4A_420/2022
Judgment of March 30, 2023
First Civil Court

Composition
Federal Judges Kiss, presiding judge,
Hohl, Rüedi, May Canellas and Kölz.
Clerk: Mr. O. Carruzzo.

Parties
Cardiff City Football Club Limited, represented by Fabrice Robert-Tissot and Patrick Pithon, lawyers,
Appellant

Against

SASP Football Club de Nantes, represented by Edgar Philippin, David Casserly and Damien Oppliger, lawyers,
Respondent

International arbitration in sports matters, motion of civil law against the award rendered on August 26, 2022 by the Court of Arbitration for Sport (CAS 2019/A/6594).

**Facts:**

A.
A.a.
On July 20, 2015, SASP Football Club de Nantes (hereinafter: FC Nantes), a football club playing in the French first division championship, member of the Ligue de Football Professionnel (LFP) and the Fédération Française de Football (FFF), itself affiliated to the Fédération Internationale de Football Association (FIFA), entered into an employment contract with Argentine striker Emiliano Raúl Sala Taffarel (hereinafter: the player or footballer), the term of which was set at June 30, 2020.

A.b.
On November 21, 2018, FC Nantes and the British company A._____ Ltd. entered into a contract, referred to as the "Sports Agent Contract", by virtue of which B._____, the executive director of the aforementioned company, was authorized to negotiate the definitive transfer of the player to clubs playing in the first division of the English football championship, in return for the payment in his favor of a fixed commission of 10% of the transfer amount received by FC Nantes.

A.c.
On January 18, 2019, Cardiff City Football Club Limited (hereinafter: CCFC), an English company managing a football club based in Cardiff, a member of the Football Federation of Wales (FGF), which was then playing in the First Division of the English league, submitted the player to a medical examination. At the end of the examination, the parties signed a three-

and-a-half year employment contract expiring on June 30, 2022. The next day, FC Nantes and the player signed a document, entitled "Termination Agreement", under which the parties agreed, under certain conditions, to terminate the employment contract that bound them.

A.d.
On January 19, 2019, FC Nantes sent CCFC a countersigned copy of the Player Transfer Agreement (hereinafter: the Transfer Agreement). According to this contract, the transfer amount consisted of a fixed amount of EUR 17,000,000, to be paid in three instalments, - the first instalment of EUR 6,000,000 to be paid within five days after the registration of the player with CCFC, the other two instalments to be paid on January 1, 2020 and January 1, 2021 respectively - to which could be added, if necessary, additional indemnities. Art. 2 of the contract in question made the player's transfer conditional upon the fulfillment of various conditions, including confirmation from the LFP and the FGF that the player was registered with CCFC and that the player's International Transfer Certificate (ITC) had been issued. Both clubs publicly announced the player's transfer on the same day.

A.e. On January 21, 2019, at 12:00 p.m. (Swiss time), the legally autonomous entity managing the English Premier League informed CCFC that it could not endorse the player's contract of employment because the signing bonus clause in the contract required certain amendments. On the same day, at 6:30 p.m. (Swiss time), the FGF confirmed that it had received the player's ITC and registered it with CCFC, with the status of the transfer in the FIFA Transfer Matching System (TMS) now being "Closed – awaiting payment". At 9:08 p.m. (Swiss time), the player's agent, C._____, agreed to the changes in the employment contract, including the signing bonus. At 9:35 p.m. (Swiss time), CCFC sent an e-mail to the Premier League notifying them of the changes. The Premier League did not respond and later confirmed that they had never registered the player in the English Premier League. During the night of January 21-22, 2019, at an undetermined time after the e-mail was sent, the player tragically died in a plane crash over the English Channel. The other occupant of the plane, the pilot D._____, also died in the air crash.

B.
B.a.
On February 26, 2019, FC Nantes brought an action against CCFC before the FIFA Players' Status Committee (PSC), seeking payment of EUR 6,000,000 plus interest, which is the first instalment of the compensation fixed in the transfer contract. The defendant raised the lack of jurisdiction. It argued, among other things, that the circumstances that led to the player's death were attributable to FC Nantes, which is why it intended to set off the amount of the claim for damages resulting from the footballer's death against the claims raised by the plaintiff. In its decision of September 25, 2019, the FIFA PSC ordered the defendant to pay FC Nantes the sum of 6,000,000 euros, with interest at 5% per annum from January 27, 2019, and gave the defendant 45 days from receipt of the plaintiff's bank details to pay the said amount, under penalty of a ban on the registration of new players, both at national and international level, for a maximum of three full and consecutive registration periods. It further declared itself incompetent to hear the claim for damages raised the defendant.

B.b.

On November 20, 2019, CCFC appealed this decision to the Court of Arbitration for Sport (CAS). A three-member Panel was constituted to deal with the club's appeal. On September 8, 2020, the Panel rejected the request submitted by the Appellant for a stay of the proceedings until the end of the investigations carried out by various authorities in connection with the crash that occurred in January 2019.

On October 4, 2021, the Panel decided to split the proceedings and to examine, as a preliminary matter, whether the transfer contract entered into by the parties was valid (i), whether the FIFA PSC and CAS had jurisdiction to hear the Appellant's claim for damages in compensation (ii), and whether, according to the law applicable in the case, a claim of a contractual nature could be extinguished through a claim in tort (iii).
After holding a hearing on March 3 and 4, 2022 in Lausanne, the Panel dismissed the appeal with its award dated August 26, 2022. The grounds of this decision can be summarized as follows.

B.b.a.
After a brief introduction (Award, n. 4-8), the Panel summarized the facts relevant to its decision (Award, n. 9-32) before describing the proceedings as they were conducted before the FIFA PSC (Award, n. 33-36) and then under its authority (Award, n. 37-87). Afterwards, it set out the arguments put forward by CCFC and FC Nantes in support of their appeal (Award, n. 88 ff.) and their response (Award, n. 90 ff.).

b.b. In the following chapters of the contested award, the Panel noted, on the one hand, that it had jurisdiction to hear the appeal lodged before it (Award, n. 92-98) and, on the other hand, that the appeal was lodged in a timely manner (Award, n. 99-101).

b.c. The Panel then examined whether it had jurisdiction to rule on the claim of an extra-contractual nature made by the Appellant, who claimed that the other party was responsible for the death of the player and therefore liable for the resulting damages (Award, n. 102-190). After recounting the respective positions of the parties on this issue (Award, n. 110-128), the Court, on the basis of its legal analysis of the controversial issue not only from a procedural point of view but also to the merits (Award, n. 129-188), considered that the FIFA PSC and the CAS Appeals Division did not have the competence to rule on the tort claim asserted by the Appellant (Award, n. 189 et seq.).

b.d.
In the next chapter of its award, the Panel addressed a range of procedural issues (Award, n. 191-306). In particular, it explained why it did not grant the motions to stay the CAS proceedings (Award, n. 191-202) and why it decided not to postpone the hearing of the Appellant's expert, E._____ (Award, n. 248-269).

b.e.
Having settled these issues, the Panel turned to the merits of the appeal (Award, n. 312-389). In order to determine whether the Transfer Agreement had come to an end, the Panel first reproduced the text of Clause 2.1 of the Transfer Agreement, which reads as follows (Award, n. 313):
*“This Transfer Agreement is conditional upon:*

*2.1.1. the player successfully completing medical examination with [CCFC];*
*2.1.2. FC Nantes and the Player agreeing all the terms of a mutual termination of FC Nantes contract of employment with the Player;*
*2.1.3. the mutual termination of FC Nantes contract of employment with the Player is registered by the LFP;*
*2.1.4. the LFP and the FAW [FGF] have confirmed to [CCFC] and FC Nantes that the Player has been registered as a [CCFC] player and that the Player's International Transfer Certificate [ITC] has been released. "*
The arbitrators specified that the question of whether the interpretation of the said clause was governed by the rules of English and Welsh law or by those of Swiss law had no bearing on the outcome of the dispute, since the conclusion they reached remained the same in any case (Award, n. 318-332). Examining successively the conditions provided for in Art. 2.1 of the transfer contract, the Panel considered that they were all fulfilled before the death of the player, for which reason FC Nantes was entitled to the payment of the first instalment of the agreed transfer compensation (Award, n. 333-389).

