let me inform you football club FC Baník Ostrava is subjected to Czech Football Association which decided in controversy between our clubs. We accepted this decision. So, if other club or any other subject did not accept decision of Czech FA have to contact its Court of Arbitration. Hope you understand our position. Please contact Czech FA as our leading association which is only one entitled to give you valid informations”.*

On April 17, 2008, Mr. Christian Dube has been appointed as President of the Panel.

On May 7, 2008, the CAS Court Office informed the parties of the composition of the Panel appointed to decide in this case. The appointed members of the Panel were: Mr. Christian Duvé as President and Mr. Bernhard Welten and Mr Vit Horacek as Arbitrators.

On June 18, 2008, the CAS Court Office noted that Respondent had failed to inform the Panel of its position regarding the holding of an arbitration hearing within the prescribed deadline. Therefore, Respondent was invited once again to pronounce itself on this matter on or before June 25, 2008.

On June 19, 2008, the CAS Court Office invited the parties to submit comments or observations on the following list of questions addressed to the Czech FA:

- “1) What are the powers and competences of the Arbitration Commission according to its statutes and to the Czech Football Association Statutes?*
- 2) What are the powers and competences of the Appellate and Review Commission according to its statutes and to the Czech Football Association Statutes?*
- 3) In case none of the above-mentioned statutes allows the Appellate and Review Commission to review decisions of the Arbitration Commission, what is the interpretation given by the Czech Football Association to the two-instance principle contained in art. 22 of its Statute?*
  - a) Which are the two instances that art. 22 is referring to?*
  - b) How can the members of the association crystallize their right to a second instance?”.*

On June 23, 2008, Appellant filed its comment to the above-transcribed questions and did not suggest an amendment to their wording nor oppose it.

On June 24, 2008, the CAS Court Office invited the Czech FA to respond to the above-transcribed questions. Since the CAS Court Office received no reply, the invitation was sent again to the Czech FA on August 20, 2008.

On August 4, 2008, the Czech FA sent an English copy of the Statutes of the Football Association but did not submit an English copy of the Statutes of the Arbitration Commission or the Appellate and Review Commission because the Czech FA “did not manage an English copy of these statutes”. These were submitted by Appellant on September 1, 2008 after being requested to do so by the CAS.

On October 13, 2008, the parties were requested to sign and return the Procedural Order for this case or on before October 20, 2008.

On October 14, 2008, Respondent sent a letter to the CAS Court Office stating that it “cannot sign the procedural order because there is inaccurate information. We obtained on April 4, 2008 letter from Mr. Casserly and then we sent you our answer. Hope you will find our answer in your communication and give it to new procedural order”. Enclosed with this letter, Respondent sent the letter it had already sent on April 11, 2008 which is quoted above.

On October 23, 2008, the CAS Court Office acknowledged receipt of the Order of Procedure signed by Appellant as well as the letter from Respondent dated October 14, 2008. Furthermore, the CAS

Court Office sent a slightly modified Order of Procedure to the parties and invited them to sign and return a copy of the new Order of Procedure on or before October 27, 2008.

On October 29, 2008, the CAS Court Office acknowledged receipt of the second Order of Procedure signed by Appellant. Furthermore, since Respondent had informed the CAS Court Office by phone that it could not sign the Order of Procedure because it had allegedly not received the CAS letter dated February 11, 2008, the CAS Counsel sent by fax a copy of such letter for its attention. Additionally, due to the fact that Respondent contested receiving the CAS letter dated February 11, 2008, the Panel decided to accept Respondent's letter dated April 11, 2008 as the answer filed by Respondent and invited Respondent to inform the CAS Court Office on or before November 6, 2008 whether it would like to supplement this answer. Finally, the Panel invited Respondent to either confirm the appointment of Mr. Horacek Vit by the President of the Appeals Division as the appointed arbitrator for Respondent, or to nominate another arbitrator from the list of CAS arbitrators on or before November 6, 2008.

On November 5, 2008, Respondent sent a letter to the CAS Court Office stating:

*"Football club FFC Banik Ostrava as member of Czech FA obtained decision of Czech FA Arbitration court between 2 clubs (FC Banik Ostrava/FC Slovacko). As part of Czech FA we respect its decision. So, please understand our position and ask for all necessary informations from Czech FA. If the CAS obtained already all information from Czech FA, please use them.*

*We understand this controversy between FC Slovacko and Czech FA arbitration. We are not **passively legitimated**. Please ask the Czech FA to sign procedural order and confirm its arbitrator.*

*Please inform me, if you accept our statement".*

On November 27, 2008, the CAS Court Office acknowledged receipt of the Order of Procedure signed by Appellant as well as the letter from Respondent dated November 5, 2008.

Appellant in summary submits the following:

Slovacko is only obliged to pay a compensation fee upon the fulfilment of one of the three conditions set forth in art. 2(2) of the Transfer Contract:

- a) the Player is transferred from Appellant's club to another club;
- b) the Player guests in another club;
- c) the Player extends the Professional Contract with Appellant.

Appellant argues that provisions like the above-mentioned ones form commonly part of contracts dealing with transfer of football players.

Furthermore, Appellant submits that it originally concluded a Professional Contract with Mario Lička until August 10, 2006, and even though it wanted to extend the contract, the Player refused to do so. In contrast, the Player arranged by himself a new contract with the club of the second English football league, the Southampton Football Club. As the second English football league started on August 1, 2006, the Player asked Appellant for an earlier termination of his Professional Contract. Consequently,

since the Player was not interested in extending his Professional Contract with Appellant, Slovacko decided to comply with the request and asked the Czech FA for a release, which was confirmed on August 3, 2006.

