Arbitration CAS 2020/A/6950 Football Club FCSB SA v. Lukasz Gikiewicz, award of 7 June 2021

Panel: Mr Fabio Iudica (Italy), President; Prof. Pascal Pichonnaz (Switzerland); Mr Manfred Nan (The Netherlands)

Football
Termination of the employment contract with just cause by the player
Just cause of termination
Poor performance and preventing the player from training with the first team
Limits to the CAS power of review
Need for a specific request for relief regarding reduction of the amount of compensation
Admissibility of implicit requests

1. **A "valid reason" or "just cause" for termination of an employment contract exists when the relevant breach by the other party is of such nature, or has reached such a level of seriousness, that the essential conditions under which the contract was concluded are no longer present and the injured party cannot in good faith be expected to continue the employment relationship, to be assessed on a case-by-case basis. As regards employment relationships, an employee has just cause to terminate an employment contract in case of serious infringements of his rights, such as a unilateral or unexpected change in his status which is not related either to the company's requirements or to the organization of work or to a failure of the employee to observe his obligations. This is in line with the fundamental principle that the terms of a contract may not be changed unilaterally and that non-insignificant alterations to contractual terms require mutual consent of the parties, unless a right to modify is provided for in the relevant contract, within the limits of the law.**

2. **Not only can inadequate sporting performance by a player hardly constitute a breach of contract from the latter but also, preventing a player from training with the first team for poor performance may constitute a breach by the club as it is potentially a much harsher measure than solely assigning a player to play matches with the second team while being allowed to train with the first team squad. The former seriously prejudices the player's future perspectives with the first team, since such measure is of a more definite nature than the latter. In fact, it is generally recognised that preventing a professional player from rendering his services according to the terms of the employment contract may result in an infringement of his personality rights which encompass in particular the development and fulfilment of personality through sporting activity, professional freedom and economic freedom. An athlete who is not actively participating in competitions depreciates on the market and reduces his future career opportunities. Athletes have therefore a right to actively practice their profession.**

3. **Without prejudice to Article R57 of the CAS Code, which confers CAS with the full power to review the facts and the law of the case, a CAS panel is nonetheless bound to the limits of the parties' motions, since the arbitral nature of the proceedings obliges the panel to decide all claims submitted by the parties and, at the same time, prevents the panel from granting more than the parties are asking by submitting their requests for relief to the CAS, according to the principle of *ne ultra petita.***

4. **Requests for relief must be specified with enough precision in order for the Respondent(s) to be in a position to accurately reply to all parts of the claim. They must be worded in a way that the appellate authority may, where appropriate, incorporate them to the operative part of its own decision without modification. As a general rule, when a payment is sought, the request should be expressly quantified. In case the requests for relief are not sufficiently specified it may be impossible for adjudicatory body to assess whether their respective claim adjudicated in the appealed the decision and a claim raised before it is the same, in which case the respective requests would be barred by the principle of *res judicata.* Unless a specific request for recalculation has been submitted by the appellant in order to reduce the amount of compensation granted by the decision under appeal, the panel has no power to diminish the amount of compensation established by the challenged decision, given the constraint deriving from the appellant's requests for relief.**

5. **A judicial body may be authorized to adjudicate also on "implicit requests", i.e. on requests other than that expressly submitted which may be considered as virtually "contained" or "included" in the latter or implicitly formulated. However, unspoken requests may be considered "virtually contained" in other requests which were expressly formulated, only provided that they are connected with each other by the same grounds, namely, by the same reasons in fact and in law (so that the main legal issue to be resolved by the adjudicator is the same). Otherwise, the principle of *ne ultra petita* would be circumvented. If a request for relief submitted in the Appeal Brief (i.e. the request for annulment) is grounded on the assumption that a player's termination was without just cause, a "subsidiary request" for mitigation justified on condition that such assumption is rejected, cannot be considered as "contained" or "implicit" in the initial request for relief.**

I. INTRODUCTION

1. This appeal is brought by Football Club FCSB against Mr Lukasz Gikiewicz with respect to the decision rendered by the Dispute Resolution Chamber (the "FIFA DRC" or the "Chamber") of the Fédération Internationale de Football Association ("FIFA") on 17 January 2020 (the "Appealed Decision"), regarding an employment-related dispute.

II. PARTIES

2. Football Club FCSB SA (the "Appellant" or the "Club") is a football club with headquarters in Bucharest, Romania, which participates in the first-league championship in Romania. It is a member of the Romanian Football Federation (the "FRF"), which in turn is affiliated with FIFA.

3. Mr Lukasz Gikiewicz (the "Respondent" or the "Player") is a Polish professional football player, born in Olsztyn, Poland, on 26 October 1987.

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

III. FACTUAL BACKGROUND AND FIFA PROCEEDINGS

A. Background facts

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 this appeal. 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 31 July 2019, the Player signed an employment contract with the Club as a professional, valid as from 1 August 2019 until 30 June 2020 (the "Employment Contract").

7. Among the Club's ancillary contractual duties under the Employment Contract, Article 5 envisages the obligation *"j) To bear all expense for training and participation in sports competitions (transports, accommodation, meals, etc.)"*; *"l) To provide the player with a service car during the contract period"* and *"m) To provide the player with 3 airplane tickets/competitive season for the player on Buchurest-Varsovia-Buchurest route and 3 airplane tickets/competitive season for the player on route Buchurest-Split-Buchurest"*.

8. According to the "Financial Annex" to the Employment Contract, concluded on the same date, the Parties agreed that the Player would be entitled to a net monthly salary of EUR 8,500 (eight thousand five hundred euros).

9. Pursuant to Article I of the Financial Annex, *"Payment of the monthly remuneration provided in art. I above will be done in the current month for the previous month"*.

10. Based on the documentation on file, between 1 August 2019 and 18 August 2019, the Player was fielded and played in four of the Club's official matches.

11. On 6 September 2019, the Player sent a letter to the Club through his legal counsel, complaining as to the following: since 18 August 2019, he was no longer summoned by the Club for official matches; according to the Romanian press, the Club's owner had issued some

statements announcing the Player's departure from the team, among other players, due to the Club's dissatisfaction with his performance; on 5 September 2019, he had been excluded from the team's group chat on WhatsApp messenger, following a decision taken by the Club's management; also on 5 September 2019, the Club's head coach precluded him from training with the first team and assigned him to individual training, without any explanation or plan and later sent him an individual training schedule for the next two days; and the Club still owed him his salary for the month of August 2019.

12. In such context, the Player reminded the Club of his fundamental rights as a professional player, besides the right to remuneration, namely, the right to access training and to be given the possibility to compete with his fellow teammates in the team's official matches. The Player argued that, by removing him from the first team without any legal or sporting justification, the Club was infringing its contractual obligations as well as the Player's personality rights. In this respect, the Player pointed out that the Club's abusive conduct aimed at forcing him *"to terminate or change the terms of the contract"* fell within the scope of Article 14 (2) of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), giving rise to just cause for termination. Moreover, the Player contested that his alleged *"poor performance"* was a mere pretext in the absence of any indication of objectives and targets to achieve, and that the Club was aiming at bullying and harassing him in order to force him to terminate the Employment Contract, besides the fact that a possible decrease in his sporting performance was not a valid reason for the Club to suspend him from training with his teammates. Finally, the Player requested that the Club reinstate him to the first team, or in the alternative, to enter into a possible negotiation in the event that the Club was no longer interested in continuing the employment relationship.

13. On 9 September 2019, the Club sent a letter of reply to the Player, informing him that, in the period between 9 and 16 September 2019, according to a decision of the technical staff, coordinated by the main coach, he was required to attend the weekly training session with another player (Mr Andrei Marc) and to participate in the Club's second team's upcoming matches. The Club also attached a training schedule for the relevant period and reassured the Player that he would benefit from *"the best material, technical, organizational, medical assistance, recovery and rehabilitation conditions offered by our club, for an efficient physical and technical-tactical training of yours"*. The schedule contained notice that the training program for the following week would be communicated on 15 September 2019.

14. Also on 9 September 2019, in reply to the Club's letter, the Player contested the Club's decision to relegate him to the second team, based on the jurisprudence of the Court of Arbitration for Sport ("CAS") and the Swiss Federal Tribunal ("SFT"), and requested the Club to provide justification for such a decision and to specify the duration of his exclusion from the first team as well as the milestones, if any, he had to achieve to be reinstated to the first team. The Club was also requested to provide an explanation of why the Player's service car had been taken away the same day, and for how long the car would be unavailable to him. In addition, the Player informed the Club that he would continue training alone or with the second team merely in order to keep his sporting conditions, but that he refused to participate in matches with the Club's second team. Finally, the Club was urged to provide payment of the Player's outstanding salary for August 2019.

15. Later, the same day, with regard to the payment of the Player's salary, the Club informed the Player that it was not in arrears according to Article I of the Employment Contract, which provides that *"Payment of the monthly remuneration provided in art. I above will be done in the current month for the previous month"*.

16. In an email letter sent to the Club shortly after, the Player insisted that, in the absence of a specific deadline in the Employment Contract, payment of the salary was intended to be executed, on the first day of the following month, at the latest, in accordance with FIFA's well-established jurisprudence, arguing that, therefore, the Club was in default of payment.

17. By an email to the Club on 10 September 2019, the Player's counsel referred to an article issued in the Romanian press on the same day, which was reporting on the precarious position of the Player within the Club, and the ongoing situation between the Parties. In this respect, the Player's counsel blamed the Club for the disclosure of confidential information regarding the status of the Player.

