Arbitration CAS 2020/A/6959 Akhisar Belediye Gençlik ve Spor Kulübü Dernegi v. Dany Achille Nounkeu Tchounkeu, award of 15 December 2020

Panel: Mr Patrick Lafranchi (Switzerland), Sole Arbitrator

Football
Termination of the employment contract with just cause by the player
Ne ultra petita
Pro-rata value of outstanding salaries not due on a monthly basis
Scope of Article 14bis RSTP
Temporary financial difficulties
Poor sporting performance due to an injury as just cause to terminate the contract
Legal characterisation of the bonus provided for in the contract
Factors important when the termination is due to a breach by the club
Duty to mitigate the damage

1. **According to the well-established principle of *"ne ultra petita"*, a CAS panel is bound to observe the limits of the parties' motions. Even though the panel has full power to review the facts and the law of the case, the arbitral nature of CAS proceedings obliges the panel to decide all claims submitted, but at the same time prevents the panel from granting more than what the parties are actually asking for.**

2. **If the salaries are not due on a twelve months basis but on a different number of occasions, the pro-rata value corresponding to two months shall be considered in order to assess whether at least two monthly salaries were due at the time of the unilateral termination of the contract, in accordance with Article 14bis par. 2 of the FIFA Regulations on the Status and Transfer of Players (RSTP).**

3. **In the context of Article 14bis RSTP and its clear wording, only outstanding salaries constitute just cause for the termination of an employment contract by a player, while other amounts such as bonuses, tax contributions and sign-on fees are left outside the scope of said provision.**

4. **Financial difficulties to satisfy an obligation of payment do not excuse the failure to make a required payment. This is also the case if the financial difficulties are only temporary.**

5. **Poor sporting performance, for whatever reason, thus also because of tedious injuries, is the inherent risk for any club concluding long-term football contracts. This is especially true for cases where there is no explicit contractual clause that would provide the club a possibility for an early termination due to lacking sporting results or the event that a player is injured for a long time.**

6. In order to assess whether a bonus clause in a contract is to be considered as a "reward" in the sense of a performance incentive clause or not, the true and mutual intention of the parties should be sought. Usually, a bonus scheme is set up to with the goal of motivating the team to achieve the desired results. If no bonus scheme was set up and there is no indication in the contract that payment of the bonus would be subject to any conditions, but to the contrary, the clause itself states that the player will receive bonuses in a minimum guarantee amount, it can be concluded that the bonus clause was not drafted as an incentive clause and that therefore, the fact that the player was not able to play for most of the season due to an injury does not matter and the player is still entitled to the payment of the whole amount of the bonus.

7. Where the termination of the employment contract was due to a breach by the club, the "remuneration" factor, together with "the time remaining" factor – both parameters from the non-exhaustive list set out in Article 17 par. 1 RSTP –, play a major role.

8. In order to assess whether or not a player fulfilled his/her duty to mitigate his/her damage, the circumstances of the job market or the personal conditions need to be taken into consideration. If it turns out as little probable that the employee could have found an appropriate job, it may not even be concluded from the fact alone that an employee did not look for a job, that s/he deliberately did forego a possible work income. Factors such as the difficult situation of a player suffering from a long-time injury with very little match practice at the age of 34, the fact that only few transfer windows are available, as well as the difficulties of a job market that became much more unpredictable as of March 2020 when the COVID-19 pandemic started to hit, are relevant. According to Swiss law, it is the employer who bears the burden of proof in such constellations.

I. PARTIES

1. Akhisar Belediye Gençlik ve Spor Kulübü Dernegi (the "Appellant" or the "Club") is a sports club, affiliated to the Turkish Football Federation ("TFF"), which in turn is affiliated with Fédération Internationale de Football Association ("FIFA").

2. Dany Achille Nounkeu Tchounkeu (the "Respondent" or the "Player") is a French-Cameroonian professional football player, born in Yaoundé, Cameroon on 11 April 1986.

II. FACTUAL BACKGROUND

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced and at the hearing. Additional facts and

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

4. On 18 January 2018, the Parties signed an employment contract (the "Contract"), valid as from the date of signature until 31 May 2020.

5. Pursuant to Article 3 of the Contract, the Player was entitled to an annual salary of EUR 500,000 net for the season 2018-2019, payable in ten monthly instalments as well as bonuses to *"be decided by the Board in the minimum guarantee amount of 100.000 Euros net"*. Article 3 further stated that *"if the total amount of the team/win bonuses which will be decided by the Board is less than 100.000 Euros in 2018/2019 Season, the Club will pay the difference between 100.000 Euros and the total team/win bonuses until 15th of June, 2019"*.

6. With regard to the sporting season 2018/2019, the Parties agreed that the Player's remuneration, a total net amount of EUR 500,000, shall be payable as follows:

25.08.2018	*95.000 Euro*
25.09.2018	*45.000 Euro*
25.10.2018	*45.000 Euro*
25.11.2018	*45.000 Euro*
25.12.2018	*45.000 Euro*
25.01.2019	*45.000 Euro*
25.02.2019	*45.000 Euro*
25.03.2019	*45.000 Euro*
25.04.2019	*45.000 Euro*
25.05.2019	*45.000 Euro*

7. In Article 3 of the Contract, very similar conditions were agreed on for the football season 2019/2020. Apart from the ten monthly instalments to be paid to the Player, it was agreed that the Player *"will receive team/win bonuses which will be decided by the Board in the minimum guarantee amount of 100.000 Euros net"*. The same as for the 2018/2019 season applied, if the amount of the team/win bonuses which would be decided by the Board was less than EUR 100,000. In that case, *"the Club will pay the difference between 100.000 Euros and the total team/win bonuses until 15th of June, 2020"*.

