Arbitration CAS 2020/A/7370 Antalyaspor A.Ş. v. Aatif Chahechouhe, award of 20 August 2021

Panel: Mr Eligiusz Krześniak (Poland), President; Mr Emin Özkurt (Turkey); Mr João Nogueira da Rocha (Portugal)

Football
Termination of the employment contract without just cause by the club
Violation of the right to train and play as just cause of termination
Scope of the right to train and play
Time frame to terminate a contract
Principles applicable when ascertaining the damage mitigation

1. **Among a player's fundamental rights under an employment contract is not only his or her right to a timely payment of his or her remuneration, but also his or her right to access training and to be given the possibility to compete with his or her fellow team mates in the team's official matches. By refusing to register a player, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, violating one of his or her fundamental rights as a football player. Similarly, a player's fundamental rights include his or her right to participate in collective football training. Football, being a team sport, requires collective football training. Depriving a player of such possibility *de facto* deprives him or her of the possibility to play his or her sport. As a result, a player who was hired to play with a club's first team with the status of a professional footballer and was part of such club's first team during the previous season, has objective reasons to believe that a club has no intention to perform its side of the employment contract and cannot reasonably be expected to carry on the employment relationship when he or she is informed that he or she is no longer considered part of the club's first team for the upcoming season and that the club is discontented with his or her performance, is asked to train alone and/or with the U-21 team and is finally asked to find a new team before the beginning of the season.**

2. **A professional football contract executed between a club and a player features – explicitly or implicitly – an obligation on the part of a club to provide a player with a possibility to participate in collective training and in football matches. This does not mean that each club must at all times and under all circumstances provide all of its players with both such possibilities. There are situations in which a player may be relegated to train individually (e.g. when recuperating from injuries) or moved to a team participating in lower-class matches – the employment contract permitting. However, if a contractual clause, according to which *"the Player may or may not be included in the A-team list at the Coach's discretion"*, can be interpreted to mean that a player may from time to time (based on the decision of the coach) not be making the line-up for a particular match (as the latter is the standard risk of playing collective sports), it cannot**

mean that it is permissible to actually deprive a player of the possibility to participate in collective training and in football matches for extensive periods. This would contradict the nature of the obligatory relation between a club and a player.

3. **While no unjustified breach of a valid contract should be endorsed, it is true that even the breaching party does have certain rights. One of those is the right to know what tools the other, non-breaching party will avail itself of. The breaching party should not be put in a position in which it would eventually find itself in a perpetually unstable contractual situation, not knowing whether and when the non-breaching party will terminate the contract for just cause. Unlike in the termination for convenience scenario, in which either party can terminate a contractual relationship at any time, the termination for cause can usually only be effected within a given time frame, following the breach giving rise to the termination itself. This is, among other things, so that the breaching party is not "caught by surprise" if the non-breaching party unexpectedly terminates the contract, especially for less recent breaches. Although such time frame must be short, two to three business days is by no means to be considered an absolute rule with no exceptions. An extension of several days is tolerated under exceptional circumstances, for example if the non-breaching party has been actively seeking to resolve the issue.**

4. **When signing a subsequent contract– that under which the damages have to be mitigated –, a player or a coach may assume two things. First, that the subsequent contract will remain in force for the entire period for which is has been executed. Second, that all bonus payments to which a player or a coach is entitled to will be paid out by the subsequent club. Therefore, when assessing the amount by which the damages will be mitigated, one ought to, in principle, consider the entire value of the subsequent contract. Upon ruling as to the damages for breaching the original contract, both by the judicial bodies of the sports federations and by CAS, the subsequent contract may still be in effect and a subsequent termination by either of the parties will be impossible to be considered. At the same time, bonuses can only be taken into account if the probability that they will be paid is much higher than the risk that they will not be paid.**

I. PARTIES

1. Antalyaspor Spor Faaliyetleri Ticaret Sanayi A.Ş. (as the "Appellant", "Antalyaspor" or the "Club") is a football club with its registered office in Antalya, Turkey. It is affiliated with the Turkish Football Federation ("TFF") and with the Fédération International de Football Association ("FIFA").

2. Mr Aatif Chahechouhe (as the "Respondent" or the "Player") is a professional football player. He was born on 2 July 1986 and holds the passport of France.

II. FACTUAL BACKGROUND

A. Employment contract signed by Antalyaspor and the Player

3. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced 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 Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in his Award only to the submissions and evidence it considers necessary to explain its reasoning.

4. On 19 June 2019, the Parties concluded an employment contract (the "Contract"). It was a fix-term contract for two seasons, effective from 19 June 2019 to 31 May 2021. This document reads as follows, where relevant:

"Article 3– PAYMENTS and SPECIAL CONDITIONS

2019-2020 Season:

In total, the Club shall pay the Player a total guaranteed remuneration of 1.035.000.- Euro (One million thirty-five thousand euros) for the season. First, the Club shall pay the Player 800.000.-Euro (Eight hundred thousand euros) as salary for the 2019/2020 season […]

2020-2021 Season:

In total, the Club shall pay the Player a total guaranteed remuneration of 1.035.000.- Euro (One million thirty-five thousand euros) for the season. First, the Club shall pay the Player 800.000.-Euro (Eight hundred thousand euros) as salary for the 2020/2021 season […]

This contract shall automatically extended for one more season, i.e. 2021/2022 season, if the Player plays in 20 officials games in 2020/2021 season with the following financial conditions:2021-2022 Season:
In total, the Club shall pay the Player a total guaranteed remuneration of 910.000.-Euro (Nine hundred and ten thousand euros) for the season. First, the Club undertakes to pay 800.000.-Euro (Eight hundred thousand euros) as salary for the 2021/2022 season […].

BONUS PAYMENTS (for each season)

In additional to the guaranteed amounts stipulated above,

- *The Player shall be paid the bonus amount of 50.000.- Euro (fifty thousand euros) if he plays at least 15 official games during the relevant season, to be paid on 15th June.*
- *The Player shall additionally be paid a further bonus amount of 50.000.- Euro (fifty thousand euros) if reaches [sic] 25 official games played during the relevant season, to be paid on 15th June.*
- *If the Club qualifies for UEFA Europa League group stage during the contract, Club shall pay the bonus amount of 50.000.- (fifty thousand euros) to the Player, to be paid on 15th June If the Club qualifies for UEFA Champions' League group stage during the contract, Club shall pay the bonus amount of 150.000.- Euro (one hundred and fifty thousand euros) to Player, to be paid on 15th June.*

- *If the Player scores a goal or deliver an assist in an official match, the Club shall pay 10.000,00 Euro (ten thousand euros) for each goal or assist. The goal and assist bonuses shall be paid at the latest on the 15th June of each season.*

[…]

18.

The Player may or may not be included in the A team list at the Coach's discretion. In case the Player is not included in the A team list, the Player here by accepts that the decision is unavoidable, and he will not be entitled to any rights, especially the right of unilateral termination for sporting just cause. The Player accepts this matter in advance.

