4A_668/2016[1]

Judgment of July 24, 2017

First Civil Law Court

Federal Judge Kiss, Presiding
Federal Judge Klett
Federal Judge Hohl
Federal Judge Niquille
Clerk of the Court: Mr. Carruzzo

X._____
Appellant,

v.

Z._____,
Represented by Vincent Guignet,
Respondent.

Facts:

A.
A.a. In November 2014, the professional football Player X._____ (hereinafter: the Player), who was playing at the time under the colors of FC A._____, wanted to be loaned to another team, believing that his sporting talent was not being sufficiently exploited by the aforementioned club. His Exclusive Representative, B._____, through an acquaintance, contacted Z._____, an intermediary of Belgian nationality domiciled in Switzerland, who had links with various clubs, in particular with Club C._____.

After discussing the terms of the contract in the following month, the three parties signed a contract on December 24, 2014, referred to as the Mandate (hereinafter: the mediation contract), whereby B._____, as the Exclusive Representative of the Player, assigned Z._____, designated as a Sub-Agent (hereinafter: the Agent), the task of negotiating the conditions of the lending of the Player to the Club C._____. This mandate, valid only with respect to the aforementioned club, took effect on the day of signature of the contract and expired on January 31, 2015. As remuneration for their

[1] Translator's Note: Quote as X._____ *v.* Z._____, 4A_668/2016.
The decision was issued in French. The original text is available on the website of the Federal Tribunal, www.bger.ch.

respective services, B._____ and Z._____, would each receive half of 10% of the Player's total gross income over the entire duration of his new employment contract.

B._____ received the commission stipulated in the mediation contract.

A.b. On January 22, 2015, the Player, who the day before had accepted he would be loaned to Club C._____ by FC A._____, signed a second agreement with Z._____, entitled *Agreement for Payment of Player's Commission*[2] (hereinafter: the commission contract), in which the Player undertook to pay him Z._____ the amount of EUR 37'500 by January 23, 2015, and the same amount no later than April 15, 2015. In case of default, a contractual penalty of 10% of the unpaid portion would become payable two weeks after its due date. The arbitral clause provided for a Sole Arbitrator, who would rule on any disputes arising out of this agreement under the aegis of the Court of Arbitration for Sport (CAS).

The parties to the commission contract agreed that C._____ would pay the first installment of EUR 37'500 to Z._____ on behalf of the Player. The Club executed the payment after receiving an invoice from the Agent.

By letter of November 10, 2015, Z._____, who had waited for the Player to receive his full salary before claiming the payment of the second installment of his commission, requested his contracting partner honor his debt. He was estopped and unsuccessfully contacted the debtor again after the latter informed him, by letter dated December 12, 2015, sent by B._____ that he considered that he no longer owed him anything.

B.
B.a. On December 9, 2015, Z._____ filed a request for arbitration to the CAS in order to obtain the payment of the second installment of EUR 37’500, plus interest, and EUR 3’750 as a contractual penalty.

On January 20, 2016, a Lausanne-based lawyer was appointed as the Sole Arbitrator (hereinafter: the Arbitrator) in this case.

In his answer of March 11, 2016, the Player, represented by Mr. D. _____, lawyer, requested that the application be dismissed in its entirety.

On April 1, 2016, the CAS Secretariat informed the parties that the Arbitrator had decided to hold a hearing in this case. The Player, who had already indicated that he was opposed to a hearing on March 18, 2016, informed the CAS that he would not be participating for financial reasons. On April 13, 2016, the CAS Secretariat, which informed the parties two days earlier that the meeting would be held on April 15, 2016, made it clear to the Player that he could participate in the hearing through a conference call or Skype. On the same day, the lawyer of the player informed the CAS Secretariat that his client would be represented at the hearing by B._____ and sent the proxy that the Player had signed the day before for his Exclusive Representative.

[2] Translator’s Note: In English in the original text.

