Arbitration CAS 2021/A/8087 Altay SK v. Prince Segbefia, award of 11 April 2022

Panel: Mr Patrick Lafranchi (Switzerland), Sole Arbitrator

Football
Termination of the employment contract with just cause by the player
Just cause of termination
Compensation for damages

1. **According to Article 14bis of the FIFA Regulations on the Status and Transfer of Players (RSTP), 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) – subject to deviating contractual provisions.**

2. **According to Article 17 (1) par. ii 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"). 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.**

I. PARTIES

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

2. Prince Segbefia (the "Respondent" or the "Player", together with the Appellant, the "Parties") is a Togolese football player.

II. FACTUAL BACKGROUND

A. Background Facts

3. On 1 January 2020, the Player and the Club concluded an employment contract (the "Contract") valid between 1 January 2020 and 31 May 2021.

4. The Contract contained a unilateral option for the Club to extend the Contract for one more season if the Club was promoted to the Super Lig (i.e. the top division of the Turkish football league system) at the end of the season 2019/2020 (between 15 April 2020 and 30 May 2020) or at the end of the season 2020/2021 (between 15 April 2021 and 30 May 2021). Equally, the Contract provided that if the Club is not promoted to the Super Lig, the Contract will end without further notice at the end of the season 2020/2021.

5. In its Article 3, the Contract further contained the following general financial obligations of the Club towards the Player:

   a. Season 2019/2020: EUR 25,000 payable in 5 instalments of EUR 5,000 each between 1 February 2020 and 1 June 2020,

   b. Season 2020/2021: EUR 250,000 payable as follows:
      - EUR 50,000 due an 31 July 2020,
      - EUR 200,000 payable in ten instalments of EUR 20,000 each between 1 August 2020 and 1 May 2021,

   c. Season 2021/2022 (should the club exercise the option for extension): EUR 450,000 payable as follows:
      - EUR 150,000 due on 31 July 2021,
      - EUR 300,000 payable in ten instalments of EUR 30,000 each between 1 August 2021 and 1 May 2022.

6. Further, the following bonus payments were agreed on:

   a. if during the season 2019/2020 the player is a starter 11 in at least 10 matches in the TFF 1. Lig, the player will receive EUR 30,000,

   b. if during the season 2019/2020 the player is a starter 11 in at least 20 matches in the TFF 1. Lig, the player will receive EUR 50,000,

   c. if during the season 2019/2020 the player is a starter 11 in at least 30 matches in the TFF 1. Lig, the player will receive EUR 100,000,

   d. if the player plays in the number of matches indicated in points A, B or C above, the player will only be entitled to the higher amount and the lower amounts will not be due,

e. if during the season 2020/2021 the player is a starter 11 in at least 10 matches in the Super Lig, the player will receive EUR 50,000,

f. if during the season 2020/2021 the player is a starter 11 in at least 20 matches in the Super Lig, the player will receive EUR 100,000,

g. if during the season 2020/2021 the player is a starter 11 in at least 20 matches in the Super Lig, the player will receive EUR 150,000

h. if the player plays in the number of matches indicated in points E, F or G above, the player will only be entitled to the higher amount and the lower amounts will not be due,

i. if during the season 2021/2022 the player is a starter 11 in at least 10 matches in the Super Lig, the player will receive EUR 50,000,

j. if during the season 2021/2022 the player is a starter 11 in at least 20 matches in the Super Lig, the player will receive EUR 100,000,

k. if during the season 2021/2022 the player is a starter 11 in at least 20 matches in the Super Lig, the player will receive EUR 150,000,

l. if the player plays in the number of matches indicated in points I, J or K above, the player will only be entitled to the higher amount and the lower amounts will not be due.

7. On 3 August 2020, the Player put the Club in default for the payment of the salaries for the months of February, March, April and May 2020, the advance payment due on 31 July 2020 as well as the salary for August 2020, amounting to a total of EUR 95,000. The Club was granted a 15-day deadline to pay the said amount.

