Arbitration CAS 2019/A/6626 Club Al Arabi SC v. Ashkan Dejagah, award of 12 November 2020

Panel: Mr Frans de Weger (The Netherlands), President; Mr Mark Hovell (United Kingdom); Mr Jan Räker (Germany)

Football
Termination of the employment contract with just cause by the player
Principle "electa una via non datur recursus ad alteram" acknowledged by FIFA
Non-exclusivity vs lis pendens
Obligation to stay the proceedings only in case of "serious reasons" or "substantive grounds"
Definition of "serious reasons" or "substantive grounds"
Non-payment or late payment of the remuneration as just cause
Warning or notification of the termination
Validity of a liquidated damages clause and reciprocity of such clause
Scope of review of a CAS panel and inadmissibility of counterclaims

1. **Taking into account the possibility for clubs and players to refer disputes to state courts instead of submitting them to sport adjudication bodies, FIFA has developed, in the exercise of its freedom of association, a principle of coordination between the state and the sporting adjudication systems: if a party decides to start proceedings before a state court, such case cannot be submitted (at the same time or thereafter) to a FIFA adjudication body. This rule of "alternativity" has been described by FIFA as based on the principle of "litispendency". Its effects, however, appear to be more properly the consequence, established within the FIFA system, of the choice by the relevant party of the remedy for contractual disputes, so that *electa una via non datur recursus ad alteram*. Put differently, FIFA acknowledges the possibility for a party to opt for state court adjudication, but establishes the principle that once such option is exercised, the possibility to refer the same case to sport adjudication bodies is precluded.**

2. **Any non-exclusivity does not mean, *per definition*, that no *lis pendens* can exist. Even if a provision provides for non-exclusivity, a matter of *lis pendens* can apply. Non-exclusivity only means that a party that starts litigation has the liberty to choose the forum and is not bound by any exclusivity. However, once a forum for litigation has been chosen by one of the parties, the principle of *lis pendens* might still come into play. In addition, *"notification"* is not a strict requirement under Swiss law in order to establish whether or not there is a matter of *lis pendens*.**

3. **An international arbitral tribunal having its seat in Switzerland is not obliged to stay the proceedings, also not if an identical legal action has been initiated before a foreign state court first. Article 186(1bis) of the Swiss Private International Law Act (PILA), authorizes an international arbitral tribunal with its seat in Switzerland, when seized**

second, to proceed with the arbitration and decide on its jurisdiction, regardless of any action on the same dispute already pending before a state court or another arbitral tribunal. However, the mere fact that an international arbitral tribunal with its seat in Switzerland is in principle not obliged to stay the proceedings, does not rule out that such tribunal is required to stay the proceedings in case *"serious reasons"* require it to do so, pursuant to Article 186(1bis) PILA, or in case so-called *"substantive grounds"* exist, as explicitly follows from Article R55 of the CAS Code.

4. **"Serious reasons" or "substantive grounds" exist if the appellant can prove that the suspension is necessary in order to protect its rights and that the continuation of the arbitration proceedings would cause any serious harm. However, the simple possibility of a state court issuing a decision different from the CAS is not considered to be a substantive ground. Indeed, the possibility to have contradictory decisions exists in all parallel proceedings involving a civil and an arbitration institution. Otherwise, the arbitral procedure would always end up being suspended, which is clearly not the aim of Article 186 paragraph 1 PILA. A stay of the arbitration based on Art. 186(1bis) PILA might be justified, for example, if it appears that the foreign proceedings were primarily initiated to "torpedo" the arbitration, or if the arbitration was only initiated when the proceedings in the foreign state court had already reached an advanced stage. The arbitral tribunal may also be willing to examine whether the decisions of the foreign court is likely to be recognized and enforced in Switzerland.**

5. **Just cause exists whenever the terminating party can in good faith not be expected to continue the employment relationship. The definition of "just cause", as well as the question and whether just cause in fact existed, shall be established in accordance with the merits of each particular case. In other words, the event that leads to the immediate termination must so significantly shatter the trust between the parties that a reasonable person could not be expected to continue to work with the other party who is responsible for the just cause. Only material breaches of a contract can possibly be considered as "just cause" for the termination of the latter. Non-payment or late payment of remuneration by the employer does in principle – and particularly if repeated – constitute just cause for termination of the employment contract, since the employer's payment obligation is his main obligation towards the employee. The fact that a club expressed that it is *"working hard"* to solve outstanding payment issues is not sufficient to exempt it from its obligations under the employment contract.**

6. **For a party to be allowed to validly terminate an employment contract, it must have warned the other party, in order for the latter to have had the chance, if it deemed that the complaint to be legitimate, to comply with its obligations. The duty to issue a reminder or a warning, respectively, is not absolute, and there are circumstances where no reminder and no warning is necessary, for instance where it is clear that the other side does not intend to comply with its contractual obligations.**

7. **Article 17(1) of the FIFA Regulations on the Status and Transfer of Players does not require contractually agreed liquidated damages clauses to be reciprocal, nor is there**

any other source or legal doctrine based on which such test would have to be applied. The appropriate test should be whether there has been any excessive commitment from any of the contractual parties in respect of the conclusion of the applicable clause.

8. **In order for a CAS panel to be able to award more than what was granted to a party in the appealed decision, the party must have filed an independent appeal against the decision. The *de novo* principle, in accordance with the power bestowed on it by Article R57 of the CAS Code, does not go that far that the CAS panel is in the position to grant an amount exceeding the overall compensation awarded in the appealed decision. It must be recalled that, since 2010, counterclaims are no longer possible in appeal procedures before the CAS. This means that, if a potential respondent wants to challenge part or all of a decision, it must file an independent appeal with the CAS within the applicable time limit for appeal.**

I. INTRODUCTION

1. This appeal is brought by Club Al Arabi SC (the "Club" or the "Appellant") against the decision rendered by the Dispute Resolution Chamber (the "FIFA DRC") of the Fédération Internationale de Football Association ("FIFA") on 14 June 2019 (the "Appealed Decision"), regarding an employment-related dispute between the Club and Ashkan Dejagah (the "Player" or the "Respondent").

II. PARTIES

2. The Appellant is a professional football club, based in Doha, Qatar. The Appellant is affiliated to the Qatar Football Association (the "QFA") which in turn is affiliated with FIFA.

3. The Respondent is a professional football player of Iranian and German nationality, born on 5 July 1986.

4. The Appellant and the Respondent are referred together as the "Parties".

III. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions on the file, the video-hearing and relevant documentation produced in this appeal. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Award only refers to the submissions and evidence it considers necessary to explain its reasoning.

A. Background facts

6. On 23 July 2014, the Parties concluded an employment contract valid as from 1 July 2014 until 30 June 2018 (the "Employment Contract").

7. The Employment Contract contains, *inter alia,* the following relevant terms:

> *"**Article (9) Contract Commencement and Termination***
>
> *This contract begins on **01/07/2014** and terminates on **30/06/2018**. The validity of the Contract is subject to registration of the QFA and the confirmation of the approval of QSLM (ratification of the contract).*
>
> *The* [Club] *and the* [Player] *have the Option to extend this contract under the same conditions for an additional season (2018/2019). In this case they have to inform the other party in written form during this contract, via Telefax. In this case the* [Player]*'s salary will be like the season 2014/2015 of this contract.*
>
> ***Article (10) Termination by the Club or the Player***
>
> *1. The* [Club] *and the Player may terminate this Contract, before its expiring term, by mutual agreement.*
>
> *2. The* [Club] *and the Player shall be entitled to terminate this Contract, before its expiring term, by fifteen (15) days' notice in writing for just cause according with the FIFA Regulations governing this matter as well as the Law of the State of Qatar.*
>
> *3. When the termination of the Contract is not due to a just cause or a mutual agreement between the Parties concerned, the* [Club] *or the Player shall be entitled to receive from the other party in breach of the Contract a compensation for a net amount:*
> - ***To the* [Club]:**
> ***Euro 30.000.000/-(Thirty Million Euro)***
> - ***To the Player:***
> ***(The remaining salaries of the contract)***
>
> ***Article (13) Applicable Law and Jurisdiction***
>
> *In case of any contractual dispute the only applicable law shall be firstly the Law of the FIFA. The parties agree to submit this Contract to the non exclusive jurisdiction of the Qatari Courts or of any other arbitral tribunal established by QFA and QSLM in accordance to its Statutes and the FIFA National Dispute Resolution Chamber, if applicable".*

8. The *"Football Player's Contract Schedule"* (the "Annex") attached to the Employment Contract contains the following relevant provisions regarding the Player's salary and other benefits:

> *"Total amount of the contract :*
> *Euro 12.300.000/- (Euro Twelve Million Three Hundred Thousand*
> *Only) for Four season (2014/2015) – (2015/2016) – (2016/2017) – (2017/2018).*
> *to be paid as follows:*

1- The First season 20014/2015.

The total amount for the First season:

Euro 3.300.000/- (Euro Three Million Three Hundred Thousand only) to be paid as follows:

(a) *Euro 900.000/- (Nine Hundred Thousand Euro) advanced payment, to be paid within a July 2014.*

(b) *Euro 200.000/- (Two Hundred Thousand Euro) a Monthly Salaries, per month to be paid from 01/07/2014 to 30/06-2015 (Twelve months).*

2- The Second season 20015/2016 .

The total amount for the Second season:

Euro 3.000.000 (Euro Three Million only) *to be paid as follows:*

(a) Euro 600.000/- (Six Hundred Thousand Euro) advanced payment, to be paid within a July 2015.

(b) Euro 200.000/- (Two Hundred Thousand Euro) a Monthly Salaries, per month to be paid from 01/07/2015 to 30/06/2016 (Twelve months).

3- The Third season 2016/2017 .

- Total amount for the Third season:

Euro 3.000.000/- (Euro Three Million only) *to be paid as follows:*

(a) Euro 600.000/- (Six Hundred Thousand Euro) advanced payment, to be paid within a July 2016

(b) Euro 200.000/- (Two Hundred Thousand Euro) a Monthly Salaries per month to be paid from 01/07/2016 to 30/06/2017 (Twelve months)

4- The Fourth season 2017/2018 .

- The total amount for the Fourth season:

Euro 3.000.000/- (Euro Three Million only) *to be paid as follows:*

(a) Euro 600.000/- (Six Hundred Thousand Euro) advanced payment, to be paid within a July 2017.

(b) Euro 200.000/- (Two Hundred Thousand Euro) a Monthly Salaries per month to be paid from 01/07/2017 to 30/06/2018
(Twelve months)

(e Other benefits in favour of the player :

- ***House***
- ***Car***
- ***Air Tickets: (8) business class (Berlin – Doha – Berlin), per each sesons to be used by the player and his family.***
-
- *Bonuses :*
  - ***1- Euro (500.000) for winning Q.S.L. League***
  - ***2- Euro (250.000) for winning Emir Cup***
  - ***3- Euro (100.000) for winning Qatar Cup***

4- Euro (150.000) for winning Gulf Cup
5- Euro (1.000.000) for winning Asian League

The player's income refers to net amounts. Any taxes Regarding this contract will be covered by the club.
.....".

9. As from April 2016, the Club failed to pay the Player his salaries. Moreover, as from the summer 2016, the Club deregistered the Player from the QFA, and, as from then, the Player did not play any matches for the Club.

10. Per letter of 31 October 2016, the legal representative of the Player addressed the QFA claiming outstanding salaries for the months April, May and June in 2016. In the same letter, the Player also requested an explanation about his deregistration with the QFA.

11. Per letter of 22 November 2016 to the QFA, the Club acknowledged that a total amount of EUR 800,000 was outstanding, corresponding to the salaries as from April until June as well as October 2016. Further to this, the Club informed the Player that the Club was working on it and that the amount was going to be paid to the Player. No further explanation was given by the Club with regard to the deregistration of the Player.

12. On 1 December 2016, the Player sent a letter to the Club, claiming salary payments for the months as of April until November 2016 as well as an advance payment for the season 2016/2017 of EUR 600,000 and outstanding payments for benefits, such as house, car and air tickets. In total, the Player claimed the amount of EUR 2,200,000.

