Arbitration CAS 2021/A/7888 Yeni Malatyaspor FK v. Fabian Ceddy Farnolle, award of 1 February 2022

Panel: Prof. Jacopo Tognon (Italy), Sole Arbitrator

Football
Termination of the employment contract with just cause by the player
Inadmissibility of counterclaims
Request to establish the invalidity of an unbalanced clause
Validity of the employment contract
Non-payment or late payment of the remuneration
Financial difficulties linked to the COVID-19 pandemic
COVID-19 pandemic as a force majeure situation
Force majeure

1. **Article R55 of the CAS Code does not allow to file counterclaims or cross-appeals with the answer to the appeal. If a potential respondent wants to challenge part or all of a decision and request more than the confirmation of such decision, it must file an independent appeal with the CAS within the applicable time limit for appeal.**

2. **The party advantaged by the unbalance of a contractual clause is not entitled to request the invalidity of the clause because of such unbalance.**

3. **Neither Swiss law nor the FIFA Regulations make the validity of an employment contract dependable on the registration of such contract.**

4. **Non-payment or late payment of remuneration does in principle constitute just cause for termination of the relevant contract as the payment obligation is the main obligation that an employer has towards its employees. In this sense, if a club fails to meet its obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulties by reason of the late or non-payment is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the party has in future performance in accordance with the contract, to be lost. For a party to be allowed to validly terminate an employment contract it must have warned the other party in order to give the latter the chance to remedy and comply with its obligations.**

5. **External economic factors do not constitute a justification for non-compliance with financial obligations assumed by a contracting party. In this respect, financial difficulties or the lack of financial means of a club alleged to be linked to the COVID-19 pandemic cannot be invoked as justification for not complying with an obligation to pay.**

6. Neither in the FIFA COVID-19 Guidelines nor in the FIFA Circular 1720 did the Bureau of the FIFA Council determine that the COVID-19 outbreak was a force majeure situation in a specific country or territory, or that any specific employment or transfer agreement was impacted by the concept of force majeure. The Bureau of the FIFA Council stated that clubs or employees could not rely on the Bureau decision to assert a force majeure situation (or its equivalent). Whether or not a force majeure situation (or its equivalent) existed in the country or territory of an national association was a matter of law and fact, which had to be addressed on a case-by-case basis vis-à-vis the relevant laws applicable to any specific employment or transfer agreement.

7. For force majeure to exist there must be an objective (rather than a personal) impediment, beyond the control of the 'obliged party', that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible. This definition of force majeure must be narrowly interpreted as it represents an exception to the fundamental obligation of *pacta sunt servanda*, which is at the basis of the legal system and necessary for maintaining contractual stability.

I. PARTIES

1. Yeni Malatyaspor FK (the "Appellant" or "Malatyaspor") is a Turkish football club affiliated to the Turkish Football Federation (the "TFF"), which in turn is affiliated to the *Fédération Internationale de Football Association* ("FIFA").

2. Mr Fabien Ceddy Farnolle (the "Player" or the "Respondent") is a professional football player of French nationality.

3. The Appellant and the Respondent shall hereinafter be jointly referred to as the "Parties", where applicable.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the main relevant facts and allegations based on the Parties' submissions and allegations. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 16 July 2019, the Player and the Appellant executed an employment contract (the "Contract") valid from 30 August 2019 until 31 May 2020, for the duration of 1 season.

6. According to the Contract, the Appellant undertook to pay to the Respondent – for the season 2019/2020 – a total salary amounting to EUR 460,000 net which was payable as follows:

(i) Down payment as follows:

- EUR 60,000 – on 25 August 2019,

(ii) The residual amount in 10 monthly instalments as follows:

- EUR 40,000 net on 30 August 2019,
- EUR 40,000 net on 30 September 2019,
- EUR 40,000 net on 30 October 2019,
- EUR 40,000 net on 30 November 2019,
- EUR 40,000 net on 30 December 2019,
- EUR 40,000 net on 30 January 2020,
- EUR 40,000 net on 29 February 2020,
- EUR 40,000 net on 30 March 2020,
- EUR 40,000 net on 30 April 2020,
- EUR 40,000 net on 30 May 2020.

7. Regarding the next season, the Contract specified as follows:

"FOR 2020-2021 FOOTBALL SEASON (OPTIONAL SEASON): 450.000-EUROS NET

For avoidance doubt;

This contractual season will valid in case of Player(line-up)starts 25 official Super league game on 2019/2020 season. Therefore player contract extend automatically one more year on conditions set out below:

A. Club will be paid 50.000 EURO ON 25TH August 2020 for down payment to player.

*B. The rest of the aforementioned amount is to be paid to the PLAYER by the CLUB in 10 (ten) equal instalments on the below mentioned dates: 40.000 Euros (*10) start on 30 August 2020 - finish on 30 May 2021"* (sic).

8. The Contract stipulated also the following bonuses to the Player:

(i) *"if club entitled to participate UEL Group Stage: 30.000 Euro,*

(ii) *if club entitled to participate UCL Group Stage: 100.000 Euro,*

(iii) *if club win Turkish Cup: 25.000 Euro".*

9. The Player took part 34 league matches during the 2019/2020 season.

10. The Respondent by correspondence dated 10 June 2020 put the Appellant in default requesting the payment, within the 15-day period provided for Article 14 bis of the FIFA Regulations on the Status and Transfer of Players, of the amount of EUR 120,000 net, corresponding to the remuneration from March 2020 to May 2020, as follows:

(i) EUR 40,000 net as unpaid salary of March 2020,

(ii) EUR 40,000 net as unpaid salary of April 2020,

(iii) EUR 40,000 net as unpaid salary of May 2020.

11. On 25 June 2020, the Appellant answered to this letter. Noting that the requested salaries were due during the *"*Covid-19 period*"*, it referred to the measures adopted by FIFA and mentioned its endeavour to find appropriate collective agreement and the importance of equal treatment. It submitted a proof of payment of the salaries for March and April 2020 and deemed that the Respondent had no overdue payment on 25 June 2020 and that *"Player receivables from May will be evaluated equally with all other players after collective negotiations done".*

12. On 10 August 2020, the Respondent, who was in France for his holidays, informed the Appellant that due to certain health problems it was impossible for him to travel at least until 16 August 2020.