8. On 20 August 2020, the Player sent another letter to the Club, informing the latter of the unilateral termination of the Contract as no remuneration had been paid within the time limit set.

9. On 28 August 2020, the Player signed a contract with the Turkish club Tuzla Spor Kulübü valid until 31 May 2021, according to which he was entitled to a total salary of EUR 50,000.

B. Proceedings before the FIFA Dispute Resolution Chamber

10. On 23 September 2020, the Player lodged a claim against the Club before the FIFA Dispute Resolution Chamber (the "DRC"), requesting outstanding remuneration in the amount of EUR 275,000 as well as compensation for breach of contract without just cause for an amount of EUR 150,000 equivalent to 6 months of salary, plus 5% interest p.a. He also requested that sporting sanctions be imposed on the Club.

11. The Club did not reply to the claim.

12. On 25 March 2021, the DRC passed the following decision (the "Appealed Decision"):

> *"1. The claim of the Claimant, Mr Prince Segbefia, is accepted.*
>
> *2. The Respondent, Altay SK, has to pay to the Claimant, Mr Prince Segbefia, the following amounts:*
>
> - *EUR 95,000 as outstanding remuneration plus 5% interest p.a. as from 25 April 2021 until the date of effective payment,*
> - *EUR 180,000 as compensation for breach of contract plus 5% interest p.a. as from 25 April 2021 until the date of effective payment.*
>
> *3. Any further claims of the Claimant are rejected.*
>
> *4. The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.*
>
> *5. The Respondent 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 Respondent within 45 days, as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:*
>
> *1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. 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"* (emphasis omitted).

13. On 4 June 2021, the grounds of the Appealed Decision were communicated to the Parties.

14. First of all, the DRC concluded that it was competent to deal with the case at hand and that the February 2021 edition of the FIFA Regulations on the Status and Transfer of Players (the " FIFA RSTP") shall be applicable to the matter at hand as to the substance.

15. It then noted that all facts established by the Player remained uncontested as the Club had not replied to the claim. Thus, the DRC noted that the decision would be passed based on the documents on file, i.a. those provided by the Appellant.

16. The DRC acknowledged that the Player unilaterally terminated the Contract on 20 August 2020 after having put the Club in default regarding the payment of four monthly salaries (February, March, April and May 2020), the advance payment due on 31 July 2020 and also the salary for August 2020.

17. The DRC concluded that the Player had terminated the Contract with just cause in accordance with Article 14bis FIFA RSTP on 20 August 2020. It considered that the Club had undoubtedly failed to pay more than two monthly salaries at the time the Player terminated the Contract. Furthermore, the DRC observed that the Player had duly put the Club in default of payment of the outstanding remuneration and granted a time limit of 15 days to settle its debts, to no avail.

18. The DRC then addressed the claim of the Player for payment of the outstanding remuneration, corresponding to any and all amounts not received but due up until the date of termination of the Contract. As the claim for EUR 25,000 (outstanding amounts in the season 2019/2020) had remained uncontested, the DRC decided to grant such amount to the Player.

19. The Player's claim for payments in the season 2020/2021, corresponding to an advance payment of EUR 50,000 due on 31 July 2020 and the salary for August 2020 of EUR 20'000, was found to be justified as well. The DRC concluded that those amounts were outstanding and that the claim was admitted also in this regard.

20. Thus, the DRC decided that – in accordance with the principle of pacta sunt servanda – the Club shall pay the Player an amount of EUR 95,000 plus, according to the Player's request and constant practice of the Chamber, 5% interest p.a. as from 25 April 2021 until the date of effective payment.

21. Furthermore and in addition to the outstanding remuneration, the DRC decided that, taking into consideration Article 17 (1) FIFA RSTP, the Player is entitled to compensation for breach of contract.