The hearing took place as scheduled at the CAS headquarters in Lausanne on April 15, 2016. The Agent, assisted by his counsel, attended the hearing and so did B._____, as the Exclusive Representative of the Respondent. At the outset of the hearing, the parties' representatives signed a corrected procedural order without raising any remarks or objections. At the end of the hearing they expressly confirmed that the equality of the parties and their right to be heard had been fully respected throughout the arbitration proceedings.

B.b. By means of a final award dated October 13, 2016, the Arbitrator ordered the Player to pay Z._____ the sum of EUR 37'500 with interest of 5% per annum as of April 16, 2015, and the amount of EUR 3'750 with interest of 5% per annum as of April 30, 2015. The reasons that led to this result can be summarized as follows.

The present case will be ruled *ratione temporis* in accordance with the Players' Agents Regulations, approved by the Executive Committee of the Fédération International de Football Associations (FIFA) on October 29, 2007, and entered into force on January 1, 2008, (hereinafter: PAR). The FIFA Regulations on working with intermediaries of March 21, 2014, which came into force on April 1, 2015, (hereinafter: RWI), are not applicable in this case. Swiss law will apply in order to fill any existing gaps in this sporting regulation.

The main issue to be resolved is the validity of the commission contract signed on January 22, 2015, and the compatibility of this contract with the mediation contract of December 24, 2014. In the absence of specific requirements from FIFA, the answer to this question must be sought in Swiss law. Under the latter, contractual relationships are subject to the principle of contractual freedom (Art. 19 CO).[3] According to this principle the parties, after deciding the conditions for the intervention of the Agent and the modalities of the calculation of the commission to be paid to him in the mediation contract, were free to specify in a second agreement the amount due to the Agent for all services rendered to the Player, as they did by signing the commission contract. There is no need to decide at this point whether the conclusion of this second contract violated the initial mediation contract with respect to the commission to be paid to the Exclusive Representative of the Player. The commission contract, which merely supplemented the contractual relationship between the Agent and the Player, had no impact on the relationship between the Player and B._____. Moreover, the Exclusive Representative received the amount he was entitled to under the mediation contract of December 24, 2014.

In accordance with the terms of the commission agreement, the Player agreed to pay Z._____ a total of EUR 75'000 in two consecutive installments of EUR 37'500 each. According to him, such an amount was excessive in view of the pertinent rules of FIFA. However, it should be recalled that the RWI, which definitively sets limits in this respect, is not applicable in this case from a temporal perspective. For the rest, the Player, who had the burden to prove this allegation (Art. 8 CC), provided no evidence to support it, even though it would have been possible, for example, to provide the employment contract with the Club C._____. The Arbitrator is therefore bound by the remuneration which the Player agreed to pay to the Agent by signing the commission contract.

[3] Translator's Note: CO is the French abbreviation for the Swiss Code of Obligations.

The Player further argues, in order to exclude any contractual obligation to Z._____, that the first installment of the Agent's remuneration was paid directly by C._____ on his behalf, so that it should be the same for the second installment. Z._____ admitted that the Club paid him the first EUR 37'500 on behalf of the Player, but he claims to be convinced that the remaining EUR 37'500 was to have been paid by the Player, as indicated in the commission contract. It should be observed at this point that this method of payment is provided for by the RTA, and Art. 19(4) reads as follows:

> ...after the conclusion of the relevant transaction, the player may give his written consent for the club to pay the player's agent on his behalf. The payment made on behalf of the player must reflect the general terms of payment agreed between the player and the player's agent.

In the present case, neither of the two cumulative conditions contained in this regulatory provision is fulfilled: with respect to the first, the Player did not provide evidence that he had given a written authorization to Club C._____ to pay the amount of EUR 37'500 directly to Z. As to the second condition, the Agent demonstrated, based on the text of the commission contract, that the Player was directly responsible for the payment of the outstanding EUR 37'500.

The Arbitrator therefore finds that the commission contract is valid and that the Player is directly responsible for paying Z._____ the second installment of EUR 37'500.

C.
On November 14, 2016, the Appellant filed a civil law appeal, along with a request for provisional measures, requesting the annulment of the Award of October 13, 2016. In his view, the Award was rendered in violation of the principle of equality of the parties and was also incompatible with public policy.

