



**Arbitration CAS 2014/A/3850 Branislav Krunic v. Bosnia and Herzegovina Football Federation (BIHFF), award of 17 July 2015**

Panel: Prof. Petros Mavroidis (Greece), Sole arbitrator

*Football*

*Monetary claim related to a contract of employment between a player and a club*

*Applicable law*

*Standing to be sued*

1. FIFA Statutes are applicable to the parties that made a tacit choice of law when they submitted themselves to arbitration rules, which contained provisions relating to the designation of the applicable law. Moreover, if each party is – at least indirectly – affiliated to FIFA, Article 66 para. 2 of the FIFA Statutes is applicable. With respect to the applicable substantive law, subject to the primacy of applicable FIFA's regulations, Swiss law shall apply to the extent warranted. "Subsidiarily" only, the regulations of the national federation are applicable.
2. It is universally accepted that neither the CAS Code nor the FIFA Regulations contain any specific rule regarding the standing to be sued. Under Swiss law, a decision by an association may be challenged pursuant to Article 75 of the Swiss Civil Code (CC). The purpose of this provision is to protect the individual in its membership related sphere from any unlawful infringements by the association. A monetary claim raised by a player against a club based on an employment relationship is clearly not a membership-related dispute but is strictly of contractual nature. Therefore, article 75 CC does not come into play and the player has no ground to direct its appeal at the national federation, based on this provision. In addition and pursuant to constant CAS jurisprudence, the defending party has standing to be sued (*"légitimation passive"*) if it is personally obliged by the *"disputed right"* at stake. 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. If none of the player's prayers for relief was directed against the national federation, the latter, therefore, cannot be considered as the *"passive subject"* of the claim brought before the CAS by way of appeal.

**I. PARTIES**

1. Mr Branislav Krunic (hereinafter referred to as the "Appellant" or the "Player") is a former professional player, born on 28 January 1979 in Trebinje, Bosnia and Herzegovina.

2. The Bosnia and Herzegovina Football Federation (hereinafter referred to as “BIHFF”) is the governing body of football in Bosnia and Herzegovina. It has its registered office in Sarajevo, Bosnia and Herzegovina. It was founded in 1992 and is affiliated to the Fédération Internationale de Football Association (hereinafter referred to as “FIFA”) since 1996.

## II. FACTUAL BACKGROUND

### A. *Background facts*

3. Below is a summary of the relevant facts and allegations based on the Parties’ written and oral submissions, pleadings and evidence adduced. References to additional facts and allegations found in the Parties’ written and oral submissions, pleadings and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his award only to the submissions and evidence he deems necessary to explain his reasoning and final decision.
- B. *The agreements entered into by Mr Krunic*
4. FC Borac is a football club with its registered office in Banja Luka, Republic of Srpska, Bosnia and Herzegovina. It is a member of the BIHFF.
5. On 10 February 2011, Mr Krunic and the club FC Borac signed an employment contract (hereinafter referred to as the “Employment Contract”), effective from 10 February 2011 until 30 June 2012. Mr Krunic’s salary was determined in an appendix attached to the Employment Contract. According to this document, Mr Krunic was entitled to a sign-on fee of 5,000 Bosnian Convertible Marka (hereinafter referred to as “BAM”), a monthly wage of BAM 5,000 and a contribution of BAM 500 towards his rent.
6. On 20 June 2012, Mr Krunic and FC Borac agreed to extend the Employment Contract for two more years, *i.e.* until 30 June 2014. To this end, they signed a new document, attached to the initial Employment Contract and referred to as “*Annexe 298-06 of 20.06.2012*”. According to this document, Mr Krunic was entitled to a monthly wage of BAM 3,000, appearance fees and a contribution of BAM 300 towards his rent.
7. In the beginning of 2013, Mr Krunic was diagnosed with a heart condition, which made it impossible for him to pursue his career as a professional football player.
8. Following the “*Second Assembly of its Management Board*” held on 18 April 2013, FC Borac appointed Mr Krunic as its sport director. In this regard, it is undisputed that a) from that moment on, Mr Krunic did not play for FC Borac anymore, b) the Employment Contract was not amended and c) no new employment agreement was signed between Mr Krunic and the club.
9. At the hearing before the Court of Arbitration for Sport, Mr Krunic claimed that the minutes of the Second Assembly of the Management Board of FC Borac (confirming his nomination as