19.

The Club may decide for the Player to train alone or with another category of the team besides the A team, subject to the condition to receive the opinion of the Coach.

[…]

Article 9 — DISPUTES

This contract shall be exclusively governed by the laws and regulations of FIFA and the FIFA Dispute Resolution Chamber shall have jurisdiction over any dispute arising out of or in connection with this contract. The parties may appeal to the Court of Arbitration for Sport (CAS) within the specified period of time against the decisions of the FIFA Dispute Resolution Chamber" (emphasis omitted).

B. Alleged breach of the Contract by the Club

5. The Player was authorised by the Club to leave the Club premises and to conduct transfer negotiations in late January and early February 2020.

6. On 3 February 2020, the Club informed the Player that since he had allegedly been acting improperly during training sessions and was in an inadequate physical condition, he was to train following a training schedule provided.

7. On the same day, the Club "cancelled" said letter, informing the Player that it had been sent due to an oversight, and that on the head coach's recommendation, the Player was to follow a specific training schedule.

8. The Player then put the Club in default requesting information as to his registration status and the payment of EUR 160,000 corresponding to the salaries of December 2019 and January 2020.

9. In the follow-up correspondence, the Player indicated on several occasions – via his legal counsel – that he viewed his deregistration from the Club's A-team list as a breach of the Contract by the Club.

10. On 10 February 2020, upon the Player's request, the Turkish Football Federation sent the Player a list of 28 registered players of the Club for the second part of the season. The Player was not listed.

11. Between 11 February 2020 and 27 February 2020, the parties exchanged communication aimed at finding an amicable solution, to no avail.

C. Contract termination

12. On 27 February 2020, the Player's legal counsel notified Antalyaspor in writing that the Player officially terminated the Contract for material breach: deregistration of the Player for 5 months, exclusion form collective football, humiliating and unprofessional training conditions.

D. Contracts signed after 20 March 2019

13. On 8 September 2020, the Player signed an employment contract with Fatih Karagümrük Spor Kulübü (the "Karagümrük Contract"), which provides *inter alia* as follows:

"ARTICLE 4 – TERM OF THE CONTRACT

4.1 The Contract enters into force on 08.09.2020 and be effective during the 2020/2021 football season until 31st of May 2021 or any later date on which an official match is played in the respective football season. […]

ARTICLE 6 – OBLIGATIONS OF THE CLUB

The Club is obliged to pay the amounts as written below to the Player in return of his services subject to this present contract, all payments indicated in this present contract are agreed that are "net" payments. For the avoidance of the doubt, the Club shal be responsible of the taxes and deductions in accordance with the Turkish Tax legislation […].

6.1- Financial Benefits In Favor Of The Player

Conditional payment: During the continuation of this Contract, the Player shall be entitled 10.000,00 (Ten Thousand Euros) for each official TFF Super League match, in which the Player plays with a minimum duration of 45 (fortyfive) minutes for the Club. In case the Player plays less than 45 (fortyfive) minutes in the relevant TFF Super League match, the Player shall not be entitled the conditional payment for this match.

The minimum wages are included in the abovementioned conditional payment and the Player shall not be entitled for the minimum wages. But in case the Player shall not be entitled for the abovementioned conditional payment during the continuation of this Contract, the Player shall be entitled for the minimum wage during the continuation of this Contract" (emphasis omitted).

14. On 14 January 2021, the Player and BB Erzurumspor concluded an employment contract (the "Erzurumspor Contract"). It is a fix-term contract valid from 14 January 2021 to 14 May 2021. This document reads as follows, where relevant:

"3 - PAYMENTS and SPECIAL CONDITIONS

Net Monthly Salary (not under the legal minimum salary)	*LEGAL MINIMUM WAGE (Legal compulsory legal wage payable to the player is included in the fixed payment referred herein)*
Other Payments Promised by the Club and Payment Style *If the payment will be done in installments, the amounts and the dates will be clearly stated. Otherwise, the precepts of the Law Of Mortgages and the Regulations about the Transfer and Status of Professional Footballers are implemented.*	*2020/2021 SEASON* *FIXED REMUNERATION:* *a) For the 2020/2021 Season, the Club guarantees to pay the Player a total of 50.000.EUR- as salary in exchange for the professional services of the Player as follows:* *31.1.2021 10.000.-EUR* *28.02.2021 10.000.-EUR* *30.03.2021 10.000.-EUR* *30.04.2021 10.000.-EUR* *30.05.2021 10.000.-EUR* *TOTAL 50.000.- EUR* *CONDITIONAL REMUNERATION:* *b) A maximum total amount of 22.000.-EUR (Twenty two thousand Euros) shall be paid to the Player as appearance fee based on the fulfilment of the conditions specified hereunder as follows:* *- The amount of the Appearance Fee is set with reference to remaining part of the football season Turkish Spor Toto Süper Lig (Edition / 2020-2021) as from the 14.1.2021 to till the end of the football season comprising 22 (twenty-two) matchdays. The Parties herewith accept and undertake that the remaining part of the football season 2020/2021 as from the conclusion of the present Employment Contract in Turkish Spor Toto Süper Lig comprises 22 league games. Aforementioned conditional appearance fee (if any) shall be paid within 10 business days following the last official league game of BB Erzurumspor at the end of the football season 2020/2021.* *- The amount effectively due by BB Erzurumspor to the Player as Appearance Fee shall be assessed after the final official league match of the football season 2020-2021, pro rata to the number of games in which the Player has taken part (either as a starting player if he starts the relevant league game in starting line-up, used replacement if he starts the league game in bench and comes off the bench during the course of the relevant league game or non-used replacement if he starts the league game in bench and*

	does not come off the bench during the course of the relevant game), as follows: *(i) starting line-up: 100% of the per match appearance fee (i.e. 1.000-EUR considering the remaining part of the football season 2020/2021 comprises 22 matchdays);* *(ii) used replacement: 75% of the per match appearance fee (i.e. 750- EUR);* *(iii) non-used replacement: 50% of the per match appearance fee (i.e. ;500.-EUR)* *§ - For the avoidance of doubt and ease of understanding considering that remaining part of the football season in the Turkish Spor Toto Süper Lig (Edition /2020-2021 comprises 22 (twenty-two) matchdays in league, if the Player takes part in 10 (twenty) games as a starter by starting the league game in starting line-up(a), in 5 (five) games as a used replacement if he starts the league game in bench and comes off the bench during the course of the relevant game (b), and in 1 (one) game os a non-used replacement if he starts the league game in bench but does not come off the bench during the course of relevant game(c), he shall be entitled to 14.250.-EUR, as follows:* *(i) bonus per 20 matches (a): 1.000-EUR * 10 matches = 10.000.-EUR* *bonus per 5 matches (b): 750-EUR * 5 matches = 3.750.-EUR* *bonus per 1 match (c): 500-TL * 1 match = 500.-EUR* *c) Should BB Erzurumspor not be relegated from the competitions of Turkish Spor Toto Süper Lig at the end of the football season 2020-2021 on a sporting merit, the Player shall be remunerated with a conditional payment in the amount of 25.000.-EUR. Subject to the fulfilment of the aforementioned condition subsequent, contingent payment concerned shall be made within 30 days following the last official league game of BB Erzurumspor Professional football team at the end of the football season 2020-2021".*

E. Proceedings before FIFA Dispute Resolution Chamber (DRC)

15. On 6 March 2020, the Player filed a claim against the Club before the FIFA Dispute Resolution Chamber (the "DRC") for breach of contract.

