Arbitration CAS 2020/A/6820 Antalyaspor A.Ş. v. Samir Nasri, award of 6 October 2020

Panel: Mr Fabio Iudica (Italy), President; Mr Emin Özkurt (Turkiye); Mr Olivier Carrard (Switzerland)

Football
Contractual dispute
Ultra petita ruling
Reduction of a contractual penalty

1. **According to the general principle of *"non ultra petita"*, CAS awards cannot go beyond the claims submitted and CAS panels are bound to what has been specifically requested by the parties. Although a party confirms its point at the hearing, the lack of a specific request for relief related to such point makes it void.**

2. **A reduction of a contractual penalty is justified when there is a significant disproportion between the agreed amount and the interest of the creditor to maintain his entire claim. To evaluate the excessive character of such penalty, one must consider all the circumstances of a case, such as the nature and duration of the contract, the degree of fault and of the contractual breach, the damage incurred by a creditor, the behaviour and economic situation of the parties, their experience in business matters, a special interest of a creditor that a debtor behaves in conformity with the contract. A reduction of a contractual penalty shall never lead to a lower amount than a creditor would receive under general rules to calculate compensatory damages.**

I. INTRODUCTION

1. This appeal is brought by Antalyaspor A.Ş. against the decision rendered by the Dispute Resolution Chamber (the "DRC" or the "Chamber") of the Fédération Internationale de Football Association ("FIFA") on 5 November 2019 (the "Appealed Decision"), regarding an employment-related dispute arisen with Mr Samir Nasri.

II. PARTIES

2. Antalyaspor A.Ş. (the "Club" or the "Appellant") is a professional football club, based in Antalya, Turkey, competing in the Süper Lig of the Turkish Football Championship. It is a member of the Turkish Football Federation which in turn is affiliated with FIFA.

3. Samir Nasri (the "Player" or the "Respondent") is a professional football player of French nationality, born on 26 June 1987 in Marseille, France.

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

III. FACTUAL BACKGROUND

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

6. On 21 August 2017, the Player and the Club signed an employment contract valid for two sporting seasons, as from the date of signing until 31 May 2019 (the "Employment Contract").

7. According to Article 3 of the Employment Contract, for the sporting season 2017/2018, the Player was entitled to receive the following amounts:

   - EUR […] net, as sign-on fee, payable in two instalments of EUR […] each, respectively due within 20 days upon signing and on 31 July 2018;

   - EUR […] as net salary, payable in ten equal instalments of EUR […] each on a monthly basis from August 2017 until May 2018;

   - EUR […], as guaranteed net allowance fee for accommodation and travel expenses, payable in two equal instalments,

   as well as other benefits and bonuses, including a temporary car allowance and a variable bonus in case of transfer or loan to any other professional club by 31 August 2018.

8. For the sporting season 2018/2019, the Club also undertook to pay to the Player the amount of EUR […] as net salary in ten equal instalments of EUR […] each, on a monthly basis, as well as a guaranteed net allowance of EUR […] in two equal instalments.

9. The Player was also entitled to receive additional variable bonuses adding up to an overall amount of EUR […] for each sporting season of the Employment Contract, depending on the Player's performance and on the Club's sports achievement.

10. On the same date of signing of the Employment Contract, the Parties also concluded an amendment agreement (the "Amendment Agreement") whereby, *inter alia*, Article 3, paragraph 17, of the Employment Contract was amended. As a consequence, a new set of rules was stipulated, in the event that the Player would be sanctioned with a suspension for more than four months by a final decision of the competent disciplinary body (FIFA, UEFA, WADA) as a result of the conclusion of an ongoing investigation proceedings. In essence, the relevant provision set forth the option for the Club, under certain conditions, to early terminate the

Employment Contract and the obligation for the Player to reimburse to the Club part of the sign-on fee of […], depending on the starting date of the suspension, if any. The relevant amendment also specified that the EUR […] signing fee *"is due for the whole term of this contract"*.

11. On 14 January 2018, the Player put the Club in default of payment of the amount of EUR […] corresponding to the salaries for November and December 2017, granting the Club a time limit of ten days to remedy the breach.

12. On 29 January 2018, the Parties entered into an agreement for the early termination of the Employment Contract (the "Mutual Termination Agreement").

13. Under Article 1.3 of the Mutual Termination Agreement, the Parties acknowledged that the Club was in default of payment of the total amount of EUR […], corresponding to the Player's salaries for November 2017, December 2017 and January 2018 and other expenses.

14. On the assumption of the above, the Parties mutually terminated the Employment Contract with immediate effect, provided that the following conditions were fulfilled:

    - the Club agreed to pay to the Player the amount of EUR […] net, corresponding to outstanding salaries as to EUR […]; net allowance for accommodation, travel and other expenses as to EUR […]; compensation for the early termination of the Employment Contract and the Amendment Contract as to EUR […] net.

15. The Parties agreed that the Club shall pay the abovementioned amount in 6 equal instalments according the following schedule:

    - EUR […] net on the date of signing of the Mutual Termination Agreement,
    - EUR […] net on 28 February 2018;
    - EUR […] net on 30 March 2018;
    - EUR […] net on 30 April 2018;
    - EUR […] net on 31 May 2018;
    - EUR […] net on 29 June 2018.

16. Moreover, in order to guarantee the payment of the amounts above, the Club agreed to provide the Player with 5 bank cheques for the remaining instalments, on the date of signing of the Mutual Termination Agreement.