sport director) could not be held against him as they had not been ratified by persons duly authorised to act in the name of the club. However, Mr Krunic accepted that, following his nomination, he had signed several documents on behalf of FC Borac in his capacity of sport director.

*C. Proceedings before the lower instances*

10. On 28 July 2014, Mr Krunic filed an application with the “*Committee for Status of players of City Football Association*” over the failure of FC Borac to pay part or all of his wages and contribution towards his rents for several months in 2012, 2013 and 2014. Mr Krunic’s claim against his former club amounted to BAM 50,870.
11. In a decision dated 22 September 2014, the “*Committee for Status of players of City Football Association*” dismissed Mr Krunic’s claim on the following grounds:
  - From the day he was appointed sport director of FC Borac, Mr Krunic lost his status of professional player and, consequently, the right to file a claim before the competent sports-deciding bodies of the BIHFF.
  - From that moment on and according to the applicable regulations, Mr Krunic had 30 days to claim the outstanding wages due to him in his capacity of professional player. This deadline started running from 18 April 2013, when Mr Krunic was appointed sport director. As a consequence, Mr Krunic’s claim was lodged late and, therefore, must be dismissed.
  - From the moment he worked as the club’s sport director, Mr Krunic’s employment relationship with FC Borac was governed by the national Labour Law. Hence, his claims arising from such a contract could only be entertained and decided by civil courts.
  - The “*Annexe 298-06 of 20.06.2012*” extending the Employment Contract until 30 June 2014 was null and void as it did not meet the necessary formal requirements.
12. As a result, on 22 September 2014, the “*Committee for Status of players of City Football Association*” decided the following:

*“The request of Branislav Krunic of 28.07.2014 for protection of rights from the Contract of professional player number 04-15 of 14.02.2011 is rejected due being untimely, whereas the request for protection of rights from the Annex to the Contract of professional player number 298-06 of 20.06.2012 is rejected due to incompetence”.*
13. At some unspecified date, Mr Krunic challenged the decision issued by the “*Committee for Status of players of City Football Association*” before the “*BIHFF Committee for Status of a Player*” acting as the second instance court.
14. In a decision dated 7 November 2011, the “*BIHFF Committee for Status of a Player*” fully agreed with the findings of the first instance, save that it did not want to take position as regards the validity of the “*Annexe 298-06 of 20.06.2012*”. Consequently, it confirmed the challenged decision “*in its entirety*”.

15. On 12 November 2014, Mr Krunic was notified of the decision issued by the ‘*BIHFF Committee for Status of a Player*’ (hereinafter the “Appealed Decision”).