18. With a new letter to the Club dated 11 September 2019, the Player raised further *"disturbing issues"* as follows: the Club's second team was purely an amateur team, composed of young players (U17 and U19) and trained by a coach who did not have a UEFA PRO license; moreover, the training which took place on 10 September 2019 was conducted on an artificial pitch, causing pain in the Player's knees and ankles, while the first team benefited from a grass pitch; therefore, and in the absence of any provision in the Employment Contract allowing the Club to relegate the Player to the second team, he would no longer take part in training with the Club's second team. In addition, the letter pointed out that, according to the Club's latest statements to the Romanian press, it was clear that the Club was no longer interested in keeping the Player's services, and therefore this had to be considered as the only reason for the downgrading of the Player's position as well as for the Club's failure to pay the Player's salary. Finally, the Player noted that the previous new KIA car initially provided by the Club to the Player had been taken away for alleged maintenance and substituted with an old Daewoo car, a different and downgraded car compared to the cars provided to the other players. This fact was acknowledged as a further attempt to intimidate the Player and to force him to terminate the Employment Contract. Finally, in view of the Club's illegitimate conduct and failure to comply with its contractual obligations and in line with the principle of *exceptio non adimpleti contractus*, the Player was no longer going to comply with the Club's instruction to train with the second team.

19. On the same day, the Club informed the Player in writing that he had to leave the room provided by the Club in the Club's sports facilities, by 12 September 2019 at the latest. In this respect, the Club emphasized that the room was initially offered on a temporary basis, as a courtesy, since the Club had no contractual obligation to provide accommodation to the Player. Moreover, the Club noted that the relevant sports facilities were in fact dedicated to the Club's Sports Academy and that, due to a tournament at the Academy starting from 12 September 2019, all the accommodation facilities would be entirely reserved to the junior athletes participating in the tournament.

20. Later that day, the Player informed the Club that he would return the room key the next day

and requested payment of his salary in order to be able to rent an apartment, pointing out that, according to the Employment Contract, the accommodation allowance was included in his monthly salary.

21. By email on 12 September 2019, the Player urged the immediate payment of his salary and clarifications regarding the car replacement.

22. On 13 September 2019, the Club replied in writing stating the following: the Club had no obligation to provide a company accommodation; with regard to the car allowance, the Club had no obligation to provide a specific model or brand, the choice depending on the Club's possibilities; in relation to the press articles reporting the Player's position, the Club had not disclosed any information whatsoever; as regards the Player's salary for August 2019, it was not yet overdue; regarding the staff's decision to assign the Player to the second team, the Club argued that the training sessions were coordinated by Mr Nastai Dacian, who had a coach PRO license; and finally, the Club affirmed it was willing to continue the relationship with the Player, while the latter was only using pretexts to create a dispute with the Club.

23. On the same day, the Player replied to the Club, remarking that: by requesting him to return the room, and, at the same time, by withholding the payment of his salary (which also included EUR 500 for accommodation allowance), the Club increased tension between the Parties, and was attempting to create conditions to induce the Player to leave the Club; moreover, the Club had failed to provide clarifications for the replacement of the KIA model with an old car in terrible condition; with regard to the press reports, the source of the relevant information was not the responsibility of the Player's counsel as suggested by the Club; and the Club was in breach of contract for failing to pay the Player's salary and relegating him to the second team with no justification. Therefore, the Club was granted a deadline of until 16 September 2019 to reintegrate the Player to the first team and to pay his salary for the month of August 2019.

24. Later on the same day, the Club contested the Player's decision to refuse to participate in the training sessions scheduled by the technical staff and to comply with his contractual obligations; as a consequence, the Player was informed that he was not included in the second team squad for the official match on 14 September 2019 against CS Viitorul Ianca, and that the Club would instigate disciplinary proceedings against him; finally, on 14 and 15 September 2019, the Player would take two days off and the next training schedule would be communicated to him by 15 September 2019.

25. The Player immediately contested the abovementioned letter, drawing the Club's attention to his previous correspondence dated 11 September 2019.

26. On 15 September 2019, the Club notified the Player with the training schedule for the period between 16 and 22 September 2019, confirming the Player's assignment to the second team.

27. On 16 September 2019, the Player sent a final warning letter to the Club, reiterating that the latter had breached the Employment Contract and the Player's personality rights, and granted a final deadline of until 20 September 2019 in order to be reintegrated to the first team, failing which he would terminate the Employment Contract based on Article 14(2) of the FIFA

RSTP.

28. By a termination notice on 20 September 2019, the Player finally terminated the Employment Contract, alleging just cause based on the Club's following behaviour:

- the Player's relegation to the second team for an unspecified period of time;
- the withholding of his monthly salary for August 2019;
- statements to the Romanian press that the Club was no longer interested in the Player's services;
- the replacement of his service car with an old model in terrible condition;
- evicting him from his room under a false pretext without paying him his monthly salary, so preventing him from renting an apartment;
- failing to answer to his reasonable requests for clarification with respect to his precarious position within the Club; and
- cutting all communications with him as from 16 September 2019.

29. On 25 September 2019, the Club contested the Player's termination, alleging that the Player had acted with bad faith and provocative behavior, and had breached his contractual obligations, with the only purpose of ending the employment relationship and obtain compensation; on the contrary, the Club affirmed having complied with the Employment Contract and that the decision to assign him to the second team was merely aimed at allowing him to *"better prepare and increase your performance in the game, given that the performance you gave in the first team could not provide games for the first team"*. Finally, the Club denied that it ever wished to end the employment relationship with the Player and requested that the Player return to training.

B. Proceedings before the FIFA DRC

30. On 30 September 2019, the Player lodged a claim before the FIFA DRC against the Club, requesting – in addition to the imposition of sporting sanctions on the Club – outstanding remuneration and compensation for breach of contract, for a total amount of EUR 93,961.31 allocated as follows:

- EUR 8,500 net as overdue salary for the month of August 2019, plus interest of 5% p.a. as from 2 September 2019 until the date of effective payment;
- EUR 85,461.31 net as compensation, plus 5% interest p.a. as from 20 September 2019 until the date of effective payment, broken down as follows:
    - EUR 85,000 as the residual value of the contract, from 1 September 2019 to 30 June 2020 (EUR 8,500 x 10 months);

- EUR 461.31 as expenses for the Player's return trip from Bucharest to Split on 21 September 2019 according to Article IV 5. par. m of the Employment Contract.

31. In his claim, the Player maintained: that the Club had not selected him to play in any of the official matches between 19 August 2019 and 20 September 2020, and had forced him to train alone without any indications; and that the Club had further relegated him to the second team for poor performance and isolated him from the first team, thus alleging that the Club was trying to push him to terminate the Employment Contract. Moreover, the Club also failed to pay him his salary for August 2019. The Player held that the Club's decision to remove him from the first team constituted a violation of his personality rights and of the Employment Contract, in the absence of any contractual provision allowing the Club to do so. Therefore, the Player argued that he had just cause to terminate the Employment Contract, based on Article 14 (2) of the FIFA RSTP. With regard to his professional status after termination of the Employment Contract, the Player declared he had remained unemployed.

32. In its reply, the Club first objected that FIFA was not competent to deal with the matter-at-stake since the FRF had jurisdiction in virtue of Article 7 of the Employment Contract. With regard to the substance, the Club argued: that the decision to assign the Player to the second team was justified by his physical condition and training level, as his performance in the first team had been unsatisfactory; and that, actually, the coach of the second team had a PRO license and, in any case, the exclusion from the first team was only temporary. Therefore, the Player had breached the Employment Contract by refusing to train with the second team contrary to the indications by the technical staff; moreover, the Club confirmed having complied with the payment of the Player's monthly salary for August 2019 according to the Employment Contract and that there were no infringements of any contractual obligations with respect to the car allowance or the accommodation. According to the Club, the Player's behavior was aimed at fabricating a dispute with the Club in order to obtain compensation. As a consequence, the Club requested the FIFA DRC to reject the Player's claim in its entirety.

33. On 17 January 2020, the FIFA DRC rendered the Appealed Decision, finding as follows:

1. *"The claim of the Claimant, Lukasz Gikiewicz, is admissible.*

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

3. *The Respondent, Football Club FCSB, has to pay to the Claimant outstanding remuneration in the amount of* EUR *8,500 plus 5% interest p.a. as from 2 September 2019 until the date of effective payment.*

4. *The Respondent has to pay to the Claimant compensation for breach of contract in the amount of* EUR *85,461.31, plus 5% interest p.a. as from 20 September 2019 until the date of effective payment.*

5. *[…]*

6. *[…]*

7. *In the event that the amounts due plus interest in accordance with points 3. and 4. above are 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 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).*

8. *The ban mentioned in point 7 above will be lifted immediately and prior to its complete serving, once the due amounts are paid.*

9. *In the event that the aforementioned sums plus interest are 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".*

34. On 25 March 2019, the grounds of the Appealed Decision were notified to the Parties. The reasoning of the Appealed Decision can be summarized as follows:

- Firstly, the FIFA DRC established that it had jurisdiction over the present dispute based on the provision of Article 3 para. 1 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules"), in conjunction with Article 24 para. 1, in combination with Article 22 lit. b) of the FIFA RSTP, since it concerns an employment-related dispute with an international dimension between a Polish player and a Romanian Club.

- In this respect, the Chamber rejected the Club's objection to FIFA's jurisdiction, since it concluded that Article 7 of the Employment Contract does not contain any clear reference in favour of the national FRF Dispute Resolution Chamber, contrary to the Club's allegation.

- Furthermore, the FIFA DRC decided that the 2019 edition of the FIFA RSTP was applicable to the substance of the matter, considering that the Player's claim was lodged in front of FIFA on 30 September 2019.

- With regard to the merits, the Chamber acknowledged that the Employment Contract signed by the Parties on 31 July 2019, valid as from 1 August 2019 until 30 June 2020, was unilaterally terminated by the Player in writing on 20 September 2019.

- The FIFA DRC observed that the main issue at stake was to determine whether the Player had just cause for termination under the provision of Article 14 (2) of the FIFA RSTP, as a result of the Club's vexatious attitude towards him.

- After having recalled the Parties' arguments, the Chamber first established that the Club had failed to discharge the burden of proof in relation to the payment of the Player's salary for August 2019; therefore, due to the lack of evidence with regard to the assertion made by the Club, the FIFA DRC concluded that the payment of EUR 8,500 had not been made and that the amount was still overdue.

- As to the Player's relegation to the second team, the Chamber held that the arguments put forward by the Club, based on a subjective element such as the Player's alleged poor performance, could not be accepted.