22. As it calculated the amount of said compensation, the DRC first noted that the Contract did not contain any clause, by means of which the Parties had beforehand agreed upon a compensation payable in the event of breach of contract. It then took into account both the remuneration due as stated in the Contract and the time remaining along with the professional situation of the Player after the early termination. The DRC noted that the Contract would have lasted until 31 May 2021, so for another 9 months, had it not been terminated early. Thus, it concluded that the remaining value of the Contract from its early termination until the regular expiry amounted to EUR 180,000.

23. The DRC then pointed out that the Player had been able to mitigate the damages by concluding a new employment contract with the Turkish club Tuzla Spor Kulübü from 28 August 2020 until 31 May 2021. According to the constant practice of the DRC and the general obligation to mitigate damages, the DRC concluded that total remuneration of EUR 50,000 which the Player earned with that club during the period mentioned, shall be deducted from the amount of compensation owed by the Club.

24. Therefore, the amount of the mitigated compensation for breach of contract would amount to EUR 130,000 (EUR 180,000 – EUR 50,000).

25. The DRC then addressed the entitlement to three additional monthly salaries in case of an early termination of the contract due to overdue payables according to Article 17 (1) lit. ii FIFA RSTP. However, it concluded that adding said additional compensation (i.e. 3x EUR 62,500 as average salary including the advance payment due on 31 July 2020) would exceed the residual value under the contract, which is not permitted as per the provision of Article 17 (1) lit. ii FIFA RSTP itself.

26. The DRC therefore decided that the Club shall pay the Player an amount of EUR 180,000 for breach of compensation, as well as 5% interest p.a. as of 25 April 2021 until the date of effective payment (as requested by the Player and in accordance with the constant practice of the DRC).

27. Finally, the DRC addressed the compliance with monetary decisions according to Article 24bis (1) and (2) of the FIFA RSTP and decided that, in the event that the Respondent does not pay the amounts due to the Claimant within 45 days as from the moment in which the Claimant communicates the relevant bank details to the Respondent, provided that the decision is final and binding, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on the Respondent in accordance with art. 24bis (2) and (4) of the FIFA RSTP.

28. All other requests for relief made by any of the Parties were rejected.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

29. On 24 June 2021, the Appellant filed its Statement of Appeal against the Appealed Decision.

30. On 28 June 2021, the CAS Court Office invited the Appellant to complete its Statement of Appeal with the name and full address of the Respondent.

31. On 30 June 2021, the Appellant submitted the missing information to the CAS Court Office.

32. On the same day, the CAS Court Office acknowledged receipt of the Statement of Appeal and initiated the present arbitral procedure.

33. On 2 July 2021, the Appellant requested an extension of the time limit to submit the Appeal Brief.

34. On 5 July 2021, said request was granted by the CAS Court Office.

35. On 9 July 2021, FIFA submitted a clean copy of the challenged decision, informing that it renounced its right to request possible intervention in the present arbitration proceedings.

36. On 14 July 2021, the Appellant filed its Appeal Brief via e-filing. It requested the CAS:

"1.To decide that the termination made by the Player is without just cause and due to the fact the Player

has no right to claim any compensation,

2. To decided [sic] *that the Player has no unpaid salaries,*

3. To fix a sum of CHF 4.000.- (Four Thousand Swiss Francs Only) to be paid by the Player to the Appellant, to help the payment of its legal fees and costs".

37. On 14 July 2021, the Respondent was given a deadline of 20 days to submit its Answer.

38. By letter of 15 July 2021, the legal Respondent's representative submitted a power of attorney and stated that he considered that the Appeal was filed late. Therefore, the Respondent considered the Appeal to be withdrawn. He also considered that the costs of the proceedings should be borne by the Appellant and if not, the proceedings should be terminated and the Appeal considered withdrawn. Should the Appeal be upheld, the Appellant should pay the full costs of the proceedings. In the light of the above, the Respondent requested a 20 day extension of the time-limit to file its Answer.

39. On 19 July 2021, the Appellant was invited to comment on the Respondent's objection to the admissibility of the Appeal Brief as well as to his request for extension of the time-limit to file his Answer.

