Arbitration CAS 2020/A/7262 Helder Jorge Leal Rodrigues Barbosa & Hatayspor CA v. Akhisar Belediye Genclik ve SK, award of 10 June 2021

Panel: Mr Maciej Bałaziński (Poland), Sole Arbitrator

Football
Termination of the employment contract
Principle of freedom of contract
Just cause of termination
Principle of good faith
Bonus as element of salary
Differenciation between Art. 14 and Art. 14bis RSTP
Method of delivery of the default notice prior to the termination of a contract
Termination of contract due to circumstances not attributable exclusively to one party
Obligation to prove the damages incurred

1. **Pursuant to the general principle of freedom of contract, unilateral termination of contract generally brings the contractual relationship to an end, irrespective of whether there existed a just cause. Hence, the existence of just cause to terminate the contract (or its absence) has an impact only on the financial and sporting consequences of the termination.**

2. **In lack of corresponding definition in the relevant FIFA regulations, it is useful to refer to Article 337 par. 2 of the Swiss Code of Obligations (SCO), according to which *good cause* is, in particular, any circumstance, in light of which the terminating party cannot in good faith be expected to continue the employment relationship. Article 337 par. 3 of SCO establishes in its relevant part that *"The court determines at its discretion whether there is good cause"*.**

3. **Although the FIFA Regulations on the Status and Transfer of Players (RSTP) does not contain an explicit reference to the principle of good faith of both parties to the relationship, its essence has been engrained in Article 14 par. 2 of FIFA RSTP. Therefore, legal protection of actions that are conducted manifestly without good faith is excluded. For instance, the conduct of a club consisting in requesting a player to renounce his right to remuneration for the already provided football services constitutes a manifest expression of lack of good faith.**

4. **In order for a bonus to be considered as an element of salary, it is necessary to establish whether such bonus is determined or objectively determinable. If the bonus is explicitly determined or at least objectively determinable, it shall be considered as a part of the salary.**

5. Article 14 and Article 14bis of FIFA RSTP establish separate, autonomous legal basis for termination of contract with just cause. More specifically, while Article 14 of FIFA RSTP provides a general basis for termination of a contract with just cause determined on a *case-by-case* basis, Art. 14bis establishes specific requirements for termination of a contract due to the players' unpaid receivables. As a consequence, termination of a contract for outstanding salaries may, in principle, only be made, if it complies with conditions set out in Article 14bis of FIFA RSTP. The mere fact that the club has failed to pay the player's salaries does not justify termination of the contract pursuant to Article 14 of FIFA RSTP. Accordingly, non-payment of the player's remuneration, although it constitutes a reprehensible conduct, does not automatically amount to an abusive conduct referred to in Article 14 par. 2 of FIFA RSTP.

6. The applicable FIFA regulations condition termination of a contract with just cause for outstanding salaries on a prior notification of the club which complies with requirements set out in Article 14bis par. 1 of FIFA RSTP. In respect of the formal requirements of such notification, this provision stipulates that it shall be made *in writing*. However, it does not pose any particular conditions regarding the required methods of its delivery. Consequently, as long as the club effectively receives a written notification from the player regarding the outstanding salaries, irrespective of the method of its delivery, such written notification shall be considered properly delivered.

7. Article 17 par. 1 of FIFA RSTP does not encompass cases in which both parties contribute to a situation that ultimately leads to termination of the contractual relationship. It is therefore necessary to refer to Article 337b of SCO. In case termination of the employment relationship occurs due to circumstances that are not attributable exclusively to one party, Article 337b par. 2 of SCO authorizes the judicial body to determine the financial consequences of such termination at its discretion, taking into account all circumstances of the case.

8. Each party lodging certain claims has both a right and an obligation to prove them. In order for a club to obtain compensation for damages suffered due to termination of a contract by a player, it is insufficient to simply quote the values of the existing and/or new contract and to invoke applicable FIFA regulations. Undeniably, Article 17 par. 1 of FIFA RSTP provides for certain criteria for calculation of due compensation. However, this fact does not exempt the parties from the obligation to prove the damages effectively incurred. In accordance with the principle of "positive interest", the party claiming compensation shall submit evidence demonstrating the situation in which it would have been, had the contractual relationship continued, as well as the damages objectively suffered.

I. THE PARTIES

1. Helder Jorge Leal Rodrigues Barbosa (the "Player" or the "First Appellant") is a professional football player born on 25 May 1987 in Parades, Portugal.

2. Hatayspor Club Association (the "Hatayspor" or the "Second Appellant") is a professional football club with its registered office in Hatay, Turkey. Hatayspor is a member of the Turkish Football Federation (*Turkiye Futbol Federasyonu* – the "TFF") which is affiliated to the Fédération Internationale de Football Association ("FIFA").

3. Akhisar Belediye Genclik ve Spor Kulubu (the "Akhisar" or the "Respondent") is a professional football club with its registered office in Akhisar, Turkey. Akhisar is a member of the TFF which is affiliated to FIFA.

4. The Appellants and the Respondent are jointly referred to as the "Parties".

II. THE DECISION AND ISSUE ON APPEAL

5. The Player and Hatayspor appealed against a decision rendered by the FIFA Dispute Resolution Chamber (the "FIFA DRC") dated 20 May 2020 (the "Appealed Decision"). In the Appealed Decision, FIFA DRC ordered the Respondent to pay to the First Appellant the outstanding remuneration in the total amount of EUR 62,500 plus interest at the rate of 5% *p.a.* Furthermore, FIFA DRC ordered the First Appellant to pay to the Respondent a compensation for breach of contract in the amount of EUR 350,000. Lastly, FIFA DRC declared that the Second Appellant is jointly and severally liable for the payment of the abovementioned compensation to the Respondent.

III. FACTUAL BACKGROUND

6. The circumstances stated below are a summary of the main relevant facts based on the Parties' written and oral submissions, pleadings and evidence adduced. Additional facts may be set out, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

A. Contractual obligations

7. On 14 July 2017, the Player and Akhisar concluded the first Professional Football Player Contract valid in principle until 31 May 2018 (the "First Contract").

8. The First Contract contained, *inter alia*, the following provisions regarding the remuneration of the Player:

*"**3 – PAYMENTS and SPECIAL CONDITIONS***

2017 – 2018 Season

The Player shall be paid EUR 300.000 net (three hundred thousand Euros) for the 2017 – 2018 Season in accordance with the following schedule:

25.08.2017	*30.000 Euro*
25.09.2017	*30.000 Euro*
25.10.2017	*30.000 Euro*
25.11.2017	*30.000 Euro*
25.12.2017	*30.000 Euro*
25.01.2018	*30.000 Euro*
25.02.2018	*30.000 Euro*
25.03.2018	*30.000 Euro*
25.04.2018	*30.000 Euro*
25.05.2018	*30.000 Euro*

If the Player plays in starting eleven in 25 Super League matches in 2017/2018 Season, this Contract will be extended for 2018/2019 Season (until. 31.05.2019) under the below mentioned conditions.

If the Player will not play in starting eleven in 25 Super League Matches in 2017/2018 Season this Contract will expire on 31.05.2018.

[…]".

9. The First Contract did not contain any other pecuniary benefits due to the Player from Akhisar in the 2017/2018 football season.

10. The First Contract expired on 31 May 2018.

11. It is undisputed between the Parties that there are no outstanding receivables of the Player concerning basic remuneration resulting from the First Contract.

12. On 6 July 2018, the Player and Akhisar entered into the second Professional Football Player Contract valid in principle until 31 May 2020 (the "Second Contract").

13. The Second Contract contained, *inter alia*, the following provisions regarding the remuneration of the Player:

*"**3 – PAYMENTS and SPECIAL CONDITIONS***

2018 – 2019 Season

1. The Player shall be paid EUR 400.000 net (four hundred thousand Euros) for the 2018 – 2019 Season in accordance with the following schedule:

15.07.2018	*50.000 Euro*
25.08.2018	*35.000 Euro*
25.09.2018	*35.000 Euro*
25.10.2018	*35.000 Euro*
25.11.2018	*35.000 Euro*
25.12.2018	*35.000 Euro*
25.01.2019	*35.000 Euro*
25.02.2019	*35.000 Euro*
25.03.2019	*35.000 Euro*
25.04.2019	*35.000 Euro*
25.05.2019	*35.000 Euro*

2. If the Club plays final at Turkish Cup in 2018/2019 Season, 10.000 Euros bonus shall be paid to the Player.

2019 – 2020 Season

1. The Player shall be paid EUR 400.000 net (four hundred thousand Euros) for the 2018 – 2019 Season in accordance with the following schedule:

15.07.2019	*50.000 Euro*
25.08.2019	*35.000 Euro*
25.09.2019	*35.000 Euro*
25.10.2019	*35.000 Euro*
25.11.2019	*35.000 Euro*
25.12.2019	*35.000 Euro*
25.01.2020	*35.000 Euro*
25.02.2020	*35.000 Euro*
25.03.2020	*35.000 Euro*
25.04.2020	*35.000 Euro*
25.05.2020	*35.000 Euro*

2. If the Club plays final at Turkish Cup in 2019/2020 Season, 10.000 Euros bonus shall be paid to the Player.

3. If the Player had played in starting eleven at 25 Super League matches in 2018/2019 Season, 25.000 Euro bonus shall be paid to the Player in the beginning of the season".

14. The Second Contract did not contain any other pecuniary benefits due to the Player from Akhisar neither in the 2018/2019 nor in the 2019/2020 football season.

15. The outstanding receivables of the Player resulting from the Second Contract amount to EUR 62,500 and are composed as follows:

- EUR 17,500 as basic remuneration payable until 25 April 2019,
- EUR 35,000 as basic remuneration payable until 25 May 2019,
- EUR 10,000 as bonus for the Respondent's participation in the final of the Turkish Cup in the 2018/2019 football season.

B. Termination of the Second Contract

16. On 31 May 2019, the First Appellant sent to the Respondent by a registered letter dated 29 May 2019 (the "Default Notice") containing a request for payment of all outstanding receivables of the Player as of this date, i.e. TRY 205,355 and EUR 52,500 comprised as follows:

- TRY 80,355 as bonuses due for the 2017/2018 football season,
- TRY 125,000 as bonuses due for the 2018/2019 football season,
- EUR 17,500 as remuneration (half) payable until 25 April 2019,
- EUR 35,000 as remuneration payable until 25 May 2019.

