Arbitration CAS 2017/A/5182 Akhisar Belediye Gençlik ve Spor Kulübü Dernegi v. Ivan Sesar, award of 20 December 2017

Panel: Mr Sofoklis Pilavios (Greece), Sole Arbitrator

Football
Termination of the employment contract with just cause by the player
Definition of just cause
Removal from first team as just cause of termination
Burden of proof regarding the regulations of a national federation
Obligation to maintain a player as professional player under a professional footballer's employment contract

1. **The definition of "just cause" as well as the question whether just cause in fact existed, shall be established in accordance with the merits of each particular case and, as it is an exceptional measure, the immediate termination of a contract for just cause must be accepted only under a narrow set of circumstances. Only a particularly severe breach of the labour contract will result in the immediate dismissal of the employee, or, conversely, in the immediate abandonment of the employment position by the latter. The judging body determines at its discretion whether there is just cause.**

2. **A player who was hired to play with a club's first team with the status of a professional footballer and was part of the club's first team during the previous season, but (i) whose club's discontent with his performance is expressed not only verbally but also in writing, (ii) is informed that he is no longer considered part of the club's first team for the upcoming season and is asked to train alone and/or with the U21 team, and (iii) is asked to find a new team before the beginning of the season, has objective reasons to believe that the club has no intention to perform its side of the employment agreement and cannot reasonably be expected to carry on the employment relationship.**

3. **In an employment dispute between a club and a player, the club is not in a position to request the CAS panel to ask the national federation for information and a translation of its relevant provisions. Granting such request would contravene Article R51 of the CAS Code as well as the principle of the burden of proof, which is a basic principle in every legal system that is also established in Article 8 of the Swiss Civil Code, particularly if the club has not submitted any reasons as to why it would be impossible for it to submit the requested information and documents with its appeal brief, although it is member of the national federation and participated in the national championship during the season at issue.**

4. **The national federation's regulations governing the foreign players' quota for a specific season cannot possibly allow clubs to remove foreign players from their first teams and order them to train with the U21 teams, on account of them exceeding the relevant**

quota. To hire and to maintain the football player as a professional footballer is a basic obligation assumed by any football club that is party to a professional footballer's employment contract. Moreover, if a player played in a club's first team during previous season(s), it would be contrary to good faith and to the principle of *pacta sunt servanda* for the club to knowingly sign more foreign players during the transfer window, and then invoke the latter agreements as being compulsory for the club over the one signed with the player.

I. PARTIES

1. Akhisar Belediye Gençlik ve Spor Kulübü Dernegi (the "Club" or the "Appellant") is a football club playing in the top division of the Turkish football league system, with seat in Akhisar. It is affiliated to the Turkish Football Federation, which is, in turn, a member of the Fédération Internationale de Football Association (FIFA).

2. Ivan Sesar (the "Player" or the "Respondent") is a professional football player from Bosnia and Herzegovina.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions. Additional facts and allegations found in the parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

4. On 6 August 2013, the Player signed an employment contract with the Club, which was valid until 31 May 2016 (the "Contract") and provided *inter alia* the following:

"(…)

3 – PAYMENTS AND SPECIAL PROVISIONS

The total contractual amount for the 2013-2014 season is 158,000 euro and shall be paid in accordance with the payment schedule as follows:

1-Advance payment in the amount of 90,000 euro shall be paid as follows:

A) 30,000 euro shall be paid on the date of signature.

B) The outstanding amount of 60,000 euro (30/09/2013 20,000 euro – 31/10/2013 20,000 euro – 30/11/2013 20,000 euro) shall be paid in the form of a check.

2-68,000 euro shall be paid per each match (34x2,000 euro).

The total contractual amount for the 2014-2015 season is 183,000 euro and shall be paid in accordance with the payment schedule as follows:

1-Advance payment in the amount of 105,000 euro shall be paid as follows:

A) 35,000 euro shall be paid on 2/8/2014.

B) The outstanding amount of 70,000 euro (30/09/2014 20,000 euro – 31/10/2014 25,000 euro – 30/11/2014 25,000 euro) shall be paid in the form of a check.

2-78,000 euro shall be paid per each match (34x2,294 euro).

The total contractual amount for the 2015-2016 season is 208,000 euro and shall be paid in accordance with the payment schedule as follows:

1-Advance payment in the amount of 122,000 euro shall be paid as follows:

A) 40,000 euro shall be paid on 2/8/2015.

B) The outstanding amount of 82,000 euro (30/09/2015 27,000 euro – 31/10/2015 27,000 euro – 30/11/2015 28,000 euro) shall be paid in the form of a check.

2-86,000 euro shall be paid per each match (34x2,529 euro).