17. Under Article 2.4 of the Mutual Termination Agreement, the Parties stipulated as follows:

"Antalyaspor agrees and accepts that the receipt of the abovementioned amount by the Player timely and without delay is the key component of this Mutual Termination Agreement. Subject to the conditions the checks are still at the possession of the Player and submitted to the bank duly, in case Antalyaspor has insufficient funds in its bank account at the payment date of the bank cheques which causes the Player not to collect any of the instalments, the Player shall have the right to notify Antalyaspor in writing (facsimile accepted) and request the payment of the overdue instalments within 7 (seven) days. In case Antalyaspor fails to pay the Player the overdue instalments within the deadline of 7 (seven) days, Antalyaspor agrees and accepts that the monetary conditions of this Mutual Termination Agreement will immediately become null and void without any requirement for another notice and the Player's guaranteed salary from Antalyaspor between November 2017 and May 2018 under the Contract will be due and payable by Antalyaspor to the Player effective immediately. In such case, Antalyaspor irrevocably agrees and accepts to immediately pay the Player his guaranteed salary from November 2017 and May 2018 under the Contract in the total amount of net […] *EUR after deducting the payment that is already paid to the Player according to this Agreement, if any".*

18. Moreover, according to Article 2.5. of the Mutual Termination Agreement *"The Parties hereby agreed to release each other from any financial responsibilities, except the payment determined above, thus the Player will not claim any amount (transfer fee, monthly wages, compensation etc.) from the Club whatsoever as well as the Club will not claim any amounts from the Player provided that the above determined payments are made in full and on time to the Player by the Club. Player hereby accepts that have been waived his all contractual rights (transfer fee, monthly wages, compensation fee, salary etc.) from Club".*

19. On 31 January 2018, the first instalment of EUR […] was paid by the Club to the Player *via* wire transfer.

20. On 28 February 2018, the Club only made a partial payment of the second instalment, in the amount of […], *via* wire transfer.

21. On 1 March 2018, the Player sent a warning letter to the Club requesting payment of the balance of the second instalment within the next seven days, in accordance with Article 2.4 of the Mutual Termination Agreement, failing which, he reserved the right to terminate the Mutual Termination Agreement and initiate legal proceedings to seek compensation in accordance with Article 2.4 of the Mutual Termination Agreement.

22. On 7 March 2018, the Club paid the overdue amount of EUR […] corresponding to the balance of the second instalment.

23. As the third instalment became due on 30 March 2018, the Player could not cash the relevant cheque which was refused due to insufficient funds in the Club's bank account. The fourth, fifth and sixth instalment also remained unpaid.

24. On 23 July 2018, the Player sent a formal notice to the Club, requesting the payment of the overdue instalments in the amount of EUR […] within the next seven days, in accordance with Article 2.4 of the Mutual Termination Agreement, warning the Club that in case of failure, he would be entitled to receive the amount of EUR […], deducted the sum already paid.

25. On 1 August 2018, failing any payment by the Club, the Player sent a new formal notice to the latter, assuming that the Mutual Termination Agreement had become null and void because of the non-fulfilment of its financial conditions and requested the Club to immediately pay the amount of EUR […] within the next three days.

26. In the absence of any payment or response by the Club, the Player sent a final warning on 19 September 2018, setting a time limit of 10 more days in order for the Club to remedy its debt.

27. On 19 October 2018, the Player lodged a claim before the FIFA DRC against the Club, pursuant to Article 2.4 of the Mutual Termination Agreement, due to the failure by the Club to fulfil its financial obligations, requesting as follows:

- EUR […] as outstanding amounts due by virtue of the Mutual Termination Agreement, plus 5% interest as from 2 August 2018, *i.e.* one day after the requested sum in the Player's default notice on 23 July 2018 became due;

- Sporting sanctions to be imposed on the Club.

28. In its response before the FIFA DRC, the Club challenged the FIFA's competence to adjudicate the present matter, in favour of the CAS, referring to Article 3 of the Mutual Termination Agreement, according to which: *"The disputes arising from the present contract may be referred to the Court of Arbitration for Sport (CAS) Ordinary Arbitration in Lausanne. The parties agree than any CAS Ordinary arbitration shall be held in expedited manner before a Sole Arbitrator. The language of arbitration will be English".*

29. On the contrary, the Player maintained that the word *"may"* in the relevant arbitration clause indicates that CAS jurisdiction was a mere option, as an alternative to FIFA's competence.

30. As to the substance, the Club did not provide any further arguments.

31. On 5 November 2019, the FIFA DRC rendered the Appealed Decision, by which the Player's claim was partially accepted, as follows:

1. *"The claim of the Claimant, Samir Nasri, is admissible.*

2. *The claim of the Claimant is accepted.*

3. *The Respondent, Antalyaspor, has to pay to the Claimant outstanding remuneration in the amount of EUR* […]*, plus interest at the rate of 5% as from 2 August 2018 until the date of effective payment.*

4. *The Claimant is directed to inform the Respondent, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent must pay the amount mentioned under point 3. above.*

5. *The Respondent shall provide evidence of payment of the due amount in accordance with point 3. above to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).*

6. *In the event that the amount due plus interest in accordance with point 3. above is not paid by the Respondent* ***within 45 days*** *as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount plus interest is paid and for the maximum duration of three entire and consecutive registration periods (cf. Art. 24bis of the Regulations on the Status and Transfer of Players).*

7. *The ban mentioned in point 6. above will be lifted immediately and prior to its complete serving, once the due amount plus interest is paid.*

8. *In the event that the aforementioned sum plus interest is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision".*

32. The grounds of the Appealed Decision were served by facsimile to the Parties on 7 February 2020.

IV. GROUNDS OF THE APPEALED DECISION

33. The grounds of the Appealed Decision can be summarized as follows:

34. Firstly, the DRC considered that, in principle, it would be the competent body to decide the present case, involving an employment-related dispute between a French Player and a Turkish club, based on the provision of Article 24 (1 and 2) in combination with Article 22 lit. b of the FIFA Regulations on the Status and Transfer of Players (the "RSTP").

35. However, the Chamber acknowledged that the Club contested the competence of FIFA to deal with the present matter, referring to Article 3 of the Mutual Termination Agreement, allegedly providing for the exclusive competence of the CAS.

36. On the other side, the FIFA DRC noted that the Player rejected such position and considered the arbitration clause contained in Article 3 of the Mutual Termination Agreement to be optional.

37. In this context, the Chamber analysed the content of Article 3 of the Mutual Termination Agreement and established that it provided an option for the Parties to resort to the CAS, without any prejudice to the claimant's choice to lodge his claim in front of the FIFA DRC.