17. In the Default Notice, the First Appellant noticed that *"Clubs are required to comply with their financial obligations towards the players as per the terms stipulated in the contracts with their professional players – article 12 bis, 1 of the Regulations on the Status and Transfer of Players of FIFA".*

18. Furthermore, the First Appellant noted that *"[…] in case of a club unlawfully failing to pay to the player at least two monthly salaries on their due dates, the player will be deemed to have just cause to terminate his contract with the right to compensation – Article 14 bis. 1 of the Regulations on the Status and Transfer of Players of FIFA. 23. Moreover, delayed payment of an amount which is equal to at least two months* ***is also be deemed a just cause for the player to terminate his contract*** *– Article 14 bis. 2 of the Regulations on the Status and Transfer of Players of FIFA".*

19. The First Appellant also emphasized that this situation *"[…] has been causing to the Player anxiety and frustration"* and *"[…] is causing to the player serious damages, because he needs the money of his salaries to provide for his needs and of his family".*

20. Lastly, the First Appellant granted the Respondent a deadline of 15 days to comply with its financial obligations, referring to Art. 14bis par. 1 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP").

21. In June 2019, the First Appellant and the Respondent entered into negotiations concerning the future of their contractual relationship based on the Second Contract. The Parties scheduled a meeting on 20 June 2019 in order to possibly conclude an agreement terminating the Second Contract. Both Parties came in to this meeting. However, they did not reach an agreement, therefore the Second Contract has not been terminated by mutual understanding.

22. On 3 July 2019, the First Appellant sent to the Respondent by e-mail a letter containing a statement of termination of the Second Contract pursuant to Art. 14 par. 2 and Art. 14bis par. 1 and par. 2 of FIFA RSTP (the "Termination Letter").

23. In the Termination Letter, the First Appellant specified that the total outstanding remuneration amounted to TRY 225,355 and EUR 62,500, comprised as follows:

- TRY 80,355 as bonuses due for the 2017/2018 football season,
- TRY 145,000 as bonuses due for the 2018/2019 football season,
- EUR 10,000 as bonus for participation in the final of the Turkish Cup in the 2018/2019 football season,
- EUR 17,500 as remuneration (a half) payable until 25 April 2019,
- EUR 35,000 as remuneration payable until 25 May 2019.

24. In the Termination Letter, the First Appellant noted that *"By the letter sent to the Club on 31 May 2019, the player put the club in default […]"* and that *"[the] club missed the said payments until the present date"*.

25. Furthermore, the First Appellant expressed that *"Acting like that, the Club is using an abusive conduct aiming at forcing the counterparty to terminate the contract"*.

26. Lastly, the First Appellant noted that *"[…]* ***the player is entitled to a compensation equal to the residual value of the contract that was prematurely terminated – article 17. 1 of the Regulations on the Status and Transfer of Players. 42. In the present case the player has the right to a compensation in the amount of EUR 400.000 net (Four hundred thousand Euros) for the 2019-2020 Season****"*.

27. Consequently, the First Appellant declared that he terminates the Second Contract with just cause and requested payment of the total amount of TRY 225,355 and EUR 62,500, as well as compensation in the total amount of EUR 400,000.

28. On 5 July 2019, the Respondent sent to the First Appellant by e-mail a reply to the Termination Letter (the "Respondent's Letter").

29. In the Respondent's Letter, Akhisar asserted that the Second Contract has been terminated by the Player without just cause.

30. Firstly, the Respondent informed that *"On 04.07.2019, Turkish Football Federation (TFF) sent a letter to our Club and stated that the legal representative of Helder Jorge Leal Rodrigues Barbosa (Barbosa) has terminated the Contract between our Club and Barbosa"*.

31. Secondly, the Respondent argued that it hadn't received the Default Notice nor the Termination Letter from the Appellant. Accordingly, the Respondent claimed that *"We were very surprised when we get that letter of TFF and when we checked the attachments of that letter, we saw that you have unilaterally terminated the Contract between our Club and Barbosa with your letter dated*

03.07.2019. What is more, we also saw for the first time in the attachment of letter of TFF that you alleged that you sent a warning letter to our Club on 29.05.2019 […]".

32. In this respect, the Respondent argued that the delivery of the Default Notice by post should have been made in accordance with the Turkish Notification Law (Law No: 7201), i.e. it must have been delivered to the person who is entitled to represent the legal person. Consequently, the Respondent concluded that *"As a result, your alleged letter dated 29.05.2019 was not delivered to our Club in accordance with Notification Law and our Club did not receive that letter".*

33. Furthermore, the Respondent pointed out that in June 2019 the Parties had entered into negotiations regarding a mutual termination of the Second Contract. On 20 June 2019, the Parties met with the purpose of signing an agreement on such termination. However, in the Respondent's Letter, Akhisar asserted that *"[…] Barbosa delayed the signature of the termination agreement and said he will sign it later. While we were still waiting for him to come and sign that Agreement, we surprisingly received the letter of TFF dated 04.07.2019 and learnt that Barbosa terminated the contract".*

34. Lastly, the Respondent noted that *"in accordance with FIFA Regulations, a player can only terminate his contract because of unpaid salaries (by sending a prior written notice) in the case of a club fails to pay* ***at least two monthly salaries****. The salary of Barbosa is 35.000 Euros per month, so the amount of his two monthly salaries is 70.000 Euros. […] 3.1 But as of today, the total amount of unpaid receivables of Barbosa is only 62.500 Euros. On the contrary to your allegations in your termination letter, our Club does not owe any bonus to Barbosa. Besides, there is no article in his contract regarding those so-called bonuses".*

35. On 5 July 2019, the First Appellant sent to the Respondent by e-mail another letter, reiterating his position with respect to the termination of the Second Contract with just cause (the "Appellant's Letter").

36. Firstly, the First Appellant referred to the issue of delivery of the Default Notice. In this respect, he asserted that *"as it can be seen by receipt of postal delivery, the said letter was delivery in Your Club on 17.06.2019 (attached document 1). 6. Also it was duly received by the legal representatives of the Club. 7. And in the correct postal address. 8. Therefore, the player put the Club in default in writing and within the time limits imposed by FIFA".*

37. Furthermore, with regard to the alleged negotiations of the Parties on the termination of the Second Contract, the First Appellant claimed that *"even if they have ever been made, the reality is that they were never concluded, and there was no mutual agreement reached by the parties".*

38. In relation to the outstanding receivables of the Player, the First Appellant reiterated that *"all the labor credits claimed are in debt, even those related with bonuses that arise from the contract, that increase even more the debt of the Club to the player".*

39. As a conclusion of the Appellant's Letter, the First Appellant informed that *"the player is open to negotiate with the Club the value of the due labor credits and compensation in order to achieve an amicable solution for this case, other wise he will be force to lodge the legal claims against the club".*

C. Proceedings before FIFA DRC

40. On 31 July 2019, the First Appellant lodged a claim with FIFA against the Respondent maintaining that he terminated the Second Contract with just cause and consequently requesting payment of TRY 225,355 and EUR 62,500 as outstanding remuneration and EUR 400,000 as compensation for the breach of contract. The First Appellant further requested FIFA to impose sporting sanctions on the Respondent.

41. In reply to this claim, the Respondent rejected the First Appellant's requests in their entirety and lodged a counterclaim against the Player for the breach of contract, requesting payment of compensation in the amount of EUR 350,000.

42. In the course of the proceedings before FIFA, the First Appellant informed FIFA that he had concluded a professional football player contract with the Second Appellant on 5 August 2019, valid in principle until 31 May 2021 (the "Third Contract").

43. Under the Third Contract, the First Appellant was entitled to receive EUR 300,000 as the basic remuneration in the 2019/2020 football season, comprised as follows:

- EUR 75,000 as an advance payment to be paid on the date of conclusion of the Third Contract,
- EUR 22,500 as a basic remuneration to be paid monthly from August 2019 to May 2020 on the last day of each respective month.

44. Furthermore, the First Appellant was entitled to receive the following bonuses under the Third Contract in the 2019/2020 football season:

- EUR 30,000 net for 10 goals or assists in the official league competitions in the 2019/2020 season,
- EUR 50,000 net for the Hatayspor's participation in the final match of the Turkish Cup,
- EUR 50,000 for the Hatayspor's promotion to the upper league in the 2019/2020 season.

45. On 20 May 2020, FIFA DRC rendered the Appealed Decision and decided the following (including rectification of the Appealed Decision referred to in sec. 47 below):

"1. The claim of the Claimant / Counter-Respondent, Helder Jorge Leal Rodrigues Barbosa, is partially accepted.

2. The Respondent / Counter-Claimant, Akhisar Belediyespor Kulubu, has to pay to the Claimant / Counter-Respondent outstanding remuneration in the amount of EUR 62,500, plus interest at the rate of 5% p.a. as follows:

- *on the amount of EUR 17,500 as from 26 April 2019 until the date of effective payment;*
- *on the amount of EUR 35,000 as from 26 May 2019 until the date of effective payment;*
- *on the amount of EUR 10,000 as from 1 June 2019 until the date of effective payment.*

3. Any further claim lodged by the Claimant / Counter-Respondent is rejected.

[…]

9. The counterclaim of the Respondent / Counter-Claimant, Akhisar Belediyespor Kulubu, is partially accepted.

10. The Claimant / Counter-Respondent, Helder Jorge Leal Rodrigues Barbosa, has to pay to the Respondent / Counter-Claimant compensation for breach of contract in the amount of EUR 350,000.

11. The Intervening Party, Hatayspor, is jointly and severally liable for the payment of the amount mentioned under point 10. above.

12. Any further claim lodged by the Respondent / Counter-Claimant is rejected.

[…]".

46. The Appealed Decision was notified to the Parties on 25 May 2020.

47. On 22 June 2020 FIFA notified the Parties about the need to rectify the content of the Appealed Decision pursuant to Art. 14 par. 5 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber.

48. On the same date, the grounds of the Appealed Decision were communicated to the Parties.

49. With respect to jurisdiction, FIFA DRC first found that it was competent to deal with the matter at stake in accordance with Art. 24 par. 1 and par. 2 in conjunction with Art. 22 sec. b) of FIFA RSTP. Furthermore, FIFA DRC confirmed that the June 2019 edition of FIFA RSTP was applicable to the merits of the dispute.