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

16. On 2 December 2014, Mr Krunic filed his statement of appeal with the Court of Arbitration for Sport (hereinafter referred to as the “CAS”) in accordance with Article R47 *et seq.* of the Code of Sports-related Arbitration (hereinafter referred to as the “Code”).
17. On 15 December 2014, the CAS Court Office acknowledged receipt of the statement of appeal filed by Mr Krunic, of his payment of the CAS Court Office fee and invited a) the BIHFF to comment within five (5) days on Mr Krunic’s request to submit the present matter to a sole arbitrator and b) the Parties to state whether they were interested in the submission of the present dispute to CAS Mediation. The CAS Court Office also noted that Mr Krunic chose English as the language of the arbitration.
18. On 12 January 2015, the CAS Court Office observed that the BIHFF failed to state whether it agreed to the appointment of a Sole Arbitrator. It informed the Parties that it would be for the President of the CAS Appeals Arbitration Division, or his Deputy, to decide the issue.
19. On 12 February 2015, the CAS Court Office acknowledged receipt of the Parties’ payment of their respective share of the advance of costs for the present procedure. On behalf of the President of the CAS Appeals Arbitration Division, it informed the Parties that the Panel to hear the case had been constituted as follows: Prof. Petros C. Mavroidis, Sole Arbitrator.
20. On 20 February 2015, the CAS Court Office took note of the fact that Mr Krunic’s statement of appeal was to be considered as his appeal brief.
21. On 18 March 2015, the BIHFF filed its answer in accordance with Article R55 of the Code.
22. The same day, the Parties were invited to inform the CAS Court Office whether their preference was for a hearing to be held.
23. On 24 and 25 March 2015, Mr Krunic, respectively the BIHFF, confirmed to the CAS Court Office their preference for a hearing to be held.
24. On 30 March 2015, the Parties were informed that the Sole Arbitrator had decided to hold a hearing, which was scheduled for 22 May 2015, with the agreement of the Parties.
25. On 13 and 22 May 2015, the BIHFF, respectively Mr Krunic, signed and returned the Order of Procedure in these appeal proceedings.
26. The hearing was held on 22 May 2015 at the CAS premises in Lausanne. The Sole Arbitrator was assisted by Mr Fabien Cagneux, Counsel to the CAS, and Mr Patrick Grandjean, *ad hoc* Clerk.

27. At the outset of the hearing, the Parties confirmed that they did not have any objection as to the appointment of the Sole Arbitrator.
28. The following persons attended the hearing:
- Mr Krunic, accompanied by Mr Momcilo Ristic, attorney-at-law and assisted by Mrs Maja Vucic, interpreter.
  - The BIHFF was represented by its attorney-at-law, Mr Adnan Dzemic.
29. No witness was heard.
30. The Sole Arbitrator heard the detailed submissions of the Parties. After their final arguments, the Sole Arbitrator closed the hearing and announced that his award would be rendered in due course. At the conclusion of the hearing, all Parties accepted that their rights before the Sole Arbitrator had been fully respected. The Sole Arbitrator reserved his award, which takes account of all the arguments and material admitted before it including, but not restricted to, those summarised above.

#### IV. SUBMISSIONS OF THE PARTIES

##### A. *The Appeal*

31. Mr Krunic submitted the following requests for relief:

*“Request of the complainant:*

*Having in mind the stated facts, evidences and appeal reasons, the complainant Krunic Branislav, requests:*

*That arbitrator or arbitrary council CAS adopts this appeal as a whole, to modify the Decision of the BIHFF Committee for status and transfer of players no. 02-3311-2/14 of 07.11.2014 and adopts a decision by which FC “Borac” Banjaluka would be obliged to pay the total of the main debt in amount of 52.219,00 BAM, out of which the debt for the unpaid salaries is 43.119,00 BAM, as well as contributions on the unpaid salaries to the Pension and Disability insurance Fund and Fund for health insurance of Republic of Srpska (which shall be calculated by expert afterwards) and the debt on the basis of unpaid rents in the amount of 9.100,00 BAM, all in accordance with the Contract of a professional player no. 43 of 10.02.2011, Annex to the contract of the professional player of 10.02.2011 and Annex to the contract no.298-06 of 20.06.2012, within 30 days from the adoption of the CAS decision.*

*The complainant Branislav Krunic also requires that an arbitrator or arbitration council CAS oblige FK Borac Banjaluka to pay the statutory default interest on unpaid salaries and rents, which will be calculated from the date of being late with the payment of each individual salary and rent, until the payment, according to the rate of statutory default interest applied in Republic of Srpska.*

*Considering the costs of the procedure, the complainant Branislav Krunic asks that arbitrator or arbitrary council CAS obliges FC Borac Banjaluka to payment of costs, both from previous and this procedure.*