38. As a consequence, the members of the Chamber rejected the Club's objection and decided that they were competent to deal with the present case on the basis of Article 22 lit. b of the FIFA

RSTP and that the June 2018 edition of said regulations were applicable to the matter at hand as to the substance, considering that the claim was lodged on 18 October 2018.

39. With regard to the merits, the DRC took into consideration that the Player put the Club in default, on 1 August 2018 and 19 September 2019, deeming that the financial conditions under the Mutual Termination Agreement had not been satisfied due to the Club's failure to fulfil the agreed payment schedule.

40. In view of the above and in the absence of any defence by the Club as to the substance, the FIFA DRC established that, in accordance with the general principle of *pacta sunt servanda*, the Respondent was liable to pay to the Player the amount of EUR […] (*i.e.* the total amount of EUR […] set forth under Article 2.4 of the Mutual Termination Agreement, deducted the amount already paid by the Club out of the instalments due, amounting to EUR […]), plus interest at the rate of 5% *p.a.* as of 2 August 2018.

41. In addition, the Appealed Decision established that a ban from registering new players would be imposed on the Club as a consequence of the failure to pay the relevant amount within the due time-limit.

V. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

42. On 28 February 2020, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Respondent with respect to the Appealed Decision, in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration, 2019 edition (the "CAS Code"). The Appellant chose English as the language of the arbitration and requested that the present case be submitted to a sole arbitrator.

43. On 9 March 2020, the Respondent objected to the Appellant's request to appoint a sole arbitrator and requested that the present case be submitted to a panel of three arbitrators in accordance with Article R50 of the CAS Code.

44. On the same day, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

45. On 16 March 2020, the CAS Court Office informed the Parties that the Deputy President of the Appeals Arbitration Division had decided to submit the present matter to a three-member panel and invited the Appellant and the Respondent to respectively nominate their arbitrator from the relevant list of CAS arbitrators.

46. On 16 March 2020, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.

47. On 20 March 2020, the Respondent requested the CAS Court Office a 20-day extension of the time limit to file his Answer.

48. On 25 March 2020, the Appellant nominated Mr Emin Özkurt, Attorney-at-Law in Istanbul, Turkey, as an arbitrator in the present proceedings.

49. On the same day, the CAS Court Office informed the Parties that the Respondent's request for an extension of 20 days of the time limit to file his Answer, had been granted.

50. On 2 April 2020, the Respondent nominated Mr Olivier Carrard, Attorney-at-Law in Geneva, Switzerland, as an arbitrator in this procedure.

51. In accordance with Article R55 of the CAS Code, the Respondent filed his Answer on 17 April 2020 and requested the Panel to decide on the basis of the Parties' written submissions, or, alternatively, that the hearing, if any, be conducted by video-conference.

52. On 21 April 2020, the CAS Court Office invited the Appellant to state whether it preferred a hearing to be held in the present matter or for the Panel to render a decision based solely on the Parties written submissions. On the same day, the Appellant informed the CAS Court Office that, in regard of the hearing, it left the relevant decision to the discretion of the Panel.

53. On 8 May 2020, the CAS Court Office informed the Parties that the Panel appointed to decide the present case had been constituted as follows:

President:	Mr Fabio Iudica, Attorney-at-Law in Milan, Italy;
Arbitrators:	Mr Emin Özkurt, Attorney-at-Law in Istanbul, Turkey; Mr Olivier Carrard, Attorney-at-Law in Geneva, Switzerland.

54. On 12 May 2020, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing in the present proceedings.

55. On 22 May 2020, the Appellant stated its preference for an in-person hearing.

56. On 25 May 2020, the Parties were informed that a hearing would take place on 23 June 2020 and that the modalities of the hearing (whether *in persona* in Lausanne, or by videoconference) would be defined at a later stage.

57. On 11 June 2020, the CAS Court Office informed the Parties that the Swiss immigration authorities issued the necessary permits to allow the Appellant to enter Switzerland despite the travel restrictions related to the COVID-19 pandemic, and thus to attend the hearing in person, as per its preference. Consequently, the CAS informed the Parties that the hearing scheduled on 23 June 2020 would take place in person in Lausanne, Switzerland.

58. On 16 June 2020, unexpectedly, the Appellant informed the CAS Court Office that it would not be able to attend the hearing in Lausanne while it remained available for a hearing to be held by videoconference.

59. On 18 June 2020, the CAS Court Office informed the Parties that the hearing would take place in Lausanne on 23 June 2020 as planned, with the Respondent and his representative to be heard in person and the Appellant to be heard *via* video-conferencing.

60. On the same day, the CAS Court Office forwarded the Order of Procedure to the Parties which was returned in duly signed copy by the Respondent on 22 June 2020 and by the Appellant on 23 June 2020. By signing the Order of Procedure, the Parties expressly agreed to the partial use of videoconferencing as the means for conducting the arbitral hearing, pursuant to Article R44.2 of the CAS Code.

61. On 23 June 2020, a hearing took place at the CAS Court Office in Lausanne, Switzerland.

62. At the hearing, besides the Panel and Mr Giovanni Maria Fares, Counsel to the CAS, the following persons were present:

    For the Appellant: Mr Cenk Soyer, Counsel, attending by video conference.

    For the Respondent: Mr Samir Nasri; Mr Micha Bühler, Mr Pierre-Alain Guillaume, Counsels; Mr Alain Migliaccio, personal advisor; Mr Naïm Aalai, witness.

63. At the outset of the hearing, the Parties confirmed that they had no objections in respect to the composition of the Arbitral Tribunal and that the Panel has jurisdiction over the present dispute. In their opening statements, the Parties reiterated the arguments already put forward in their respective written submissions. The Appellant, *inter alia*, confirmed its objection to the FIFA's jurisdiction in the first instance proceedings.

64. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Panel and that their rights to be heard and to be treated equally had been duly respected.