13. On 16 August 2020, the Respondent received oral information that the Appellant was considering terminating the Contract.

14. By a correspondence dated 17 August 2020, the Respondent replied to the Appellant asking Malatyaspor to:

(i) send him a written proposal to terminate the Contract,

(ii) send him the official training programme for the 2020/2021 season.

15. However, the Appellant did not reply to such letter.

16. The Respondent thus reiterated these requests on 24 August 2020.

17. On 31 August 2020, the Respondent sent another correspondence to the Appellant as follows:

"On 17 and 24 August 2020, we gave you formal notice on two occasions to inform my client of the dates and times of training, so that he could join the professional group and train. Furthermore, even though you have

indicated that you wish to terminate Mr FARNOLLE's employment contract, you have not sent us any information relating to the situation, or any formal statement or offer concerning this point. Our correspondence has not been followed by any reply.

Furthermore, even though you contacted us to propose a physical meeting to discuss the player's situation, you cancelled this meeting, without any reason or excuse.

This situation, which is extremely uncomfortable for a professional footballer, must absolutely stop. Indeed, the harassment and mobbing of which my client is a victim, carried out in a totally humiliating manner, has caused the player definite harm.

[…]

Moreover, by correspondence of today, we also draw your attention to non-payment of salary to the amount of 130,000 euros my client did not even receive his salary of May 2020, even though the season ended on July 25, 2020.

Consequently, you are requested, within 24 hours of receipt of this letter, to provide us with clarification on the points raised, failing which we shall be obliged to unilaterally terminate the said agreement to your detriment".

18. The correspondence remained however unanswered by the Appellant.

19. On 1 September 2020, the Appellant signed an employment contract, valid from 1 September 2020 until 31 May 2020, with another goal keeper, Mr Guido Gabriel Herrera.

20. On 2 September 2020, the Respondent notified the Appellant the unilateral termination of the Contract. In this letter, he alleges that the non-payment of an amount of EUR 130'000 (representing his salary for May 2020, the down payment due on 25 August 2020 as well as his salary for August 2020) as well as the harassment and discrimination of which he was a victim were just causes for such unilateral termination.

21. On 4 September 2020, the Respondent concluded an employment contract with the Turkish club - Erzurumspor, valid until 31 May 2021. According to the said contract, the Respondent was entitled to a total remuneration of EUR 225,000 for the season 2020/2021.

B. Proceedings before FIFA Dispute Resolution Chamber

22. On 23 October 2020, the Player lodged a claim before the FIFA Dispute Resolution Chamber (the "FIFA DRC") against the Appellant requesting the payment of EUR 490,000 net as *""outstanding remuneration" for the season 2019/2020 and 2020/2021"*, detailed as follows:

    (i) EUR 40,000 net as salary for May 2020;

    (ii) EUR 50,000 net due on 25 August 2020;

    (iii) EUR 400,000 net corresponding to the residual value of the Contract, since 30 August 2020;

(iv) EUR 225,000 net as *"moral and sporting damages"* corresponding to six monthly salaries.

23. Moreover, the Player requested 5% interest *p.a.* as from 30 days following the decision. Before FIFA, the Player explained that he was treated in a discriminatory manner and was not even registered before the TFF for the season 2020-2021.

24. The Club answered that this season was optional and that the Player's registration had thus not been requested by any of the Parties. The Club further underlined that the Player never came in Malatya and presented the following conclusions:

"a) 40.000.EUR for the salary of May 2020 has been deducted due to COVID -19 for the season 2019/2020 on the basis of equal treatment with all other players, therefore, the claim for the amount of 40.000.EUR should be inadmissible. b) There was no any contract for the season 2020/2021 between the parties the claim of 450.000.EUR has no any legal ground and has to be rejected. c) Regarding to allegedly sportive compensation claim has also no any legal basis and it is unjustified and therefore it has to be rejected".

25. Firstly, FIFA DRC analysed the issue of the automatic extension of the Contract for the 2020/2021 season.

26. In this regard, FIFA DRC established that, in principle, the Contract was valid from 30 August 2019 until 31 May 2020.

27. However, FIFA DRC noted that the Contract included a clause stipulating an extension for the season 2020/2021 (i.e. until 31 May 2021) *"in the case of Player (line-up) starts 25 official Super League game on 2019/2020 season"*.

28. FIFA DRC established that the abovementioned clause grants more rights to the Appellant than to the Respondent, as *"the player could not have the same capacity to decide over his own participation in official matches"*.

29. Furthermore, FIFA DRC recalled its longstanding jurisprudence, according to which, *"a clause which gives one party the right to unilaterally cancel or extend the contract, without providing the other party to the contract with analogous rights is a clause with disputable validity"*.

30. Moreover, FIFA DRC emphasized that the said clause *"was drafted in a manner that would allow the player to believe in good faith that the contract would be valid until 31 May 2021"*.

31. Taking the above into account, FIFA DRC decided that the Contract was valid until 31 May 2021.

32. Secondly, FIFA DRC examined the circumstances involving the early termination of the Contract. In this regard, it observed, at first, that the Player sent a termination letter on 2 September 2020, after having sent a default notice on 10 August 2020 in which the Player notified the existence of outstanding salaries for an amount equal to EUR 130,000 net, as well as the occurrence of *"harassment and mobbing"*.

33. As it was already established, the Contract was valid until 31 May 2021 and, therefore, the Club had an obligation to register the Respondent for 2020/2021 season.

34. Moreover, FIFA DRC stated that *"among the player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow team mates in the team's official matches. In this context, the DRC emphasized that 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 fundamental rights as a football player"*.

35. In view of the above, FIFA DRC established that the Respondent terminated the Contract with just cause.

36. Furthermore, FIFA DRC considered the Player's requests with reference to the outstanding salaries.

37. At first, FIFA DRC noted that, according to the Club, EUR 40,000 net for the salary of May 2020 was deducted due to COVID-19 for the season 2019/2020 on the basis of equal treatment with all other players.

38. In this respect, FIFA DRC made reference to the guidelines issued by FIFA, which aim at providing appropriate guidance and recommendations to member associations and their stakeholders, to both mitigate the consequences of disruptions caused by COVID-19 and ensure that any response is harmonised in the common interest. FIFA DRC also referred to the FIFA COVID-19 FAQ, which provides clarification with regard to the most relevant questions in connection with the regulatory consequences of the COVID-19 outbreak.