- Further, the FIFA DRC considered that the Player alleged having been pushed by the Club to unilaterally terminate the Employment Contract and took note of the following elements brought forward by the Player to justify his unilateral termination:

  - the Player's relegation to the second team;
  - the change of the car;
  - the Club's request that the Player return the accommodation originally offered;
  - the failure to pay the salary for August 2019; and
  - statements in the press concerning the Player's position within the Club.

- The Chamber held that all of the above-mentioned elements were uncontested facts and concluded that, taken and analysed as a whole, *"those elements demonstrated an abusive tactic of the Respondent to drive the Claimant to unilaterally terminate the contract"*. Consequently, the FIFA DRC held that the Player terminated the Employment Contract with just cause.

- With regard to the consequences of the Club being liable for the early termination, the FIFA DRC took into consideration the provision of Article 17(1) of the FIFA RSTP and established that the Player was entitled to receive compensation for breach of contract, in addition to the payment of his outstanding salary in the amount of EUR 8,500, plus interest as from 2 September 2019.

- In this respect, in the absence of any compensation clause in the Employment Contract, the FIFA DRC referred to the criteria set out in the FIFA RSTP and took into account the remaining value of the Employment Contract until 30 June 2020, which amounted to EUR 85,000. Moreover, the Chamber also decided to take into account the Player's request for reimbursement in the amount of EUR 461.31 corresponding to travel expenses, as it was supported by adequate evidence. Therefore, the total amount of EUR 85,461.31 was taken as the basis for the determination of the final compensation for breach.

- Since the Player had remained unemployed after the early termination of the Employment Contract, the Chamber established that it was not possible for the Player to mitigate his damages by way of alternative salaries and therefore, the amount of EUR 85,461.31 was considered reasonable and proportionate as final compensation for breach of contract in the present case, without any deduction.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. On 15 April 2020, the Club filed an appeal with the CAS against the Player with respect to the Appealed Decision, pursuant to Article R48 of the Code of Sports-related Arbitration (the "CAS Code", 2019 Edition), and nominated Prof Dr Pascal Pichonnaz, Fribourg, Switzerland as arbitrator. In the Statement of Appeal, the Appellant also requested a stay of the Appealed Decision with respect to points 7 to 9 of the operative part regarding disciplinary sanctions.

36. On 17 April 2020, the CAS Court Office informed the Parties that the present appeal seemed to concern similar issues as the dispute related to the case *CAS 2020/A/6914 Lukasz Gikiewicz v. CS Gaz Metan Medias* and invited the Parties to state whether they agreed to refer the present matter to the same Panel further to Article R50 of the CAS Code.

37. On 17 April 2020, the Respondent informed the CAS Court Office that he was not going to pay his share of the advance of costs for the present arbitration procedure and requested that the time limit to file his Answer be fixed after the payment by the Appellant of the entire advance of costs, further to Article R55 of the CAS Code. The Respondent also nominated Mr Manfred Nan, Attorney-at-law in Arnhem, the Netherlands, as an arbitrator in the present proceedings. Finally, the Respondent stated that he did not agree that this matter be referred to the same Panel as *CAS 2020/A/6914*, stating that the two procedures do not concern similar issues.

38. On 23 April 2020, the Appellant informed the CAS Court Office that it did not oppose, in principle, to the referral of the present procedure to the same Panel as *CAS 2020/A/6914* and would let the CAS decide.

39. On 27 April 2020, the CAS Court Office informed the Appellant that, according to CAS jurisprudence, a decision of financial nature issued by a private Swiss association, as is the present case, is not enforceable while under appeal and therefore, it may not be stayed and an application in that respect – being moot – would in principle be dismissed. Consequently, the Appellant was invited to inform the CAS Court Office whether it maintained or withdrew its application for a stay.

40. On the same day, FIFA informed the CAS Court Office that it did not intend to request to intervene in this proceeding, pursuant to Article R41.3 of the CAS Code.

41. On 29 April 2020, the Appellant informed the CAS Court Office that it maintained its request to stay the execution of points 7 to 9 of the Appealed Decision.

42. On 5 May 2020, the CAS Court Office further noted that points 7-9 of the Appealed Decision, being conditional upon payment of the amounts in point 3 and 4 of the Appealed Decision, are equally not enforceable while the present appeal is pending and therefore, it invited the Appellant, once again, to confirm whether it maintained or withdrew its application for a stay.

43. On 6 May 2020, the Parties were informed that the present arbitration proceedings would not be referred to the same Panel/Sole Arbitrator as *CAS 2020/A/6914* further to Article R50

of the CAS Code.

44. On 11 May 2020, the Appellant informed the CAS Court Office that it renounced its request for a stay of the execution of the Appealed Decision.

45. On 15 May 2020, after being granted an extension, the Appellant filed its Appeal Brief in the present proceedings in accordance with Article R51 of the CAS Code.

46. On 17 June 2020, the CAS Court Office informed the Parties that the Panel appointed to decide the present matter was constituted as follows:

President: Mr Fabio Iudica, Attorney-at-law in Milan, Italy

Arbitrators: Prof Dr Pascal Pichonnaz, Professor in Fribourg, Switzerland

Mr Manfred Nan, Attorney-at-law in Arnhem, the Netherlands

47. On 17 July 2020, after being granted an extension, the Respondent filed his Answer according to Article R55 of the CAS Code.

48. On 21 July 2020, the CAS Court Office invited the Parties to state whether they preferred a hearing to be held in the present matter or for the Panel to issue an award based solely on the Parties' written submissions.

49. On the same day, the Respondent informed the CAS Court Office that he preferred that the Panel render a decision based solely on the Parties' written submissions.

50. On 28 July 2020, the Appellant requested the Panel to hold a hearing in the present case and also to grant the Parties a second round of submissions, based on *"new essential facts"* arising from the Respondent's Answer, *"many of which were unknown to the Appellant"*.

51. On 30 July 2020, the Respondent objected to the Appellant's request for a second round of submissions.

52. On 12 August 2020, on behalf of the Panel, the CAS Court Office requested FIFA to provide the CAS with a copy of the complete case file related to this arbitration proceedings.

53. On the same day, the CAS Court Office informed the Parties that the Panel had decided to grant them a restricted second round of written submissions in the present proceedings, limited to addressing the employment contract signed by the Respondent with Al-Faisaly FC which was attached to the Respondent's Answer. Therefore, the Appellant was given a 10-day deadline to file its Reply as well as to submit the following:

- the original signed version of the document attached as Exhibit 10 of the Appeal Brief;

- the English translation of the document attached as Exhibit 11 of the Appeal Brief;

- the original version of the documents attached as Exhibit 27 of the Appeal Brief.

54. In addition, the Parties were informed that the Panel had decided to hold a hearing in the present case, further to Article R57 of the CAS Code.

55. On 19 August 2020, the Appellant filed the requested documents with the CAS Court Office.

56. On 24 August 2020, the Appellant filed its Reply.

57. On 25 August 2020, the CAS Court Office transmitted copy of the Order of Procedure to the Parties, which was returned to the CAS Court Office in duly signed copy by the Appellant on 1 September 2020 and by the Respondent on 26 August 2020. By signature of the Order of Procedure, the Parties inter alia confirmed the jurisdiction of the CAS in the present matter.

58. On 26 August 2020, the Respondent informed the CAS Court Office that he objected to the filing of new arguments and new evidence by the Appellant with its Reply, alleging that the Appellant had disregarded the Panel's instructions with regard to the second round of submissions.

59. On the same day, the Respondent was given a 10-day deadline to file his Rejoinder.

60. On 4 September 2020, the Respondent filed his Rejoinder.

61. On 7 September 2020, after consulting the Parties, the CAS Court Office informed the Parties that the hearing would be held in the present case on 28 September 2020 by videoconference, further to Articles R44.2 and R57 of the Code.

62. On 8 September 2020, FIFA provided the CAS Court Office with a link to access the relevant FIFA DRC case file.

63. On 15 September 2020, the Respondent reiterated his objection to the admissibility of Exhibits 10 and 11 filed by the Appellant with the Appeal Brief.

64. On 22 September 2020, the CAS Court Office transmitted a revised copy of the Order of Procedure to the Parties, which was returned to the CAS Court Office in duly signed copy on the same day by the Respondent and on 24 September 2020 by the Appellant.

65. On the same day, the Respondent reiterated his objection to the admissibility of Exhibit 27 of the Appeal Brief, disputing that the document filed by the Appellant on 19 August 2020 was still not the *"original version"*, contrary to the instructions of the Panel.

66. Also, on 22 September 2020, the Appellant replied that *"The press articles in Exhibit A27 are clearly admissible, being provided in the original language (Romanian) and translated into English, and also accompanied by the hyperlink to each article which makes it very easy to verify their accuracy"*.

67. On 23 September 2020, the Respondent further commented that, as regards Exhibit 27 of the Appeal Brief, it consisted of a *"free selection of text in the Romanian language from an unknown source,*

written on an unspecified date, and presented on a blank piece of paper by the Appellant. Neither the Respondent nor the Panel is obliged to check the veracity of the links provided by the Appellant, as it suggested". Therefore, the Respondent insisted that the relevant document should be declared inadmissible, as well as Exhibits 10 and 11 of the Appeal Brief.

68. On 28 September 2020, a hearing took place in the present arbitration proceedings, via videoconference, due to the COVID-19 pandemic.

69. In addition to the Panel and Ms Kendra Magraw, CAS Counsel, the following persons attended the hearing:

- For the Appellant: Mrs Madalina Diaconu (Legal Counsel);
- For the Respondent: Mr Lukasz Gikiewicz (Respondent) and Mr Georgi Gradev (Legal Counsel).

70. At the outset of the hearing, the Parties confirmed that they had no objections in respect to the formation of the Panel and that the Panel had jurisdiction over the present dispute. In their opening statements, the Parties reiterated the arguments already put forward in their respective written submissions.

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

V. SUBMISSIONS OF THE PARTIES

72. The following outline is a summary of the Parties' arguments and submissions that 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

73. The Appellant's submissions in the Statement of Appeal, in the Appeal Brief and in the Reply may be summarized as follows.

