



Arbitration CAS 2021/A/8321 Yeni Malatyaspor FK v. Jody Lukoki, award of 27 April 2022

Panel: Prof. Ulrich Haas (Germany), Sole Arbitrator

Football

Contractual dispute for outstanding amounts

Scope of the CAS panel's mandate

Lack of financial means

Claim for amounts not due

1. According to Article R57 of the CAS Code, a CAS panel has full power to review the facts and the law. The mandate of the CAS panel, however, is limited – in principle – to the matter in dispute before the previous instance. Furthermore, the mandate of the CAS panel according to Article R57 of the CAS Code cannot exceed the authority of the previous instance. Thus, if the first instance was not authorized to adjudicate all of one party's claims, also the powers of the CAS panel are limited in that respect.
2. Swiss law provides for the principle that one must have money. It follows from this principle that a lack of financial means does not affect the obligation to pay a certain amount and that, more particularly, the debtor cannot claim impossibility of performance.
3. The Regulations of the Status and Transfer of Players or the Rules Governing the Procedure of the Players' Status Committee and the Dispute Resolution Chamber are silent on the question whether or not a claim must have fallen due before it can be filed with FIFA. This question is first and foremost a question on the merits. Thus, if a claim has not fallen due, the creditor's prayer for payment must be dismissed. However, according to the subsidiary applicable Swiss law the relevant point in time for the approval of a claim is not the filing of the claim, but when the competent body decides upon the claim. Therefore, the claim does not have to be due at the time the action is filed. It is sufficient if it is due at the time when the claim is adjudicated.

I. PARTIES

1. Yeni Malatyaspor FK ("the Appellant" or "the Club") is a professional football club based in Malatya, Turkey. The Club is affiliated to the Turkish Football Federation ("TFF"), which, in turn, is a member of the Union de Association Européennes de Football ("UEFA") and the Fédération Internationale de Football Association ("FIFA").

2. Mr Jody Lukoki (“the Respondent” or “the Player”), born on 15 November 1992, is a professional football player of Dutch nationality.
3. The Appellant and the Respondent are jointly referred to as “the Parties”.

II. BACKGROUND FACTS

4. Below is a summary of the relevant facts and allegations as established by the Sole Arbitrator on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (“the FIFA DRC”) on 12 August 2021 (“the Appealed Decision”), the written submissions of the Parties and the evidence adduced. Additional facts may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain its reasoning.

A. The Employment Contract

5. On 17 August 2020, the Appellant and the Respondent entered into an employment contract for a fixed period of time from 17 August 2020 and 31 May 2022 (“the Employment Contract”).
6. With regard to the financial obligations of the Club towards the Player, Article 3 of the Employment Contract contains – in its pertinent parts – as follows:

“1 The Salary of The PLAYER

For 2020/2021 Football Season: 800.000-EURO NET (Eight Hundred Thousand)

- a. Club will be paid an amount 100.000 EURO (onehundredthousand) signing fee at the time of signature. [...]*
- b. The rest of the aforementioned amount is to be paid to the PLAYER by the CLUB in 10 (ten) equal installments on the below mentioned dates:
70.000 Euros (SeventyThousand) (*10) start on 30 August 2020 – finish on 30 May 2021*

For 2021/2022 Football Season: 800.000-EURO NET (Eight Hundred Thousand)

- a. Club will be paid an amount 100.000 EURO (onehundredthousand) down payment on 20th August 2021.*
- b. The rest of the aforementioned amount is to be paid to the PLAYER by the CLUB in 10 (ten) equal installments on the below mentioned dates:
70.000 Euros (SeventyThousand) (*10) start on 30 August 2021 – finish on 30 May 2022”.*

B. The Settlement Agreement

7. On 21 April 2021, the Appellant und the Respondent entered into a Settlement Agreement (“the Settlement Agreement”). This Settlement Agreement states, *inter alia*, as follows:

“2. Parties mutually and amicably agreed as follows:

a. The Player has total an amount 210.000,000 (twobundredtenthousand) Euro net outstanding remuneration on the date of this Mutual Termination.

b. The Parties are mutually agreed on term, 210.000,00 Euro will be paid to player on three installment as below;

70.000 Euro net on 23th April 2021

70.000 Euro net on 30th June 2021

70.000 Euro net on 30th July 2021

c. Subject to the fulfilment of the conditions provided for in article 2.b, the Player hereby declares and accepts that he will not have any claims from the Club; as compensation, remuneration or in any other name.

d. In sake of clarity, The Parties agree to terminate the Contract dated 17.8.2020 with their mutual consent regardless of the name under which without claiming any further remuneration and any further compensation (except for the amounts payable to the Player as specified under article 2.b) payable from each other. In conjunction with the conclusion of the present Agreement, the Contract dated 17.8.2020 concluded between the Parties concerned will immediately be ended with its all effects and consequences and also any agreement, protocol and/ or consensus, which determined employment relationship between the Parties, become invalid [...]”.