Appellant submits that the fee contained in art. 2(2) of the Transfer Contract is a bonus (additional to the purchase price) that the Transferor (Respondent) is entitled to receive in case the Transferee (Appellant) has further benefit from the Player in the future. This benefit arises only upon the Player's sale, loan or extension of his Professional Contract.

As a result, Appellant believes that the Arbitration Commission was wrong in basing its decision of July 20, 2007 on the fact Appellant confirmed on August 3, 2006 the Application for Release of the Player.

It argues that Appellant's confirmation of the Application for a Release of a Player does not mean that the Player was transferred. On the contrary, Appellant was obliged to make this confirmation or else he would be subject to sanctions by the Czech FA.

Additionally, the Player negotiated and concluded the contract with Southampton as a free player. Appellant did not participate in any way in the negotiations and did not receive any compensation or other consideration from Southampton for the release of the Player.

Regarding the internal remedies provided by the Czech FA, Appellant submits that the fact that none of its bodies considered Appellant's appeal violates its rights under Article 22 of the Statutes of the Czech FA. This article stipulates the obligation to observe the two-instance principle of proceedings.

Additionally, Appellant alleges that both the appeal to the Appellate and Review Commission and the motion for re-opening of the cases lodged with the Arbitration Commission were dismissed without even being considered.

Concerning the appeal, the Appellate and Review Commission discontinued the appellate proceedings by its decision Ref. No. 033/2007 dated September 6, 2007. The reasoning of the decision stated that the Appellate and Review Commission has no powers to review a decision of the Arbitration Commission and that there is no appellate body within the Czech FA which could do so. Moreover, the decision states that the two-instance principle of proceedings, as specified in art. 22 of the Statutes of the Czech FA has not yet been complied within the Czech FA.

With regard to the dismissal of the motion for re-opening the cases, Appellant states that this decision was not justified at all. It was only stated that the conditions for re-opening the case specified in Article 3, Clause 1, of the Statutes and Rules of the Arbitration Commission were not fulfilled.

Therefore, Appellant states that it complies with the requirement of exhaustion of local remedies set forth in Article 63, Clause 2, of the FIFA Statutes version 2008.

On April 11, 2008, Respondent filed the following answer:

*“let me inform you football club FC Banik Ostrava is subjected to Czech Football Association which decided in controversy between our clubs. We accepted this decision. So, if other club or any other subject did not accept decision of Czech FA have to contact its Court of Arbitration. Hope you understand our position. Please contact Czech FA as our leading association which is only one entitled to give you valid informations”.*

## LAW

### Admissibility of the appeal

1. In order to decide on the admissibility of the present appeal, the Panel looks at the special circumstances of the case. The Panel notes that Statutes of the Czech FA (“Czech FA Statutes”) provide in article 22 for two-instance proceedings. In particular, the Panel notes that there is a lack of clarity as to how Appellant could comply with the two-instance principle before the Czech FA. In this regard, the Panel will address two issues: first, the jurisdiction of the Appellate and Review Commission; and second, Appellant’s efforts to exhaust the legal remedies available to him within the Czech FA before lodging his appeal before the CAS.
2. Article 22 of the Czech FA Statutes, which is part of the Czech FA Statutes since at least the year 2001, provides the following:

*“1. Decisions regarding the rights and obligations of the [Czech FA] members and competition participants shall be made in two instances. This shall not prejudice the right of the [Czech FA] Appellate and Review Commission to review decisions pursuant to the provisions of article 10, Section 3.*

*2. No [Czech FA] member and competition participant will be denied the right to invoke its rights before the [Czech FA] authorities. Czech authorities shall adjust its activities so as to prevent delays and ensure the proper and timely discussion of any motions subject to their decision”*

[Clarifications made by the Panel].
- A. *The jurisdiction of the Appellate and Review Commission*
3. In order to address the issue of jurisdiction, the legal framework of the Czech FA needs to be analyzed.
4. The Czech FA Statutes govern the relationship between the Czech FA and its members. Generally speaking, they organize how the Czech FA and its different authorities function. In particular, articles 10 and 11 deal with the composition and functions of its dispute resolution bodies, the Appellate and Review Commission and the Arbitration Commission respectively.
5. Article 10 of the Czech FA Statutes states:



***“1. The Appellate and Review Commission shall decide as an authority of the second instance in all appeals against the decisions of [commissions] governing competitions on the national level regarding competition and disciplinary issues, registration, transfers, and appeals against the decision of the [Czech FA] registration division. [...]”***

*3. Upon suggestion, the Appellate and Review Commission is also authorized to review decisions issued in appeal proceedings by the District and Regional Football Association authorities in competition and disciplinary matters; change, cancel, or return such decisions for further review, if such decisions are in violation of the [Czech FA] Statutes, Rules and Regulations. The Appellate and Review Commission is also entitled to decide whether the schedules of all competition levels and decisions of the governing authorities are in compliance with the Competition Rules and competition schedules, and to decide in other matters in accordance with the [Czech FA] rules and regulations.*

*4. The Appellate and Review Commission shall convene at least once a month. Its term of office is 4 years. Changes in the Appellate and Review Commission may be made by any General Meeting.*

*5. The activities of the Appellate and Review Commission are governed in detail by the Statute and Appellate Rules, conformed by the Executive Committee upon the proposal of the Appellate and Review Commission.*

*The Appellate and Review Commission has 5 regular and 2 substitute members; of which 3 members and 1 substitute member are elected by General Meeting delegates from Bohemia, and 2 members and 1 substitute member are elected by the General Meeting delegates from Moravia. Members of the Appellate and Review Commission shall elect a Chairman from their midst. [...]”*

[Clarifications made and emphasis added by the Panel].