50. Subsequently, in support of the operative part of the Appealed Decision, FIFA DRC presented the following reasoning, quoted in its pertinent parts:

"13. […] the Chamber deemed that the underlying issue in this dispute, considering the claim of the player and the counter-claim of Akhisar, was to determine whether the employment contract had been unilaterally terminated with or without just cause by the player, as well as to decide on the consequences thereof.

14. Notwithstanding, the members of the Chamber, before entering in detail into the substance of the matter, wished to recall the contents of art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right in regards to a fact shall bear the respective burden of proof.

15. In this respect, the Chamber firstly referred to the player's allegations that Akhisar allegedly owed him TRY 80,355, corresponding to "overdue bonus payable for the previous written contract". In this regard, the Chamber observed that the player did not corroborate his allegations and did not provide any evidence regarding his alleged entitlements pertaining to his first contract […].

16. […] in any case, the player could not invoke alleged overdue payables derived from his first contract as grounds for termination of his second contract, which constitutes the legal basis for the case at hand, particularly considering that the player, knowingly and willingly, agreed to conclude a new contract with Akhisar after the first contract expired. Consequently, the Chamber considered that the player's allegations had to be rejected on this point.

17. With regard to the player's allegations that Akhisar failed to pay him TRY 145,000 "as bonus for the sport season 2018/2019", the Chamber […] observed that the player failed to provide any evidence regarding his alleged bonuses for the 2018-2019 sporting season. […]

[…]

21. […] the Chamber was of the unanimous opinion that at the time the player had put Akhisar in default of payment on 29 May 2019, only one and a half monthly salaries were to be considered outstanding. Consequently, the members of the DRC concluded that the conditions outlined in art. 14bis par. 1 of the Regulations were evidently not fulfilled.

22. Furthermore, the Chamber was eager to emphasize that only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. […] if there are more lenient measures […] such measures must be taken before terminating an employment contract. A premature termination of an employment contract can always only be an ultima ratio.

23. In light of the foregoing considerations, the DRC concluded that the termination of the contract by the player in the present case cannot be considered as an ultima ratio measure.

24. Consequently, the Chamber decided that the player did not have a just cause to terminate the contract on 3 July 2019 and that he is to be held liable for such contractual termination.

25. In light of the foregoing, the DRC established that, in accordance with art. 17 par. 1 of the Regulations, the player is liable to pay compensation to Akhisar.

26. […] the Chamber came to the conclusion that the player is entitled to the total amount of EUR 62,500 as outstanding remuneration. As such, the Chamber decided to partially accept the player's claim […].

[…]

28. […] the members of the Chamber firstly reiterated that, in accordance with art. 17 par. 1 of the Regulations, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including in particular the remuneration and other benefits due to the player under the existing contract and/or the new contract(s), the time remaining on the existing contract up to a maximum of five years as well as the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

29. In application of the relevant provision, the Chamber held that it first of all had to clarify as to whether the pertinent employment contract contains a provision by which the parties had beforehand agreed upon an amount of compensation payable by either contractual party in the event of breach of contract. Upon careful examination of said contract, the members of the Chamber assured themselves that this was not the case in the matter at stake.

30. As a consequence, the members of the Chamber determined that the amount of compensation payable in the case at stake had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable and that the broad scope of criteria indicated tends to ensure that a just and fair amount of compensation is awarded to the prejudiced party.
[…]

31. Consequently, in order to estimate the amount of compensation due to the Claimant in the present case, the Chamber firstly turned its attention to the financial terms of the player's former and the new contract, the value of which constitutes an essential criterion in the calculation of the amount of compensation in accordance with art. 17 par. 1 of the Regulations. In this context, the members of the Chamber deemed it important to emphasise that the wording of art. 17 par. 1 of the Regulations allows the DRC to take into consideration both the existing contract and the new contract in the calculation of the amount of compensation, thus enabling the Chamber to gather indications as to the economic value attributed to a player by both his former and his new club.

32. In this regard, the DRC established, on the one hand, that the total value of the contract signed by the player with Akhisar, for the remaining contractual period, amounted to EUR 400,000. On the other hand, the members of the Chamber established that the value of the new contract concluded by the player with his new club, i.e. the intervening party, for the same period, was EUR 300,000.

33. In view of all the above, the Chamber concluded that […] the compensation considering the player's both existing contract and any new contract(s) amounts to EUR 350,000 […], a sum the Chamber found to be fair and proportionate.

[…]

36. In addition, in accordance with the unambiguous contents of art. 17 par. 2 of the Regulations, the Chamber established that the player's new club, i.e. Hatayspor, shall be jointly and severally liable for the payment of the aforementioned amount of compensation".

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. Written submissions

51. On 10 July 2020 the Appellants filed their Statement of Appeal with the Court of Arbitration for Sport (the "CAS") pursuant to Article R47 *et seq.* of the Code of Sports-related Arbitration (the "CAS Code") against the Respondent to challenge the Appealed Decision. The Statement of Appeal was accompanied by 17 (seventeen) exhibits and contained a request to hear the testimony of the First Appellant as well as the testimonies of two witnesses, Mr Abdoul Sissoko and Mr Sergio Antonio Borges Junior. In addition, the Appellants requested to stay the execution of the Appealed Decision pursuant to Article R48 of CAS Code. Furthermore, the Appellants requested the appeal be submitted to a Sole Arbitrator and proposed the appointment of Mr Emin Ozkurt.

52. On 16 July 2020, the CAS Court Office initiated the arbitration proceeding *CAS 2020/A/7262*.

53. On 17 July 2020, the First Appellant informed the CAS Court Office that pursuant to Article R51 of CAS Code, the Statement of Appeal was to be considered as the Appeal Brief. The First Appellant further informed the CAS Court Office that the Appellants withdrew their request to stay the execution of the Appealed Decision and that they were not interested in submitting the present dispute to CAS Mediation.

54. On20 July 2020, the CAS Court Office reminded the Respondent about the time limit to file an Answer to the Statement of Appeal until 10 August 2020.

55. On 21 July 2020, the Respondent informed the CAS Court Office that it did not agree to the submission of the case to a Sole Arbitrator, nor to the appointment of Mr Emin Ozkurt as sole arbitrator. The Respondent requested the appeal be submitted to a Panel of three arbitrators and that pursuant to Article R55 of CAS Code, its time limit to file an Answer be fixed after the payment by the Appellants of their share of the advance of costs.

56. On 23 July 2020 the CAS Court Office invited the Respondent to inform on or before 30 July 2020 whether it intended to pay its share of the advance of costs.

57. On 24 July 2020, FIFA renounced its right to request its intervention in the present arbitration proceedings.

58. On 29 July 2020, the Respondent informed the CAS Court Office that it would not pay its share of the advance of costs.

59. On 21 August 2020, the Parties were informed that the Deputy President had decided to submit the case to a sole arbitrator and had appointed Mr Maciej Bałaziński as the Sole Arbitrator to hear the case and disclosed the remarks made in his "Arbitrators' Acceptance and Statement of Independence" form.

60. On 22 September 2020, the Respondent filed its Answer to the Statement of Appeal in accordance with Article R55 of the CAS Code and requested that a witness Mr Ozgur Nac, the translator of the First Appellant, be heard in the present case.

61. On the same day, the Parties were invited to inform the CAS Court Office whether they would prefer a hearing to be held in this case. The Parties subsequently confirmed their will to hold a hearing in this case.

62. On 1 October 2020, pursuant to Article R57 of CAS Code, the CAS Court Office, on behalf of the Sole Arbitrator, requested the Parties to provide additional written submissions.

63. On 7 October 2020, the Appellants each filed an additional submission pursuant to Article R57 of CAS Code as requested by the Sole Arbitrator.

64. On 8 October 2020, the Respondent filed its additional submission pursuant to Article R57 of CAS Code as requested by the Sole Arbitrator.

B. Hearing

65. On 19 October 2020 the CAS Court Office, on behalf of the Sole Arbitrator, proposed to hold a hearing on 4 November 2020 and invited the Parties to confirm their availability. The Appellant and Respondent (after reminding on 26 October 2020) agreed on 22 and 27 October 2020 respectively to hold a hearing on this date.

66. On 30 October 2020, the CAS Court Office, on behalf of the Sole Arbitrator, issued an order of procedure (the "Order of Procedure"), which was subsequently signed by the Parties.

67. On 4 November 2020, the hearing in the present case was held by video-conference. The Sole Arbitrator was assisted at the hearing by Ms Sophie Roud, Counsel to CAS. The hearing was attended by the following persons:

i.	for the First Appellant:	1) Mr Helder Jorge Leal Rodrigues Barbosa,
		2) Mr Pedro Macieirinha – attorney;
ii.	for the Second Appellant:	1) Mr Ismail Coskun – attorney,
		2) Mr Deniz Lus – attorney;
iii.	for the Respondent:	1) Mr Bisar Ozbey – attorney,

2) Mr Hasan Anil Eken - translator;

iv. witnesses (in order of appearance): 1) Mr Abdoul Sissoko,

2) Mr Sergio Antonio Borges Junior –

accompanied by Mr Mesquita Ferreira – translator.

68. The witness requested by the Respondent, Mr Ozgur Nac, did not attend the hearing.

69. At the opening of the hearing, the Sole Arbitrator presented the Panel to the Parties. Subsequently, all Parties confirmed that they had no objections with respect to the procedure and the composition of the Panel. Thereafter, each Party had the opportunity to briefly set out the facts of the case.

70. The Panel then proceeded to hearing the witnesses. Each witness had been invited by the Sole Arbitrator, before the respective deposition, to tell the truth subject to the sanctions of perjury. The Parties were given full opportunity to examine the witnesses.