C.
On September 26, 2022, CCFC (hereinafter: the Appellant) filed an appeal in civil matters, with an request for suspensive effect, in order to obtain the annulment of the above-mentioned award. On September 27, 2022, the Appellant submitted a supplementary application to the Federal Court. By order of November 10, 2022, the request for suspensive effect was rejected and the suspensive effect, which was granted on October 5, 2022, was revoked. In its response, FC Nantes (hereinafter: the Respondent) concluded that the appeal should be rejected insofar as it was admissible. In its response, the CAS filed brief observations on the appeal in order to explain why the complaints raised by the appellant appeared to be unfounded. The Appellant replied spontaneously, prompting the filing of a rejoinder by the Respondent.

**Grounds:**

1.
According to Art. 54 para. 1 of the Federal Supreme Court Act of June 17, 2005 (FSCA; SR 173.110), the Federal Supreme Court drafts its judgment in an official language, as a rule in the language of the challenged decision; when this decision was issued in another language (here English), the Federal Supreme Court uses the official language chosen by the parties. Before the CAS, the parties used English, while in their pleadings to the Federal Supreme Court, they used French, thus complying with Art. 42 para. 1 FSCA in conjunction with Art. 70 para. 1 of the Federal Constitution of the Swiss Confederation (Cst.; RS101; ATF 142 III 521 at 1). In accordance with its practice, the Federal Court will therefore render its decision in French.

2.
An appeal in civil matters is admissible against awards in international arbitration under the conditions set forth in Art. 190 to 192 of the Federal Act on Private International Law of December 18, 1987 (LDIP; SR 291), in accordance with Art. 77(1)(a) FSCA. None of the parties had their seat in Switzerland at the relevant time. The provisions of chapter 12 of the Swiss

Federal Law on Private International Law are therefore applicable (Art. 176 para. 1 Swiss Federal Law on Private International Law).

3.
In arbitration matters, the appeal is in principle of purely cassatory nature (cf. Art. 77 para. 2 FSCA, which excludes the application of Art. 107 para. 2 FSCA). However, when the dispute concerns the jurisdiction of an arbitral tribunal, it has been accepted, by way of exception, that the Federal Tribunal may itself determine the jurisdiction or lack of jurisdiction (BGE 136 III 605, para. 3.3.4; 128 III 50, para. 1b; judgment 4A_64/2022 of 18 July 2022, para. 4). The Appellant's request that the Federal Court itself establish the jurisdiction of the CAS to rule on the claim that it has asserted as a set-off is therefore admissible. For the rest, the formal admissibility conditions, either related to the subject matter of the appeal, the standing to appeal or the time limit for the appeal, seem to be met. The motion is therefore admissible, subject to the admissibility of the appellant's complaints.

4.
4.1.
A statement of appeal against an arbitral award must satisfy the requirement to state the reasons on which it is based, as set out in article 77 paragraph 3 FSCA in conjunction with article 42 paragraph 2 FSCA and the related case law (BGE 140 III 86, para. 2, and the references cited). This presupposes that the appellant discusses the reasons for the decision and indicates precisely in what way it considers that the author of the decision has infringed the law. The appellant can only do this within the limits of the admissible grounds against the award, i.e. only with regard to the complaints listed in article 190 paragraph 2 of the LDIP when the arbitration is of an international nature.

Moreover, as this reasoning must be contained in the notice of appeal, the Appellant cannot use the procedure of asking the Federal Court to refer to the allegations, evidence and offers of proof contained in the pleadings in the arbitration file. Likewise, it would use the reply in vain to invoke arguments, of fact or of law, which it had not presented in due time, i.e. before the expiry of the non-extendable time limit for appeal (Art. 100 para. 1 FSCA in conjunction with Art. 47 para. 1 FSCA), or to complete, outside the time limit, an insufficient statement of reasons (decision 4A_478/2017 of May 2, 2018, para. 2.2 and the references cited).

4.2.
The Federal Supreme Court shall decide on the basis of the facts as found in the award (cf. Art. 105 para. 1 FSCA). It may not correct or supplement the findings of the arbitrators ex officio, even if the facts have been established in a manifestly incorrect manner or in violation of the law (cf. Art. 77 para. 2 FSCA, which excludes the application of Art. 105 para. 2 FSCA). The findings of the arbitral tribunal as to the course of the proceedings are also binding on the Federal Court, whether they relate to the parties' submissions, the facts alleged or the legal explanations given by the parties, statements made during the proceedings, requests for evidence, or even the content of a testimony or expert opinion, or even information gathered during an eyewitness inspection (BGE 140 III 16, para. 1.3.1 and references cited; judgments 4A_54/2019 of April 11, 2019, para. 2.4; 4A_322/2015 of June 27, 2016, para. 3 and references cited).

The task of the Federal Supreme Court, when seized of an appeal in civil matters against an international arbitral award, is not to rule with full power of review, like an appellate court, but only to examine whether or not the admissible claims against the award are well-founded. Allowing the parties to allege facts other than those found by the arbitral tribunal, apart from the exceptional cases reserved by the case law, would no longer be compatible with such a mission, even if these facts were established by the evidence in the arbitration file (judgment 4A_140/2022 of August 22, 2022, at 4.2). However, the Federal Tribunal retains the right to review the facts on which the contested award is based if one of the complaints mentioned in Art. 190 para. 2 LDIP is raised against the said facts or if new facts or means of proof are exceptionally taken into consideration within the framework of the appeal procedure in civil matters (ATF138 III 29 at 2.2.1 and references).

5.
In a first plea, the Appellant, invoking Art. 190 para. 2 let. b LDIP, maintains that the Panel wrongly refused to admit its jurisdiction to rule on the claim for damages that it had put forward. Before examining the merits of the criticisms formulated by the Appellant, it is necessary to recall certain principles and to set out the reasons that support the contested award on the issue under consideration.

5.1.
If the claim of lack of jurisdiction is brought before it, the Federal Supreme Court is free to examine the questions of law, including the preliminary questions, which determine the jurisdiction or lack of jurisdiction of the arbitral tribunal (BGE 146 III 142, para. 3.4.1; 133 III 139, para. 5; decision 4A_618/2019 of September 17, 2020, para. 4.1). However, it will only review the facts on which the contested award was based - even if it concerns the question of jurisdiction - if one of the complaints mentioned in Art. 190 para. 2 LDIP is raised against these facts or if the new facts or evidence (cf. Art. 99 para. 1 FSCA) are exceptionally taken into account in the context of the appeal procedure in civil matters (BGE 144 III 559, para. 4.1; 142 III 220, para. 3.1; 140 III 477, para. 3.1; 138 III 29, para. 2.2.1).

5.2.
According to Art. 190 (2) (b) LDIP, the award may be challenged if the arbitral tribunal has wrongly declared itself competent or incompetent. The court has jurisdiction if the case is arbitrable under Art. 177 LDIP, the arbitration agreement is valid in form and substance under Art. 178 LDIP, and the case is covered by the agreement, all of which are inseparable conditions (BGE 133 III 139, para. 5).
When considering whether it has jurisdiction to decide the dispute submitted to it, the arbitral tribunal must resolve, among other things, the objective scope (or ratione materiae) and the subjective scope (or ratione personae) of the arbitration agreement. It must determine which disputes are covered by the agreement and which parties are bound by it. These questions of jurisdiction must be resolved in the light of Art. 178 para. 2 LDIP. This provision establishes three alternative connections in favorem validitatis, without any hierarchy between them, namely the law chosen by the parties, the law governing the subject matter of the dispute (lex causae) and Swiss law (ATF 134 III 565, para. 3.2).