8. On 11 May 2021, the Respondent put the Appellant via email in default for the amount of EUR 70,000.00, providing a 3 days’ deadline to remedy the default.
9. On 14 May 2021, the Respondent noticed that the Appellant has failed to pay the due amount of EUR 70,000.00 within the given deadline and is therefore in default.
10. On the same day, the Respondent informed the Appellant via email that he would start a legal proceeding before FIFA.
11. On 19 May 2021, via registered and electronic mail, the Respondent informed the Appellant that, insofar the Settlement Agreement is annulled (either by the Appellant or in the FIFA procedure), he thereby unilaterally terminates the Employment Contract with the Club due to unlawfully failing to pay the due monthly salaries.

C. The Proceedings before the FIFA Dispute Resolution Chamber

12. On 4 June 2021, the Player lodged a claim before the FIFA DRC against the Club for payment in the amount of EUR 243,479.18 (EUR 210,000.00 as outstanding amount as per the

Settlement Agreement; EUR 1,979.18 as interest due until the date of claim; EUR 31,500.00 as extrajudicial costs) within five days following the day of the FIFA DRC judgment. The Player further requested that the Club shall be obligated to pay the costs of the FIFA DRC procedure, the costs of his Attorney at law and all other costs and payments that have been paid by him for the purpose of starting this procedure.

13. On 12 August 2021, the FIFA DRC partially accepted the claim of the Player.

14. The operative part of the Appealed Decision reads as follows:

“1. The claim of the Claimant, Jody Lukoki, is partially accepted.

*2. The Respondent, Yeni Malatyaspor, has to pay to the Claimant, the following amount:
- EUR 210,000 as outstanding amount, plus 5% interest, p.a. until the date of effective payment as follows:*

- on the amount of EUR 70,000 as from 24 April 2021;*
- on the amount of EUR 70'000 as from 1 July 2021;*
- on the amount of EUR 70,000 as from 31 July 2021.*

3. Any further claims of the Claimant are rejected.

4. Full payment (including all applicable interest) shall be made to the bank account set out in the enclosed Bank Account Registration Form.

5. Pursuant to article 24bis of the Regulations on the Status and Transfer of Players if full payment (including all applicable interest) is not paid within 45 day of notification of this decision, the following consequences shall apply:

1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of three entire and consecutive registration periods.

2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not paid by the end of the three entire and consecutive registration periods.

6. The consequences shall only be enforced at the request of the Claimant in accordance with article 24bis paragraphs 7 und 8 and article 24ter of the Regulations on the Status and Transfer of Players.

7. This decision is rendered without costs”.

15. The decision with grounds was notified to the Parties on 30 August 2021.

16. The grounds of the Appealed Decision can be summarized as follows:

- “[...] the Chamber acknowledged that it its task was to whether the amounts claimed by the [Player] had indeed already fallen due and were to be paid be the [Club].
- In this respect, the members of the Chamber noted that it remained uncontested between the parties that the first instalment in the amount of EUR 70,000 had fallen due and remained unpaid by the [Club].
- What is more, the members of the Chamber noted that – although the settlement does not hold an acceleration clause, on the basis of which the late payment of one instalment would lead to the other instalments immediately becoming due – the other instalments had also fallen due at the time of the passing a decision in the matter at hand.
- As a result of the foregoing, the Chamber decided to reject the argumentation submitted by the [Club] and concluded that the [Player] is entitled to full value of the settlement agreement.
- [...] the Chamber decided that in accordance with the general legal principle of *pacta sunt servanda*, the [Club] is liable to play the [Player] the amount of EUR 210,000, plus interest at the rate of 5% p.a. as from the respective due dates.
- Subsequently, the Dispute Resolution Chamber decided to reject the [Player’s] claim pertaining to legal / extrajudicial costs in accordance with art. 18 par. 4 of the Procedural Rules and the Chamber’s respective longstanding jurisprudence in this regard.
- [...] the Chamber referred to par. 1 lit.[a] and 2 of art. 24bis of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
- In this regard, the DRC highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
- Therefore, bearing in mind the above, the DRC decided that the [Club] must pay the full amount due (including all applicable interest) to the [Player] within 45 days of notification of the decision, failing, which, at the request of the [Player], a ban from registering new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become immediately effective on the [Club] in accordance with art. 24bis par. 2,4 and 7 of the Regulations [...]”.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 20 September 2021 the Appellant filed a statement of Appeal by email with the Court of Arbitration for Sport (“CAS”) against the Appealed Decision of 12 August 2021 pursuant to Article R47 of the Code of Sports-related Arbitration (“the CAS Code”). In its Statement of Appeal, the Appellant requested that the Sole Arbitrator shall be appointed by the CAS. On the same day the Appellant requested the admission to upload the Statement of Appeal to the CAS e-filing platform.

