Arbitration CAS 2016/A/4678 Balikesirspor FC v. Ermin Zec, award of 10 March 2017

Panel: Mr Lars Hilliger (Denmark), President; Prof. Petros Mavroidis (Greece); Mr Bernhard Welten (Switzerland)

Football
Termination of an employment contract with just cause by the player
Late payment or non-payment of the remuneration
Effect of the relegation to a lower league on the agreed remuneration
Assessment of the amount of compensation for damages in case the playing category of the club is uncertain
Mitigation of damage

1. **The non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated - constitute 'just cause' for termination of the contract. The relevant criterion is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be 'insubstantial' or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning.**

2. **Although, pursuant to article 341 paragraph 1 of the Swiss Code of Obligations (CO), an employee may not waive any claim resulting from mandatory provisions of law during the course of an employment relationship and for one month after its termination, article 341 paragraph 1 CO does not basically prevent an employer and an employee from agreeing that certain circumstances beyond the control of both parties should result in a forward-looking change of the agreed remuneration. The reason for this is that article 341 paragraph 1 CO limits the binding effect to mandatory rights; however, the employee's future salary is no such mandatory right. Therefore, a contractual provision to the effect of which the remuneration of a player is reduced should the club be relegated to a lower division, is valid.**

3. **If it is the club that terminated a contract of employment which provided that in case the club would be playing in a lower division, the remuneration of the player would be reduced, and if it remains unresolved for the upcoming season(s) during which the player was still under contract, at which level (upper or lower division) the club will be playing, it is the club that should rightfully bear the risk of its actual ranking in the national championship, in the way that for the calculation of the compensation due to the player for the upcoming season(s), it must be assumed that the club will be playing in the upper division. The question of whether or not the club is potentially entitled to**

a repayment of some of this amount once the level of playing of the club is determined, remains open.

4. **According to article 337c para. 2 CO, the employee must permit a set-off against the amount of compensation for what he saved because of the termination of the employment relationship, what he earned from other work, or what he has intentionally failed to earn. Such a rule implies that, in accordance with the general principle of fairness, the injured player must act in good faith after the breach by the club and seek other employment, showing diligence and seriousness. The duty to mitigate should not be considered satisfied when, for example, the player deliberately fails to search for a new club or unreasonably refuses to sign a satisfactory employment contract, or when, having different options, he deliberately accepts to sign the contract with less favourable financial conditions, in the absence of any valid reason to do so. However, the fact that a player did in fact sign two new employment contracts during the original contract period, pursuant to one of which he actually received the same remuneration as he would have been entitled to receive pursuant to the original contract, is enough to consider that the player has fulfilled his obligation to mitigate his loss.**

I. THE PARTIES

1. Balikesirspor FC (the "Club" or "Appellant") is a Turkish professional football club actually playing in the Turkish 1. Lig after being relegated from the Turkish Süper Lig at the end of the 2014/15 season. The Club is affiliated with the Turkish Football Federation (the "TFF"), which in turn is affiliated with FIFA.

2. Mr Ermin Zec (the "Player" or "Respondent") is a Bosnian professional football player, currently playing for Kardemir Karabükspor in the Turkish Süper Lig.

II. FACTUAL BACKGROUND

3. The elements set out below are a summary of the main relevant facts as established by the Panel on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (the "DRC") on 28 January 2016 (the "Decision"), the written submissions of the Parties and the FIFA file. Additional facts may be set out, where relevant, in the legal considerations of the present Award.

4. On 23 January 2015, the Parties entered into an employment agreement valid as from the date of signing until 31 May 2018 (the "Contract").

5. According to Clause 3 of the Contract, the Player was entitled to receive, *inter alia*, the following net remuneration:

   - Season 2014-15: four monthly salaries of EUR 50,000 payable from 25 February 2015 until 25 May 2015;

- Season 2015-16: ten monthly salaries of EUR 60,000 payable from 25 August 2015 until 25 May 2016;
- Season 2016-17: ten monthly salaries of EUR 60,000 payable from 25 August 2016 until 25 May 2017;
- Season 2017-18: ten monthly salaries of EUR 60,000 payable from 25 August 2017 until 25 May 2018.

6. Furthermore, the Player was entitled *"to receive match bonuses in accordance with the sports club regulations (for U-21 Team compensation and Cup competitions, premium and special bonuses do not have any validity)*, and the Contract further stated that *"Football player in a lower League Team for the duration of the contract to drop EUR 200,000 if paid by the Club is [frced]"* (Clause 3.7) and *"If in case of getting out of the Super Lig, player wanted to stay in 1. PTT Lig, the contract will be reduced on EUR 300.000 per season"* (Clause 3.9).

7. The Contract further stated, *inter alia*, that the Club should be obliged to *"ensure accurate and timely payment of all salaries (regular, monthly, weekly and performance based) under this contract"* and *"to respect the Statutes, Regulations, including the Code of Ethics and Decisions of FIFA, UEFA and TFF …"* (Clause 6), and also emphasised that the Player should be obliged to *"respect the Statutes, Regulations, including the Code of Ethics and Decisions of FIFA, UEFA and TFF…"* (Clause 7).

8. On 5 May 2015, the counsel of the Player, acting on behalf of the Player, sent a default letter to the Club, claiming that the Club had defaulted on its payment of the Player's salaries for February, March and April 2015 in the amount of EUR 150,000, and requesting payment of the said salaries on or before 12 May 2015.

9. By fax letter of 7 May 2015, the counsel of the Player, acting on behalf of the Player and acknowledging receipt of EUR 15,000 from the Club requested the Club to pay the remaining outstanding salaries in the amount of EUR 135,000 on or before 12 May 2015, stating, *inter alia*, as follows:

   "On the other hand please inform us what the sporting and legal situation of your club towards the player in particular. Do you want to retain the service of the player? Finally, if we don't receive the remaining balance of EUR 135,000 and/or we don't receive any answer to our questions above by "12 May 2015" then the player unilaterally terminate the employment relationship with Balikesirspor for just cause, without further warning".

10. By fax letter of 15 May 2015, the Player's counsel acknowledged receipt of an additional EUR 20,000 from the Club and requested the Club to pay the remaining outstanding salaries in the amount of EUR 115,000 on or before 22 May 2015, stating, *inter alia*, as follows:

    "On the other hand it was clear that you didn't respond my previous letter on 7 May 2015. So I assume and accept that the partial payment of EUR 15,000 and EUR 20,000 as the part of first due salary February. Furthermore, please inform us what is the sporting and legal situation of your club towards the player in particular. Do you want to retain the service of the player? In case of silence the player will assume that the club is not interested in his services. In view of the above, if we don't receive the remaining balance of EUR 115,000

by "22 May 2015" then the player unilaterally terminate the employment relationship with Balikesirspor for just cause, without further warning".