16. By virtue of the decision dated 18 June 2020 (the "Appealed Decision"), the panel of the DRC partially accepted the claim brought by the Player and concluded as follows:

"1. The claim of the [Player] is partially accepted.

2. The [Club] has to pay to the Claimant, the following amount:

- *EUR 1,325,000 as compensation for breach of contract without just cause plus 5% interest p.a. as from 6 March 2020 until the date of effective payment.*

3. Any further claims of the [Player] are rejected.

4. The [Player] is directed to immediately and directly inform the [Club] of the relevant bank account to which the [Club] must pay the due amount.

5. The [Club] shall provide evidence of payment of the due amount in accordance with this decision to psdfifa@fifa.org, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).

6. In the event that the amount due, plus interest as established above is not paid by the [Club] within 45 days, as from the notification by the [Player] of the relevant bank details to the [Club] , the following consequences shall arise:

1. The [Club] 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. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid. (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

2. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee".

17. The DRC argumentation can be summarised as follows:

(a) DRC concluded that it was competent to deal with the matter in accordance with Article 24(1) and (2) read with Article 22(b) of the 2020 edition of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), since the matter concerns an international employment-related dispute between a French player and a Turkish club.

(b) DRC then concluded that the 2019 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "Procedural Rules") apply to the matter at hand (cf. Article 21(2) and (3) of the Procedural Rules).

(c) DRC then concluded that in accordance with Article 26(1) and (2) of the FIFA RSTP, and considering that the present claim was lodged with FIFA on 6 March 2020, the March 2020 edition of the FIFA RSTP applies to the present matter.

(d) DRC noted that it remained undisputed that in January 2020, the Player was authorised to seek other employment opportunities and to leave the Club premises to conduct

potential transfer negotiations. Thereafter, throughout February 2020, the Player complained to the Club about the latter's decision to send the Player to train alone and the Player enquired about his registration situation.

(e) DRC pointed out that it remained uncontested that the Player had been sent to train alone and/or with youth teams without any explanation.

(f) On 10 February 2020, upon the Player's request, the TFF sent the Player a list of 28 registered players of the Club for the second part of the season. The Player was not listed. DRC noted that it remained undisputed that the Player had not been registered as a player qualified to play the Turkish Super League (the "A-team list").

(g) DRC then noted that there was no evidence on file demonstrating that the Player had been aware that he was going to be deregistered, nor that he had been made aware that such deregistration would, allegedly, be temporary in nature.

(h) The Parties also exchanged communications regarding a possible amicable settlement of the situation, yet none was reached.

(i) DRC came to a unanimous conclusion that, on 27 February 2020, the various breaches on the Club's part, i.e. the uncertainty as to whether the Player would be re-registered and its decision to send him to train alone and/or with youth teams, had reached a severity which caused the Player's confidence in the continuation of the employment relationship to be lost. In DRC's view, the Player had duly put the Club in default of remedying the relevant contractual breaches before he terminated the contract.

(j) The above considerations led DRC to conclude that the Player terminated the contract on 27 February 2020 with just cause, and that, consequently, the Club must bear the financial consequences of the early termination.

(k) When determining the amount of compensation to be payable by the Club to the Player, DRC noted that the amount of EUR 1,325,000 corresponded to the monies payable to the Player under the terms of the Contract until 31 May 2021. DRC thus concluded that the residual value of the Contract at the time of the Club's termination amounted to EUR 1,325,000 corresponding to the salaries of March, April and May 2020, as well as the entire season 2020/2021, plus the bonus of EUR 50,000 due in accordance with the Contract (cf. 1.3. above).

(l) With respect to the bonus in the amount of EUR 50,000, DRC held that the Player had duly proven that the condition to acquire the bonus, i.e. participation in at least 15 official matches during the relevant season, had been met.

(m) DRC thus concluded that the amount of EUR 1,325,000 shall serve as the basis for calculating the compensation for the breach of the Contract.

(n) DRC went on to determine whether the Player had signed an employment contract with another club during the time the Contract (with Antalyaspor) was supposed to be in force.

According to DRC's common practice, such remuneration, under a new employment contract(s), is taken into account when calculating the amount of the breach of contract damages in connection with the general obligation to mitigate his damages.

(o) DRC acknowledged, however, that the Player had remained unemployed following the termination of the Contract with just cause.

(p) With respect to the Player's claim for the amount of EUR 517,500 for the specificity of sport, DRC decided to reject such claim due to lack of evidence and of contractual basis.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 26 August 2020, the Club filed its Statement of Appeal before the Court of Arbitration for Sport (the "CAS") pursuant to Article R48 of the Code of Sports-related Arbitration (2020 edition) (the "CAS Code") and Article 58 of the FIFA Statutes, against the Appealed Decision. In its Statement of Appeal, the Club nominated Mr Emin Özkurt as arbitrator.

19. On 31 August 2020, the CAS Court Office initiated arbitration proceeding CAS 2020/A/7370 and *inter alia* invited the Appellant, pursuant to Article R51 of the CAS Code, to submit its Appeal Brief within 10 days of receipt of said letter.

20. On the same day, the CAS Court Office notified FIFA about the Appeal and its right to participate as a party pursuant to Article R41.3 of the CAS Code.

21. On 1 September 2020, the Respondent nominated Mr João Nogueira da Rocha as arbitrator.

22. On 3 September 2020, the CAS Court Office acknowledged receipt of the Appellant's request for a 10-day extension to file the Appeal Brief. Such extension was granted.

23. On 10 September 2020, FIFA renounced its right to request its intervention in the proceedings.

24. On 16 September 2020, the CAS Court Office acknowledged receipt of the Appellant's Appeal Brief and exhibits and invited the Respondent to submit his Answer within 20 days.

25. On 25 September 2020, the CAS Court Office informed the parties that the Panel was constituted as follows:

President: Prof. Dr Eligiusz Krzesniak, Lawyer in Warsaw, Poland
Arbitrators: Mr Emin Özkurt, Attorney-at-Law in Istanbul, Turkey
Mr João Nogueira Da Rocha, Attorney-at-law in Lisbon, Portugal.