1 – The fee per each match shall be paid in the amount of 100% in case the player enters the game among the initial 11 players, 75% in case the player enters subsequently, and 50% in case the player is among the initial 18 players but does not enter the game. The fee per match shall be paid by the end of the season at the latest. Such fees shall be paid once for each four matches.

(…)

4 – The player is entitled to 4 round-trip tickets to Sarajevo per season.

5 – The player shall be provided with a rent-a-car.

6 – The player shall reside at the hotel in Manisa during his girlfriend's visit and at the facilities at all other times.

(…)".

5. On 9 July 2014, the Club allegedly informed the Player in writing that he was to appear for training for the preparation of the next season 2014/2015, on the subsequent day, *i.e.* on 10 July 2014 at 17:00.

6. On 9 July 2014, the Player's legal counsel sent a letter to the Club, stating, *inter alia*, that the Club did not pay for the Player's plane ticket from Sarajevo and the Player had to pay for it himself and that the Player was informed by the Club to find another club, but it is the Player's intention to honour his contract. The letter also contained a request that the Player be allowed to train with the first team of the Club and join the first team for the preseason training.

7. On 10 July 2014, the Club replied to the Player's counsel in writing stating that *"Ivan Sesar is a registered player of our team, but on the other hand it is definitely the Coach's decision that if he will be with the team or not in the upcoming season (…) as being our registered Professional football player, Ivan Sesar is obliged to comply with the training program which was notified to him"*.

8. On 25 July 2014, the Player's legal counsel wrote to the Club requesting that the Player be treated equally with all the other players and also that payment of outstanding agent fees under the Contract be made and that the Player be provided with a car as per the relevant provision of the Contract.

9. On 6 August 2014, the Player's legal counsel sent a letter to the Club objecting that the Player being made to train alone. The letter also included a formal notice to the Club requesting from them to *"1. Allow the player to train with the first team; 2. Provide him a suitable residence at your expense; 3. Provide him with a rent-a-car at your expense; 4. Refund him the flight ticket Sarajevo-Turkey; 5. Pay the amount of 35,000 euro expired on 2/8/14. I remember you (sic) that if all of this doesn't happen within 48 hours we consider you in breach of conduct and we will protect our rights before the competent authority"*.

10. On 8 August 2014, the Club wrote the following to the Player's counsel:

> *"(…) it is sportingly and legally not possible to accept that "all the players must stay and train with the first team". The player's presence in the first team during the whole season is not a contractual obligation and/or undertaking of a club. For sporting reasons (or any other reasonable reasons), some players may be excluded from the first team squad of the team.*
>
> *At this point we would like to draw your attention to the foreign player quota of the Turkish Football Federation (TFF). According to the rules of the TFF, in 2014/2015 season only 5 foreign players can play in the match at the same time in Super League. This issue makes it mandatory for the Club to make a choice between its registered foreign players. For this reason, like all other Super League Clubs in Turkey, our Club must limit the number of foreign players in its first team squad.*
>
> *Therefore, taking all these into account, we would hereby like to state that the sporting decision of our Club's Coach is that the Player Ivan Sesar cannot be in the first team of our Club for 2014/2015 season. On the other hand, there is no doubt that our Club will continue to perform its contractual obligations towards the player.*

(…) during the 2014/2015 season Ivan Sesar will train with the supervision of our Club's trainer, and in the pitch which is assigned to him and may also train with our U21 team for the whole season. The detailed training schedule will be officially notified to the player subsequently".

11. On 11 August 2014, the Player's legal counsel replied to the Club that the Club is in irremediable breach of contract and that, as a result, the Player cannot fulfil his obligations under the Contract, thus terminating the employment relationship.

B. Proceedings before the FIFA Dispute Resolution Chamber

12. On 8 August 2014, the Player lodged a claim with the Dispute Resolution Chamber of FIFA (the "FIFA DRC") against the Club, requesting payment of (i) EUR 36,500 corresponding to the payment due on 2 August 2014 and one partial "per match" payment of EUR 1,500, (ii) EUR 356,000 corresponding to compensation for breach of contract by the club, and (iii) the imposition of sporting sanctions.

13. The Club, by way of its response, rejected the Player's claim and submitted that its decision not to register the Player was a "sporting decision" which was taken on account of the foreign player quotas imposed on all Turkish Super League clubs by the Turkish Football Federation (TFF). The Club further lodged a counterclaim against the Player, on the basis that the latter had terminated the Contract without just cause, and requested compensation of EUR 100,000, claiming that, had the Player been transferred from the Club, it would have received the requested amount as compensation for the transfer.

14. On 19 January 2017, the FIFA DRC rendered its decision (the "Appealed Decision"), by means of which it partially accepted the Player's claim. The operative part of the decision states the following:

"1. The claim of the Claimant/Counter-Respondent, Ivan Sesar, is partially accepted.