11. Finally, by fax letter of 27 May 2015, the Player's counsel acknowledged receipt of an additional EUR 25,000 from the Club and requested the Club to pay the now remaining outstanding salaries in the amount of EUR 140,000 on or before 29 May 2015, stating, *inter alia*, as follows:

"First, considering the latest partial payments made by the Club to the Player on 14 May (EUR 20,000) and 21 May 2015 (EUR 25,000), I was instructed by Mr. Ermin Zec to draw your attention, for the last time, to the fact that, despite his default letters dated 5,7 and 15 May 2015, the Club is still in arrears of the following uncontested payments due to him:

EUR 40,000 net for the March 2015 salary, due on 25.03.2015,

EUR 50,000 net for the April 2015 salary, due on 25.04.2015,

Second, as of today the May 2015 salary (EUR 50,000 net) which will be paid on 25 May 2015 is also outstanding and due.

If the Club does not agree with the above assessment, it has until 29 May 2015, at the latest, to make a written statement to this regard. The silence will be interpreted by the Player as renouncement of the right to defence by the Club (cf. the principle of estoppel by silence and the related principle of venire contra factum proprium).

A partial payment will not be considered by the Player as discharge of the Club's duty to remunerate him. In fact, the Player interprets the belated payments of the outstanding sums to him on 14 and 21 May 2015 as a reaction to his default letters dated 5,7 and 15 May 2015, designed to avoid the Player being able to make good a charge that it was the Club, not he, who was in breach of the Employment Contract. Be that as it may, the Player finds – critically – that the club has always accepted – and accepts – an obligation to pay the Player for these months.

In this respect, I am bound to remind you that the case law distinguishes two types of breach of contract: (i) the fundamental breach which constitutes a just cause for immediate termination; and (ii) the minor breach which is sanctioned by a warning and, if it occurs again, might justify an immediate termination. In this context, it is also possible that a minor breach which happens frequently may result in a situation that justifies an immediate termination of the employment contract (as in the present case). Pursuant to the longstanding FIFA jurisprudence, the employer's payment obligation is his main obligation towards the employee. As a general rule, that club's persistent non-compliance with its financial obligations towards a player without just cause is to be considered as an unjustified breach of an employment contract by the club.

Third, in the latter default letter of 7 and 15 May 2015, I explicitly asked you on behalf of the Player to clarify his sporting and legal situation at the Club, particularly whether you want to retain his services for the forthcoming 2015/16 season, as your conclusive behaviour speaks otherwise. I expressly stated that the silence on the part of the Club will be interpreted as lack of interest in the Player's services. The Club negligently hindered this request and did not reply by 22 May 2015.

Therefore, I hereby ask you on behalf of the Player, ***for the last time****, to clarify his sporting and legal position at the Club for the forthcoming 2015/16 season, in particular, whether the Club is interested in pursuing the Employment Contract and in the Player's services thereof. I would be grateful if you confirm in writing that the Club will register the Player with TFF for the next season.*

I case I do not hear from you until 29 May 2015, at the latest, the Player will interpret the Club's silence as a lack of interest in his services and in the performance of the Employment Contract by the Club. It is the last opportunity for the Club to rebut this legitimate presumption.

Finally, I was instructed to inform you that the persistent breaches of the financial terms of the Employment Contract by the Club, coupled with the uncertainty created in the Player regarding the performance of the Employment Contract by the Club in the future, are causing the Player to lose the confidence and trust he had in the performance of the said contract by the Club, which entitles him to terminate the contract for just cause with immediate effect.

Therefore, I hereby give you ***ultimate deadline until 29 May 2015*** *to put things right, i.e. to pay the Player the outstanding salaries in the amount of* ***EUR 140,000*** *net detailed above, in full, as well as to declare in writing your interest in the Player's services and in the performance of the Employment Contract in the upcoming 2015/16 season, failing which the Player will terminate the Employment Contract without further warning, pursuant to Article 14 of the FIFA Regulations on the Status and Transfer of Players.*

I stress the seriousness of this final notice*".*

12. On 2 June 2015, and without having received any further payments from the Club, the Player prematurely and unilaterally terminated the Contract by fax letter, stating, *inter alia*, the following:

"I refer to the Employment Contract entered between ***Bosnia and Herzagovina*** *player, Mr.* ***Ermin Zec****, and Balikesirspor Kulübü from from 23.01.2015 until 31 May 2018. I refer also to the warnings sent, to Balikesirspor Kulübü on 5, 7 and 15 May and, in particular, to the final warning of 27 May 2015, which all remained negligently hindered by the Club.*

To date, Balikesirspor Kulübü is in arrears of payments of nearly three months of the player's salary (i.e. EUR 140,000 net) as follows, EUR 40,000 net for the March 2015 salary due on 25.03.2015; EUR 50,000 net for the April 2015 salary due on 25.04.2015; EUR 50,000 net May 2015 salary due on 25.05.2015, pursuant to article 3 of the Employment Contract.

Furthermore, Balikesirspor Kulübü did not answer to the player's request for clarification of his sporting and legal situation at the club for the next season, which he interprets as lack of interest in his services by the club.

Balikesirspor Kulübü persistent non-compliance with its financial obligations in connection with the Employment Contract and its lack of interest in the player's services for the next season caused the player Mr. Ermin Zec to lose the confidence he had in the future performance of the Employment Contract by Balikesirspor Kulübü, which entitles him to step out from the Employment Contract with just cause immediately.

On account of the above, I hereby unilaterally terminate the Employment Contract for just cause, with immediate effect, based on Article 14 of the FIFA Regulations on the Status and Transfer of Players.

I hereby request payment by Balikesirspor Kulübü of the outstanding amount as well as of the residual value of the Employment Contract ***immediately****. Otherwise, I will submit the labour dispute to the FIFA Dispute Resolution Chamber* ***without further warning****".*

13. By a resolution of 9 June 2015 by the board of directors of the TFF, the Club, due to its sporting results in the 2014-2015 season, was relegated to the PTT 1. League (i.e. Turkish second division) starting from the beginning of the 2015-2016 season. The Club is still today (2016-17 season) playing in the PTT 1. League.

14. On 22 June 2015, the Player lodged a claim for breach of contract against the Club before the FIFA Dispute Resolution Chamber (the "FIFA DRC") and requested the following net payments from the Club:

1. The Respondent, Balikespor, has to pay to the Claimant, Ermin Zec, the amount of ***EUR 140,000*** *as outstanding salaries, plus interest of 5% p.a. as follows:*

a. On EUR 40,000 as of 26 March 2015;
b. On EUR 50,000 as of 26 April 2015;
c. On EUR 50,000 as of 26 May 2015.