In his Answer dated March 6, 2017, Z._____ (hereinafter: the Respondent) requested the dismissal of the appeal.

In its Answer dated March 20, 2017. the CAS requested that the appeal be dismissed to the extent it was admissible.

The Appellant maintained his original submissions in his Reply of April 6, 2017.

For its part, the Respondent indicated, by letter dated April 12, 2017, that he wished to challenge all the Appellant's allegations that were not in conformity with his own.

Reasons:

1.
According to Art. 54(1) LTF,[4] the Federal Tribunal drafts its judgment in an official language, as a general rule in the language of the contested decision.[5] When this decision has been rendered in language that is not an official language (here, English), the Federal Tribunal uses the official language chosen by the parties. The parties used English before the CAS and French in the briefs sent to the Federal Tribunal, thus complying with Art. 42(1) LTF in conjunction with Art. 70(1) CST (ATF 142 III 521[6]). In accordance with its practice, the Federal Tribunal will therefore render its judgment in French.

2.
2.1. A civil law appeal against awards rendered in the field of international arbitration is admissible under the conditions set out in Art. 190-192 PILA[7] (Art. 77(1)(a) LTF). Whether as to the subject-matter of the appeal, the standing to appeal, the time limit to appeal, the submissions filed by the appellant, or the grounds for appeal raised in the appeal brief, none of these admissibility conditions are of concern in this case. The matter is therefore capable of appeal. The admissibility of the Appellant's grounds for appeal is reserved.

2.2. The Federal Tribunal issues its decision on the basis of the facts established in the contested award (see Art. 105(1) LTF). It may not rectify or supplement *ex officio* the factual findings of the arbitrators, even if the facts were established in a blatantly inaccurate manner or in violation of the law (*see* Art. 77(2) LTF which excludes the application of Art. 105(2) LTF). Its task when facing a civil law appeal against an international arbitral award does not consist of ruling on the matter with full power of review, as in the case of an appellate court, but merely in examining whether the admissible complaints made against that award are well-founded. It would not be compatible with such a mission to allow the parties to allege facts other than those found by the arbitral tribunal, apart from the exceptional cases reserved by the case law, where these facts established by evidence are found in the file of the arbitration. However, as was already the case under the Federal Judiciary Act, the Federal Tribunal has the right to review the factual findings on which the award under appeal is based if one of the grievances mentioned in Art. 190(2) PILA is raised against such factual findings or when some new facts or evidence are exceptionally taken into consideration within the framework of a civil law appeal.

The Federal Tribunal is also bound by the findings of the arbitral tribunal as to the conduct of the proceedings, subject to the same reservations, whether they relate to the parties' submissions, the alleged facts or the legal explanations given by the parties, to the witness or expert statements or the information gathered during a visual inspection (*see* Judgement 4A_34/2016 of April 25, 2017, at 2.2, and the case law quoted).

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[4] Translator's Note: LTF is the French abbreviation of the Federal Statute of June 17, 2005, organizing the Federal Tribunal, RS 173. 110.

[5] Translator's Note: The official languages of Switzerland are German, French, and Italian.

[6] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/federal-tribunal-upholds-independence-members-cms-network

[7] Translator's Note: PILA is the most commonly used English abbreviation for the Federal Statute on International Private Law of December 18, 1987, RS 291.

3.
In a first plea, the Appellant submits that the equality of the parties was not respected by the Arbitrator.

3.1. The equality of the parties, guaranteed by Art. 182(3) and 190(2)(d) PILA, means that the procedure was settled and conducted in such a way that each party had the same opportunity to make use of its means (ATF 142 III 360,[8] at 4.1.1, p. 361).

It must be recalled at this point that the party that considers itself to be disadvantaged by a violation of its right to be heard or another procedural error is forfeited from raising such argument if it fails to do so promptly during the arbitration procedure. It is against the principle of good faith to invoke a procedural defect only with the appeal filed against the arbitral award, when such defect could have been raised during the proceedings (Judgment 4A_198/2012[9] of December 14, 2012, at 3.2.1).