*The costs contain the barrister fee and praises according to the barrister tariff, costs of interpretation by the certified court interpreter for English language, costs of the expert for the economic profession, fees and other possible costs in the procedure before the CAS, which would be afterwards decided upon by the complainant”.*

32. The submissions of Mr Krunic, in essence, may be summarized as follows:

- The CAS has jurisdiction to decide on the present dispute.
- The Employment Contract signed on 10 February 2011 and extended until 30 June 2014 has never been terminated by mutual agreement or by the unilateral breach of either Mr Krunic or FC Borac. When Mr Krunic has been appointed as the club’s sport director, no new agreement has been signed. In other words, the Employment Contract remained in force and was binding upon its signatories until 30 June 2014.
- The fact that Mr Krunic acted in the capacity of sport director as of April 2013 a) does not have any impact upon the validity of the Employment Contract, b) does not change the nature of the said contract, in particular it does not alter the legal regime governing the employment relationship between him and FC Borac.
- The fact that Mr Krunic has never lost the status of professional player before the end of the Employment Contract is proven by the disciplinary sanction imposed upon him on 12 June 2014. This decision clearly states that he was being sanctioned in his capacity of professional player.
- As a consequence, the “Committee for Status of players of City Football Association” and the “BIHFF Committee for Status and transfer of players” had jurisdiction to decide upon the entire claim brought by Mr Krunic against FC Borac.
- Considering that on 28 July 2014, Mr Krunic initiated proceedings with the “Committee for Status of players of City Football Association” to order FC Borac to pay in his favour the outstanding wages and other benefits, he complied with the applicable 30-day deadline.
- During the proceedings initiated before the “Committee for Status of players of City Football Association” and the “BIHFF Committee for Status of a Player”, FC Borac has not contested the quantum or the well-founded nature of Mr Krunic’s claim, which must be confirmed.
- The Appealed Decision “*is illegal and incorrect*” as it does not meet several formal requirements. It is also arbitrary as it “*is based upon statements without any substantive evidences [and] is confusing and contrary to the suggested evidence of the complainant during the procedure*”.

B. *The Answer*

33. The BIHFF filed an answer, with the following requests for relief:

*“In conclusion, we urge the Honourable Court to reject this appeal as unfounded and that the appellant covers all legal fees”.*

34. In its submission, the BIHFF mainly restated the same arguments set out in the Appealed Decision.

## V. PROCEDURAL ISSUE – ADDITIONAL SUBMISSION

35. Article R56 para. 1 of the Code provides as follows:

*“Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer”.*

36. At the hearing, the BIHFF filed a copy of its closing statement. Mr Krunic agreed with its production. Under these circumstances, the Sole Arbitrator decided to allow this additional submission.

## VI. JURISDICTION

37. 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”.*

38. The jurisdiction of CAS, which is not disputed, derives from Article 139 para. 4 of the BIHFF Regulations on the Registration, Status and Transfers of Players as well as from Article 67 of the FIFA Statutes. It is further confirmed by the order of procedure duly signed by the Parties.

39. At the hearing, Mr Adnan Dzemic suggested that there could be a third instance at the BIHFF level. The existence of such a body was not mentioned in the written submissions of the BIHFF and was also not established convincingly during the oral arguments. Furthermore, it appears to be inconsistent with the evidence of record:

- Pursuant to Article 13 of the Employment Contract, *“Disputes arising from this Contract in the first instance are dealt with by the responsible Commission on the Status of Players association responsible for the registration, and in the second instance Commission on the Status of BIHFF”.*
- In the present case, Mr Krunic filed his claim before the *“Committee for Status of players of City Football Association”*, which clearly stated in its decision that it was acting as *“the first instance body”*. This is furthermore confirmed in the Appealed Decision, which endorsed *“the first-instance Decision [...] in its entirety”*.
- As the appeal body, there is no doubt that the *“BIHFF Committee for Status of a Player”* was acting as the second and the last instance court. In this regard, the Appealed Decision confirmed that it was *“final”*.
- Article 139 of the BIHFF Regulations on the Registration, Status and Transfers of Players only makes reference to two instances.