26. On 15 October 2020, the Respondent filed his Answer and requested that a hearing be held in the present proceeding.

27. on 16 October 2020, the CAS Court Office acknowledged receipt of the Respondent's Answer. Also, the CAS Court Office informed the Parties that the were not authorised to supplement

or amend their requests or their argument, nor to produce new exhibits, nor to specify further evidence. The Appellant was invited to inform the CAS Court Office before 23 October 2020 whether it preferred a hearing to be held.

28. On 23 October 2020, the Appellant requested to be granted a time limit to submit its comments to the Respondent's Answer and indicated that it was willing to hold a hearing.

29. On 12 November 2020, the CAS Court Office on behalf of the Panel informed the Parties that pursuant to Article R57 of the CAS Code, the Panel decided to hold a hearing in this matter, and invited the parties to provide their availability. Additionally, the Respondent was invited to comment on the Appellant's request for a further round of written submissions.

30. On 16 November 2020, the Respondent objected to the Appellant's request.

31. On 18 November 2020, the CAS Court Office on behalf of the Panel informed the parties that a hearing would be held on 24 February 2021.

32. On 1 December 2020, the Appellant and the Respondent signed the Order of Procedure.

33. A hearing was held on 24 February 2021 by videoconference due to the COVID-19 pandemic. The Panel was present, assisted by Ms Delphine Deschenaux-Rochat, CAS Counsel.

34. The following persons attended the hearing:

(a) For Antalyaspor:

(i) Mr Servet Çavuşoğlu, General Manager of the Club

(ii) Mr Sait Kemal Kapulluoğlu, Attorney-at-Law;

(iii) Mr Ismet Bumin Kapulluoğlu, Attorney-at-Law;

(b) Mr Aatif Chahechouhe;

(c) Mr Aatif Chahechouhe was represented by Mr Osama Al Sabbagh, Attorney-at-Law;

(d) Mr Aly Cissokho, as witness;

(e) Mr Enver Kilinc, as witness.

35. In conclusion to the hearing, the Parties declared that they did not object to the composition of the Panel and raised no formal objections.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

36. In the Appeal Brief, the Club submitted the following requests for relief:

"a. to grant a permanent relief reversing the appealed decision and reject the Respondent's claim,

b. to adjudicate that the Respondent's unilateral termination is termination without just cause,

c. if above mentioned requests are not accepted and without detriment to the primary requests of order as listed above and in subsidiary order, to reduce the amount of compensation for breach of contract without just cause that has been decided in favour of the Respondent under the decision appealed against,

d. to establish that the costs of the present arbitration procedure shall be borne by the Respondent,

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

37. The Club's submission, as drafted in the Appeal Brief, may in essence be summarized as follows:

(a) The Appellant included the Player in the first, second and third A-team list submitted to TFF on 15, 18 and 21 January 2020, respectively.

(b) The Player was fielded in 16 out of 17 matches in the first half of the 20019/2020 season. He was also fielded in the first match of the second half of the season, i.e. the match played on 19 January 2020 against Club Göztepe A.Ş., among the starting eleven, which shows that the Club was still very much interested in the services of the Player.

(c) It was the Player who requested to be authorised to leave the Club and conduct negotiations with other teams for a possible employment contract. The Club granted that request and authorised the Player to leave the Club's premises for one week, i.e. from 21 until 28 January 2020.

(d) Shortly before the lapse of that one week, the Player insisted that the Club authorise him to continue negotiations with other clubs. The Club agreed to it and granted permission for another week of negotiations, i.e. until 3 February 2020.

(e) On 2 February 2020, the Club submitted the final A-team list to TFF, on which the Player was not included. According to the mandatory regulations of the TFF, 2 February 2020 was the last day for the Club to submit the final version of the A-team list, comprising 28 players who may participate in the official games of the Club.

(f) The Club believes that it was only natural that the Player was not included on the A-team list, since he returned to the Club facilities after the deadline to submit the final A-team list had elapsed, and he had clearly declared his intention to end the contractual relationship with the Club and to be transferred to another club.

(g) On 3 February 2020, the Player returned to the Club premises, stating that he was not able to find an alternative employment contract with another club.

(h) The Player missed numerous training sessions and several official league matches for the previous two weeks. The Player was not physically ready to train, nor was he integrated with the A-team, therefore he had to undergo a special training programme. That special training programme was also needed in order to prepare the Player in the best possible

manner for the upcoming season of 2020/2021, during which the Player could be included on the A-team list again. The Player was thus instructed to follow a special training programme.

(i) In the subsequent weeks, the Player claimed on several occasions – via his counsel – that the Club had materially breached the Contract, as well as requested his re-integration with the A-team.

(j) The Club has been rejecting all allegations of any wrongdoing on its part, other than confirming that its letter of 3 February 2020 was drafted for a previous occasion and for another player and was only sent to the Player due to an oversight.

(k) The Player failed to attend five training sessions held on 14, 15, 17, 20 and 21 February 2020, i.e. five days out of seven active days of the second training programme. Despite this, the Club did not sanction him.

(l) The Player's salaries have always been paid on time: on 14 February 2020, within the 15-day set by the Player, the Club paid him EUR 160,000 corresponding to outstanding salaries for the months of December and January. On 27 February 2020, the Club paid the Player's salary of February 2020 (i.e. EUR 80,000) and the accommodation expenses (i.e. EUR 10,000).

(m) Also on 27 February 2020, the Respondent sent his Contract Termination Notice and informed the Club that the contract between the Parties was unilaterally terminated. The Club requested the Player to revoke the termination and to appear at the Club facilities in order to discuss the matter at hand and to determine the terms of honouring the employment contract mutually. This letter remained unanswered.

(n) Subsequent talks between the parties regarding a potential settlement were unsuccessful.

(o) The Club believes that the Player was never de-registered, since in the Club's view the concept of the A-team list differs from de-registration. De-registration of a player, as the name suggests, consists in revoking a player's registration before the competent authorities. This never happened with respect to the Player, so long as the Player was employed by the Club.

(p) The A-team list is a different concept. Clubs participating in the Super League can include only 28 players on their A-team lists. Exclusion of the Player from the A-team list developed as a natural consequence of his declarations and absence.

(q) With regard to the alleged infringement of the Player's personality rights, the Club submits that even potential infringements are lawful if the person whose rights are infringed has consented to the infringement.

(r) The Club also claims that the Player must have been aware of the risk of not being included in the A-team list and has waived all its rights in that respect by agreeing to signing Clause 18 of the Contract. The Parties decided to include that clause on the basis

of the Swiss law principle of freedom of contract and in particular Article 19(1) of the Swiss Code of Obligations ("CO"), which envisages that *"The terms of a contract may be freely determined within the limits of the law"*.

(s) The precedents referred to in the Appealed Decision, according to which it is a player's fundamental right to train and compete with his fellow team mates in official matches, are irrelevant. In the present case, the Contract expressly provides for the possibility to exclude the Player from the A-team list, which the Player accepted. Besides, the Club kept paying the Player's salary at all times. The Player was also included in the pre-season training camp and as registered on the first three A-team lists of 15, 18 and 21 January 2021.