71. The testimony of Mr Abdoul Sissoko may be summarized in its relevant parts as follows:

i. The witness played for Akhisar for 3 (three) seasons, in the same period when the First Appellant was the player of Akhisar. He left Akhisar in May 2019.

ii. In principle, the players employed by Akhisar were entitled to two types of bonuses. Some bonuses were directly included in each individual contract. However, Akhisar offered to all the players certain bonuses per each game. Bonuses were paid for a win and for a draw in a given match.

iii. The amount of bonus depended predominantly on the difficulty of the game and the opponent. The exact amount of the bonus was notified to the players only by a text message in a group chat to which all the players were members. At the end of the season, Akhisar would delete the chat.

iv. As examples, the witness invoked the following amounts: TRY 50,000 for a win with Fenerbahce S.K., TRY 30,000 for a win with Caykur Rizerspor, TRY 25,000 for a win with a weaker club.

v. These bonuses were paid around 3-4 days after a given game. For these purposes, Akhisar asked the players to open two bank accounts – one in EUR for the payment of the salaries and one in TRY for payment of the bonuses.

vi. Usually Akhisar paid these bonuses exactly in the amount communicated in the group chat. However, in the last months Akhisar did not pay the full amounts. With respect to the bonuses per game, all the players were in the same situation.

vii. The witness did not receive all the money due from Akhisar. He signed an agreement with Akhisar in which he gave up EUR 10,000 of bonus resulting from the contract. The basic remuneration under the witness' contract was principally divided in twelve monthly installments.

viii. The witness considered that the 2018/2019 football season was successful for Akhisar. He doesn't know why Akhisar did not pay the promised bonuses.

72. The testimony of Mr Sergio Antonio Borges Junior may be summarized in its relevant parts as follows:

i. The witness played for Akhisar for 2 (two) seasons, in the same period when the First Appellant was the player of Akhisar.

ii. In the 2017/2018 and 2018/2019 football seasons, the players of Akhisar were generally entitled to receive bonuses directly envisaged in each individual contract, as well as bonuses per game. Bonuses per game were due in case of a win or a draw in a given match. The amount of bonus varied depending on the opponent. Akhisar would communicate the amount of each bonus via WhatsApp in a group chat between the players and the directors of Akhisar, one or two days before each match.

iii. As an example of the amount of offered bonus per game, the witness invoked the amount of TRY 40,000. The witness also estimated that the minimum amount of bonus in case of a win was around TRY 20,000 – 30,000, while in case of a draw around TRY 20,000.

iv. The basis of the bonus per game was the same for all the players. However, the final amount of the bonus due to each player depended on his participation in a given match. Those players who played in the first eleven received 100% of the bonus, those who entered at a later stage were entitled to 75% of the bonus, whereas those who did not enter received 50% of the bonus.

v. The bonuses provided in the contracts (per objective) were paid in EUR, whereas the bonuses per game were paid in TRY. For this purpose, the players were asked by Akhisar to open two bank accounts, one in EUR and one TRY currency respectively.

vi. During the 2017/2018 football season, Akhisar generally paid all the bonuses per game. However, the players were offered an additional bonus for winning the Turkish Cup which was to be paid in four installments. The witness did not receive all of them.

vii. In the 2018/2019 football season, Akhisar did not pay some of the offered bonuses per game. Some of them were paid only in half their amount.

viii. The witness himself did not receive all payments due as salaries and bonuses for these two seasons. However, his priority was to go back to his home country, therefore he concluded an agreement with Akhisar in which he gave up some of his receivables in

order to become a free player. In the end, he received from Akhisar all payments due as salaries, but not all due as bonuses. The witness estimated that he gave up around TRY 150,000 – 220,000 of due bonuses.

ix. The witness considers that Akhisar was not successful at the time he became a free player.

x. The witness declared that he still has access to the WhatsApp group in which the bonuses were offered by Akhisar to the players and undertook to provide a copy of these messages to the Panel.

73. Subsequently, all Parties have presented their positions with respect to the subject matter of the dispute, submitted their pleadings and made closing statements.

74. Before the hearing was concluded, the Parties confirmed that their procedural rights, including the right to be heard, were fully respected in these proceedings.

75. On 5 November 2020, on behalf of the Sole Arbitrator, the CAS Court Office invited the First Appellant to provide copies of the communications from the Respondent to the players regarding the match bonuses, within 5 (five) days following the receipt of such communication. Furthermore, the CAS Court Office invited the Parties to inform whether they find an agreement on the amicable resolution of the dispute in question, within 12 (twelve) days following the receipt of such communication.

76. On 5 November 2020, the First Appellant provided the CAS Court Office with copies of WhatsApp messages between the Respondent and its players regarding the match bonuses, transmitted from the witness Mr Sergio Antonio Borges Junior.

77. On 18 November 2020, the First Appellant informed the CAS Court Office that the Parties had not found an agreement.

V. SUBMISSIONS OF THE PARTIES

78. The following outline of the Parties' positions does not necessarily comprise every submission advanced by the Appellants and the Respondent. The aim of this section of the Award is to provide a summary of the principal arguments of the Parties. The Sole Arbitrator has nonetheless carefully examined and considered all the submissions made by the Parties, whether or not there is a specific reference to them in the following summary.

A. The Appellants' Position

79. The Statement of Appeal underlying this case has been filed jointly by the First Appellant and the Second Appellant. Their arguments and pleadings throughout the proceedings fundamentally coincide. For these reasons, the position of the Appellants will be further

presented unitedly. Any relevant differences regarding their arguments will be duly noted in this section.

80. In their Statement of Appeal, which is also serving as the Appeal Brief, the Appellants submitted the following requests:

"a. The present appeal has to be considered admissible and accepted, and consequently the Appellants request to the Court of Arbitration for Sport to declare the annulment of the Decision of the Dispute Resolution Chamber of FIFA, passed in Zurich, Switzerland, on 20 May 2020, in the following composition: Geoff Thompson (England), Chairman, Jerome Perlemuter (France), member and Angela Collins (Australia), member, on the matter between the player Helder Jorge Leal Rodrigues Barbosa, Portugal, as Claimant / Counter-Respondent, and the club Akhisar Belediyespor Kulubu, Turkey, as Respondent / Counter-Claimant, and the club Hatayspor Turkey, as Intervening Party, that proceeded to a rectification of the decision on 22 June 2020, regarding an employment-related dispute between the parties, CASE REF. nr. 19-01573/eam (Exhibit 1);

b. The Appellant request to the Court of Arbitration for Sport to stay the execution of the decision appealed – article R48 of the Code;

c. The Appellants request to CAS to issue a new decision which replaces the decision challenged and declares:

1. The claim of the Appellant I Helder Jorge Leal Rodrigues Barbosa is accepted, in the following grounds:

2. The Respondent Club Akhisar Belediyespor Kulubu has to pay to Appellant I Helder Jorge Leal Rodrigues Barbosa outstanding remuneration in the amounts of:

2.1 80 355,00 Turkish lira for overdue bonus payables for the previous contract;

2.2 145 000,00 Turkish lira for overdue bonus payables for the sports season 2018/2019;

2.3 the amount of 10 000,00 € as bonus for the final of the Turkish cup'

2.4 17 500,00 € as half salary due on 25.04.2019;

2.5 35 000,00 € for the due salary of 25.05.2019;

2.6 total: 225 355,00 Turkish lira and 62 500,00 € plus interests at 5% p.a. until the date of effective payment are due.

3. The Respondent Club Akhisar Belediyespor Kulubu has to pay to the Appellant I Helder Jorge Leal Rodrigues Barbosa the amount of 205 000,00 € as compensation for breach of contract, plus interests at 5% p.a. until the date of effective payment are due;

4. The Appellant I Helder Jorge Leal Ridrigues Barbosa shall not be banned from playing in official matches, either nationally or internationally, nor for the maximum duration of six months;

5. *The counterclaim lodged by the Respondent Club Akhisar Belediyespor Kulubu shall be rejected;*

6. *To determine that Appellant I Helder Jorge Leal Rodrigues Barbosa has terminated the Contract with the Respondent Club Akhisar Belediyespor Kulubu with just case and, as a consequence, determine that the Appellant I Helder Jorge Leal Rodrigues Barbosa has not to pay to the Respondent Club Akhisar Belediyespor Kulubu any compensation, not even in the amount of 350 000,00 €;*

7. *To determine that Appellant I Helder Jorge Leal Rodrigues Barbosa has terminated the Contract with the Respondent Club Akhisar Belediyespor Kulubu with just cause and, as a consequent, determine that the Appellant II Club Hatayspor, Turkey in not jointly and severally liable for the payment of any compensation to the Respondent, and has not to pay to the Respondent Club Akhisar Belediyespor Kulubu any compensation, not even in the amount of 350 000,00 €;*

8. *The Appellant II Club Hatayspor, Turkey shall not be banned from registering new players, either nationally or internationally, for the maximum duration of six months;*

9. *Finally, sporting sanctions shall be imposed to the Respondent Club Akhisar Belediyespor Kulubu, pursuant article 17, nr. 4 of Regulations on the Status and Transfer of Players of FIFA".*

81. The Appellants' submissions in support of their appeal against the Appealed Decision may, in essence, be summarized as follows:

i. Outstanding receivables of the Player

82. The Appellants assert that the Player's receivables due from the Respondent underlying the present dispute include not only the remuneration envisaged directly in the Second Contract but also the overdue bonus payables that the Respondent undertook to pay for the Player's football activity throughout the 2017/2018 and the 2018/2019 football seasons, apart from the explicit contractual obligations.

83. Accordingly, in the view of the Appellants, the Player shall receive from the Respondent the amount of TRY 80,355 as overdue bonus payables under the First Contract (for the 2017/2018 football season) and the amount of TRY 145,000 as overdue bonus payables for the 2018/2019 football season (the "Bonuses"). The First Appellant asserts that his manager tried to reach an agreement with the Respondent regarding the outstanding Bonuses, but didn't succeed.

84. As evidence predominantly corroborating the abovementioned entitlement the Appellants submitted a statement of the Player's bank account held in DenizBank A.S. in TRY currency, demonstrating the execution of numerous payments made by the Respondent to the Player between 15 August 2017 and 3 May 2019.

85. The Appellants further submit that the Bonuses were agreed by the Respondent with the First Appellant as well as with all other players of its team. As proof of this fact, the Appellants

requested to hear the testimony of the witnesses Mr Abdoul Sissoko and Mr Sergio Antonio Borges Junior, professional football players who rendered their services for Akhisar at the time the First Appellant was the player of the Respondent.