6. Article 11 of the Czech FA Statutes provides:

***“1. The Arbitration Commission is entitled to settle disputes between legal entities and physical persons within the [Czech FA], especially disputes arising from professional contracts between clubs and players, disputes regarding the fulfilment of contracts between clubs regarding the compensation for transferred players, and other disputes arising from similar contracts.***

*2. The activities of the Arbitration Commission are governed in detail by a Statute, confirmed by the Executive Committee upon the Arbitration Commission’s proposal.*

*3. The Arbitration Commission has 9 members and 2 substitute members, elected from among legal professionals. General Meeting delegates from Bohemia elect 6 members and 1 substitute member; General Meeting delegates from Moravia elect 3 members and 1 substitute member. The members of the Arbitration Commission shall elect a Chairman from their midst.*

*4. The Arbitration Commission shall act and decide in three-member tribunals, which shall meet as required to decide regarding the applications received. The renewal of proceedings shall be decided by a council consisting of all members of the Arbitration Commission. The Commission’s term of office is 4 years. Changes in the Arbitration Commission may be made by any General Meeting. [...]”*

[Clarifications made by the Panel].

7. On a subordinated hierarchical level, both the Arbitration Commission and the Appellate and Review Commission have their own statutes and rules pursuant to articles 10.5 and 11.2 of the Czech FA Statutes.

8. Article 2 of the Rules of Procedure of the Appellate and Review Commission of the Czech FA (“Rules of the Appellate and Review Commission”) adds:

*“1. It is within the appellate and reviewing powers of the FA Commission to perform:*

*a) the function of an **appellate body for appeals lodged against decisions issued in matters regarding competition, discipline, registrations and transfers by first instance commissions** or offices controlled by the Executive Committee of the [Czech FA]. [...]*”

[Clarifications made and emphasis added by the Panel].

9. The Panel indicates at this point that in the translation provided to the Panel, article 10.1 of the Czech FA empowers the Appellate and Review Commission to hear cases on as a second instance *“in all appeals against the decisions of committees”*. However, the Panel believes this being a translation error, as the wording of the text in Czech refers to “commissions”. Moreover, article 2.1(a) of the Rules of the Appellate and Review Commission allows the Appellate and Review Commission to function as *“an appellate body for appeals lodged against decisions issued (...) by first instance commissions”*.
10. The Panel tends to hold that the wording of the provisions of the Czech FA Statutes or the Rules of the Appellate and Review Commission or the Statutes and Rules of the Arbitration Commission of the Czech FA (“Rules of the Arbitration Commission”) give jurisdiction to the Appellate and Review Commission to review decisions of the Arbitration Commission. Nevertheless, the Appellate and Review Commission ruled that the power of the Appellate and Review Commission to review decisions of the Arbitration Commission was not constituted by the Czech FA Statutes, the Rules of the Arbitration Commission or the Rules of the Appellate and Review Commission, or *“by any other rules of order or regulations valid and effective”* within the Czech FA.
11. Furthermore, the Appellate and Review Commission deemed that article 22 of the Czech FA Statutes had not been implemented yet at the time when Appellant lodged an appeal against the decision of the Arbitration Commission. Nevertheless, it acknowledged that a two-instance proceeding would have been appropriate in this case. In its decision, the Appellate and Review Commission emphasized the following:

*“We can but agree that it would be more than suitable that even in property disputes two-instance proceedings were conducted within the Football Association of the Czech Republic, as is, for that matter, anticipated in Article 22, Clause 1, first sentence of its Statutes. Nevertheless, this provision of the Statutes of the Association has not been fulfilled yet and there is no body within the Association, which would be authorized to decide on appeals against decisions of the Arbitration Commission. Therefore even the Appellate and Review Commission is not authorized to decide about appeals against decisions of the Arbitration Commission.*

*Based on the above described situation the Appellate and Review Commission could not but have decided as specified above, i.e. to discontinue the proceedings and not to adopt a factual decision on the merits, but only a procedural decision. Regulations of the Association do not regulate a situation when the Appellate and Review Commission is referred to with a submission contesting a decision of any other body of the Football Association of the Czech Republic and at the same time now powers have been granted to the Appellate and Review*

*Commission in such matters; under the circumstances the option to discontinue the proceedings was selected out of the offered solutions”.*