(t) According to the DRC case law, the fact that a player is sent to training out of the permanent team of the club does not constitute just cause for the player to terminate his employment agreement.

(u) Under Swiss law, a party prepared to terminate its employment agreement for just cause *"has only a short period of reflection, after which it must be assumed that the said party chose to continue the contractual relationship until the expiry of the agreed period. A period of reflection of two to three business days is a maximum"* (CAS 2014/A/3643). Yet in this case the Player terminated the Contract seven days after his final default notice.

(v) Sporting just cause, as provided by the FIFA RSTP, requires the player to appear in less than 10% of the club's official matches. In the present case, the Player played 17 out of 34 matches and the Contract was valid for another entire season.

(w) The Club thus claims that the Player unilaterally terminating the Contract was not justified.

B. The Respondent

38. The Player's submission, as drafted in the Answer, may in essence be summarized as follows:

(a) The Club had acquired new players at the beginning of 2020 and the probability of being less used by the coach than during the first half of the season was imminent for the Player.

(b) For this reason, the Player was seeking new employment opportunities.

(c) Given that the Club was no longer interested in the Player's services, the Player's agent asked for an extension to continue negotiations with interested clubs – which he then obtained.

(d) The Club in no way warned the Player that he could be deregistered from the A-team list (the list of 28 players authorised to play in the Turkish Super League).

(e) For the Player, the "de-registration" and not being included on the A-team list was one and the same, as not being part of the A-team meant that the Player was not allowed to compete until the end of the season.

(f) The Club did not provide any serious training schedule, the Player was running alone on the U-14 pitch for 30 minutes per day and had no access to any football activities for a month. While a club may decide to temporarily exclude a player from the first team trainings, the decision must be well-founded and justified. Here the decision was clearly abusive and only related to the Club's transfer activity in January 2020 and the loss of interest in the Respondent's services.

(g) The Player does not dispute the five absences, but claims that they resulted from the humiliating training conditions and the absence of perspectives for the Player.

(h) The salaries of December 2019 and January 2020 were paid with a significant delay (on 14 February 2020), only after an official default notice.

(i) Clause 18 of the Contract did not allow the Club to de-register the Player at its own discretion. In fact, the Player's understanding was that he agreed in advance the possibility of not being lined up by the Coach, which was acceptable. If the Club wanted to pre-agree on the possible de-registration of the Player, it should have been expressly and clearly mentioned in the Contract.

(j) The Club acted in bad faith, violated its contractual obligations and lost interest in the Player's services by de-registering him at the end of the second transfer window. Therefore, the Player was allowed to terminate the Contract.

(k) As decided by the DRC, the Club shall be held responsible for paying the residual value of the contract, i.e. EUR 1,325,000. With regard to the Karagümrük Contract, there is no fixed remuneration apart from the legal minimum wage. This was the only concrete offer presented to the Respondent. Since joining his new club on 8 September 2020, the Respondent participated in four games: 3 minutes, 13 minutes, 10 minutes, and 32 minutes.

39. The Player requested the CAS to:

"• *Fully reject the Appeal of Antalyaspor and confirm the Appealed Decision,*

- *Decide that Antalyaspor must bear all costs related to these present proceedings; and*

- *Decide that Antalyaspor must pay to Mr. Chahechouhe a contribution to the legal fees of the Player of CHF 15,000".*

C. Submissions of the Parties during the hearing

40. During the hearing, the Parties made full oral submissions. Each party was allowed to respond and comment on the arguments presented by the other party. Two witnesses were called to testify – Mr Enver Kilinç and Mr Ally Cissokho, both called by the Player.

41. The Club's submissions, as presented during the hearing, did not deviate from those presented in the Appeal Brief:

(a) The Player was not de-registered, but merely not included on the A-team list through the fault of his own – looking for another club at the time when the Club had to decide whom to include on the A-team list.

(b) The Player accepted the risk that he may or may not be registered on the A-team list, since he had signed the Contract where Clause 18 clearly indicated this.

(c) The Player was asked to train individually with experienced coaches.

(d) For these reasons, the Player terminating the Contract was unjustified.

42. The Player's submissions can be summarized as follows:

(a) the Player was sent to train alone with another excluded player – Mr Cissokho – on the U-14 pitch, away from the professional group. The Club indicated that the Player was not going to play collective football until the beginning of the next season.

(b) The Player was effectively de-registered and not allowed to play professional football for at least half a season.

(c) For these reasons, the Player was entitled to terminate the Contract for breach by the Club.

V. JURISDICTION

43. 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.*
>
> *An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.*

44. The jurisdiction of CAS, which was not disputed by the Parties, derives from Article 58(1) FIFA Statutes, which states: *"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". The Appealed Decision referred to in its *"Note related to the appeal procedure"* to this Article, as well.

45. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by the parties.

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

VI. ADMISSIBILITY

47. Article R49 of the CAS Code provides as follows:

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

48. The appeal was filed within the deadline provided by Article 58(1) of the FIFA Statutes and stated in the Appealed Decision. It complied with all the other requirements of Article R48 of the CAS Code, including those pertaining to the payment of CAS Court Office fee.

49. It follows that the appeal is admissible.

VII. APPLICABLE LAW

50. A vast majority of cases resolved by CAS have an international aspect. Situations in which both parties to a dispute reside or are established in Switzerland are rather rare. More commonplace are cases in which each of the parties to a dispute resides or is established in another country and the federation whose decision is the focal point of the dispute is established in yet another country (typically in Switzerland).

51. The point of departure for an analysis of the governing law is as follows:

    (a) There is a difference between the governing law (the law applicable to the contract) and the *lex arbitri* - the arbitration law of the seat. *Lex arbitri* is the relevant source of legal norms for external (court) supervision. External supervision includes not only setting aside the award, but it can also include appointment, challenges, ordering provisional relief, and judicial assistance in taking evidence. All these issues would be resolved under the arbitration law of the seat of the arbitration institution selected.

(b) Undoubtedly, *lex arbitri* for all CAS cases is the Swiss law, since CAS has its seat in Lausanne, Switzerland (Article S1, R28 of the CAS Code). Therefore, the Swiss arbitration law has been applied.

(c) The Swiss arbitration law distinguishes between national and international arbitration proceedings. According to Article 176(1) of the Swiss Private International Law Act ("PILA"), PILA shall always apply if the place of residence and/or domicile of at least one party was outside Switzerland at the time of concluding the arbitration agreement.

(d) This prerequisite has been fulfilled in the case at hand and, therefore, PILA applies.

(e) Pursuant to Article 187(1) PILA, the Arbitral Tribunal shall decide the case according to the rules of the law chosen by the parties or, in the absence thereof, according to the rules of the law with which the case has the closest connection.