13. In reply to its letter of 31 October 2016, as referred to above, on 6 December 2016, the QFA sent a letter to the Player informing the latter that the matter had been submitted to the QFA Players' Status Committee. In this letter, the QFA asked the Player to inform the QFA by no later than 11 December 2016 whether a settlement agreement had been reached between the Parties. Furthermore, the QFA informed the Player that the QFA was not able to issue an official decision and could only mediate between the Parties.

14. Per letter of 8 December 2016, the Player informed the QFA that a settlement agreement had not been reached between the Parties. In this letter, the Player further claimed payment of the salaries until November and referred to the deadline of 10 December 2016. In the same letter, the Player requested an explanation regarding his deregistration.

15. On 18 January 2017, the Player sent a letter to the Club in which the Player informed the Club that he was exercising his unilateral extension right under Article 9 (2) of the Employment Contract, following which the Employment Contract would be extended for another year and would come to an end on 30 June 2019.

16. On 19 January 2017, the Player sent another letter to the Club. In this letter, the Player requested the payment of the amount of EUR 800,000, corresponding to outstanding salaries

for April, May, June and December 2016, by 23 January 2017 at the latest. In case payment would not be made, the representative of the Player informed the Club that he was going to advise the Player to terminate the Employment Contract. Further to this, the Player asked, again, for the requested explanation for his deregistration.

17. Per letter of 24 January 2017, the Club informed the Player that the Club was working hard to resolve the outstanding payment issues. Moreover, the Club informed the Player per that same letter that the unilateral extension by the Player was rejected.

18. On 25 January 2017, the Player terminated the Employment Contract in writing.

19. On 16 February 2017, the Club filed a claim against the Player before the Qatari Civil Courts, submitting the following requests for relief:

*"**First**: To order* [the Player] *to pay* [the Club] *an amount of 30,000,000 thirty million euros, the penal clause provided in the contract due to rise of the reason thereto.*

***Second**: To order* [the Player] *to pay the charges and costs".*

20. In its claim before the Qatari Civil Courts, the Club's legal representative requested the court to *"notify* [the Player] *by diplomatic means through his new club and the German Football Association and through his elected domicile (office of his legal representative)".*

B. Proceedings before the FIFA Dispute Resolution Chamber

21. On 18 September 2017, with an additional amendment on 6 October 2017, the legal representative of the Player filed a claim against the Club in front of the FIFA DRC for breach of contract and requested, *inter alia*, EUR 961,290 as outstanding remuneration, corresponding to outstanding salaries as of April until June 2016, plus December 2016 and 25 days of January 2017, as well as an amount of EUR 5,312,709.71 as total compensation for breach of contract.

22. In its reply to the claim, the Club contested FIFA's jurisdiction and lodged a counterclaim against the Player, requesting payment of in total EUR 30,000,000 as compensation for terminating the Employment Contract by the Player without just cause.

23. On 14 June 2019, the FIFA DRC rendered the Appealed Decision with the following operative part:

"1. The claim of the [Player]*, Ashkan Dejagah, is admissable.*

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

3. The [Club]*, Al Arabi SC, 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 1,000,000 plus interest until the date of effective payment as follows:*

a. 5% p.a. as of 1 May 2016 on the amount of EUR 200,000;
b. 5% p.a. as of 1 June 2016 on the amount of EUR 200,000;
c. 5% p.a. as of 1 June 2016 on the amount of EUR 200,000;
d. 5% p.a. as of 1 January 2017 on the amount of EUR 200,000;
e. 5% p.a. as of 26 January 2017 on the amount of EUR 200,000.

4. The [Club] *has to pay to the* [Player]*, within 30 days as from the date of notification of this decision, the amount of EUR 3,400,000 as compensation for breach of contract, plus 5% interest p.a. as of 20 December 2018 until the date of effective payment.*

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

6. The counterclaim of the [Club] *is rejected.*

7. In the event that the aforementioned amounts plus interest are not paid by the [Club] *within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration asd a formal decision.*

8. The [Player] *is directed to inform the* [Club] *immediately and directly of the account number to which the remittances under point 3. And 4. Are to be made and to notify the DRC of every payment received".*

24. On 15 November 2019, the grounds of the Appealed Decision were communicated to the Parties determining, *inter alia,* the following:

- With regard to the competence of FIFA, *"the Chamber acknowledged that the* [Club] *contested the competence of FIFA's deciding bodies, invoking lis pendens on the basis that* [the Club] *had lodged a claim against the* [Player] *in front of the local courts of Qatar prior to the one lodged by the* [Player] *in front of FIFA regarding the* [Player's] *termination.*

- *In relation to said argument, the members of the Chamber took note that the* [Player] *insisted in the competence of FIFA on the grounds, that FIFA was not excluded by means of the wording of art. 13 in the relevant contract. Furthermore, the* [Player] *stated that he was never notified in relation to the procedure allegedly existing against him before the local courts of Qatar. The Chamber also took note that, according to the* [Player]*, he never participated in said alleged proceedings.*

- *In view of the dissent of the parties, the Chamber further examined the argument and evidence submitted by the* [Club] *in relation to the competence*

- *In this regard, the members of the Chamber pointed out that art. 13 of the contract provided for the "non exclusive" jurisdiction of the Qatari courts, therewith not excluding the competence of other decision-making bodies such as the DRC. In this respect, the Chamber wished to emphasise that the alleged fact that the claim in front of the Qatari court was filed earlier than the claim in the present proceedings does not prevent per se the Chamber from entertaining the latter claim. Moreover, the Chamber recalled the basic principle of burden proof, as established in art. 12 par. 3 of the Procedural*

Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof.

- *In accordance with said principle, the Chamber carefully examined the documentation provided by the* [Club] *and noticed that the latter failed to provide any convincing evidence to prove that the* [Player] *was duly informed of any pending proceedings in front of the Qatari courts, and that the information provided by the Qatari club in this regard is not conclusive in order to determine that an actual notification of any court proceedings was effectively sent to the* [Player].

- *In view of the above, the Chamber unanimously decided to reject the* [Club's] *argument in this regard and, thus, concluded that the DRC is competent to deal with the matter at stake".*

- With regard to the breach of the Employment Contract, the Player maintained that the Club had *"breached the* [Employment Contract] *by failing to comply with its financial obligations as well as by de-registering him from the* [QFA]. *Consequently, the* [Player] *stated that he terminated the* [Employment Contract] *on 25 January 2017 with just cause, after having put* [the Club] *in default on several occasions. In line with the above, the* [Player] *requested to be awarded with his outstanding dues as well as compensation for breach of contract.*

- *The Chamber observed that, in reply,* [the Club] *lodged a counterclaim against the* [Player] *arguing that the latter "failed to follow the procedural steps to terminate the* [Employment Contract]*" and since he allegedly never warned the* [Club] *about a possible termination. Further, the* [Club] *confirmed the* [Player's] *deregistration, but held that this had no effect on the* [Employment Contract] *and, that its "short period" did not justify a termination since he could have possibly been registered again. On account of the above, the* [Club] *claimed compensation in the amount of EUR 30,000,000, referring to the compensation clause in the* [Employment Contract].

- *Having established the above, and in view of the diverging positions of the parties, the members of the Chamber turned their attention to the central issue at stake, namely whether the* [Employment Contract] *was terminated by the* [Player] *with or without just cause and to decide on the consequences thereof.*

- *With the above in mind, the Chamber proceeded with an analysis of the circumstances surrounding the present matter, the parties' arguments as well the documentation on file, bearing in mind art. 12 par. 3 of the basis of an alleged fact shall carry burden of proof.*

- *In doing so, the DRC recalled that it has remained undisputed that the* [Player] *terminated the* [Employment Contract] *on 25 January 2017 by means of a letter, referring to outstanding remuneration corresponding to more than four monthly salaries, namely April until June 2016, December 2016 as well as January 2017.*

- *In particular, the members of the Chamber noted that said alleged outstanding remuneration remained uncontested and partially acknowledged by* [the Club]. *In this context, the DRC established that* [the Club] *without any valid reason, failed to remit to the* [Player] *remuneration in the total amount of EUR 1,000,000, corresponding to five monthly salaries.*

- *What is more, the Chamber took into account that the* [Player] *on three occasions had put the* [Club] *in default before terminating the* [Employment Contract]*, including the warning that he would terminate the* [Employment Contract] *in case of non-compliance by the club. In this regard, the DRC rejected the* [Club's] *argument that the* [Player] *"failed to follow the procedural steps to terminate the* [Employment Contract]*"*.

- *Consequently, the Chamber concluded that the* [Club] *had thus repeatedly and for a significant period of time been in breach of its contractual obligations toward the* [Player].

- *As to the alleged de-registration of the* [Player]*, the members of the Chamber first of all considered important to point out, as it has been previously sustained by the DRC in various decisions, that among the player's fundamental rights under an employment contract, there is not only his right to a timely payment of his remuneration, but also his right to be given the possibility to compete with his fellow team mates in the team's official matches. In this context, the DRC emphasised that, by refusing to register or by de-registering a player, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, violating one of his fundamental rights as a football player.*

- *Therefore, and since the* [Player's] *de-registration was confirmed by the* [Club]*, the members of the DRC concluded that the* [Club] *effectively prevented the* [Player] *from being eligible to play for it as from "summer 2016" until the* [Player's] *termination on 25 January 2017*.

- *In addition, and from the documentation available on file, the members of the Chamber confirmed that, indeed, the* [Player] *notified the* [Club] *in order to express his dissatisfaction with his de-registration on several occasions, without receiving any reply as to the specific issue of his deregistration.*

- *On account of the above, the Chamber unanimously rejected the* [Club's] *argumentation that the de-registration had no influence on the* [Employment Contract] *and that the* [Player] *could have been re-registered at some point.*

- *Consequently, the members of the DRC highlighted that, at the moment the* [Player] *terminated the* [Employment Contract]*, he was not registered with the* [Club] *and had strong reasons to believe that the latter was no longer interested in him. As mentioned previously, the sole fact of not registering a player, thus preventing him from rendering his services to a club, constitutes in itself a serious breach of contract"*.

- With regard to the termination of the [Employment Contract],*"the DRC came to the unanimous conclusion that the* [Player] *terminated the contract with just cause on 25 January 2017*.

- *Subsequently, prior to establishing the consequences of the termination of the* [Employment Contract] *with just cause by the* [Player] *in accordance with art. 17 par. 1 of the Regulations, the Chamber held that it, in general, had to address the issue of unpaid remuneration at the moment when the* [Employment Contract] *was terminated by the* [Player].

- *Bearing in mind the above, the Chamber, in accordance with the general legal principle of pacta sunt servanda, decided that the club is liable to pay to the player the amount of EUR 1,000,000 with*

regard to the remuneration due to him during the months April until June 2016, December 2016 as well as January 2017.

- *In addition, taking into consideration the* [Player's] *claim, the Chamber decided to award the* [Player] *interest at the rate of 5% p.a., on the aforementioned amount, as of the respective due dates until the date of effective payment.*

- *In continuation, the Chamber focused its attention on the consequences of the breach of contract in question and, in this respect, it decided that, taking into consideration art. 17 par.1 of the* Regulations, *the* [Player] *is entitled to receive from the* [Club] *compensation for breach of contract on the basis of the relevant* [Employment Contract].