12. As a result of the apparent contradiction between the provisions of the different statutes of the Czech FA and the interpretation given to them by the Appellate and Review Commission, the Panel invited the Czech FA both on June 24, 2008 and again on August 20, 2008 to answer the following set of questions:
  - 1) *What are the powers and competences of the Arbitration Commission according to its statutes and to the Czech Football Association Statutes?*
  - 2) *What are the powers and competences of the Appellate and Review Commission according to its statutes and to the Czech Football Association Statutes?*
  - 3) *In case none of the above-mentioned statutes allows the Appellate and Review Commission to review decisions of the Arbitration Commission, what is the interpretation given by the Czech Football Association to the two-instance principle contained in art. 22 of its Statute?*
    - a) *Which are the two instances that art. 22 is referring to?*
    - b) *How can the members of the association crystallize their right to a second instance?*
13. Up to the date of issuance of this award, the CAS Court Office has received no reply from the Czech FA to the Panel’s questions. Furthermore, only Appellant actively participated in these proceedings arguing that article 22 had not been implemented. Respondent, in contrast, made no submissions in this regard. Consequently, the Panel is unable to determine whether article 22 of the Czech FA has indeed been implemented. Thus, the Panel has to rely on the facts as represented by the Appellate and Review Commission and Appellant.
14. Despite the wording of the provisions of the different statutes of the Czech FA, the Appellate and Review Commission refused to assume jurisdiction in this case saying that there was no specific procedure that Appellant could rely on to implement its rights under article 22 of the Czech FA Statutes. Accordingly, the Panel finds that this procedural absence put Appellant in a state of procedural uncertainty. In the Panel’s view, if a sports federation enacts rules which render unclear which procedure to apply, *“a judging body of that same federation should adopt the interpretation which could be more favourable to the appealing party, in compliance with the widely recognized interpretative principle contra proferentem or contra stipulatorem (in Swiss jurisprudence see, e.g.: ATF 22 October 2002 4C.186/2002; ATF 126 V 499, 3b; ATF 122 III 118, 2d)”* (see CAS 2004/A/635, 49).
15. In these circumstances, the Panel rules that the Appellate and Review Commission, in rejecting the Appellant’s claim on formal grounds, was in breach of the fundamental principle of procedural fairness, which in many occasions the CAS has recognized and protected (see e.g. CAS 96/153, in Digest of CAS Awards, I, 341; CAS 98/200, in Digest of CAS Awards, II, 66; CAS 2000/C/267, in Digest of CAS Awards, II, 741; TAS 2003/A/443; and CAS 2004/A/635, 51).

16. The decision of the Appellate and Review Commission must thus be declared to be void and of no effect.

B. *Exhaustion of internal legal remedies*

17. Addressing the second issue, article 61 of the FIFA Statutes and article R47 of the CAS Code state the requirements for the filing of an appeal before the CAS.

*Article 61 of the FIFA Statutes 2008 - Jurisdiction of CAS*

**“1. Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.**

**2. Recourse may only be made to CAS after all other internal channels have been exhausted.**

**3. CAS, however, does not deal with appeals arising from:**

**(a) violations of the Laws of the Game;**

**(b) suspensions of up to four matches or up to three months (with the exception of doping decisions);**

**(c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognized under the rules of an Association or Confederation may be made”.**

*Article R47 of the CAS Code - Appeal*

**“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”.**

[Emphasis added by the Panel].

18. Briefly, in other words, parties can only lodge an appeal before CAS within the 21 days deadline after exhausting all other internal channels, in this case, before the Czech FA.
19. The decision of the Arbitration Commission dismissing Appellant’s motion for a new trial was notified to the parties on December 28, 2007. Appellant, therefore, had under article 61 of the FIFA Statutes until January 18, 2008 to file the appeal statement, which it did on January 17, 2008. Hence, the appeal is admissible as it was filed within the stipulated deadline.
20. The Panel concludes that the decision of the Arbitration Commission dated July 20, 2007 only became final upon notification of the denial of Appellant’s motion for a new trial dated December 10, 2007. The Panel arrived at this conclusion for the two following reasons.
21. First, as mentioned previously when dealing with the Appellate and Review Commission’s jurisdiction, the Panel recognizes that Appellant could not have successfully lodged an appeal against the decision of the Arbitration Commission before the Appellate and Review

Commission. Nonetheless, Appellant could legitimately rely on the guarantee of the two-instance proceedings based on the existence of article 22 in the Czech FA Statutes (already included in the 2001 version of the Czech FA Statutes). Appellant's behaviour in filing the appeal was in accordance not only with the Czech FA Statutes but also with article 61 of the FIFA Statutes and with article R47 of the CAS Code. In Appellant's state of procedural uncertainty at that time, it could have appeared reasonable to file an appeal only after pursuing the exhaustion of internal legal remedies available within the Czech FA.

22. Secondly, given the two-instance proceedings guarantee, Appellant's endeavour to pursue a new trial under article 3 of the Rules of the Arbitration Commission was a reasonable attempt to exhaust the internal legal remedies available.
23. The Panel notes that the wording of article 3 of the Rules of the Arbitration Commission might imply that the filing of the motion for a new trial could be considered rather as an extraordinary measure, given the situation of procedural uncertainty of Appellant in its proceedings before dispute resolution bodies of the Czech FA and the fact that the Czech FA did not respond to the questions of the Panel after being requested twice. Hence, the Panel finds that Appellant exhausted the legal remedies available to him prior to the appeal by filing a motion for a new trial.