8. The remuneration in the total net amount of EUR 500,000 set out in the Contract was foreseen to be paid in the following instalments:

25.08.2019	*95.000 Euro*
25.09.2019	*45.000 Euro*
25.10.2019	*45.000 Euro*

25.11.2019	*45.000 Euro*
25.12.2019	*45.000 Euro*
25.01.2020	*45.000 Euro*
25.02.2020	*45.000 Euro*
25.03.2020	*45.000 Euro*
25.04.2020	*45.000 Euro*
25.05.2020	*45.000 Euro*

9. On 29 October 2018, the Player suffered from a serious knee injury. As a consequence, he could not play a single match for seven months.

10. On 11 June 2019, the Player served a written notice to the Appellant, claiming the payment of EUR 90,000 (corresponding two monthly salaries) with a deadline of fifteen days for the full payment with reference to Articles 12bis and 14bis FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"). Besides the payment default, the Appellant was also warned of the unfair decision of leaving the Player out of squad without professional license.

11. On 19 July 2019, on an initiative of the Club, the Respondent had an MRI scan and got examined by a doctor. It turned out that the knee injury had still not properly healed.

12. On 25 July 2019, the Appellant sent a letter to the Respondent, offering him to terminate the contract mutually. It also offered the Respondent to pay his unpaid receivables in instalments.

13. On 27 August 2019, the Respondent sent another written notice to the Appellant, claiming the payment of EUR 285,000 – again with a deadline of fifteen days for the full payment. The Appellant was warned of the consequences in case of non-payment at the end of the given deadline.

14. On 11 September 2019, on the very last day of the deadline set out by the Respondent, the Appellant sent a letter to the Respondent, raising objections to the calculation of the bonus payment as well as highlighting the fact that the Respondent had been injured.

15. On this same day, the Respondent reiterated his claim towards the Appellant, extending the deadline for one more day until 12 September 2019.

16. On 13 September 2019, as the Appellant still had failed to pay the amounts requested by the Respondent, the latter unilaterally terminated the Contract.

III. PROCEEDINGS BEFORE THE FIFA DRC

17. On 30 October 2019, the Respondent lodged a claim against the Appellant before the FIFA Dispute Resolution Chamber (the "FIFA DRC"), claiming six unpaid monthly salaries *"on the pro-rata temporis values defined in Article 14bis of FIFA RSTP"*. These had not been paid despite the

served default notices which is why the Player considered to have had just cause to terminate the contract on 13 September 2019, in accordance with Article 14bis FIFA RSTP.

18. On 20 February 2020, the FIFA DRC issued the following decision (the "Appealed Decision"):

"1. The claim of the Claimant [the Respondent in the present matter]*, Dany Achille Nounkeu Tchounkeu, is partially accepted.*

2. The Respondent [the Appellant in the present matter] *has to pay to the Claimant* [the Respondent] *outstanding remuneration in the amount of EUR 221,716.63, plus interest at the rate of 5% p.a. until the date of effective payment as follows:*

i. 5% p.a. as from 26 April 2019 on the amount of EUR 22,500
ii. 5% p.a. as from 26 May 2019 on the amount of EUR 45,000
iii. 5% p.a. as from 26 August 2019 on the amount of EUR 95,000
iv. 5 % p.a. as from 16 June 2019 on the amount of EUR 59,216.63

3. The Respondent [the Appellant] *has to pay to the Claimant* [the Respondent] *compensation for breach of contract in the amount of EUR 505,500, plus interest at the rate of 5% p.a. as from 30 October 2019 until the date of effective payment.*

4. Any further claim lodged by the Claimant [the Respondent] *is rejected.*

5. The Claimant [the Respondent] *is directed to inform the Respondent* [the Appellant]*, immediately and directly, preferably to the e-mail addresses as indicated on the cover letter of the present decision, of the relevant bank account to which the Respondent* [the Appellant] *must pay the amounts plus interest mentioned under point 2 and 3 above.*

6. The Respondent [the Appellant] *shall provide evidence of payment of the due amounts in accordance with point 2 and 3 above to FIFA to the e-mail address psdfifa@fifa.org, duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).*

7. In the event that the amounts due in accordance with point 2 and 3 above are not paid by the Respondent [the Appellant] ***within 45 days*** *as from the notification by the Claimant* [the Respondent] *of the relevant bank details to the Respondent* [the Appellant]*, the Respondent* [the Appellant] *shall be banned from registering any new players, either nationally or internationally, up until the due amounts plus interest are 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 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" (emphasis in original).

19. On 31 March 2020, the FIFA DRC issued the grounds of the Appealed Decision. The FIFA DRC noted that the underlying issue in the present dispute was to determine whether the Contract had been unilaterally terminated with or without just cause by the Respondent on 13 September 2019, and the consequences thereof.

20. The FIFA DRC observed in this context, that *"prior to the termination of the contract, the Claimant* [Respondent] *had put the Respondent* [Appellant] *in default twice"*. Also, the Respondent had requested *"the payment of EUR 285,000, corresponding to the monthly salaries of April, May and August 2019 as well as the bonus payment for the season 2018-2019 in the amount of EUR 100,000"*.

21. It also took note that the Appellant considered that the bonus of EUR 100,000 had been partly paid and that the outstanding amount shall not be paid as the Respondent had not been playing any matches for seven months. However, the FIFA DRC observed that the Appellant acknowledged a debt of EUR 67,500 for half of the monthly salary of April 2019 and the full monthly salary of May 2019.

22. The FIFA DRC noted that on the date of the termination of the Contract, i.e. on 13 September 2019, two and a half monthly salaries were outstanding (corresponding to half of the monthly salary of April 2019 as well as the full monthly salaries of May and August 2019). Therefore, it considered that the Respondent had just cause to terminate the Contract according to Article 14bis par. 1 RSTP.

23. The outstanding remuneration still due was considered to amount to a total of EUR 221,716.63, corresponding to the salaries of EUR 22,500 (half of April 2019), EUR 45,000 (May 2019) and EUR 95,000 (August 2019) as well as a part of the annual bonus of EUR 100,000 in the amount of EUR 59,216.63.