3.2
3.2.1. Essentially, the Appellant explained that since the lawyer appointed by him ceased his mandate on April 13, 2016, namely two days before the hearing, he had agreed to be represented at that hearing, to which he did not attend for financial reasons, by his Exclusive Representative B._____. According to him, he lost sight of the fact that his so-called Exclusive Representative had, in fact, a personal interest in the outcome of the arbitral proceedings, an interest opposed to the one of his principal. The interest of the Exclusive Representative, according to the Appellant, was to have Z._____ succeed before the CAS, because in this case the Exclusive Representative's obligation to pay half of the remuneration to that Agent based on the mediation contract would cease to exist or become impossible.

The Appellant adds that, born in 1990, he was fully occupied by his football career since the age of 11, so that he relied on his Exclusive Agent (with whom he had a close relationship of trust) to manage his affairs and deal with third parties. He had therefore lost sight of the fact that his Exclusive Representative also had an interest in the present case, an interest different from his own. In fact, he did not pay attention to this fact until after he received the award, when he then received advice from an independent third party. For this reason, he was able to present his views at the hearing of April 15, 2016, and to produce all the evidence necessary for his case, such as an e-mail of January 19, 2015, of the Representative of C._____ stating that the Club would not tolerate Z._____ acting as Agent of the Player and would not pay the travel and accommodation expenses of that Agent at U._____, for the signature of the contract concerning the Player.

According to the Appellant, the Arbitrator should have quickly recognized the conflict of interest between the Player and his Exclusive Representative and acted accordingly – just as a judge would have done upon observing a similar conflict between a lawyer and his client – for example, by formally drawing the Player's attention to the risk he was taking by entrusting the defense of his rights to a person interested in the outcome of the dispute. He also should not have relied on the declaration of the Player's

[8] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/agreed-upon-rules-procedure-do-bind-parties

[9] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/failure-ask-reasons-does-not-make-appeal-inadmissible

Exclusive Representative at the end of the Hearing, according to which the parties' right to be heard and equal treatment had been respected on that occasion.

3.2.2. The statement that a sole arbitrator or a panel took into account all the factual and legal arguments submitted by the parties, which is also confirmed by the parties at the end of the hearing, is a stereotyped formula found in most CAS awards and has no more value than a routine expression (Judgment 4A_730/2012[10] of April 29, 2013, at 3.3.2). The Appellant is right on this point, but this is the only element in its reasoning that speaks in his favor.

On the other hand, the legal argument developed in his brief in support of his first grievance is wrong because it is based on factual findings that do not accord with the facts as they were established by the Arbitrator. First, the assertion that the Player's lawyer ceased his mandate two days before the hearing of April 15, 2016. Nothing in the arbitration file supports the interpretation that Mr. D._____, a lawyer to whom the Appellant had issued a power of attorney on March 2, 2016, and based on such power of attorney he had drafted and filed the answer to the request for arbitration on behalf of his client on March 11, 2016, allegedly ceased his mandate on April 13, 2016. Such an allegation seems all the more unlikely as the name of the lawyer appears in the *rubrum* of the award, alongside that of B._____ and equally, an original copy of the Award was sent to that lawyer on October 21, 2016. Moreover, the participation of the Player's Exclusive Representative at the Hearing of April 15, 2016, was not unknown to Mr. D._____, as is clear from the fact that it was the latter who informed the CAS, by a letter of April 13, 2016, to which he attached the power of attorney signed by the Appellant for Exclusive Representative on April 12, 2016. Secondly, it is hardly likely – and in any event not established – that the Appellant was not informed of the conflict of interest between him and B. until after receiving the reasoned award. Finally, the assertion concerning the e-mail allegedly written by the Club of C._____ appears to be equally unfounded (see point 3.2.1, §2, *in fine*, above).