3. The Respondent has to pay the Claimant the amount of ***EUR 1,800,000*** *as compensation for breach of contract, plus interest of 5% p.a. accrued since 3 June 2015 until the date of effective payment.*

4. All the payments above shall be made ***on a net basis, free of any taxation****, The Respondent being responsible for the filing and payment of all taxes relating to these payments due to the Claimant*

15. In support of his claim, the Player submitted, inter alia, that the termination of the Contract was made with just cause, in particular considering that the Club was already in arrears for a considerable amount, i.e. almost three monthly salaries, and for a significant period of time. Furthermore, the Club never replied to the Player's several default letters.

16. In its reply, the Club first submitted that it had paid EUR 60,000 to the Player, and therefore the amount of EUR 140,000 was still outstanding. However, in its second submission to the FIFA DRC, the Club maintained, *inter alia,* that EUR 60,000 as well as TRY (Turkish Lira) 8,500, which corresponds to EUR 3,000 according to the respondent, have been paid to the Claimant for the 2014-15 season. In view of this fact, the Respondent holds that an amount of EUR 137,000, corresponding to less than three monthly salaries, is outstanding and that consequently, the Claimant did not have just cause to terminate the contract. In support of its assertions, the Respondent submitted the following bank receipts:

- Receipt dated 3 February 2015 in the amount of TRY 3,500 as "wage payment"
- Receipt dated 1 April 2015 in the amount of TRY 5,000 as "bonus payment"
- Receipt dated 28 April 2015 in the amount of EUR 15,000 as "wage payment"
- Receipt dated 14 May 2015 in the amount of EUR 40,000 as "wage payment"
- Receipt dated 21 May 2015 in the amount of EUR 25,000 as "wage payment".

17. Furthermore, the Club insisted that the Player had failed to comply with his obligations pursuant to the Contract, and in particular with the Regulations of the TFF, which require the default

letter to be issued "by notary", which is why the Contract is still in force and any termination made in violation of the TFF Regulations would be deemed a termination without just cause.

18. In addition, the Club made reference to article 12bis paragraph 3 of the FIFA Regulations on the Status and Transfer of Players (the "Regulations"), according to which the deadline given to the Club to fulfil its obligation must be at least ten days, which was not respected by the Player in his fax letter of 27 May 2015, and the Club therefore cannot be considered to have overdue payables. Finally, the Player is not entitled to claim compensation for breach of contract, since he never suffered any damage, and in any case, the Club's relegation and the content of Clause 3.9 of the Contract, as well as the Player's new Contract should be taken into account.

19. In his replica, the Player submitted that the Club never submitted documentation to prove that the Contract was not terminated in accordance with the TFF Regulations and that, in any case, such regulations are not applicable to this case. Furthermore, since his claim is based on article 17 of the Regulations, TFF Regulations are not applicable. In any case, since the Player in fact gave the Club a deadline to comply with its obligations on several occasions, the Club was de facto given a deadline of more than 10 days.

20. With regard to the payments made in TYR, the Player asserted that these are not related to the monthly salaries pursuant to the Contract, but constitute payments of performance-related bonuses made in accordance with Clause 3 of the Contract and the Club's own sports regulations. Finally, Clause 3.9 of the Contract is not applicable since the Club never filed any proof that the cumulative conditions in the said clause were fulfilled.

21. In its duplica, the Club submitted that it was up to the Club to decide in which currency payments were made, and the payments made in TYR constitute salary payments. Finally, the Club presented a document confirming its relegation to the Turkish second division (1. PTT Lig) at the end of the 2014-2015 season.

22. On 24 July 2015, the Player and the Azerbaijani football club Gabala SC signed an employment contract valid from its date of signature until 30 June 2016, and according to which the Player should receive a total remuneration of USD 425,000.

23. The FIFA DRC, after having confirmed its competence, concluded that the 2015 edition of the Regulations was applicable to the case.

24. The FIFA DRC then took note that on 2 June 2015, the Player terminated in writing the contractual relationship with the Club after having put the latter in default on four occasions. With regard to the Club's argument as to the alleged invalidity of the said default letters, the FIFA DRC noted that the Club actually proceeded to partial payments in reaction to these letters, recognising de facto the validity of the same.

25. With regard to the payments in TRY in the total amount of TR 8,500, the FIFA DRC found that such payments correspond to bonuses the Club freely undertook to pay to the Player in addition to the salary debts it had towards the Player. Since the Club, without any valid reason

and for a considerable amount of time, failed to pay the Player an amount of EUR 140,000 corresponding to part of his salary for March 2015 as well as his salaries for April and May 2015, the FIFA DRC found that the Player had just cause to terminate the Contract unilaterally on 2 June 2015 and that, as a result, the Club should be held liable for the early termination of the Contract without just cause.

26. Having established that the Club is to be held liable for the early termination of the Contract, and taking into consideration article 17 paragraph 1 of the Regulations, the FIFA DRC decided that the Player is entitled to receive from the Club an amount of money as compensation for breach of contract in addition to any outstanding payments on the basis of the Contract. As a consequence and in accordance with the principle of *pacta sunt servanda*, it was decided that the Club is liable to pay the Player the amount of EUR 140,000 as outstanding remuneration.

27. With regard to the compensation payable to the Player, the FIFA DRC firstly recapitulated that, in accordance with article 17 paragraph 1 of the Regulations, the amount of compensation must be calculated, 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, the time remaining of the existing contract up to a maximum of five years, and depending on whether the breach of contract falls within the protected period.

28. Since the Parties had not provided otherwise in the Contract, the FIFA DRC then proceeded with the calculation of the total remuneration to the Player under the terms of the Contract. Finding that the Parties had validly agreed that in case of the Club's relegation, the annual remuneration to the Player should be reduced by EUR 300,000, the FIFA DRC concluded that an annual remuneration of EUR 300,000 would serve as the basis for the determination of the amount of compensation for breach of contract.

29. The FIFA DRC then noted that the Player, according to his statement, had signed a new employment contract with a new club valid as from 24 July 2015 until 30 June 2016. However, as the FIFA DRC also noted that after the breach of the Contract occurred and the termination of the new contract, the Player would be given several opportunities to find a new club and, thus, to mitigate his loss to some extent, the FIFA DRC decided to take into consideration the 2015-2016 and 2016-2017 seasons only in order to establish the residual value of the Contract.