### **CAS Jurisdiction**

24. The jurisdiction of CAS derives from Article 23 of the Statutes of the Football Association of the Czech Republic which contains an arbitration clause in favour of CAS. Indeed, its second paragraph reads: *"Apart from the statutory right of a Member of the Football Association of the Czech Republic to refer under the Act on Association of Citizens to a court, a Member of the Football Association of the Czech Republic may apply for a decision to the Court of Arbitration for Sport (CAS) with its seat in Lausanne, as is stipulated in applicable regulations of FIFA and UEFA; such decision of this Court of Arbitration for Sport shall not, according to sec. 15 of Act No. 83/1990, the Act on Association of Citizens, be subject to appellate review by Czech courts because the Court of Arbitration for Sport (CAS) seated in Lausanne is not a body of the Football Association of the Czech Republic"*. Since, the wording of these Statutes is binding on all football clubs operating in the Czech Republic, both parties are bound by the arbitration clause contained in Article 23 of the mentioned Statute.
25. In the present case, article 23 of the Statutes of the Czech FA contains an arbitration clause in favour of CAS. Article 61 of the FIFA Statutes provides for appeals against final decisions from members of FIFA within 21 days of the notification and excludes awards delivered by independent and duly constituted arbitral tribunals recognized by the associations. The award from the Arbitration Commission was final, as Appellant unsuccessfully tried to file an appeal against this decision before the Appellate and Review Commission and later a motion to re-open the case before the Arbitration Commission which was dismissed. Therefore, local remedies were exhausted. Moreover, the statement of appeal was filed before CAS within the deadline (as explained in the admissibility section of this award). Finally, the Arbitration Commission is elected by the Czech FA General Meeting (pursuant to article 11.3 of the Czech

FA Statutes). Thus, it depends on the Czech FA and cannot be considered “*an independent and duly constituted arbitral tribunal*” pursuant to article 61.3 of the FIFA Statutes and the FIFA Circular Letter 1010, which upholds the principle of parity, among others.

26. The scope of the Panel’s jurisdiction is defined in article R57 of CAS Code, which provides that: “*The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance*”.

### Applicable Law

27. As previously mentioned when dealing with the jurisdiction of the CAS, the arbitration clause contained in article 23 of the Czech FA Statutes is binding on the parties. Thus, any member of the Czech FA may lodge an appeal before CAS “*as specified in the applicable regulations of FIFA and UEFA*”.
28. Article R27 of the CAS Code states that its provisions “*apply whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of an arbitration clause inserted in a contract or regulations or of a later arbitration agreement (ordinary arbitration proceedings) or involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies, or a specific agreement provides for an appeal to the CAS (appeal arbitration proceedings) [...]*”.
29. Pursuant to article R58 of the CAS Code, the CAS settles the disputes 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 that the CAS deems appropriate.
30. Since article 23 of the Czech FA Statutes calls for the application of the FIFA provisions relevant to determine the jurisdiction of the CAS, the Panel looks into article 60(2) FIFA Statutes, which provides that “*the provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law*”.
31. CAS jurisprudence has consistently interpreted article 60(2) of the FIFA Statutes as to contain a choice of law clause in favour of Swiss law governing the merits of the disputes. For example, the Panel in the case CAS 2004/A/587 ruled that since the FIFA has its seat in Zurich, Swiss law is applicable subsidiarily to the merits of the case (CAS 2004/A/587, para. 8.2). This rule was subsequently supplemented by the Panel in case CAS 2005/A/902-903 which found that since the parties had subjected themselves to the FIFA Statutes and the CAS Code, and since the FIFA has its seat in Zurich, the matter would be settled by application of Swiss law (CAS 2005/A/902-903, para. 16 and 36).
32. In addition, in the case CAS 2005/A/983-984 the Panel added:

*“Pursuant to article 60.2 of the FIFA Statutes, the Arbitration Code of Sports of the CAS regulates which the applicable law is. CAS applies first and foremost the various FIFA regulations, and additionally, Swiss Law” (para. 37).*

*“It is not only desirable but also indispensable that the rules regulating sports at an international level are uniform and coherent all over the world. To guarantee compliance on a global level, such regulations cannot be applied differently in one country from another, particularly due to the interference of domestic law and domestic sports rules. The principle of the universal application of the FIFA rules acts in response to the need for legal rationality, security and foreseeability. All members of the Football family are subject to the same standards published and known to everyone, to ensure respect for equality of treatment around the world” (para. 24).*

33. More recently, in case CAS 2007/A/1298-1300 the CAS Panel affirmed that:

*“Since chapter 12 of the Swiss Private International Law Act (“PILact”) governs all international arbitrations with their seat in Switzerland and this arbitration constitutes an international arbitration with its seat in Switzerland as defined by article 176 of the PILact, article 187 PILact is the underlying conflict-of-law rule which is applicable in determining the governing rules of law” (para. 71).*

*“Article 187 of the PILact gives the parties a large degree of autonomy in selecting the applicable rules of law – including the possibility of choosing conflict-of-law rules (to determine the governing substantive law), a national law or private regulations. Moreover, the parties’ choice can be tacit, e.g. result from their conduct during the proceedings” (para. 83).*

*“according to the clear wording of article 60§2 of the FIFA Statutes, the FIFA intended the interpretation and validity of its regulations and decisions to be governed by a single law corresponding to its law of domicile, i.e. Swiss Law” (para. 73).*

34. Subsequently, the Panel examines article 1(1) of the 2005 edition of the FIFA Regulations, which affirms that the FIFA Regulations *“establish global and binding rules concerning the status of players, their eligibility to participate in Organised Football, and their transfer between clubs belonging to different Associations”*.

35. In this regard, Commentary on the Regulations for the Status and Transfer of Players (the “Commentary”), states:

*“The Regulations set up rules regarding the international transfers of players, the status of players, their eligibility to participate in organized football (art. 1, par.1) as well as the release of players for association teams and the players’ eligibility to play for such teams (art. 1, par.4). These fundamental rules shall be compulsory and applicable in the same way all over the world”*

(Commentary on the Regulations for the Status and Transfer of Players, pg. 8).