24. Furthermore, it considered that an interest of 5% p.a. on said amount was owed as from the respective due dates.

25. In a next step, the FIFA DRC assessed whether and if yes, how much of an additional compensation for breach of contract (Article 17 par. 1 RSTP) was owed. It observed that there was no contractual clause regarding a potential compensation in the event of a breach of contract. It therefore determined that the amount of compensation shall be assessed in application of the other – non-exhaustive – parameters set out in Article 17 par. 1 RSTP.

26. It first noted that the residual value of the Contract, originally supposed to be valid until 31 May 2020, was EUR 405,500. The FIFA DRC further observed that the annual bonus of EUR 100,000 was to be considered as a minimum amount guaranteed in the Contract and was therefore owed.

27. The FIFA DRC then assessed whether the Player had concluded any new employment contract with a possible remuneration that needed to be taken into consideration when calculating a compensation (Article 17 par. 1 point ii. RSTP). In this context, the FIFA DRC concluded that the Player was still unemployed, i.e. that there was no employment agreement that needed to

be taken into account.

28. Then, the FIFA DRC addressed the request of the Player for the payment of an additional compensation of EUR 300,000. However, it observed that said request had no contractual basis and was, in addition, unsubstantiated which is why it rejected the claim.

29. Finally, the FIFA DRC referred to Article 24bis FIFA RSTP, setting forth the consequences in case the Appellant did not pay the sums as it was condemned to.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

30. On 16 April 2020, the Appellant filed its Statement of Appeal and suggested that the present matter be submitted to a sole arbitrator.

31. On 20 April 2020, the Respondent informed the CAS Court Office that it did not agree with the appointment of a sole arbitrator.

32. On 21 April 2020, the Respondent also informed the CAS Court Office that it did not intend to pay his share of the advance of costs.

33. On 24 April 2020, the Parties were informed, that, pursuant to Article R50 of the Code of Sports-related Arbitration (the "Code"), the Deputy President of the CAS Appeals Arbitration Division had decided to submit the present case to a sole arbitrator.

34. On 27 April 2020, the Appellant requested an extension of the time-limit to file the Appeal Brief. The request was granted this same day by the CAS Court Office pursuant to Article R32 par. 2 of the Code as amended by the CAS Emergency Guidelines.

35. On 1 May 2020, the CAS Court Office confirmed receipt of the clean copy of the challenged decision sent by FIFA on 30 April 2020 and noted that FIFA, in this same letter, had renounced its right to request its possible intervention in the present arbitration proceedings.

36. On 14 May 2020, within the time limit set, the Appellant filed its Appeal Brief.

37. On 26 May 2020, the Respondent requested the extension of the time-limit to file its Answer. This request was granted the same day by the CAS Court Office pursuant to Article R32 par. 2 of the Code as amended by the CAS Emergency Guidelines.

38. On 2 June 2020, the Parties were informed that on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel appointed to decide the case at hand was constituted as follows:

Sole Arbitrator: Mr Patrick Lafranchi, Attorney-at-law in Bern, Switzerland

39. On 15 June 2020, the Appellant was requested to file an English translation of its Exhibit 4,

which it submitted on 19 June 2020.

40. On 24 June 2020, the Respondent filed his Answer.

41. On 6 July 2020, the Parties were requested to inform the CAS Court Office concerning their preferences regarding a possible hearing. On this same day, the Respondent stated that it did not consider it necessary that a hearing be held in the matter at hand. On 10 July 2020, the Appellant requested a hearing to be held.

42. On 1 September 2020, the CAS Court Office took note of the Appellant's new representatives.

43. On 7 September 2020, the CAS Court Office sent to the Parties an Order of Procedure, requesting them to return a signed copy of it to the CAS Court Office. On 7 and 9 September 2020, respectively, both Parties returned a signed copy of the Order of Procedure to the CAS Court Office.

44. A hearing was held on 15 September 2020 on the basis of the notice given to the Parties in the letter of the CAS Court Office dated 4 August 2020. The Sole Arbitrator was assisted at the virtual hearing by Mrs Sophie Roud, Counsel to the CAS who represented Mrs Delphine Deschenaux-Rochat, Counsel to the CAS. The following persons attended the virtual hearing:

    i. for the Appellant: Ms Elvan Z. Berk as counsel

    ii. for the Respondent: Mr Sami Dinç as counsel

45. At the conclusion of the hearing, the Parties confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings and that they had been given the opportunity fully present their cases.

V. SUBMISSIONS OF THE PARTIES

46. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Sole Arbitrator, indeed, has carefully considered all the written and oral submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

A. The Position of the Appellant

47. In its Appeal Brief, the Appellant requests the CAS:

    "• to accept our appeal against the decision of FIFA DRC dated 20 February 2020 and Ref. Nr. 19-02069/sil,

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

- *to decide that the Respondent terminated his contract without just cause,*
- *If it is decided that the Appellant shall pay compensation;*
  - *the amount of 100.000 Euro team/win bonus for 2019/2020 Season shall not be taken into consideration while determining the amount of compensation,*
  - *the income which the Respondent intentionally avoid to get shall be deducted from that compensation,*
  - *after the deduction stated above, an equity deduction shall also be made from the compensation,*
- *to condemn the Respondent to pay the costs of the arbitration and also the legal fees and other expenses of the Appellant in connection with the proceedings".*

48. The Appellant first outlines the circumstances of the termination of the Contract. It submits that the Respondent had suffered from a knee injury on 29 October 2018. It stresses that it turned out only later that he had failed to undergo arthroscopic PCL, ACL reconstruction if needed and MCL repairmen surgery, even though the Respondent had himself claimed that he was going to do so when in France.

49. The Appellant submits that, as a consequence, the Respondent was not able to play football for seven months in the 2018/2019 season. Therefore, the Appellant had to transfer another player into the Respondent's position for the second half of the 2018/2019 season.

50. The Appellant points out that during the preparation of the 2019/2020 season, it was observed that the Respondent – still – did not perform well because of his knee injury and that he would sportingly not be in a position to play First League matches. After an MRI scan on 19 July 2019, the doctors stated that the Respondent's injury had not been properly cured because he did not have the necessary surgery. Consequently, he would not be able to play First League matches and perform at a level of 100%.