(f) The above means that *lex arbitri* (for cases heard by CAS, this will always be the Swiss law) and that the governing law, applicable to the merits and according to which a dispute shall be resolved, may differ.

52. The point of departure in this current proceeding is as follows:

(a) Article R58 of the CAS Code provides the following:

"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of the 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 the law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

(b) The *"applicable regulations"*, referred to in Article R58 of the CAS Code, are in this case most notably the FIFA RSTP. This conclusion stems from Article 22 RSTP (2019 edition), according to which *"Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear: (..), c) employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level"*.

(c) The FIFA Regulations, in turn, refer to the Swiss law, as the *"supplementing"* or *"additional"* law. Article 57(2) of the FIFA Statutes provides that *"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, the Swiss law"*.

53. In the case at hand, the parties did refer to the FIFA regulations in the Contract. According to Article 9 of the Contract, it shall be *"exclusively governed by the laws and regulations of FIFA"*.

54. The Contract has been signed and executed in Turkey with one party being registered in Turkey and the other domiciled in Turkey for a number of years prior to the execution of the Contract.

55. Nevertheless, the Swiss law shall apply to the Contract. This is justified by indicating a reference in Article R58 of the CAS Code to *"applicable regulations"* (in this case FIFA RSTP and FIFA

Statutes) – to which the parties referred in the Contract – and which, in turn, points toward the Swiss law. To phrase it differently – the fact that the parties did refer explicitly to the FIFA *"laws and regulations"* indicates that the parties intended to have the Contract governed by the Swiss law.

56. The reference to the Swiss law in that context also stems from the specificity of sport, due to which a necessity arises to ensure uniform case law in matters of sport, irrespective of where a dispute has actually occurred.

VIII. MERITS

A. Issues

57. The main issue to be resolved by the Panel in ruling on this dispute is to decide whether the termination of the Contract by the Player was justified and – if so – what is the correct calculation of the compensation to which the Player is entitled. Yet to allow for a more structured argumentation, the questions which the Panel will answer can be further divided as follows:

    (a) Shall the actions of the Club, taken in February 2020, namely: (i) de-registration from the A-team list and (ii) sending the Player to train alone and/or with youth teams, be viewed as breaching the Club's obligations under the Contract?

    (b) Did the Player waive his rights with respect to being eliminated from the Club's A-team list by agreeing to execute Clause 3.18 of the Contract, according to which *"The Player may or may not be included in the A team list at the Coach's discretion"*?

    (c) Did the Player waive his right to terminate the Contract by waiting too long to do so after it became apparent that he had been eliminated from the Club's A-team list?

    (d) If the answer to question (a) above is yes and the answer to question (b) above is no, then is it reasonable, while calculating the compensation due to the Player, to consider the fact that the Player executed a contract with two new employers after the decision of DRC has been issued?

    (e) Assuming that statement (c) was reasonable, what rules are to be applied when ascertaining the amount by which the Player was able to mitigate his damages?

    (f) What is the base value from which to deduct any possible amount by which the damages have been mitigated?

    and, in consequence,

    (g) Are there any reasons to adjust the compensation granted by DRC?

B. Shall the actions of the Club, taken in February 2020, namely: (i) de-registration from the A-team list and (ii) sending the Player to train alone and/or with youth teams, be viewed as breaching the Club's obligations under the Contract?

58. The first issue the Panel will address is whether de-registration of the Player from the A-team list and sending the Player to train alone and/or with youth teams can be viewed as breaching the Club's obligations under the Contract.

59. It is undisputed that the Player terminated the Contract prematurely.

60. It is disputed, however, whether the Player was authorised to do so. While the Player claims that he had the right to terminate the Contract due to the Club's behaviour, the Club on the other hand believes that the Player terminated the Contract unilaterally, prematurely and without just cause.

61. The Super League is the main competition in Turkey. Not being registered for that competition means that a player is effectively prevented from competing and exercising his profession.

62. A contract between a football club and a player includes several essential obligations on the part of a club. As DRC rightly pointed out – among a player's fundamental rights under an employment contract is not only his or her right to a timely payment of his or her remuneration, but also his or her right to access training and to be given the possibility to compete with his or her fellow team mates in the team's official matches.

63. By refusing to register a player, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, violating one of his or her fundamental rights as a football player.

64. This is what the Club did in this case in the view of the Panel.

65. Liability of the parties to a contract is liability under the condition of fault of the party not performing correctly (Article 97 CO). This principle is complemented and qualified by the presumption of fault: the burden of proof is on the non-performing party causing the damage.

66. The non-performing party in the case at hand is – in the view of the Panel – the Club. While the Club did perform its financial obligations – albeit with some delays – it did fail to honor its other obligations, namely the obligation to allow the Player to exercise his profession.

67. It is common knowledge that an athlete who is not actively competing reduces his future career opportunities to the point of being forced to retire prematurely. Consequently, as CAS panel noted in CAS 2016/A/4560, *"Athletes have therefore a right to actively practice their profession"*.

68. In this case, the Player was effectively prohibited from actively practicing his profession.

69. Similarly – the Player's fundamental rights include his right to participate in collective football training. Football, being a team sport, requires collective football training. Depriving the Player of such possibility *de facto* deprives him of the possibility to play his sport.

70. In a somewhat similar case, CAS panel stated that *"not allowing a professional football player to train with his teammates could be – absent specific circumstances such as injury recovery – equivalent to a severe breach of said player's personality rights by the club which employs him (and implicitly of the employment agreement concluded between the two)"* (CAS 2017/A/5465).

71. In yet another case, a player was requested by the Head Coach to train with the U-21 team *"for a temporary period"* due to his poor and insufficient performance. The player then terminated his employment contract. CAS held that the club had violated the player's right to train and play with the first team, i.e. the right to be employed and perform his activity under the terms agreed, which could seriously prejudice his career as a professional (CAS 2018/A/6029).

72. In the view of the Panel, the Player cannot be accused of using the situation to the detriment of the Club. In certain situations, a player has objective reasons to believe that a club has no intention to perform its side of the employment contract and cannot reasonably be expected to carry on the employment relationship. Such situation arises where a player who was hired to play with a club's first team with the status of a professional footballer and was part of such club's first team during the previous season, is informed that he is no longer considered part of the club's first team for the upcoming season and that the club is discontented with his performance, is asked to train alone and/or with the U-21 team and is finally asked to find a new team before the beginning of the season (as in CAS 2017/A/5183).

73. The situation is similar in this case.

74. For the above reasons, the Panel believes that the Player terminating the Contract with the Club at fault was reasonable.

75. As stated above, this conclusion is confirmed by vast CAS jurisprudence as there are several CAS awards confirming that preventing a player from training with the first team constitutes a breach of contract.

C. Did the Player waive his rights with respect to being eliminated from the Club's A-team list by agreeing to execute Clause 3.18 of the Contract, according to which *"The Player may or may not be included in the A team list at the Coach's discretion"*?