40. In light of the foregoing, the Sole Arbitrator has no difficulty to find that Mr Krunić had exhausted all the legal remedies available to him prior to his appeal filed before CAS.
41. It follows that the CAS has jurisdiction to decide on the present dispute. However and in view of the outcome of the present arbitration, the Sole Arbitrator invites Mr Krunić to explore the opportunity to file an application before such “third instance”.
42. Under Article R57 of the Code, the Sole Arbitrator has the full power to review the facts and the law.

## VII. ADMISSIBILITY

43. It is undisputed that the appeal was submitted within the deadline provided by Article R49 of the Code as well as by Article 67 para. 1 of the FIFA Statutes.
44. The Sole Arbitrator therefore finds that the present appeal is admissible

## VIII. APPLICABLE LAW

45. It is generally accepted that the choice of the place of arbitration also determines the law to be applied to arbitration proceedings. The Swiss Private International Law Act (hereinafter referred to as “PILA”) is the relevant arbitration law (DUTOIT B., *Droit international privé Suisse, commentaire de la loi fédérale du 18 décembre 1987*, Bâle 2005, N. 1 on Article 176 PILA; TSCHANZ P-Y., in *Commentaire romand, Loi sur le droit international privé - Convention de Lugano*, 2011, n° 1, p. 1627, ad Article 186 PILA). Article 176 para. 1 PILA provides that the provisions of Chapter 12 of PILA regarding international arbitration shall apply to any arbitration if the seat of the arbitral tribunal is in Switzerland and if, at the time the arbitration agreement was entered into, at least one of the parties had neither its domicile nor its usual residence in Switzerland.
46. The CAS is recognized as a true court of arbitration (ATF 119 II 271). It has its seat in Lausanne, Switzerland. Chapter 12 of the PILA shall therefore apply as at least one of the Parties in the present dispute has neither its domicile nor its usual residence in Switzerland.
47. Pursuant to Article 176 para. 2 PILA, the provisions of Chapter 12 do not apply where the parties have excluded its application in writing and agreed on the application of the third part of the Civil Procedural Code. There is no such agreement in this case. Therefore, Articles 176 *et seq.* PILA are applicable.
48. Article 187 para. 1 of the PILA provides - inter alia - that “*the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected*”. This provision establishes a regime concerning the applicable law that is specific to arbitration and different from the principles instituted by the general conflict-of-law rules of the PILA.



49. According to the legal doctrine, the choice of law made by the parties can be tacit and/or indirect, by reference to the rules of an arbitral institution. In agreeing to arbitrate the present dispute according to the Code, the Parties have submitted to the conflict-of-law rules contained therein, in particular to Article R58 of the Code (CAS 2008/A/1705 para. 9 and references, CAS 2008/A/1639, para. 21 and references; CAS 2006/A/1141, para. 61).
50. Article R58 of the Code provides the following:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
51. Article R58 of the Code indicates how the Panel must determine which substantive rules/laws are to be applied to the merits of the dispute. This provision recognizes the pre-eminence of the “*applicable regulations*” to the “*rules of law chosen by the parties*”, which are only applicable “*subsidiarily*”. Article R58 of the Code does not admit any derogation and imposes a hierarchy of norms, which implies for the Panel the obligation to resolve the matter pursuant to the regulations of the relevant “*federation, association or sports-related body*”. Should this body of norms leave a lacuna, it would be filled by the “*rules of law chosen by the parties*”.
52. The Parties in the present case are bound by the FIFA Statutes for two reasons. Firstly, and as exposed above, they made a tacit choice of law when they submitted themselves to arbitration rules, which contained provisions relating to the designation of the applicable law. Secondly, each Party is – at least indirectly – affiliated to FIFA (CAS 2008/A/1517 para. 7). Therefore, this dispute is subject, in particular, to Article 66 para. 2 of the FIFA Statutes, which provides that “[t]he 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”.
53. According to its Article 1, the Employment Contract “*determine[s] [Mr Krunić’s and FC Borac’s] mutual relations, based upon the Regulations on registration of clubs and players, transfer and status of BIHFF, and upon Laws of BiH and entity laws*”.
54. Therefore, in the present case and with respect to the applicable substantive law, subject to the primacy of applicable FIFA’s regulations, Swiss Law shall apply to the extent warranted. “*Subsidiarily*” only, “*the Regulations on registration of clubs and players, transfer and status of BIHFF, and upon Laws of BiH and entity laws*” are applicable.
55. It can be observed that the Parties adopted the same approach. As a matter of fact, during the hearing, the Parties made reference to various FIFA Regulations, namely to Article 67 of the FIFA Statutes, which provides for a 21-day deadline to lodge an appeal with the CAS.