65. On 23 June 2020, the Appellant also provided the CAS Court Office with a copy of the *"Check Receipt Document"* confirming that the Respondent received a total of 5 bank cheques from the Club, pursuant to Article 2.3 of the Mutual Termination Agreement. Since the fact that the cheques have been handed over to the Respondent was undisputed between the Parties – and, therefore, this element has no particular relevance for the outcome of the present dispute – the Panel did not consider the *"Check Receipt Document"* as a new evidence or fact pursuant to Article R56 of the Code and thus it considered not necessary to ask the Respondent to comment on its admissibility.

66. On 25 June 2020, as requested by the Respondent and agreed at the end of the hearing, the CAS Court Office invited the Parties to file their Submission on Costs within the next 10 days.

67. On 6 July 2020, the Parties respectively provided the CAS Court Office with their Submission on Costs. Furthermore, the Respondent also briefly commented the *"Check Receipt Document"* submitted by the Appellant and contested its admissibility and relevance.

VI. SUBMISSIONS OF THE PARTIES

68. The following outline is a summary of the Parties' arguments and submissions which the Panel considers relevant to decide the present dispute and does not necessarily comprise each and every contention put forward by the Parties. The Panel has nonetheless carefully considered all the submissions made by the Parties, even if no explicit reference has been made in the following summary. The Parties' written and oral submissions, documentary evidence and the content of the Appealed Decision were all taken into consideration.

A. The Appellant's submissions and requests for relief

69. The Appellant's submissions in its Statement of Appeal and in its Appeal Brief may be summarized as follows.

70. First of all, the Appellant objected that FIFA was not competent to decide the present matter in the first instance.

71. According to Article 3 of the Mutual Termination Agreement, in fact, any dispute arising between the Parties from the same contract shall be referred to CAS.

72. Contrary to the Player's interpretation of the word *"may"* in the relevant arbitration clause, the choice of forum in favour of the CAS was not optional in the intent of the Parties. While the term *"may"* would suggest a mere possibility in daily language, in legal context, a careful analysis is needed in order to establish whether a specified act is an option, or it is mandatory for the parties.

73. If the Parties had intended the arbitration clause to be optional, they simply would have not included it in the Mutual Termination Agreement and, as a consequence, the competence of FIFA would be established by default.

74. Moreover, it is noteworthy that both in the Employment Contract and in the Amendment Agreement, the relevant arbitration clause makes reference to the FIFA DRC as the competent body to adjudicate over the dispute, instead of the CAS, which is a sign that under the Mutual Termination Agreement the Parties deliberately established a different choice of forum in favour of the CAS.

75. As to the substance of the matter, the Appellant claimed that Article 2.4 of the Mutual Termination Agreement, by envisaging the Club's obligation to pay the amount of EUR […] (deducted the amounts already paid) to the Player as a consequence of the failure by the Club to fulfil the payment deadlines set forth under Article 2.3, actually represents a penalty clause.

76. As such, the amount of EUR […] is disproportionate and must be reduced according to Article 163(3) of the Swiss Code of Obligations (the "Swiss CO"). In fact, considering that the original debt under article 2.3 amounted to EUR […] and that the first two instalments due had been

paid, the penalty in the amount of EUR […] corresponds to […]% of the remaining amount due (*i.e.* EUR […]) which is clearly excessive.

77. Even considering the amount in question as the residual value of the Employment Contract, assuming that the Club committed breach, the amount of EUR […] would still be excessive. In that case, in fact, the compensation payable to the Player would be reduced by the alternative salaries that he earned by performing other work or he would have earned had he not intentionally foregone such work, in accordance with Article 337c of the Swiss CO. Since the Player was sanctioned with a ban from football activities for disciplinary reasons, the Club asserted that, as a consequence, the Player failed to mitigate his damages, either intentionally or based on his fault, within the meaning and for the purpose of Article 337c of the Swiss CO.

78. In addition, the Appellant pointed out that, since the disciplinary sanction of six-month ban was later extended to eighteen months, the Club had the option to terminate the Employment Contract pursuant to the Amendment Agreement. In such event, the Player would only have been entitled to 50% of the first instalment of the signing fee and to no further amount.

79. Finally, considering that the Club paid to the Player an overall amount of EUR […] under the Employment Contract and the Mutual Termination Agreement (EUR […] as signing fee under the Employment Contract + EUR […] as salaries + EUR […] as first and second instalment under the Mutual Termination Agreement), and only benefited from the Player's services in relation to only eight league matches during the sporting season 2017/2018, it is neither just nor proportionate to condemn the Club to pay an additional amount of EUR […].

80. The Appellant submitted the following requests for relief:

> *"a. to set aside the challenged decision of the FIFA Dispute Resolution Chamber in its entirety and to adjudicate that the Respondent is not entitled to any amount for the premature termination of the employment agreement between the Parties,*
>
> *b. subsidiarily, to adjudicate that the Respondent may only be entitled to the maximum amount of* […].- *Euro as the original amount agreed under the Mutual Termination,*
>
> *c. to condemn the Respondent to pay the Appellant the legal fees and other expenses in connection with the proceedings".*

B. The Respondent's submissions and requests for relief

81. The position of the Respondent is set forth in his Answer and can be summarized as follows.

82. With regard to the Appellant's preliminary objection to FIFA's jurisdiction in the first instance proceedings, the Club failed to submit the relevant request for relief to the CAS and therefore, it forfeited its right to challenge FIFA's competence.

83. In fact, the Player argued that according to Article 186(2) of the Federal Statute of Private International Law (the "PILA") the plea of lack of jurisdiction must be raised before any defence on the merits. Beside the foregoing, the arbitration clause in the Mutual Termination Agreement only contains an option for the Parties to refer the dispute directly to the CAS, with no exclusion to the general competence of the FIFA DRC, as it results from the use of the term *"may"*, instead of "must" or "shall" in the relevant provision. In addition, under Article 22 lit. b of the FIFA RSTP and consistent with the jurisprudence of the Swiss Federal Supreme Court (cf. 4A_492/2016), the competence of FIFA DRC can only be excluded in favour of an independent arbitration tribunal *"established at national level"* which is not the case of CAS.