18. On 22 September 2021, the CAS Court Office granted it access to the CAS e-filing platform.
19. On the same date, the Appellant uploaded the Statement of Appeal to the CAS e-filing platform.
20. On 27 September 2021, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code.
21. On 27 September 2021, the CAS Court Office initiated the procedure and granted the Respondent a deadline to inform it whether he agreed to the appointment of a Sole Arbitrator.
22. On 30 September 2021, the Respondent objected to the admissibility of the appeal arguing that the Statement of Appeal did not meet the formal requirements prescribed by the CAS Code and that it was not submitted within the prescribed time limit.
23. On 4 October 2021, the CAS Court Office invited the Appellant to express its observations regarding the issue of the admissibility of the Appeal by 11 October 2021.
24. On 6 October 2021, the Appellant explained that the Statement of Appeal was filed within the prescribed time limit and that it fulfills all requirements pursuant to Article R48 of the CAS Code.
25. On 11 October 2021, the President of the CAS Appeals Arbitration Division rejected the Respondent's request to terminate the present proceeding. The President advised the Parties that the final decision regarding the timeliness of the Appeal will be rendered by the Panel, once constituted.
26. On 13 October 2021, the CAS Court Office informed the Parties that the Respondent failed to comment on the Appellant's request to nominate a Sole Arbitrator and that, therefore, it is for the President of the CAS Appeals Arbitration Division to decide the issue pursuant to Article R50 of the CAS Code.
27. On 15 October 2021, the Respondent filed his Answer in accordance with Article R55 of the CAS Code, together with his objections on admissibility and a "counterclaim".
28. On 19 October 2021, the CAS Court Office granted the Parties a deadline until 26 October 2021 to inform it whether they preferred a hearing to be held in this matter or for the Panel or Sole Arbitrator to issue an award based solely on the Parties' written submissions.
29. On 21 October 2021, the Respondent informed the CAS Court office, that he does not consider a hearing necessary and that the award be rendered solely on the Parties' written submissions. The Appellant has failed to state its position within the granted deadline.
30. On 25 October 2021, the CAS Court Office informed the Parties, that pursuant to Article R50 of the CAS Code the President of the CAS Appeals Arbitration Division has decided to submit the present case to a Sole Arbitrator.

31. On 1 December 2021, the CAS Court Office informed the Parties that pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division that the Panel in the present had been constituted as follows:

Sole Arbitrator: Prof. Dr. Ulrich Haas, Professor of Law in Zurich, Switzerland

32. On 8 December 2021, the CAS Court Office informed the Parties that in view of the submissions filed, the absence of any witness and taking account of the Parties' positions with respect to the holding of a hearing, the Sole Arbitrator pursuant to Article R57 of the CAS Code deems himself sufficiently well-informed to decide this case based solely on the Parties' written submissions. In the same letter the Sole Arbitrator ordered a second round of submissions pursuant to Article R44.3, R55 para. 5 and R56 of the CAS Code and invited the Appellant - *inter alia* – to comment on the Respondent's objections related to the admissibility of the Appeal. Furthermore, the Sole Arbitrator drew the Parties' attention to the award issued in the matter CAS 2020/A/7241, which has not been published yet and which might be of relevance in this case.
33. On 17 December 2021, by email, and on 21 December 2021, via e-Filing the Appellant submitted its Reply.
34. On 22 December 2021, the CAS Court Office invited the Respondent to file his Rejoinder on or before 10 January 2022.
35. On 5 January 2022 the Respondent withdrew his objection related to the admissibility of the appeal.
36. On the same day, the CAS Court Office took note of such withdrawal and of the fact that the Respondent did not wish to submit a Rejoinder.
37. On 13 January 2022, the CAS Court Office issued the Order of Procedure ("OoP"), which was duly signed and returned by the Parties on 14 January 2022.

IV. SUBMISSIONS OF THE PARTIES

38. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the award or in the discussion of the claims below.

A. The Position of the Appellant

39. In its Appeal Brief, the Appellant sought the following relief:

“We kindly request from CAS PANEL that as we have explained in detail above annulment of FIFA DRC decision dated on 12 August 2021 notified to the parties on 30 August 2021”.