76. It is undisputed that the Player was not registered on the list of players qualified to play in the Turkish Super League. It is also uncontested that the Player was neither specifically warned prior to 3 February 2020 that he was going to be de-registered, nor that he was made aware that such deregistration would, allegedly, be temporary in nature.

77. It is disputed, however, whether the Player consented *in abstracto* to such risk when signing the Contract. In it the Parties indicated that the Player may or may not be included on the A-team list and the fact of him not being included on the A-team list does not give him any rights, especially the right of unilateral termination for sporting just cause.

78. On the first glance, the conclusion at which DRC arrived – namely that the Player terminating the contract was reasonable – seems to contradict Clause 18 of the Contract.

79. However, further analysis of this issue leads one to believe that the DRC decision in that regard was correct.

80. It is commonly accepted that when analyzing contracts, one ought to examine the joint intention of the parties and the objective of the contract, rather than draw on the contract's literal wording. This rule – which certain legal frameworks have elevated to rank on a par with legal principles – requires one to seek such interpretation of the contract's wording which best reflects the parties' intentions (Article 18(1) CO).

81. Obviously, the Player's objective upon executing the Contract was to play football.

82. Playing football is essentially associated with two elements – collective training and participation in football matches organized by a relevant football association or by an entity duly authorised by it or cooperating with it. Any other activities – regeneration, motor and strength training, proper nutrition – are merely an addition to those two fundamental elements associated with playing football professionally.

83. For this reason, a professional football contract executed between a club and a player features – explicitly or implicitly – an obligation on the part of a club to provide a player with a possibility to participate in collective training and in football matches.

84. The above does not mean that each club must at all times and under all circumstances provide all of its players with both such possibilities. There are situations in which a player may be relegated to train individually (e.g. when recuperating from injuries)[1] or moved to a team participating in lower-class matches – the employment contract permitting.

85. This does not mean, however, that it is permissible to actually deprive a player of the possibility to participate in collective training and in football matches for extensive periods. This would contradict the nature of the obligatory relation between a club and a player.

86. The Panel, therefore, believes that the Player did not waive his rights to be able to exercise his profession, i.e. train and compete with other team members of the Club, and the provisions of Clause 18 of the Contract may not be interpreted in such manner.

87. Considering that the Super League is the main competition in Turkey, not being registered for that competition (regardless of whether it is dubbed *"non-registration for the A-team"*, *"de-registration"* or otherwise) meant that the Player was effectively prevented from competing and exercising his profession.

88. The Player had the right to interpret Clause 18 of the Contract not as much as one providing for the Club's right to actually prevent the Player from participating in Turkish Super League matches for a good part of the season – regardless of the Player's shape at a given time – but rather as one stipulating the risk of not making the line-up for a particular match. The latter is the standard risk of playing collective sports. This may be indicated, among others, by a reference in Clause 18 to "the Coach" as the individual making the decision in that regard.

[1] As in CAS 2017/A/5465.

However, it was determined in the course of the proceedings that the decision regarding the "A-team list", then reported to the Turkish Football Federation, is not made solely by the Coach.

89. That said, the Panel disagrees that Clause 18 of the Contract, according to which *"the Player may or may not be included in the A-team list at the Coach's discretion"*, means that it was permissible to actually deprive the Player of the possibility to compete in the Turkish Super League and to train with the Club's team for 5 months. Clause 18 of the Contract ought to – in the Panel's assessment – in the best case scenario be considered a rule indicating that the Coach may from time to time (before each match) decide as to who will make the line-up and in the worst case scenario be deemed forbidden as contradicting the nature of an employment contract between a football club and a player.

D. Did the Player waive his right to terminate the Contract by waiting too long to do so after it became apparent that he had been eliminated from the Club's A-team list?

90. The Club claims that the Player waited too long before terminating the contract. According to the Club, the accepted period of reflection in similar situations is no more than two to three business days following the event that gives rise to the grounds of just cause, while the Player proceeded with the termination seven days after the communication of his final notification. The Club refers to CAS award of 5 June 2015 (CAS 2014/A/3643) to support its view.

91. The Panel rejects the Club's argument.

92. While no unjustified breach of a valid contract should be endorsed, it is true that even the breaching party does have certain rights. One of those is the right to know what tools the other, non-breaching party will avail itself of. The breaching party should not be put in a position in which it would eventually find itself in a perpetually unstable contractual situation, not knowing whether and when the non-breaching party will terminate the contract for just cause. Unlike in the termination for convenience scenario, in which either party can terminate a contractual relationship at any time, the termination for cause can usually only be effected within a given time frame, following the breach giving rise to the termination itself. This is, among other things, so that the breaching party is not "caught by surprise" if the non-breaching party unexpectedly terminates the contract, especially for less recent breaches.

93. The Club's interpretation of the CAS award of 5 June 2015 (CAS 2014/A/3643) and of the case law of the Swiss Federal Court quoted therein, as well as applying its rationale to the facts of the present case is, however, incorrect.

94. The Player terminated the contract on 27 February 2020, which may by no means be considered belated. This is so for at least three reasons.

95. First, one may by no means deem that Player's terminating the Contract had been a surprise to the Club. Immediately after striking the Player off the A-team list, the Player attempted, first and foremost, to determine whether he had in fact been stricken off the list and – consequently – whether the Club had breached the Contract. In the follow-up correspondence, the Player

indicated on several occasions – via his legal counsel – that he viewed his deregistration from the Club's A-team list as a breach of the Contract by the Club and he intended to take any available legal action. The Club must have found it reasonable that the Player would have terminated the Contract.

96. Second, with regard to terminating within *"two to three business days"*, as referred to in the CAS Award of 5 June 2015 (CAS 2014/A/3643), the Panel opines that it may by no means be considered an absolute rule with no exceptions. In the CAS award itself, the ruling panel indicated that an extension of several days is tolerated under exceptional circumstances. Such exceptional circumstances did transpire in the present case, even due to the fact that the Player had on numerous occasions informed the Club of his intention to avail himself of the available legal measures and he had been actively seeking to resolve the issue.

97. Third, finally, the assessment as to the timeframe in which the non-breaching party can terminate a contract breached by the beaching party requires an assessment of all facts of the matter. In the present case it is clearly evident that the Player had actively sought to resolve the issue, addressing multiple letters to the Club within slightly over three weeks since the day on which he found he had been deregistered from the A-team list. The player was also within his rights to count on resolving the issue amicably. Naturally, then, he refrained from availing himself of the most severe measure – terminating the Contract.

98. Therefore, the Panel rejects the Club's argument that the termination was belated.

E. Is it necessary, while calculating the damages due to the Player, to consider the fact that the Player executed a contract with a new employer after the decision of DRC?

99. Pursuant to Article 17 of the FIFA RSTP, remuneration under a new employment contract(s) – if any – shall be taken into account in the calculation of the amount of compensation for breach of contract.

100. The above is driven by the obligation to mitigate damages, which, in one form or another, can be found in most of today's jurisdictions.