- *In continuation, the Chamber outlined that, in accordance with said provision, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, 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.*

- *In application of the relevant provision, the Chamber held that it first of all had to clarify whether the pertinent* [Employment Contract] *contained any clause, by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. In this regard, the members of the Chamber noted that article 10 of the* [Employment Contract] *provided a form of compensation as follows:*

  > *"When the termination of the* [Employment Contract] *is not due to a just cause or a mutual agreement between the Parties concerned, the* [Club] *and the* [Player] *shall be entitled to receive from the other party in breach of the* [Employment Contract] *a compensation for a net amount:*
  >
  > - *To the* [Club]*: EUR 30,000,000I- (Thirty Million Euro).*
  > - *To the* [Player]*: Ashkan Seyed Dejagah (the remaining salaries of the contract)".*

- *However, and after carefully analysing the content of art. 10 of the* [Employment Contract]*, the DRC considered that this clause is in direct opposition with the general principle of proportionality and the principle of balance of rights of the parties since it provides benefits only toward the* [Club] *with no equivalent right in favour of the* [Player]. *Therefore, the Chamber concluded that said clause could not be taken into consideration in the determination of the amount of compensation.*

- *As a consequence, the members of the Chamber determined that the amount of compensation payable by the* [Club] *to the* [Player] *had to be assessed in application of the other parameters set out in art. 17 par. 1 of the* Regulations. *The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation*

payable. Therefore, other objective criteria may be taken into account at the discretion of the deciding body.

- *Bearing in mind the foregoing as well as the claim of the* [Player]*, the Chamber proceeded with the calculation of the monies payable to the* [Player] *under the terms of the* [Employment Contract] *as from 25 January 2017 (i.e. the date of termination of the* [Employment Contract]*) until 30 June 2018 (i.e. the original date of expiration of the* [Employment Contract]*).*

- *In this regard, the members of the Chamber noted that the* [Player]*, by correspondence dated 18 January 2017, intended to extend the contractual relationship in application of art. 9 par.2 of the* [Employment Contact] *for one additional season. Taking into account that the* [Player] *terminated the* [Employment Contract] *only one week later and that he had already sent several default notices to the* [Club] *mentioning his intention to terminate the* [Employment Contract]*, the DRC concluded that said unilateral extension was issued in bad faith and would not be taken into account when calculating the residual value of the* [Employment Contract].

- *Furthermore, the members of the Chamber observed, that under the* [Employment Contract]*, the* [Player] *would have earned the amount of EUR 4,000,000, as from the date of termination of the* [Employment Contract] *until the original expiration date of the* [Employment Contract]*. The members of the Chamber therefore established that the aforementioned amount shall serve as the basis for the calculation of the payable compensation.*

- *In continuation, the Chamber verified as to whether the* [Player] *had signed an employment contract with another club during the relevant period of time, by means of which he would have been enabled to reduce his loss of income. According to the constant practice of the DRC, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the* [Player's] *general obligation to mitigate his damages.*

- *In this respect, the Chamber noted that, subsequently, on 27 January 2017, the* [Player] *concluded an employment contract with the German club, VfL Wolfsburg, valid as from the date of signature until 30 June 2017, including a monthly salary of EUR 80,000.*

- *In addition, the DRC noted that the* [Player] *remained unemployed between 1 July 2017 until 29 January 2018.*

- *Furthermore, the members of the Chamber noted that on 30 January 2018, the* [Player] *signed an employment contract with the English club, Nottingham Forest valid as from the date of signature until 30 June 2018, for a total remuneration in the amount of GBP 168,000.*

- *On account of the above considerations, taking into account the remuneration from the* [Player's] *new employment during the relevant period, the DRC calculated a mitigated compensation in the amount of EUR 3,400,000.*

- *In conclusion, for all the above reasons, the Chamber decided to partially accept the* [Player's] *request and held that the* [Club] *must pay to the* [Player] *the amount of EUR 3,400,000 as compensation for breach of contract, which is considered by the Chamber to be a reasonable and justified amount.*

- *In addition, taking into consideration the* [Player's] *claim, the Chamber decided to award the* [Player] *interest at the rate of 5% p.a. as of the date of the amended claim, i.e. 20 December 2018, until the date of effective payment.*

- *The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claim lodged by the player is rejected.*

- *Finally, the DRC also rejected the counterclaim lodged by the* [Club]*, as it has been established that the* [Player] *had just cause to terminate the* [Employment Contract]*".*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

25. On 6 December 2019, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Article 58 of the FIFA Statutes and Articles R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code").

26. On 12 December 2019, the CAS Court Office acknowledged the filing of the Statement of Appeal and invited the Club to file with the CAS, within ten (10) days following the expiry of the time limit for the appeal, a brief stating the facts and legal arguments giving rise to the appeal. Further to this, the CAS Court Office invited the Player to state whether he consented to the requested extension by the Club until 5 January 2020 to file its Appeal Brief. Furthermore, the CAS Court Office noted the Club's nomination of Mr Mark Andrew Hovell as an arbitrator. In the same letter, the CAS Court Office invited the Player to file a letter of representation.

27. Per letter of the same day, on 12 December 2019, the CAS Court Office informed FIFA regarding the appeal as filed by the Club, and invited FIFA whether it intended to participate as a party in the present arbitration.

28. On 17 December 2019, the legal representative of the Player provided the CAS Court Office with a power of attorney, and informed the CAS Court Office that the Player agreed with the extension for the filing of the Appeal Brief until 5 January 2020 and nominated Mr Jan Räker as an arbitrator.

29. On 17 December 2019, the CAS Court Office informed the Parties that by absence of any objection by the Player, the Club's deadline to file its Appeal Brief was extended.

30. On 18 December 2019, the CAS Court Office invited Counsel for the Player to resubmit a power of attorney as the one attached to its former letter was illegible.

31. On 19 December 2019, FIFA informed the CAS Court Office, *inter alia*, that it renounced its right to request its possible intervention in the present arbitration proceedings.

32. On 6 January 2020, the Club filed its Appeal Brief pursuant to Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments, in which the Club challenged the Appealed Decision.

33. On 9 January 2020, the CAS Court Office acknowledged receipt of the Club's Appeal Brief dated 6 January 2020, and invited the Player to submit its Answer.

34. On 10 January 2020, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel appointed to decide the case was constituted as follows:

- President: Mr Frans M. de Weger, Attorney-at-law, Haarlem, the Netherlands

  Arbitrators: Mr Mark Andrew Hovell, Solicitor, Manchester, United Kingdom

  Dr Jan Räker, Attorney-at-law, Stuttgart, Germany

35. On 16 January 2020, the Player asked that the deadline to file the Answer starts running from receipt of the Club's exhibits in a legible format, which request was granted by the CAS Court Office per letter of the same day.

36. On 30 January 2020, the Player filed his Answer in accordance with Article R55 of the CAS Code.

37. On 31 January 2020, the CAS Court Office informed the Parties that it acknowledged receipt of the Player's Answer. Per that same letter, the Parties were informed that they were not authorized to supplement or amend their requests or their argument, nor to produce new exhibits, not to specify further evidence on which they intended to rely, after the submission of the Appeal Brief and of the Answer. Furthermore, the CAS Court Office invited the Parties whether they preferred a hearing to be held on 14 May 2020.

38. Per letter of 7 February 2020, the Player informed the CAS Court Office that he agreed with a decision *"in the written procedure if, from the Appeal Panel's point of view, hearing the witnesses Fazeli and Rebbe is not of decisive importance"*. Per letter of the same day, the Club informed the CAS Court Office that *"it preferred a hearing to be held in the present matter"*.

39. On 28 February 2020, the CAS Court Office informed the Parties that they were granted a second round of written submissions. In this regard, the Club was invited, within 10 days from receipt of that letter, to file a Reply focusing on – but not limited to – the issue of *lis pendens* and the admissibility of the Player's counterclaim. Thereafter, a similar deadline would be granted to the Player to file his Rejoinder. Further to this, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing.

40. After confirmation by the Parties of their presence for the hearing to be held on 14 May 2020, per letter of 6 March 2020, the Player asked to reschedule the hearing due to COVID-19, and to propose a new date.

41. On 10 March 2020, the CAS Court Office acknowledged receipt of the Club's Reply submitted on 9 March 2020 and invited the Player to file his Rejoinder within ten (10) days from receipt of this letter. In its Reply, the Club asked the CAS to issue a preliminary award on the jurisdiction / *lis pendens* issue.

42. On 13 March 2020, the CAS Court Office informed the Parties that in light of the sanitary situation in Europe, the Panel had decided not to hold the hearing on the initial date of 14 May 2020 and proposed new dates.

43. On 18 March 2020, the Player filed his Rejoinder.

44. Per letter of 23 March 2020, the CAS Court Office confirmed that the hearing was going to be held on 1 July 2020 at the Office of the CAS Anti-Doping Division in Avenue de Rhodanie in Lausanne.

45. On 7 April 2020, the CAS Court Office informed the Parties that the Panel had decided to assess the *"lis pendens"* issue together with the merits of the case in the final arbitral award and that, consequently, no preliminary award would be released.

46. On 17 April and 29 May 2020 respectively, the Club and the Player returned duly signed copies of the Order of Procedure to the CAS Court Office.

47. On 29 May 2020, the CAS Court Office informed the Parties that the hearing which was scheduled on 1 July 2020, due to the travel restrictions, would be held by videoconference.

48. On 1 July 2020, a hearing by videoconference was held. At the outset of the hearing, the Parties confirmed not to have any objection as to the constitution and composition of the arbitral tribunal.

49. In addition to the Panel, Mr Fabien Cagneux, Counsel to the CAS, the following persons attended the hearing:

    a) For the Appellant

        1) Mr Nilo Effori, Counsel

    b) For the Respondent

        1) Mr Markus Buchberger, Counsel
        2) Mr Ashkan Dejagah

50. The Panel heard evidence from Mr Reza Fazeli, the Respondent's agent, as a witness called by the Respondent, and from Mr Ashkan Dejagah, as a party.

51. The Parties had full opportunity to examine the witness, Mr Reza Fazeli, and Mr Ashkan Dejagah, to present their case, submit their arguments and answer the questions posed by the members of the Panel.

52. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Panel and their right to be heard has been respected.

53. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

V. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

54. The Club's submissions, in essence, may be summarised as follows:

Litispendency

- The Club submits that the CAS shall have jurisdiction, but limited to scrutinize the Appealed Decision and, without entering into the merits of the dispute, to annul and set aside in view of its blatant violation of the principle of *lis pendens* during the first instance procedure of this matter. In other words, it is the Club's position that the CAS might retain its jurisdiction but limited to the annulment of the Appealed Decision on a preliminary basis only.

- The Club refers to Article 9 of the Swiss Private International Law Act ("PILA"), which embodies the *lis pendens* rule. The Club claims the conditions are met in order for this provision to be applied: a) the actions must have the same subject matter and be between the same parties; b) it can be expected that the foreign court will render a decision within a reasonable time; and c) that decision of capable of being enforced in Switzerland.

- The Club also refers to Article 186 PILA and submits, referring to CAS jurisprudence (CAS 2009/A/1881), that para. 1 of said provision requires the CAS to stay the arbitral proceedings if three conditions are cumulatively met: 1. the arbitration and the civil lawsuit must be between the same parties and must concern the same matter; 2. the lawsuit before the State court must be "already pending" (*"déjà pendante"*) when the arbitration claim is lodged with the CAS; and 3. the party raising the exception of *lis pendens* must prove the existence of "serious reasons" (*"motifs sérieux"*) requiring the stay of the arbitral proceedings.

- The Club claims that if the requirements of Articles 9 and 186 PILA are met, an arbitral tribunal in Switzerland must stay the arbitration.

- In addition, the Club submits that a CAS award that does not apply these rules and violates the principle of *lis pendens* can be set aside under Article 190 para. 2 lit. b PILA. The stay of the proceedings in case of *lis pendens* is a matter of jurisdiction. In this regard, the need of preventing the CAS award from being annulled by the Swiss Federal Tribunal ("SFT") is, *per se*, a very serious reason under para. 1bis of Article 186 PILA to oblige CAS to suspend the proceedings.

- As an exception to the general rule of Article 59 (2) FIFA Statutes that recourse to ordinary courts of law is prohibited, Article 22 of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP") stipulates that employment-related disputes may be submitted to civil courts.