51. The Appellant argues that the Club suffered a big sporting and financial damage because of the Respondent's fault and negligence and that such damage would continue even if the Respondent underwent surgery later on. As it was mentioned at the hearing, the Respondent had in fact played only two matches (2 x 90 minutes). The Appellant submits that therefore, it had offered the Respondent to terminate the Contract with mutual agreement and to pay the outstanding receivables in instalments. According to the Appellant, the Respondent had acted in bad faith and tried to get unfair benefits when refusing said offer and terminating the Contract unilaterally. The Appellant therefore considers the termination of the Contract as a termination without just cause.

52. In this context, the Appellant points out that the abovementioned arguments were not even discussed or mentioned in the Appealed Decision which constitutes a violation of its right to fair trial and which is why the Appealed Decision should be set aside with all its consequences.

53. The Appellant submits that the *"outstanding salaries"* claimed by the Respondent in fact only

corresponded one and a half month's salary (partial salary of April 2019 and salary of May 2019). The payment of EUR 95,000 due on 25 August 2019 is, according to the Appellant, not to be considered as a salary but an advance payment of the 2019/2020 season which is why the Club could not be put in default for that amount. Thus, the outstanding remuneration at the time of the unilateral termination of the Contract did not amount to the two outstanding salaries that are required under Article 14bis RSTP in order to justify a unilateral termination of the Contract.

54. Also, the Appellant suggests that the Club was ranked last and relegated to lower league, which caused financial problems. Therefore, the payments of all players were generally and temporarily delayed at the end of 2018/2019 season, however, not those of the Respondent, as he refused to be understanding. This behaviour shall be taken into account when determining whether the termination was just or unjust.

55. The Appellant further considers the bonus payment for the 2018/2019 season as superfluous as the Respondent had not provided any service after 29 October 2018. The Appellant did make bonus payments in the total amount of EUR 40,794. In its opinion, that should be enough as they were not even owed but was made out of good-will when in fact the Respondent had not played for seven months. Also, the Appellant is of the opinion that the bonus is worded as a reward (team/win bonuses) and that the Respondent – as he did not play – did clearly not deserve that.

56. Finally, according to Appellant, no further compensation is owed to the Respondent and the one calculated by the FIFA DRC in the amount of EUR 505,500 is excessive, wrong and unfair. The salary that the calculation of the compensation was based on is unlawful and unfair as the residual value of the Contract was in fact EUR 405,000 and not EUR 405,500 and as the bonus of EUR 100,000 was wrongfully taken into consideration because the latter is designated as a reward.

57. Also, the Appellant considers that the Player has not fulfilled his obligation to mitigate the damages (i.e. concluding a new employment contract) but intentionally avoided to get an income. Also, the compensation calculated by the FIFA DRC corresponded to the amount which the Respondent would have deserved had he stayed at the Club until the end of his contract and continued providing services which, however, he did not. Therefore, an equity deduction shall be made from that compensation.

B. The Position of the Respondent

58. In its Answer, the Respondent made the following prayers for relief and requested the CAS:

"i) To reject the allegations of the Appellant,

ii) To ratify the decision of the FIFA Dispute Resolution Chamber dated 20 February 2020,

iii) To state that the Appellant is responsible for the payment of the whole CAS ad-ministration costs and the Arbitrators fees,

iv) To condemn the Appellant to pay the legal fees in the amount CHF 30,000 and other expenses of the Respondent in connection with proceedings".

59. The Respondent argues that his injuries do not have any legal value for the case at hand and that there is no causal connection between the alleged injury and the non-payment of the contractual remuneration of the Respondent, which led to the termination of the Contract subject to this case. Because as it is clearly seen from the factual background of this case and the termination process, the termination of the Contract had been made based on the persistent and serious failure of the Appellant on its financial obligations. The Respondent further points out that it is undisputed that the injury occurred while playing football.

60. The Respondent then underlines that it was not necessary to discuss the issue of the injury within the present case: The injury of the Player didn't result of any activities except his sporting activities and he himself unilaterally terminated the Contract due to the default on the payments of the Appellant. The situation would have been different if the Appellant had terminated the Contract because of the injury of the Respondent. In that case, the issue could have been discussed while the decision was rendered. The Respondent also argues that the Appellant never raised the topic of the Player's injury until 25 July 2019 – thus there was no reaction for nine months but only when the Respondent asked for his money.

61. According to the Respondent, the termination of the Contract was made with just cause. The Respondent considers it to be very clear that as of the date of the receipt of the second and last default notice by the Appellant (i.e. 27 August 2019), the unpaid receivables of the Respondent were EUR 285,000. The payments requested in said second letter were half of a monthly salary for April 2019, one full salary for May 2019 as well as the bonus of EUR 100,000. As of the date of the termination, the outstanding overdue payables towards the Respondent corresponded to more than 6 monthly salaries considering the pro-rata values defined in Article 14bis of FIFA RSTP.

62. Regarding the bonus, the Respondent considers it to be crystal clear that – according to the clause in Article 3 of the Contract (*"Payment and Special Conditions"*) – the remuneration for the season 2018/2019 is a guarantee payment in the minimum amount of EUR 100,000 in addition to the other remunerations for the Respondent. According to the Respondent, it is clear from the drafting of the provision that the Appellant has to pay EUR 100,000 as a guarantee bonus payment in minimum, no matter if the Player played any matches for the Appellant or not.

63. According to the Respondent, Article 17 FIFA RSTP has to be applied regarding the consequences (i.e. the compensation) of the unilateral premature termination of the Contract. Thus, according to the Respondent, the total residual value for the remaining part of the Contract equals the amount of EUR 505,500 (plus 5% interest p.a. as from 30 October 2019). The EUR 100,000 guarantee bonus shall not be deduced from that sum.

64. Finally, the Respondent states that he has not violated his duty to mitigate the damage. As the agreement was terminated in September (after the closing of the national transfer window), there was no possibility to find a new club until the next transfer window in January.