Moreover, the legal arguments put forward in the appeal brief do not appear to be convincing in any way and they are insufficient to establish that the CAS proceedings were not conducted in such a way as to offer each of the parties an equal opportunity to present its case. The Appellant does not demonstrate that the Arbitrator did not examine some of the factual, evidentiary, or legal arguments he submitted in support of his submissions, while the same Arbitrator accepted all the procedural motions filed by the Respondent. In particular, it does not specifically indicate how the behavior of B._____ at the hearing of April 15, 2016, would have prejudiced him and would have facilitated the task of his opposing party, which was represented by a lawyer. Moreover, merely stating the circumstances prior to the hearing shows that the Appellant took the decision not to attend the hearing in full knowledge of the facts. This is so because the Appellant was then assisted by a professional and had authorized, through a written proxy, his Exclusive Representative to attend the aforementioned hearing in his place, thereby renouncing the opportunity he was granted to attend the hearing, even *in absentia*, through electronic means of communication. Similarly, it is questionable why the Appellant did not make use of the opportunity to obtain legal aid before the CAS and to have a pro-bono lawyer appointed in order to assist him at the hearing of April 15, 2016 (see 4A_690/2016 of February 9, 2017, at 5.1, 1st para. *in*

[10] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/modification-operative-part-award-admitted-if-appellant%E2%80%99s-favor

fine and the references cited) if, as he alleges, financial reasons prevented him from traveling to Lausanne to defend his rights in the presence of the Arbitrator and his opponent. In fact, there is every reason to believe that the Appellant has continuously benefited from the assistance of a lawyer (an attorney or otherwise) – apart from at the hearing of April 15, 2016 – from a reading of the appeal brief, and he waited to know the outcome of the dispute in order to decide to appeal to the Federal Tribunal and complain of unequal treatment during the arbitral proceedings.

In any event, the Appellant failed to establish the conflict of interest which, in his view, should have led the Arbitrator to reject B._____ as his representative at the hearing on April 15, 2016. According to him, his Exclusive Representative had a personal interest, in opposition to his own, to have the Respondent prevail before the CAS, because in this way he would not have had to share the commission provided for in the mediation contract of December 24, 2014, with the Agent. This is however based on the erroneous premise according to which, under this contract, it was the responsibility of B._____ to pay Z._____ the share of the commission to which the latter was entitled. That is not what is provided under Art. 5 of said contract, which makes these two agents the direct creditors of the Player up to 50% each. As regards the dispute between Z._____ and the Appellant, it concerned the performance of the commission contract, which specified the amount owed by the Player to that Agent for the signing of the contract of employment with the Club C._____. Thus, since B._____ was not one of the two signatories to this contract and admitted he had been paid in full, in accordance with the previously concluded mediation contract, one cannot see how he could have a personal interest in the outcome of the present dispute, not being a party thereto. Moreover, as the Respondent points out in his Answer to the appeal, there is no basis for a finding that B._____ would not have to share with him the agency commission under the mediation contract even in case the Respondent prevailed before the CAS.

Accordingly, if the plea of violation of Art. 190(2)(d) PILA is not inadmissible for foreclosure, it is still dismissed.

4.
Second, the Appellant criticizes the Arbitrator for having breached substantive and procedural public policy in many respects.

4.1. An award is incompatible with public order if it disregards the essential and widely recognized values which, according to the prevailing view in Switzerland, should form the basis of any legal order (ATF 132 III 389 at 2.2.3). There is a distinction between procedural public policy and substantive public policy.

Procedural public policy, within the meaning of Art. 190(2)(e) PILA (ATF 138 III 270[11] at 2.3) is only a subsidiary guarantee and ensures that the parties have the right to an independent judgment on the findings and the facts submitted to the arbitral tribunal in a manner consistent with the applicable

[11] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/an-international-arbitral-tribunal-seating-in-switzerland-is-gen

procedural law; there is a violation of procedural public policy when fundamental and generally recognized principles have been violated, which leads to an intolerable contradiction with the notion of justice, such that the decision appears incompatible with the values recognized in a state governed by the rule of law (ATF 132 III 389 at 2.2.1).