2. The Respondent/Counter-Claimant, Akhisar Belediyespor, has to pay to the Claimant/Counter-Respondent, within 30 days as from the notification of the present decision outstanding remuneration in the amount of EUR 36,500 plus 5% interest p.a. until the date of effective payment as follows:

a. 5% p.a. as of 1 June 2014 on the amount of EUR 1,500;

b. 5% p.a. as of 3 August 2014 on the amount of EUR 35,000.

3. The Respondent/Counter-Claimant has to pay to the Claimant/Counter-Respondent, within 30 days as from the date of notification of this decision, compensation for breach of contract amounting to EUR 152,000 plus 5% interest p.a. as from 8 August 2014.

(…)

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

5. The counterclaim of the Respondent/Counter-Claimant is rejected".

15. On 10 May 2017, FIFA communicated to the parties the grounds of the Appealed Decision, following a request of the Club, which, *inter alia*, determined the following:

"11. In view of the above, the DRC first noted that the player inter alia based his unilateral termination on the fact that he was excluded from first team training and had previously put the club in default multiple times. He equally argued that the club acknowledged having excluded him from training with the club's first team on the basis of the "sporting sanction" not to register him and acknowledged that the instalment due on 2 August 2014 had remained outstanding in its reply to the player of 8 August 2014. In this regard, the Chamber took note that the club acknowledged having not registered the player for the 2014/2015 season in its reply to the claim, on the basis of a "sporting sanction".

(…)

13. With the above in mind, the Chamber considered it important to first recall, as has been previously sustained by the Dispute Resolution Chamber, that amongst a player's fundamental rights under an employment contract is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow team mates in the team's official matches.

14. In continuation, with regard to the argument of the club that it was a "sporting decision" not to register the player, the Chamber noted that a decision not to select a player for a particular match is typically of a technical nature, resulting in the fact that the manager considers other players to be in a better position at that specific moment to help the team reach its goals falls within the context of the nature of football. To the contrary, the Chamber deemed that in the present matter, by not registering the player for the relevant season, the club effectively barred, in an absolute manner, the potential access of a player to competition, and as such is violating one of the fundamental rights of a football player.

15. Furthermore, the Chamber wished to clarify that the decision of an Association imposing an obligation on its affiliated clubs to respect quotas for foreign players cannot be held against the player, notably since a player has no possible way influencing the respect of this administrative formality. The members of the Chamber therefore noted that the club, in casu, cannot use the TFF decision relating to foreign player quotas to justify the non-registration of a player. Nevertheless, referring to art. 12 par. 3 of the Procedural Rules, the Chamber also took due note that the club had failed to submit any documentary evidence relating to the allegation that the TFF decision meant the club could not register the player.

16. From all the above, the Chamber established that the non-registration of the player for the relevant season constitutes a material breach of contract since it de facto prevents a player from being able to play for his club. The members of the Chamber agreed that in light of this consideration and the club's acknowledgement that it had not registered the player, the player had just cause to terminate the employment contract due to the breach of the club.

(…)

20. In view of all the above, in particular taking into account that the club did not contest that either amount were due and had remained unpaid, the Chamber decided that in accordance with the general legal principle of pacta sunt servanda, the club must fulfil its contractual obligations towards the player and is therefore to be held liable to pay the player the total amount of EUR 36,500 as outstanding remuneration.

(…)

22. In continuation, the Chamber focused its attention on the calculation of the amount of compensation for breach of contract in the case at stake. In doing so, the members of the Chamber first recapitulated 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 Claimant under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

(…)

26. Bearing the foregoing in mind, the Chamber proceeded with the calculation of the monies payable to the player under the terms of the employment contract as from its date of termination with just cause by the player, i.e. 11 August 2014, until the original expiry of the employment contract on 31 May 2016. The Chamber concluded that the player would have received a total of EUR 192,000 as fixed remuneration had the contract been executed until its original expiry date. The members of the Chamber were eager to point out that the contractually provided for "per match" payments could not be included in the calculation of compensation for breach since said payments are linked to matches to be played in the future, i.e. after the termination of the relevant contract, and, therefore, are fully hypothetical. Therefore, the Chamber decided to reject this portion of the claim. Consequently, the Chamber concluded that the amount of EUR 192,000 serves as the basis for the final determination of the amount of compensation due for breach of contract in the case at hand.

(…)

28. The Chamber recalled that on 15 January 2015 the player signed an employment contract with FK DAC 1904, in accordance with which he could be entitled to EUR 5,200 per month. The Chamber noted that both the player and FK DAC 1904 had indicated that the contract was terminated by mutual consent on 30 June 2015. Furthermore, the DRC noted that on 16 July 2015, the player had signed an employment contract with NK Siroki Brijeg, valid until 1 June 2018, which provides for the monthly salary of EUR 800. These employment contracts enabled the player to earn income of, and therefore mitigate his damages by, the amount of EUR 40,000.