86. Furthermore, during the hearing, the First Appellant asserted that the Respondent offered the Bonuses in a WhatsApp group to which all the players of Akhisar were members, around one or two days before each game. The Bonuses were supposed to be paid within three/four days after such game. The Bonuses were offered for a win and for a draw in a given match. The basis of the Bonuses was equal for all the players, but the final due amount depended on the participation in the match of each individual player. Those who started the match in the first eleven were entitled to receive 100% of the Bonus, those who entered the pitch later got 75% of the Bonus and those who did not enter the pitch but were selected for the match could obtain 50% of the Bonus. The First Appellant further asserted that Akhisar tended to remove players from the said WhatsApp group when they left the club. Similarly, he did not have access to this group anymore.

87. The First Appellant notes that the Respondent never denied having offered such additional bonuses. In view of the Player, the Respondent however claimed that such bonuses were not included in the contracts and could not therefore, form the basis for terminating the contract with just cause for outstanding salaries.

88. The Second Appellant in turn notes that it is a common practice of football clubs in Turkey to assign additional bonuses to football players in this way. As a consequence, it is more difficult for the players to prove the entitlement to such bonuses. According to the Second Appellant, this can be done predominantly through provision of bank account statements evidencing payments executed by a club, provision of messages of the club demonstrating the declaration of the club to pay a given bonus as well as witness testimonies.

ii. Negotiations on mutual termination of the Second Contract

89. The First Appellant testifies that at the time Akhisar was originally relegated to a lower league at the end of the 2018/2019 football season, he received a call from the Akhisar's manager declaring that the salary agreed upon in the Second Contract was too high and that they had to agree either to its reduction by renouncing the outstanding due remuneration, i.e. EUR 62,500, or to the termination of the Second Contract. According to the First Appellant, this call took place before the Default Notice had been sent.

90. The First Appellant asserts that during the meeting scheduled for 20 June 2019, he was informed that he could stay in Akhisar only if he agreed to renounce his right to receive the due outstanding remuneration in the amount of EUR 62,500. According to the First Appellant, the Parties did not mention any due and outstanding Bonuses.

91. As stated by the First Appellant, he did not want to finish his contractual relationship with Akhisar, however, he could not agree to the above-mentioned reduction of his due salary. As a consequence, no agreement was reached during the meeting on 20 June 2019.

92. The abovementioned circumstances have been testified by the First Appellant during the hearing.

iii. Just cause to terminate the Second Contract

93. According to the Appellants, the Player had just cause to terminate the Second Contract.

94. Firstly, the Appellants submit that the Respondent's non-payment of outstanding salaries was an act contrary to good faith and constituted an abusive conduct aiming at forcing the counterparty to terminate or change the terms of the contract. Therefore, the Player had the right to terminate the Second Contract pursuant to Art. 14 par. 2 of FIFA RSTP.

95. In addition, the Appellants assert that the Respondent's failure to pay the due outstanding amounts also justifies termination of the Second Contract pursuant to Art. 14bis of FIFA RSTP.

96. Furthermore, in the Appellants' view, the overdue payables deriving from the First Contract can also be used as grounds for termination of the Second Contract, as both Contracts amount in reality to a continuing relationship between the Parties. Moreover, the Respondent allegedly used the overdue payables deriving from the First Contract to force the First Appellant to terminate or change the terms of the Second Contract.

97. In view of the Appellants, the outstanding amounts due by the Respondent to the First Appellant as of the date of termination of the Second Contract totaled TRY 225,355 and EUR 62,500.

98. However, the Appellants asserted that even if only the undisputed amount of EUR 62,500 was to form the basis of the just cause to terminate the Second Contract, the correct application of Art. 14bis of FIFA RSTP shall lead to a conclusion that this amount is sufficient to constitute such just cause.

99. Indeed, in the Appellants' view, the amount of remuneration due for the 2018/2019 football season under the Second Contract shall be understood as follows:

- EUR 50,000 as the signing fee,
- EUR 35,000 as the monthly remuneration.

100. Therefore, in the Appellants' opinion, pursuant to Art. 14bis par. 2 of FIFA RSTP, the amount of EUR 350,000 shall be calculated on a *pro rata* basis and divided by 12 (twelve) months. Such calculation results in a monthly installment being equal to EUR 29,166.66. Consequently, the amount corresponding to two monthly salaries is equal to EUR 58,333.33.

101. As a consequence, even taking into account only the undisputed amount of EUR 62,500, in view of the Appellants it shall be concluded that the amount of outstanding basic remuneration

due to the Player is higher than the two monthly salaries and justifies termination of the Second Contract.

iv. Compliance with the procedure set out in Art. 14bis of FIFA RSTP

102. The Appellants further submit that the Player has properly followed the procedure set out in Art. 14bis of FIFA RSTP. On 31 May 2019, he sent the Default Notice to the Respondent, putting the Respondent in default of payment of the outstanding amounts and granting it an additional time limit of 15 days to fulfill its financial obligations. The Appellants note that the Default Notice contained a typo and that the intent of the Player was to request payment of TRY 145,000 for overdue bonus payables for the 2018/2019 football season (instead of requested TRY 125,000). The Appellants further note that in the Default Notice the Player expressed his will to negotiate with Akhisar *"the value of the due labour credits and compensation in order to achieve an amicable solution for this cas*e*"*.

103. According to the Appellants, the Default Notice was sent by regular post to the official address of the Respondent and was received by Akhisar on 17 June 2019. To corroborate this, the Appellants submitted a printed proof of delivery of the mail containing the Default Notice.

104. Subsequently, by letter dated 3 July 2019 sent by e-mail, the Player has validly terminated the Second Contract.

v. Consequences of termination of the Second Contract with just cause

105. First and foremost, the Appellants assert that the Player is entitled to receive compensation for breach of the Second Contract by the Respondent pursuant to Art. 17 par. 1 sec. ii. of FIFA RSTP.

106. The Appellants note that the residual value of the Second Contract amounts to EUR 400,000. Moreover, the Player has concluded the Third Contract with Hatayspor, the value of which for a corresponding period amounts to EUR 300,000.

107. As a consequence, the value of the new contract shall be deducted from the contract that was prematurely terminated. Accordingly, pursuant to Art. 17 par. 1 sec. ii. Of FIFA RSTP, the Appellants assert that the Mitigated Compensation due to the Player amounts to EUR 100,000.

108. Furthermore, the Appellants claim that the Player is entitled to receive the Additional Compensation under Art. 17 par. 1 sec. ii. of FIFA RSTP, corresponding to three monthly salaries of the Player, as the early termination of the Second Contract occurred due to overdue payables. Accordingly, as the monthly salary envisaged for the 2019/2020 football season amounts to EUR 35,000, the Additional Compensation shall be equal to EUR 105,000.

109. Overall, the Appellants assert that the Player is entitled to receive an amount of EUR 205,000 as compensation for the breach of contract, plus interest at 5% rate *p.a.* until the date of effective payment.

110. At the same time, the Appellants claim that the Respondent's request for compensation allegedly due from the Player should have been rejected by FIFA DRC in its entirety. In this respect, the Appellants request the Sole Arbitrator to annul the Appealed Decision. Consequently, the Second Appellant shall not be considered jointly and severally liable for the payment of such compensation from the Player to Akhisar.

111. Lastly, the Appellants requested that sporting sanctions be imposed on the Respondent pursuant to Art. 17 par. 4 of FIFA RSTP. In particular, the Respondent shall be banned from registering any new players, either nationally or internationally, for two entire consecutive registration periods.

B. The Respondent's Position

112. In its Answer dated 21 September 2020, the Respondent submitted the following requests:

"In consideration facts of the case our statements given above and attached documents, we hereby respectfully request from CAS;

1- To decide that the Claimant has terminated the Contract without a just cause,

2- To reject all requests of the Claimant,

3- To accept the Respondent's claims regarding the 350.000,00-TL compensation from remaining contractual period,

4- Deduction from the compensation considering the Players new contract and income from Hatayspor, in the case it has been decided to the Respondent pay any compensation,

5- To decide the Claimant pay all the legal expenses incurred within the scope of the appeal application".

113. The Respondent's submissions in support of its Answer may, in essence, be summarized as follows:

i. Outstanding receivables of the Player

114. It is undisputed between the Parties that the unpaid receivables of the Player due from Akhisar amount to EUR 62,500. However, the Respondent submits that it does not have any debt towards the Player regarding the Bonuses.

115. In the Respondent's view, the Player has failed to legally ground his allegations and to provide any concrete evidence regarding the allegedly due Bonuses. The Respondent asserts that the burden of proving the existence of the entitlement to receive the Bonuses lies with the Player. However, neither of the Contracts contains any provisions determining the payment of the Bonuses.

116. As a consequence, the existence of the Player's entitlement to the Bonuses has not been proven and any claims made by the Player in relation to the said Bonuses due for the 2017/2018 and the 2018/2019 football season are legally groundless.

117. The Respondent further asserts that the potential bonuses and premiums offered by a club apart from its explicit contractual financial obligations may be different for every player. When a club is successful, it may pay premiums to its players. However, according to the Respondent, Akhisar was not successful in the 2018/2019 football season.

ii. Negotiations on mutual termination of the Second Contract

118. The Respondent argues that in June 2019 the Player declared his wish to leave Akhisar. Accordingly, the Respondent claims that the Parties agreed that the Player *"shall waive all his receivables as 62.500,00-EUR and all his rights in the Club"* in order to leave Akhisar. As declared by the Respondent in his Answer: *"The Claimant has been a key stone in the Club's in financial and sporting plans for the 2019/2020 football season therefore the Parties decided that the Player shall waive his financial rights corresponding the transfer fee to be paid for the exit"*.

119. Subsequently, the Respondent asserts that the Parties scheduled a meeting on 20 June 2019 at 17:00 in order to conclude an agreement on mutual termination of the Second Contract. However, as claimed by the Respondent, the Player delayed the conclusion of such an agreement and declared to sign it on another day. As results from the Respondent's written submissions, this situation was witnessed by the Player's translator, Mr Ozgur Nac.

iii. Lack of just cause to terminate the Second Contract

120. According to the Respondent, termination of the Second Contract by the Player occurred without just cause.

121. Referring to the allegations regarding the abusive conduct of the Respondent, the Respondent asserts that it never treated the Player in an abusive manner. In the Respondent's view, *"such allegations only been declared with aim to ground and create another reason to the Players unlawful termination"*. Accordingly, the Respondent states that the Appellants could not submit any concrete evidence to prove these allegations. Consequently, in the Respondent's opinion, allegations regarding its abusive behaviour are contrary to fact and totally groundless.