39. On the basis of the abovementioned documents, FIFA DRC established that the COVID-19 outbreak was not declared by FIFA as a force majeure situation in any specific country or territory, nor that any specific employment or transfer agreement was impacted by the concept of force majeure. Whether there was a situation of force majeure has to be considered on a case-by-case basis, taking into account all the relevant circumstances.

40. FIFA DRC also emphasized that the Club did not provide evidence supporting any type of negotiation nor decision performed in good faith.

41. In this regard, FIFA DRC considered that the Club had no reason to withhold the Respondent's remuneration.

42. FIFA DRC also examined which amounts of the Player's salary were outstanding as of 2 September 2020 - date of termination of the Contract. After having properly examined the case at stake, FIFA DRC established that the amount of EUR 130,000 net was outstanding, corresponding to the remuneration for May 2020 and August 2020 (i.e. EUR 40,000*2) as well as payment due on 25 August 2020 (i.e. 50,000).

43. Taking into account the principle of *pacta sunt servanda*, FIFA DRC stated that the Appellant shall pay to the Respondent the total outstanding remuneration of EUR 130,000 plus 5% interest p.a. over said amount as from 30 days following the notification of the decision.

44. Furthermore, FIFA DRC decided that in accordance with art. 17 par. 1 of FIFA RSTP, the Appellant was liable to pay compensation to the Respondent and in this respect, FIFA DRC calculated the amount of compensation for breach of Contract.

45. Bearing in mind the wording of art. 17 para. 1 of FIFA RSTP and both the Contract and employment contract with the new club of the Player, FIFA DRC concluded that as from the date of termination of the Contract without just cause, i.e. September 2020, until 31 May 2021, the Player would have received in total EUR 360,000 (i.e. October 2020 until 31 May 2021, i.e. 9*40,000).

46. The amount of EUR 360,000 was served by FIFA DRC as the basis for the final determination of the amount of compensation for breach of Contract.

47. Furthermore, FIFA DRC noted that on 4 September 2020, the Respondent concluded a contract with the Turkish club, Erzurumspor, which was valid until 31 May 2021. The Respondent was entitled to a total remuneration of EUR 225,000 for the season 2020/2021.

48. In this regard, the mitigated compensation would amount to EUR 135,000 (i.e. 360,000 - 225,000).

49. Moreover, FIFA DRC recalled the provision of art. 17 para. 1 ii of FIFA RSTP, according to which, subject to early termination of the contract being due to overdue payables, in addition to the mitigated compensation, the Respondent should be entitled to an amount corresponding to three monthly salaries.

50. Taking the above into account, FIFA DRC decided that the Respondent was entitled to the said additional compensation for EUR 122,700 (i.e. 450,000/11*3).

51. Consequently, FIFA DRC determined that the final compensation payable to the Respondent shall amount to EUR 257,700.

52. On 25 March 2021, the FIFA DRC issued its decision in favour of the Player and communicated the grounds to the Parties on 1 April 2021. In light of the above, the operative part of the FIFA decision reads as follows:

> *"1. The claim of the* [Player]*, Fabien Ceddy Farnolle, is partially accepted.*
>
> *2. The* [Club]*, Yeni Malatyaspor, has to pay to the* [Player]*, the following amount:*
>
> - *EUR 130,000 as outstanding remuneration, plus 5% interest p.a. as from 30 days following the notification of this decision until the date of effective payment;*

- *EUR 257,770 as compensation for breach of contract without just cause, plus 5% interest p.a. as from 30 days following the notification of this decision until the date of effective payment;*

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

[…]

6. In the event that the amount due, plus interest as established above is not paid by the Respondent 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".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. The written proceedings

53. On 21 April 2021, the Appellant lodged a statement of appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the " CAS Code") with the Court of Arbitration for Sport (the "CAS") challenging the FIFA DRC Decision dated 25 March 2021. In its statement of appeal, it requested the appointment of a sole arbitrator, while on 30 April 2021 the Respondent agreed with such request.

54. In accordance with Article R51 of the CAS Code, the Appellant filed its Appeal Brief on 30 April 2021.

55. On the same day, the Respondent requested the CAS Court Office to fix the time-limit for the filing of his answer after the Appellant's payment of the advance of the cost, pursuant to Article R55 of the CAS Code. This request was granted on 3 May 2021 by the CAS Court Office.

56. On 22 June 2021, the Parties were informed that the President of the CAS Appeals Arbitration Division appointed Mr Jacopo Tognon, attorney-at-law in Padova, Italy, as Sole Arbitrator in this procedure.

57. On the same date, the CAS Court Office further invited the Respondent to file his answer by 12 July 2021.

58. On 5 July 2021, the Respondent asked the CAS Court Office to extend the time-limit for the filing of its Answer until 29 July 2021.

59. The CAS Court Office, by a letter dated 9 July 2021 and with the Appellant's tacit agreement, extended the time-limit for the filing of the Answer until 29 July 2021.

60. In accordance with Article R55 of the CAS Code, the Respondent filed his Answer on 29 July 2021.

61. On 2 August 2021, the CAS Court Office invited the Parties to inform the CAS Court Office by 9 August 2021 whether they prefer a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

62. By letter dated 3 August 2021, the Appellant requested the holding of a hearing.

63. By e-mail of 4 August 2021, the Respondent informed the CAS Court Office that he did not deem a hearing necessary in this matter.

64. On 11 August 2021, the CAS Court Office informed the Parties that the Sole Arbitrator, after having duly considered their positions regarding the necessity of a hearing, had decided to hold a hearing in the present case.

65. On 20 August 2021 and after having been duly consulted the Parties were informed that the hearing would be held on 22 October 2020 via videoconference. The Parties were further provided with a copy of the award issued in the case *CAS 2020/A/7603* informed that they would have the opportunity to submit their views on its relevancy during the hearing-

66. On 4 October 2021, the CAS Court Office, on behalf of the Sole Arbitrator, issued an Order of Procedure, which was duly signed by the Parties, on 7, respectively 9, October 2021.

B. The hearing

67. The hearing was held on 22 October 2021 via videoconference. Attending – in addition to the Sole Arbitrator and Ms Pauline Pellaux, Counsel to the CAS – were the following:

- On behalf of the Appellant:
  - (i) Mr Nihat Guman, Counsel
- On behalf of the Respondent:
  - (i) Mr Thomas Normand, Counsel

68. The Parties presented in full their arguments and evidences. At the beginning of the hearing the Sole Arbitrator, informs the Parties that, as per CAS constant jurisprudence, the Respondent's counterclaim which amount to a cross-appeal were deem inadmissible.