30. Consequently, and considering that, on the one hand, for the 2015-2016 and 2016-2017 season, the Player would have been entitled to receive EUR 600,000 in accordance with the Contract, and that, on the other hand, for the aforementioned period, the Player had secured a remuneration from his new club corresponding to EUR 390,000, the FIFA DRC decided that the Club must pay the amount of EUR 210,000 to the Player, which was considered to be a reasonable and justified amount of compensation for breach of contract.

31. On 28 January 2016, the FIFA DRC issued its decision (the "Decision") stating, *inter alia*, as follows: "

1. *The claim of the [Player] is partially accepted.*

2. *The [Club] has to pay to the [Player]* ***within 30 days*** *as from the date of notification of this decision, outstanding remuneration in the amount of EUR 140,000 plus 5% interest p.a. until the date of effective payment as follows:*

   a) *5% p.a. as of 26 March 2015 on the amount of EUR 40,000;*
   b) *5% p.a. as of 26 April 2015 on the amount of EUR 50,000;*
   c) *5% p.a. as of 26 May 2015 on the amount of EUR 50,000;*

3. *The [Club] has to pay to the [Player]* ***within 30 days*** *as from the date of notification of this decision, compensation for breach of contract amounting to EUR 210,000 plus 5% interest p.a. on said amount as from 22 June 2015 until the date of effective payment.*

4. *In the event that the amounts plus interest due to the [Player] in accordance with the abovementioned points 2. and 3. are not paid by the [Club] within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

5. *Any further claim lodged by the [Player] is rejected.*

6. *…".*

III. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE THE CAS

32. On 27 June 2016, the Appellant filed its Statement of Appeal in accordance with Articles R47 and R48 of the CAS Code of Sports-related Arbitration (the "CAS Code") against the Decision.

33. On 4 July 2016, the Appellant filed its Appeal Brief in accordance with Article R51 of the Code.

34. On 10 August 2016, the Respondent filed his Answer in accordance with Article R55 of the Code.

35. By letter dated 18 August 2016, in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr Lars Hilliger, attorney-at-law in Copenhagen, Denmark, as President of the Panel, Mr Petros C. Mavroidis, Professor at Law in Commugny, Switzerland (nominated by the Appellant), and Mr Bernard Welten, attorney-at-law in Bern, Switzerland (nominated by the Respondent) as arbitrators of the Panel.

36. By letter of 31 October 2016, and following the Parties' submissions on the same issue, the CAS Court Office informed the Parties that the Panel deemed itself sufficiently informed to decide the case and render an award, based solely on the written submissions received without holding a hearing.

37. On 2 November 2016, the Parties provided the CAS Court Office with a copy of the Order of Procedure duly signed by them.

38. By letter of 29 November 2016, and upon instruction from the Panel pursuant to Article R44.3 of the CAS Code, the CAS Court Office invited the Respondent to inform the CAS Court Office whether he signed a new employment contract(s) with a club after the termination of his contractual relationship with the Azerbaijani football club Gabala SC before 30 June 2016 and, in the affirmative, to file a copy of such employment contract(s).

39. By letter of 2 December 2016, the Respondent submitted a copy of his employment contract with the Turkish football club Kardemir Karabük SK valid as from 27 August 2016 until 31 May 2017, according to which the Player would be entitled to a salary of EUR 600,000 net for the 2016-2017 season.

40. By signing the Order of Procedure, the Parties confirmed their agreement that the case should be decided solely on the basis of the written submissions and that their right to be heard had been duly respected.

41. The Panel examined carefully and took into account in its deliberations all the evidence and arguments presented by the Parties, even if they have not been expressly summarised in the present Award.

IV. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

42. Article R47 of the Code states as follows: *"An appeal against the decision of a federation, association or sports-related body may be filed with the 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 him prior to the appeal, in accordance with the statutes or regulations of that body".*

43. With respect to the Decision, the jurisdiction of the CAS derives from art. 67(1) of the FIFA Statutes as it determines that *"*[a]*ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"*. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of CAS, which was furthermore confirmed by the Parties signing the Order of Procedure.

44. The Decision with its grounds was notified to the Appellant on 6 June 2016, and the Appellant's Statement of Appeal was lodged on 27 June 2016, *i.e.* within the statutory time limit of 21 days set forth in art. 67(1) of the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

45. It follows that the CAS has jurisdiction to decide on the Appeal and that the Appeal is admissible.

V. APPLICABLE LAW

46. Article R58 of the Code states 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 the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

47. Art. 66 par. 2 of the FIFA Statutes states as follows: *"The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

48. In his submission, the Respondent maintains that pursuant to Article R58 of the CAS Code, the Regulations are applicable and, additionally, Swiss law. The Appellant failed to make any submission on this issue.

49. Based on the above, the Panel is therefore satisfied to accept the application of the Regulations and, additionally, Swiss law, both insofar as the application relates to the normative application and interpretation of the Regulations, and to the extent that the Panel has to decide on matters not addressed in the Regulations.

50. Finally, the Panel agrees with the FIFA DRC that the FIFA Regulations on the Status and Transfer of Players (2015 edition) are applicable to the present matter.

VI. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

51. The following outline of the Parties' requests for relief and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, however, has carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

VI.1 The Appellant

52. In its Appeal Brief of 4 July 2016, the Appellant requested the following from the CAS:

    1. *The stay of execution of the decision taken by FIFA DRC until our appeal objection is concluded*[1]*,*
    2. *The acceptance of our appeal application against the decision of FIFA DRC and annulment of the decision,*
    3. *Ascertaining that client club has no debt to football player since all contractual fees were paid to the football player,*
    4. *Designating that the football player unfairly terminated the contract made between the parties,*
    5. *Refusal of termination compensation and fee demands,*
    6. *In case of the decision that the football player is right in the termination; making at least 90% of discount by taking into account; the service period of the football player with the client club, the fact that the football*

[1] By letter of 12 July 2016, this prayer for relief was withdrawn by the Appellant.

player got rid of the fulfillment of the contract and released his work force, occupational experience, cost saved due to the non-fulfillment of the work being the subject of the contract, etc., and similar decisions.