84. As to the facts of the present case, the Player maintained that under the (amended) Employment Contract he would have been entitled to a total fixed remuneration of EUR […] and that, considering the further variable benefits and performance bonuses, the total value of the Employment Contract over its entire duration would have reached the amount of EUR […].

85. The Appellant fulfilled its financial obligations under the Employment Contract only with respect to three monthly salaries (August, September and October 2017) as well as 50% of the signing fee, for a total amount of EUR […]. In this regard, the Appellant's assertion that the Player received the amount of EUR […] corresponding to the entire signing fee is untrue as it also results from Article 1.3 of the Mutual Termination Agreement and, in any event, the Club did not provide any evidence in support of its allegation to the contrary.

86. In this framework, the Respondent stressed that, pursuant to the Mutual Termination Agreement, he agreed to renounce a large part of his remuneration, in exchange of EUR […], corresponding to the overdue salaries for November 2017, December 2017 and January 2018, plus a termination fee of EUR […], and also accepted an instalment payment. The Player's renunciation was subject to the condition that the Appellant would pay each instalment on time in accordance with the payment schedule set forth under Article 2.3 of the Mutual Termination Agreement.

87. However, as it is also undisputed, the Appellant failed to comply with its financial obligations under the Mutual Termination Agreement since, when the third instalment became due on 30 March 2018, the Player could not cash the relevant cheque because of the lack of sufficient funds in the Appellant's bank account which finally results in the application of Article 2.4.

88. In regard to the law, Article 2.4 of the Mutual Termination Agreement is not a penalty clause in the meaning of Article 160 of the Swiss CO as alleged by the Appellant, but rather, a conditional renouncement by the Respondent which entails a smaller renouncement in case of non-compliance by the Club.

89. Even assuming that Article 2.4 was a penalty clause (*quod non*), it would not be excessive within the meaning of Article 163 of the Swiss CO, failing any *"glaring disproportion"* between the amount of the penalty and the amount of damages occurred, which has not been demonstrated by the Appellant.

90. Moreover, the Respondent argued that comparing the amount of compensation under Article 2.4 of the Mutual Termination Agreement in case of failure by the Club (EUR […]) with the lower original debt (EUR […] or EUR […] if considering the amount already paid) is irrelevant for the purpose of establishing the alleged disproportion of the awarded amount. In fact, the compensation envisaged under Article 2.4 in case of the Club's failure to comply with the payment schedule should rather be compared with the overall remuneration to which the Player would have been entitled, had the Employment Contract not been early terminated. In such context, the compensation fee corresponds roughly to […] % of the total fixed salary due to the Player for the entire duration of the Employment Contract, excluding bonuses and, therefore, it is neither disproportionate, nor unjust.

91. Likewise, the objection to the proportionality of the clause based on the Player's ban from football activities is wrong and inconsistent because Article 337c of the Swiss CO does not apply to a mutual termination of an employment contract, as is the present case and moreover, because the amount agreed by the Parties was meant to be a comprehensive lump-sum, and each Party waived any further claim against the other Party except for the payment of the agreed amount.

92. In addition, the Appellant was aware of the pending disciplinary proceedings and of the risk of a ban on the Player when the Employment Contract was concluded. In fact, the Parties set forth specific provisions for the different possible case scenario of a ban. On the contrary, the Mutual Termination Agreement did not envisage the possibility for a possible suspension of the Player to affect the Appellant's financial obligations thereunder. Therefore, the Parties considered the ongoing disciplinary proceedings as irrelevant to the purpose of the Mutual Termination Agreement.

93. This is also corroborated by the Appellant's subsequent conduct after the imposition of the ban on the Player, as it was for the first time in its Appeal Brief that the Appellant argues that the financial obligations under the Mutual Termination Agreement should be reduced due to the (later) ban.

94. Therefore, the Appellant's arguments are specious, since the obligation to pay EUR […] to the Respondent according to Article 2.4 of the Mutual Termination Agreement is valid and binding and the Appealed Decision is to be upheld.

95. In conclusion, the Respondent submitted the following requests for relief:

1. *"Dismiss the appeal of the Appellant;*

2. *confirm the decision of the FIFA Dispute Resolution Chamber dated 5 November 2019 and order the Appellant to pay to the Respondent EUR* […] *plus interest at the rate of 5% p.a. as from 2 August 2018 until the date of effective payment;*

3. *confirm that the Appellant shall be banned from registering any new players, either nationally or internationally, up until the due amount plus interest is paid in full and for the maximum duration of*

three entire and consecutive registration periods as provided for in point 6 of the dispotive [sic] *part of the decision of the FIFA Dispute Resolution Chamber dated 5 November 2019;*

4. *order the Appellant to bear all costs of these arbitral proceedings, including the arbitrators' fees and expenses, the CAS costs, the expenses and costs of witnesses and/or experts, as well as all costs incurred by the Claimant, such as but not limited to attorney's fees, out-of-pocket expenses, related to these proceedings, plus interest at a rate of 5%per annum as the date of the award until full and final payment;*

5. *other such further and other relief as the Appeal Panel may deem just and appropriate".*

VII. JURISDICTION

96. Article R47 of the CAS Code provides as follows:

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

97. In its Statement of Appeal, the Appellant relies on Articles 58 of the FIFA Statutes, as conferring jurisdiction to the CAS.

98. The jurisdiction of the CAS was not contested by the Respondent.

99. The signature of the Order of Procedure confirmed that the jurisdiction of the CAS in the present case was not disputed.

100. Accordingly, the Panel is satisfied that CAS has jurisdiction to hear the present case.

VIII. ADMISSIBILITY OF THE APPEAL

101. Article R49 of the CAS Code provides the following:

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

103. According to Article 58(1) of the FIFA Statutes *"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 notification of the decision in question".*

104. The Panel notes that the FIFA DRC rendered the Appealed Decision on 5 November 2019 and that the grounds of the Appealed Decision were notified to the Parties on 7 February 2020.

105. Considering that the Appellant filed its Statement of Appeal on 28 February 2020, *i.e.* within the deadline of 21 days set in the FIFA Statutes, the Panel is satisfied that the present appeal was filed timely and is therefore admissible.