74. As a preliminary remark, the Appellant pointed out that it is aware of other proceedings still pending before the CAS (*CAS 2019/A/6914*) regarding a claim brought by the Player against another club for compensation for the same period of time as the present case (i.e. the whole 2019/2020 sporting season).

75. As to the substance, the Club contended that, contrary to FIFA's findings, the Player did not

have just cause to terminate the Employment Contract under the FIFA RSTP and consistent with the SFT and CAS jurisprudence. In the alternative, the compensation awarded by the Appealed Decision should be reduced in application of the duty of mitigation of damages, for two reasons: i) the new employment contract signed by the Player with Al-Faisaly FC in January 2020, which the Player failed to communicate to the FIFA DRC; and (ii) the reduction of all of the Club's players' salaries by 50% according to an agreement due to the COVID-19 pandemic, as from March 2020.

76. Concerning the specific circumstances alleged by the Player as constituting the Club's abusive conduct under Article 14(2) of the FIFA RSTP, the Club argued the following:

- With regard to the Club's decision to impose a separate training schedule on the Player and to assign him to the second team, this cannot be considered as a breach of contract in view of the assessment criteria set by CAS jurisprudence in similar cases (*CAS 2014/A/3642*; *CAS 2013/A/3091, 3092 & 3093*);

- In fact: the removal from the first team was a temporary measure in order to help the Player improve his skills and give him the opportunity to further participate in official matches; the decision was exclusively based on the technical staff's evaluation of the Player's weak performance *"which had not been convincing"*; the training period with the second team was restricted to one week only, from 9 September until 16 September 2019; such period was further extended for a few more days only because of the Player's refusal to show up at any training or matches; the training with the second team did not imply any change of the Player's status, nor any amendment of the Employment Contract; contrary to the Player's allegations, the second team is not an "amateur" team, as it also includes 10 professional players, the relevant sports facility includes 4 fields with natural grass, 3 fields with synthetic grass, a smaller training field and modern training equipment; the second team's main coach and supervisor, Mr Dacian Iosif Nastai, held a UEFA PRO licence and is a highly qualified trainer with more than 20-years of experience; and the team can also avail of a two-field stadium which has also been used for the first-league matches and even for national final matches.

77. With reference to the Player's other complaints, the Club insisted that the Employment Contract does not set forth any obligation for the Club to provide corporate accommodation to the Player, nor to bear the costs for the rent, nor any obligation to provide a specific type or model or brand of car. In addition, the reason why the previous KIA car was replaced with a Daewoo was merely due to the need for maintenance, being understood that the previous vehicle would be returned to the Player after the technical service.

78. With regard to the room made available at the Club's Football Academy, it was a temporary accommodation which the Club offered to the Player as a courtesy, while waiting for the latter to find a suitable apartment for rent. In this respect, it is notable that the sports facility concerned is situated in an industrial and suburban area in Bucharest and provides basic accommodation with shared facilities, while the Player, due to his salary (fourteen times higher than the average salary in Romania), could afford the rent of an apartment of high standing

anywhere in Bucharest. Therefore, it is ridiculous to imagine that the Player relied on that temporary accommodation and more than reasonable that the Club requested the Player to leave the room on 11 September 2019, since the Academy needed that accommodation for its activities.

79. As for the Player's salary for August 2019, the Club was prevented from complying with the relevant payment since the Player failed to register with the Romanian tax system and did not obtain the Tax Identification Number ("TIN") which is imperative according to Romanian tax law for payment of employees' salaries, subject to penal sanctions. Such behaviour suggests that the Player intentionally tried to hinder the payment in order to create another pretext for termination. Besides, the Employment Contract indicates that the salary for the current month shall be paid the following month but does not provide any specific deadline. Therefore, the Player's salary for August 2019 only fell due on 30 September 2019.

80. The press statements referred to by the Player, suggesting the Club's intention to get rid of the Player, are unreliable as they were decontextualized as a result of sensationalist journalism. In fact, other press articles correctly reported the true facts as referred by the first team's coach, mentioning that the Player was momentarily separated from the first team but not excluded from the Club and would continue enjoying the same salary. Therefore, no argument may be drawn from such press statements to imply that the Club wanted to induce the Player to terminate.

81. The first team's WhatsApp group only includes active players of the first team as it is used for professional communications about training and matches; therefore, it became useless to the Player for the period he was temporarily assigned to the second team, but it was intended that he would re-join the chat group as soon as he returned to the first team.

82. With regard to the termination of the Employment Contract, the Appellant drew attention to the following facts: the Player refused to take part in any training session or match after 9 September 2019, contrary to the Club's instructions; and he failed to report to the training schedules set by the technical staff and was absent without leave from the official match of the second team on 14 September 2019, thus failing to comply with his contractual obligations. Moreover, the Player terminated the Employment Contract outside the transfer period and therefore, he was aware of the fact he could not transfer to any other club before January 2020, i.e., for a period of at least three months. This demonstrates that the Player was not interested in preserving his training level and physical condition, but merely in obtaining a compensation as a result of the termination of his employment relationship with the Club. The Player's bad faith is further confirmed by the attempt of the latter to claim compensation from another Romanian club, CS Gas Metan Medias, for the same period of time as the present dispute.

83. With respect to the events occurred after the termination of the Employment Contract, the Club stressed that, on 18 and 20 January 2020 (i.e. after the issuance of the Appealed Decision), the Player announced on social media (via Twitter) he would soon start a new employment relationship with the Al-Faisaly FC. Although it is reasonable to assume that this information was already available to the Player and to his counsel days before the

announcement was made, the Player failed to disclose to FIFA the existence of the new employment contract which would have impacted the outcome of the FIFA proceedings with respect to the calculation of compensation for breach of contract.

84. In fact, pursuant to the duty of mitigation envisaged under Article 17(1) of the FIFA RSTP and Article 337b of the Swiss Code of Obligations (the "Swiss CO") and in accordance with CAS case law, the compensation awarded to the Player, if any, should have been drastically reduced by the alternative salary earned by the Player under the Employment Contract signed with Al-Faisaly FC, which the Player had in bad faith failed to disclose to the FIFA DRC.

85. In addition, it should also be taken into consideration that, as a consequence of the economic impact of the COVID-19 pandemic, the Player's salary from March 2020 until June 2020 would have been reduced by half, following an agreement concluded by the Club with its players, with consequent impact on the residual value of the Employment Contract for the purpose of calculating the amount of compensation for breach of contract.

86. In its Reply to the Respondent's Answer, the Appellant commented on the employment contract signed by the Player with Al-Faisaly FC on 18 January 2020, asserting that the Respondent is responsible for having misled the FIFA DRC in the calculation of the compensation. Therefore, in the event that just cause for termination is confirmed by the CAS, the Appellant requested that the Panel exclude any amount of compensation for the period January 2020-June 2020 due to the Player's bad faith, or award no more than EUR 34,000, corresponding to the Player's salary for September-December 2019 under the Employment Contract.

87. According to the Appellant's argument, the Player's bad faith allows the Club to amend its requests for relief in that sense.

88. Although the Appellant stressed that the Respondent failed to provide any documentation to demonstrate the amounts he actually received from Al-Faisaly, it considered reasonable to estimate a minimum total net remuneration of USD 24,000, broken down as follows:

- USD 6,000 as basic salary for the period January-June 2020;
- USD 16,000 as cumulated bonuses for winning the League Championship, Cup and Super Cup;
- USD 2,000 as cumulated bonuses *"for 20 goals expected in internal matches"* (4 already scored in July and August 2020).

89. Moreover, the Appellant submitted further arguments in relation to the consequences of the COVID-19 pandemic on football in Romania, following various decisions and measures taken by the FRF, and attached several documents in support, as well as reiterated its previous reasoning with respect to the cut of its players' salaries according to an amicable solution with them.

90. In its Statement of Appeal and Appeal Brief, the Club submitted the following requests for

relief:

"Principally:

1. *Declare the present Appeal admissible.*

2. *Annul the FIFA Dispute Resolution Chamber Decision of January 17th, 2020 (Ref. nr. 19-01925) in its entirety.*

3. *Condemn the Respondent to bear the costs of these arbitration proceedings.*

4. *Condemn the Respondent to cover the Appellant's legal fees and other expenses incurred in connection with these arbitration proceedings.*

Subsidiarily:

5. *Declare the present Appeal admissible.*

6. *Annul points 2, 4, 5, 6, 7, 8 and 9 of the FIFA Dispute Resolution Chamber Decision of January 17th, 2020 Ref. nr. 19-01925).*

7. *Condemn the Respondent to bear the costs of these arbitration proceedings.*

8. *Condemn the Respondent to cover the Appellant's legal fees and other expenses incurred in connection with these arbitration proceedings".*

91. In the Reply, the Appellant amended its requests for relief, adding the following:

"Very subsidiarily:

1. *Declare the present Appeal admissible.*

2. *Reform points 2 and 4 of the FIFA Dispute Resolution Chamber Decision of January 17th, 2020 Ref. nr. 19-01925) and award the Player a compensation whose amount shall be equitably decided by the panel, but no more than EUR 34'000 (point 4).*

3. *Equitably split the costs of these arbitration proceedings between the Parties.*

4. *Decide that each party shall bear its own legal fees and expenses incurred in connection with these arbitration proceedings".*

B. The Respondent's Submissions and Requests for Relief

92. The position of the Respondent, as set forth in the Answer and in the Rejoinder, can be summarized as follows.

93. As regards the responsibility of the Appellant for the premature termination of the

Employment Contract, the Respondent complained that the Club relegated him to train alone with another unwanted player and later imposed him to train with the second team, composed of young players competing in the third tier of amateur football in Romania, for an unspecified period. In addition, the training with the second team took place on an artificial field which caused joint pain to the Player. At the same time, the Club did not provide any valid justification, nor set any objectives for the Player to achieve in order to be reinstated to the first team. Moreover, the Appellant intentionally withheld the payment of the Player's monthly salary for August 2019. Finally, the Club released several statements to the Romanian press indicating the Player's precarious condition within the Club due to dissatisfaction with his performance. The abusive behaviour of the Club included: the removal of the car originally provided to the Player and its replacement with an old and very cheap model in bad condition; the eviction from the room at the Club's sports facilities under a false pretext while the Player was not able to rent an apartment, not having received his salary; the exclusion from the WhatsApp group chat of the first team; and the interruption of any communication with him as of 16 September 2019.