7. *Charging judiciary costs and expenses, and attorney's fee to the opposite party".*

53. In support of its requests for relief, the Appellant submitted as follows:

a) First of all, the Club has no financial obligations towards the Player pursuant to the Contract, since it has fulfilled all its obligations and made all payments in full.

b) Since all payments to the Player pursuant to the Contract were made in full, the early termination of the Contract by the Player on 2 June 2015 was made without just cause.

c) As such, there was no legal ground for awarding compensation to the Player for the Club's alleged breach of contract.

d) In any case, the amount of compensation to be paid by the Club to the Player pursuant to the Decision constitutes an exorbitant amount and is disproportional to the loss or damage suffered by the Player.

e) The Contract was terminated on 2 June 2015 and, as such, the remuneration to be earned by the Player from a new club from this date until the original expiry date of the Contract, 31 May 2018, should have been taken into consideration in order to reduce or mitigate the compensation payable to the Player.

f) The FIFA DRC was not able to determine the actual loss of the Player due to the termination of the Contract, which should consequently not be taken into consideration when determining the amount of compensation to be paid, if any.

g) Furthermore, the benefits gained by the Player as a result of the termination of the Contract should be taken into consideration and deducted from the loss of the Player.

h) The Player failed to fulfil his obligation to mitigate his loss, since he did not sign a new employment contract with another Turkish football club, but instead left the country and signed an employment contract with a foreign football club, consequently earning less than he would have been able to do in Turkey.

VI.2 The Respondent

54. In his Answer of 10 August 2016, the Respondent filed the following requests for relief:

1. *To reject the appeal filed by the Appellant against the decision passed on 28 January 2016 by the FIFA Dispute Resolution Chamber.*
2. *To order the Appellant to bear all the costs incurred with the present procedure.*
3. *To order the Appellant to pay to the Respondent a contribution towards his legal and other costs, in an amount to be determined at the discretion of the Panel".*

55. In support of his requests for relief, the Respondent submitted as follows:

a) Pursuant to article 14 of the Regulations, a party to a contract is entitled to terminate the contract without consequences of any kind if there is just cause.

b) A club's payment obligation pursuant to an employment contract with a football player is the main obligation towards the player, and non-payment or late payment of the player's salary by the club may constitute just cause for termination of the said contract.

c) At the time of the unilateral and premature termination of the Contract by the Player, the outstanding remuneration payable to the Player amounted to EUR 140,000, (EUR 40,000 as the balance of the salary for March 2015 due on 25 March 2015, EUR 50,000 as the salary for April 2015 due on 25 April 2015 and EUR 50,000 as the salary for May 2015 due on 25 May 2015).

d) Before the FIFA DRC, the Club acknowledged the debt of the said amount to the Player at the time of the termination of the Contract, however, during these proceedings, the Club stated that it had fulfilled all its obligations towards the Player and made its payments in full, which is disputed by the Player.

e) The Club never submitted any evidence documenting such alleged payments or in any other way discharged the burden of proof to establish that it paid the outstanding amount of EUR 140,000 to the Player.

f) In any case, the Club's acknowledgement of its debt to the Player made in its submission to the FIFA DRC is valid whether or not a cause of obligation is mentioned.

g) In light of the Club's failure to meet its payments obligation in respect of a considerable amount and for a significant period of time, combined with its failure to respond to the four default letters, including the request to receive information regarding the Club's plans for the Player, the continuation of the employment relationship between the Parties under the Contract could not be expected, since such breach caused the loss of the confidence and trust the Player had in the future performance of the Contract by the Club.

h) The Player warned the Club on four occasions in writing, making it clear to the Club that the failure of the Club to comply with its payment obligations would trigger the termination of the Contract by the Player. Even so, each of the said letters was left ignored and unanswered by the Club.

i) Therefore, the Player had just cause to terminate the Contract on 2 June 2015.

j) In accordance with the principle of *pacta sunt servanda*, the Player is entitled to receive all due and outstanding remuneration pursuant to the Contract until the termination of the Contract on 2 June 2015 in the amount of EUR 140,000.

k) With regard to the compensation payable to the Player, the Player agrees with the FIFA DRC in the Decision that, in accordance with article 17 paragraph 1 of the Regulations, the amount of compensation must 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, the time remaining of the existing contract up to a maximum of five years, and depending on whether the breach of contract occurs within the protected period.

l) The compensation should be set to the entire payment of remuneration pursuant to the Contract for the remainder of the period of contract, reduced by any payment the Player receives or received, respectively intentionally failed to earn from a third party or what he saved as expenses for the same period.

m) Pursuant to the Contract, the remaining salaries under the Contract amount to EUR 600,000 net for the 2015-2016 season; EUR 600,000 net for the 2016-2017 season; and EUR 600,000 net for the 2017-2018 season, totalling EUR 1,800,000 net for the remaining period of contract.

n) In the Decision, the FIFA DRC made reference to Clause 3.9 of the Contract and decided that since the Club was relegated after the 2014-2015 season, under the said provision, the remuneration payable to the Player should be reduced by EUR 300,000 per season, thus an annual remuneration of EUR 300,000 would serve as the basis for the determination of the amount of compensation payable to the Player by the Club for breach of contract.

o) The Club never discharged the burden of proof to establish that the Player would have accepted to play in the secondary league, just as such alleged agreement should be disregarded in any case, since it would be in conflict with the mandatory provision of article 341 paragraph 1 of the Swiss Code of Obligation ("CO").

p) If the Panel finds that the remuneration payable under the Contract should be reduced due to the Club's relegation, the reduction should be EUR 200,000 for the duration of the Contract only, in accordance with Clause 3.7 of the Contract.

q) The contradiction between the provisions of Clause 3.7 and Clause 3.9 of the Contract should be interpreted to the detriment of the Club, which drafted the Contract.

r) Given these circumstances, the basis for the determination of the amount of compensation payable to the Player by the Club for breach of contract should be EUR 1,600,000 at the least.

s) The Player agrees that any remuneration earned by the Player from other clubs during the remainder of the original period of contract between the Parties may be deducted, but the

Club bears the burden of proof to establish the concrete elements which would justify the application of the said deduction.

t) The Club failed to submit any evidence proving that the Player signed an employment contract with another club after the termination of the Contract on 2 June 2015, nor has the Club asked the Player to disclose such employment contracts.

u) However, the Player did in fact meet his obligation to mitigate his damage and, thus, disclosed to FIFA the receipt of an amount corresponding to EUR 390,000 under his new contract with Gabala SC, valid from 24 July 2015 until 30 June 2016, and the said amount must therefore be deducted from EUR 1,800,000 when calculating the amount of compensation to be paid to the Player by the Club.

v) Since the Player never filed an appeal against the Decision, and as a counterclaim is not permitted under the CAS Code, the Panel cannot decide *ultra petita*, and is, therefore, bound by the amount awarded by the FIFA DRC in the Decision, just as the Club neither challenged the interest rate applicable to the outstanding amount payable by the Club to the Player, nor the dates from which interest must be calculated at such a rate.