IX. APPLICABLE LAW

106. Article R58 of the CAS Code provides 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.*

107. The Appellant relies on the application of Swiss law, while the Respondent refers both to the FIFA RSTP and Swiss law as the applicable rules.

108. In consideration of the above and pursuant to Article R58 of the CAS Code, the Panel holds that the present dispute shall be decided principally according to the FIFA RSTP, Edition June 2018, with Swiss law applying subsidiarily.

X. LEGAL ANALYSIS

A. Preliminary issue

109. Before entering into the substance of the present case, the Panel notes that the Appellant has raised an objection regarding the alleged lack of jurisdiction by the FIFA DRC with respect to the claim filed by the Player in the first instance proceedings.

110. In this respect, the Appellant maintains that, in accordance with Article 3 of the Mutual Termination Agreement, CAS was exclusively competent to deal with the present dispute, while the Respondent objects that CAS jurisdiction was established as an option at the choice of the party starting the relevant proceedings, being FIFA DRC still competent, alternatively, on the basis of Article 22 lit. b of the FIFA RSTP.

111. The main issue lays in the conflicting interpretation of the wording of said Article 3, reading as follows: *"The disputes arising from the present contract may be referred to the Court of Arbitration for Sport (CAS) Ordinary Arbitration in Lausanne"*, where the term *"may"* would actually entail a mandatory choice of *forum*, according to the Appellant, or, conversely, a mere possibility at the discretion of the claimant, according to the Respondent, without prejudice to the right to seek redress before the FIFA DRC.

112. Preliminarily, without entering into the merits, the Panel observes that the supporting arguments put forward by the Appellant in its Appeal Brief in order to maintain the lack of jurisdiction by FIFA, has not been formalised in any specific request for relief. In fact, the

Appellant failed to submit any claim in order for the CAS to adjudicate on the issue of FIFA jurisdiction.

113. In such context, the Panel reminds that, according to the general principle of "*non ultra petita*", stemming from Article 190 of the PILA, a CAS award cannot go beyond the claims submitted and therefore a CAS panel is bound to what has been specifically requested by the parties. Although the Appellant confirmed its objection at the hearing, the lack of a specific request for relief on the point makes the relevant objection void.

114. As a consequence, the Panel holds that the there is no need to adjudicate on the issue concerning the alleged lack of jurisdiction of the FIFA DRC in the first instance.

115. Notwithstanding the above and for the sake of completeness, the Panel believes that, in any case, according to a *bona fide* interpretation of the arbitration clause contained under Article 3 of the Mutual Termination Agreement, by referring to the word *"may"*, the Parties had agreed to freely decide whether to directly bring the case before the CAS, by means of an ordinary arbitration proceedings (in accordance with Article R27 of the CAS Code), or to lodge the claim before the FIFA DRC, according to the general provision set forth under Article 22 lit. b of the FIFA RSTP.

116. Therefore, it is the opinion of the Panel that Article 3 of the Mutual Termination Agreement does not contain any exclusive choice of forum in favour of the CAS.

117. Such interpretation is also corroborated by the compared analysis of the wording of Article 3 of the Mutual Termination Agreement with the wording of Article 9 of the Employment Contract, also containing an arbitration clause, where, conversely, the Parties expressly established that *"FIFA Dispute Resolution chamber has the exclusive authority to settle any dispute derived from this contract"*, thereby clearly establishing the competence of FIFA DRC on an exclusive basis.

118. In any case, the Panel also reminds that, even assuming that FIFA had no competence to deal with the present matter in the first instance (which is excluded in the Panel's view), the filing of the appeal with the CAS would have had a healing effect on the previous instance, due to the CAS Panel's full power of review in accordance with Article R57 of the CAS Code.

B. Merits

119. Addressing the merits of the case at issue, the Panel considers that it remained undisputed that the Appellant failed to fulfil its financial obligations under the Mutual Termination Agreement towards the Player.

120. The Appellant, in fact, acknowledged that the third instalment due according to the payment schedule under Article 2.3 (as well as the following instalments) has remained unpaid.

121. Moreover, it was also not contested that such failure was due to the lack of sufficient funds in the Appellant's bank account when the Respondent tried to cash the relevant cheque on the due date.

122. It is also undisputed that, subsequently, the Respondent put the Appellant in default by written notice, requesting the Club to pay all the overdue instalments (*i.e.* EUR […]) within the prescribed time limit under Article 2.4 of the Mutual Termination Agreement, but the Appellant still failed to remedy its breach.

123. In addition, the Parties concur that the Appellant's default of payment of the third instalment triggered the application of Article 2.4 of the Mutual Termination Agreement, together with its compensation mechanism.

124. What is disputed between the Parties is whether the Respondent is entitled to receive the amount envisaged under Article 2.4 of the Mutual Termination Agreement, *i.e.*, EUR […], deducted the instalment already paid by the Club (EUR […]), and therefore, the overall amount of EUR […], which is contested by the Club.

125. In fact, according to the Appellant, Article 2.4 of the Mutual Termination Agreement actually embodies a penalty clause in accordance with Article 160 of the Swiss CO and, as such, it shall be reduced by the Panel pursuant to Article 163(3) of the Swiss CO, in that it is allegedly excessive.

126. In support of this allegation, the Appellant maintains the following:

a) the penalty in the amount of EUR […] is disproportionate, corresponding to […]% of the residual Appellant's debt under the Mutual Termination Agreement, which amounted to EUR […];

b) even considering the amount in dispute as if it was the basis for the calculation of the compensation for breach of contract according to Article 17 of the FIFA RSTP (*i.e.* the residual value of the Employment Contract), it would still be excessive. In fact, the relevant amount would be necessarily reduced by the alternative salaries earned by the Player or those he would have earned after the termination of the Employment Contract, in case he had not been banned, in accordance with Article 337(c) of the Swiss CO;

c) moreover, due to the imposition of the ban, the Appellant had the option to unilaterally terminate the Employment Contract pursuant to the Amendment Agreement with the Player only being entitled to 50% of the first instalment of the signing fee and to no further amount;

d) finally, the *"penalty"* is excessive considering that the Appellant paid to the Player an overall amount of EUR […] (EUR […] as signing fee under the Employment Contract + EUR […] as salaries + EUR […] as first and second instalment due under the Mutual Termination Agreement).