VI. JURISDICTION

65. Given that CAS has its seat in Switzerland and that when the purported arbitration agreement was executed the Claimant did not have its domicile in this country, this is an international arbitration procedure governed by Chapter 12 of the Swiss Private International Law Act ("PILA"), whose provisions are thus applicable. Art. 186 para. 1 of the PILA states that the arbitral tribunal shall itself decide on its jurisdiction. This general principle of Kompetenz-Kompetenz is a mandatory provision of the *lex arbitri* and has been recognized by CAS for a long time (see e.g. CAS 2004/A/748, para. 6).

66. Article R47 of the Code provides as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with 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. […]".*

67. It is undisputed between the Parties that CAS has jurisdiction to adjudicate the matter at hand, which they both confirmed by signature of the Order of Procedure.

68. The Sole Arbitrator is satisfied that, also according to Article 58 par. 1 of the FIFA Statutes and Article 49 of the FIFA Disciplinary Code which he considers applicable, CAS has jurisdiction to hear this case and decide on the matter.

VII. ADMISSIBILITY

69. Article R49 of the Code reads as follows:

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

70. According to Article 67 par. 1 of the FIFA Statutes, appeals *"shall be lodged with CAS within 21 days of notification of the decision in question".*

71. No objections regarding the admissibility of the Appeal have been raised by either Party. The Sole Arbitrator notes that all requirements mentioned in the provision set out above are fulfilled and that the Appeal is therefore admissible.

VIII. APPLICABLE LAW

72. Article R58 of the Code reads 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".

73. According to Article 57 par. 2 of the FIFA Statutes, the provisions of the Code shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and additionally, Swiss law.

74. The Sole Arbitrator therefore rules that the present dispute is to be solved according to the corresponding FIFA regulations, in particular the RSTP (in its October 2019 edition, which was when the claim was originally lodged), and that Swiss law shall be applied subsidiarily.

IX. MERITS

A. Issues in dispute

75. According to Article R57 of the Code,

"The Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. […]".

76. Before addressing the merits of the present case, the Sole Arbitrator recalls that it is undisputed between the Parties that the Contract was unilaterally terminated by the Player, in writing, 13 September 2019, following two prior warnings to the Club dated 11 July 2019 (with a claim of EUR 90,000) and 27 August 2019 (with a claim of EUR 285,000).

77. It is also undisputed that, at the time when the first letter of formal notice was sent, the Club was in default of payment of the outstanding amount of EUR 165,000, corresponding to the Player's monthly salaries of half of April 2019 (due on 25 April 2019) and a full salary of May 2019 (due on 25 May 2019).

78. It is also undisputed that the Player suffered from a knee injury in October 2018 and was not able to play any matches from that point. Finally, it is undisputed that the Player remained unemployed for the Contract's remaining period of validity until 31 May 2020.

79. What is disputed in the present case is whether the Player had a just cause or not to unilaterally terminate the Contract on 13 September 2019, which fact is contested by the Appellant.

80. If a just cause should be affirmed, it is furthermore controversial whether the FIFA DRC established an appropriate compensation for the Player as a result of the early termination of the employment. Apart from the outstanding remuneration due to the player, a CAS panel is to consider the question of compensation on a de novo basis, pursuant to Article R57 of the Code and may put itself in the shoes of the FIFA Dispute Resolution Chamber and apply the applicable law, i.e. the RSTP and in particular Article 17.1.

81. The Sole Arbitrator observes that the Appellant has not put forward any request regarding a possible compensation owed by the Respondent in case the Sole Arbitrator would come to the conclusion that the Contract had been terminated without just cause. The Sole Arbitrator recalls the well-established principle of *"ne ultra petita"*, according to which *"a CAS Panel is bound to observe the limits of the parties' motions. Even though the Panel has full power to review the facts and the law of the case, the arbitral nature of CAS proceedings obliges the Panel to decide all claims submitted, but at the same time prevents the Panel from granting more than what the parties are actually asking for"* (CAS 2008/A/1644). The Sole Arbitrator would therefore not be in a position to assess the question of such compensation.

82. The main concerns of this case are thus the following:

a) Was the contract terminated with or without just cause?

b) If the contract was terminated with just cause, what is the remuneration owed by the Appellant?

83. The Sole Arbitrator will address said questions in the order set out above.

a. Was the Contract terminated with or without just cause?

84. According to Article 12bis par. 1 and 2 FIFA RSTP, clubs have a duty to fulfil their contractual obligations:

"1. Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements.

2. Any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned in accordance with paragraph 4 below".

85. Article 13 FIFA RSTP stipulates the principle of *"pacta sunt servanda"* and states the following:

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

86. One exception to this principle and ground rule is explicitly contained in Article 14bis paras. 1 and 2 FIFA RSTP which read as follows:

"1. In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.

2. For any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to

two months shall be considered. Delayed payment of an amount which is equal to at least two months shall also be deemed a just cause for the player to terminate his contract, subject to him complying with the notice of termination as per paragraph 1 above".

87. In the matter at hand it is disputed by the Appellant that the Player unilaterally terminated the Contract with just cause. In particular, the Appellant considers that Article 14bis par. 1 FIFA RSTP is not applicable as the delay in payments at the time of the premature unilateral termination of the Contract did not amount to *"at least two monthly salaries"* but only to one and a half monthly salary, inter alia because the payment of EUR 95,000 due on 25 August 2019 is not to be considered as a salary but as an advance payment of the 2019/2020 season.

88. The Sole Arbitrator thus needs to assess whether the FIFA DRC correctly concluded that the termination of the Contract was made with just cause. The Sole Arbitrator first notes that in the matter at hand, there is no contractual provision addressing the issue of an early termination of the Contract with (or without) just cause, which is why – in principle – Article 14bis FIFA RSTP shall apply. The first question is therefore, how many monthly salaries were due at the time of the unilateral termination of the Contract of the Player.