40. On 19 July 2021, the Appellant stated that the Appeal Brief had to be submitted by 15 July 2021. It pointed out that said requirement was fulfilled as the Appeal Brief was uploaded to the e-filing platform on 14 July 2021 and e-mailed with its annexes on 14 July 2021. It therefore requested that the Respondent's claim be dismissed as groundless.

41. On 3 August 2021, the Answer of the Respondent, dated 26 July 2021, was received by e-mail and uploaded to the e-filing platform. He requested the CAS the following:

"1- To decide that the termination made by the Player is without just cause and due to the fact the Player has no right to claim any compensation,

2- To decided [sic] that the Player has no unpaid salaries,

3- To fix a sum of CHF 4.000.- (Four Thousand Swiss Francs Only) to be paid by the Player to the Appellant, to help the payment of its legal fees and costs".

42. On the same day, the Parties were invited to inform the CAS Court Office whether they preferred a hearing to be held in the matter at hand or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

43. The Parties did not provide their preference in this respect within the prescribed time limit.

44. On 17 August 2021, the Respondent sent a letter dated 15 July 2021, stating that the Appellant had not paid the advance of costs within the prescribed time limit and that, accordingly, the proceedings should be terminated and the Appeal should be considered withdrawn.

45. On the same day, the Appellant was invited by the CAS Court Office to provide a proof of timely payment of the costs within the deadline granted.

46. On 18 August 2021, the CAS Court Office noted that – according to the SWIFT proof of payment filed by the Appellant – the advance of costs had been paid within the deadline. Therefore, the Respondent's request that the Appeal be deemed withdrawn and the present procedure be terminated were denied. On a separate note, the Parties were informed that the Panel appointed to decide the case at hand was constituted as follows:

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

47. On 25 August 2021, the Appellant was invited to submit an English translation of its Exhibits 1-3 as the Respondent objected to their admissibility. Further, the Sole Arbitrator noted that no employment contract had been submitted by either Party.

48. On 1 September 2021, the Appellant submitted the requested translations.

49. On 15 September 2021, the Respondent was invited to comment on the translated exhibits submitted by the Appellant. Further, the Parties were invited to inform the CAS Court Office about their preferences regarding a possible hearing. Finally, the Parties were, again, reminded that no employment contract had been submitted yet and that, if no such contract was filed, the Sole Arbitrator would have to rely on the assessment made by the DRC in the Appealed Decision concerning the Contract.

50. On 17 September 2021, the Respondent pointed out that an English translation of the Appellant's Exhibit 2 was still missing and that said document referred to a signing bonus (in Turkish "imza ucreti odemesi") for the Player, which constituted a remuneration *"outside the contract"* and did not correspond to the payment of wages. The Respondent thus considered the failure to provide an English translation of Exhibit 2 as a demonstration of the Appellant's bad faith. Furthermore, the Respondent stated that even if the Club had made a payment of TL 230,000 (which he considered not proven), it still owed more than two months' salaries at the time of termination of the Contract. Finally, the Respondent stated that he did not consider it necessary that a hearing be held in the matter at hand and added that he is currently unemployed.

51. On 21 September 2021, the Appellant submitted the Contract between the Parties and stated that it did not consider a hearing to be necessary in the matter at hand.

52. On 23 September 2021, the CAS Court Office invited the Parties to a very last round of submissions. In this context, it underlined that the Sole Arbitrator had noted that the Contract submitted by the Appellant did not bear any signatures and did not seem to be a certified English translation. The Appellant was therefore invited to explain why the Contract bears no signatures and/or submit another copy of the Contract. Also, the Appellant was invited to file its comments on the allegations made by the Respondent on 17 September 2021 regarding Exhibit 2 and the fact that he is currently unemployed.

53. On 12 October 2021, in the absence of a timely reaction by the Appellant, the Respondent was in turn invited to comment on the fact that the Contract bears no signatures and/or to submit a copy of the Contract actually signed between the Parties and/or a certified English translation of the Contract.