- As a general rule, an international dimension of a dispute determines the jurisdiction of FIFA. However, the parties to a contract may establish a different jurisdiction other than, or in addition to FIFA. The Parties expressly did so in Article 13 of the Employment Contract. Even in face of a non-exclusive jurisdiction clause, the Employment Contract expressly provides for the competence of the Qatari courts. Therefore, if a claim is lodged there first, as the Club did in this matter against the Player, FIFA is precluded from deciding in this matter. The FIFA DRC should therefore have suspended the proceedings first, or, at the least, it should have declared the Player's claim inadmissible as the Parties contractually agreed to submit a labour dispute to a competent ordinary court.

- The Club filed a claim against the Player before the Qatari Civil Courts on 16 February 2017, *i.e.* about seven months before him lodging his claim before the FIFA DRC. The claim before the Qatari Civil Courts was notified to the Player, at the latest, during the proceedings before the FIFA DRC when the Club referred to this claim. Any parallel claim after the commencement of the claim before the Qatari Civil Courts falls under the principle of *lis pendens*.

- In any event, the FIFA DRC failed to address in the Appealed Decision whether the relevant elements that constitute *lis pendens* were present. The FIFA DRC erred in its consideration because the matter of *lis pendens* is not decided on whether or not a case is notified to the counterparty, but only on the existence of the case on the date when a second case between the same parties on the same object is lodged with a second court, irrespective of its notification. The dispute pending before the Qatari Civil Courts concerns the same parties and the same object and the decision that is expected to be issued in a reasonable time will be enforceable in Switzerland.

- Also, the existence of two (potentially) contradictory decisions would create a situation against the Swiss public order, as the SFT ruled in AFT 116 II 625.

- The FIFA DRC had no jurisdiction and should not have issued the Appealed Decision, which shall be annulled and set aside by the CAS through an award which

will not enter into the merits of the dispute but will merely ascertain the violation affecting the Appealed Decision on a prejudicial – preliminary basis.

Substance (legal arguments)

- As to the merits of the case, the Club submits that the Player did not have just cause to terminate the Employment Contract. The Player sent the Club a termination letter on 25 January 2017, without any reasons. The Player never warned the Club about his intention to terminate the Employment Contract despite the fact that the Club had informed him that a solution would be provided. In fact, only a few days before the termination the Player had requested an extension of the Employment Contract for the season 2018/2019, which was declined by the Club. By doing so, the Player not only failed to comply with the terms under Article 10 of the Employment Contract but also failed to comply with mandatory procedural steps towards termination, which rested unjustified. Further, the Club submits that Article 49 of the Qatari Law 14/2004 is also breached by the Player.

- The termination was regarded by the Club as having had no legal effect, as the same was sent by the Player in contravention of Article 10 of the Employment Contract, not to mention Article 49 of the Qatari Law 14/2004, and without following the procedural steps for termination such as a prior and unequivocal warning to the other party about the intention to terminate the labour agreement as well as the chance for the other party to cure its default.

- The Club had consistently complied with its obligations throughout the years, creating a solid foundation for the Player to be confident that the Club would pay him the outstanding salaries. That and the fact that the Player requested an extension of the Employment Contract for an extra year, declined by the Club, certainly demonstrates that the termination by the Player without prior warning was an attitude of disproportional severity, not to mention the blatant lack of prior warning which constitutes one of the prerequisites for valid termination for just cause due to late payment.

- As to the "deregistration of the Player", the Club submits that a temporary deregistration of the Player did not terminate or invalidate the Employment Contract in any way, especially since the Player has never warned the Club that, in case of deregistration, he would terminate the Employment Contract. In accordance with the general legal doctrine of *pacta sunt servanda*, the Club notes that the Employment Contract does not unfold on the Club the particular obligation to register the player with the QFA. By terminating the Employment Contract without just cause, the Player caused the Club to lose an asset and the opportunity either to re-register the Player or to transfer him in the next registration window.

Substance (consequences of termination)

- As the Player did not have just cause to terminate the Employment Contract, the Player must be ordered to pay the Club compensation under the terms of Article 17 of the FIFA RSTP, *i.e.* the compensation must be awarded with due regard to *"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, 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"*. In this case, as taken into account by the FIFA DRC in the Appealed Decision, an amount of EUR 3,400,000.

- In the event that the CAS understands that the Player had just cause to terminate the Employment Contract, the Club submits that it is not bound to pay any other periods/salaries requested by the Player after the date of termination. Furthermore, any amounts corresponding to the season 2018/2019 are out of the question because the Player could not have extended the Employment Contract unilaterally and therefore the original Employment Contract would expire on 30 June 2018, as correctly understood by the FIFA DRC. Accordingly, any other amounts after the date of termination 30 June 2018 must be disregarded by the CAS.

- Additionally, since the Player acted in bad faith as acknowledged by the FIFA DRC in the Appealed Decision, the calculation of the compensation to be paid by the Club is clearly excessive because the Player, to say the least, actively contributed to the termination of the Employment Contract with fault, and the CAS should then adjust it accordingly pursuant to Article 44 (1) of the Swiss Code of Obligations ("CO").

- The Player acted in bad faith and every party has the obligation, under Article 2 of the Swiss Civil Code, to display towards the other party which cannot harm the latter and which takes into account the expectations of the other side. The Player failed to abide by such standard towards the Club. As regards the bad faith, as submitted by the Club, the latter noted that the Player signed a new employment contract with the German club VfL Wolfsburg two days after the termination letter on 25 January 2017, i.e. on 27 January 2017. It is not reasonable to assume that the player landed a new contract within two days of negotiations, which means that the Player wished to terminate the Employment Contract also to change clubs. All the more reason for the CAS to decrease the compensation ordered in the Appealed Decision.

- As to the counterclaim as raised by the Player, the Club stated in its Reply that *"since the text of the Rule (R55) of the CAS Code, amended as of 1 January 2010, currently in force and applicable in this arbitration, it no longer contemplates the possibility for the Respondent to challenge in its answer the decision appealed against by the Appellant"*. In other words, the Club submits that *"R55 no longer includes the possibility for a Respondent to file counterclaims in is answer in appeal procedures"*. The Club further emphasized in its Reply that the amount of the last salary to be paid by the Club to the Player must be calculated pro rata, amounting to

the total of EUR 161,290 and not EUR 200,000 *"as stated in the DRC decision"* and *"as also recognised by the Respondent in its Answer"*.

55. On this basis, the Club submits the following prayers for relief:

"On a prejudicial – preliminary basis:

i) The Appeal filed by Appellant it admissible;

ii) The Appeal filed by Appellant is upheld;

iii) That FIFA did not have jurisdiction to hear the present dispute; and

iv) The Challenged Decision is annulled and set aside and replaced by the relevant CAS award to reflect the aforesaid.

In the event that the CAS rejected the above and decides that the Respondent terminated the Contract with just cause:

v) that the Respondent was the one who breached the Contract and terminate it unilaterally without just cause; hence the Respondent should be ordered to pay compensation to the Appellant pursuant to Article 17.1 of the RSTP, i.e. EUR 3,400,000 as detailed herein plus interests of 5% p.a.;

In any event:

vi) the Appellant shall pay a compensation to the Respondent no more than fifty per cent of his original request, as the Respondent actively contributed to the event which caused the damage to him;
vii) kindly request FIFA for a full copy of the relevant case file to be admitted into these appeal proceedings;

viii) an order for the Respondent to bear the entire costs of these proceedings;

ix) an order for the Respondent to bear the entire costs of the Appellant's legal costs and expenses with these arbitration proceedings".

56. The Player's submissions, in essence, may be summarised as follows:

Litispendency

- The Club's references to Articles 9 and 186 of the PILA are based, among other things, on an incorrect translation of the decisive regulations and on the wrong assumption that these also apply to the FIFA DRC. The jurisdiction of the FIFA DRC for the

present legal dispute between a club from Qatar and a player from Iran follows from Article 22 lit. b and Article 24 (1) RSTP.

- There was no obligation on the Parties to appeal to a state court in Qatar or an arbitral tribunal other than the CAS, because Article 13 of the Employment Contract expressly states that such courts can be called "non-exclusive".

- The FIFA DRC is neither a state court nor an arbitral tribunal in the sense of state legal systems. Therefore, Articles 9 and 186 of the PILA have no influence on the jurisdiction of the FIFA DRC.

- Article 186 PILA does not intervene here as it only intervenes if an arbitral tribunal is called in addition to a state court. Although the CAS is an arbitral tribunal in this sense, the FIFA DRC, which is a unit of FIFA, is not.

- Even if one applied the principle of *lis pendens* via Article 9 PILA, there would be no other result as the requirements of Article 9 PILA are not met. Even if the same contract between the Parties is relevant here, the subject matter in this case is not the same as in the Player's complaint to the FIFA DRC. The subject of this proceeding was claims by the Player for payments of outstanding salaries and compensation. In addition, the deregistration of the Player was an essential aspect of the claim at the FIFA DRC, but was irrelevant to the Qatar proceedings.

- The Club also completely misjudged the condition for the suspension. The prerequisite would be that the *"foreign court makes a decision within a reasonable period"*. The court in Qatar, if it has been called, has demonstrably not made a decision within a reasonable period of time to date.

- The Club allegedly asked the Qatari Civil Courts to deliver the documents to the law firm of the legal representative of the Player. However, the legal representative of the Player confirmed that no submissions from the Qatari Civil Courts were served in proceedings between the Parties.

- With reference to Article R55 of the CAS Code, the Player submits that there are no substantive grounds for suspending the arbitration. It cannot be assumed that the procedure in Qatar is *"well advanced"*. There will only be a first hearing in *"April 2020"* and nothing happened between February 2017 and April 2020 for 38 months.

- In summary, it can be said that the FIFA DRC and also the CAS have unlimited jurisdiction to decide the present case.

Substance (legal arguments)

- As to the merits of the case, the Player is of the opinion that it has remained undisputed between the Parties that the Club did not make the payments for April 2016, June

2016, July 2016 and December 2016 in the amount of EUR 200,000 each. It is also undisputed between the Parties that the Club did not make the monthly salary payments for January 2017 in the amount of EUR 161,290 (until January 25, 2017). The Club has undisputedly failed to meet payment obligations to the Player of almost EUR 1,000,000 net.

- It is also undisputed that the Club had already deregistered the Player in the summer of 2016 and did not answer any inquiries from the Player in that regard.

- The Club did not respond to all the warning letters. On the contrary, the contractual payment obligations are still outstanding and the Player also left Qatar in January 2017 unpaid. The letters were also related to the deregistration of the Player.

- The non-payment amount of four monthly salaries was sufficient, according to the constant case law of the FIFA DRC, to justify a termination with just cause of a player contract by a player who is no longer paid. The deregistration for a period of many months from the "summer of 2016" to January 2017 alone is sufficient reason for the Player to terminate the Employment Contract.

- The Player has, of course, made several threats to the Club that he will take legal action if the payments are not made. The Club, however, behaved passive in terms of both willingness to pay and (re) registration of the Player. FIFA Law (FIFA RSTP 2016) describes no obligation to meet a specific warning period.

Substance (consequences of termination)

- The FIFA DRC correctly considered the Player's claim for payment of outstanding monthly salaries for the months of April 2016, May 2016, June 2016 and December 2016 at EUR 200,000 each. The FIFA DRC also considered a full EUR 200,000 for January 2017, although only EUR 161,290 had to be taken into account for the period from 1 January 2017 to 25 January 2017. In total, the Player's claim for outstanding salaries amounts to EUR 961,290.

- As regards to the claim for damages, the Player submits that this amount of EUR 3,400,000 which was awarded by the FIFA DRC, is not sufficient.

- The calculation did not take into account the effective exercise of the extension option of the Player by letter dated 19 January 2017. The compensation for this period should also be considered as the Employment Contract would have to continue until 30 June 2019. The total claim for damages under the Employment Contract therefore amounts to EUR 7,338,710.