122. Furthermore, the Respondent submits that the Player's unpaid receivables do not justify termination of the Second Contract for outstanding salaries. In the Respondent's view, the total outstanding receivables of the Player amount to EUR 62,500, which corresponds to one and half monthly salaries of the Player. Therefore, the condition set out in Art. 14bis of FIFA RSTP concerning the default of payment of two monthly salaries on their due dates has not been met.

123. In addition, even if the Panel decided to calculate the value of two monthly salaries on a *pro rata* basis pursuant to Art. 14bis par. 2 of FIFA RTSP, the Respondent asserts that the amount

which should be divided by 12 (twelve) is the total basic remuneration due to the Player for the 2018/2019 football season, i.e. EUR 400,000. As a result of such calculation, the value of two monthly salaries is equal to EUR 66,666. Consequently, the amount of EUR 62,500 is still lower than the value of two monthly salaries and the condition set out in Art. 14bis par. 2 of FIFA RSTP is not met.

124. In this respect, the Respondent asserted that the rules set out in FIFA RSTP regarding legitimate reasons to terminate a contract shall be applied in an equal manner to all interested parties, i.e. both to the clubs and to the players.

iv. Non-compliance with the procedure set out in Art. 14bis of FIFA RSTP

125. The Respondent argues that it never received the Default Notice from the Player. According to the Respondent, the Default Notice has only been transmitted to it by TFF along with the notice of termination of the Second Contract dated 4 July 2019.

126. In the Respondent's opinion, the delivery of the Default Notice shall comply with the Turkish Code of Notifications (Law No: 7201). As stated by the Respondent in its Answer: *"As per the Turkish Code of Notifications (Law No: 7201) any posts and notifications sent to legal persons, shall be delivered to person who is duly authorized representatives of the legal person. However the alleged warning letter has never received by the Club or any employee of its even though the contact address specified in the second Professional Football Player Contract hadn't been changed"*.

127. Accordingly, in the Respondent's view, the condition set out in Art. 14bis par. 1 of FIFA RSTP has not been met.

128. Furthermore, the Respondent asserts that it has also not received the Termination Letter from the Player. The Respondent claims that it only received the Termination Letter as an attachment to the TFF's termination notice dated 4 July 2019. As claimed in the Answer to the Statement of Appeal: *"Such termination notice has not been transmitted to the Club as it shall be via fax or e-mail and by priorly sending a notice to give the Club a payment period no less than 15 days as per the FIFA regulations"*.

v. Consequences of termination of the Second Contract without just cause

129. According to the Respondent, due to the fact that the Player has terminated the Second Contract without just cause, the Respondent shall be entitled to receive compensation for the breach of contract under Art. 17 of FIFA RSTP.

130. The Respondent notes that pursuant to the applicable regulations of FIFA, the amount to be received by the Player from the new club for the 2019/2020 football season shall be deducted from compensation. As argued in the Respondent's Answer: *"However, the total amount of the compensation is calculated accordingly the entire term fees of the contract. As the Player did not provide any services in the relevant season and the contract is terminated there shall be a equity deduction made"*. The

Respondent concludes that it is entitled to claim the amount of EUR 350,000 as compensation *"in return for the total 2018/2019 season salaries"*.

131. On the contrary, in the Respondent's opinion, the Player is not entitled to any compensation regarding termination of the Second Contract. The Player's claims regarding loss of profit from termination shall consequently be rejected.

VI. JURISDICTION

132. Article R47 par. 1 of CAS Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".

133. The jurisdiction of CAS in the present case derives from Art. 57 par. 1 and Art. 58 par. 1 of FIFA Statutes, as well as Art. 24 par. 2 sec. 3 of FIFA RSTP.

134. Art. 57 par. 1 of FIFA Statutes provides as follows:

"FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents".

135. Art. 58 par. 1 of FIFA Statutes provides as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".

136. Art. 24 par. 2 sec. 3 of FIFA RSTP provides in its relevant part as follows:

"[…] Decisions reached by the DRC or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS)".

137. The Appealed Decision rendered by FIFA DRC further provided that *"According to art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS)"*.

138. It shall also be noted that jurisdiction of CAS in the present case is not contested by the Parties and is further confirmed by the Order of Procedure duly signed by each Party.

139. The Sole Arbitrator therefore holds that CAS has jurisdiction to adjudicate and decide on the present dispute.

VII. ADMISSIBILITY

140. Art. R49 of CAS Code provides in its relevant part as follows:

"In the absence of a time limit set in the status or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against".

141. Art. 58 par. 1 of FIFA Statutes further provides that *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".*

142. Furthermore, the Appealed Decision provided that *"The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with the Code of sports-related arbitration".*

143. The grounds of the Appealed Decision were notified to the Parties, via e-mail, on 22 June 2020. The Appellants filed their Statement of Appeal on 10 July 2020, i.e. within the prescribed time limit of 21 days. Furthermore, on 17 July 2020, the First Appellant informed the CAS Court Office that the Statement of Appeal shall be considered as the Appeal Brief. The Appellants also complied with other requirements set out in Art. R48 of CAS Code, including the payment of the CAS Court Office fee.

144. The Sole Arbitrator therefore holds that the Appeal is admissible.

VIII. APPLICABLE LAW

145. Art. 57 par. 2 of FIFA Statutes reads as follows:

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

146. Art. R58 of CAS Code provides, in turn, as follows:

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

147. In the present case, the *"applicable regulations"* referred to in Art. R58 of CAS Code are, indisputably, various FIFA regulations, including primarily FIFA RSTP. The Panel first notes that the appeal is directed against a decision rendered by a FIFA judicial body, which was passed applying relevant FIFA regulations. In particular, the Sole Arbitrator agrees with the FIFA DRC that the regulations applicable to the substance of the matter in question are the June 2019 edition of FIFA RSTP.

148. It is also worth invoking Art. 187 par. 1 of the Swiss Private International Law Act (the "PILA") applicable to the matter at hand as stipulated in the Order of Procedure duly signed by each Party, according to which:

"The arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the case is most closely connected".

149. It shall further be noted that the Second Contract does not indicate the law applicable thereto. However, Art. 4 sec. d) and Art. 5 sec. c) of the Second Contract directly oblige the Parties to respect *inter alia* regulations of FIFA.

150. The Sole Arbitrator further notes that the Appellants explicitly refer to the provisions of Swiss law at para. 174 of the Statement of Appeal and the Respondent does not raise any objections thereto.

151. The Sole Arbitrator is therefore satisfied that the various regulations of FIFA are primarily applicable to the merits of the Appeal, especially FIFA RSTP effective as of 1 June 2019. Taking into consideration the abovementioned circumstances as well as cited provisions of the FIFA Statutes, the CAS Code and the Second Contract, the Sole Arbitrator holds that Swiss law shall be subsidiarily applicable, should the need arise to supplement the provisions of the FIFA regulations.

IX. MERITS

152. The Sole Arbitrator notes that the question underlying the present dispute is whether the Player had just cause to terminate the Second Contract and, consequently, what shall be the financial consequences of such termination for all of the Parties.

153. As established above, the merits of the dispute have been evaluated by the Sole Arbitrator in accordance with the applicable FIFA regulations, and subsidiarily with Swiss law.

A. Just cause to terminate the Second Contract

154. In order to establish whether there existed a just cause to prematurely terminate the Second Contract, it is necessary to observe what are the fundamental obligations of the parties to a contractual relationship under a professional football player's contract. It shall be observed, that the elementary obligation of professional football clubs towards their players is the payment of an agreed remuneration, unless any extraordinary circumstances rendering such remuneration undue occur. This is further confirmed in Art. 12bis par. 1 of FIFA, according to which:

"1. Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements".

155. On the other hand, the fundamental obligation of players is to perform football activities for the club and to comply with other particular obligations stipulated in a contract.

156. Contractual stability is one of the underlying principles of FIFA legal framework. In this context, Art. 13 of FIFA RSTP establishes that:

"A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement".

157. However, as an exception to the abovementioned principle, FIFA RSTP envisages certain situations in which either party may for valid reasons prematurely terminate a contractual relationship. The legal basis for such premature termination of a contract is laid down in Art. 14, Art. 14bis and Art. 15 of FIFA RSTP. Nonetheless, the Sole Arbitrator notes that Art. 15 of FIFA RSTP is not applicable to the matter at hand, therefore will not be examined.

158. Accordingly, Art. 14 par. 1 and 2 of FIFA RSTP provides as follows:

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

2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause".

159. Furthermore, Art. 14bis par. 1 and 2 of FIFA provides as follows:

"1. In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.

2. For any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered. Delayed payment of an amount which is equal to at least two months shall also be deemed a just cause for the player to terminate his contract, subject to him complying with the notice of termination as per paragraph 1 above".

160. Realization of any of the abovementioned courses of events and fulfillment of the conditions set out therein justify in principle unilateral premature termination of the contract. Thus, such justified termination shall not entail negative consequences for the terminating party (either payment of compensation or imposition of sporting sanctions).

161. However, it shall be noted that pursuant to the general principle of freedom of contract, unilateral termination of contract generally brings the contractual relationship to an end, irrespective of whether there existed a just cause. Hence, the existence of just cause to

terminate the contract (or its absence) has an impact only on the financial and sporting consequences of the termination[1].

162. Subsidiarily, the Sole Arbitrator notes that under Swiss law, contractual obligations are primarily governed by the Swiss Civil Code of 10 December 1907 (the "SCC"), in particular by its fifth part – Swiss Code of Obligations (the "SCO"). It is a common view among CAS Panels that a contractual relationship between a player and a club, on the basis of which the player undertakes predominantly to perform for the club sporting activities in consideration of a fixed salary, shall be interpreted in light of the Swiss legal provisions regarding employment relationship, established in Art. 319 of SCO *et seq*[2].

163. Accordingly, the legal basis for premature termination of an employment contract with just cause has been established in Art 337 par. 1 of SCO which provides as follows[3]:

"1. Both employer and employee may terminate the employment relationship with immediate effect at any time for good cause; the party doing so must give its reasons in writing at the other party's request".