69. At the closing of the hearing, they confirmed that they had no objections in respect of their right to be heard and that they had been given the opportunity to fully present their cases.

IV. SUBMISSIONS OF THE PARTIES

70. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every argument advanced by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions and claims made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant's submissions

71. The Appellant's submissions, in essence, may be summarised as follows:

72. The Appellant argues that acceptance and presumption of FIFA DRC that the Contract was valid until 31 May 2021 *"has led to the wrong decision and effected entire consequences of FIFA DRC decision"*.

73. According to the Appellant, the contractual relationship ended on 31 May 2020. Therefore, the Appellant is of the opinion that the Respondent could have demanded the payment of EUR 40,000 only the Appellant as outstanding salary.

74. In view of the Appellant, the contractual clause that extended the Respondent's Contract to the end of the 2020/2021 season was invalid and never came into force, as it was only optional. FIFA further recognized the invalidity of such clause since it was optional and unilateral.

75. Furthermore, the Appellant states that the optional clause at stake required both Parties' mutual agreement for the Contract to be valid the next season. Indeed, the Contract was registered to TFF only for the season 2019/2020 and such circumstance was under the knowledge of both Parties.

76. Moreover, the Appellant emphasises that *"the parties mutually agreed only for one season of the contract which was for the season 2019/2020. TFF registration proves this clear fact"*. The Appellant strongly states that there was no mutual agreement between the Parties for the Contract to be valid during the 2020/2021 season.

77. In this regard, the Appellant notes that the Respondent *"did not have any request to register the contract to TFF for the optional season of 2020/2021"*, while registration is required under Articles 13 and 14 of the TFF Regulations. The Club deems that FIFA's failed to take into account these provisions and the Player's obligations to register. Therefore, according to the Appellant, the contractual relationship with the Respondent ended on 31 May 2020 and there was no contractual relations between the Parties for the season 2020/2021. It thus signed an employment agreement with another goal keeper.

78. In view of the above, the Appellant states that the Respondent's demands to receive compensation for EUR 257,770 and payment of outstanding salary for EUR 90,000 have no legal basis.

79. Regarding the claim of the Respondent as to the outstanding salary for May 2020 in the amount of EUR 40,000, the Appellant referred to the COVID-19 pandemic as the reason for the deduction of the salary of May.

80. The Appellant states that it was deeply affected by the COVID-19 pandemic, which made it difficult to pay salaries during the pandemic lockdown period. Therefore, the Appellant made collective bargaining agreements with other players, regarding deduction of their salaries, and requested the same approach from the Respondent as well.

81. The Appellant's requests for relief are the following:

"We kindly request from CAS Panel that as we have explained in details above annulment of the FIFA DRC decision dated on 25 March 2021 notified to the parties on 01 April 2021".

B. The Respondent's submissions

82. The Respondent's submissions, in essence, may be summarised as follows:

83. Firstly, the Respondent underlines that the contractual clause regarding automatic extension of the Contract for the 2020/2021 season was drafted in the manner that would allow the Respondent *"to believe in good faith that his Employment Contract would be valid until 31 May 2021 for several reasons as follow*:

(i) *the only condition for this optional season to bind the parties to continue the contract for the 2020/2021 season is the number of matches played by the player in the 2019/2020 season, i.e. a minimum of 25 matches;*

the Player started 34 league matches during the 2019/2020 season;

(ii) *as a consequence of the fulfilment of this sole condition, the Employment Contract clause provides that the Employment Contract will automatically be extended for a further season (2020/2021 Season)".*

84. Hence, the Respondent states that the position of the Appellant is based on bad faith.

85. Furthermore, the Respondent refers to the Appellant's argument that the optional clause *"requires both parties mutual agreement for validity for next season"*. In this regard, the Respondent states that said clause *"is clear insofar as the extension of the contract is automatic as soon as the condition is fulfilled"* that is what occurred in this case.

86. The Respondent emphasises that the Contract was automatically extended for the 2020/2021 season and the Respondent should receive a full salary for this period.

87. Moreover, according to the Respondent, the Appellant was solely responsible to register the Contract with TFF.

88. Finally, as the Respondent was not registered with the TFF - which was under the responsibility of the Appellant - the Respondent was eligible to sign a contract with a new club.

89. Secondly, the Respondent analyses the issue of outstanding payments.

90. The Respondent underlines that the FIFA DRC duly determined the amount of outstanding remuneration (EUR 130,000).

91. Furthermore, the Respondent states that he never agreed on a salary reduction and the Appellant never informed the Respondent that it would unilaterally reduce his salary.

92. As to the cancellation of May 2020 salary, the Respondent also emphasises that he never agreed to it and the arguments of the Appellant related to COVID-19 pandemic are irrelevant to this case. The Player underlined here that, with its letter of 25 June 2021, the Club only informed him of *"a suspension of the payment of the salary for the month of May 2020 by application of the principle of equal treatment between players, but not a cancellation, in particular a cancellation with his agreement"*.

93. The Respondent also points out that the Appellant failed to register the Respondent with TFF for 2020/2021 season as the Contract was valid until 31 May 2021.

94. In light of the above, the Respondent states that he had a just cause to terminate the Contract.

95. The Respondent further refers to the issue of the amount of compensation due to the Respondent for having terminated the Contract with just cause.

96. In this regard, the Respondent mentions the wording of art. 17 para. 1 of FIFA RSTP which entitled the Respondent to receive compensation from the Appellant for having terminated the Contract with just cause.

97. Taking into account the fact that there was no compensation clause included in the Contract, the Respondent underlines that *"the amount of compensation shall be calculated with due consideration for the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the Player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period"*.

98. Therefore, the Respondent states that the Appellant should compensate the Respondent in the amount of EUR 490,000 which should be determined as follows:

    (i) EUR 130,000 as outstanding salary corresponding to the Respondent's salary for May 2020, August 2020 (i.e. EUR 40,000*2) and the payment due on 25 August 2020 (i.e. EUR 50,000),

(ii) EUR 360,000 corresponding to the Respondent's salary for 2020/2021 season as of 2 September 2020 (i.e. EUR 40,000*9 instalments from 30 September 2020 to 31 May 2021).