VII. MERITS

56. Initially, the Panel notes that it is undisputed that the Parties signed the Contract, the validity of which ran from 23 January 2015 until 31 May 2018 (i.e. almost three and a half sporting seasons), and that, according to the Contract, the Player was entitled to receive, *inter alia*, the following amounts as remuneration for the work performed under the Contract:

- Season 2014-15: four monthly salaries of EUR 50,000 payable from 25 February 2015 until 25 May 2015, totalling EUR 200,000 net;
- Season 2015-16: ten monthly salaries of EUR 60,000 payable from 25 August 2015 until 25 May 2016, totalling EUR 600,000 net;
- Season 2016-17: ten monthly salaries of EUR 60,000 payable from 25 August 2016 until 25 May 2017, totalling EUR 600,000 net;
- Season 2017-18: ten monthly salaries of EUR 60,000 payable from 25 August 2017 until 25 May 2018, totalling EUR 600,000 net.

57. It is further undisputed that the Player fulfilled his obligations under the Contract until 2 June 2015 when the Player, following four written default letters to the Club due to the Club's alleged non-payment of the Player's salaries, unilaterally and prematurely, terminated the Contract.

58. However, the Parties disagree over whether the termination of the Contract by the Player was with or without just cause and, accordingly, what the financial consequences of this termination, if any, should be for either Party.

59. Thus, the main issues to be resolved by the Panel are:

a) Did the Player terminate the Contract with or without just cause?
b) What are the financial consequences of the early termination of the Contract?

a) Did the Player terminate the Contract with or without just cause?

60. To reach a decision on this issue, the Panel has conducted an in-depth analysis of the facts of the case and the information and evidence gathered during the proceedings, including the information and evidence gathered during the proceedings before the FIFA DRC.

61. Initially, the Panel notes that the Player submits that, on the date of the Player's termination of the contractual relationship, the Club was in default with its payments to the Player in the amount of EUR 140,000, corresponding to part of his salary for March 2015 as well his salaries for April and May 2015. Based on that, the Player was entitled to terminate the contractual relationship with just cause.

62. The Club, on the other hand, submits that it had fulfilled all its payment obligations towards the Player pursuant to the Contract, and that the termination of the contractual relationship was consequently made without just cause.

63. Based on the facts of the case and the Parties' submissions, the Panel finds that it is up to the Appellant to discharge the burden of proof to establish that the Club had in fact fulfilled its payment obligations pursuant to the Contract at the time of the Player's termination of the Contract, i.e. on 2 June 2015.

64. In doing so, the Panel adheres to the principle *actori incumbit probatio*, which has been consistently observed in CAS jurisprudence, and according to which *"in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue, In other words, the party which asserts facts to support its rights has the burden of establishing them (..) The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46 and CAS 2009/A/1975, para. 71ff).

65. However, the Panel finds that the Appellant has not adequately discharged the burden of proof to establish that the Club had in fact fulfilled its payment obligations pursuant to the Contract at the time of the Player's termination of the Contract. In that connection, the Panel attaches particular importance to the failure by the Club to produce evidence documenting the alleged payments of the outstanding amount, and – after having examined the evidence presented to the FIFA DRC – the Panel finds that insufficient evidence has been produced to show that these payments relate to the payments of the Player's remuneration pursuant to the Contract for the remaining part of the March 2015 salary as well as for the Player's salaries for April and May 2015. In the Panel's view, the evidence produced thus concerns payments of the Player's salaries and bonuses for different months.

66. The Panel therefore concludes that the Club was in default with its payments to the Player in the amount of EUR 140,000, corresponding to part of his salary for March 2015 as well as his salaries for April and May 2015, at the time of the Player's termination of the Contract on 2 June 2015.

67. With regard as to whether the Club's default on payments to the Player constitutes just cause for termination of the Contract, the Panel notes that, according to the CAS jurisprudence, *"the non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated […] - constitute 'just cause' for termination of the contract […]; for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be 'insubstantial' or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract"* (see CAS 2006/A/1180, para. 26).

68. In the present case, both prerequisites have been met. The Club failed to comply with a major part of its payment obligation, i.e. almost three months' remuneration. Furthermore, the Player's counsel warned the Club several times about its breach of obligations. The said letters pointed out not only the Club's breaches of its obligations, but also quite clearly and unambiguously emphasized that the Player was not prepared to tolerate similar breaches of obligations in the future. In the last warning of 27 May 2016, the Club was finally given a last deadline to settle the outstanding debts. In this regard the letter expressly states, *inter alia*, as follows: *"Finally, I was instructed to inform you that the persistent breaches of the financial terms of the Employment Contract by the Club, coupled with the uncertainty created in the Player regarding the performance of the Employment Contract by the Club in the future, are causing the Player to lose the confidence and trust he had in the performance of the said contract by the Club, which entitles him to terminate the contract for just cause with immediate effect. Therefore, I hereby give you* ***ultimate deadline until 29 May 2015*** *to put things right, i.e. to pay the Player the outstanding salaries in the amount of* ***EUR 140,000*** *net detailed above in full, as well as to declare in writing your interest in the Player's services and in the performance of the Employment Contract in the upcoming 2015/16 season, failing which the Player will terminate the Employment Contract without further warning, pursuant to Article 14 of the FIFA Regulations on the Status and Transfers of Players.* ***I stress the seriousness of this final notice****".*

69. Based on these facts, the Panel finds that the Club was in material breach of the Contract and the Player, therefore, had just cause to terminate the Contract on 2 June 2015.

b) What are the financial consequences of the early termination of the Contract?

70. The Panel initially notes that since the Contract was terminated with just cause by the Player, it has to address i) the Player's claim for payment of the outstanding remuneration of EUR 140,000, and ii) the Player's claim for compensation for breach of contract.

71. With regard to the Player's claim for payment of the outstanding remuneration of EUR 140,000, and in view of the fact that it is undisputed that the Player fulfilled his obligations under the Contract until the termination date and in accordance with the general principle of *pacta sunt servanda*, the Panel finds that the Club should have fulfilled its contractual obligations to the Player until the date of termination of the Contract on 2 June 2015.

72. As explained above (see para. 7.11), at the time of the Player's termination of the Contract on 2 June 2015, the Club still owed the Player remunerations in the total amount of EUR 140,000.