An award is contrary to substantive public policy when it violates fundamental principles of substantive law to the point of no longer being compatible with the legal order and the system of core values. These principles include, among others, contractual loyalty, respect of the rules of good faith, prohibition of abuse of rights, prohibition of discriminatory or confiscatory measures, and the protection of incompetent people (*ibid.*).

4.2. In the first part of his plea, the Appellant stresses, first of all, the importance of the PAR in so far as it seeks to prevent the exploitation of footballers, for the most part young and inexperienced, by unscrupulous players' agents and to create, in this way, a transparency in the field of football transfers. In his opinion, as this regulation is binding on the persons concerned, an award (such as the one at issue here) that does not take into account the inherent contradiction between two successive mediation contracts relating to the same player, thereby grossly violating this binding regulation, is no longer compatible with public policy. This is what happened in the present case, according to the Appellant, as the Award ignored the impact of the exclusive nature of the mediation contract linking him to his Exclusive Representative. It did so by both tolerating the existence of two parallel contracts that created a legal impossibility within the meaning of Art. 20 CO and by seeking to circumvent this prohibitive obstacle through an interpretation, not explained in the Award, that resulted in making the commission contract a complement to the mediation contract, while ignoring the fact that the Exclusive Representative was a party to the latter, but not to the former.

The reasoning of this first part of the grievance in question, roughly summarized above, is highly inadequate. In any event, the Appellant fails to see that the mere fact of disregarding a FIFA regulation, even if it is imperative for the persons concerned and the subject-matter of the case, does not alone imply a violation of public policy referred to in Art. 190(2)(e) PILA. According to the case law, that also applies by analogy to Art. 20(1) CO, the violation of Art. 27 CC is not automatically contrary to public policy; it is necessary to have a serious and clear case of violation of a fundamental right. A contractual restriction of economic freedom is not considered excessive under Art. 27(2) CC only if the obligee is given over to his contractual counterpart's arbitrariness, suppresses his economic freedom, or restricts it to such an extent that the basis of his economic existence is jeopardized (ATF 138 III 322[12] at 4.3.2 and the references to 4A_458/2009[13] of June 10, 2010, at 4.4.3.2; see also 4A_45/2017 of June 27, 2017, at 5.4, publication forthcoming). Nothing of this kind applies in the present case where the Appellant was ordered to pay the Respondent a commission corresponding to a service rendered and not of such size as to jeopardize the economic existence of the debtor, a football player of a certain reputation.

[12] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/landmark-decision-of-the-swiss-supreme-court-international-arbit

[13] Translator's Note: The English translation of this decision is available here: http://www.swissarbitrationdecisions.com/challenge-of-arbitrators-sitting-on-cas-panel-rejected-claim-of-

In addition, it is not for the Federal Tribunal, which is called upon to deal with such a grievance, to examine whether the panel or the sole arbitrator applied correctly, or even merely in a supportable manner in the given circumstances, the legal rules and the jurisprudential principles governing the interpretation of the contracts and, in particular, the interaction between two agreements signed successively on the same subject.

4.3

4.3.1. In the second part of the same plea, the Appellant first criticizes the Arbitrator for having failed to observe the strict prohibition of a dual mandate, which consists, for an agent, to intervene at the same time on a mandate from the club which decided to acquire the services of a player and on a mandate with the player himself. This prohibition, which he draws from Art. 22(1)(a) PAR, is the subject of a well-established case law based on the French Code of Sport and finds its counterpart in Swiss law in the prohibition of the dual representation sanctioned on several occasions in the jurisprudence relating to Art. 32 and 33 CO (see, lastly, on the double real estate brokerage, Art. 415 CO, ATF 141 III 64, at 4).