- The Player submits that the remuneration for him paid by third clubs should have no influence on the damages because of the clear contractual starting position, which determines the compensation according to the residual remuneration value of the

Employment Contract. However, if the Panel wants to consider, as the FIFA DRC did, an obligation to offset earned remuneration by 30 June 2019, a total amount of EUR 505,909.97 as net salaries, corresponding to the net income from the clubs VfL Wolfsburg, Nottingham Forest FC and Tractor Sazi FC, must be deducted from the above-mentioned value of EUR 7,338,710. Therefore, the total claim for damages is EUR 6,832,800.03. With reference to Article R57 of the CAS Code, the Panel can therefore go beyond the previous decision of the FIFA DRC and decide a higher claim for damages.

- The Player submits that the claim by the Club must be dismissed as the Player terminated the Employment Contract with just cause.

- In its Rejoinder, the Player insists that there is no application of a "counterclaim" being made by him. In this regard, the Player submits that the *"CAS Appeal Panel can make its own decision"*. The Player states that the *"CAS decision can – also in the opinion of the Appellant – determine the amount of the compensation as its own discretion"*. In this regard, he finds that *"it is not making new claims in favor of the Respondent, but simply asking the appeal panel to redefine the compensation in favor of the Respondent"* and as such concludes that *"Rule 55 does not intervene"*.

57. On this basis, the Player submits the following prayers for relief:

"1. The jurisdiction of the FIFA DRC and the CAS Appeal panel are confirmed.

2. The Appellant is ordered to pay the Respondent an amount as outstanding remuneration of € 961.290.00 plus interest of 5% p.a.

a) since May 1, 2016 from the amount of € 200.000.00
b) since May 1, 2016 from the amount of € 200.000.00
c) since July 1, 2016 from the amount of € 200.000.00
d) since January 1, 2017 from the amount of € 200.000.00
e) since January 26, 2017 from the amount of € 161.290.00

3. The Appellant is ordered to pay the Respondent € 7.338.710,00 as damages plus interest of 5% p.a. from December 20, 2018

a) as a precautionary application, in the event that the appeal panel wants to accept a lower claim for damages, the Appellant is ordered to pay to the Respondent € 6,832,800.03 as damages plus 5% interest p.a. from Decembre 20, 2018.

b) As a further precaution, in the event that the appeal panel wants to accept a lower claim for damages, the Appellant is ordered to pay to the Respondent an amount of not less than € 3,400,000.- plus 5% interest p.a. from Decembre 20, 2018.

4. *The Appellant's applications are rejected in total, in particular insofar as they stipulate the Respondent's payment obligations.*

5. *The Appellant is ordered to bear all the costs of the FIFA DRC and the CAS Appeal panel proceedings.*

The Appellant is ordered to pay all of the Respondent's legal costs and expenses related to this procedure".

VI. JURISDICTION

58. Article R47 of CAS 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 it prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".*

59. The jurisdiction of CAS derives from Article 58 (1) of the FIFA Statutes (2019 edition) which reads:

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

60. The jurisdiction of CAS is not contested by the Parties. It is, however, the position of the Club that the FIFA DRC was not competent to render the Appealed Decision. In this regard, the Club submits that CAS shall only have jurisdiction but limited *"to scrutinize the* [Appealed Decision] *and, without entering into the merits of the dispute, to annul and set aside it in view of its blatant violation of the lis pendens principle during the first instance procedure of this matter".*

61. Given that the position of the Club on this issue does not have any impact on the jurisdiction of CAS as such, there was also no need for the Panel to issue a preliminary award on the jurisdiction / *lis pendens*, as requested by the Club. Accordingly, the Panel will assess these arguments together with the merits of the case below.

62. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.

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

VII. ADMISSIBILITY

64. Article R49 of the CAS 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 in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has already been constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the other parties".

65. The Panel notes that pursuant to Article 58 (1) of the FIFA Statutes, the time limit to file an appeal is 21 days of receipt of the Appealed Decision.

66. In accordance with Articles R47 and R48 of the CAS Code, the Club filed its Statement of Appeal on 6 December 2019, which is within the 21 days deadline.

67. Therefore, the appeal was timely submitted and is admissible.

VIII. APPLICABLE LAW

68. Article R58 of the CAS Code provides more specifically the following:

"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".

69. Article 57 (2) of the FIFA Statutes reads as follows:

"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the dispute has the closest connection".

70. The Panel notes that Article 13 of the Employment Agreement provides that *"in case of any contractual dispute the only applicable law shall be firstly the Law of the FIFA".*

71. The Club submits that *"the Panel shall apply the FIFA Rules and Regulations as the applicable regulations within the meaning of Artile R58 of the Code. In light of Article 57 paragraph 2 of the FIFA Statutes the Panel will apply Swiss law (subsidiarily) for the interpretation and construction of the respective FIFA Regulations".* Although the Employment Contract does not refer to Qatari law and as such is not contractually agreed between the Parties, in its submissions, the Club also refers to certain provisions in the Qatari law.

72. The Player refers to Article 13 of the Employment Contract, as quoted above, and submits that *"FIFA Law"* should apply *"equally to the decision on the jurisdiction of the FIFA DRC as well as the decision on the claims of the parties to one another".* In addition, the Respondent submits that *"CAS Swiss Law"* must be applied, as determined by Article R58 of the CAS Code and Article

57 (2) of the FIFA Statutes. The Player further submits that *"other legal regulations, like Law of Qatar, have no relevance"*.

73. The Panel is in the position to apply Qatari law on a subsidiairy basis, but only insofar as it would concern issues that are not regulated in the FIFA RSTP and if properly submitted. As shown below, the Panel ultimately did not consider it appropriate to apply Qatari law to the present dispute.

74. In light of the above, the Panel is satisfied that the FIFA Regulations are applicable, with Swiss law applying to fill in any gaps or *lacuna* within those regulations.

IX. MERITS

A. The Main Issues

75. The main issues to be resolved by the Panel are:

a. Should the present proceedings be stayed due to *lis pendens?*

b. Did the Player have just cause to terminate the Employment Contract?

c. If so or not, what are the consequences thereof?

a. Should the present proceedings be stayed due to lis pendens?

1. Introductory remarks

76. The Panel observes that the Parties have diametrically opposed positions as to the legal question whether the present CAS proceedings should be stayed due to *lis pendens*.

77. As a starting point, the CAS Panel notes, as also referred to by the CAS Panel in CAS 2007/A/1301, taking into account the possibility for clubs and players to refer disputes to state courts instead of submitting them to sport adjudication bodies, FIFA has developed, in the exercise of its freedom of association, a principle of coordination between the state and the sporting adjudication systems: if a party decides to start proceedings before a state court, such case cannot be submitted (at the same time or thereafter) to a FIFA adjudication body. This rule of "alternativity" has been described by FIFA as based on the principle of "litispendency". Its effects, however, appear to be more properly the consequence, established within the FIFA system, of the choice by the relevant party of the remedy for contractual disputes, so that *electa una via non datur recursus ad alteram*. Put differently, FIFA acknowledges the possibility for a party to opt for state court adjudication, but establishes the principle that once such option is exercised, the possibility to refer the same case to sport adjudication bodies is precluded.

78. In the present case, the CAS Panel observes that the Club requests that the present appeal arbitration proceedings must be suspended because the Club had already initiated proceedings

against the Player in front of the Qatari Civil Courts before the Player lodged a claim against the Club with the FIFA DRC. The Player, however, submits that the current proceedings should not be suspended.

79. More specifically, the Panel notes that the Parties have divergent views on the legal basis to pronounce a suspension. On the one hand, the Club claims that Articles 9 and 186 PILA apply to the case as the requirements under these provisions are met. On the other hand, the Player submits that both provisions have no influence on the CAS' jurisdiction as the FIFA DRC is neither a state court nor an arbitral tribunal, and, even if the principle of *lis pendens* would be applied via Article 9 PILA, the conditions are not met. In this respect, the Player further refers to Article R55 of the CAS Code.

80. Before the Panel will assess the arguments of both the Parties as to *lis pendens*, the Panel first notes that in the Appealed Decision, the FIFA DRC unanimously decided to reject the Club's argument for *lis pendens*, mainly for two reasons. First, the FIFA DRC pointed out that Article 13 of the Employment Contract provided for the *"non-exclusive"* jurisdiction of the Qatari courts, therewith not excluding the competence of other decision-making bodies such as the FIFA DRC. Second, the Club failed to provide any convincing evidence to prove that the Player was duly informed of any pending proceedings in front of the Qatari courts. Although the Panel can agree with the outcome of the decision of the FIFA DRC to decide that there is no *lis pendens*, the Panel does not agree with the underlying motivation of the FIFA DRC.

81. As to the "non-exclusive" character of Article 13 of the Employment Contract, the Panel wishes to underline that any non-exclusivity does not mean, *per definition*, that no *lis pendens* can exist. Even if a provision provides for non-exclusivity, a matter of *lis pendens* can apply. Non-exclusivity only means that a party that starts litigation has the liberty to choose the forum and is not bound by any exclusivity. However, once a forum for litigation has been chosen by one of the parties, the principle of *lis pendens* might still come into play.

82. As to the failure to provide any convincing evidence to prove that the Player was duly informed of any pending proceedings in front of the Qatari Civil Courts, the Panel notes that *"notification"* is not a strict requirement under Swiss law in order to establish whether or not there is a matter of *lis pendens*, as correctly noted by the Club (BOHNET/HALDY/JEANDIN/SCHWEIZER/TAPPY, *Code de procédure civile commenté*, Basel 2011, n. 5 *et seq.* ad article 62 CPC, p. 200; n. 5 ad article 63 CPC, p. 204; n. 3 ad article 220 CPC, p. 818).

83. In light of the above, and considering the different positions of the Parties, as set out above, the Panel will first focus on the legal framework to determine whether or not *lis pendens* exists and whether the CAS proceedings should be stayed due this principle.

2. Legal framework

84. Article 9 PILA reads as follows:

> *"1. When an action having the same subject matter is already pending between the same parties in a foreign country, the Swiss court shall stay the case if it is to be expected that the foreign court will, within a reasonable time, render a decision capable of being recognized in Switzerland.*
>
> *2. In order to determine when an action has been initiated in Switzerland, the conclusive date is that of the first act that is necessary to initiate the proceeding. A notice to appear for conciliation is sufficient.*
>
> *3. The Swiss court shall terminate its proceeding as soon as it presented with a foreign decision capable of being recognized in Switzerland".*

85. Article 186 PILA determines as follows:

> *"1. The arbitral tribunal shall decide on its own jurisdiction.*
>
> *1bis It shall decide on its jurisdiction without regard to an action having the same subject matter already pending between the same parties before a state court or another arbitral tribunal, unless serious reasons require to stay the proceedings.*
>
> *2. Any objection to its jurisdiction must be raised prior to any defense on the merits.*
>
> *3. The arbitral tribunal shall, in general, decide on its jurisdiction by a preliminary decision".*

86. From Article R55 of the CAS Code it follows that:

> *"The Panel shall rule on its own jurisdiction. It shall rule on its jurisdiction irrespective of any legal action already pending before a state court or another arbitral tribunal relating to the same object between the same parties, unless substantive grounds require a suspension of the proceedings".*

87. In view of the above provisions, the Panel underlines that, contrary to Article 9 PILA, Article 186 PILA is incorporated in Chapter 12 PILA which deals with "International Arbitration". As such, while Article 9 PILA may be applicable to domestic arbitrations and state court proceedings in Switzerland, it is clear for the Panel that Article 9 PILA does not govern international arbitrations, as the latter type of arbitrations are specifically governed by Chapter 12 PILA. In this regard, the Panel refers to CAS 2018/A/5771 & 5772, in which the same observations were made by the respective panel.

88. Consequently, and as opposed to the position of the Club in this regard, Article 9 PILA does not apply in the present international arbitration procedure before the CAS.

89. As regards Article 186 PILA, the Panel is of the opinion that no suspension of the present appeal arbitration proceedings is to be pronounced based on such basis either. In fact, an arbitration must only be stayed in case "serious reasons" require a stay, as follows from this provision. The Panel finds that no "serious reasons", nor "substantive grounds" in light of Article R55 of the CAS Code, are present in this case, and will explain as follows.