29. Consequently, on account of all the aforementioned considerations and the specificities of the case at hand, as well as the player's general obligation to mitigate his damage, the Chamber decided the club was to pay to the player EUR 152,000, which was considered reasonable and proportionate as compensation for breach of contract in the case at hand.

30. In addition, taking into account the player's request, the Chamber decided that the club must pay to the Claimant interest of 5% p.a. on the amount of compensation due as of the date on which the claim was lodged, i.e. 8 August 2014, until the date of effective payment".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 30 May 2017, the Club submitted a statement of appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code") to the Court of Arbitration for Sport (the "CAS"), challenging the Appealed Decision. Within its statement of appeal, the Appellant also requested that its appeal be submitted to a Sole Arbitrator in accordance with Article R50 of the Code.

17. On 9 June 2017, the Appellant filed its appeal brief in accordance with Article R51 of the Code.

18. In its appeal brief, the Appellant also requested, as an evidentiary measure, that CAS request the file of the case from the FIFA DRC to be included in the case file and request from the Turkish Football Federation to provide the rules on the quota for foreign players in force during the 2014/2015 season.

19. On 20 June 2017, the Respondent informed the CAS Court Office that he agreed to the present matter being referred to a Sole Arbitrator.

20. On 29 June 2017, the Respondent filed his answer in accordance with Article R55 para. 1 of the Code requesting the CAS to reject the appeal and condemn the Appellant to the payment of all legal expenses.

21. On 25 July 2017, the CAS Court Office informed the parties that the Panel appointed to decide this matter was constituted as follows:

Sole Arbitrator: Mr. Sofoklis P. Pilavios, Attorney-at-law in Athens, Greece.

22. On 6 October 2017, the CAS Court Office received a copy of the FIFA case file in connection with this matter and informed the parties accordingly.

23. On 9 October 2017, the CAS Court Office issued an order of procedure, which was signed and returned to the CAS by the parties on 11 October 2017.

24. On 12 October 2017, a hearing took place at the CAS Court Office in Lausanne, Switzerland. The Sole Arbitrator participated in the hearing via telephone conference as he was prevented from travelling to Lausanne the day before because of extraordinary circumstances. No party objected to such arrangements.

25. The Sole Arbitrator was assisted by Mr. Brent Nowicki, CAS Managing Counsel, and joined by the following:

- Mr. Levent Polat (in-person), on behalf of the Appellant. .

- Mr. Paolo Bordonaro (by telephone), on behalf of the Respondent.

26. At the outset of the hearing, the parties confirmed that they did not have any objection as to the constitution and composition of the Panel.

27. At the conclusion of the hearing, the parties confirmed that their right to be heard and to be treated equally in the present proceedings before the Sole Arbitrator had been fully respected, following which the Sole Arbitrator closed the hearing.

IV. SUBMISSIONS OF THE PARTIES

28. The following outline of the parties' positions is illustrative only and does not necessarily comprise every submission advanced by the parties. The Sole Arbitrator has nonetheless carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.

29. The Appellant's submissions, in essence, may be summarized as follows:

- On 16 May 2014, the Turkish Football Federation announced a rule that was to take effect for the coming 2014/2015 Super League season, according to which all Super League clubs, including the Appellant, had to reduce the number of foreign players they could register to 8 and the number of foreign players they could field in a match at the same time to 5.

- Although the Respondent unilaterally terminated his contract with the Appellant without just cause on 11 August 2014, on 8 August 2014 the Respondent filed a statement of claim with the FIFA DRC alleging that he had already terminated the contract.

- The Appealed Decision found that the fact that the Respondent was not registered for the Appellant's first team with the TFF constitutes a material breach of the contract. However, not only did the FIFA DRC not consider other grounds for termination which were put forward by the Respondent, but the Respondent's non-registration does not constitute a just cause for termination.

- Football clubs assume two types of main obligations with employment contracts: to make the payments agreed in the contract (financial obligations) and to provide minimum appropriate standards to the players for their football activities (sporting obligations). It is undisputed that the Appellant met his financial obligations. Additionally, the Appellant also complied with its sporting obligations: it provided a private coach and an appropriate training field to the Respondent and it informed him that he can train with the club's U-21 team. As a result, the Appellant did not breach any of his main obligations under the employment contract.

- Exclusion from the first team or non-registration of the Respondent cannot be considered a just cause for termination. Moreover, the Player was not in the first team as a result of the TFF mandatory regulations. The TFF decided that Super League Clubs may remove one of their foreign players from their first teams, as long as they comply with their financial obligations towards the player. In the matter at hand, the Appellant exercised a right that was given to it by the TFF, and so did all the Super League clubs, namely to leave one of their foreign players without being registered. The Appellant chose the Respondent in light of a technical report by its technical director and the reason was his insufficient sporting performance. Nonetheless, the Appellant specifically informed the Respondent that he intended to comply with all of its financial obligations under the contract.