94. The above-mentioned circumstances describe a situation falling within the abusive conduct envisaged under Article 14(2) of the FIFA RSTP, where the Club aimed at forcing the Player to terminate the Employment Contract, thus giving the Player just cause for termination.

95. The Club's decision to relegate the Player to the second team, without any specific clause in the Employment Contract allowing the Appellant to do so, is considered as an infringement of the Player's personality rights as a professional football player. In fact, it is recognised in jurisprudence and among legal scholars that a professional footballer playing in the first division shall be given the possibility not only to train regularly with players of his level but also to compete in matches with teams of the highest possible level, in order to retain his value on the market. According to CAS jurisprudence, the employer is bound to protect the employee's personality rights and to offer him the work which the employee was hired to do against remuneration; therefore, a football club infringes its contractual obligations if it removes one of its players from the first team for an undetermined period without any legal or sporting justification.

96. In this context, the Player referred to a six-criteria test developed by CAS case law (*CAS 2014/A/3642*) in order to determine whether the exclusion of a player from a club's first team constitutes an infringement of his "performance rights" and/or the club's contractual obligations, according to which the following factors should be assessed: a) the reason for the player's assignment to the reserve team; b) whether the club still complies with its obligation to pay the player's full salary; c) whether the player's exclusion from the first team is a temporary measure; d) whether the player can benefit from adequate training facilities in the reserve team; e) whether the employment contract stipulates an express right for the club to relegate the player to the reserve team; and f) whether the player is left to train alone or with a team.

97. Contrary to the Club's assertions: the relegation to the second team was extendable for an unlimited period, regardless of the Player's compliance with the training schedule or the Player's development in training, and the Club had no intention to reinstate him to the first

team; the Appellant also failed to comply with its obligation to pay the Player's salary for August 2019 that fell due at the latest on 9 September 2019, according to Article 75 of the Swiss CO (and is still outstanding); the coach Mr Mezei Lucian, who was supposed to guide the Player's training with the second team, was not qualified with a UEFA PRO license or equivalent license; moreover, when the Player participated in the first training with the second team, he had to train on an artificial pitch, and therefore, the training conditions with the second team were totally inappropriate for him; furthermore, at the beginning, between 5 and 8 September 2019, the Player was assigned to individual training with another player (who was also apparently unwanted and who finally left the Club on 13 September 2019) and only after the Player's counsel sent a "complaining letter", he was requested to train with the second team; and finally, the Club had no right deriving from the Employment Contract to move the Player to the second team, as he was hired as a professional footballer.

98. The Player also referred to other CAS jurisprudence (*CAS 2010/A/2049*; *CAS 2015/A/4322*; *CAS 2017/A/5465*; *CAS 2017/A/5162*; *CAS 2018/A/6029*; *CAS 2018/A/6041*) establishing that excluding a player from training with his teammates merely based on alleged poor performance or the Club's dissatisfaction and not supported by specific and objective circumstances, such as injury recovery, constitutes breach of contract giving the player just cause for unilateral termination, as well as the unilateral change in the status of a player that is not related to company requirements or to organization of the work or the failings of the employees.

99. In this framework, the Respondent also underlined that the Club never formally raised any issue with regard to the Player's alleged poor performance until after the termination of the Employment Contract, nor has the relevant evaluation of the Player's performance by the technical staff ever been reported or notified to the Respondent.

100. In this respect, the statements of Mr Bodgan Vintila, the Club's main coach, submitted by the Appellant as Exhibit 10 to the Appeal Brief, reporting to the Club's Presidency the evaluation of the Player's condition and performance, have no probative value as the document is not the original version and is not signed, and moreover, it was not produced by the Appellant in the FIFA proceedings. Furthermore, such statements were allegedly issued on 9 September 2019, i.e. more than three weeks after the Respondent played in an official match for the last time on 18 August 2019. In addition, such statements do not provide any specifics regarding the Player's performance. Likewise, the document attached as Exhibit 13 to the Appeal Brief does not address at all the issue of the Player's alleged poor performance.

101. As a consequence, the Appellant failed to discharge its burden of proof in order to justify the exclusion of the Player from the first team for alleged poor performance, which fact is solely based on the assertions of the Club. Therefore, it results that his relegation to the second team was a *"sort of sanction for alleged poor performance"* with no legal or sporting justification whatsoever.

102. In addition, the Player was not even eligible to play official matches with the second team, which is a youth team (U21), while the Player was 32 years of age at that time.

103. What is true is that between 19 August 2019 up until the date of termination of the

Employment Contract, the Club showed it was no longer interested in the Player's services and tried to set up a bullying strategy to force the Player to terminate the Employment Contract, which is corroborated by the facts of the present case.

104. In conclusion, the Appellant's decision to relegate the Player to the second team was arbitrary and gave the Player just cause to terminate the Employment Contract on 20 September 2019 based on Article 14(2) of the FIFA RSTP.

105. With regard to the consequences of the termination with just cause, the Player argued that the Appellant's late request that CAS reduce the compensation awarded by FIFA (based on the duty of mitigation and on the alleged financial consequences of the COVID-19 pandemic on the players' salaries), cannot be addressed by the Panel, since the Appellant failed to submit any request for relief in this sense in the Appeal Brief.

106. In fact, in the present case, according to the CAS jurisprudence referred to by the Respondent, the Panel would have no power to amend the compensation established in the Appealed Decision in the amount of EUR 85,000, in accordance with the principle of *ne ultra petita*.

107. Therefore, although the Respondent admits that the Appellant's relevant arguments are correct at least with regard to the duty of mitigation deriving from the new contract with Al-Faisaly FC, he requested that the Appellant's claim for mitigation and reduction be rejected in the absence of any specific prayer for relief allowing the Panel to amend the amount of compensation granted by the FIFA DRC.

108. Besides the foregoing, the Respondent also contested the Appellant's claim in its substance, for the following reasons:

- under the employment contract with Al-Faisaly FC in the relevant period (from 18 January 2020 until 30 June 2020), the Player was entitled to receive a total remuneration of USD 5,452 net (i.e. USD 452 pro rata from 18 January to 31 January 2020, and USD 5,000 from 1 February 2020 until 30 June 2020); therefore, in principle, such amount, at most, could be deducted from the compensation for mitigation purposes, had the Appellant submitted a specific request for relief; in addition, the related bonuses are not to be considered since they are merely contingent payments as well as being undemonstrated. However, the Respondent acknowledged having received the amount of EUR 1,000 as bonus for winning the 2020 Jordan Cup on 29 February 2020;

- the Appellant's allegation that, had the Employment Contract not been terminated, the Player would have been entitled to a reduced salary in the amount of EUR 4,250 per month from March 2020 due to the COVID-19 pandemic in conjunction with the agreement signed by the Club with its players is groundless. In any event, the Appellant failed to demonstrate that the Player would have agreed to such reduction or that any other player of the Club accepted such 50% reduction, or if it is valid. In this respect, the document attached by the Appellant as Exhibit 28 of the Appeal Brief has no probative value.

109. Finally, with regard to the Appellant's argument that the Player is claiming the "same compensation" from CS Gaz Metan Medias, in the matter *CAS 2019/A/6914*, the Respondent argued that such allegation is contradicted by the facts and not reliable:

"the Respondent draw[s] *the attention of the Panel to para. 175 of his Appeal Brief in the cited case, in which the Respondent stated <pursuant to Article 17.1(ii) RSTP, the amount of EUR 93,500 due under the FCSB Contract (but not received by the Appellant yet) should be deducted from the requested compensation for damages from [CS Gaz Metan Medias]>. Hence, the Respondent did not claim from CS Gaz Metan Medias the amount of EUR 93,500, which was awarded to him in the Appealed Decision".*

110. In his Rejoinder, with reference to the employment contract signed with Al-Faisaly FC, the Respondent maintained that on 25 June 2020 his counsel emailed the Appellant's counsel a copy of the contract in a genuine attempt to settle the dispute at hand, proposing to deduct the amount of USD 4,500 from the requested compensation, as mitigation. However, the Appellant failed to reply.

111. Moreover, the Respondent raised objections to the admissibility of the Appellant's submission of new unsolicited arguments under paragraphs 80-92 of its Reply, new requests for relief (as a further alternative) and new Exhibits (29-38), as they were not authorized by the Panel and they also violate Article R56(1) of the CAS Code, arguing there was no exceptional circumstance allowing the Appellant to make submission out of the boundaries of the said provision and outside of the restricted scope of the second round of submissions.

112. In particular, the Respondent argued that neither the content of his Answer nor the relevant attachments raised new essential facts which had remained unknown to the Appellant which would allow the latter to supplement its submissions. Therefore, the Appellant's request to the Panel for that purpose was based on false grounds, just to remedy an irreparable negligence in the Appeal Brief due to the failure to submit a specific request for relief with respect to the mitigation of damages. As a result, the Panel must rule on the issue of the mitigation of damages based on the requests for relief contained in the Appeal Brief.

113. Finally, the Respondent claimed that the reason why the employment contract with Al-Faisaly FC was not disclosed before the FIFA DRC is that it was signed on 18 January 2020, i.e. after the issuance of the Appealed Decision on 17 January 2020.

114. In his Answer, the Respondent submitted the following requests for relief which were reiterated in his Rejoinder:

*"**Primary***

1. *Dismiss the appeal filed by the Appellant against the decision issued on 17 January 2020 by the FIFA Dispute Resolution Chamber in case Ref. No. 19-01925 insofar as it is admissible.*

2. *Confirm the decision issued on 17 January 2020 by the FIFA Dispute Resolution Chamber in case Ref. No. 19-01925.*

<u>Alternatively, only if the requests under items no. 1 and 2 above are rejected</u>

3. *Replace point 4 of the operative part of the decision issued on 17 January 2020 by the FIFA Dispute Resolution Chamber in case Ref. No. 19-01925 with the following decision:*

   The Appellant has to pay to the Respondent compensation for breach of contract of EUR 85,461.31 minus USD 5,452, plus 5% interest p.a. as of 20 September 2019 until the date of effective payment.