101. Pursuant to Article 17(1)(ii) of the FIFA RSTP, *"in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the 'Mitigated Compensation')"*.

102. Consequently, the Panel opines that the damage must be reduced by the amount which the Player was able to earn elsewhere.

103. In the present case, upon due consideration of all the evidence submitted, the Panel is satisfied that the Player has taken the necessary steps to mitigate the damage. The Club did not put forward any evidence demonstrating that Player would have failed to search for a new club, or would have declined to sign a more remunerative employment agreement. The fact that the Player received a higher remuneration under the Contract that he received under the

Karagümrük and the Erzurumspor Contracts is not in itself sufficient to mean automatically that the compensation payable from his former club should be reduced (CAS 2018/A/6029; CAS 2016/A/4605).

F. What rules are to be applied when ascertaining the amount by which the Player was able to mitigate his damages?

104. There is rather scant CAS jurisprudence with regard to the guidelines as to the principles to be applied when determining the value of the subsequent contract executed by a coach or a player with a new employer. Particularly vague is whether – for the purposes of calculating the value of the subsequent contract and, in consequence, the amount by which the damages will be mitigated – one ought to consider the original value of the subsequent contract or to take into account the actual circumstances, such as early termination of the subsequent contract, bonus payments which may or may not be paid out etc.

105. It is the Panel's opinion that one ought to, in principle, consider the entire value of the subsequent contract, with the caveat that this is true only as long as the Panel knows at the moment of delivering its verdict what that value is.

106. The Panel is aware that under such circumstances, the actual amount by which one managed to mitigate the damage may be lower or higher than originally anticipated. Such conclusion, however, has been derived for the following reasons.

107. When signing a subsequent contract a player or a coach may assume two things. First, that the subsequent contract will remain in force for the entire period for which is has been executed. Second, that all bonus payments to which a player or a coach is entitled to will be paid out by the subsequent club.

108. The Panel believes that the first assumption ought to be – as a rule – taken into account. Upon ruling as to the damages for breaching the original contract, both by the judicial bodies of the sports federations and by CAS, the subsequent contract – that under which the damages were mitigated – may still be in effect. This is the case here with respect to one of the two contracts signed by the Player after the termination of the Contract (with the Club), since the contract between the Player and the Erzurumsport is supposed to remain in force until 31 May 2021. Its subsequent termination by either of the parties will be impossible to be considered by the Panel in this case[2].

109. At the same time the Panel may only take bonuses into account if, in the view of the Panel, the probability that they will be paid is much higher than the risk that they will not be paid.

[2] See for example CAS 2013/A/3398, where the CAS award was issued before the lapse of the time period of the subsequent contract with a new employer. This did not prevent the Panel from deducting the entire amount of the new remuneration under the subsequent contract from the damages due from the former club – also that part of the remuneration which were due for the period (albeit very short) following the award.

110. In the case at hand, the Panel must consider two contracts which the Player signed after terminating the Contract with the Club.

111. With respect to the first of those two contracts, the one with Karagümürk, the Panel notes that it does not have any information which would allow it to assume that the conditional remuneration, as specified in Clause 6.1 of the contract with Karagümürk, has been paid. In particular, there is no evidence that the Player ever played more than 45 minutes in an official game – while being employed by Karagümürk – thereby triggering his right to remuneration over the minimum wage.

112. Moreover, the Panel notes that the Club did not specifically ask the Panel to deduct the amounts earned from Karagümürk – if any – and that such amount have not been specified.

113. For these reasons, the Panel believes that the prerequisites allowing to account for the payments, if any, made by the Player's first subsequent employer – Karagümürk – as mitigating the damages, have not been met.

114. With respect to the second contract, the one with Erzurumsport, the Panel notes that it does not have any information which would allow it to assume that the conditional remuneration, as specified in Clause 3b of the Erzurumspor Contract, will be or has been paid.

115. In the Panel's assessment, the prerequisites thus have been met allowing to account the entire fixed remuneration, agreed upon in the contract between the Player and his subsequent employer – Erzurumsport – as mitigating the damages (in the amount of EUR 50,000).

116. In the Panel's subsequent assessment, the prerequisites allowing to account the conditional remuneration, agreed upon in the contract between the Player and his subsequent employer – Erzurumsport – as mitigating the damages, have not been met.

G. What is the base value from which to deduct any possible amount by which damages have been mitigated?

117. There is unanimity within the sports law doctrine in that regard. When calculating the damages due, one ought to take into consideration the entire period during which the contract was to be in effect. The Panel shall compare two financial situations – one hypothetical and one actual. In the first one, the Panel shall take into account the Player's or hypothetical situation without the Club's breach of Contract and then compare this with the actual financial situation of the Player which follows the breach of Contract (CAS 2013/A/3398).

118. To put it yet in other words – the Panel shall take into account the entire residual value of the Contract.

119. In the case at hand, this is what DRC did.

120. DRC – in its decision – rightfully noted that the entire residual value of the Contract (EUR 1,325,000) ought to be the point of departure for calculating the damages due to the Player from the Club. This basic amount is not disputed by the Club.

H. Are there any reasons to adjust the compensation granted by DRC?

121. DRC itself noted that according to its constant practice, a remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract in connection with the Player's general obligation to mitigate his damages.

122. DRC did not take into account any amounts due to the Player or received by him under the Karagümrük Contract nor the Erzurumspor Contract since they were signed only after DRC has issued its decision. Yet in line with the practice of DRC, mentioned above, and the clear line of reasoning in earlier CAS rulings, the amount paid (or supposed to be paid) by the Player's subsequent employers – Karagümrük and Erzumspor – ought to be deducted from the above amount.

123. For this reason, the decision of DRC must be corrected by taking into account the facts which transpired after said decision has been issued.

124. From the amount of EUR 1,325,000 (residual value of the Contract), the amount of EUR 50,000 (fixed remuneration under the Erzurumspor Contract) shall be deducted.

125. FIFA has also imposed a transfer ban on the Club. Although no argument was raised in this regard, the Panel confirms that this sanction has been appropriate and proportionate.

ON THESE GROUNDS

The Court of Arbitration for Sport has ruled that:

1. The appeal filed by Antalyaspor A.Ş. on 26 August 2020 against the decision issued on 18 June 2021 by the FIFA Dispute Resolution Chamber is partially upheld.

2. Para. 2 of the operative part of the decision issued by the FIFA Dispute Resolution Chamber on 18 June 2020 is amended as follows:

"2. Antalyaspor A.Ş. must pay Aatif Chahechouhe the following amount:

- *EUR 1,275,00 (one million two hundred and seventy-five thousand Euros) as compensation for breach of contract without just cause plus 5% interest p.a. as of 6 March 2020 until the date of effective payment".*

3. Any further claims of Antalyaspor A.Ş. are rejected.

4. (…).

5. (…).

6. All other or further claims and counterclaims are dismissed.