## IX. MERITS

56. Mr Krunic seeks as a relief an order from the CAS instructing FC Borac to pay in his favour outstanding wages, contributions towards a) his rents, b) his social and health insurances, c) his legal fees and other expenses incurred in connection with the present procedure.
57. At the hearing, the Sole Arbitrator asked Mr Krunic the reasons why he did not summon FC Borac to appear before the CAS and why he had only directed his appeal against the BIHFF and not against his former club.
58. Mr Krunic's representative answered that according to the wording of Articles R47 and R48 of the Code, an appeal lodged with the CAS could only be directed against the federation, the decision of which was being challenged; *i.e.* the BIHFF.
59. The Sole Arbitrator finds that Mr Krunic's proposed interpretation of Articles R47 and R48 of the Code is inconsistent:
  - with the wording of these provisions, which do not limit the passive legal standing in any manner. On the contrary, Article R48 of the Code unambiguously states that there may be more than just one Respondent. In this regard, it is universally accepted that neither the Code nor the FIFA Regulations contain any specific rule regarding the standing to be sued (CAS 2013/A/3140, para. 8.2; CAS 2008/A/1468, para. 82; CAS 2008/A/1517, para. 133; CAS 2008/A/1518, para. 22).
  - with the principle of right to be heard. If only the federations could be called to participate in the proceedings before the CAS, then CAS decisions could only be directed against them and could certainly not be enforced against a third party, such as FC Borac. Any other conclusion would clearly infringe the third party's right to be heard as it would never have the chance to defend itself, to comment on the appellant's arguments, to submit evidence with regard to all relevant facts, etc.
  - with the fact that, from the very beginning of the CAS existence, appeals concerning decisions rendered by sports-governing organizations have been brought before the CAS and directed not only against federations, but also against individuals (athletes, coaches, agents, referees, etc.) or legal entities (clubs, investment companies, etc.).
60. In light of the foregoing, Mr Krunic's interpretation of Articles R47 and R48 of the Code must be discarded.
61. Bearing in mind that the relief sought is exclusively directed at FC Borjac, which is not a party to these proceedings, the question arises as to whether the Sole Arbitrator can still consider Mr Krunic's appeal.
62. The standing to be sued is a matter of substantive law (ATF 128 II 50, 55; CAS 2008/A/1639, para. 11.2; DE LA ROCHEFOUCAULD E., Standing to be sued, a procedural issue before the Court of Arbitration for Sport (CAS), in CAS Bulletin 1/2010, page 51).