4. *Confirm the rest of the decision issued on 17 January 2020 by the FIFA Dispute Resolution Chamber in case Ref. No. 19-01925.*

<u>In any event</u>

5. *Order the Appellant to bear all costs incurred with the present procedure.*

6. *Order the Appellant to pay the Respondent a contribution towards his legal and other costs in an amount to be determined at the discretion of the Panel".*

VI. JURISDICTION

115. 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".

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

117. Article 58.1 of the FIFA Statutes reads as follows: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question".*

118. The jurisdiction of the CAS was not contested by the Respondent and is further confirmed by the signature of the Order of Procedure by both Parties.

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

VII. ADMISSIBILITY

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

"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".

121. 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"*.

122. The Panel notes that the FIFA DRC rendered the Appealed Decision on 17 January 2020 and that the grounds of the Appealed Decision were notified to the Parties on 25 March 2020.

123. Considering that the Appellant filed its Statement of Appeal on 15 April 2020, i.e. within the deadline of 21 days set in the FIFA Statutes, the Panel is satisfied that the present appeal was timely filed.

124. Furthermore, the Appeal complied with all other requirements of Article R48 of the CAS Code and is therefore admissible.

VIII. APPLICABLE LAW

125. Article R58 of the CAS Code provides as follows:

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

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

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

127. However, the Panel notes that the Employment Contract reads as follows in Clause XIV(b):

"This contract will be interpreted in accordance with the laws of Romania".

128. This notwithstanding, the Panel notes that Clause XIII of the Employment Contract confers jurisdiction onto FIFA and CAS, and that the Appellant is subject to the FIFA Statues and Regulations.

129. Therefore, the Panel is satisfied to accept the application of the various rules and regulations of FIFA and, subsidiarily, Swiss law. The Panel did not find it necessary to resort to Romanian law, as will be seen below.

IX. LEGAL ANALYSIS

A. Main Issues

130. Before turning to the main issues to be resolved in the present case, the Panel first observes that the following facts are not disputed between the Parties:

- The Employment Contract was unilaterally terminated by the Player by means of the termination notice on 20 September 2019;

- After having been selected to play in four official matches with the first team up until 18 August 2019, the Player was barred from training with his teammates between 5 and 8 September 2019, and was officially assigned to the second team for training purpose by means of the Club's 9 September 2019 letter, initially for a one-week period between 9 and 16 September 2019;

- The reason invoked by the Club for excluding the Player from the first team was the Player's alleged low level of performance;

- The Player's training schedule with the second team was further extended from 16 September 2019 to 22 September 2019 by means of the Club's 15 September 2019 letter;

- The Club's second team was competing in the third Romanian League (LIGA III);

- Except for taking part in the training session on 10 September 2019, the Player further refused to train with the second team, invoking violation of the Employment Contract as well as of his personality rights as a professional footballer;

- The Club failed to pay the Player's monthly salary for August 2019, in the amount of EUR 8,500; and

- The Player notified the Club with several letters of formal notice, requesting to be reinstated to the first team and urging the payment of his salary, also complaining of other suspected abusive conduct allegedly aimed at forcing him to unilaterally terminate the Employment Contract.

131. Bearing this in mind, the main issues to be resolved by the Panel are:

    i. Whether the unilateral termination of the Employment Contract by the Player was with or without just cause?

    ii. If the Player had just cause to terminate the contract, what are the consequences of the Club's breach, including with respect to the Appellant's request to reduce the amount of compensation?

132. The Panel will address these issues in turn below.

B. Merits

i. Was the unilateral termination of the Employment Contract by the Player with or without just cause?

133. The Parties dispute whether the Club's decision to remove the Player from the first team within the context resulting from the facts described above, together with other elements and events contested by the Player, is able to constitute a just cause for termination of the Employment Contract.

134. In the following paragraphs, the Panel briefly recalls the Parties' position in this respect.

135. In substance, the Club argues that, contrary to FIFA's findings in the Appealed Decision, the Player did not have just cause to terminate the Employment Contract since nothing in the Club's behaviour can be interpreted as abusive towards the Player in the sense of Article 14(2) of the FIFA RSTP. In fact, the decision to impose on the Player a separate training schedule with the second team – merely based on technical sporting reasons due to the Player's low performance – was only temporary and originally limited to one week; afterwards, the decision was further extended to one more week because of the Player's refusal to comply with the staff's instructions and to join the second team. In any event: the training with the second team was meant to support the Player's improvement; the second team was composed of a majority of professional players and could benefit from adequate sporting facilities; the training was coordinated by a highly qualified coach holding a UEFA PRO license; the assignment to the second team did not imply any change in the Player's status or in his salary; as to the allegation of bullying, the Employment Contract did not impose an obligation on the Club to provide certain benefits claimed by the Player, so there was no violation by the Club; with reference to the press articles, they are irrelevant and unreliable since the reported facts were decontextualized to make headlines and in any case, the intention of the Club was not to part from the Player; the salary was not paid since the Player failed to provide the Club with his TIN which was necessary for that purpose and, in any event, the deadline was on 30 September 2019, contrary to the Player's argument; and finally, the Player did not comply with his contractual obligations as he disregarded the Club's instructions and deliberately acted in bad faith in order to create a pretext for termination of the Employment Contract.

136. On the other side, according to the Player, the Club's decision to relegate him to the second team was arbitrary, since he had been employed as a professional player and the Employment Contract does not provide a right to the Club to transfer him to the second team – a U21 team competing in the third tier of amateur football in Romania – where he was supposed to train under the guidance of a coach who was not qualified with a UEFA PRO license. Therefore, the Club violated the Employment Contract as well as his personality rights as a professional. Moreover, his relegation to the second team was in fact a permanent measure, and the Club never set any objectives for the Player to achieve in order to be reinstated to the first team; further, the Club has never provided him with the technical evaluation of his performance, nor was he allowed to discuss the issue with the coach or with the Club. The salary for August 2019 was due on 9 September 2019, at the latest, and the Club's arguments with regard to the default of payment are irrelevant and specious. The Player assumes that,

since the Club had not been satisfied with his performance, not only was he dropped to the second team, but he was also bullied through several intimidating actions with the intent to induce him to leave the Club. Therefore, the Player concludes that the Club's conduct falls within the extent of Article 14(2) of the FIFA RSTP, giving him just cause for termination.

137. Within this framework, the main issue to be first addressed by the Panel is whether the Player had just cause to terminate the Employment Contract.

138. The Panel first recalls that, according to Article 13 of the applicable FIFA RSTP, *"A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement"*. In addition, Article 14(1) of the FIFA 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"*. Further, Article 14(2) establishes that *"Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause"*.

139. Incidentally, it is hereby noted that Article 14bis of the FIFA RSTP, which introduced a qualified case of "just cause" for players' terminations of contracts, in the event of non-payment of at least two monthly salary instalments, does not apply to the present case, failing the necessary condition.

140. Therefore, whether the circumstances of the present case fall within the concept of "just cause" shall be assessed by the Panel by way of interpretation. In such analysis, the Panel will therefore consider whether the facts of the present case, alone or as a whole, may substantiate the termination of the Employment Contract by the Player under the provision of Article 14 of the FIFA RSTP.

141. While the FIFA RSTP do not provide any definition of just cause, the Commentary on the FIFA RSTP offers the following guideline:

"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. 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 over 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" (FIFA RSTP commentary to Article 14).

142. The threshold level of the infringement which justifies the early termination of an employment contract, according to consistent CAS jurisprudence, is established according to the principle that a "valid reason" or "just cause" for termination of an employment contract exists when the relevant breach by the other party is of such nature, or has reached such a level of seriousness, that the essential conditions under which the contract was concluded are no longer present and the injured party cannot in good faith be expected to continue the employment relationship, to be assessed on a case-by-case basis.

143. In fact, with respect to the "valid reason" or "good reason" principle, another CAS panel

established that:

"Pursuant to the principle pacta sunt servanda, obligations deriving from contracts which are validly entered into must be executed pursuant to the contract's terms until the parties consensually adopt a new contractual arrangement. While the FIFA rules do not define the concept of "just cause", reference should be made to the applicable law. When Swiss law applies, Article 337 para. 2 of the Swiss CO provides that "any circumstances which, according to the rules of good faith, mean that the party who has given notice of termination cannot be required to continue the employment relationship, shall be deemed good reason". *The concept of "just cause" as defined in Article 14 RSTP must therefore be likened to that of "good reason" within the meaning of Article 337 para. 2 CO"* (*CAS 2013/A/3091&3092&3093*).

144. Turning to the possible circumstances of the breach which can provide "good reasons" for termination of an employment contract, the Panel emphasizes that, as regards employment relationships, the SFT holds that an employee has just cause to terminate an employment contract in case of serious infringements of his rights (SFT, decision 4C.240/2000, of 2 February 2001, reason 3.b.aa) such as a unilateral or unexpected change in his status which is not related either to the company's requirements or to the organization of work or to a failure of the employee to observe his obligations (unpublished decision of 7 October 1992 in Semaine Judiciaire ["SJ"] 1993 I 370; unpublished decision of 25 November 1985, in SJ 1986 I 300).

145. CAS jurisprudence agrees with this approach, as confirmed by the same CAS panel in the above-mentioned award:

"According to the Swiss Federal Tribunal, an employment contract may be terminated immediately for good reason when the main terms and conditions, under which it was entered into are no longer implemented. The circumstances must be such that, according to the rules of good faith, the party terminating the employment relationship cannot be required to continue it. When immediate termination is at the initiative of the employee, a serious infringement of the employee's personality rights, consisting, for example, in unilateral or unexpected change in his status which is not related either to company requirements or to organization of the work or the failings of the employee, or even, in certain circumstances, a refusal to pay all or part of the salary, may be deemed good reason" (*CAS 2013/A/3091, 3092 & 3093*).