99. In the Respondent's opinion, FIFA DRC wrongly determined the amount of compensation with respect to the mitigated compensation. Indeed, although the Respondent signed a contract with a new club, he did not receive any salary; therefore, the amount of compensation due to the Respondent should not be mitigated.

100. In this regard, the Respondent considers the amount of EUR 360,000 as the *"final amount of compensation for breach of contract in the case at hand"*.

101. Furthermore, due to the conduct of the Respondent and his career, the Respondent requests that the Appellant *"is condemned to pay, in accordance with the jurisprudence of CAS, as per damages relating to the specificity of sport, a sum equal to Three months of remuneration due in accordance with the Employment Contract, that is to say, EUR 122,700 net (i.e. 450,000/11 * 3)"*.

102. In this regard, the Respondent refers to the CAS jurisprudence (CAS 2012/A/2874; CAS 2009/A/1880 & 1881, para. 109; CAS 2007/A/1298, 1299 & 1300, para. 132) and articles 99, par. 3, and 42, par. 2, of the Swiss Code of Obligations, where it was stated that *"the specificity of sport derives, in general lines, from the specific nature and need for sport to achieve solutions which simultaneously consider the interests of a player and of a club, as well as of the whole football community"*.

103. According to the Respondent, *"the CAS jurisprudence defines that the criteria to establish such specificity of sport is met by "reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interests at stake, the sporting circumstances and the sporting issues inherent to the single case (CAS 2009/A/1880 & 1881)""*.

104. The Respondent's requests for relief are the following:

a) "Confirm FIFA's decision with Reference 20-01551 dated on 1st April 2021, in the following points:

b) Confirm that the Appellant has to pay to the Respondent the following amounts:

*i) EUR 130,000 € as outstanding remuneration corresponding to the Player's remuneration for May 2020, August 2020 (i.e 40,000 € *2) and the payment due on 25 August 2020 (i.e 50,000 €);*

*ii) EUR 360,000 corresponding to the Player's remuneration for 2020/2021 Season as of 2 September 2020 (i.e EUR 40,000 * 9 instalments from 30 September 2020 to 30 May 2021);*

iii) EUR 122,700 net as damages relating to the specificity of sport, a sum equal to Three months of remuneration due in accordance with the Employment Contract;

iv) all amounts claimed shall be considered as net;

v) order the payment of legal interest at a rate of 5% p.a. to the values due by MALATYASPOR to the Player, starting to count on the date when each of them became due until effective payment;

vi) Order MALATYASPOR to pay any legal expenses or costs faced by the Player in an amount prudently estimated in the excess of 10.000.00 € (ten thousand Euros).

c) Order MALATYASPOR to bear any and all administrative and procedural costs, which have already been incurred or may eventually be incurred in connection with these proceedings".

V. JURISDICTION

105. 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 the 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".

106. Article 58 para. 1 of the FIFA Statutes provides as follows:

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

107. The jurisdiction of CAS derives from Article 58 para. 1 of the FIFA Statutes and Article R47 of the CAS Code. Furthermore, the jurisdiction of the CAS is not contested by any of the Parties in these proceedings and is confirmed by the signature of the Order of Procedure. Therefore, it follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

A. Admissibility of the appeal

108. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. […]".*

109. Furthermore, Article 58 para. 1 of the FIFA Statutes provides that:

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

110. The Appeal was filed within the 21-day limit set by Article 58 para. 1 of the FIFA Statutes and Article R49 of the CAS Code. The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office.

111. The Sole Arbitrator, therefore, finds the appeal admissible.

B. Inadmissibility of the counter-claims

112. On the contrary, the Sole Arbitrator notes that the Player in his requests for relief asked for a higher compensation for breach of contract (namely EUR 360.000 instead of EUR 135.000). In other words, the Player requested more than the confirmation of the Appealed Decision, while he failed to appeal such decision.

113. Such request cannot be considered or decided by the Sole Arbitrator as it is not admissible in accordance with the CAS Code. In this regard, the Sole Arbitrator notes that the CAS Code (Art. R55) does not allow to file counterclaims or cross-appeals with the answer to the appeal.

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

115. The Sole Arbitrator shares the view expressed by the authors cited above and finds that the Player's request, as set out above, go beyond a mere statement of defence and that, in case of being upheld, have the effect of prejudicing the position of the Club. In other words, in order for the Player to have validly raised this issue, it should have filed its own independent appeal against the Appealed Decision (see, for example, CAS 2017/A/5481 paras. 42 - 46 and CAS 2017/A/5336 para. 116, CAS 2020/A/6753, paras. 99-102).

116. Accordingly, the Player's requests for relief which go beyond a request for the confirmation of the Appealed Decision and which are not relating to the costs in connection with the present procedure are inadmissible.

VII. APPLICABLE LAW

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

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

118. Article 57 para. 2 of the FIFA Statutes provides as follows:

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

119. As a result, the Sole Arbitrator shall decide the present matter according to the relevant FIFA regulations, and more specifically the FIFA RSTP, and the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules"), as in force at the relevant time of the dispute, namely the June 2020 edition with respect to the FIFA RSTP and the January 2021 edition with respect to the FIFA Procedural Rules, and Swiss law shall be applied subsidiarily.

VIII. MERITS

120. The Sole Arbitrator has identified the following main issues, which will be addressed by answering to the following questions:

(a) Was the Contract automatically extended for the 2020/2021 season?

(b) Did the Player have just cause to terminate the Contract unilaterally and prematurely?

(c) What is the compensation due?

A. Was the Contract automatically extended for the 2020/2021 season?

121. The Contract included a clause which provided an extension for the season 2020/2021 (i.e. until 31 May 2021) *"in the case of Player (line-up) starts 25 official Super League game on 2019/2020 season"*.

122. According to the Appellant, the abovementioned clause was only optional and for its validity required the consent of both Parties. Considering that there was no agreement with respect to the abovementioned extension, such clause shall be considered invalid and not applicable.

123. The Respondent, in turn, emphasises that the Contract was automatically extended for the 2020/2021 season and, therefore, the Respondent is entitled to receive a full salary for such period.

124. In this respect, the Sole Arbitrator is of the opinion that the Contract would have been automatically extended if the condition regarding playing 25 matches in the 2019/2020 season had been met.