36. In the present case, the arbitration clause contained in article 23 of the Czech FA Statutes calls for the application of the FIFA Statutes, which in turn deem applicable the FIFA Regulations and subsidiarily, Swiss law.

37. Consequently, the Panel rules applicable the 2005 edition of the Regulations for the Statutes and Transfer of Players (“FIFA Regulations”), and additionally, Swiss law. The 2005 edition of the FIFA Regulations rather than the 2008 edition is applicable for two reasons: first, the parties

signed the Transfer Contract on August 9, 2005; and second, the Player joined Southampton on August 1, 2006.

### Merits of the Appeal

38. The questions before the Panel are:

- 1) Does Respondent have standing to be sued?
- 2) Was the Professional Contract between Appellant and the Player terminated on an earlier date than the one originally contracted for?
- 3) Was Appellant obliged to agree to the issuance of the ITC once requested by the Czech FA so that the Player could be registered in England?
- 4) Is Respondent entitled to compensation under art. 2(2) of the Transfer Contract?

#### A. Respondent's standing to be sued

39. As previously mentioned, on November 5, 2008, Respondent refused to sign the Order of Procedure alleging that the controversy was between Appellant and the Czech FA and therefore, it had no standing to be sued.
40. In the present case, neither the FIFA Regulations nor the CAS Code contain any specific rule regarding the standing to be sued. Therefore, in order to determine whether Respondent's allegations are correct, the Panel looks into the definition given to the term "standing to be sued" by CAS jurisprudence and also considers Swiss law.
41. In the case CAS 2007/A/1329 & 1330, the Panel ruled that *"(u)nder Swiss law, applicable pursuant to Articles 60.2 of the FIFA Statutes and R58 of the CAS Code, the defending party has standing to be sued (légitimation passive) if it is personally obliged by the 'disputed right' at stake (see CAS 2006/A/1206). In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (cf. CAS 2006/A/1189; CAS 2006/A/1192)"* (pg. 5, para 27).
42. Furthermore, the Panel also considers whether article 75 of the Swiss Civil Code ("Swiss CC") is applicable to the present case.
43. Article 75 of the Swiss CC under the heading "protection of member's rights", reads: *"every member of an association is entitled by law to apply to the court to avoid any decisions passed by the association without his assent, which are contrary to law or the constitution of the association, provided the application is made within one month from the day on which he became cognizant of such resolution"*.
44. Article 75 of the Swiss CC has consistently been interpreted to mean that it is always the association which has capacity to be sued (HEINI/SCHERRER, *"Basler Kommentar"*, 2<sup>nd</sup> edition, 2002, note 20 on Art. 75 Swiss Civil Code; RIEMER H.M., *"Berner Kommentar"*, note 60 et seq. on



Art 75 Swiss Civil Code; cf. BGE 122 III 283). However, Article 75 of the Swiss CC “does not apply indiscriminately to every decision made by an association (Cf. for example BGE 52 I 72; BGE 118 II 12). Instead, one has to determine in every case whether the appeal against a certain decision by an association falls under Art. 75 Swiss Civil Code, i.e. whether the prerequisites of Art. 75 Swiss Civil Code are met in a specific individual case. If, for example, there is a dispute between two association members (e.g. regarding the payment for the transfer of a football player) and the association decides that a club (member) has to pay the other a certain sum, this is not a decision which can be subject to an appeal within the meaning of Art. 75 Swiss Civil Code. As has been explained above, when an appeal is filed under Art. 75 Swiss Civil Code, the association (and only the association) as a legal entity is (and has to be) always the defendant and thereby has capacity to be sued. **A dispute between two football clubs, i.e. two association members, therefore, is not a dispute which can be appealed against under Art. 75 Swiss Civil Code. The sports association taking a decision is not doing so in a matter of its own, i.e. in a matter which concerns its relationship to one of its members, rather it is acting as a kind of first decision-making instance, as desired and accepted by the parties**” [Emphasis added by the Panel] (BERNASCONI/HUBER, *Appeals against a Decision of a (Sport) Association: The Question of the Validity of Time Limits stipulated in the Statutes of an Association*, SpuRt, 2004, Nr. 6, p. 268 ff.).

45. In the present case, the Panel is called to settle a financial dispute between the parties based on the interpretation of the article 2(2) of the Transfer Contract. The present matter is clearly not a membership related decision, which might be subject to Article 75 of the Swiss CC but a strict contractual dispute. Accordingly, the Panel holds that FC Banik Ostrava does have standing to be sued (cf. CAS A/1192, pg. 11, para. 47).

*B. Player's Professional Contract termination with Appellant*

46. According to article 8 of the Swiss Civil Code, the party invoking a fact to make a claim must prove it.
47. Consequently, Appellant has the burden of proving the termination of the Professional Contract upon which it is basing its claim that Respondent is not entitled to receive a further compensation of CZK 4,000,000 plus applicable VAT due to the fact that none of the conditions set forth in article 2(2) of the Transfer Contract were met in this case.

*“Under Swiss law, the standard of proof normally applied to a contractual claim is whether it has been established beyond reasonable doubt, thereby leading to the court's conviction that the claim is well founded”* (CAS 2005/A/1003, para. 51).