146. The Panel concurs with the SFT and consistent CAS jurisprudence as it believes this position to be in line with the fundamental principle that the terms of a contract may not be changed unilaterally and that non-insignificant alterations to contractual terms require mutual consent of the parties, unless a right to modify is provided for in the relevant contract, within the limits of the law.

147. With this in mind, the Panel observes that, in the present case, pursuant to the Employment Contract, the Player was hired by the Club as a professional and there was no specific clause in the Employment Contract allowing the Club to oblige the Player to train or play with a team other than the first team or to unilaterally amend the contractual terms. On the contrary, pursuant to the final provisions under Clause XIV of the Employment Contract, the Parties stipulated that any amendment of the relevant employment agreement could only be achieved by entering into an *"additional act"*.

148. However, based on the relevant facts and evidence on file, it results that, from 5 September 2019, the Player was prevented from joining his teammates for training, and, as from 9 September 2019, the Club, in fact, officially relegated the Player to its second team, which the Player claims to be composed of youth players (U21) competing in the third tier of amateur football in Romania. Although the Club maintains that the second team was composed of a majority of professional footballers, it failed to provide any conclusive evidence in that sense. In addition, the fact that the second team was competing in the Romanian third league (LIGA III), as it also results from the documentation produced by the Respondent, was not disputed by the Appellant. Furthermore, according to the documentation filed by the Respondent, which has not been contested by the Appellant either, almost all players included in the second team were under 21 years of age at that time. These changes were far from insignificant.

149. That being established, the Panel also recalls that, according to the evidence on file, which likewise remained undisputed, the reason put forward by the Club for justifying the Player's removal from the first team was the Club's dissatisfaction with the Player's poor performance and the fact that the latter did not allegedly meet the required level for the first team. In addition, it is recalled that the Club did not substantiate the allegations of poor sporting performance, nor did it provide any conclusive evidence that the evaluation by the technical staff was notified to the Player, nor that the Player was put in the condition to discuss any possible issue regarding his sporting performance with the coach. As a result, the Player's alleged disappointing sporting performance is solely based on the assertions of the Club.

150. Additionally, the Panel observes that, although the Club asserts that the decision to assign the Player to the second team was a temporary measure, it failed to provide any conclusive evidence thereto. In fact, although the Player was initially requested to train with the second team in the period between 9 and 16 September 2019, the Club further extended such instructions for the following week, adding that *"the schedule for next week will be announced on Sunday, September 22"*, which suggests the possibility for a further extension.

151. Moreover, the Club also failed to provide any indication as to its intention to reinstate the Player to the first team in the future, nor did the Club inform the Player of any criteria or any sporting achievement, based on which his reinstatement to the first team would be decided, which leads the Panel to believe that the relegation to the second team was potentially subject to unlimited extensions at the sole discretion of the Club. Therefore, it is possible to believe that the alleged "temporary" measure would result into the Player's exclusion from the first team on a permanent basis.

152. In such context, the Panel notes that, according to CAS jurisprudence, not only can inadequate sporting performance by a player hardly constitute a breach of contract from the latter (*CAS 2010/A/2049*, para 12, see also ZIMMERMANN M., Vertragsstabilität im Internationalen Fussball, Zürich 2015, p. 237), but also, preventing a player from training with the first team for poor performance may constitute a breach by the club as it *"is potentially a much harsher measure than solely assigning a player to play matches with the second team while being allowed to train with the first team squad. The former seriously prejudices the player's future perspectives with the first team, since such measure is of a more definite nature than the latter"* (*CAS 2014/A/3642*).

153. In fact, it is generally recognised that preventing a professional player from rendering his services according to the terms of the employment contract may result in an infringement of his personality rights:

"According to Articles 28 et seq. of the Swiss Civil Code, any infringement of personality rights caused by another is presumed to be illegal and subject to penalties unless there is a justified reason that overturns this presumption. It is generally accepted in jurisprudence (ATF 120 II 369; ATF 102 II 211; ATF 137 III 303; Judgment of the Swiss Federal Tribunal 4A_558/2011, dated March 27,2012) that personality rights apply to the world of sport. For athletes, personality rights encompass in particular the development and fulfilment of personality through sporting activity, professional freedom and economic freedom. An athlete who is not actively participating in competitions depreciates on the market and reduces his future career opportunities. Athletes have therefore a right to actively practice their profession" (*CAS 2016/A/4560* referring to *CAS 2013/A/3091, 3092 & 3093*).

154. In view of all the considerations above, the Panel is persuaded that the removal of the Player from the first team and his demotion to the second team for training purposes was unwarranted and constituted a unilateral change of the terms of the Employment Contract to the detriment of the Player, and was, as such, abusive.

155. Besides, the Panel notes that the Player also complained of other alleged misconduct by the Club as follows:

- the deliberate failure to pay his monthly salary for August 2019;
- several statements to the Romanian press indicating the Player's precarious condition within the Club due to dissatisfaction with his performance;
- the removal of the car originally provided and its replacement with an old and very cheap model in bad conditions, under false pretexts;
- the sudden eviction from the room he was occupying at the Club's sports facilities, while he was not able to rent an apartment, having not received his salary;
- the exclusion from the WhatsApp group chat of the first team; and
- the interruption of any communication with him as of 16 September 2019.

156. With regard to the Players' outstanding salary, the Panel notes that this fact is undisputed, although the Appellant alleges that the payment was prevented by the Player's failing to provide his TIN and that, in any case, the salary only became due on 30 September 2019.

157. In this respect, the Panel first observes that it is the responsibility of each club to make the relevant payments available to its players and to comply with administrative matters, if any, and in any case, there is no evidence that the Club ever informed the Player of the issue or urged him to provide the information in that sense, in order to be able to make the payment. Therefore, the Panel holds that the Club's argument does not constitute a valid reason for withholding the Player's salary. Secondly, with regard to the date when the salary was payable,

the Panel notes that according to the Financial Annex to the Employment Contract, *"payment of the monthly remuneration provided in art. I above will be done in the current month for the previous month"* and therefore the Parties did not establish any specific deadline, besides providing that the payment has to be made the following month. In this respect, even admitting, in principle, that the Club was allowed to pay the Player's salary within the last day of the following month (i.e. 30 September 2019), the Panel believes that the Appellant did not show any good faith, in consideration of the following: a) the Player was requested to leave the room he was occupying at the Club's sporting facilities as from 12 September 2019, although at that time the Club knew he could not benefit from his remuneration in order to rent an alternative accommodation, which is certainly against the obligation of the employer to protect the employees' personality rights according to Swiss Law (and namely, Article 328 of the Swiss CO), even supposing that the salary was formally not yet overdue; b) the Club's allegation that the payment was not made due to the Player's failure to provide his TIN is in conflict with other evidence on file, according to which the Club rejected the Player's request for payment based on the fact that it was not yet overdue, which makes the Appellant's arguments inconsistent and specious; c) moreover, it also emerged from the facts of the case that, in front of the FIFA DRC, the Club argued that it had complied with the relevant payment, which also reveals that the Club's arguments are contradictory, illogical and based on pure pretext; and d) to date, the Player's salary has remained completely outstanding.

158. With regard to the other events complained of by the Player as described above, after an overall appreciation of all the circumstances of the present case, the Panel believes that the Club's behaviour towards the Player was completely inappropriate. In fact, it emerges from the facts of the case and from the evidence on file that, besides having been removed from the first team, which was *per se* abusive, the Player also suffered several bullying and intimidating practices and psychological pressure which were offensive and abusive. Among other things, it is also noted that the conduct at issue occurred soon after the Player had complained in writing for the first time about his removal from the first team, which suggests their intimidating or vindicative spirit. The Panel is of the firm opinion that, considered as a whole, such conduct contributed to exasperating the Player's position within the Club, which was already unfortunate and precarious due to the Appellant's unilateral decision to remove him from the first team.

159. Consequently, the Panel believes that, at the time when the Employment Contract was terminated, the main terms and conditions under which it was concluded by the Parties were no longer present and that, based on all the circumstances of the case, the Player could no longer expect that the Club would reinstate him to the first team and comply with its contractual obligations. It emerges from the facts of the case that, in fact, the Player had very good reason to believe that the Club was no longer interested in his services. As a consequence, in the Panel's opinion, according to the rules of good faith, the Player could not be expected to rely on the performance by the Club of its contractual obligations and, therefore, to continue the employment relationship. There was a clear breach of trust in the contractual relationship by the Club, as a consequence of which the Player could not be forced to remain in the contractual relationship anymore. Therefore, the Panel agrees with the FIFA DRC that the Player had *"valid reason"* or *"just cause"* for termination due to the Club's abusive conduct according to Article 14(2) of the FIFA RSTP. According to some Swiss Courts, the

failure by the employer to pay the salary despite a formal reminder (Art. 102 I Swiss CO) may constitute just cause (RFJ 1994, p. 306 reason 3a and b; ZR 2000 220).

160. Moreover, the Panel observes that, before the termination of the Employment Contract was notified, the Player complied with the duty to give several warnings to the Appellant, namely that in the absence of any remedy by the Club, he would terminate the contract, in accordance with CAS jurisprudence and Swiss law (DFT 127 III 153; DFT 121 III 467; DFT 117 II 560; DFT 116 II 145 and DFT 108 II 444, 446; *CAS 2013/A/3091, 3092 & 3093*; *CAS 2015/A/4327*; *CAS 2013/A/3398*). The Player had therefore drawn the Appellant's attention to the fact that the Club's conduct was not in accordance with the Employment Contract and that the persistence of the breach would result in a unilateral termination for just cause.

161. Therefore, the Panel finds that the Player had just cause to terminate the Employment Contract, according to Article 14(2) of the FIFA RSTP.

ii. If the Player had just cause to terminate the contract, what are the consequences of the Club's breach by the Club, including with respect to the Appellant's request to reduce the amount of compensation?