The Respondent admittedly sent his invoice to Club C._____ for the first installment of EUR 37'500 for his commission provided for in the contract of January 22, 2015. Based on that fact, the Appellant argued that the Respondent acknowledged that he was in fact acting for the Club, so that he could not act simultaneously for the Player, unless he disregarded the prohibition of the dual mandate. In his view, therefore, it was for the Respondent to prove that his action was not based on a contractual relationship with the Club but merely on the written authorization given by the Appellant to the Club to pay the Agent on his behalf, in accordance with Art. 19(4) PAR, supra (see above, letter B, 5th paragraph). The Arbitrator, instead of inviting the Respondent to bring this evidence to the proceedings, instructed the Appellant to prove that he had given his written consent to the Respondent to directly request payment of the second installment of EUR 37'500 of his commission from Club C._____. This reversal of the burden of proof, according to the Appellant, resulted in depriving him of the possibility to demonstrate that he did not have standing to be sued with respect to the second installment of the commission provided in the contract of January 22, 2015, as he had to prove a negative fact, namely the lack of written consent. For the rest, the considerations set out in the Award concerning the payment of the first installment did not change anything. Moreover, the Arbitrator violated the Appellant's right to be heard, guaranteed by Art. 29(2) CST, by failing to examine this question of standing to be sued without compelling reason.

4.3.2. The argument developed by the Appellant, in addition to lacking clarity and logic, does not appear convincing.

The existence of a dual mandate, alleged at least implicitly by the Appellant in the arbitration proceedings, has not been proved. The text of the mediation contract, which refers to the mandate given by the Exclusive Representative to the Respondent to represent the Player as Sub-Agent in respect of the Club C._____, the commission contract, which deals only with the remuneration of the Respondent's services by the Appellant, as well as the two successive contracts plead in favor of the sub-mandate conferred by the Exclusive Representative to another agent, by sharing the commission payable by the principal.

With respect to the alleged reversal of the burden of proof, in connection with the consent given or not by the Appellant to the Club to pay the commission owed to the Respondent on its behalf, it is necessary to recall that the application of the rules on the burden of proof is excluded from the examination of the Federal Tribunal in a civil law appeal against an international arbitral award because such rules are not part of the substantive public policy within the meaning of Art. 190(2)(e) PILA (judgment 4A_616/2016 of 20 September 2016, at 4.3.1. It must then be noted that the consensual solution adopted for the payment of the first installment of the Respondent's commission did not necessarily imply that the parties derogated from the clause in the commission contract as to the payment of the second installment. The Player was the debtor of EUR 37'500 payable on April 15, 2015, at the latest. It was therefore incumbent upon the Appellant to establish the existence of such a derogation. In any event, even if the Appellant had in fact given his written consent to the Club... to pay the Respondent the second installment of the commission owed by him, that agreement would not have altered the standing to sue (Respondent) and to be sued (Appellant) for the amount due. This was so that, in the absence of resumption of the debt by the Club C._____ and if the latter refused to pay the remaining EUR 37'500 to the Respondent, the latter could only go after the Appellant in order to obtain the rest of his commission.

Finally, apart from the fact that Art. 29(2) CST cannot be relied upon directly in an international arbitration proceeding, the allegation that the Arbitrator did not deal with the burden of proof and standing to be sued with respect to the second installment of the commission claimed by the Respondent proves to be unfounded, since these problems have been examined in the Award (see above, B.b, 5th paragraph). It does not matter, from this point of view, that they were not to the satisfaction of the Appellant.

4.4. At the end of this analysis, the appeal must be dismissed to the extent it is admissible. As a result, the request for provisional measures becomes moot.

5.
The Appellant, who is unsuccessful in his appeal, shall pay the costs of the Federal proceedings (Art. 66(1) LTF) and shall compensate the Respondent for its legal costs (Art. 68(1) and (2) LTF).

For these reasons, the Federal Tribunal pronounces:

1.
The appeal is dismissed in so far as it is admissible.

2.
The judicial costs, fixed at CHF 2'000, shall be borne by the Appellant.

3.
The Appellant will pay the Respondent CHF 2’500 for its legal costs.

4.
This judgment is communicated to the parties and to the Court of Arbitration for Sport.

Lausanne, July 24, 2017

On behalf of the First Civil Law Court of the Swiss Federal Tribunal

Presiding Judge:	Clerk:
Kiss	Carruzzo