5.3.
5.3.1.

In the contested award, the Panel, after having set out the opposing arguments developed by the parties (Award, n. 110-128), specified that the problem relating to the jurisdiction of the CAS to rule on the claim for damages made by the appellant was a matter of both procedural and substantive law (Award, n. 129).

5.3.2.
Examining first the procedural aspects, the Panel emphasized that its own jurisdiction presupposed that the FIFA PSC was itself competent to rule on the claim asserted in compensation, as the parties expressly recognized at the arbitration hearing. In other words, the CAS, when it is seized by way of appeal, could only examine the claim for damages if the judicial body called upon to rule in first instance on the dispute, in this case the FIFA PSC, was itself entitled to do so (Award, n. 130-132).
Referring then to Art. 63 of the Swiss Civil Code of December 10, 1907 (CC; RS 210), the Panel pointed out that associations under Swiss law have a large degree of autonomy in the way they are organized. They thus have an increased freedom to determine what types of disputes may be submitted to their internal dispute resolution bodies (Award, n. 133). The arbitrators noted that neither the Regulations on the Status and Transfer of Players (June 2018 edition; hereinafter: RSTP) nor the Rules of Procedure of the PSC and the Dispute Resolution Chamber (2018 edition; hereinafter: PSC Rules) issued by the umbrella football organization dealt with the question of whether and to what extent FIFA's judicial bodies were obliged to rule on counterclaims for compensation (Award, n. 135-137).
The Panel further stated that the legal principle of "the judge of the action is the judge of the exception" prevails before the Swiss state authorities. According to this principle, a court has jurisdiction to hear claims for compensation even if they fall within the jurisdiction of another authority. The Panel therefore wondered whether such a principle also applied in proceedings conducted by the judicial organs of a Swiss law association (Award, n. 138-140). In resolving this issue, it pointed out that Art. 377 para. 1 of the Code of Civil Procedure of December 19, 2008 (CPC; SR 272), which regulates the question of the jurisdiction of the arbitral tribunal to rule on a claim asserted as a set-off in an internal arbitration subject to Art. 353 ff. of the CPC, was not applicable as such to proceedings conducted by the jurisdictional bodies of associations, but could at most be taken into account in the context of an application by analogy (Award, n. 141).
The Panel noted that the aforementioned text differed considerably in the three official languages, since the French and Italian versions provide that the arbitral tribunal is competent *("Il tribunale arbitrale è competente")* to rule on the set-off objection even if the claim on which it is based does not fall within the scope of the arbitration agreement, whereas the German version seemed to confer a discretionary power on the arbitral tribunal to decide whether it will rule on the counterclaims for set-off *("Erhebt eine Partei die Verrechnungseinrede, sokann das Schiedsgericht die Einrede beurteilen")*. However, it did not consider it necessary to decide the question of whether the arbitral tribunal's jurisdiction to decide on a claim for set-off was mandatory or discretionary, since the fate of the dispute in the present case remained unchanged in any event (Award, n. 142-148).
The CAS first examined the case on the assumption that the jurisdiction was mandatory, and explained the reasons why, in its opinion, the FIFA PSC rightly refused to enter into the matter of the claim for set-off (Award, nos. 149-167).
The Panel then considered the assumption that Art. 377 para. 1 CPC is a potestative norm ("Kann-Vorschrift") and held that the decision on whether or not to deal with the

counterclaims for compensation should be made taking into account criteria relating to the efficiency and fairness of the proceedings. In this case, the Panel found that no such considerations justified the simultaneous processing of the claim for payment based on the transfer agreement and the claim for set-off based on tort. There was, in fact, no material connection between the claim for payment in contract and the claim for set-off. It was therefore possible to rule independently on the contractual and tortious aspects of the dispute between the parties, given that the transfer contract in no way obliged the Respondent to transport the player to its new club. The Panel also considered that the respondent club was entitled to have the claim it had made more than three years ago examined within a reasonable period of time, since the Appellant itself had admitted that the claim for damages would likely not be heard in the near future. The CAS thus concluded that it would have ruled in the same way as the FIFA PSC had it been in its place (Award, n. 168-175).

5.3.3.
In a subsidiary argument, the Panel examined the question of whether the conditions laid down by the applicable law - in this case English law and, more particularly, the test advocated by the Geldof case (sufficiently close relationship between the principal claims and those set off) - were met in order to admit a possible set-off. It considered that this was not the case since the degree of connection required by English law between the offsetting claim and the claim to be set off was not met in this case. In this respect, the Panel noted that the organization of the fatal flight was not part of the contractual duties of the Respondent and that, therefore, the consequences of the tragic death of the player were not connected with the transfer contract. The Panel further noted that the player's transfer was completed at the time the said flight was arranged (Award, n. 177-188).

5.3.4.
At the end of its analysis, the Panel, on the one hand, declared that it had no jurisdiction to rule on the claim based on the claim for damages. On the other hand, and in the alternative, the CAS concluded that, even in the opposite case, it could only have found that it was impossible for the appellant to rely on the set-off, given the nature of the claim against the set-off, and this without regard to the very existence of this claim, a point on which it did not rule. However, it specified that this decision did not prevent the Appellant, if necessary, from asserting the same claim directly in the context of an ordinary arbitration before the CAS or before the competent state court (Award, n. 190).

5.4.
5.4.1. In support of its plea of violation of Art. 190 para. 2 let. b LDIP, the Appellant maintains, first of all, that the claim that it has set off falls within the scope of the arbitration clause provided for in Art. 8.2 of the transfer contract. Stressing that the interpretation of the scope of an arbitration agreement must be carried out in accordance with the ordinary rules of Art. 18 para. 1 of the Swiss Code of Obligations (CO; SR 220), it argues that the parties, when they provided for a broadly formulated arbitration clause, intended to submit to an arbitral tribunal all claims arising out of - or directly related to - the contracts governed by their agreement. According to the Appellant, who refers to the opinion expressed by certain authors, there is thus a presumption that an arbitration clause which is not of a restrictive nature also covers extra-contractual claims arising from the contract containing the clause. It then insists on the

broad wording of the arbitration agreement inserted in Art. 8.2 of the Transfer Agreement, which reads as follows: *"Any dispute arising out of or in connection with this Transfer Agreement shall be subject to the jurisdiction of the FIFA Dispute Resolution Chamber... and on appeal (or in the event that FIFA declines jurisdiction) to the Court of Arbitration for Sport..."*.

Thus, it claims that the facts surrounding the Respondent's tort liability are undoubtedly related to the Transfer Agreement. In its opinion, the Panel should have concluded that the claim for set-off fell within the scope of the arbitration clause entered into by the parties. The Appellant then seeks to demonstrate that the reasoning of the arbitrators, which in its opinion was guided by reasons of expediency, does not stand up to scrutiny.