127. On the other side, the Respondent contends that Article 2.4 of the Mutual Termination Agreement is not a penalty clause in the meaning of Article 160 of the Swiss CO as alleged by the Appellant, but rather, a conditional renouncement by the Respondent which entails a smaller renouncement in case of non-compliance by the Club. In this respect, the Respondent emphasises that, by signing the Mutual Termination Agreement, he forfeited a large part of the salaries he would have earned under the Employment Contract until the contractually agreed termination date. However, such renunciation was subject to the condition that the Appellant would fulfil each due instalment on time, in compliance with the payment scheduled stipulated under Article 2.3. Even considering the relevant clause to be a penalty clause (*quod non*), it would not be excessive within the meaning of Article 163c of the Swiss CO, in comparison with the residual fixed salary to which the Player would have been entitled for the entire duration of the Employment Contract, corresponding to roughly […] % of the such amount. Moreover, Article 337c of the Swiss CO providing the obligation to mitigate damages by the aggrieved party does not apply to mutual termination of employment agreements but only to unilateral terminations by the employer. Finally, the Appellant was aware of the pending disciplinary proceedings against the Player when the Mutual Termination Agreement was concluded; therefore, it follows that the agreed amount was the result of a conscious and deliberate choice.

128. In view of the conflicting positions above, the Panel turns its attention to the provision stipulated by the Parties under Article 2.4 of the Termination Agreement which reads as follows:

> *"Antalyaspor agrees and accepts that the receipt of the abovementioned amount by the Player timely and without delay is the key component of this Mutual Termination Agreement. Subject to the conditions the checks are still at the possession of the Player and submitted to the bank duly, in case Antalyaspor has insufficient funds in its bank account at the payment date of the bank cheques which causes the Player not to collect any of the instalments, the Player shall have the right to notify Antalyaspor in writing (facsimile accepted) and request the payment of the overdue instalments within 7 (seven) days. In case Antalyaspor fails to pay the Player the overdue instalments within the deadline of 7 (seven) days, Antalyaspor agrees and accepts that the monetary conditions of this Mutual Termination Agreement will immediately become null and void without any requirement for another notice and the Player's guaranteed salary from Antalyaspor between November 2017 and May 2018 under the Contract will be due and payable by Antalyaspor to the Player effective immediately. In such case, Antalyaspor irrevocably agrees and accepts to immediately pay the Player his guaranteed salary from November 2017 and May 2018 under the Contract in the total amount of net* […] *EUR after deducting the payment that is already paid to the Player according to this Agreement, if any".*

129. Firstly, the Panel observes that in the intention of the Parties, the fulfilment by the Appellant of each instalment of the payment schedule provided under Article 2.3, on the respective due dates without delay, was an essential requirement of the Mutual Termination Agreement.

130. In other words, the Parties established that the deadlines of the payment schedule were essentials for the purpose of fulfilling the Appellant's obligation, failing which, the Mutual Termination Agreement would be immediately terminated and the Club would be obliged to pay an higher amount, covering the residual value of the first sporting season of the

Employment Contract: *"the monetary conditions of this Mutual Termination Agreement will immediately become null and void without any requirement for another notice and the Player's guarantee salary from Antalyaspor between November 2017 and May 2018 under the Contract will be due and payable by Antalyaspor to the Player effective immediately".*

131. In fact, pursuant to Article 2.2 of the Mutual Termination Agreement, provided that the relevant payment schedule was met, the Parties agreed that, by early terminating the contract on 29 January 2018, the Player would only be entitled to receive an amount of EUR […], broken down as follows:

    i. EUR […] corresponding to outstanding salaries for November 2017, December 2017 and January 2018;

    ii. EUR […] as outstanding accommodation allowance and other expenses according to Article 3, lit. C of the Employment Contract;

    iii. EUR […] as compensation fee for the early termination.

132. Therefore, it emerges from the context of the Mutual Termination Agreement, that the Player accepted to renounce a significant part of his fixed salaries to which he would have been entitled to, had the Employment Contract not been early terminated, not considering variable performance bonuses.

133. In this respect, the Panel notes that the residual value of the Employment Contract at the signing of the Mutual Termination Agreement (not considering the outstanding payments) until the date of its natural expiry, amounted to EUR […], consisting in the Player's fixed salaries as from February 2018 until May 2019 and accommodation fixed allowance for the sporting season 2018/2019, excluding variable performance bonuses. Prudentially, the Panel does not consider the outstanding second instalment of the signing fee in the amount of EUR […], in consideration of the fact that according to the Amendment Agreement this figure could be subject to partial or full renouncement in relation to the Player's suspension.

134. On the other side, the Panel observes that, by signing the Mutual Termination Agreement, the Player would recover the credit relating to his outstanding salaries and allowance, plus a compensation for the early termination and he would be free to sign a new employment contract with any other club.

135. In this respect, the Panel considers that, as a consequence of the Appellant's failure to comply with the agreed payment schedule, the Mutual Termination Agreement became null and void in accordance with the termination clause contained in article 2.4 and the Club's obligation to pay the residual Player's salaries until May 2018 - which the Player had previously renounced -, came into force. Therefore, the Panel believes that, as an effect of the termination clause, part of the Appellant's obligations under the Employment Contract was re-established in place of the settlement agreement stipulated under the Mutual Termination Agreement.

136. Therefore, the amount of EUR […] became immediately due, according to Article 2.4 of the Mutual Termination Agreement.

137. In this context, the Appellant claims that the stipulation in dispute represents a penalty clause according to Article 160 of the Swiss CO and requests the Panel to reduce it as it is allegedly disproportionate and excessive.

138. In view of the analysis above, the Panel considers that under Article 2.4, the Parties have stipulated an immediate termination clause in the event of failure by the Appellant to fulfil the essential deadlines agreed upon to the purpose of the early termination of the Employment Contract.