- A termination for not playing in official matches cannot take place at the beginning of a season. Further than that, no club is under the obligation to train all its players with the first team. As such, "training with first team" was not a contractual obligation of the Appellant and it is also impossible for a player who is not eligible to play because of the TFF regulation, to train with the first team.

- The Appellant acted in good faith from the beginning, informing the Respondent well in advance of the beginning of the season, in order for him to find a new club.

- It is incorrect than an ITC request for the transfer of the player to FK DAC 1904 was rejected by the TFF. The Appellant never objected to the issuance of the ITC for the Respondent.

- The amount of compensation awarded by the FIFA DRC is excessive and not in line with FIFA and CAS case law. The Respondent is under the obligation to mitigate his damages and by signing a subsequent contract with an extremely low remuneration he has violated such obligation.

- Had the Respondent not terminated his contract without just cause, the Appellant would have received a transfer fee from the Respondent's transfer to another club. Therefore, the Respondent's unjustified termination has deprived the Appellant from receiving a transfer fee and that is the reason why the Respondent should be ordered to pay EUR 100,000 to the Appellant as compensation.

30. In its appeal brief, the Appellant requested the following relief:

"- To hold a hearing,

- to accept our appeal against the decision of FIFA DRC dated 19 January 2017,

- to overturn and set aside the abovementioned decision with all its consequences,

- to decide that the Respondent is in breach of the Contract and the Respondent has terminated his Contract without just cause.

- IF CAS is of the opposite opinion, to make an equity deduction from the compensation which was decided by FIFA DRC.

- To order the Respondent to pay 100,000 euros as compensation with interest of 5% starting from the date of Respondent's unilateral and unjustified termination,

- to condemn the Respondent to pay the legal fees and other expenses of the Appellant in connection with the proceedings".

31. The Respondent's submissions, in essence, may be summarized as follows:

- The Appellant does not discharge its burden of proof on the existence and content of the alleged TFF regulation on the foreign players' quota at the 2014/2015 season. In any event, it seems improbable that the TFF would issue a regulation forcing clubs to exclude from the team foreign players without any prior notice.

- As it concerns the TFF regulation, the Appellant did not give any evidence on the number of foreign players it was allowed to register in the 2014/2015 season.

- As it appears on the TFF website, on 20 June 2013, the TFF issued a circular letter stating that during the 2014/2015 season, Super League clubs can list a maximum of 8 foreign players out of the 18 included in the list of each match and only 5 of them can be fielded at the same time during the match. When the contract between the Appellant and Respondent was signed, the Appellant was already aware of the TFF restrictions for the 2014/2015 season.

- Moreover, the TFF limitation does not concern the number of foreign players listed with a club for the whole duration of the season, but the number of foreign players listed in each match list. There is no limit imposed by the TFF to the foreign players registered with a Super League club. The facts that during the 2014/2015 season, the Appellant had a total of 13 foreign players, whereas 9 of them were signed at the beginning of the season, are further proof of this.

- The compensation calculated by the FIFA DRC is correct and not excessive or abusive. The Respondent's obligation to mitigate his damage has been duly taken into account in the Appealed Decision.

32. In his answer, the Respondent requested the following relief:

"Mr. Ivan Sesar, represented by Mr. Paulo Bordonaro, attorney at law, asks that the TAS rejects the appeal proposed by Akhisar and condemns him to the payment of legal expenses".

V. JURISDICTION

33. Article R47 of the Code provides as follows:

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

34. The jurisdiction of CAS, which is not disputed, derives from article 67 par. 1 of the FIFA Statutes (2013 edition) 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"* and Article R47 of the Code.

35. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

36. Article R49 of the Code provides as follows:

In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

37. The Appealed Decision was notified to the Appellant on 10 May 2017. The appeal was filed on 30 May 2017 and therefore, within the 21 days set by article 67 par. 1 of the FIFA Statutes. The appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fees.

38. It follows that the appeal is admissible.

VII. APPLICABLE LAW

39. Article R58 of the Code provides 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".

40. The Sole Arbitrator notes that Article 66 par. 2 of the FIFA Statutes (2013 edition) stipulates the following:

"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".

41. Consequently, the Sole Arbitrator will decide the present dispute primarily in accordance with the FIFA Regulations and, subsidiarily, apply Swiss law in case of a possible gap in the FIFA Regulations.

42. The case at hand was submitted to the DRC on 8 August 2014, hence after 1 August 2014, which is the date when the 2014 edition of the FIFA Regulations for Status and Transfer of Players (the "FIFA Regulations") came into force.