48. In the present case, it is therefore imperative to determine whether Appellant has established beyond reasonable doubt the termination of the Professional Contract with the Player, and thus the non fulfilment of the contractual conditions contained in the Transfer Contract, in order to reject Respondent's compensation claim.
49. Appellant alleged in its submissions that even though it was interested in extending the Professional Contract with the Player but that the Player refused the extension and arranged for

himself a new contract in the club of the second English league – Southampton Football Club. As the competition in the second English football league started already on August 1, 2006, Mario Lička asked for earlier termination of his Professional Contract. In view of the fact that Mario Lička was not interested in extending his Professional Contract, Appellant complied with the request. The application for the release of the Player, which was sent to Appellant by the Czech FA, was confirmed on August 3, 2006. In support of these allegations, Appellant submitted a letter from Southampton addressed to it dated April 3, 2007 which stated:

*“I can confirm that Southampton Football Club did not pay any fee to your Club for [Mario Lička], who joined us as a professional player on 1<sup>st</sup> August 2006.*

*For clarity, the player was not under contract with a Club at this time and was therefore a free agent when he signed for our Club”*

[Clarifications made by the Panel].

50. Appellant’s allegations were not contested by Respondent in the present arbitration proceedings.
51. As a result, the Panel considers that, in light of the evidence produced, and the participation of the parties in these proceedings, there are no reasonable doubts regarding the early termination of the Professional contract. Hence, the Player was free to contract with Southampton or any other club.

C. *Appellant’s confirmation of the release of the Player sent by the Czech FA*

52. In order to determine whether Appellant’s confirmation of the release of the Player was lawful, the Panel has to analyze the following provisions which govern the registration and transfer of players between associations.
53. Article 5 of the FIFA Regulations (edition 2005) states:  
*“1. A player must be registered with an Association to play for a club as either a Professional or an Amateur in accordance with the provisions of Art. 2. Only registered players are eligible to participate in Organised Football. By the act of registering, a player agrees to abide by the Statutes and regulations of FIFA, the confederations and the Associations.*  
*2. A player may only be registered for one club at a time. [...]”.*

54. Article 9 of the FIFA Regulations (edition 2005) provides:  
*“Players registered with one Association may only be registered with a New Association once the latter has received an International Transfer Certificate (ITC) from the Former Association. The ITC shall be issued free of charge without any conditions or time limitation. Any provisions to the contrary shall be null and void. The Association issuing the ITC shall deposit a copy with FIFA. The administrative procedures for issuing the ITC are contained in annex 3 of these Regulations. [...]”.*

55. The Annex 3 to the FIFA Regulations deals in detail with the administrative procedure governing the transfer of players between associations.
56. Article 1 of Annex 3 sets forth the principles:
- “1. Any player who is registered for a club that is affiliated to one Association shall not be eligible to play for a club affiliated to a different Association unless an ITC has been issued by the Former Association and received by the New Association in accordance with the provisions of this annex. Special forms provided by FIFA for this purpose or forms with similar wording shall be used.*
- 2. In the case of Professionals, the Association issuing the ITC shall also attach a copy of the player passport to it”.*
57. Article 2 of Annex 3 explains the procedure for the Issuance of an ITC for a Professional
- “1. All applications to register a Professional must be submitted by the New Club to the New Association during one of the Registration Periods established by that Association. All applications shall be accompanied by a copy of the contract between the New Club and the Professional. A Professional is not eligible to play in Official Matches for his New Club until an ITC has been issued by the Former Association and received by the New Association.*
- 2. Upon receipt of the application, the New Association shall immediately request the Former Association to issue an ITC for the Professional (the “ITC Request”). The last date on which the ITC Request can be made is the last day of the Registration Period of the New Association. An Association that receives an unsolicited ITC from another Association is not entitled to register the Professional concerned for one of its clubs.*
- 3. Upon receipt of the ITC Request, the Former Association shall immediately request the Former Club and the Professional to confirm whether the Professional’s contract has expired, whether early termination was mutually agreed or whether a contractual dispute exists.*
- 4. Within seven days of receiving the ITC Request, the Former Association shall either:*
- a) issue the ITC to the New Association; or,*
- b) inform the New Association that the ITC cannot be issued because the contract between the Former Club and the Professional has not expired or that there has been no mutual agreement regarding its early termination. [...]”.*
58. Mr. Lička could only play for Southampton FC if he was registered with the English Football Association. Given that he had been playing until then in the Czech Republic (and therefore was registered with the Czech FA), before registering him the English FA had to ask the Czech FA for an ITC for Mr. Lička (i.e. make an “ITC request”). Prior to issuing the ITC, the Czech FA had to ask both the Player and Appellant to confirm the release of the Player. Since the contract had been early terminated by mutual agreement, Appellant abided by the FIFA Regulations and confirmed such release on August 3, 2006.
59. As a result, the Panel rules that Appellant’s confirmation of the application for release of the Player was in compliance with the FIFA Regulations and does not automatically entail the fulfilment of any of the conditions of article 2(2) of the Transfer Contract as concluded by the Arbitration Commission in its decision of July 20, 2007.