73. The Club is therefore clearly obligated to pay this amount to the Player as outstanding remuneration.

74. Further, the Panel sees no reason to deviate from the Decision concerning the late payment interests to be paid and therefore confirms that the Player is entitled to receive interests at the rate of 5% p.a. of the said amount as follows:

- 5% p.a. as of 26 March 2015 on the amount of EUR 40,000;
- 5% p.a. as of 26 April 2015 on the amount of EUR 50,000;
- 5% p.a. as of 26 May 2015 on the amount of EUR 50,000;

75. With regard to the Player's claim for compensation for breach of contract, and since the Club is held liable for the early termination of the Contract due to its breach of contract, the Panel finds that the Player is entitled, subject to article 17 paragraph 1 of the Regulations, to receive financial compensation for breach of contract in addition to the above-mentioned payments of outstanding remuneration.

76. Article 17 paragraph 1 of the Regulations states as follows:

"The following 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 (amortized over the term of the contract) and whether the contractual breach falls within the protected period".

With reference to the foregoing, the Panel finds that it is undisputed that no agreement has been concluded between the Parties on the amount of compensation payable in the event of breach of contract.

77. Furthermore, it is undisputed that the Player, so far, in the period after the termination of the Contract and until the original expiry date, signed two employment contracts, one contract with the Azerbaijani football club Gabala SC valid as from 24 July 2015 until 30 June 2016, and one contract with the Turkish football club Kardemir Karabük SK valid as from 27 August 2016 until 31 May 2017, according to which the Player would be entitled to a salary of EUR 390,000 for the 2015-2016 season and EUR 600,000 net for the 2016-2017 season, respectively.

78. However, the Parties are not in agreement as to which amount of remuneration the Player would have been entitled to be paid by the Club pursuant to the Contract for the remainder of the period of contract.

79. While the Player submits that he would be entitled to receive the full remuneration pursuant to the Contract for the remaining three sporting seasons, i.e. a total amount of EUR 1,800,000, the Club, during the FIFA proceedings, made reference to Clause 3.9 of the Contract, which, *inter alia*, states as follows: *"in case of getting out of the Super Lig, player wanted to stay in 1. PTT Lig, the contract will be reduced on EUR 300.000 per season"*.

80. The Player submits that the said clause is not applicable, first of all since it is in conflict with Clause 3.7 of the Contract, which states: *"Football player in a lower League Team for the duration of the contract to drop EUR 200,000 if paid by the Club is [frced]"*. For this reason alone, the reduction to be conducted – if at all – cannot exceed EUR 200,000 for the full period of contract. Furthermore, the Player submits, that the Club never discharged the burden of proof to establish that the Player would have accepted to play in the second league, and secondly, since the said provision is in direct conflict with article 341 paragraph 1 CO, which is a mandatory rule under article 362 paragraph 1 CO.

81. According to the Player, pursuant to article 341 paragraph 1 CO, an employee may not waive any claim resulting from mandatory provisions of law during the course of an employment relationship and for one month after its termination. Even if a common and real intent of the parties has been established, article 341 paragraph 1 CO leads to disregard the content of an agreement of the employee to waive one or certain of his rights.

82. The Panel initially notes that article 341 paragraph 1 CO does not basically prevent an employer and an employee from agreeing that certain circumstances beyond the control of both Parties should result in a forward-looking change of the agreed remuneration. The reason for this is that article 341 paragraph 1 CO limits the binding effect to mandatory rights (articles 361 and 362 CO), however, the employee's future salary is no such mandatory right (article 322 CO). Furthermore, article 341 paragraph 1 CO only covers existing claims (*see* HONSELL ET AL., Obligationenrecht I, 3rd ed., 2003, p. 1859, ad art. 341 (par. 2)).

83. The Panel consequently finds no grounds for setting aside the provision of clause 3.9 of the Contract based on Article 341 para. 1 CO, observing, *inter alia*, that the specific event the Parties agreed to be the triggering factor is the relegation to Lig1, which event is beyond the direct control of both Parties, that the agreed reduction is applicable only if the Player wants to

continue his contractual relationship with the Club after the relegation, and, furthermore, that the specific provision was agreed prior to the conclusion of the Contract at a time when there was no imminent risk of a relegation.

84. Based on the foregoing, the Panel finds that Clause 3.9 basically contains a valid provision to the effect that the remuneration of the Player must be reduced on EUR 300,000 per season in which the Club plays in Lig1.

85. The Panel attributes no weight to the Player's submission that the Club failed to prove that the Player would - in the ongoing contract without early termination - actually have stayed with the Club after the relegation at the end of the 2014/15 season. The wording of clause 3.9 of the Contract refers to the fact that the Player is continuing to play with the Club after the relegation as the Contract does not state any "exit-clause" in case of the Club's relegation. Therefore, the Club has no burden of proof to establish that the Player would have stayed with the Club; clause 3.9 of the Contract is understood by the Panel in the sense that in case the Club will be relegated, the Player's salary will be reduced on EUR 300,000 per season.

86. With regard to the Player's submission that Clause 3.9 of the Contract is not applicable since it is in conflict with Clause 3.7 of the Contract, which states: *"Football player in a lower League Team for the duration of the contract to drop EUR 200,000 if paid by the Club is [frced]"*, the Panel has attempted, through an analysis, to discern the Parties' true intention behind the said clause, including whether the content must be assumed to cover the same situation as that provided for in Clause 3.9, i.e. the Club's relegation to Lig1. The Panel reads this Clause 3.7 in the sense that it presumably describes a situation in which the Player is loaned to another club, playing in a lower league, and the Club is forced [frced] to pay the Players salary or the situation that the Club has not been relegated to the Lig1 but the Player was nonetheless degraded to the Club's second-best team. In other words, the Panel is of the opinion that Clause 3.7 and 3.9 do not cover the same situation and therefore they are not contradicting.

87. Based on the above, the Panel finds that the Player has failed to produce adequate evidence to prove to the Panel's satisfaction that a conflict in terms of content exists between Clause 3.7 and Clause 3.9 of the Contract to such an extent that Clause 3.9 cannot be deemed to be applicable.

88. With regard to the calculation of the Player's remuneration pursuant to the Contract, the Panel initially notes that the Player was essentially entitled under the Contract to receive remunerations in the amount of EUR 600,000 for each of the three seasons 2015/2016, 2016/2017 and 2017/2018, and the Panel also finds, with reference to Clause 3.9, that the Parties have agreed that the annual remunerations must be reduced on EUR 300,000 for the seasons in which the Club is playing in Lig1.

89. As the Club indisputably played in Lig1 in the 2015/2016 season, coupled with the fact that the Club is also playing in this division in the current 2016/2017 season, the Panel finds that the Player, for these two seasons, was entitled to receive remuneration in a total amount of EUR 600,000, corresponding to EUR 300,000 per season after an agreed reduction.

90. As far as the 2017/2018 season is concerned, it remains unresolved whether the Club will also be playing in Lig1, which would mean that the Player's remuneration would remain on the reduced EUR 300,000 for this season, as well.