54. On the same day, the Appellant (and not, as mistakenly stated by the CAS Court Office, the Respondent) submitted the Turkish version of the Contract bearing the Parties' signature and an English version translated from the original one.

55. On 13 October 2021, the Respondent pointed out that the English translation submitted by the Appellant also concerned the transfer order of 230,000 TL made on 31 January 2020 by the Club and that this order also mentioned "Altay SK – Payment of the Kossi Prince Segbefia Contract Signing Fee".

56. On 14 October 2021, the Parties were sent the Order of Procedure with the request for signature and return of a copy.

57. The Order of Procedure was signed by the Parties on 18 October 2021.

IV. THE POSITION OF THE PARTIES

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

A. The Position of the Appellant

59. According to the Appellant, not all the amounts paid by the Club to the Player were taken into consideration in the Appealed Decision, although they should have been. It considers that the following sums should be deducted from the receivables of the Player:

- EUR 7,500 paid as a representation payment to the legal counsel of the Player, Mr. Selcuk Demir, at the beginning of the Contract, on 31 January 2020;

- TL 230,000 (corresponding to EUR 34,863) paid with the note *"Payment for contract for Prince Segbefia pursuant to the claim of the Player"* to the account of the legal counsel of the Player, on 31 January 2020.

60. Furthermore, the Appellant considers that there were no unpaid and overdue amounts towards the Player.

B. The Position of the Respondent

61. The Respondent considers that the amount of EUR 7,500 paid to the legal counsel of the Player concerns a service at the time of signing the Contract. Said service, as mentioned in the invoice, included *"representation of the party in the contract, legal and tax advice, research, travel"*. The service was provided by and therefore paid to the Player's lawyer. Hence, the Respondent points out, it has nothing to do with the Player's remuneration.

62. The Respondent further claims that the alleged payment made on 31 January 2020 has no relation with the Player's remuneration. It was not mentioned in the Contract and was thus paid independently from the amounts set out in the Contract. Said payment rather corresponded to an advance of salary, which becomes clear when seen in context with the contract offer made by the Club on 30 January 2020.

63. According to the Respondent, the bank statements and receipts for an alleged payment of the Player submitted by the Club correspond to match bonuses for matches played between 12 March and 3 July 2020 against Hataysport, Menemen, Altinordu, Akhisarspor and Osmanlispor. Thus, he concludes, the payments have nothing to do with regular wages.

64. Finally, the Respondent states that even if a payment of TL 230,000 would have been made, *quod non*, the Club owed more than two monthly salaries at the time the Player put the Club in default and finally terminated the Contract. Thus, with reference to Article 14 of the FIFA RSTP, the Player had just cause to unilaterally terminate the Contract.

V. JURISDICTION

65. Given that CAS has its seat in Switzerland and that when the purported arbitration agreement was executed neither the Appellant nor the Respondent had their respective seat in this country, this is an international arbitration procedure governed by Chapter 12 of the Swiss Private International Law Act ("PILA"), whose provisions are thus applicable. Art. 186 para. 1 of the PILA states that the arbitral tribunal shall itself decide on its jurisdiction. This general principle of Kompetenz-Kompetenz is a mandatory provision of the *lex arbitri* and has been recognized by CAS for a long time (see e.g. CAS 2004/A/748).

66. Article R47 of the Code of Sports-related Arbitration (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 him 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".*

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

68. The Sole Arbitrator is satisfied that, also according to Article 58 (1) of the FIFA Statutes and Article 24 (2) FIFA RSTP, CAS has jurisdiction to hear this case and decide on the matter.

VI. ADMISSIBILITY

69. Article R49 of the CAS Code reads as follows:

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

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

71. The Sole Arbitrator notes that all requirements mentioned in the provision set out above are fulfilled. In particular, and as set out by the CAS Court Office already, both the Statement of Appeal and the Appeal Brief were filed in a timely manner. The Appeal is therefore admissible.