D. *The matter of compensation under article 2(2) of the Transfer Contract*

60. Article 2(2) of the Transfer Contract stipulated three conditions under which the Appellant would be obliged to pay CZK 4,000,000 plus VAT (19%):
  - a. the Player is transferred from the Appellant's club to another club;
  - b. the Player is loaned to another club; or
  - c. the Player extends the professional contract with the Appellant.
61. To interpret article 2(2) of the Transfer Contract, it is necessary to make reference to article 18(1) of the Swiss Code of Obligations ("Swiss CO"), which provides:

*"When interpreting the form and the contents of a contract, the mutually agreed real intention of the parties must be considered and not incorrect terms or expressions used by the parties by mistake or in order to conceal the true nature of the contract [...]"*.
62. Additionally, the Panel indicates at this point that the Commercial Code of the Czech Republic also stipulates the same principle of interpretation of the intention(s) of the parties when negotiating the contract.
63. According to CAS jurisprudence, under article 18 of the Swiss CO *"the parties' common intention must prevail on the wording of their contract. If this common intention cannot be determined with certainty based on the wording, the judge must examine and interpret the formal agreement between the parties in order to define their subjective common intention (WINIGER B., Commentaire Romand – CO I, Basel 2003, n. 18-20 ad Art. 18 CO). This interpretation will first take into account the ordinary sense one can give to the expressions used by the parties and how they could reasonably understand them (WINIGER B., op. cit., n. 26 ad art. 18 CO; WIEGAND W., Obligationenrecht I, Basel 2003, n. 19 ad art. 18 CO). The behaviour of the parties, their respective interest in the contract and its goal can also be taken into account as complementary means of interpretation (WINIGER B., op. cit., n. 33, 37 and 134 ad art. 18 CO; WIEGAND W., op. cit., n. 29 and 30 ad art. 18 CO)"* (CAS 2005/A/871, pg. 19, para. 4.29).

*"By seeking the ordinary sense given to the expressions used by the parties, the real intention of the parties must – according to the jurisprudence of the Swiss Federal Court – be interpreted based on the principle of confidence. This principle implies that a party's declaration must be given the sense its counterparty can give to it in good faith ('Treu und Glauben': WIEGAND B., op. cit., n. 35 ad art. 18 CO), based on its wording, the context and the concrete circumstances in which it was expressed (ATF 124 III 165, 168, consid. 3a; 119 II 449, 451, consid. 3a). Unclear declarations or wordings in a contract will be interpreted against the party that drafted the contract (ATF 124 III 155, 158, consid. 1b): It is of the responsibility of the author of the contract to choose its formulation with adequate precision (In dubio contra stipulatorem – WINIGER B., op. cit., n. 50 ad 18 CO). Moreover, the interpretation must – as far as possible – stick to the legal solutions under Swiss law (ATF 126 III 388, 391, consid. 9d), under which the accrued protection of the weakest party"* (CAS 2005/A/871, pg. 19, para. 4.30).
64. Consequently, in order to decide whether Appellant owes Respondent a compensation under article 2(2) of the Transfer Contract the Panel must first determine whether one of the

conditions set forth therein was fulfilled by looking at “*the mutually agreed real intention of the parties*” pursuant to article 18 of the Swiss CO.

65. Initially, it is important to mention that provisions like article 2(2) of the Transfer Contract are widely used in transfer contracts of football players.
66. Subsequently, the Panel deems that the factual circumstances of the present case are clear enough to rule out, *prima-facie*, the fulfilment of the second and the third conditions of article 2(2) of the Transfer Contract (i.e.: the loan of the Player or the extension of the Professional Contract of the Player).
67. With regard to the first condition, whether the Player was indeed transferred from Appellant to Southampton, it is necessary to interpret article 2(2) of the Transfer Contract under the light of article 18(1) of the Swiss CO and look for the intention behind such clause being stipulated by the parties.
68. While analyzing “*the mutually agreed real intention of the parties*” when stipulating a further compensation paid by the Transferee (Appellant) to the Transferor (Respondent), the Panel realizes that in the occurrence of any of the three conditions, the Transferor is participating of the Transferee’s financial rewards. In other words, the Transferee club compensates the Transferor because the Transferee has a financial gain when it transfers the Player to another club; gives him on loan to another club; or extends the Player’s professional contract with the Transferee.
69. In the present case, Appellant received no financial reward for the early termination of the Player’s employment contract (neither compensation nor a transfer fee) and the subsequent registration of Mr. Lička with Southampton. This was confirmed by the letter sent by the English club, which also added that Appellant did not participate in the negotiations between Southampton and the Player that ended up in Mr. Lička joining Southampton.
70. For the above-mentioned reasons, the Panel concludes that neither the early termination of the Professional Contract nor the fact that Mr. Lička was subsequently registered with Southampton after carrying negotiations on his own with the English club constitute one of the conditions for compensation payment set forth in article 2(2) of the Transfer Contract.
71. In this regard, the Panel adds that even if there would have been no early termination of the Professional Contract, the assessment would not change, as the Professional Contract would have expired anyway a week after Appellant agreed to the release of the Player and the Player negotiated his new contract with Southampton as a free agent.
72. As a result, the Panel finds that Respondent should not have received any compensation from Appellant, and therefore, Appellant is entitled to the reimbursement of the whole amount.

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

1. The appeal by FC Slovacko against the decision issued on July 20, 2007 by the Arbitration Commission of the Czech Football Association is upheld.
2. The Decision issued on July 20, 2007 by the Arbitration Commission of the Czech Football Association is annulled.
3. FC Banik Ostrava shall reimburse to FC Slovacko the total amount of CZK 4,760,000, including late interests payment, and further cost of the arbitration fee in the amount of CZK 62,475, which FC Slovacko was obliged to pay to FC Banik Ostrava on the basis of the decision issued on July 20, 2007 by the Arbitration Commission of the Czech Football Association.

(...).