91. Given the circumstance that the Club committed the breach of the Contract between the Parties, thereby causing the premature termination of the Contract, combined with the fact that the Club asserts that the Player's remuneration must be reduced in pursuance of Clause 3.9 of the Contract, the Panel finds that it is the Club, at this point in time, which should rightfully bear the risk for the Club's actual ranking in the national tournament for the coming season in the way that for the calculation of the compensation for the 2017/18 season, the Panel assumes that the Club will be playing in the Super Leage.

92. Given these circumstances, the Panel finds no basis, at the present moment, for applying the reduction provision set out in Clause 3.9 of the Contract to the Player's remuneration for the 2017/2018 season. Therefore, based on the Contract, the full amount of EUR 600,000 for the 2017/18 season must be included in the calculation of the Player's compensation.

93. Based on the foregoing, the Panel finds that the Player, for the remainder of the period of contract, would have been entitled to receive a salary of EUR 1,200,000 (EUR 300,000 + EUR 300,000 + EUR 600,000).

94. Having determined which amount of remuneration the Player would have been entitled to obtain pursuant to the Contract for the remaining period of contract, the Panel notes, in consistency with the well-established CAS jurisprudence, that the injured party is entitled to a whole reparation of the damage suffered pursuant to the principle of *"positive interest"*, under which compensation for breach must be aimed at reinstating the injured party to the position it would have been in had the contract been performed until its expiry (CAS 2012/A/2698; CAS 2008/A/1447).

95. Moreover, the Panel observes that article 337c (1) and (2) CO provides the following: *"(1) Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration. (2) Such damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work"*.

96. In view of the above, the Panel is satisfied to note that the Player has the right to have his compensation determined under the provisions of article 17 of the FIFA Regulations in the light of the principle of *"positive interest"* as specified above and with due consideration to the duty to mitigate damages according to Swiss law, which is consistent with CAS jurisprudence (CAS 2005/A/909-910-911; CAS 2005/A/801; CAS 2004/A/587).

97. At the date of the Decision, the Decision correctly deducted the salaries the Player received under the employment contract with the Azerbaijani football club Gabala SC valid as of 24 July 2015 until 30 June 2016, i.e. an amount of EUR 390,000.

98. However, later on, and after the Decision was issued, the Player signed another employment contract with the Turkish football club Kardemir Karabük SK valid as from 27 August 2016 until 31 May 2017, according to which the Player is entitled to a salary of EUR 600,000 net for the 2016-2017 season. This remuneration must also be deducted from the amount the Player was originally entitled to be paid for the remainder of the period of contract.

99. As a consequence, the Panel holds that the Player, in principle, is entitled to receive from the Appellant the amount of USD 210,000 (EUR 1,200,000 less EUR 390,000 and EUR 600,000).

100. The Club, however, submits that the compensation payable to the Player must be assessed in view of the circumstances of this particular case, for instance by taking into account that the Player failed to sign a new contract at a level of remuneration similar to that of the value of the Contract. In addition, the amount of compensation awarded to the Player by the FIFA DRC constitutes an exorbitant amount and is disproportional to the damage suffered by the Player.

101. Based on the facts of the case and the Parties' submissions, the Panel is not persuaded by the allegations of the Club with respect to the alleged failure by the Player to mitigate his damage because he only accepted to sign new employment contracts with less favourable financial conditions.

102. As already outlined above, according to article 337c para. 2 CO, the duty of mitigation is related to the rule that the employee must permit a set-off against the amount of compensation for what he saved because of the termination of the employment relationship, what he earned from other work, or what he has intentionally failed to earn.

103. In the opinion of the Panel, such a rule implies that, in accordance with the general principle of fairness, the injured player must act in good faith after the breach by the club and seek other employment, showing diligence and seriousness. The Panel considers that this principle is aimed at limiting the damages deriving from the breach and at avoiding that a possible breach committed by the club could turn into an unjust enrichment for the injured party.

104. Moreover, the wording of article 337c para. 2 CO, with reference to what the employee intentionally failed to earn, suggests that the duty to mitigate should not be considered satisfied when, for example, the player deliberately fails to search for a new club or unreasonably refuses to sign a satisfactory employment contract, or when, having different options, he deliberately accepts to sign the contract with less favourable financial conditions, in the absence of any valid reason to do so.

105. The Panel emphasises in this context that the circumstance that a player received a higher remuneration under his former contract than the relevant player will receive under his new contract is not in itself sufficient to lead to an automatic and further reduction of the

compensation payable to the player from his former club being the difference between the two salaries.

106. Based on the foregoing, including the fact that the Player did in fact sign two new employment contracts during the original contract period, pursuant to one of which the Player actually received the same remuneration as the Player would have been entitled to receive pursuant to the Contract, and since the Club (see para 7.9) did not submit any evidence proving differently, the Panel finds that the Player must be considered to have fulfilled his obligation to mitigate his loss. As the Panel finds no other grounds for reducing the compensation payable, the Panel decides that the residual value of the Contract must be reduced only by the value of the Player's new contracts, i.e. EUR 990,000, the effect of which therefore is that the Club has to pay the amount of EUR 210,000 to the Player as compensation for breach of contract. The Panel points out in this connection that in its ruling, it has not addressed the question of whether or not the Appellant is potentially entitled to a repayment of some of this amount, depending on the Respondent's contractual relationship in the 2017-2018 season and depending on whether the Appellant will continue to play in Lig1 in this 2017-2018 season.

107. The Panel sees no reason to deviate from the Decision concerning the interest rate and, therefore, confirms that the Player is entitled to receive interest at the rate of 5% p.a. of the said amount as from 22 June 2015 until the date of effective payment.

VIII. SUMMARY

108. Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Panel finds that the Respondent is entitled to receive from the Appellant payment of the outstanding remuneration of EUR 140,000 plus interests of 5% p.a. as of 26 March 2015 on EUR 40,000 as of 26 April 2015 on EUR 50,000 respectively as of 26 May 2015 on EUR 50,000.

109. Furthermore, and as the Panel finds that the Respondent terminated the contractual relationship between the Parties with just cause, in accordance with article 17 paragraph 1 of the Regulations, the Appellant has to pay the sum of EUR 210,000 plus interests of 5% p.a. as of 22 June 2015 to the Respondent as compensation for breach of contract.

110. The Appeal filed against the Decision is therefore dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 27 June 2016 by Balikesirspor FC against the decision rendered by the FIFA Dispute Resolution Chamber on 28 January 2016 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 28 January 2016 is confirmed.

3. (…).

4. (…).

5. All further and other requests for relief are dismissed.