VII. APPLICABLE LAW

72. Article R58 of the CAS Code reads as follows:

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

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

74. The Sole Arbitrator therefore rules that the present dispute is to be solved according to the corresponding FIFA regulations, in particular the FIFA RSTP (given that the Player filed its claim on 23 September 2020, in its June 2020 edition), and that Swiss law shall be applied subsidiarily.

VIII. MERITS

75. As a preliminary remark, the Sole Arbitrator notes that in the present proceedings, it is undisputed that the Club had been duly put in default and been granted a 15-day time limit to fulfil its financial obligations towards the Player before the latter unilaterally and prematurely terminated the Contract on 20 August 2020.

76. However, it is disputed whether the Club owed the Player any payments at the time of the termination of the Contract, respectively whether the Respondent breached the Contract.

77. The Sole Arbitrator further notes that according to the basic principle of burden of proof, a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. He recalls that the principle of *actori incumbit probatio* has been consistently observed in CAS jurisprudence:

> *"In CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (…). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence"* (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).

78. He also notes that the assessment will be based on the English translation of the Contract (although not certified) submitted by the Appellant on 12 October 2021, as said translation has not been challenged by the Respondent.

79. Thus, the following issues will be addressed in turn:

a) Did the Club breach the Contract?

b) If so: What are the consequences thereof?

A. Breach of Contract

80. In the Appealed Decision, the DRC held that the salaries of February, March, April and May 2020, the advance payment due on 31 July 2020 as well as the salary for August 2020 were due at the time the Player put the Club in default and ultimately terminated the Contract.

81. As an initial matter, the Sole Arbitrator notes that both the Respondent, in his claim filed before FIFA, as well as the FIFA DRC in the Appealed Decision, refer to unpaid salaries of February, March, April and May 2020 as outstanding remuneration, which they value at EUR 25,000 in total. However, given that the monthly salary amounted to EUR 5,000, the overall amount of EUR 25,000 appears to cover five monthly salaries, and not four. The Sole Arbitrator concludes that the amount of EUR 25,000 thus includes, apart from the salaries of February, March, April and May 2020, also the salary of June 2020.

82. The Sole Arbitrator notes that the Appellant has not disputed said facts within the proceedings before the DRC. Also within the present proceedings, the Appellant has not actually disputed that said payments were outstanding at the time. Instead, it argues that two payments in the amount of EUR 7,500 (a *"representation payment to the legal counsel"* allegedly paid on 31 January 2020) as well as in the amount of TL 230,000 (corresponding to an amount of EUR 34,863, *"a payment for contract for Prince Segbefia pursuant to the claim of the Player"* allegedly paid on 31

January 2020) should have been taken into account. The Club asserts, by analogy, that there were (and are) no payment arrears towards the Player.

83. The Sole Arbitrator first notes that the invoices submitted by the Appellant clearly refer to a *"representation payment to the legal counsel"* as well as a *"payment for contract for Prince Segbefia pursuant to the claim of the Player"*, thus, there was no reference to any "salary" or "advance payment" or the like.

84. Regarding the first payment, the Sole Arbitrator notes that the Appellant has not provided any explanation as to why it – as alleged by the Respondent - was made to the account of the Player's lawyer and why the services mentioned included *"representation of the party in the contract, legal and tax advice, research and travel"*, should it have been – as alleged by the Appellant – a salary and/or advance payment for the services rendered by the Player. Thus, the Sole Arbitrator finds that the Appellant has failed to demonstrate that those EUR 7,500 were indeed a salary and/or an advance payment.

85. With regard to the second payment, the Sole Arbitrator observes that the Respondent has provided a document issued by the Appellant and dated 31 January 2020, mentioning a warranty fee in the amount of EUR 35,000 that would be paid in advance. As the Club has not provided any evidence that would let the Sole Arbitrator draw another conclusion, this advance payment of EUR 35,000 mentioned corresponds to the *"payment for contract for Prince Segbefia pursuant to the claim of the Player"* and was owed independently from the Contract – it had nothing to do with salaries or the advance payment due on 31 July 2020.