43. These are the editions of the rules and regulations under which the case shall be assessed.

VIII. MERITS

44. According to Article R57 par. 1 of the Code, the Sole Arbitrator has *"full power to review the facts and the law"*. As repeatedly stated in the CAS jurisprudence, by reference to this provision the CAS appellate arbitration procedure entails a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Sole Arbitrator to make an independent determination as to merits (see CAS 2007/A/1394).

45. In accordance with the principle of the burden of proof, which is a basic principle in every legal system that is also established in Article 8 of the Swiss Civil Code, each party to a legal procedure bears the burden of corroborating its allegations. In other words, any party deriving a right from an alleged fact shall carry the burden of proof and, in the matter at hand, it is up to the party invoking arguments to justify the existence of a contractual agreement the terms of which were not respected to establish the existence of the facts founding such arguments (see IBARROLA J., *La jurisprudence du TAS en matière de football – Questions de procédure et de droit de fond*, in BERNASCONI/RIGOZZI (eds.), The Proceedings before the Court of Arbitration for Sports, Berne 2007, p. 252; see also, *ex multis*, CAS 2009/A/1810 & 1811).

46. In light of the facts and the circumstances of the case, the Sole Arbitrator shall first examine whether the Appellant established that the Respondent terminated the employment relationship without just cause and, second, shall deal with the financial consequences resulting from the termination of the employment relationship.

A. Did the Appellant establish that the Respondent terminated the agreement without just cause?

47. As it appears from the correspondence included in the case file and the FIFA case file in connection with this matter, which was sent to the CAS upon request of the Sole Arbitrator, the Respondent justifies the termination of his employment relationship with the Appellant by claiming that the Appellant was in breach of its obligations under the Contract. In particular, the Respondent provided several grounds to justify the termination of the employment relationship, namely that the Appellant (a) removed the Respondent from the first team at the beginning of the 2014/2015 season, (b) instructed him to train with the U21 team or alone, (c) did not execute the payment of EUR 35,000 which was due on 2 August

2014 under the Contract, (d) did not provide the Respondent with a car and suitable accommodation according to the terms of the Contract.

48. The Appellant, on the other hand, claims that removing the Respondent from the first team does not constitute valid ground (just cause) for termination and that, in any event, this was the result of a TFF mandatory regulation reducing foreign players quota for the 2014/2015 season, in combination with a report of the Appellant's technical director which was based on the Respondent's lacking performance.

49. The general provisions on contractual stability of the applicable FIFA Regulations on the Status and Transfer of Players (2014 edition) stipulate the following:

"Article 13 – Respect of contract

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

Article 14 – Terminating a contract with just cause

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".

50. However, the FIFA Regulations do not define what constitutes a "just cause". Therefore, in line with well-established CAS case-law, the Sole Arbitrator shall examine the relevant provisions of Swiss law, applicable to the interpretation of the FIFA Regulations (CAS 2008/A/1518, par. 59).

51. Article 337 of the Swiss Code of Obligations ("Swiss CO") provides in this respect that:

"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 his reasons in writing at the other party's request.

2. In particular, good cause is any circumstance which renders the continuation of the employment relationship in good faith unconscionable for the party giving notice.

3. The court determines at its discretion whether there is good cause, However, under no circumstances may the court hold that good cause is constituted by an employee being prevented from working through no fault of his own".

52. According to the relevant jurisprudence of the Swiss Federal Tribunal ("SFT"), the definition of "just cause" as well as the question whether just cause in fact existed, shall be established in accordance with the merits of each particular case and, as it is an exceptional measure, the immediate termination of a contract for just cause must be accepted only under a narrow set of circumstances (ATF 127 III 153 1.a). Only a particularly severe breach of the labour contract will result in the immediate dismissal of the employee, or, conversely, in the immediate abandonment of the employment position by the latter. The judging body determines at its discretion whether there is just cause (Article 337(3) Swiss CO).

53. In the context of the present case and considering that *(a)* the Respondent was hired to play with the Appellant's team with the status of a professional footballer according to the Contract, *i.e.* to play with the Appellant's first team in the professional Turkish Super League, *(b)* the Respondent was part of the Appellant's first team during the 2013/2014 season, which is not disputed by the Appellant, *(c)* the Appellant was obviously not content with the Respondent's performance and such discontent was expressed not only verbally to the Respondent but also in writing in the correspondence of the Appellant with the Respondent's legal counsel (letters of 10 July and 6 August 2014), *(d)* the Respondent was informed that he was no longer considered part of the Appellant's first team for the coming 2014/2015 season and was asked to train alone and/or with the U21 team of the Appellant, and *(e)* the Respondent was asked by the Appellant to find a new team before the beginning of the 2014/2015 season, which is not disputed by the Appellant, the Sole Arbitrator holds that the Respondent had objective reasons to believe that the Appellant had no intention to perform its side of the employment agreement. His exclusion from the team could have seriously prejudiced his career development, as it completely deprived him of the chance to put his talent on display thereby potentially increasing his market value. Bearing in mind the Appellant's criticism and attitude towards the Respondent, the Sole Arbitrator finds that the latter could not reasonably be expected to carry on the employment relationship.