5.4.2.
In Swiss law, the interpretation of an arbitration agreement is governed by the general rules of contractual interpretation. Like a judge, the arbitrator or arbitral tribunal will first of all try to ascertain the real and common intention of the parties (cf. Art. 18 para. 1 CO), if necessary empirically, on the basis of surrounding elements, without stopping at any inaccurate expressions or names they may have used. In this sense, evidence is not only the content of the declarations of intent, but also the general context, i.e., all the circumstances that make it possible to discover the will of the parties, whether it is a question of declarations made prior to the conclusion of the contract, draft contracts, correspondence exchanged, or even the attitude of the parties after the conclusion of the contract. This subjective interpretation is based on an assessment of the evidence. If it is conclusive, the result, i.e. the finding of a common and real intention of the parties, is a matter of fact and is therefore binding on the Federal Court. If this is not the case, the interpreter will have to determine, by applying the principle of trust, the meaning that the parties could and should have given, according to the rules of good faith, to their mutual expressions of intent in the light of all the circumstances (BGE 142 III 239, para. 5.2.1 and references cited; judgment 4A_174/2021 of July 19, 2021, para. 5.2.3). If it is not disputed, as in the present case, that an arbitration agreement exists, there is no reason to resort to a particularly restrictive interpretation. On the contrary, the parties' willingness to have the dispute decided by an arbitral tribunal must be taken into account (BGE 138 III 681, JdT 2013 II 452 at 4.4; 128 III 675, JdT 2004 I 70 at 2.3). If an arbitration agreement is drafted in such a way that it also covers disputes arising "in connection with" the contract, it must be concluded, according to the parties' stated intention, that they intended to submit to the exclusive jurisdiction of the arbitral tribunal all claims arising out of or directly affecting the state of affairs governed by the contract (BGE 138 III 681, Journal of Administrative Law 2013 II 452, § 4.4).

5.4.3.
The first part of the Appellant's argument does not convince the Federal Tribunal. The wording of the arbitration clause is certainly not restrictive, in the sense that it covers not only disputes that may arise out of the transfer agreement, but also those that are only related to this agreement ("in connection with"). That there is a chronological link between the death of the player and the transfer agreement is undeniable, as the death would not have occurred if the transfer agreement had not been executed. However, the same connection would also exist if the player had bought his own plane ticket to his new club by an ordinary flight. In this case, however, it is clear from the findings of the Panel that the transfer contract was executed

before the player's death and that this contract did not impose on the Respondent the obligation to arrange the flight on which the player died. In these circumstances, the Appellant cannot be followed when it claims that the claim for damages has a tortious basis and relates to the consequences of the flight in question, which took place after the transfer contract was executed, and therefore falls within the scope of the arbitration agreement concluded by the parties, since the organization of the flight was independent of the contractual obligations set out in the transfer contract.
In a landmark decision published in ATF 138 III 681, the Federal Court, called upon to rule on the material scope of an arbitration clause with a wording similar to that of the present case, certainly held that, when an arbitration agreement is worded in such a way that it must also cover disputes arising in connection with the contract, this is to be understood, according to the rules of good faith, as meaning that the parties did not intend that claims arising under several legal headings from their relationship governed by the contract should be the subject of proceedings conducted on the one hand before the Arbitral Tribunal and on the other hand before the State authorities. This being the case, it appears that the tort claim asserted by the Appellant for compensation due to the consequences of the aviation accident in January 2019 is, on the basis of the findings of the Panel, clearly distinct from the Respondent's claim for payment under the Transfer Agreement. In other words, the claim for damages does not relate to the relationship governed by the transfer contract. It should also be noted that the interested party bases its demonstration on facts that are not apparent from the contested award, in particular when it asserts that the transfer had not been finalized at the time of the accident or when it maintains that it was B. _____, acting as the Respondent's sports agent, had organized and booked the flight on which the player and the pilot tragically died before the transfer contract was signed.

5.
5.5.1.
In a second part of its argument, the Appellant claims that the CAS should have recognized, according to the FIFA regulations, the competence of the FIFA PSC and, consequently, its own competence to recognize the claim for damages in the present case. In this respect, it argues that Art. 17 RSTP expressly reserves the possibility of filing a counterclaim and therefore allows a party to assert a claim by way of set-off. It also states that no statutory or regulatory provision of FIFA limits in any way the right of a party to file counterclaims, which is why there is no reason to exclude the jurisdiction of the FIFA PSC and, consequently, that of the CAS to examine the claim that it has filed by way of set-off. The Appellant furthermore argues that the Panel should in any case have declared itself competent to rule on the claim asserted in compensation, by virtue of the principle according to which *"the judge of the action is the judge of the exception"*, or by applying, by analogy, Art. 377 para. 1 CPC. Referring to the decision 4A_482/2010 of February 7, 2011, it observes that the Federal Court has recognized that the trend is towards the generalization of the said principle in international arbitration. It then argues that there is no evidence to suggest that the parties intended to exclude the claim for damages in the present case from the jurisdiction of the FIFA PSC and the CAS. In the meantime, the arbitral tribunal was obliged to declare itself competent to examine a claim for set-off, as it was obliged to interpret article 377 paragraph 1 CPC. In the alternative, it tries to show that any exceptions to the application of Art. 377 para. 1 CPC could not be taken into account in this case. Alternatively, it argues that the CAS should have accepted jurisdiction even if Art. 377 para. 1 CPC was a potestative norm.

5.5.2.
It should be emphasized at the outset, and once and for all, that it is not for the Federal Tribunal to rule on the jurisdiction of an arbitral tribunal located in Switzerland to decide on a claim for set-off brought before it in the context of an international arbitration. It would indeed be illusory to hope to be able to lay down, on this point, general rules of jurisprudence, applicable to all conceivable situations and for any type of arbitration (commercial, sports, investment, etc.). The only question to be resolved here is that of knowing whether, in the present case, the CAS has violated Art. 190 para. 2 LDIP by denying the jurisdiction of the FIFA PSC - and consequently its own - to recognize the claim for set-off asserted by the Appellant. It is not disputable that, in principle, it is possible for the Respondent to invoke a claim for set-off in an international arbitration and to require, under certain conditions, that the arbitral tribunal take it into consideration and examine its merits (cf. *CHRISTOPH ZIMMERLI*, Die Verrechnung im Zivilprozess und in der Schiedsgerichtsbarkeit, 2003, p. 25 f.; *LUC PITTET*, Compétence du juge et de l'arbitre en matière de compensation, 2001, p. 303; *FLORA STANISCHEWSKI*, Die Verrechnung im Zivilprozess unter der Schweizerischen Zivilprozessordnung, 2020, n. 159; *HEIDI KERSTIN JAUCH, Aufrechnung und Verrechnung in der Schiedsgerichtsbarkeit, 2001, p. 163; POUDRET/BESSON*, Comparative law of international arbitration, 2nd ed. 2007, n. 325; *KAUFMANN-KOHLER/RIGOZZI*, International arbitration, 2015, n. 3.149; *BERGER/MOSIMANN*, in Commentaire bernois, Internationale Schiedsgerichtsbarkeit, 2023, no. 74 ad Art. 186 LDIP; *PIERRE-YVES TSCHANZ*, inCommentaire romand, Loi sur le droit international privé, 2011, no. 58 ad Art. 187 LDIP; *COURVOISIER/JAISLI-KULL*, in Commentaire bernois, Internationales Privatrecht, 4th ed. 2021, no. 85 ad Art.186 LDIP; *BERGER/KELLERHALS*, International and domestic Arbitration in Switzerland, 4th ed. 2021, no.526 ff; *MARCO STACHER*, in Commentaire bernois, Schweizerische Zivilprozessordnung, vol. III, 2014, no. 2 ad Art. 377 CPC; *GABRIEL/MEIER*, Set-off defenses in arbitration - Conclusions from a Swiss civil lawperspective, in Indian Journal of Arbitration Law 2017 p. 67; *PHILIPP HABEGGER*, in Commentaire bâlois, Schweizerische Zivilprozessordnung, 3rd ed. 2017, no. 4 ad Art. 377 CPC; more nuanced: *GIRSBERGER/VOSER*, International arbitration, 4th ed. 2021, no. 421a). The Federal Court has long recognized this, notably in an obiter dictum to the decision 4A_482/2010, where it noted the following:

*"In the same vein and with respect to set-off, the trend is towards the generalization of the principle, rendered by the adage 'the judge of the action is the judge of the exception', according to which, to use the text of Art. 21 para. 5 of the Swiss Rules of International Arbitration, the arbitral tribunal has jurisdiction to hear a set-off exception even if the relationship which forms the basis of the claim invoked as set-off does not fall within the scope of the arbitration agreement or a choice of forum clause... "* (at 4.3.1).
In Switzerland, Art. 377 para. 1 CPC, which is inspired by the solutions adopted by the arbitration rules of various Swiss chambers of commerce (Message of 28 June 2006 on the Swiss Code of Civil Procedure, FF 2006 p. 7007), codifies from the outset the rules of arbitration of the Swiss Chamber of Commerce. It is true that, in its jurisprudence, the principle of the right to a fair hearing is not always applied. It is true that in its case law, the Federal Tribunal has on several occasions applied the rules of the CPC concerning Swiss domestic arbitration to international arbitration. However, it has only done so by analogy, which already calls for a certain caution in applying the conditions laid down by this provision for domestic arbitration to international arbitration. This caution is all the more justified since

the last amendment of the LDIP in the field of international arbitration, which came into force on January 1, 2021, was aimed at improving legal certainty and clarity, The Federal Council emphasized the desire expressed during the consultation process to maintain a dualism between international and domestic arbitration. In this respect, it emphasized that Chapter 12 of the LDIP provides for the most liberal and succinct rules possible, while the more dense and detailed rules of Part III of the CPC are intended to make the procedure more predictable for the parties (Message of 24 October 2018, FF 2018 p. 7165).

5.5.3.
In the contested award, the CAS pointed out the existence of a doctrinal controversy - prompted by the comparison of the three language versions of Art. 377 para. 1 CPC - as to whether the arbitrator's -mandatory or discretionary - competence to rule on a claim that has been invoked with respect to compensation. However, it refrained from deciding the question (Award, n. 142-148), because, in its view, the decision of the FIFA PSC in this case had to be confirmed in any case.

The Federal Tribunal considers that it is not necessary to decide here, once and for all, the true nature of the jurisdiction granted by the aforementioned provision to the arbitrator of the action to rule on the claim for damages, since the answer to this question is not decisive for the outcome of the dispute, as we shall see.

5.5.4.
According to the constant jurisprudence of the Federal Court, the decision rendered by the jurisdictional body of a sports association, even if this body is called an arbitral tribunal, constitutes in principle only a simple expression of will issued by the association concerned (ATF 148 III 427, para. 5.2.3; 147 III 500, para. 4; 119 II 271, para. 3b; decision 4A_344/2021 of January 13, 2022, para. 5.2, and the references cited therein). The Court of Appeal also had the opportunity to clarify that the FIFA PSC does not constitute an arbitral authority, but only the internal jurisdictional body of a private association (BGE 148 III 427 at 5.2.4; judgment 4A_344/2021, supra, at 5).It thus appears that the jurisdictional bodies of FIFA do not constitute real arbitral tribunals, as the party concerned expressly acknowledges in its appeal (Appeal, n. 134). Thus, in this case, the FIFA tribunal was not obliged to apply Art. 377 CPC, which regulates the question of whether an arbitrator is competent to rule on a claim for set-off, irrespective of whether the aforementioned provision is applicable mutatis mutandis in international arbitration (see, among others, *TARKAN GÖKSU*, Schiedsgerichtsbarkeit, 2014, no. 611; *GASSER/RICKLI*, "The Arbitration of the Swiss Confederation"). The appellant cannot be followed either when it argues that the so-called "universal" principle according to which "the judge of the action is the judge of the exception" should be applied in this case, since the FIFA PSC is precisely not an arbitral tribunal and the proceedings conducted by it cannot be qualified as arbitral proceedings. The case law has certainly recognized that it is in principle incumbent upon the judicial authority responsible for ruling on the principal claim to rule on the existence of the claim invoked in compensation (ATF 124 III207 c. 3b/bb; 85 II 103 at 2b; 63 II 133 at 3c), while sometimes reserving certain exceptions to this principle (ATF 85 II 103 at 2c). In an isolated decision, the Federal Court also indicated that the tendency was to generalize the principle in the field of arbitration (decision 4A_482/2010, supra, para. 4.3.1).
However, it must be emphasized once again that the FIFA PSC is neither a state authority nor an arbitral tribunal, but only the jurisdictional body of a private law association. In addition, it

is not possible to simply transpose a principle of Swiss civil procedure - which is otherwise not enshrined in the LDIP or the CPC except in matters of internal arbitration (cf. Art. 377 CPC) - to disputes submitted to the dispute resolution body of a private association.

5.5.5.
In this case, the CAS rightly emphasized that, insofar as it was called upon to rule in the present case as an appeal body, its own competence to examine the claim invoked implied that the FIFA PSC had itself been competent to hear such a claim. In other words, the jurisdiction of the appeal court could not be broader than that of the court of the association concerned which had first ruled on the matter.
The answer to the question at issue thus depended, in reality, on whether the FIFA regulations governing, in particular, the powers and jurisdiction of the FIFA PSC, as well as the procedures conducted before it, required this court to declare itself competent to examine the claim asserted in compensation by the appellant, which the Panel denied. It should be recalled here that an association under Swiss law enjoys, by virtue of the principle of the autonomy of the association guaranteed by Art. 63 CC, a large degree of autonomy in the establishment and application of the rules governing its social life and its relations with its members (ATF 134 III 193, para. 4.3; decision 4A_246/2022 of November 1, 2022, para. 6.3.1). In order to solve the controversial problem, it is therefore necessary to interpret the topical rules laid down by the association concerned.

5.5.5.1.
According to the jurisprudence of the Federal Court, the statutes of a major sports association, such as FIFA, in particular the clauses relating to questions of jurisdiction, must be interpreted according to the rules of interpretation of the law (judgments 4A_618/2020 of June 2, 2021, para. 5.4.3; 4A_462/2019 of July 29, 2020, para. 7.2 and the references cited). The same applies to the interpretation of rules of a lower level than the statutes of a sports association of this importance (judgments 4A_314/2017 of May 28, 2018, at 2.3.1; 4A_600/2016 of June 29, 2017, at 3.3.4.1). In this case, the interpretation relates to rules that were issued by the world football governing body. Therefore, they must be interpreted in accordance with the methods of statutory interpretation.

5.5.5.2.
The interpretation begins with the letter of the law (literal interpretation), but this is not the decisive factor: it must also restore the true scope of the norm, which also derives from its relationship with other legal provisions and its context (systematic interpretation), from the aim pursued, in particular the interest protected (teleological interpretation), as well as from the will of the legislator as it results in particular from the preparatory work (historical interpretation). The judge will depart from a clear legal text insofar as the other methods of interpretation mentioned above show that this text does not correspond in all respects to the true meaning of the provision in question and leads to results that the legislator could not have intended, that offend the sense of justice or the principle of equal treatment. In short, the Federal Supreme Court does not favor any particular method of interpretation and does not establish a hierarchy, but is inspired by a pragmatic pluralism in order to seek the true meaning of the norm (BGE 142III 402, para. 2.5.1 and the references cited therein).

5.5.5.3.