3. Absence of serious reasons / substantive grounds

90. As a starting point, the Panel underlines, as also referred to by the CAS Panel in CAS 2018/A/5771 & 5772, that the legal doctrine is uniform in finding that an international arbitral tribunal having its seat in Switzerland is not obliged to stay the proceedings, also not if an identical legal action has been initiated before a foreign state court first:

> *"No issue of public policy arises – e.g. – in a case of parallel proceedings between civil courts and arbitration. Even if the CAS is the second court seized and the matter in dispute is identical in both proceedings, no mandatory stay applies to the arbitral procedure (cf. Art. 186(1bis) PILS, which basically excludes the lis pendens rule)"* (NOTH/HAAS, Article R32 CAS Code, in: ARROYO (Ed.), Arbitration in Switzerland, 2nd Edition, p. 1466).
>
> *"Article 186(1bis) PILS authorizes an international arbitral tribunal with its seat in Switzerland, when seized second, to proceed with the arbitration and decide on its jurisdiction, regardless of any action on the same dispute already pending before a state court or another arbitral tribunal. In other words, Art. 186(1bis) PILS provides that an international arbitral tribunal in Switzerland seized second, when confronted with a situation of lis pendens, shall not be obliged to stay its proceedings until such time as the authority seized first has decided on its jurisdiction […]*
>
> *The situation of a foreign state court seized first corresponds to the situation found in the Fomento case and was the primary "target" of the revision that brought Art. 186(1bis) into Chapter 12 of the PILS. This situation therefore does not raise any further concern"* (BERGER, Article 186 PILS, in: ARROYO (Ed.), Arbitration in Switzerland, 1st Edition, p. 149-151).

91. However, on the other hand, the mere fact that an international arbitral tribunal with its seat in Switzerland is in principle not obliged to stay the proceedings, does not rule out that such tribunal is required to stay the proceedings in case *"serious reasons"* require it to do so, pursuant to Article 186 (1bis) PILA, or in case so-called *"substantive grounds"* exist, as explicitly follows from Article R55 of the CAS Code, as set out above.

92. In order to substantiate that "serious reasons" exist in the present case, the Club refers to the fact that the need of preventing the CAS award from being annulled by the Swiss Federal Tribunal ("SFT") is, *per se*, a very serious reason under para. 1bis of Article 186 PILA to oblige CAS to suspend the proceedings. Although the Panel fully agrees with the Appellant's argument that it should be prevented that any arbitral award issued by the CAS is annulled by the SFT, the Panel believes that the arguments as submitted by the Club do not justify an annulment of the present arbitral award.

93. In this regard, the Appellant submits that the existence of two (potentially) contradictory decisions would create a situation against the Swiss public order, as this must be considered as a "serious reason" under para. 1bis of Article 186 PILA to oblige CAS to suspend the proceedings. However, the Panel does not agree with this argument. In fact, according to the legal doctrine, the mere risk of contradictory decisions, as opposed to what the Club claims here, is not a "serious reason" for the stay of proceedings:

> *"The 'substantive' (or 'serious' grounds) are one of the conditions enumerated in Article 186 paragraph 1 PILA. Substantive grounds exist if the appellant can prove that the suspension is necessary in order to protect its rights and that the continuation of the arbitration proceedings would cause any serious harm. However, the simple possibility of a state court issuing a decision different from the CAS is not considered to be a substantive ground. Indeed, the possibility to have contradictory decisions exists in all parallel proceedings involving a civil and an arbitration institution. Otherwise, the arbitral procedure would always end up being suspended, which is clearly not the aim of Article 186 paragraph 1 of the PILA"* (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 491).

94. The Panel fully adheres to the reasoning as expressed by the Panel in CAS 2009/A/1881, where it says that in every case of parallel proceedings involving an arbitration tribunal and a civil court, the possibility of conflicting decisions is always present. If one were to accept this argument, the arbitral tribunal would end up being always suspended, which is obviously not the legislative aim of Article 186 (1bis) PILA.

95. Also, the jurisprudence referred to by the Club (the *Fomento* case) is irrelevant in the sense that the precedents cited were pronounced before the introduction of Article 186 (1bis) PILA. Consequently, the *Fomento* case is to no avail to the Club. In fact, as correctly underlined by the panel in CAS 2018/A/5771 & 5772, it appears that this case was even the primary target of the implementation of Article 186 (1bis) PILA.

96. Legal doctrine shows that "serious reasons" can exist and might justify a stay of proceedings if the proceedings before the court had already reached an advanced stage:

> *"In view of these principles, the author considers that a stay of the arbitration based on Art. 186(1bis) PILS might be justified, for example, if it appears that the foreign proceedings were primarily initiated to "torpedo" the arbitration, or if the arbitration was only initiated when the proceedings in the foreign state court had already reached an advanced stage. The arbitral tribunal may also be willing to examine whether the decisions of the foreign court is likely to be recognized and enforced in Switzerland"* (BERGER, Article 186 PILS, in: ARROYO (Ed.), Arbitration in Switzerland, 1st Edition, p. 149-150).

97. However, it is also clear to the Panel that the Qatari Civil Court proceedings had not already reached an advanced stage. Not at the moment of the FIFA proceedings nor during the present CAS proceedings. To the contrary, the CAS Panel is not convinced that the Qatari proceedings will be concluded soon as the claim has not even been served yet on the Player.

98. The Panel considers that the FIFA DRC's assessment of the situation by then was correct. The FIFA DRC proceeded efficiently by issuing the Appealed Decision on 14 June 2019, given that there was no indication by then when the Qatari Civil Court proceedings would be finalised. Indeed, the Panel finds that the Club failed to prove to the FIFA DRC at the relevant moment in time that the Qatari Civil Court was expected to render a decision within a reasonable time. Consequently, the Panel does not consider it inappropriate that the FIFA DRC decided not to stay the proceedings.

99. The same applies to the present CAS proceedings. There is no need for the Panel to stay the proceedings. The Club initiated the proceedings before the Qatari Civil Court on 16 February 2017. In the present proceedings, the Club submitted an "Updated Case Summary", from which it follows that, only after three years a hearing was scheduled on 27 April 2020. However, during the hearing in the present CAS proceedings the legal representative of the Club confirmed to the Panel that the hearing in the Qatari Civil Court proceedings was cancelled due to the COVID-19 situation. Although this makes sense to the Panel, at the same time this makes it even more clear to the Panel that the Qatari Civil Court proceedings are far from advanced at the moment.

100. In view of the above, the Panel finds that the statements, as submitted by the Club regarding the status of the Qatari Civil Court proceedings, among others by means of the "Updated Case Summary" and the further explanation given to the Panel during the hearing by the legal representative of the Club, are far from sufficient to prove that the Qatari Civil Court proceedings will be concluded soon. Put differently, it is clear to the Panel that the proceedings before the Qatari Civil Court have not already reached an advanced stage, as a result of which, also for this reason, no "serious reason" exists.

101. Therefore, to avoid any misunderstanding and for the sake of clarity, it is not necessary for the Panel to receive any further information from the Club's side at this point, as offered by the legal representative during the hearing, also taking into account the limitations of Article R56 of the CAS Code and the absence of exceptional circumstances.

102. Having considered the legal doctrine, as set out above, and applying the above legal framework to the matter at hand, the Panel is fully convinced that no "serious reasons" have been advanced by the Club in accordance with Article 186 (1bis) PILA, nor that there are any "substantive grounds" that exist under Article R55 of the CAS Code that would require or legitimise a stay of the present arbitral CAS proceedings.

4. Not the "same subject matter"

103. In order to avoid any misunderstanding, the Panel also wishes to underline that, contrary to what the Club claims, that the present case does not concern the *"same subject matter"* here either, which is also a strict requirement under Article 186 (1bis) PILA.

104. More specifically, before the Civil Court of Qatar the Club filed a claim against the Player and asked to order the latter to pay an amount of EUR 30,000,000. There is no doubt that the Player did not participate in these civil court proceedings. In fact, the Player even claims in the present CAS proceedings that no Qatari court submissions were served to the Respondent, although the notification is not a requirement under Swiss law, as the Panel already referred to above.

105. On the other hand, the Player filed a claim before the FIFA DRC requesting remuneration of EUR 961,290 for outstanding salaries as well as an amount of EUR 5,312,709.71 as compensation under Article 17 of the RSTP for breach of contract by the Club. In addition, as the Player correctly stated, the deregistration issue was also part of the claim of the Player

before the FIFA DRC. In the proceedings before the FIFA DRC the Club filed a counterclaim, claiming the amount of EUR 30,000,000, similar as what was claimed in the proceedings before the Qatari Civil Courts.

106. In light of the above, the Panel observes that CAS has claims of both the Club and the Player before it, whereas the Qatari Civil Court only has a claim of the Club addressed to it. In other words, the FIFA DRC was in a much better position to come to a reasonable judgment taken into account that it was provided with the positions of both the Parties. In any event, the Panel finds that CAS is better equipped to render a decision on this issue than the Qatari Civil Courts.

107. In addition, the Panel takes into account, and also weights much value to the fact, that if the present proceedings before the CAS would actually be stayed, this may even have severe consequences for the Player as his part of the case would not be considered then. Furthermore, as the Panel in CAS 2018/A/5771 & 5772 also rightly considered, the Club could have had advantages of the FIFA DRC proceedings. In fact, the Club could have invoked the joint liability of any new club of the Player on the basis of Article 17 (2) FIFA RSTP. In the proceedings before the FIFA DRC, the Club could have requested the FIFA DRC to declare the Player's new club jointly liable, which would objectively have increased the Club's chances of obtaining such compensation because it would have two debtors that it could pursue, whereas such possibility is not available before domestic courts with the consequence that it could only attempt to enforce such decision against the Player alone.

108. In consideration of the above, the Panel holds that it does not concern the *"same subject matter"* here, following which Article 186 (1bis) PILA is not met for this reason either.

5. In conclusion

109. Consequently, and in view of the reasons as set out above, the Panel is of the opinion that the present arbitral proceedings are not to be stayed due to *litispendency*.

b. Did the Respondent have just cause to terminate the Employment Contract?

110. Having established that CAS is competent to adjudicate and decide the matter at hand, the Panel turns its attention to the question whether the Player had just cause to prematurely terminate the Employment Contract by letter dated 25 January 2017.

1. In general

111. Article 13 of the RSTP defends the principle of contractual stability by expressly stating that:

> *"[a] contract between a Professional and a club may only be terminated on expiry of the term of the contract or by mutual agreement".*

112. At the same time, the principle of contractual stability is not absolute as Article 14 of the RSTP provides that:

"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".

113. In this respect, the Panel considers that the FIFA Commentary provides guidance as to when an employment contract is terminated with just cause:

> *"1 The principle of respect of contract is, however, not an absolute one. In fact, both a player and a club may terminate a contract with just cause, i.e. for a valid reason.*
>
> *2 The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally.*
>
> *(…)*
>
> *5 In the event of just cause being established by the competent body, the party terminating the contract with a valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions. Given that the Respondent terminated the Employment Contract, the burden of proof in establishing that such premature termination was justified lies with the Respondent.*
>
> *6 On the other hand, the other party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed".*

114. The Panel also refers to relevant provisions of Swiss law, applicable to the interpretation of the FIFA Regulations (CAS 2014/A/3643, para. 78; CAS 2008/A/1518, para. 59, page 22). As such, Article 337 (1) CO *ab initio* which applies complementarily, provides that *"Both employer and employee may terminate the employment relationship with immediate effect at any time for just cause".*

115. Under Swiss law, such a just cause exists whenever the terminating party can in good faith not be expected to continue the employment relationship (Article 337 (2) CO). The definition of "just cause", as well as the question and whether just cause in fact existed, shall be established in accordance with the merits of each particular case (ATF 127 III 153 consid. 1 a). In other words, the event that leads to the immediate termination must so significantly shatter the trust between the parties that a reasonable person could not be expected to continue to work with the other party who is responsible for the just cause (ATF 130 III 28; ATF 116 II 145; ATF 116 II 142; ATF 112 II 41).