86. In addition, the Sole Arbitrator finds that his conclusions set out above are supported by the following facts:

- The payments mentioned by the Respondent were in the amount of EUR 7,500 and EUR 34,863 respectively. The monthly salaries from February to June 2020 would have been EUR 5,000 each, whereas the advance payment due on 31 July 2020 was supposed to be in the amount of EUR 50,000 and, the August 2020 salary in the amount of EUR 20,000. Thus, none of the sums undisputedly owed by the Club correspond to any of the two payments actually made in terms of amount.

- Also, the payments made by the Appellant date from 31 January 2020. According to the Contract, the salaries' due dates were supposed to be the first working day of each month, whereas the advance payment was due on 31 July 2020. Hence, the date of payment (i.e. 31 January 2020) does not match the due dates of the outstanding sums.

87. In light of these circumstances, the Sole Arbitrator finds that the Appellant has not put forward any evidence to prove that he has actually paid the salaries for February, March, April, May and June 2020, the advance payment due on 31 July 2020 as well as the salary for August 2020. Instead, the two invoices presented by the Appellant seem to refer to other amounts owed by the Club, this not exempting the Appellant from performing its other obligations under the Contract (such as the payment of monthly salaries and advance payments contractually agreed on).

88. Therefore, the Sole Arbitrator concludes that the salaries for February, March, April, May and June 2020, the advance payment due on 31 July 2020 as well as the salary for August 2020 were outstanding at the time the Player put the Club in default and granted it a 15-day time limit to fulfil its financial obligations.

89. Furthermore, the Sole Arbitrator finds that the Appellant has not demonstrated that it had paid those exact sums within the time limit set by the Player or, for that matter, at a later stage.

90. The Sole Arbitrator notes that, according to Article 14bis FIFA RSTP, 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) – subject to deviating contractual provisions.

91. No deviating provision regarding overdue payables is to be found in the Contract and all the requirements set out above were fulfilled: More than two monthly salaries were outstanding at the time, the Club was duly set in default and it was granted a 15-day time limit to comply with its financial obligations, to no avail. Therefore, the Sole Arbitrator concludes that, as the DRC found in the Appealed Decision, the Player had just cause to terminate the Contract on 20 August 2020 in the sense of Article 14bis FIFA RSTP.

B. Consequences

92. The Sole Arbitrator concurs with the DRC that the Club is to be held liable for its breach of contract. In a next step, he therefore addresses the question whether the consequences of the Club's breach of contract were correctly assessed by the DRC.

93. The Sole Arbitrator notes that, first of all, the party in breach – thus the Club – has to pay all the outstanding remuneration, i.e. all the amounts that were outstanding at the time the Contract was terminated but were due by then.

94. The Sole Arbitrator further notes that the Player had claimed a total of EUR 275,000 as outstanding remuneration before the DRC. This claim had remained uncontested. Still, the DRC admitted the claim for outstanding remuneration only in the amount of EUR 95,000, corresponding to the five monthly salaries for February, March, April, May and June 2020 (EUR 25,000 in total, EUR 5,000 each), the advance payment due on 31 July 2020 (EUR 50,000) and also the salary for August 2020 (EUR 20,000).

95. The Club claims that its payments made on 31 January in the amount of EUR 7,500 (paid as a representation payment to the legal counsel of the Player, Mr. Selcuk Demir) as well as in the amount of TL 230,000 (corresponding EUR 34,863) paid with the note *"Payment for contract for Prince Segbefia pursuant to the claim of the Player"* to the account of the legal counsel of the Player, also on 31 January 2020, should have been considered.

96. The Sole Arbitrator observes that, as set out above in detail (cf. paras. 82-86), the Appellant has failed to demonstrate that the two payments it (undisputedly) made, are to be considered as salary payments and/or an advance payment.