125. In this respect, the Sole Arbitrator notes that said clause granted to the Appellant a unilateral capacity to decide the extension of the Contract; indeed, it was up to Malatyaspor to decide whether the Player could play or not in 25 official matches during the season. Furthermore, the Sole Arbitrator is of the opinion that since the Appellant, was the party advantaged by this unbalance, it is not entitled to request the invalidity of the clause because of such unbalance.

126. Taking into account the factual circumstances of the case at stake, the Sole Arbitrator finally notes that this provision is clear and that since the Appellant played in 34 matches in the 2019/2020 season, the stipulated condition is, in any event, fulfilled.

127. In view of the above, the Sole Arbitrator states that the Contract was valid until 31 May 2021.

128. Regarding the Club's allegations relating to the registration of the Contract as well as of the Player with the TFF for the season 2020/2021, the Sole Arbitrator notes that, neither Swiss law nor the FIFA Regulations, made the validity of an employment agreement dependable on such registrations. He further notes that while the Appellant based its argumentation on Articles 13 and 14 of the TFF Regulations, according to Article 14, it was in any event the Club, and not the Player, who had to submit the relevant documentation to the TFF.

129. The Sole Arbitrator finally notes that the Player duly informed the Club about the reasons of his incapacity, for health reasons, to join the Club before 16 August 2020 and that his absence is thus without any impact on the extension of the Contract.

B. Did the Player have just cause to terminate the Contract unilaterally and prematurely?

130. The second issue to be resolved is if the Respondent terminated the Contract with just cause as it is undisputed between the Parties that the Respondent terminated the Contract on 2 September 2020.

131. Article 13 of the FIFA RSTP defends the principle of contractual stability and it expressly states *"a contract between a professional and a club may only be terminated on expiry of the term of the contract or by mutual agreement"*.

132. In any event, the principle referred to above may be subject to derogation. Indeed, according to Article 14 of the RSTP *"a contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause"*.

133. In this respect the FIFA commentary on the FIFA RSTP (2006 edition) reads as follows:

> *"1. The principle of respect of contract is, however, not an absolute one. In fact, both a player and a club may terminate a contract with just cause, i.e. for a valid reason.*
>
> *2. The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally.*
>
> *[…]*
>
> *5. In the event of just cause being established by the competent body, the party terminating the contract with a valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions.*

6. On the other hand, the other party to the contract, who is responsible for and at the origin of the termination of the contract, is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed".

134. The concept of *"just cause"* has often been analysed by CAS panels, relying on Swiss law and in particular on the Swiss Code of Obligations ("CO"). It is now well-established by CAS jurisprudence that: *"Under Swiss law, such a 'just cause' exists whenever the terminating party can in good faith not be expected to continue the employment relationship (Article 337 para. 2 CO). The definition of 'just cause', as well as the question whether 'just cause' in fact existed, shall be established in accordance with the merits of each particular case (ATF 127 III 153 consid. 1 a). As it is an exceptional measure, the immediate termination of a contract for 'just cause' must be accepted only under a narrow set of circumstances (ibidem). Only a particularly severe breach of the labour contract will result in the immediate dismissal of the employee, or, conversely, in the immediate abandonment of the employment position by the latter. In the presence of less serious infringement, an immediate termination is possible only if the party at fault persisted in its breach after being warned (ATF 129 III 380 consid. 2.2, p. 382). The judging body determines at its discretion whether there is 'just cause' (Article 337 para. 3 CO). As a result, only a violation of a certain severity justifies the early termination of a contract; and a breach is sufficiently severe only if it excludes the reasonable expectation of continuation of the employment relationship"*

(CAS 2015/A/4046 & 4047, at para. 98, referring to Article 337 para. 2 CO; see also CAS 2014/A/3463 & 3464 and CAS 2008/A/1447).

135. In addition to the above, Article 14bis of the FIFA RSTP introduced a specific provision of termination of contracts for just cause in case of outstanding salaries. Specifically, such Article reads 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.

3. […]*".*

136. CAS jurisprudence consistently ruled that the non-payment or late payment of remuneration does in principle constitute just cause for termination of the relevant contract based on the fact that the payment obligation is the main obligation that employers have towards their employees.

137. In this sense, if a club *"fails to meet its obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulties by reason*

of the late or non-payment is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the party has in future performance in accordance with the contract, to be lost" (CAS 2018/A/6605, para. 67; CAS 2016/A/4693, para. 101; CAS 2013/A/3398; CAS 2013/A/3091, 3092, 3093).

138. Furthermore, for a party to be allowed to validly terminate an employment contract it must have warned the other party in order to give the latter the chance to remedy and comply with its obligations (CAS 2018/A/6605; CAS 2015/A/4327; CAS 2013/A/3398; CAS 2013/A/3091, 3092, 3093).

139. The Sole Arbitrator therefore deems necessary to determine whether the Appellant's breach of the terms of the employment contract was such as to allow the Respondent to terminate unilaterally and prematurely the Contract for just cause.

140. As a matter of fact, it needs to be established if the Appellant unlawfully failed to pay the Respondent at least two monthly salaries on the due dates.

141. On 10 June 2020, the date of which the default notice was sent, the Appellant had not paid an amount of EUR 120,000 net, corresponding to :

(i) EUR 40,000 net as unpaid salary of March 2020,

(ii) EUR 40,000 net as unpaid salary of April 2020,

(iii) EUR 40,000 net as unpaid salary of May 2020.

142. On 2 September 2020, the date in which the Contract was terminated, the Appellant was in debt of the total amount of EUR 130,000 net - which corresponded to:

(i) EUR 40,000 net as outstanding salary for May 2020,

(ii) EUR 40,000 net as outstanding salary for August 2020,

(iii) EUR 50,000 net as payment due on 25 August 2020.

143. Therefore, it can be determined without any doubt that the Appellant unlawfully failed to pay the Respondent at least two monthly salaries on the due dates. Thus, the first condition for the application of Article 14bis of FIFA RSTP is fulfilled.

144. Secondly, the Sole Arbitrator analyses the second condition of application of Article 14bis of FIFA RSTP i.e., whether the Respondent put the Appellant in default in writing and has granted a deadline of at least 15 days for the Appellant to fully comply with its financial obligations.