164. Furthermore, in lack of corresponding definition in the relevant FIFA regulations, it is useful to refer to Art. 337 par. 2 of SCO, according to which *good cause* is, in particular, any circumstance, in light of which the terminating party cannot in good faith be expected to continue the employment relationship. Lastly, Art. 337 par. 3 of SCO establishes in its relevant part that *"The court determines at its discretion whether there is good cause"*. Application of Art. 337 of SCO with respect to just cause under FIFA RSTP has been broadly confirmed in relevant CAS jurisprudence[4].

165. Finally, the Sole Arbitrator takes note of the importance of the principle of good faith of both parties to the relationship for comprehensive examination of the present dispute. Although FIFA RSTP does not contain an explicit reference to this principle, its essence has been engrained in the abovementioned Art. 14 par. 2 of FIFA RSTP. Consequently, the Sole Arbitrator finds it appropriate to refer to Art. 2 of SCC, according to which:

"1. Every person must act in good faith in the exercise of his or her rights and in the performance of his or her obligations.

2. The manifest abuse of a right is not protected by law".

166. Therefore, legal protection of actions that are conducted manifestly without good faith is excluded.

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[1] Cf. CAS 2014/A/3626, Award of 23 April 2015.
[2] Cf. CAS 2008/A/1519 & CAS 2008/A/1520, Award of 19 May 2009; CAS 2014/A/3626, Award of 23 April 2015.
[3] English translation of cited provisions of the Swiss Civil Code and the Swiss Code of Obligations come from the official website of the Swiss government: https://www.fedlex.admin.ch/en/cc/internal-law/2.
[4] See *inter alia*: CAS 2006/A/1180, Award of 24 April 2007; CAS 2013/A/3216, Award of 14 May 2014; CAS 2018/A/6050, Award of 18 September 2018.

167. In the present case, the Player terminated the Second Contract indicating as just cause the unpaid salaries and the abusive conduct of the Club resulting from the Club's lack of payment of such salaries. It has been proven to the comfortable satisfaction of the Sole Arbitrator that the outstanding remuneration due to the Player amounts to EUR 62,500. At the same time, the evidentiary proceedings of this arbitration revealed that the Club might also be in default of payment of the additional receivables – match bonuses – offered to its players, including the First Appellant, on an *ad hoc* basis. However, the exact amount of the bonuses due to the First Appellant has not been sufficiently demonstrated.

168. The evidence submitted in the present proceedings, including witness statements and WhatsApp messages, indicate a pattern of behaviour of the Club which offered to its players certain bonuses for certain matches. Nonetheless, it has not been proven to the comfortable satisfaction of the Sole Arbitrator to which exact matches and offered bonuses do the claimed amounts of TRY 80,355 for the 2017/2018 football season and TRY 145,000 for the 2018/2019 football season pertain.

169. The Sole Arbitrator finds it useful to refer to one of the recent CAS awards[5] in which the CAS Panel noted that in order for a bonus to be considered as an element of salary, it is necessary to establish whether such bonus is determined or objectively determinable. If the bonus is explicitly determined or at least objectively determinable, it shall be considered as a part of the salary. However, the Sole Arbitrator notes that in the present case the Bonuses were not determined, since they were included neither in the First and the Second Contract nor in any internal regulations of the Club. Equally, on the basis of the evidence submitted in the present arbitration, the Sole Arbitrator concludes that claimed Bonuses are not objectively determinable. Consequently, the amounts of claimed Bonuses cannot be considered as part of the outstanding salaries of the First Appellant within the meaning of Art. 14bis of FIFA RSTP.

170. It shall therefore be established whether the amount of outstanding remuneration resulting from the Second Contract - EUR 62,500 - meets the requirement set out in Art. 14bis par. 1 or par. 2 of FIFA RSTP, i.e. whether it is equal or corresponds to at least two monthly salaries of the Player.

171. Accordingly, the Sole Arbitrator notes that pursuant to Art. 3 par. 1 of the Second Contract, the total remuneration due to the Player for the 2018/2019 football season amounts to EUR 400,000. The Sole Arbitrator further agrees with the Appellants that the equivalent of two monthly salaries of the Player shall be calculated on a *pro rata* basis, as the total remuneration due for this season has not been strictly divided in monthly installments. However, wording of Art. 3 par. 1 of the Second Contract does not allow the Sole Arbitrator to consider the amount of EUR 50,000 payable until 15 July 2018 as an autonomous signing fee. The structure of this provision indicates that it forms an integral part of the total remuneration due for the season in question. Consequently, in order to establish the value corresponding to two monthly salaries of the Player, the amount of EUR 400,000 shall be divided by 12 (twelve). As

[5] TAS 2019/A/6421, non-public Award of 17 June 2020.

a result, the Sole Arbitrator finds that the equivalent of two monthly salaries of the Player amounts to EUR 66,666.

172. On the basis of the foregoing, the Sole Arbitrator determines that the requirement set out in Art. 14bis par. 2 of FIFA RSTP regarding the amount of the outstanding salaries necessary for the just cause to terminate the contract to occur has not been met and proven to the comfortable satisfaction of the Sole Arbitrator.

173. Furthermore, the Sole Arbitrator finds it important to note that Art. 14 and Art. 14bis of FIFA RSTP establish separate, autonomous legal basis for termination of contract with just cause. More specifically, while Art. 14 of FIFA RSTP provides a general basis for termination of a contract with just cause determined on a *case-by-case* basis, Art. 14bis establishes specific requirements for termination of a contract due to the players' unpaid receivables. As a consequence, termination of a contract for outstanding salaries may, in principle, only be made, if it complies with conditions set out in Art. 14bis of FIFA RSTP. The mere fact that the club has failed to pay the player's salaries does not justify termination of the contract pursuant to Art. 14 of FIFA RSTP. Accordingly, non-payment of the Player's remuneration, although constitutes a reprehensible conduct, does not automatically amount to an abusive conduct referred to in Art. 14 par. 2 of FIFA RSTP.

174. Nonetheless, the Sole Arbitrator notes that the evidence submitted in these proceedings indicates that neither the First Appellant nor the Respondent demonstrated the will to continue the contractual relationship under the Second Contract, on the contrary, the executed proceeding has proven the completely opposite motivation of the First Appellant and Respondent.

175. The Sole Arbitrator finds it apparent that a conflict has arisen between the First Appellant and the Respondent, resulting in the commencement of negotiations for the termination of the Second Contract. The Sole Arbitrator is comfortably satisfied that the Club's aim was to persuade the Player to renounce his right to remuneration that has already been earned. Such behaviour of the Club is reprehensible and stays in the opposition to the principle of good faith. The Sole Arbitrator notes that legitimate requests of a contractual party shall be considered and, where possible, respected. However, as already noted, conduct that is manifestly contrary to good faith shall not be granted legal protection. The Sole Arbitrator finds that conduct of the Club consisting in requesting the Player to renounce his right to remuneration for the already provided football services constitutes a manifest expression of lack of good faith. Furthermore, the fact that the Club conditioned termination of the Second Contract solely upon the Player's waiver of the right to receive due remuneration clearly indicates that it was not willing to continue the contractual relationship with the Player.

176. On the other hand, the Sole Arbitrator notes that the Player similarly expressed his lack of will to continue the contractual relationship with the Club since he decided to unilaterally terminate the Second Contract although it was uncertain whether the outstanding receivables of the Player meet the requirements set out in Art. 14bis of FIFA RSTP.

177. The Sole Arbitrator therefore determines that the First Appellant and the Respondent demonstrated their mutual will to terminate the Second Contract prematurely.

178. At this point, the Sole Arbitrator finds it appropriate to refer to the disputed issue of delivery of the Default Notice. It shall be noted that Art. 14bis par. 1 of FIFA RSTP provides that prior to the termination of a contract, the player shall *"put the debtor club in default in writing and [grant] a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s)"*. Therefore, the applicable FIFA regulations condition termination of a contract with just cause for outstanding salaries on a prior notification of the club which complies with requirements set out therein. In respect of the formal requirements of such notification, Art. 14bis par. 1 of FIFA RSTP stipulates that it shall be made *in writing*. However, it does not pose any particular conditions regarding the required methods of its delivery. Consequently, the Sole Arbitrator determines that pursuant to Art. 14bis par. 1 of FIFA RSTP, as long as the club effectively receives a written notification from the player regarding the outstanding salaries, irrespective of the method of its delivery, such written notification shall be considered properly delivered.

179. In this respect, the Respondent argues that delivery of the Default Notice shall comply with Turkish Notification Law (No: 7201) according to which any post and notifications sent to a legal person shall be delivered to a person duly authorized to represent the former. However, the Sole Arbitrator once again notes that the Second Contract does not indicate the law applicable to this contractual relationship and refers neither to Turkish law in general, nor to Turkish Notification Law in particular. Moreover, no delivery procedure has been described and agreed in the contract.

180. Taking into consideration the foregoing, the Sole Arbitrator notes, without determining whether introduction of stricter requirements of the abovementioned written notification than these envisaged in Art. 14bis par. 1 of FIFA RSTP shall be permitted, that any laws and regulations which the parties to a contract consider applicable to their contractual relationship shall explicitly be referred to in such contract.

181. It has been proven to the comfortable satisfaction of the Sole Arbitrator that the Default Notice has been sent by the First Appellant's representative as a registered letter on 31 May 2019 at 17:58, and delivered to the Respondent on 17 June 2019 at 15:01. Therefore, the Sole Arbitrator determines that the First Appellant has met the requirement set out in Art. 14bis par. 1 of FIFA RSTP regarding prior written notification of the Respondent.

182. The Sole Arbitrator finally notes that CAS jurisprudence has developed over the years a model of mutual contribution of the parties to termination of a contract[6]. Accordingly, the CAS Panel in its Award of 23 April 2015 in case CAS 2014/A/3626 found that *"both parties' behaviour led to the situation in which termination of the Contract was declared by the Player"* and that *"the Panel, in the exercise of its discretion, holds in fact that the termination of the Contract was justified, i.e. that it was for "just cause", since the Player could in good faith and objectively believe that the continuation of the employment*

[6] Cf. CAS 2003/O/453, non-public Award of 11 November 2003; CAS 2015/A/3955 & CAS 2015/A/3956, Award of 29 January 2016; CAS 2014/A/3626, Award of 23 April 2015.

relationship was not possible (Article 337 para. 2 CO), but that such "just cause" does not consist solely in a Respondent's breach of the Contract – as it was the result of a unique, objective situation to which both parties equally contributed".