139. As a consequence, the previous obligation of the Club to pay a total amount of EUR […] in 6 equal instalments was replaced by a new obligation which is more burdensome to the Club, implying the immediate payment of a total amount of EUR […], deducted the instalments already paid by the Club and therefore a final amount of EUR […].

140. The Panel reminds that the relevant sum consists of the Player's guaranteed salary between November 2017 and May 2018 according to the Employment Contract.

141. In this respect, it is important to mention that part of the relevant amount, and namely EUR […] still corresponds to overdue payables (Player's salaries and expenses), while the amount of EUR […] corresponds to the compensation fee agreed under the Mutual Termination Agreement.

142. It follows that, as a matter of fact, only EUR […] out of EUR […] awarded to the Player by the Appealed Decision, can be considered as a *"penalty"* following the Appellant's position.

143. Even if the content of Article 2.4 of the Mutual Termination Agreement should be considered as a penalty clause within the meaning of Article 160 of the Swiss CO, the Panel believes that, in any case, the conditions for the application of Article 163(3) invoked by the Appellant for its reduction are not met.

144. In this respect, the relevant provision reads as follow:

> *"(1) The parties are free to determine the amount of the contractual penalty.*
>
> *(2) The penalty may not be claimed where its purpose is to reinforce an unlawful or immoral undertaking or, unless otherwise agreed, where performance has been prevented by circumstance beyond the debtor's control.*
>
> *(3) At its discretion, the court may reduce penalties that it considers excessive".*

145. In view of the above, the Panel observes that under Swiss law, and consistent with CAS jurisprudence (CAS 2014/A/3823; CAS 2015/A/4057), a penalty is considered as being

excessive according to the Swiss CO if such penalty has to be considered as being against justice and fairness:

> *"Under Swiss law, the judge (or the arbitrator) will use his discretion under Article 163 para. 3 SCO to reduce a contractual penalty if the relationship between the amount of the penalty agreed upon, on the one hand, and the interest of the creditor worthy of protection, on the other hand, is grossly disproportionate. In other words, an excessive penalty under Swiss law is a penalty that, at the time of the judgment, is unreasonable and clearly exceeds the admissible amount in consideration of justice and equity, or, put more simply, is "abusive". Moreover, the specific circumstances of the case, such as the nature and duration of the contract, the seriousness of the contractual breach, the degree of fault, the behaviour of the creditor, the financial conditions of the parties, a special interest of the creditor that the debtor behaves in conformity with the contract, the experience in business matters of the parties and the damage incurred by the creditor shall be considered"* (CAS 2017/A/5046).

146. In addition, according to Swiss jurisdiction (SFT 133 III 201), to judge the excessive character of the contractual penalty, one must not decide abstractly, but, on the contrary, take into consideration all the circumstance of the case at hand.

147. In this regard, another CAS panel has established the following:

> *"A reduction of the penalty under Article 163.3 CO is justified when there is a significant disproportion between the agreed amount and the interest of the creditor to maintain his entire claim, measured concretely at the moment when the contractual violation took place. Disproportion must significantly exceed the limits of what appears to be normal in light of all circumstances. To evaluate the excessive character of a contractual penalty, one must not decide in an abstract manner, but, to the contrary, take into consideration all the circumstances of the case at hand. Various criteria can play a determining role, such as the nature and duration of the contract, the degree of fault and of the contractual violation, the economic situation of the parties, as well as the potential subordination of the debtor"* (CAS 2015/A/4057).

148. Moreover, Swiss doctrine (BECKER H., Berner Kommentar, Article 163 Swiss CO n. 9) affirms that a reduction of the penalty shall never lead to a lower amount than the creditor (the Player) would receive under general rules to calculate compensatory damages.

149. The Panel therefore refers to Article 17 of the FIFA RSTP which would be applied in case the Player terminated the Employment Contract with just cause for breach of contract by the Club, in accordance with CAS jurisprudence (see CAS 2017/A/5242).

150. According to such provision, the main criteria suggested by Article 17 of the FIFA RSTP in order to determine the amount of compensation which the club in breach shall pay to the player is the residual remuneration, and other benefits payable under the existing contract, until the contractual end date, mitigated by the alternative salaries, if any, earned by the player *"for the period corresponding to the time remaining on the prematurely terminated contract"*.

151. In addition, Article 17, para 1, ii of the FIFA RSTP provides that *"Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the*

player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract".

152. In this context, the Panel notes that the remaining value of the Employment Contract at the time when the Mutual Termination Agreement was signed amounted to at least EUR […], as already specified under para 131 above, excluding variable bonuses as well as the second instalment of the signing fee.

153. In addition, the Panel notes that there is no evidence on file that the Player signed a new employment contract after the termination of the Employment Contract, nor has the Appellant demonstrated the contrary, although the burden of proof fell on the latter in order to support its allegations concerning the excessiveness of the penalty clause.

154. In any event, the mitigated amount, if any, would be increased by the Additional Compensation (up to a maximum corresponding to the remaining value of the Employment Contract), according to Article 17, para 1 ii of the FIFA RSTP mentioned above, corresponding to a further amount of EUR […].

155. In view of all the above, the Panel finds that, in consideration of all the circumstances of the present case, taking into account the original value of the Employment Contract, as well as its remaining value, considering that only EUR […] out of EUR […] can be considered as a *"penalty"* under Article 160 Swiss CO, if applicable, the overall amount of EUR 2, […] awarded by the Appealed Decision cannot be considered excessive within the meaning of Article 163(3) of the Swiss CO and it is consistent with the principle of contractual freedom of the Parties.

156. In view of all the foregoing, the Panel has reached the conclusion that the appeal filed by the Club shall be entirely rejected and the Appealed Decision shall be confirmed.

157. The Panel shall not address any other issue and all other motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Antalyaspor A.Ş. against the decision of the Dispute Resolution Chamber of FIFA passed on 5 November 2019 is dismissed.

2. The decision rendered by the Dispute Resolution Chamber of FIFA on 5 November 2019 is confirmed.

3. (…).

4. (…).

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