145. As it is undisputed between the Parties, on 10 June 2020, the Respondent sent a formal notice to the Appellant, regarding the outstanding salary due to the Respondent informing the Club about the possibility to terminate the Contract on the basis of Article 14bis of FIFA RSTP.

146. Taking into account that as of 2 September 2020 the Respondent's salary was still outstanding in the amount of EUR 130,000, including the salary of May 2020 which was claimed on 10 June 2020, the Appellant did not remedy the default within the 15-day deadline.

147. The Sole Arbitrator notes that the Appellant recognized that it did not pay this amount. The Appellant essentially claims that no salaries were due for the season 2020/2021 since the Contract was not extended, such arguments shall however be rejected for the reasons set out above. For the salary of May 2020, the Appellant essentially claims that, for unforeseen circumstances, the salaries could not be paid due to the COVID-19 pandemic, which the Appellant argues that it was qualified by FIFA as force majeure allowing the Appellant to suspend payments.

148. As an introductory remark, the Sole Arbitrator notes that according to well-established CAS jurisprudence, external economic factors do not constitute a justification for non-compliance with financial obligations assumed by a contracting party. The CAS award in case CAS 2018/A/5537 states the following in this respect: *"[t]he alleged financial difficulties the Appellant faced because of the economic crisis in Egypt, and the consequential loss of value of the local currency, are not valid arguments in view of well-established CAS jurisprudence. Financial difficulties or the lack of financial means of a club cannot be invoked as justification for not complying with an obligation to pay (cf. CAS 2016/A/4402 par. 40; CAS 2014/A/3533, par. 59; CAS 2005/A/957, par. 24)"* (par. 80).

149. In this respect, the Sole Arbitrator deems it appropriate to consider the content of the COVID-19 Guidelines as well as the FIFA COVID-19 FAQ issued by the FIFA, since they elicit the purpose of providing a common set of guidelines and recommendations in order to mitigate the consequences of the COVID-19.

150. The Sole Arbitrator, however, notes that the FIFA COVID-19 Guidelines as well as the FIFA COVID-19 FAQ did not declare the COVID-19 pandemic as a force majeure event.

151. Indeed, the answer to the question of the FAQ in the FIFA Circular 1720 *"Did the Bureau of the FIFA Council declare a "force majeure" situation in any territory? Can this declaration be relied upon by MAs, clubs, or employees?"* expressly stated as follows:

"Article 27 of the RSTP allows the FIFA Council to decide "(…) matters not provided for and in cases of force majeure".

In this context, on 6 April 2020, the Bureau made several decisions regarding regulatory and legal issues as a result of COVID-19. In order to temporarily amend the RSTP, the Bureau relied upon article 27 as its source of power, determining that the COVID-19 outbreak was a matter not provided for and a force majeure situation for FIFA and football generally.

The Bureau did not determine that the COVID-19 outbreak was a force majeure situation in a specific country or territory, or that any specific employment or transfer agreement was impacted by the concept of force

majeure. For clarity: clubs or employees cannot rely on the Bureau decision to assert a force majeure situation (or its equivalent).

Whether or not a force majeure situation (or its equivalent) exists in the country or territory of an MA is a matter of law and fact, which must be addressed on a case-by-case basis vis-à-vis the relevant laws that are applicable to any specific employment or transfer agreement".

152. It is also worth mentioning the CAS finding in CAS 2018/A/5607 case, where the Panel considered that *"For "force majeure" to exist, there must be an objective (rather than a personal) impediment, beyond the control of the obliged party, that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible. This definition must be narrowly interpreted because, as a justification for non-performance, it represents an exception to the fundamental obligation of pacta sunt servanda".*

153. This approach was also confirmed in the CAS finding in CAS 2020/A/7603 case, where the Sole Arbitrator considered that based on the FIFA COVID-19 Football Regulatory Issues *"the Appellant cannot rely on the FIFA Bureau decision to assert a force majeure defence".*

154. In CAS 2015/A/3909 (which refers to a decision of the SFT, 2C_579/2011, consid. 1 of 21 July 2022 – which in fact quotes the finding of the lower instance), the Panel held that *"force majeure takes place in the presence of extraordinary and unforeseeable events that occur beyond the sphere of activity of the person concerned and that impose themselves on him/her in an irresistible manner".* According to other Panels, *"force majeure implies an objective (rather than a personal) impediment, beyond the control of the "obliged party", that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible"* (CAS 2018/A/5537; CAS 2017/A/5496; CAS 2013/A/3471; CAS 2006/A/1110; CAS 2002/A/388). Consistently with the SFT, several CAS Panels have insisted on the fact that *"The conditions for the occurrence of force majeure are to be narrowly interpreted, since force majeure introduces an exception to the binding force of an obligation"* (CAS 2018/A/5537; CAS 2015/A/3909; CAS 2006/A/1110).

155. In addition, in accordance with the principle of the burden of proof, which is a basic principle in every legal system that is also set forth in Article 8 of the Swiss Civil Code, each party to a legal procedure bears the burden of corroborating its allegations. In other words, any party deriving a right from an alleged fact shall carry the burden of proof (see IBARROLA J., La jurisprudence du TAS en matière de football – Questions de procédure et de droit de fond, in BERNASCONI/RIGOZZI (eds.), The Proceedings before the Court of Arbitration for Sport, Berne 2007; CAS 2009/A/1810 & 1811; CAS 2017/A/5182).

156. In view of the above, the Sole Arbitrator finds that the Appellant did not submit any evidence to prove that the financial effect of COVID-19 pandemic as well as the temporary suspension of sports activities caused serious financial difficulties to the Appellant that affected its possibility to make payments.

157. The Sole Arbitrator further notes that the "force majeure" approach submitted by the Appellant must be dismissed for several reasons. The suspension of football related activities in Turkey was in any event temporary and the financial difficulties the Appellant alleged (but

failed to prove) were associated with it do not – as such - excuse the failure to make the required payments in accordance with well-established jurisprudence of CAS.

158. The Sole Arbitrator further agrees with the FIFA DRC findings according to which among a player's fundamental rights under an employment contract, there is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow teammates in the team's official matches. Therefore, 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 fundamental rights as a football player. The Sole Arbitrator further notes here that, in the present case, the Club did not even answer to the Player's queries relating to his training.