At this point, it is appropriate to reproduce some of the rules laid down by FIFA for a better understanding of the explanations that follow:

*"Art. 2 of the FIFA Statutes (June 2019 edition; hereafter: the Statutes) – Purpose*
*a) to constantly improve football and spread it throughout the world, taking into account its universal, educational, cultural and humanitarian impact, by implementing youth and development programs;*
*b) to organize its own international competitions;*
*c) to establish rules and regulations governing football and related matters, and to see to it that they are respected;*
*d) to control football in all its forms by adopting such measures as may be necessary or advisable to prevent violations of the Statutes, regulations, FIFA decisions and the Laws of the Game;*
*e) to endeavor to ensure that football is accessible and provides resources to all who wish to take part, regardless of gender or age;*
*f) (. ..)*
*g) (...). "*
*"Art. 46 of the Statutes - Players' Status Committee*
*1 The Players' Status Committee shall draw up and ensure compliance with the Regulations on the Status and Transfer of Players. It shall draw up the status of players in the various FIFA competitions. Its jurisdiction is set forth in the Regulations on the Status and Transfer of Players.*
*2. The work of the Dispute Resolution Chamber, as defined in the Regulations on the Status and Transfer of Players and the Regulations of the Players' Status Committee and the Dispute Resolution Chamber, shall also be the responsibility of this committee.*
*3. The Players' Status Committee and the Dispute Resolution Chamber may impose the sanctions provided for in these Statutes and the Players' Status and Transfer Regulations on member associations, clubs, officials, players, intermediaries and agents organizing licensed matches.*
*"Art. 1 RSTP - Scope of Application*
*1 These Regulations establish universal and binding rules concerning the status of players and their qualification to participate in organized football, as well as their transfer between clubs belonging to different associations.*
*2. (...)*
*3. (...)*
*4. (...).*
*"Art. 22 RSTP – Jurisdiction of FIFA*
*Without prejudice to the right of any player or club to seek redress in a civil court for labor disputes, the jurisdiction of FIFA shall extend to:*
*a) disputes between clubs and players concerning the maintenance of contractual stability (Art. 13-18) disputes between clubs and players relating to the maintenance of contractual stability (cf. Art. 13-18), if an ITC has been requested and if a party has a claim in connection with the ITC request, in particular with regard to its issuance, sporting sanctions or compensation for breach of contract;*
*b) disputes of an international dimension between a club and a player relating to employment*
*c) labor disputes of an international dimension between a club or association and a trainer, unless an independent arbitral tribunal guaranteeing a fair procedure exists at national level*

*d) disputes relating to training compensation (Art. 20) and the solidarity mechanism (Art. 21) between clubs belonging to different associations;*
*e) disputes relating to the solidarity mechanism (Art. 21) between clubs belonging to the same association if the transfer of the player at the basis of the dispute takes place between clubs belonging to different associations;*
*f) disputes between clubs belonging to different associations that do not correspond to the cases provided for in points a), d) and e).*
*"Art. 23 RSTP - Players' Status Committee*
*1. The Players' Status Committee shall be empowered to settle any dispute referred to in Art. 22c and 22f as well as any other dispute arising from the application of these regulations, with the exception of the disputes referred to in Art. 24.2. The Players' Status Committee shall not be competent to deal with complaints relating to contractual disputes involving intermediaries.*
*3. (...)*
*4. (...). "*
*"Art. 25 JTSR - Procedural Guidelines*
*1. The single judge and the LRC judge shall render their decision in principle within thirty days of the date on which a valid request is submitted to them, and the Players' Status Committee or the Dispute Resolution Chamber within sixty days. The procedure shall be governed by the Regulations of the Players' Status Committee and the Dispute Resolution Chamber. The costs of proceedings before the Players' Status Committee, including the single judge, and before the LRC, including the LRC judge, for disputes relating to training compensation or the solidarity mechanism shall be set at a maximum of CHF 25,000 and shall in principle be payable by the party affected. The distribution of costs must be detailed in the decision. Proceedings before the LRC and the LRC judge for disputes between clubs and players in connection with the maintenance of contractual stability as well as for international labor disputes between clubs and players shall be free of charge.*
*3. (...)*
*4. (...)*
*5. (...)*
*6. The Players' Status Committee, the Dispute Resolution Chamber, the single judge or the LRC judge (as the case may be) shall apply these regulations in making their decisions, taking into account any applicable national arrangements, laws and/or collective agreements, as well as the specificity of the sport. The detailed procedure for the resolution of disputes arising from the application of these regulations shall be set forth in the Regulations of the Players' Status Committee and the Dispute Resolution Chamber.*
*"Art. 1 of the Regulations of the PSC - Scope of Application*
*1 The procedure before the Players' Status Committee and the Dispute Resolution Chamber (hereinafter referred to as the "DRC") shall be in accordance with these regulations.*
*2. In the event of any discrepancy, the provisions of the FIFA Statutes or other FIFA regulations shall prevail over the provisions of these regulations".*
*"Art. 2 of the Regulations of the PSC – Applicable law to the merits*
*In exercising their jurisdiction and applying the law, the Players' Status Committee and the RSC shall apply the FIFA Statutes and the FIFA regulations, taking into account all national agreements, laws and/or collective agreements as well as the specificity of the sport. "*
*"Art. of the Regulations of the PSC - Advance of procedural costs*
*1. An advance of procedural costs (cf. Art. 18) is required for proceedings initiated before the*

*Players' Status Committee and single judge (excluding provisional registration procedures for players) as well as the proceedings initiated before the DRC relating to disputes relating to on the training allowance and the solidarity mechanism.*
*2. Regarding the proceedings before the DRC relating to disputes relating to compensation for training and the solidarity mechanism, no advance of procedural costs will be required if the value of the dispute does not exceed CHF 50,000.*
*3. The advance of procedural costs must be paid by the party, whether plaintiff or defendant, at the time the complaint or counterclaim is filed.*
*4. (...)*
*5. If a party has not paid the advance of procedural costs at the time of filing the complaint or the counterclaim, the FIFA administration then grants him a maximum of ten days to perform while notifying him that in the event of non-payment, the complaint or counterclaim will not be processed.*
*6. (...). "*

5.5.5.4.
It appears from this overview of the various rules enacted by FIFA that these do not expressly the question whether the FIFA PSC is necessarily bound to rule on any opposing claim for damages, regardless of the legal nature thereof. Art. 17 of the Rules of the PSC, which concerns the issue relating to the advance of the costs of procedure, certainly mentions the possibility of filing a counterclaim before the FIFA PSC. On the other hand, it in no way sets the conditions to which the filing of an counterclaim is subject, neither rules on the fate of the opposing claims for damages and their processing by the FIFA PSC.
It can hardly be disputed that it is possible for the defendant to bring a counterclaim or to invoke claims by way of set-off before the FIFA PSC that the latter would have had the competence to examine if these had been submitted to it by this same party, as plaintiff, by means of a direct action for payment. However, we cannot retain, on the basis of a purely literal argument of Art. 17 of the Rules of the PSC, that the mere allusion to a "counterclaim" would mean that the FIFA PSC would be absolutely bound to rule on any claim invoked in compensation before it.
A systematic interpretation of the rules enacted by FIFA confirms that the FIFA PSC does not have of unlimited jurisdictional competence but that it has, on the contrary, competences limited to certain legal aspects related to the field of football. It must indeed be clearly seen that the FIFA PSC is a body of the governing body of football at world level, which has as its statutory purpose to establish rules and regulations governing football and related matters, and to ensure that they are enforce (Art. 2 let. c of the Articles of Association) but is not intended to settle civil disputes dividing football stakeholders unrelated to enforcement issues in football. Art. 46 par. 1 of the Statutes also provides that the FIFA PSC establishes and ensures that the RSTP and that its jurisdiction is determined therein. However, Art. 1 RSTP, titled "Scope" specifies, in its first paragraph, that the said regulation establishes universal rules and binding rules regarding the status of players and their qualification to participate in organized football, as well as their transfer between clubs belonging to different associations. It thus appears that the jurisdictional mission assigned to the FIFA PSC is to ensure compliance with the provisions of the RSTP, in accordance with Art. 1 RSTP, within the limits of its competences provided for by Art. 22 RSTP. It is also worth observing that FIFA wished to create specialized jurisdictional bodies, since it decided to distribute the football-related disputes, depending on their type, between the FIFA PSC and the Dispute Resolution Chamber of FIFA.