54. For the same reasons, the Sole Arbitrator does not see any more lenient measures which could have been taken by the Respondent in order to resolve the situation and to maintain the contractual relationship. In particular and under the specific circumstances of the case, the Sole Arbitrator sees no reason for the Respondent to give additional warning to the Appellant prior to his resignation, other than the formal notice included in the 6 August letter of the Respondent's legal representative, as such a notification would have been of no use. As a matter of fact, the Respondent had no motive to believe that the Appellant's decision to remove him from the first team was either not final or not permanent (see CAS 2014/A/3643).

55. In this regard, the Appellant claims that the removal of the Respondent from the first team *"is a result of the mandatory regulations of TFF. At this point we would like to state that, on 14.07.2015, TFF decided that, Super League Clubs may drop one foreign player from foreign player quota on condition that complying with financial obligations towards this player and not including this player to the first team squad at the end of the season [Exhibit 9 – decision of TFF dated 14.07.2014]. With this decision, TFF allows the Super League Clubs that one of their foreign players cannot participate in official matches for the wholes season"*.

56. The existence and content of said regulation is disputed by the Respondent, who claims in turn that the TFF had already communicated the regulation since 20 June 2013 and its content referred not to the maximum number of foreign players allowed to be registered by a club during a season, but to the maximum number of foreign players allowed to be included in a match list (8 out of 18) and to be fielded at the same time during the match (5 out of 11).

57. As far as the burden of proof is concerned, the Sole Arbitrator points out that it is the Appellant's duty to objectively demonstrate the existence of what it alleges (Article 8 of the

Swiss Civil Code) and, as a result, it is not sufficient for it to simply assert a state of fact for the Sole Arbitrator to accept it as true (see *ex multis* CAS 2010/A/2071, par. 48).

58. In this respect, the Sole Arbitrator remarks that the content, date of approval and scope of application of the alleged TFF regulation is not made clear by the Appellant. First, the Appellant provided with its submissions no translation into English of its *"Exhibit 9 – decision of TFF dated 14.07.2014"*, which is supposed to be an extract of the TFF website but was submitted by the Appellant in its original form in Turkish language. As such, and considering that the language of the arbitration is English and the Sole Arbitrator is not competent in Turkish, cannot be taken into consideration. Second, the Appellant provided no evidence as to whether the alleged TFF regulation was approved on 14 July 2014 or it only came into force on that date, having been approved earlier. In addition, not even the date of 14 July 2014 is confirmed by any document submitted by the Appellant (the use of the form 14.07.2015 in par. 19 of the appeal brief is obviously a spelling mistake). What is more, in par. 21 of its appeal brief, the Appellant states that *"the date of the decision of TFF for the foreign player quota was 16.05.2014"*, providing thus a different date for said regulation.

59. Lastly, no clear information as to the content and time of approval of the disputed TFF regulation was provided by the Appellant during the hearing. Instead, the Appellant's legal counsel requested the Sole Arbitrator to ask the TFF for information and a translation of the provisions of the TFF regulations governing the foreign players' quota for the 2014/2015 season. The Sole Arbitrator decided to dismiss the Appellant's request. Granting such request would contravene Article R51 of the CAS Code as well as the principle of the burden of proof, which is a basic principle in every legal system that is also established in Article 8 of the Swiss Civil Code, particularly in view of the fact that the Appellant did not submit any reasons as to why it would be impossible for him to submit the requested information and documents with its appeal brief, which would anyway be difficult to argue as the Appellant is member of the TFF and participated in the Turkish Super League during the season at issue.

60. In consideration of the above, the Sole Arbitrator cannot but observe that there is no definite and/or persuasive evidence in the case file nor did any such evidence come up during the hearing, that would allow him to conclude with certainty that the alleged TFF regulation prevented the Appellant from using the Respondent in its first team during the 2014/2015 season.

61. As a result, the Sole Arbitrator cannot take into consideration the Appellant's argument with respect to *"the mandatory regulations of TFF"*, as the Appellant failed to discharge its burden of proof in proving their existence, content and relevance to the matter at hand.