162. With regard to the consequences of the Club's breach, having established that the Player had just cause to terminate the Employment Contract further to Article 14(2) of the FIFA RSTP, the Panel is satisfied that the present case falls under the application of Article 17(1) of the FIFA RSTP, which provides for financial compensation in favour of the injured party.

163. In this regard, the Panel notes that the Appellant contends that, in the event that it is confirmed by the CAS that the Player had just cause for termination, the amount of compensation granted by the FIFA DRC in the Appealed Decision should be reduced by the alternative salary payable to the Player under the employment contract signed with Al-Faisaly FC on 18 January 2020, which the Player withheld from the FIFA DCR in bad faith.

164. However, the Panel observes that the relevant request for relief was not submitted by the Appellant in its Appeal Brief, nor in the Statement of Appeal, where the Appellant limited its petition to the annulment of the Appealed Decision in its entirety, or, in the alternative, in relation to points 2, 4, 5, 6, 7, 8 and 9 (therefore, with the exclusion of the part of the ruling on the outstanding salary). In fact, it is hereby recalled that, with the filing of its Reply, the Appellant further amended its previous request for relief, with the introduction of a specific request for the reform of the Appealed Decision, as follows:

"Very subsidiarily: Declare the present Appeal admissible. Reform points 2 and 4 of the FIFA Dispute Resolution Chamber Decision of January 17th, 2020 Ref. nr. 19-01925) and award the Player a compensation whose amount shall be equitably decided by the panel, but no more than EUR 34'000 (point 4). Equitably split the costs of these arbitration proceedings between the Parties. Decide that each party shall bear its own legal fees and expenses incurred in connection with these arbitration proceedings".

165. According to the Appellant's argument, the Player's bad faith before the FIFA DRC in failing to disclose the employment contract with Al-Faisaly FC allows the Club to amend its requests

for relief in that sense.

166. In addition, in the Reply, the Appellant insisted that the amount of compensation should also be reduced in consideration of the 50% cut of the players' salaries as from March 2020, as a consequence of the financial impact of the COVID-19 pandemic on football, attaching numerous documents in this respect (Exhibit A29-A38). However, the Panel notes that such new documents and relevant allegations in the Reply were not authorized by the Panel and, in any event, they fall outside the scope of the second round of submissions granted to the Parties on 12 August 2020, in the sense indicated above under paragraph 53 in the present Award. In addition, the Appellant already had the possibility to produce them within the time limit to file its Appeal Brief. Therefore, apart from certain documents which relates to information in the public domain, which the Panel considers irrelevant for the purpose of deciding the present matter, these submissions are clearly inadmissible since they contravene Article R56 of the CAS Code and are therefore rejected.

167. In turn, in his Rejoinder, the Respondent objected to the Appellant's late amendment of its requests for relief aiming at reducing the amount of the compensation awarded by FIFA, contending that it cannot be addressed by the Panel, since the Appellant has failed to submit any request for relief in this sense in the Appeal Brief, according to the requirement of Article R56 of the CAS Code and consistent with the principle of *ne ultra petita*.

168. The Panel recalls that, in particular, the Respondent argues that neither the content of his Answer nor the relevant exhibits raised new essential facts which had remained unknown to the Appellant, which would allow the latter to supplement or amend its submissions, and that the failure to submit a specific request for relief with respect to the mitigation of damages in the Appeal Brief has irreparably barred the Appellant from requesting that CAS amend the compensation awarded in the Appealed Decision.

169. In view of the above, the Panel observes that, without prejudice to Article R57 of the CAS Code, which confers CAS with the full power to review the facts and the law of the case, the Panel is nonetheless bound to the limits of the Parties' motions, since the arbitral nature of the proceedings obliges the Panel to decide all claims submitted by the Parties and, at the same time, prevents the Panel from granting more than the Parties are asking by submitting their requests for relief to the CAS, according to the principle of *ne ultra petita* (see also *CAS 2016/A/4384*).

170. The Panel also again recalls that Article R56 of the CAS Code provides in relevant part that:

"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer".

171. In this respect, *"Requests for relief must be specified with enough precision in order for the Respondent(s) to be in a position to accurately reply to all parts of the claim. They must be worded in a way that the appellate authority may, where appropriate, incorporate them to the operative part of its own decision without*

modification. As a general rule, when a payment is sought, the request should be expressly quantified. In case the requests for relief are not sufficiently specified it may be impossible for adjudicatory body to assess whether their respective claim adjudicated in the appealed the decision and a claim raised before it is the same, in which case the respective requests would be barred by the principle of res judicata" (*CAS 2017/A/5339*).

172. The Panel notes that, in at least two other cases, CAS has previously decided that, unless a specific request for recalculation has been submitted by the appellant in order to reduce the amount of compensation granted by the decision under appeal, the panel has no power to diminish the amount of compensation established by the challenged decision, given the constraint deriving from the appellant's requests for relief. In *CAS 2018/A/5553*, the panel established as follows:

"118. With regard to the Appellant's contention that the amount of compensation granted by the FIFA DRC shall be further deducted with the alternative salaries payable to the Player under the employment contract with the club Spartak Trnava, the Panel observes that the Club failed to submit a specific request for relief in that sense.

119. In fact the Appellant merely requested that the CAS annul the Appealed Decision.

120. In this context, the Panel observes that, without prejudice to the provision of article R57 of the CAS Code, which confers the CAS the full power to review the facts and the law of the case, the Panel is nonetheless bound to the limits of the parties' motions, since the arbitral nature of the proceedings obliges the Panel to decide all claims submitted by the Parties and, at the same time, prevents the Panel from granting more than the parties are asking by submitting their requests for relief to the CAS, according to the principle of ne ultra petita.

121. As a consequence, and irrespective of the merits of the Appellant's argument on the relevant point, the Panel has no power to amend the amount of compensation granted by the Appealed Decision" (*CAS 2016/A/4384*, paras. 118-121, principle confirmed by *CAS 2018/A/5553*, paras. 96-98).

173. The Panel observes that, similarly, in the present case, the Appellant's request for relief in the Statement of Appeal and in the Appeal Brief are limited to the annulment of the Appealed Decision in its entirety, or, at least, with respect to the compensation granted to the Player, leaving out the request for a recalculation of the amount of compensation as an alternative plea. In this regard, despite the fact that the contract with the club Al-Faisaly was only filed for the first time with the Answer, i.e. after the Club had filed its Statement of Appeal and its Appeal Brief, the Panel notes that, from the outset of the present proceedings, i.e. since the filing of the Statement of Appeal, the Club was already aware of a new employment relationship between the Player and Al-Faisaly (as is evident from e.g. Annex 6 to the Statement of Appeal). Therefore, the Appellant already had the possibility to submit a specific request for relief in either its Statement of Appeal or Appeal Brief, requesting that the amount of compensation in the Appealed Decision be mitigated by the salary earned by the Player at Al-Faisaly. Such a request for mitigation would not have been strictly dependent on actual knowledge of the specifics of the employment contract signed between the Player and Al-Faisaly FC, and could have been formulated by the Appellant as a general request, subject to further specification in view of the further developments of the CAS proceedings, such as a

request for production of documents (the Appellant did in fact request production of the employment contract with Al-Faisaly in its Appeal Brief) or, as transpired, if the Respondent filed the contract as an exhibit. Therefore, there was no exceptional circumstance justifying a belated amendment of the Appellant's requests for relief in this regard.

174. For the sake of completeness, the Panel is aware of the fact that, according to Swiss doctrine and case law, a judicial body may be authorized to adjudicate also on "implicit requests", i.e. on requests other than that expressly submitted which may be considered as virtually "contained" or "included" in the latter or implicitly formulated:

"Dans certains cas, la loi ou la jurisprudence autorisent le juge à statuer sur la base de conclusions implicites, pour autant que les faits qui les justifient aient été allégués et les moyens de preuve offerts régulièrement et en temps utile (cf. infra N 1316 ss). Ces conclusions sont implicites en ce sens que, sans être formellement exprimées, elles sont virtuellement contenues dans celles qui le sont et peuvent en être tirées par déduction" (HOHL F., *Procédure civile*, Tome I, *Introduction et théorie générale*, 2e éd., Berne 2016, para. 1200).

The above can be freely translated into English as follows:

"In certain cases, a statute or case-law authorises a court to decide on the basis of implicit prayers of relief, provided that the facts justifying them have been alleged and the evidence offered regularly and on time (cf. infra N 1316 et seq.). Such prayers of relief are implicit in the sense that, without being formally expressed, they are virtually contained in those that are stated and can be drawn from them by deduction" (HOHL F., Civil Procedure, Vol. I, Introduction and general theory, 2nd ed., Bern 2016, para. 1200).

175. However, the Panel believes that unspoken requests may be considered "virtually contained" in other requests which were expressly formulated, only provided that they are connected with each other by the same grounds, namely, by the same reasons in fact and in law (so that the main legal issue to be resolved by the adjudicator is the same). Otherwise, the principle of *ne ultra petita* would be circumvented.

176. In the present case, on the contrary, the Panel notes that the relevant requests for relief submitted in the Appeal Brief (i.e. the request for annulment) are grounded on the assumption that the Player's termination was without just cause, while the "subsidiary request" for mitigation can be clearly justified on condition that such assumption is rejected.

177. For these reasons, the Panel believes that the conditions mentioned above are not met for the subsidiary request of the Appellant to be considered as "contained" or "implicit" in its initial request for relief, aimed at establishing that any compensation be excluded as a consequence of the annulment of the relevant point of the Appealed Decision.

178. Therefore, and irrespective of the merits of the Appellant's argument on the relevant point, the Panel has no power to mitigate or reduce the amount of compensation granted by the Appealed Decision, which is therefore confirmed.

C. Conclusions

179. As a consequence of all the foregoing, the Panel is satisfied that the Player had just cause for termination of the Employment Contract based on Article 14(2) of the FIFA RSTP. The amount of compensation awarded in the Appealed Decision is confirmed.

180. All other motions or requests for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Football Club FCSB against the decision rendered by the FIFA Dispute Resolution Chamber on 17 January 2020 is rejected.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 17 January 2020 is confirmed in its entirety.

3. (…).

4. (…).

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