89. The Sole Arbitrator notes that the Appellant was put in default twice. As the Appellant was granted a second deadline of 15 days to comply with its financial obligations on 27 August 2019 before the Contract was unilaterally terminated on 13 September 2019, the Sole Arbitrator finds that only the circumstances at the time of the second warning letter are relevant.

90. The Sole Arbitrator notes that according to Article 3 of the Contract (*"Monthly Payments"*), the Parties agreed to break down the players renumeration (in the total amount of EUR 500,000 a year) into ten instalments. Thus, the salaries were not due on a twelve months basis but on ten different occasions. In order to assess whether at least two monthly salaries were due at the time of the unilateral termination of the Contract, the pro-rata value corresponding to two months shall be considered (Article 14bis par. 2 FIFA RSTP).

91. Furthermore, the Sole Arbitrator agrees with the FIFA DRC which implicitly stated that, in the context of Article 14bis FIFA RSTP and its clear wording, only outstanding salaries constitute just cause for the termination of an employment contract by a player, while other amounts such as bonuses, tax contributions and sign-on fees are left outside the scope of said provision.

92. On 27 August 2019, the Respondent put the Appellant in default regarding the payment of EUR 285,000. With regard to the above-stated, the Sole Arbitrator underlines that – contrary to what is stated by the Appellant – any potential outstanding bonus payments cannot be considered here.

93. The Sole Arbitrator notes that the following instalments with respective due dates for the 2018/2019 season respectively the 2019/2020 season were outstanding when the Appellant was reminded of its financial obligations on 27 August 2019.

25.04.2019	*45.000 Euro*
25.05.2019	*45.000 Euro*
25.08.2019	*95.000 Euro*

94. However, as a result of the letter sent on 27 August 2019, the Appellant paid half of the amount due in April 2019. Thus, it is undisputed that a salary corresponding to one and a half months for the season 2018/2019 was outstanding and due at the time of the unilateral termination of the Contract on 13 September 2019. For the season 2019/2020 starting in August 2019, it is undisputed that EUR 0 had been paid on or before 13 September 2019.

95. The Sole Arbitrator then observes that according to Article 3 of the Contract, the total value of the Contract for the 2019/2020 season is EUR 500,000. Thus, the pro-rata value of one monthly salary corresponds EUR 41,666.60. When the Respondent unilaterally terminated the Contract on 13 September 2019, at least one monthly salary for the 2019/2020 season, i.e. the one for August 2019 in said amount was due. Therefore, contrary to what is stated by the Appellant, the payment due on 25 August 2019 is not to be considered as an advance payment but – at least partly and in the amount of EUR 41,666.60 – as a "monthly" salary for August 2019.

96. Consequently, the Sole Arbitrator agrees with the FIFA DRC that at least two and a half monthly salaries were due when the Respondent unilaterally terminated the Contract on 13 September 2019.

97. As the Appellant had been given a 15-day written notice as well one extra day to pay the outstanding sum, the requirements of Article 14bis FIFA RSTP were fulfilled and the FIFA DRC correctly found that the Player had just cause to terminate the Contract on 13 September 2019.

98. The Appellant further argues that the circumstances must be taken into account when assessing whether the Contract was terminated with just cause or not. The Sole Arbitrator observes that the FIFA DRC indeed did not evaluate any further arguments of the Appellant in this regard. However, in certain cases the behaviour of the counter-party may have an impact on the assessment whether a contract was terminated with or without just cause which is why the two main arguments of the Appellant will be addressed hereinafter.

99. First, the Sole Arbitrator dismisses the argument of the Appellant put forward in its letter of 25 July 2019, i.e. that it had not paid the outstanding salaries due to financial problems, based on the well-known principle that financial difficulties to satisfy an obligation of payment do not excuse the failure to make a required payment (cf. CAS 2016/A/4402, para 40; CAS 2006/A/1008, para. 19). This is also the case if, as stated by the Appellant, the financial difficulties are only temporary.

100. In said letter, as also in the present proceedings, the Appellant pointed out that the Player's injury and his negligence in the healing process had caused the Club a big sporting and financial damage. The Sole Arbitrator observes that this argument does not change the fact that the Appellant had failed to compensate the Player according to what was agreed in the Contract.

101. It needs to be noted that the Contract was concluded for a fixed period of two and a half years, i.e. until 31 May 2020 (Article 2 of the Contract). When the Appellant states that it did not and would not have had any benefit of the Player even in the upcoming 2019/2020 season as he was and would still be injured and unable to play, the Sole Arbitrator understands the Appellant's concerns. However, the Appellant needs to be reminded that – apart from this argument being partly very hypothetical – poor sporting performance, for whatever reason, thus also because of tedious injuries, is the inherent risk for any club concluding long-term football contracts. This is especially true for cases as the present one where there is no explicit contractual clause that would provide the Club a possibility for an early termination due to lacking sporting results or the event that a player is injured for a long time.

102. The longstanding CAS jurisprudence is very clear on this point:

"The Club may have been legitimately disappointed with the performance of the Player, especially since they made an investment of a reasonable size. However, nothing in the Contract justifies termination of contract based on sporting performance. Moreover, it happens quite frequently that clubs sign players who subsequently disappoint with their sporting performance. In the absence of strict contractual language, inadequate sporting performance can hardly constitute a legitimate breach of contract. This is not to say that the Club cannot terminate the contract in such cases, provided of course, that it has reached an agreement with the Player in this regard. This has not been the case here. For these reasons, this plea must be rejected as well" (CAS 2010/A/2049).

103. The Sole Arbitrator notes that the Appellant indeed tried to solve the matter amicably and – in its letter of 25 July 2019 – offered to pay the outstanding salaries of the 2018/2019 season and to mutually terminate the Contract. However, no agreement was reached. The Appellant even fails to demonstrate that the Parties ever entered into any negotiations. The Respondent wanted to continue the employment relationship. Also, he wanted to receive the contractually guaranteed compensation as an employee.