116. According to CAS jurisprudence, only material breaches of a contract can possibly be considered as "just cause" for the termination of the latter (CAS 2013/A/3091, para. 191; CAS 2006/A/1062).

117. Consistent with CAS jurisprudence, non-payment or late payment of remuneration by the employer does in principle – and particularly if repeated – constitute just cause for termination of the employment contract, since the employer's payment obligation is his main obligation towards the employee:

> *"If, therefore, he fails to meet his 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 difficulties 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 party has in future performance in accordance with the contract, to be lost"* (CAS 2018/A/6050 para. 91; CAS 2016/A/4693 para. 101; CAS 2013/A/3398; CAS 2013/A/3091, 3092 & 3093).

118. As decided by the Panel in CAS 2006/A/1180:

> *"According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (AFT 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa). Particular importance is thereby attached to the nature of the breach of obligations. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (AFT 101 Ia 545). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus (ATF 5 May 2003, 4C.67/2003 no. 2). According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (AFT 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence (ATF 2 February 2001, 4C.240 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit. P. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrively admitted (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., op. cit., p. 364 and TERCIER P., op. cit., no. 3394, p.495)".*

119. The same award also focuses on the circumstances under which just cause exists in the event of non-payment or late payment of salaries by the employer:

> *"The non-payment or late payment of remuneration nby an employer does in principle – and particularely if repeated as in the present case – constitute just cause for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004); 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 the future. Whether the employee falls into financial difficulty*

> *by reason of the late or non-payment, is irrelevant. The only criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in the 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 also CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5. et seq.)".*

120. In addition, and according to CAS jurisprudence (CAS 2016/A/4693 para. 104), and consistent with Swiss law (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446), for a party to be allowed to validly terminate an employment contract, it must have warned the other party, in order for the latter to have had the chance, if it deemed that the complaint to be legitimate, to comply with its obligations (CAS 2015/A/4327; CAS 2013/A/3091, 3092 & 3093; CAS 2013/A/3398; decision of the Swiss Federal Court of 12 November 2013, 4A.337/2013, consid. 3; ATF 121 III 467, consid. 4d).

121. The Panel wishes to emphasise that for a party to be allowed to validly terminate an employment contract, it is often required that it has provided the other party with adequate notice, in order for the latter to have the opportunity to comply with its obligations, if it consents to the just cause. In another CAS case, a Panel stated that:

> *"[s]econdly, a prerequisite for terminating because of late payment is that the Appellant should have given a warning. This follows from the principle of good faith; for the breach of duty is – objectively – from the outset not so grave that it would have been unreasonable to expect the Appellant to continue the employment. However, if that is the case the Appellant must – before he terminates the Contract – let the Respondent know firstly that he is complaining that the Respondent's conduct is not in accordance with the Contract and secondly that he is not prepared to accept such breaches of contract in future. With regard to employment contract relationships in the world of football, according to the principle of contractual stability, the unilateral termination of a contract must be considered as an absolute last resort, where, given the particularities of the situation at stake, it could not be expected that one of the parties could reasonably continue to be bound by the contractual relationship"* (CAS 2006/A/1180 and referred to in CAS 2018/A/6050).

122. The duty to issue a reminder or a warning, respectively, is not absolute, and there are circumstances where no reminder and no warning is necessary, for instance where it is clear that the other side does not intend to comply with its contractual obligations (CAS 2018/A/5955 & 5981; CAS 2017/A/5465; CAS 2006/A/1180 and CAS 2006/A/1100). This also derives from the jurisprudence of the Swiss Federal Tribunal which clarifies that in case of a severe breach of a contract, the termination without prior warning is justified (e.g. SFT 127 III 153). Moreover, this also clearly follows from the jurisprudence of the DRC itself. In fact, DRC jurisprudence shows that it is not always a prerequisite to place the club in default before terminating the contract due to outstanding salary (DRC 23 January 2013, no. 0113797 and DRC 10 December 2009 no. 129795).

123. The Panel fully adheres to the legal framework, as set out above, and will therefore examine whether the Club's conduct was of such a nature that it could no longer be reasonably expected from the Player to continue the employment relationship with the Club. The Panel has to examine whether the Club was somehow in breach of the terms of the Employment Contract in such a manner that the Player had a just cause to put a premature end to the employment relationship, as he did.

2. In particular

124. The Panel observes that the Player basically invoked two separate arguments in justifying the unilateral termination of the Employment Contract: i) the outstanding salaries; and ii) the deregistration by the Club.

125. As to the outstanding salaries, the Player claims that the Club did not make the payments for April 2016, June 2016, July 2016 and December 2016 in the amount of each EUR 200,000. Further to this, the Player claims that the monthly salary payment for January 2017 in the amount of EUR 161,290 was also not paid to him.

126. As to the deregistration, the Player submits that the Club had already deregistered him in the summer 2016 and did not answer any inquiries from the Player.

127. The Panel will first focus on the Player's position regarding the outstanding salaries.

128. In this regard, the Panel observes that it remained undisputed between the Parties that the Appellant did not pay the salaries for April 2016, June 2016, July 2016 and December 2016 in the amount of each EUR 200,000 as well as the monthly salary payment for January 2017 in the amount of EUR 161,290.

129. Consequently, it is the Panel's conclusion that salaries are outstanding to the Respondent for a period of almost 5 months.

130. From the above-cited jurisprudence, it follows that two conditions must be met in order to validly terminate an employment contract. In the first place, the outstanding amount may not be "insubstantial". In the second place, the employee must have given a warning and must have drawn the employer's attention to the fact that his conduct is not in accodance with the contract.

131. In light of the first requirement, *i.e.* the "substantiality" condition, the Panel holds that the non-payment of salaries in the present case in the amount of in total EUR 961,290 is far from insubstantial and thus the Panel finds that this condition for terminating the Employment Contract by the Player with just cause is clearly met.

132. This leads the Panel to the second criterion, *i.e.* whether the Player warned the Club, and the defence as such advanced by the Club claiming that no warning was given. In fact, the Club claims that the Player did not fulfil the requirement to give proper warning of his intention to terminate the Employment Contract. In this regard, the Club submits that the Player has never

warned the Club that by requesting his outstanding payment this would lead to the termination of the Employment Contract. The Club submits, as was communicated to the Player by means of its letter of 24 January 2017, that it was working hard to solve the current debt and it could not expect that the Player would terminate the Employment Contract. Also for this reason the Club finds that the Player was not entitled to unilaterally terminate the Employment Contract.

133. The Panel does not agree with the Club. From several letters from the side of the Player, addressed to the Club, such as by means of its correspondence of 31 October 2016, 1 December 2016, 8 December 2016 and 19 January 2017 respectively, it clearly follows that the Club was warned. The Panel wishes to underline, as opposed to what the Club claims, that it is not necessary that the Player should have expressed its intention to terminate the Employment Contract, although the Player did in its letter of 19 January 2017. In any event, the jurisprudence, as set out above, clearly shows that the aim of the warning is that the party in breach has the chance to comply with its obligations, noting that a reminder or a warning is not even absolute as circumstances can justify that no reminder or warning is necessary, as also follows from the same jurisprudence. Accordingly, the Player did not fail to comply with the terms under Article 10 of the Employment Contract nor was there any breach of Article 49 of the Qatari law, noting that the latter provision was not relevant in the assessment of the Panel. The Panel finds that the Club had multiple chances to cure its default, which it failed to do.

134. In the Panel's view, the fact that the Club expressed, and raised as another argument, in its correspondence of 24 January 2017 to the Respondent, that it *"was working hard to solve the outstanding payment issues"*, does also not exempt the Club from its obligations to comply with the conditions under the Employment Contract.

135. Further to this, the fact that the Player made use of his unilateral extension right under Article 9 (2) of the Employment Contract per letter of 19 January 2017, and so only a few days before the termination on 25 January 2017, following which the Employment Contract would be extended for another year and would come to an end on 30 June 2019, does not invalidate the termination of the Employment Contract either. In fact, formally speaking, the Player had the contractual right to do so and, as further explained by Mr Reza Fazeli in his witness statement as well as his testimony during the hearing, the Player made use of this right to realise the loan construction to the German club VfL Wolfsburg.

136. In view of the above, taking into account the specific circumstances of the present case, the Panel is convinced that at the moment when the notice of termination was notified to the Club on 25 January 2017, the breach from the side of the Club was such that it rightfully caused the confidence, which the Player had in the future performance in accordance with the Employment Contract, to be lost. Put differently, the essential conditions under which the Employment Agreement was concluded between the Parties were no longer present and, in this respect, due to the Club's behaviour, the Player could not in good faith be expected to rely on the performance by the Club of its contractual obligations and therefore, to continue the employment relationship.

137. Consequently, the Panel finds that the Player had just cause to terminate the Employment Contract on 25 January 2017 and is satisfied with the behaviour of the Player, in terminating the Employment Contract.

138. Taking into account that the outstanding amounts to the Player in itself are already sufficient reason for him to validly terminate the Employment Contract in the present case, it is not necessary for the Panel to address the legal issue of deregistration.

c. If so or not, what are the consequences thereof?

139. Having established that the Player had just cause to terminate the Employment Contract on 25 January 2017, the Panel will now deal with the issue of financial compensation derived from such termination. However, before the Panel will address the issue of compensation under Article 17 RSTP, it will first address the issue of the outstanding salaries, more specifically what amount was due to the Player.

1. Outstanding salaries

140. With respect to the outstanding salaries, the FIFA DRC decided in the Appealed Decision that the Club, in accordance with the principle of *pacta sunt servanda*, was liable to pay the Player EUR 1,000,000. This amount corresponded to the remuneration due to him of in total five months, of each EUR 200,000 which reflected the months April, May, June and December 2016, as well as the month January 2017.

141. However, the DRC, as was also raised by both the Parties in their submissions, *i.e.* in the Answer and the Reply respectively, made a slight miscalculation by stating that the Player was entitled to receive the entire month of January 2017, whilst the Player terminated the Employment Contract on 25 January 2017. As such, the outstanding salary due by the Club for the month January in 2017 had to be calculated on a *pro rata* basis.

142. Accordingly, the Panel decides that the amount of salaries that were outstanding to the Player at the moment the latter terminated the Employment Contract on 25 January 2017 corresponded to an amount of EUR 961,290 (instead of EUR 1,000,000).

143. In addition, the Panel decides that interest will apply at the rate of 5% *per annum* on the amount of EUR 961,290 as from the due dates until the date of effective payment.

2. Compensation under Article 17 RSTP

144. Although the Panel observes that Article 14 FIFA RSTP does not specifically determine that a player is entitled to any compensation for breach of contract by a club, the Panel holds that the Player, in addition to the outstanding salaries, is entitled to receive compensation from the Club under Article 17 (1) of the RSTP.

145. In this respect, also considering the well-established CAS jurisprudence (see, *inter alia*, CAS 2016/A/4605 and CAS 2017/A/5180), it clearly follows from Article 14 (5) and (6) of FIFA Commentary, that a party *"responsible for and at the origin of the termination of the contract is liable to pay the compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed"*.

146. Although it was the Player who terminated the Employment Contract, the Club was at the origin of the termination by breaching its contractual obligations towards the Player and is thus liable to pay compensation for the damages incurred by the Player as a consequence of the early termination. This approach has also been applied in CAS jurisprudence (*e.g.* in CAS 2015/A/3891). Following the CAS jurisprudence on this issue, this practice is also constantly applied by the FIFA DRC.