183. The Sole Arbitrator determines that the situation underlying the present dispute is of a similar character. On the one hand, the Player decided to unilaterally terminate the Second Contract, although it was uncertain whether his outstanding receivables meet the requirements set out in Art. 14bis of FIFA RSTP, i.e. correspond to two monthly salaries. The Sole Arbitrator finds that the amount of remuneration due explicitly on the basis of the Second Contract – EUR 62,500 – did not meet this requirement, and the amount of claimed Bonuses has not been sufficiently substantiated. Therefore, the Sole Arbitrator determines that termination of the Second Contract by the Player did not comply with Art. 14bis of FIFA RSTP.

184. On the other hand, the Club's behaviour led to the situation in which termination of the Second Contract was declared by the Player. It has been proven to the comfortable satisfaction of the Sole Arbitrator that there existed an apparent pattern of the Club to offer to its players numerous *ad hoc* bonuses. The evidentiary proceedings revealed that the Club is in fact likely to be in default of payment of certain bonuses to the Player. Furthermore, the Club has demonstrated lack of good faith towards the Player by requesting him to renounce the right to remuneration that has already been earned and due for the 2018/2019 football season, as well as conditioning on it the negotiations on mutual termination of the Second Contract. The Sole Arbitrator further notes that despite the Club's acknowledgement of its debt towards the Player in the amount of EUR 62,500, it nonetheless deliberately did not pay such salaries.

185. In light of the foregoing, the Sole Arbitrator finds that both the First Appellant and the Respondent clearly demonstrated lack of will to continue their contractual relationship. Accordingly, the Sole Arbitrator determines that neither of the parties could be expected to continue the contractual relationship in good faith due to an objective situation to which both Parties contributed.

B. Financial consequences of termination of the Second Contract

186. In order to establish what shall be the financial consequences of termination of the Second Contract by the Player, the Sole Arbitrator primarily observes that both FIFA regulations and applicable provisions of Swiss law provide for mechanisms designed to establish such financial consequences, although with different application range.

187. Accordingly, Art. 17 par. 1 of FIFA RSTP provides in its relevant part:

"The following provisions apply if a contract is terminated without just cause:

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

due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period.

Bearing in mind the aforementioned principles, compensation due to a player shall be calculated as follows:

[…]

ii. in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract".

188. It shall be noted that Art. 17 par. 1 of FIFA RSTP provides for a set of criteria applicable for calculation of compensation for damages incurred due to termination of a contract. However, the Sole Arbitrator notes that its provisions apply only when such termination is exercised because of (or through) a breach committed by one of the parties. It does not encompass cases in which both parties contribute to a situation that ultimately lead to termination of the contractual relationship.

189. In light of the foregoing, the Sole Arbitrator finds it necessary to refer to Art. 337b of SCO which provide as follows:

"1. Where the good cause for terminating the employment relationship with immediate effect consists in breach of contract by one party, he is fully liable in damages with due regard to all claims arising under the employment relationship.

2. In other eventualities the court determines the financial consequences of termination with immediate effect at its discretion, taking due account of all the circumstances".

190. In case termination of the employment relationship occurs due to circumstances that are not attributable exclusively to one party, the above-mentioned Art. 337b par. 2 of SCO authorizes the judicial body to determine the financial consequences of such termination at its discretion, taking into account all circumstances of the case. Application of Art. 337b par. 2 of SCO in situations of this kind with respect to contractual relationships governed by FIFA regulations has been confirmed in relevant CAS jurisprudence[7]. Furthermore, the Sole Arbitrator finds it useful to refer to Award of 29 January 2016 in case CAS 2015/A/3955 & CAS 2015/A/3956 in which the CAS Panel found that:

[7] Cf. *inter alia* CAS 2014/A/3626, Award of 23 April 2015.

"la Formation considère qu'il est nécessaire de rappeler que, selon l'article 44 alinéa 1 du Code des Obligations suisse ("CO") "Le juge peut réduire les dommages-intérêts, ou même n'en point allouer, lorsque la partie lésée a consenti à la lésion ou lorsque des faits dont elle est responsable ont contribué à créer le dommage, à l'augmenter, ou qu'ils ont aggravé la situation du débiteur". Une ratio legis très similaire est à la base de l'article 337b du même Code […]".

which may be translated as follows:

"the Panel considers it necessary to recall that pursuant to article 44 par. 1 of Swiss Code of Obligations ("CO") "The court may reduce the compensation due or even refuse to order it, if the party suffering damage consented to such damage or if circumstances attributable to this party contributed to the very creation of damage, to its increase or to the worsening of the situation of the debtor". Very similar ratio legis forms basis of article 337 of the same Code […]".

191. In the present case, the Sole Arbitrator determines that no compensation is due to the First Appellant, as termination of the Second Contract pursuant to Art.14bis of FIFA RSTP did not meet the requirements set out therein, i.e. the value of outstanding salaries (EUR 62,500) did not correspond to two monthly salaries of the Player (EUR 66,666) and thus the just cause could not be established.

192. On the other hand, assessing the Respondent's requests regarding compensation ordered in the Appealed Decision, the Sole Arbitrator notes that each party lodging certain claims has both a right and an obligation to prove them. The Sole Arbitrator further determines that in order for a club to obtain compensation for damages suffered due to termination of a contract by a player, it is insufficient to simply quote the values of the existing and/or new contract and to invoke applicable FIFA regulations. Undeniably, Art. 17 par. 1 of FIFA RSTP provides for certain criteria for calculation of due compensation. However, this fact does not exempt the parties from the obligation to prove the damages effectively incurred.

193. It results from the well-established CAS jurisprudence that determination of due compensation shall follow the principle of *"positive interest",* according to which compensation shall be aimed at reinstating the injured party to the position in which it would have been, had the contract been fulfilled until its end[8]. One of the consequences of application of the abovementioned principle is that the party claiming compensation shall submit evidence demonstrating the situation in which it would have been, had the contractual relationship continued, as well as the damages objectively suffered.

194. The Sole Arbitrator notes that in the present case the Respondent did not make any attempt to prove that it had suffered any damage due to termination of the Second Contract by the Player. On the contrary, the Respondent's behaviour towards the Player before such termination occurred, and the line of argumentation advanced by the Respondent throughout these proceedings clearly reveal that it was the Respondent's will to bring the contractual

[8] Cf. CAS 2008/A/1519 & CAS 2008/A/1520, Award of 19 May 2009; CAS 2013/A/3411, Award of 9 May 2014; CAS 2017/A/5164, Award of 2 March 2018; CAS 2017/A/5366, Award of 7 August 2018.

relationship with the Player to an end and rather save remuneration due for the First Appellant than incur costs.

195. Furthermore, the Respondent restricted its pleadings and submissions pertaining to its request for compensation to simply request from CAS *"to accept the Respondent's claims regarding the 350.000,00-TL compensation from remaining contractual period"*. Without contemplating whether this statement constitutes a modification of claim, the Sole Arbitrator notes that the Respondent is inconsistent in indicating the currency, and consequently the amount of compensation claimed.

196. It stems from the consistent CAS case-law that *"other objective criteria"* referred to in Art. 17 par. 1 of FIFA RSTP might - among others - pertain to losses from a future transfer of the player, his replacement costs as well as losses resulting from agreements with third parties, such as sponsorship agreements[9]. However, the Respondent did not submit any evidence demonstrating that it has objectively incurred any losses due to termination by the Player of the Second Contract.

197. As a consequence, bearing in mind the Respondent's attitude towards the First Appellant before termination of the Second Contract, the Sole Arbitrator finds that the Respondent benefited from discontinuation of the contractual relationship with the Player rather than suffered any objective financial losses.

198. In light of the foregoing, it has not been proven to the comfortable satisfaction of the Sole Arbitrator that the Respondent is entitled to receive compensation from the First Appellant, as it has substantially contributed to the situation which led to termination of the Second Contract by the Player. Similarly, the Respondent has failed to demonstrate the amount of compensation due for the damages effectively incurred. Therefore, no compensation shall be awarded in favour of the Respondent.

199. At this point the Sole Arbitrator would like to take note of the fact that proceedings before FIFA and CAS have, in principle, a different scope. While proceedings before FIFA Dispute Resolution Chamber shall, as a general rule, be conducted in writing (Art. 8 of FIFA Procedural Rules), proceedings before CAS by default comprise both written submissions and an oral hearing (Art. R44.1 of CAS Code). Thus, the tools at the CAS Panel's disposal are by definition broader, more in-depth and by default allow the Panel to examine the case more thoroughly. This opportunity at the same time imposes an obligation on CAS Panels reviewing decisions of FIFA judicial bodies to conduct further-reaching examination of the case, including verification of the parties' written submissions in the following oral hearing. This is the reason why cases referred to FIFA judicial bodies, even if decided in proceedings conducted to the best of their capacities, are reviewed by CAS *de novo*.

[9] See: preceding references.

200. In light of the foregoing, in the present case the Sole Arbitrator decides to uphold the Appealed Decision in principle, amending however the financial consequences of termination of the Second Contract for the First Appellant and the Respondent.

201. Accordingly, the Sole Arbitrator decides that the Respondent shall pay to the First Appellant the outstanding salaries in the amount of EUR 62,500, with interest accrued as established in the Appealed Decision. On the other hand, the Sole Arbitrator finds that no payment of compensation shall be ordered in favour of any Party with respect to termination of the Second Contract.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 10 July 2020 by Mr Helder Jorge Leal Rodrigues Barbosa and Hatayspor Club Association against the decision rendered by the FIFA Dispute Resolution Chamber on 20 May 2020 is partially upheld.

2. The decision of the FIFA Dispute Resolution Chamber rendered on 20 May 2020 is modified by the replacement of paras 9 to 20 as follows:

    a. Mr Helder Jorge Leal Rodrigues Barbosa shall not pay to Akhisar Belediye Genclik ve Spor Kulubu any compensation for breach of contract;

    b. Hatayspor Club Association shall not be jointly and severally liable.

3. (…).

4. (…).

5. All other motions or prayers for relief are dismissed.