159. In consideration of the foregoing, the Sole Arbitrator considers that the Appellant did not act in good faith whilst the Respondent displayed good faith during the entire duration of the employment relationship.

160. In view of the Appellant's behaviour towards the Player, the Sole Arbitrator deems that the Appellant materially breached the Contract. In fact, under the circumstances set forth above, the Player could not be expected to continue the employment relationship with the Club and he had no other measures but to terminate the Contract.

161. In conclusion, the Sole Arbitrator finds that the Respondent terminated the Contract with just cause.

C. What is the compensation due?

162. After having ascertained that the Club breached the Contract, it shall now be determined the amount of compensation payable by the Appellant to the Respondent.

163. Indeed, Article 17 of the FIFA RSTP reads as follows:

> *"*1. *In all cases the party in breach shall pay compensation. Subject to the provisions of article 20 Annex 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".*

164. The purpose of Article 17 of the FIFA RSTP has been discussed and clarified in several CAS awards. More precisely, the purpose of Article 17 is to reinforce contractual stability, i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as deterrent against unilateral contractual breaches and terminations (CAS 2018/A/6017; CAS 2014/A/3735; CAS 2014/A/3573; CAS 2008/A/1519-1520).

165. Indeed, both parties of the contract are warned that in case of breach or termination without just cause, the party in breach shall be liable to pay compensation in accordance with the elements set forth by Article 17 of the FIFA RSTP.

166. All the above considered, two basic principles have been recognised in the jurisprudence of CAS and FIFA DRC:

(i) If there is no agreement between the parties with respect to the amount of the compensation or calculation of the compensation, the calculation shall then be made with due consideration of the various criteria contained in Article 17 of the FIFA RSTP;

(ii) The objective calculation shall be made by the Tribunal based on the principle of the so called *"positive interest"*, meaning *"it shall aim at determining an amount which shall put the respective party in the position that same party would have been in if the contract had been performed properly"* (BERNASCONI M., The unilateral breach – some remarks after Matuzalem in: BERNASCONI/RIGOZZI (eds), Sport Governance, Football Disputes, Doping and CAS arbitration, Colloquium, Berne 2009, p. 249).

167. Moreover, it is important to underline that other criteria could be considered in order to determine a fair compensation, such as the so-called "specificity of sport".

168. CAS jurisprudence stated that *"the authors of art. 17 of the FIFA Regulations, achieved a balanced system according to which the judging body has on the one side the duty to duly consider all the circumstances of the case and all the objective criteria available, and on the other side a considerable scope of discretion, so that any party should be well advised to respect an existing contract as the financial consequences of a breach or a termination without just cause would be, in their size and amount, rather unpredictable…"* (CAS 2014/A/3735; CAS 2014/A/3573; CAS 2009/A/1856-1857, para. 186).

169. In addition, *"sport, similarly to other aspects of social life, has an own specific character and nature and plays its own important role in our society. Similarly as for the criterion of the "law of the country concerned", the judging body has to take into due consideration the specific nature and needs of sport when assessing the circumstances of the dispute at stake, so to arrive to a solution which takes into reasonable account not only the interests of players and clubs, but more broadly those of the whole football community…. In other words, the judging body shall aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interest at stake, the sporting circumstances and the sporting issues inherent to the single case"* (CAS 2014/A/3735; CAS 2014/A/3573; CAS 2009/A/1880-1881, para. 233-240).

170. To summarise, it may consider negatively if a party engages in a conduct which is in blatant bad faith or that terminates the contract for its own selfish interests. On the contrary, positively will be considered the case of a party that has displayed exemplary behaviour throughout the duration of a contract and possibly even at the occasion of its termination.

171. As a consequence of the above, it has firstly to be clarified whether the employment contract contained a provision according to which the parties agreed certain amount of compensation to be paid in case of breach.

172. In this respect, the Sole Arbitrator notes that the Contract does not contain a compensation clause and, therefore, the amount payable in favour of the Player was rightly determined and calculated in compliance with the parameters set forth under Article 17 of the FIFA RSTP.

173. According to Article 17(1) of the FIFA RSTP:

"(i) in case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated;

(ii) 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"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract".

174. The Sole Arbitrator notes that the Player, after the termination of the Contract, signed an employment agreement with the Turkish club, Erzumspor, valid until 31 May 2021, according to which the Player was entitled to a total remuneration of EUR 225,000 for the season 2020/2021.

175. In this respect, according to the Respondent, FIFA DRC incorrectly determined the amount of compensation. As a matter of fact, FIFA DRC established that the compensation due to the Respondent should be mitigated by the amount of salary that the Respondent would receive from the new club. However, with respect to the mitigated compensation, the Respondent argues that although he signed a contract with the new club, he did not receive any salary, and, therefore, the amount of compensation due to the Respondent should not be mitigated. The Sole Arbitrator reminds here that the Respondent's requests on this respect are inadmissible (see, section VI B of the award).

176. The Sole Arbitrator notes that the FIFA DRC correctly referred to the remaining value of the Contract up to the original date of termination (i.e. 31 May 2021) with respect to the salaries which the Player failed to receive, in order to determine the basis of the amount of compensation for breach of contract as well as to the remuneration under the new employment contract.

177. Therefore, the relevant compensation was correctly mitigated to the amount of EUR 135,000 (i.e. 360,000 - 225,000). In this regard, the Respondent's argument that he did not receive any salary from the new club is in any event irrelevant and of no avail.

178. Furthermore, the Sole Arbitrator notes that the FIFA DRC referred to art. 17 para. 1 ii, of the FIFA RSTP and decided that the player was entitled to an additional compensation corresponding to three monthly salaries in the amount of EUR 122,700. This amount, which calculation was not contested by any of Parties, is also confirmed.

D. Conclusion

179. Based on the foregoing, and after taking into due consideration all the evidence produced and all the arguments submitted, the Sole Arbitrator finds that:

(i) the Contract was automatically extended for the 2020/2021 season.

(ii) the Respondent terminated the Contract with just cause.

(iii) there were no circumstances justifying the *"force majeure"* approach presented by the Appellant.

(iv) the compensation calculated by FIFA DRC was correct.

Accordingly, the Appealed Decision is, therefore, confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Yeni Malatyaspor FK on 21 April 2021 against the decision rendered by the FIFA Dispute Resolution Chamber on 25 March 2021 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 25 March 2021 is confirmed.

3. (…).

4. (…).

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