The teleological interpretation of the rules adopted by FIFA also confirms that the governing bodies settlement of disputes instituted within it are not intended to hear any claim raised by one football team against another, whether by way of action or exception. As the Panel rightly pointed out, the dispute resolution mechanism established by the FIFA aims not only to ensure compliance by its members with the rules laid down by it, but also enables it to ensure the uniform application of the provisions governing football in the interest of all actors in this sport. However, FIFA's role as "football policeman" cannot go beyond the borders of this sport, because its task does not consist precisely in settling disputes totally unrelated to the regulations adopted in relation to football governance. In other words, the FIFA PSC cannot hear any dispute dividing two football clubs, but only of those which fall within the scope application of the RSTP. Moreover, such an interpretation is corroborated by the association which adopted the said regulations, since FIFA indicates the following on page 375 of its published RSTP Commentary, 2021 edition:

*"Besides disputes between clubs relating to training compensation and the solidarity mechanism, FIFA is also competent to hear other disputes arising between clubs affiliated to different member associations. Once again, the international dimension is the key element in determining jurisdiction. The dispute concerned must also fall within the general scope of the Regulations for FIFA to hear it (...)"* (emphasis added).

Contrary to what the Appellant maintains, it is not clear why the 2021 edition of the RSTP's comment would not be relevant for the interpretation of the 2018 edition of the RSTP, since the relevant provisions of the RSTP, namely Arts. 1 par. 1 and 22 lit. f RSTP, have not undergone any modification. It also appears that the procedural rules applicable before the FIFA PSC were designed with a view to ensuring a rapid and inexpensive resolution of disputes. Art. 25 par. 1 RSTP states, in effect, that the FIFA PSC must in principle render its decision within sixty days. The costs themselves may not exceed 25,000 fr. (Art. 25 par. 2 RSTP and 18 of the Rules of the PSC). However, the objective pursued by the FIFA tending to guarantee the parties a quick and inexpensive settlement of disputes among them would be compromised if we accepted that the FIFA PSC was required to rule on any claim invoked, including when it has no connection with the football regulations. It must indeed be seen that the FIFA PSC, in its capacity as a judicial body specializing in monitoring compliance with certain aspects of the football regulations, has neither the necessary expertise nor sufficient means, in particular in terms of investigative measures, to rule, as in this case, on legally complex tort claims, with foreign elements, unrelated to the provisions of the RSTP or to the interests of the governing body of football. Capping costs to a relatively low amount of 25,000 fr. constitutes an additional element demonstrating that the FIFA PSC is not intended to examine claims requiring the implementation of various expertise in the aeronautical field for the purpose of elucidating the causes of an air crash. The requirement provided for by the RSTP according to which a case submitted to the FIFA PSC must be dealt with quickly would further not be satisfied if the plaintiff, whose claims were ready to be decided at the moment of the referral to the FIFA PSC, saw the rendering of its decision significantly postponed due to the fact that its opponent invoked claims in compensation, unrelated to the football regulations.

In these circumstances, it cannot be accepted that the Appellant could validly invoke a claim for damages based on a claim that the FIFA PSC did not have jurisdiction to examine whether it had been submitted to it by this same party, as plaintiff, by means of a direct action in payment brought against the Respondent.

5.5.6.
In view of the foregoing, the Panel's finding in holding that the FIFA PSC had rightly denied its jurisdiction to rule on the claim for damages must be upheld. It follows that the grievance based on the violation of Art. 190 par. 2 lit. b LDIP is dismissed.

6.
In a second plea, the Appellant, invoking Art. 190 par. 2 lit. d LDIP, accuses the Panel of violating the principle of the equality of the parties.

6.1.
According to case law, the equality of the parties implies that the procedure be settled and conducted so that each party has the same opportunity to present its case (ATF 142 III 360 at 4.1.1).

6.2.
In support of its grievance, the Appellant argues that the Panel refused, without justification, to adjourn the hearing of its expert in English law, E._____, even though it decided to hear the Respondent's expert. In its opinion, the hearing of E._____ was likely to influence the outcome of the dispute, to the extent that the expert had to specify whether English law permitted the invocation in set-off of a claim having a tort basis for the purpose of opposing the payment of a transfer fee.

6.3.
As presented, the grievance must be dismissed.
It must first be noted that the Panel recounted, in detail, the procedural steps in connection with the hearing of E._____ and the reasons why it had decided not to adjourn the hearing for such expert (Award, n. 248-269). On the basis of the facts found by the arbitrators, it does not appear that the Appellant would not have benefited from the same possibilities as its opponent to present its case, as evidenced by the convincing demonstration made by the Respondent (Answer, n. 44-52). The CAS recalls moreover, quite rightly, that a written report by expert E._____ was placed in the arbitration file, so that the Panel was able to take into consideration the opinion of this expert.
In any event, it should be noted that the violation invoked by the Appellant had no influence on the outcome of the proceedings. The arbitrators only discussed the arguments of English substantive law on a purely subsidiary basis ("On a purely subsidiary level "; Award, n. 176). The Panel, moreover, indicated the following, under n. 268 of its Award: " 268. (...) The Panel further notes that - at the end of the day - the testimony of Mr E._____ QC is not material for the outcome of this case, since the Panel has found that, for procedural reasons, the FIFA PSC [FIFA PSC] had no mandate to adjudicate CCFC's set-off claim...".

7.
In a third plea, divided into several branches, the Appellant complains of various breaches of its right to be heard (Art. 190 para. 2 let. d LDIP).

7.1.
Jurisprudence has deduced from the right to be heard a minimum duty for the arbitral tribunal to examine and address relevant issues. This duty is breached when, through inadvertence or

misunderstanding, the arbitral tribunal does not take into consideration allegations, arguments, evidence and offers of evidence presented by one of the parties and important for the award to be made. It is incumbent on the so-called party aggrieved to demonstrate, in its appeal against the award, how an inadvertence on the part of the arbitrators prevented from being heard on an important point. It is up to it to establish, on the one hand, that the court arbitrator failed to consider some of the factual, evidentiary or legal evidence that it had regularly advanced in support of its conclusions and, on the other hand, that these elements were likely to influence the fate of the dispute (ATF 142 III 360 at 4.1.1 and 4.1.3). If the Award completely ignores elements apparently important for the resolution of the dispute, it is up to the arbitrators or the respondent party to to justify this omission in their observations on the appeal. They can do this by showing that, contrary to the Appellant's assertions, the omitted elements were not relevant to resolving the case concrete or, if they were, that they were implicitly refuted by the arbitral tribunal (ATF 133 III 235 at 5.2).
Moreover, the grievance alleging violation of the right to be heard should not serve, for the party which complained of defects affecting the reasoning of the award, thereby causing an examination of the application of the substantive law (ATF 142 III 360 at 4.1.2 and the references cited).

7.2.
7.2.1.
In the first limb of the plea in question, the interested party maintains that the Panel breached its right to be heard by failing to examine the question of its jurisdiction ratione materiae arising of the arbitration clause contained in the transfer contract.