62. For the sake of completeness, the Sole Arbitrator notes that, even if the Appellant had met its burden of proof with respect to the alleged TFF regulation and if its content was indeed established as described in par. 19 of the appeal brief, the Respondent would still be in a position where he could not reasonably have been expected to carry on the employment relationship. The TFF regulation, assuming it had the alleged content, could not possibly allow clubs to remove foreign players from their first teams and order them to train with the U21 teams, on account of them exceeding the relevant quota. To hire and to maintain the football

player as a professional footballer is a basic obligation assumed by any football club that is party to a professional footballer's employment contract. Moreover, considering that the Respondent played in the Appellant's first team during the first season of the Contract, it would be contrary to good faith and to the principle of *pacta sunt servanda* for the Appellant to knowingly sign more foreign players during the 2014 summer transfer window, as was claimed by the Respondent and not disputed by the Appellant, and then invoke the latter agreements as being compulsory for the Appellant over the one signed with the Respondent.

63. Finally, the Appellant contends that it decided to remove the Respondent from the first team because of its unsatisfactory performance. The Sole Arbitrator notes, however, that the Appellant did not submit any evidence as to the existence and content of the alleged report of its technical director, let alone the report itself, regarding the supposedly insufficient performance of the Respondent, nor did the Appellant provide any concrete data as to the nature of the decrease of performance.

64. Last but not least, the Sole Arbitrator remarks that, as stated in par. 26.1 of the appeal brief, *"the Appellant did not object the issuance of the ITC for the Respondent"* which means that it was content with the outcome of the dispute and the termination of the employment relationship.

65. On the basis of the above considerations, the Sole Arbitrator finds that the Respondent terminated unilaterally the employment relationship with the Appellant with just cause and confirms the Appealed Decision in this respect.

B. The financial consequences resulting from the termination of the employment relationship

66. Having established that the Respondent terminated the contract with just cause due to breach of the Appellant, the Sole Arbitrator will now deal with the issue of financial consequences derived from such termination.

67. The Sole Arbitrator has no hesitation to confirm the Appealed Decision on this part as well, which ruled that the Respondent was entitled to payment of outstanding remuneration in the amount of EUR 36,500 as well as compensation for breach of contract in the amount of EUR 152,000.

68. With respect to the payment of the Respondent's outstanding remuneration, the Sole Arbitrator notes that the Appellant is under the obligation to fulfil its duties and financial obligations under the Contract, in accordance with the general principle of *"pacta sunt servanda"*.

69. In support of its appeal, the Appellant contends that *"the amount of compensation which was calculated by FIFA DRC is excessive and against the case law of FIFA and CAS"*, without however providing references from any such case law.

70. The Appellant did not dispute the Respondent's claim that the amount of EUR 36,500 remained outstanding under the Contract and had not been paid to the Respondent.

71. The Sole Arbitrator refers to the general principle of the burden of proof, which is further established by Article 8 of the SCC, according to which a party deriving a right from an alleged fact has the obligation to prove such relevant fact.

72. Consequently, the Sole Arbitrator concludes that the Appellant did not pay the Respondent his salary instalment of EUR 35,000 which was due on 2 August 2014, as well as his "per match" payment in the amount of EUR 1,500 which was also outstanding under the Contract. The Sole Arbitrator, therefore, confirms the Appealed Decision in this part and finds that the Respondent is entitled to receive the amount of EUR 36,500 as outstanding remuneration under the Contract.

73. As far as the matter of the Respondent's compensation for the early termination is concerned, a player has to be compensated for the damages caused by the unlawful termination of an employment contract. The matter of the player's compensation is governed by the Article 17 par. 1 of the FIFA Regulations, which states *inter alia* that:

"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".

74. Article 97 para. 1 of the Swiss CO also stipulates that:

"An obligor who fails to discharge an obligation at all or as required must make amends for the resulting loss or damage, unless he can prove that he was not at fault".

75. In spite of the Appellant's objections which relate to the allegedly excessive and unreasonable amount of compensation awarded to the Respondent, in support of which, it needs to be noted, the Appellant provides no concrete argumentation or evidence or grounds for the requested reduction, the Sole Arbitrator finds that the compensation corresponding to breach of contract was calculated correctly by the Appealed Decision, which further gives a detailed explanation of the amounts to be awarded to him.

76. In particular, the Appellant does not explain why a monthly salary of EUR 800 is excessively low and by signing a contract with said club the Respondent violated his obligation to mitigate his damages

77. As a result, the Sole Arbitrator concludes that the Appellant must also pay to the Respondent the amount of EUR 152,000 as compensation corresponding to the breach of the Contract.

78. Considering the conclusion reached in the above section, the Sole Arbitrator further decides to reject the request made by the Appellant in par. 31 of the appeal brief that the Respondent be ordered to pay EUR 100,000 to the Appellant as compensation.

79. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Akhisar Belediye Gençlik ve Spor Kulübü Dernegi on 30 May 2017 against the decision issued on 19 January 2017 by the FIFA Dispute Resolution Chamber is dismissed.

2. The decision issued on 19 January 2017 by the FIFA Dispute Resolution Chamber is confirmed.

3. (…).

4. (…).

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