104. Furthermore, the Appellant fails to demonstrate that the Player showed any bad faith or acted fraudulent, with the consequence that the Appellant rightly withheld payments. The Player's injury and the fact that he did not have any surgery seemed to concern the Appellant only after the Respondent first claimed outstanding remuneration on 11 July 2019. The Appellant has not put forward any evidence that there had been earlier discussions between the Club and the Player regarding this surgery that undisputedly never happened and, in particular, that the Player had been made aware that the Club expected him to undergo such surgery. The Appellant could not specify if and when it gave the player any specific instructions regarding the cure of his injury which he would then have potentially ignored.

105. The Sole Arbitrator finds that the Appellant has not substantiated in what way the Player should have violated its duty to keep himself "physically fit" as agreed in the Contract. The Player undisputedly attended training sessions and, apart from the Appellant's general allegations, there is no indication that he would have opposed to recommendations of the medical team. Therefore, the behaviour of the Player certainly does not amount to a contractual violation that would justify withholding monthly payments or even the termination of the contract from the Appellant's side – at least not without any prior warning. Injuries that occur during matches and

might affect the Player's performance simply fall within the Club's sphere of risk. The Sole Arbitrator therefore agrees with the FIFA DRC that the Respondent was entitled to the monthly payments as set out in the Contract.

106. Therefore, the Sole Arbitrator holds that the Respondent terminated the Contract on 13 September 2019 with just cause and that the Appellant is to be held liable for not complying with its contractual duties.

b. If the contract was terminated with just cause, what is the remuneration owed by the Appellant?

107. The Sole Arbitrator notes that the FIFA DRC then assessed the amount of the remuneration owed by the Appellant, which conforms to standard CAS practice. A club in breach of its financial obligation shall pay the player the outstanding remuneration owed at the time of the termination of the contract (see e.g. CAS 2016/A/4623 & 4624, award of 15 March 2017).

i. Outstanding remuneration

108. The Sole Arbitrator agrees with the FIFA DRC that the outstanding remuneration still due at the time of the termination of the Contract needs to be addressed first.

109. It is undisputed that the monthly payments for April 2019 in the amount of EUR 22,500 as well as for May 2019 in the amount of EUR 45,000 were owed at the time of the termination of the Contract. Furthermore, the Sole Arbitrator agrees with the FIFA DRC that the payment due on 25 August 2019 in the amount of EUR 95,000 was outstanding – notwithstanding whether it is to be characterised as a salary or an advance payment.

110. Also, it is undisputed that only a part of the bonus for the 2018/2019 season, i.e. EUR 40,783.37, had been paid at the time of the termination of the Contract in September 2019. The Appellant states that said bonus is not owed as it was designed as a "reward bonus" and the Player was undisputedly not able to play for the biggest part of the 2018/2019 season. The Respondent on the other hand refers to the wording of the bonus provision in Article 3 of the Contract stating that the bonus of EUR 100,000 is to be considered as a *"minimum guarantee amount"* and infers therefrom that the Player is entitled to a bonus payment, no matter whether he played any match or not.

111. The relevant provision in the Contract reads as follows:

"For 2018/2019 Season, Player will receive team/win bonuses which will be decided by the Board in the minimum guarantee amount of 100.000 Euros net. In this context, if the total amount of the team/win bonuses which will be decided by the Board is less than 100,000 Euros in 2018/2019 Season, the Club will pay the difference between 100.000 Euros and the total team/win bonuses until 15th of June, 2019".

112. In order to assess whether the bonus clause in the Contract is to be considered as a "reward" in the sense of a performance bonus or not, the Sole Arbitrator notes that by applying article

18 para. 1 of the Swiss Code of Obligations (SCO), the true and mutual intention of the parties should be sought, when a contract needs interpretation.

113. When assessing first the wording of the clause, the Sole Arbitrator notices that the Parties indeed mention a *"team/win"* bonus. However, they also mention a *"minimum guarantee amount"*. The question is thus, also based on the circumstances, whether the relevant clause is a performance incentive clause or not.

114. The Sole Arbitrator observes in this context that usually, a bonus scheme is set up to with the goal of motivating the team to achieve the desired results. As set out in CAS 2009/A/1874:

"For incentive schemes of this kind to provide the necessary motivation, those striving to achieve this goal must be able to expect that payment of the bonus must be certain upon obtention of the result. Presumably the higher the expected payment is, the greater the degree of motivation to achieve the identified goal. It is therefore essential that the objectives be clearly defined, and that the expected reward for reaching it also be clear".

115. However, the Sole Arbitrator also notes that in the matter at hand, no bonus scheme was set up. There is no indication in the Contract that payment of the bonus would be subject to any conditions, neither in the relevant clause itself nor in any Annex to the Contract. The Appellant does not claim such requirement either. Much more so, the clause itself states that the Player will receive bonuses in the minimum guarantee amount of EUR 100,000. In case the Board decides on a lower bonus, the clause stipulates that the Club itself will – similar to a joint and several guarantee – ensure that the whole bonus is paid by assuming the difference.

116. Therefore, the Sole Arbitrator concludes that the bonus clause was not drafted as an incentive clause and that therefore, the fact that the Player was not able to play for most of the season 2018/2019 does not matter and the Respondent is entitled to the payment of the whole sum.

117. As the FIFA DRC correctly calculated, the outstanding bonus for the 2018/2019 corresponded EUR 59,216.63.

118. The Sole Arbitrator therefore supports the calculation of the FIFA DRC regarding the outstanding payments at the time of the termination of the Contract and does not see any reason to depart from said decision. The outstanding remuneration to be paid by the Appellant thus amounts to EUR 221,716.63 plus an interest of 5% p.a. as from the due dates until the effective date of payment.

ii. Residual value of the Contract

119. The Sole Arbitrator then addresses, as did the FIFA DRC, the further consequences of the termination with just cause which the Appellant is to be held liable for.

120. The FIFA DRC applied Article 17 par. 1 FIFA RSTP which states the following:

"In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4

in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period".

121. The Sole Arbitrator notes that said provision is applied on a regular basis by CAS Panels in order to calculate the compensation owed in case a Club "forced" a Player to prematurely terminate the Contract by not making any payments, thus breaching the contract (see e.g. CAS 2018/A/6050).