147. The Panel notes that Article 17 (1) of the FIFA RSTP provides as follows:

> *"The following provisions apply if a contract is terminated without just cause:*
>
> *1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to maximum of five years, the fees and expenses paid or incurred by the former (amortised over the term of the contract) and whether the contractual breach falls within a protected period".*

148. The Panel observes that the Employment Contract, by means of Article 10, provide for compensation in case there is a breach of contract, which provision reads as follows:

> *"**Article (10) Termination by the Club or the Player***
>
> *1. The* [Club] *and the Player may terminate this Contract, before its expiring term, by mutual agreement.*
>
> *2. The* [Club] *and the Player shall be entitled to terminate this Contract, before its expiring term, by fifteen (15) days' notice in writing for just cause according with the FIFA Regulations governing this matter as well as the Law of the State of Qatar.*
>
> *3. When the termination of the Contract is not due to a just cause or a mutual agreement between the Parties concerned, the* [Club] *or the Player shall be entitled to receive from the other party in breach of the Contract a compensation for a net amount:*
>
> - ***To the* [Club]:**
> ***Euro 30.000.000/-(Thirty Million Euro)***

- ***To the Player:***
  (The remaining salaries of the contract)".

149. The Panel finds that Article 10 Employment Contract is indeed the kind of deviation provided for in Article 17 (1) FIFA RSTP. By means of the above-cited Article 10, the Parties contractually deviated from the default application of Article 17 (1) FIFA RSTP.

150. As to the validity of Article 10 Employment Contract, the Panel observes that the FIFA DRC in the Appealed Decision reasoned that Article 10 Employment Contract was:

> *"*[…] *in direct opposition with the general principle of proportionality and the principle of balance of rights of the parties since it provides benefits only towards the* [Club] *with no equivalent right in favour of the* [Player].
>
> *Therefore, the Chamber concluded that said clause could not be taken into consideration in the determination of the amount of compensation".*

151. The CAS Panel does, however, not agree with the FIFA DRC here. The FIFA DRC is of the opinion that the validity of Article 10 is subject to an equivalent right for both parties, and, as such, attaches decisive value to the principle of reciprocity. However, as also determined in established CAS jurisprudence (CAS 2015/A/3999 & 4000), the Panel finds that a liquidated damages clause like Article 10 Employment Contract does not necessarily have to be reciprocal to be valid. The validity depends on other criteria:

> *"The Panel notes that article 17(1) of the FIFA Regulations does not require contractually agreed liquidated damages clauses to be reciprocal, nor is there any other source or legal doctrine, or at least no such source has been cited by any of the parties, based on which such test would have to be applied.*
>
> *As a consequence, the Panel is not convinced that both liquidated damages clauses must be set aside for mere fact that they are not reciprocal.* […]
>
> *Rather, the Panel finds that the appropriate test should be whether there has been any excessive commitment from any of the contractual parties in respect of the conclusion of the applicable clause, i.e. in this case article 5(1) of the Employment Contract"* (CAS 2015/A/3999 & 4000, para. 158-160 of the abstract published on the CAS website).

152. The Panel fully concurs with the above approach as followed by the respective panel (CAS 2015/A/3999 & 4000). The proportionality of Article 10 of the Employment Contract should be assessed individually and within the context of the specific circumstances of the case. The Panel recalls that Article 10 of the Employment Contract provides that the Player would be entitled to the remaining salaries of the Employment Contract. As opposed to the approach by the Panel in CAS 2018/A/5771 & 5772, in which the respective player was only entitled to receive two months salaries in case of breach of contract, the Panel finds that the liquidated damages clause in the matter at hand, by means of Article 10 of the Employment Contract, is not an excessive commitment from the Player. Whereas the Panel rightfully found the respective clause in CAS 2018/A/5771 & 5772 to be excessive, because the player would only

be entitled to receive two months salaries, the Player, as set out above, would be entitled to the remaining salaries of the Employment Contract. This seems fair to the Panel as this is an important difference. At the least, the Panel does not find Article 10 Employment Contract to be an excessive commitment from the Player.

153. In view of the above, the Panel, therefore, finds that the Player is, in principle, entitled to receive the remaining salaries from the Club under the Employment Contract pursuant to Article 10, which corresponds to EUR 4,038,710 (taking into account the correction due to the *pro rata* salary payments for January 2017). This is the amount the Player would have earned as from the termination date on 25 January 2017 until the original expiration date of the Employment Contract, *i.e.* 30 June 2018. In this regard, the Panel is mindful that the Player claims, amongst others, that the exercise of the option to extend the contract for another year, *i.e.* until 30 June 2019, should also be taken into account. However, the Panel does not agree with the Player as follows from the following paragraphs where the Panel will deal with the question whether there are any reasons for adjustment of the amount of compensation.

3. Reasons for adjustment

154. Against this background, as set out above, the Panel will now proceed to assess the Respondent's objective damages, before applying its discretion in adjusting this total amount of objective damages, to an appropriate amount, if the Panel finds it necessary.

155. It is the Player's position that the amount of EUR 4,038,710 does not reflect the compensation that should be due to him. In fact, as mentioned before, the Player claims that the exercise of the option to extend the contract for another year, *i.e.* until 30 June 2019, should also be taken into account, and, therefore, the total claim for damages under the Employment Contract should amount to EUR 7,338,710. Further to this, the Player finds that any remuneration under new employment contracts should not be considered, as opposed to what the FIFA DRC determined. In this regard, the FIFA DRC calculated, considering the remuneration from the Player's new employment during the relevant period of time by means of which he was able to reduce his loss of income, a mitigated compensation for the Player of EUR 3,400,000. Alternatively, the Player finds that if any amounts under new employment contracts had to be deducted, this resulted in an amount of EUR 505,909.97, which was less than the amount that was deducted by the FIFA DRC. After this set-off, the Player calculated mitigated damages in the amount of EUR 6,832,800.03.

156. However, in the present case, the Panel wishes to underline that, in order to assess the compensation due under Article 17 RSTP, it does not have to deal with the question whether or not the option has been validly exercised and whether or not less compensation due under new employments contract had to be deducted by the FIFA DRC. In fact, in the present case, the Panel is not entitled to grant more than what the DRC awarded to the Player as overall compensation in the Appealed Decision.

157. In this context, in order for the Panel to be able to award more than what the FIFA DRC has granted in the Appealed Decision, the Player should have filed an independent appeal against the Appealed Decision, which did not happen. The Player submits that the *de novo* principle,

in accordance with the power bestowed on it by Article R57 of the CAS Code grants discretion to the CAS Panel to award more than what the FIFA DRC granted. However, Article R57 of the CAS Code does not go that far that the Panel is in the position to grant the Player with an amount exceeding the overall compensation as awarded by the DRC in the Appealed Decision.

158. For the avoidance of doubt, the Panel underlines that counterclaims are not admissible anymore as from the 2010 revision of the CAS Code, in appeal arbitration proceedings before CAS: *"It must be noted that, since 2010, counterclaims are no longer possible in appeal procedures. This means that, if a potential respondent wants to challenge part or all of a decision, it must file an independent appeal with the CAS within the applicable time limit for appeal"* (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 249 and 488, with references to CAS 2010/A/2252, para. 40; CAS 2010/A/2098, paras. 51-54; CAS 2010/A/2108, paras. 181- 183; see also CAS 2013/A/3432 paras. 54-57 with reference to a decision of the Swiss Federal Tribunal).

159. The Panel shares the view expressed by the writers cited above and finds that the Player's claim to be awarded with more than the compensation that was granted by the FIFA DRC, go beyond a mere statement of defence and that, in case of being upheld, have the effect of prejudicing the position of the Club.

160. Accordingly, the claim of the Player to be awarded with more compensation than what was granted by the FIFA DRC will be declared inadmissible by the Panel in such part. In order for the Player to have validly raised these issues, it should have filed its own independent appeal against the Appealed Decision (see, for example, CAS 2017/A/5481 paras. 42 - 46 and CAS 2017/A/5336 para. 116).

161. Notwithstanding the above, however, the Panel feels comforted to add the difference between the awarded outstanding salaries by the Panel (EUR 961,290) and the amount that was granted by the DRC (EUR 1,000,000) to the awarded compensation by the DRC under Article 17 of the RSTP, *i.e.* EUR 3,400,000. In this way, and for the avoidance of doubt, it is not a matter of granting more than what the DRC awarded in the Appealed Decision, but merely a reclassification of the overall amount of compensation. Consequently, an amount of EUR 3,438,710 is due by the Club to the Player as compensation under Article 17 of the RSTP.

162. In light of the Panel's assessment of the Player's objective damages, the Panel also does not see any reason to reduce the amount of EUR 3,438,710 based on the arguments as raised by the Club. In this regard, the Club claimed that such amount, as granted to the Player, must be reduced because the latter acted in bad faith. The Panel holds that this argument and ground for reduction must be rejected. The Panel does not find that the Player actively contributed, as opposed to what is claimed by the Club, to the termination of the Employment Contract.

163. In this regard, the Club submits that CAS should adjust the compensation pursuant to Article 44 (1) CO. However, the Panel does not agree with this point of view.

164. The fact that the Player exercised the option by letter of 19 January 2017, and so shortly before the termination, does not justify a reduction. In fact, as pointed out before, the Player had the contractual right to do so and, as explained by Mr Reza Fazeli in his witness statement as well as during the hearing's testimony, the Player made use of this right to realise the loan construction to VfL Wolfsburg. The Panel does not see any bad faith here. At most, the notification to extend might have been considered by the Club as surprising in light of the termination that followed on 25 January 2017. However, the Panel does not find that the extension justifies any reduction.

165. Further to this, which was raised as another argument from the Club's side in order to claim that a reduction must be applied, the fact that the Player only signed a new employment contract with the German club VfL Wolfsburg two days after the termination letter on 25 January 2017, *i.e.* on 27 January 2017, does not justify any reduction either. In fact, as also further explained by Mr Reza Fazeli in his witness statement as well as his testimony during the hearing, it seems that the Player and VfL Wolfsburg already had discussions prior to the termination date of 25 January 2017, in order to organise the loan construction. From that perspective, the Panel does not find it unreasonable to assume that the Player concluded a new contract shortly after the termination of the Employment Contract considering these established contacts.

166. Consequently, the Panel does not see any reason to reduce the amount as granted by the FIFA DRC in the Appealed Decision and, therefore, finds that the Club must pay to the Player an amount of EUR 3,438,710 as compensation under Article 17 of the RSTP.

167. In view of the above, an interest at a rate of 5% *p.a.* shall accrue over the amount of EUR 3,438,710 as from 20 December 2018 until the date of effective payment.

B. Conclusion

168. Based on the foregoing, the Panel finds that:

i) The present arbitral proceedings are not to be stayed due to *lis pendens*;

ii) The Player had just cause to terminate the Employment Contract on 25 January 2017;

iii) The Club shall pay an amount of EUR 961,290 to the Player with regard to outstanding salaries, with interest at a rate of 5% *per annum* as from the due dates until date of effective payment;

iii) The Club shall pay compensation to the Player for breach of contract in the amount of EUR 3,438,710, with interest at a rate of 5% *per annum* accruing as from 20 December 2018 until the date of effective payment.

169. All other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 6 December 2019 by Club Al Arabi SC against Ashkan Dejagah with respect to the decision issued on 14 June 2019 by the FIFA Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is very partially upheld.

2. The decision issued on 14 June 2019 by the FIFA Dispute Resolution Chamber is confirmed, saved for items 3 and 4, which are amended as follows:

> *"3. The Respondent / Counter-Claimant, Club Al Arabi SC, has to pay to the Claimant / Counter-Respondent,* ***within 30 days*** *as from the date of notification of this decision, outstanding remuneration in the amount of EUR 961,290 plus interest until the date of effective payment as follows:*
>
> *a. 5% p.a. as of 1 May 2016 on the amount of EUR 200,000;*
>
> *b. 5% p.a. as of 1 June 2016 on the amount of EUR 200,000;*
>
> *c. 5% p.a. as of 1 July 2016 on the amount of EUR 200,000;*
>
> *d. 5% p.a. as of 1 January 2017 on the amount of EUR 200,000;*
>
> *e. 5% p.a. as of 26 January 2017 on the amount of EUR 161,290.*
>
> *4. The Respondent / Counter-Claimant has to pay to the Claimant / Counter-Respondent,* ***within 30 days*** *as from the date of notification of this decision, the amount of EUR 3,438,710 as compensation for breach of contract, plus 5% interest p.a. as of 20 December 2018 until the date of effective payment".*

3. (…).

4. (…).

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