97. Therefore, the Sole Arbitrator concurs with the DRC that salary payments in the amount of EUR 25,000 for the 2019/2020 season (February-June 2020), an advance payment due on 31 July 2019 in the amount of EUR 50,000 and one salary payment for the 2020/2021 season (August 2020) in the amount of EUR 20,000, thus a total amount of EUR 95,000, are to be awarded to the Player as outstanding remuneration.

98. Furthermore, the Sole Arbitrator notes that in case a contract is terminated without just cause, according to Article 17 FIFA RSTP, the party in breach shall pay compensation.

99. According to Article 17 (1) FIFA RSTP, said compensation – unless otherwise provided for in the contract – 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.

100. Also, according to Article 17 (1) par. ii 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"). 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.

101. The Sole Arbitrator notes that, as set out by the DRC in the Appealed Decision, there is no compensation clause included in the Contract that should be taken into account.

102. In a next step, the Sole Arbitrator observes that the Contract was supposed to run until 31 May 2021, thus for another nine months at the time it was prematurely terminated. Taking into account the financial terms of the Contract and the fact that the Club would have had to pay the Player a monthly salary of EUR 20,000, the Sole Arbitrator concludes that the remaining value of the Contract until its regular expiry amounts to EUR 180,000. Hence, the Sole Arbitrator agrees with the DRC that said amount shall serve as the basis for the final determination of the amount of compensation for breach of contract.

103. The Sole Arbitrator further takes note that it has remained undisputed also in the present proceedings that the Player had found employment and signed a new employment contract with the Turkish club Tuzla Spor Kulübü from 28 August 2020 until 31 May 2021. During this period, the Player earned a total remuneration of EUR 50,000 with the latter club. Thus,

he was able to mitigate his damages in the amount of EUR 50,000. The Sole Arbitrator concurs with the DRC that said amount shall be taken into account in the calculation of the amount of compensation for breach of contract.

104. Considering the above, the Sole Arbitrator confirms that the mitigated compensation amounts to EUR 130,000.

105. The Sole Arbitrator then evaluates whether any additional compensation in the sense of Article 17 (1) para. ii FIFA RSTP is due. Said additional compensation would correspond to three monthly salaries (those being calculated as average salaries and taking into account the advance payment due on 31 July 2020). However, the Sole Arbitrator agrees with the DRC that adding an additional compensation (i.e. 3 x EUR 62,500) to the mitigated compensation of EUR 130,000 would exceed the residual value under the Contract.

106. As Article 17 (1) para. ii FIFA RSTP states that the overall compensation shall never be more than the rest value of the prematurely terminated contract, the Sole Arbitrator concurs with the DRC that the compensation for breach of contract in the matter at hand shall be EUR 180,000, corresponding to the residual value of the Contract.

107. In light of the above, the Sole Arbitrator deems this to be reasonable and proportionate considering the specific circumstances in the matter at hand.

108. Additionally, the Sole Arbitrator notes that interest accrues from the day following the due date according to Article 102 Swiss Code of Obligations (SCO) and CAS jurisprudence (CAS 2019/A/6508 para. 99 with references). However, the Respondent did not challenge the Appealed Decision in this regard. In light of the principle of *ne ultra petita*, the Sole Arbitrator concurs with the DRC that 5% interest p.a. shall apply both on the outstanding remuneration in the amount of EUR 95,000 as well as on the compensation for breach of contract in the amount of EUR 180,000 as from 25 April 2021 until the date of effective payment.

109. Ultimately, the Sole Arbitrator notes that the conclusions of the DRC regarding the compliance of the Club with monetary decisions have not been challenged by the Appellant. In light of the above, he sees no reason to deviate from the DRC's assessment in this regard.

110. Thus, the present Appeal is dismissed in its entirety and the Appealed Decision is confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Altay SK on 24 June 2021 against Prince Segbefia against the decision rendered by the FIFA Dispute Resolution Chamber on 25 March 2021 is dismissed.

2. The decision of the FIFA Dispute Resolution Chamber of 25 March 2021 is confirmed.

3. (…).

4. (…).

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