122. The FIFA DRC thus correctly assessed in a first step whether the Contract itself contains any provision by means of which the Parties had beforehand agreed upon an amount of compensation payable in the event of breach of contract. The Sole Arbitrator agrees with the FIFA DRC that this is not the case.

123. He further notes that where the termination of the employment contract was due to a breach by the club, the "remuneration" factor, together with "the time remaining" factor – both parameters from the non-exhaustive list set out in Article 17 par. 1 FIFA RSTP, play a major role (see CAS 2017/A/5111, paras. 137-138). In the matter at hand, the other parameters such as the law of the country concerned, the fees and expenses paid for the Player and the protected period seem to have little relevance. Further, there seems to be no place for the specificity of sport either – the breach did not preclude the Player from finding a new club.

124. In the matter at hand, the residual value of the Contract, concluded for a period until 31 May 2020, is calculated based on the monthly payments for the season 2019/2020 as set out in Article 3 of the Contract. The Sole Arbitrator observes that from said amounts, the payment due 25 August 2019 in the amount of EUR 95,000 is already included in the outstanding remuneration. Therefore, these EUR 95,000 need to be deducted from the over-all residual value of the Contract in the amount of EUR 500,000. This results in a residual value of the Contract of EUR 405,000.

125. The Sole Arbitrator therefore agrees with the Appellant that the basis for the final determination of the amount of compensation for breach of contract needs to be amended accordingly by comparison to what was calculated by the FIFA DRC in the Appealed Decision.

126. The FIFA DRC then recalled that, according to the Contract, the Respondent was entitled to an annual bonus even for the 2019/2020 season. The Sole Arbitrator notes that what was elaborated above and in the context with the annual bonus for the 2018/2019 season also applies here. The Contract stipulates a *"minimum guarantee amount of 100,000 Euros net"*, which is why said sum needs to be added to the residual value of the Contract.

127. The Sole Arbitrator therefore concludes that the total residual value of the Contract amounts to EUR 505,000 which is therefore owed by the Appellant.

iii. Duty to mitigate the damage

128. Finally, the Sole Arbitrator addresses the Appellant's argument that the Respondent did not fulfil his duty to mitigate the damage. The Sole Arbitrator notes the lack of any detailed reasoning in the Appealed Decision in this regard.

129. The Sole Arbitrator notes that in fact, Article 17 par. 1 FIFA RSTP foresees that any new employment contract needs to be taken into consideration. Furthermore, it is long-standing CAS practice that Swiss law and, in particular and as invoked by the Appellant, Article 337c SCO can be applied subisdiarily. Said provision reads as follows:

> *"1 Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration.*
>
> *2 Such damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work. […]".*

130. The Sole Arbitrator notes that it is undisputed that the Player remained unemployed until the end of the contractual period, i.e. 31 May 2020. More so, the Player was still unemployed when the hearing was held. The Respondent stated that he did not intentionally remain unemployed but that the Contract ended in September 2019 just after the national transfer window had closed. Since then, there was only one transfer window in January, during which he did not succeed in finding any new club.

131. The Sole Arbitrator first notes that, according to Swiss law, the employer bears the burden of proof in such constellations (see PORTMANN/RUDOLPH, BSK OR-I, Article 337c, N3). The Sole Arbitrator notes that the Appellant has not provided any evidence that rebuts the statements made by the Respondent. Its allegation remained very general and unsubstantiated.

132. Furthermore, the Sole Arbitrator observes that, according to Swiss jurisprudence, the circumstances of the job market or the personal conditions need to be taken into consideration – if it then turns out as little probable that the employee could have found an appropriate job, it may not even be concluded from the fact alone that an employee did not look for a job that he deliberately did forego a possible work income (see OGer ZH, JAR 2015, 641).

133. In the matter at hand, the Respondent actually did try to find a job. Furthermore, his rather difficult situation as a long-time injured player with very little match practice at the age of 34, as well as the fact that there were only few transfer windows need to be kept in mind. Also, the job market became much more unpredictable as of March 2020 when the COVID-19 pandemic started to hit. Thus, finding employment may not have been that easy for the Player. In any event, there is no indication that he intentionally omitted to find a job. The Respondent can therefore not be made liable for his failure to find a new employer.

134. Therefore, the Sole Arbitrator does not see any reason to conclude that the Respondent failed to meet his duty to mitigate the damage and reduce the compensation calculated above as requested by the Appellant.

B. Further Issues

135. Finally, the Sole Arbitrator notes that the Appellant challenged the Appealed Decision in its entirety – thus also the potential consequences in case the Club does not comply with the FIFA DRC decision (such as bans according to Article 24bis FIFA RSTP).

136. However, there is no reason to amend said rulings by the FIFA DRC as the Appealed Decision is only amended in a minor way and is upheld particularly in the sense that the Appellant needs to pay the Respondent a certain amount of money.

C. Conclusion

137. In light of the foregoing, the Sole Arbitrator holds that the Appeal brought by the Appellant against the Appealed Decision is to be partially admitted.

138. Whereas the outstanding remuneration owed by the Club was correctly calculated and quantified at EUR 221,716.63 plus an interest of 5% p.a. as from the due dates until the effective date of payment, the additional compensation owed by the Club is to be amended and quantified at EUR 505,000.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Akhisar Belediye Gençlik ve Spor Kulübü Dernegi on 16 April 2020 against Dany Achille Nounkeu Tchounkeu against the Decision of the FIFA Dispute Resolution Chamber of 20 January 2020 is very partially upheld.

2. The operative part of the Decision of the FIFA Dispute Resolution Chamber of 20 January 2020 is amended as follows:

"3. Akhisar Belediye Gençlik ve Spor Kulübü Dernegi has to pay Dany Achille Nounkeu Tchounkeu compensation for breach of contract in the amount of EUR 505,000, plus interest at the rate of 5% p.a. as from 30 October 2019 until the date of effective payment".

3. (…).

4. (…).

5. All other or further requests or motions for relief are dismissed