This criticism is flawed. The Panel has, in fact, referred to the aforementioned argument under n. 111 of the disputed Award. When examining the question of the jurisdiction of the FIFA PSC - and, therefore, of its own jurisdiction - to decide on the claim for damages, it indicated that there was no link between the claim and the opposing claim for damages (*"... The set-off claim is not linked to the breach of contract. The only arguable nexus is the crude and obvious causal one: if there had been no transfer, then there would not have been a plane crash. However, there is no substantive link between the two matters..."*; Award, n. 172). The Panel also held that the transfer contract had been executed before the player's departure by plane and that this contract did not impose on the Respondent the obligation to organize the flight during which the player perished (Award, n. 186 f.). In view of the foregoing, it is admitted that the arbitrators rejected, at least implicitly, the thesis that the claim for damages fell within the scope of the arbitration clause inserted in the transfer contract, which moreover corresponds to the conclusion reached by the Federal Court (see at 5.4.3 above).

7.2.2.
In the second part of the grievance examined, the Appellant again complains, but this time in terms of an infringement of its right to be heard, the refusal to postpone the hearing of its expert E._____. Such criticism is unfounded and we can repeat here, *mutatis mutandis*, the considerations already issued in connection with the violation of the principle of equality of the parties invoked by the Appellant (see at 6.3 above).

7.2.3.

In the third and last limb of the plea in question, the Appellant maintains that the Panel allegedly violated its right to be heard by deciding to split the proceedings in order to deal with three issues determined, to then take a decision on a point outside the framework of the separate instruction of these three legal questions, namely the examination of allegations of acts of corruption around the conclusion of the transfer contract. Such an argument does not convince the Federal Court. In this case, the decision of bifurcate the proceedings was worded as follows (Award, n. 61):

*"The Panel has decided to bifurcate the proceedings and, therefore, to preliminarily deal with the following legal issues on the merits:*
*(i) If the transfer agreement entered into by the Parties is valid (with all conditions preceding being complied with);*
*(ii) If the CAS / FIFA PSC [FIFA PSC] is competent to decide on the set-off with a damage claim;*
*(iii) Under the applicable law - as a matter of principle - a claim for transfer fee can be set-off against a wrong claim. "*
The Appellant cannot be followed when it claims, in essence, that the allegations of corruption allegedly related to a separate theme, were intended to be tackled later and for its own sake. Possible facts of corruption clearly fell within the first of the three questions supposed to be the subject of a prior separate examination, i.e. that relating to the validity of the transfer contract. In these conditions, the Appellant cannot reasonably maintain that it could not have expected to substantiate such allegations and plead them during the arbitration hearing, especially since it was itself that had put forward this argument in order to conclude that the transfer contract was void.

8.
In a fourth and final plea, the Appellant argues that the award under appeal would be contrary to the public policy referred to in Art. 190 par. 2 lit. and LDIP.

8.1.
An award is incompatible with public policy if it disregards the essential values and widely recognized which, according to the conceptions prevailing in Switzerland, should form the basis of any legal order (ATF 144 III 120 at 5.1; 132 III 389 at 2.2.3). There is a procedural and a substantive public policy.

8.1.1.
An award violates substantive public policy when it violates fundamental principles of substantive law to the point of no longer being reconcilable with the determining legal order and system of values (ATF 144 III 120 at 5.1; 132 III 389 at 2.2.1). Is does not constitute a breach of public policy when one of the grounds of the arbitral tribunal breaches public policy; it is rather the result of the award which must be incompatible with public policy (ATF 144 III 120 at 5.1). The incompatibility of the award with public policy, referred to in Art. 190 par. 2 lit. e LDIP, is a more restrictive notion than that of arbitrariness (ATF 144 III 120 at 5.1; judgments 4A_318/2018 of March 4, 2019, at 4.3.1; 4A_600/2016, cited above, at 1.1.4). According to case law, a decision is arbitrary when it is manifestly untenable, seriously disregards a standard or a clear and undisputed legal principle, or shockingly offends the sense of justice and equity; it is not enough that another solution appears conceivable, or even preferable (ATF 137 I 1 at 2.4; 136 I 316 at 2.2.2 and cited references). For an incompatibility

with public policy, it is not enough that the evidence was misjudged, that a finding of fact was manifestly false or a rule of law has been clearly violated (judgments 4A_116/2016 of December 13, 2016 at 4.1; 4A_304/2013 of March 3, 2014 at 5.1.1; 4A_458/2009 of June 10, 2010 at 4.1). The annulment of an international arbitration award for this ground of appeal is extremely rare (ATF 132 III 389 at 2.1).

8.1.2.
There is a violation of procedural public policy when fundamental principles and generally recognized have been violated, leading to an unbearable contradiction with the feeling of justice, of such that the decision appears incompatible with the values recognized in a State governed by the rule of law (ATF 141 III 229 at. 3.2.1; 140 III 278 at 3.1; 136 III 345 at 2.1). According to consistent case law, procedural public policy, within the meaning of Art. 190 par. 2 lit. e LDIP, is only a subsidiary guarantee that cannot be invoked only if none of the grounds of Art. 190 par. 2 lit. a-d LDIP can be applied (ATF 138 III 270 at 2.3)

8.2.
8.2.1.
The interested party argues, first, that the award under appeal enshrines a violation of the order procedural public, because it would contravene the adversarial principles (right to be heard and equality of parties) and procedural fairness, in relation, on the one hand, to the scope of the division of the procedure, and, on the other hand, with the hearing of its expert E._____.

As presented, the argument based on Art. 190 par. 2 lit. e LDIP, whose admissibility is more than doubtful, must be dismissed. It consists, in fact, exclusively of a presentation, from another angle, of the criticisms made previously in support of other grievances. In doing so, the Appellant disregards the subsidiary character of the guarantee of procedural public policy. There is therefore no need to consider the criticisms formulated by the Appellant in respect of the violation of procedural public policy which overlap with those who have already been discarded previously.

8.2.2.
Secondly, the Appellant seeks the annulment of the Award on the grounds that it would be incompatible with material public policy, inasmuch as the Panel would have refused "to examine (or even to investigate) acts of corruption".

Such an argument does not stand up to scrutiny. According to case law, the violation of substantive public policy for corruption can only be admitted if a case of corruption is established, but the Arbitral tribunal refused to take it into account in its award (judgment 4A_532/2014 of January 29, 2015, at 5.1 and cited references). However, that is clearly not the case here. Under n. 387 of its award, the Panel indeed indicated that the Appellant had certainly alluded to acts of corruption but had not sufficiently substantiated its related allegations. Such a conclusion, based on an assessment of the evidence that this Federal Court cannot review, excludes the possibility of blaming the CAS of having disregarded public policy by ordering the payment of the first installment of the transfer. It is also in vain that the Appellant accuses the Panel of having violated substantive public policy, by refusing to suspend the procedure until the closure of investigations carried out by another authority

over these corruption charges. In the absence of sufficiently substantiated allegations from the appellant, the Panel could, in fact, refuse to accede to its request for a stay of proceedings, it being specified that such a decision was not, in this case, of an imperative nature.

In view of the foregoing, the appeal can only be dismissed to the extent it is admissible.

9.
The Appellant, who is unsuccessful, must pay the legal costs (Art. 66 para. 1 LTF) and pay the Respondent a compensation for costs (Art. 68 para. 1 and 2 LTF).

For these reasons, the Federal Tribunal decides as follows:

1. The appeal is dismissed insofar as it is admissible.
2. The legal costs, set at 47,000 francs, shall be borne by the Appellant.
3. The Appellant shall pay the Respondent 57,000 Fr. as compensation for its legal costs.
4. This judgment is communicated to the representatives of the parties and to the Court of Arbitration for Sport (CAS).

Lausanne, March 30, 2023

In the name of the First Court of Civil Law of the Swiss Federal Court

Presiding Judge: Kiss
Clerk: O. Carruzzo