63. Under Swiss law, a decision by an association like the BIHFF may be challenged pursuant to Article 75 of the Swiss Civil Code (CC). Under the heading “*protection of members*”, this provision reads as follows:

*“Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month of learning thereof”.*

64. The Sole Arbitrator concurs with the views of a CAS panel in CAS 2008/A/1639, which held that (para. 11.5):

*“The purpose of this provision is to protect the individual in its membership related sphere from any unlawful infringements by the association (cf ATF 108 II 15, 18). In view of this legislative purpose Art 75 CC is construed and interpreted in a broad sense (cf ATF 118 II 12, 17 seq.; 108 II 15, 18 seq; Handkommentar zum Schweizer Recht/Niggli, 2007, Art 75 ZGB marg. no. 6 seq; Heini/Portmann, Das Schweizer Vereinsrecht, Schweizerisches Privatrecht II/5, 2005, marg. no 278; Basler Kommentar ZGB/Heini/Scherrer, 3rd ed. 2006, Art 75 marg. no. 3 et seq.; Berner Kommentar zum schweizerischen Privatrecht/Riemer, 1990, Art 75 marg. no. 7 et seq, 17 et seq.; Fenners, Der Ausschluss der staatlichen Gerichtsbarkeit im organisierten Sport, 2006, marg. no. 208 ). In particular the term “resolution” in Art 75 CC does not only refer to resolutions passed by the assembly of an association but, instead, encompasses any other (final and binding) decision of any other organ of the association irrespective of the nature of such decision (disciplinary, administrative, etc.) and the composition of said organ (one or several persons)” (see also CAS 2013/A/3139 para. 107).*

65. In the presence of a claim lodged on the ground of Article 75 CC, it is the association which has the standing to be sued (ATF 132 III 503; FOËX B., in PICHONNAZ/FOËX, Commentaire romand, Helbling & Lichtenhahn, Bâle, 2010, ad. Article 75, n 9, p. 537).

66. However, Article 75 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. [...] 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” (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, published in German in the review Sport 6/2004, p. 268 ff.; see also CAS 2008/A/1517 para. 23; DE LA ROCHEFOUCAULD E., *op. cit.*, page 52).

67. In the present case, the Sole Arbitrator is called to adjudicate a monetary claim raised by Mr Krunic against FC Borac based on an employment relationship entered into in 2011. The present matter is clearly not a membership-related dispute but is strictly of contractual nature. In other words, when it rendered its Appealed Decision, the “BIHFF Committee for Status of a Player” was acting within its jurisdiction as the competent body to adjudicate a contractual

litigation between a player and a club. It did not act like a court of first instance in a dispute, which could have had an impact a) either on the rights and duties of Mr Krunic or of FC Borac as members of the BIHFF or b) on the relationship of the BIHFF with either the player or the club.

68. In other words, it appears that Article 75 CC does not come into play in the present proceedings and that the Player had no ground to direct its appeal at the BIHFF in the present case, based on this provision.
69. In addition and pursuant to constant CAS jurisprudence, the defending party has standing to be sued (*“légitimation passive”*) if it is personally obliged by the *“disputed right”* at stake. 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 (CAS 2007/A/1329 and CAS 2007/A/1330 and references; DE LA ROCHEFOUCAULD E., *op. cit.*, page 53).
70. In the present dispute, none of Mr Krunic’s prayers for relief was directed against the BIHFF, which, therefore, cannot be considered as the “passive subject” of the claim brought before the CAS by way of appeal. As a matter of fact, the rights of the BIHFF are not concerned by the Appealed Decision.
71. Based on the foregoing consideration, the Sole Arbitrator comes to the conclusion that the BIHFF does not have any standing to be sued and, therefore, cannot, as such, be identified as a respondent in the present proceedings. Mr Krunic directed his appeal at the wrong party and, therefore, the Sole Arbitrator cannot consider his requests for relief. Consequently, Mr Krunic’s appeal must be dismissed.

## ON THESE GROUNDS

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

1. The appeal filed on 2 December 2014 by Mr Branislav Krunic against the decision of the *“BIHFF Committee for Status of a Player”* dated 7 November 2014 is dismissed.
2. The decision of the *“BIHFF Committee for Status of a Player”* dated 7 November 2014 is confirmed.
3. (...).
4. (...).
5. All other or further requests and prayers of relief are dismissed.