40. The submissions of the Appellant, as contained in its written submissions, may be summarized, in essence, as follows:
- the Respondent requested an early termination of the Employment Contract stating that he had many offers and did not want to live in the city of Malatya any longer;
 - the Appellant does not contest its obligation to pay the Respondent EUR 210,000.00 based on the Settlement Agreement.
 - The Appellant submit that it could not make the first payment of EUR 70,000.00, due on 23 April 2021, because of financial difficulties.
 - at the time the Appellant lodged the claim before the FIFA DRC, on 4 June 2021, only the first installment in the amount of EUR 70,000.00 was due. The remaining second and third installments were not due at that time. The Appellant submits that the Appealed Decision can only address the dispute at the time the claim was lodged. Whereas any new facts arising thereafter can only be considered and dealt with in a new case. Since the Player did not amend his original claim and did not lodge any new claims before the FIFA DRC, the FIFA DRC acted ultra petita by awarding the other two installments in the total amount of EUR 140,000.00.
 - The Appellant also stresses, that *“the employment agreement does not have any acceleration clause or any clause for due requirement”*.
41. By obliging the Club to pay to the Player EUR 210,000.00 as outstanding amount, plus 5% interest *p.a.* until the date of effective payment, the FIFA DRC has committed essential procedural mistakes. Thus, the Appealed Decision is unjustified and must be squashed.
42. The Appellant objects to the Respondent’s submissions as to the alleged inadmissibility of the appeal. The Appellant is of the view that the Statement of Appeal has been filed on time on 20 September 2021. The Appeal could only be uploaded via e-Filing as of 22 September 2021, because the Appellant was only then granted access to the e-Filing system. This, however, complies with the time limit set out in Article R49 of the CAS Code, since the Appellant immediately uploaded the Statement of Appeal via e-Filing, i.e. 4 hours after being granted access to the respective platform. The Appellant notes that its view is confirmed by the CAS award in the matter CAS 2020/A/7241.
- B. The Position of the Respondent**
43. In his Answer dated 15 October 2021, the Respondent sought the following relief:

‘Primarily

- I. *The Respondent requests the Sole Arbitrator by judgment to declare the Appellant’s claims inadmissible, or at least to deny these claims as being unfounded and/or unproven, or at least to reject the claimed annulment of the Decision and to order The Appellant to comply with the Decision, consisting of payment of the amount EUR 220,500 plus 5% interest p.a., and further:*

Subsidiary

- II. *In the unlikely event that the Appellant’s claim is declared admissible and this claim is awarded, consisting of annulment of the Decision, the Respondent requests that the Sole Arbitrator rules and declares that the Appellant has failed imputably in the performance of the Mutual Termination and that the Appellant is therefore obliged to pay the amount of EUR 220,500 plus interests, determined by Sole Arbitrator in good justice, to the Respondent, within five (5) days following the day of the Sole Arbitrator Award and further.*

Primarily and subsidiary

- III. *The Respondent furthermore requests that the Sole Arbitrator rules and determines that the Appellant is obligated to pay the costs of these proceeding, being the costs of the Sole Arbitrator procedure, the costs of the Respondent’s Attorney at law and all other costs and payments that have been paid by the Respondent for the purpose of this procedure, to be determined by the Sole Arbitrator”.*

44. The submissions of the Appellant, as contained in his written submissions, may be summarized, in essence, as follows:
- the Appellant’s Statement of Appeal does not meet the formal requirements and therefore must be declared inadmissible. The Statement of Appeal was submitted on 20 September 2021 by email. However, submitting the Statement of Appeal via email is not the proper way to lodge an appeal. Instead the applicable rules provide that the Statement of Appeal must be sent by post or filed via the CAS e-Filing platform. The Appellant only uploaded the Statement of Appeal on 22 September 2021 onto the platform, i.e. after the expiry of the time limit set out in Article 58 para. 1 of the FIFA Statutes. The fact that the Appellant was granted access only on 22 September 2021 to the e-Filing platform is irrelevant, since it was the Appellant’s duty to request access to the e-Filing platform in time to meet the statutory deadline.
 - On 5 January 2022, the Respondent withdrew his objection against the admissibility of the Appeal after having been provide by the CAS Court Office with the decision in the matter CAS 2020/A/7241. The Respondent stated in his letter that he *“still feels that the Appellant should be deemed to be inadmissible, he is availed by an expeditious conclusion by these present proceedings for his financial situation to be resolved”*.
 - The Respondent declares that - contrary to the Appellant’s statements – he wanted to terminate the Employment Contract because the Appellant had failed to meet its financial obligations towards him.

- The case at hand is related to the Appellant's failure to fulfill its obligations as an employer. The Appellant has breached clause 4 a) of the Employment Contract according to which the Club has to "*fulfill all the obligations related with the wages mentioned in this contract in due time*". The Appellant has not fulfilled its obligation to pay the installments, which is the reason the Respondent claimed the outstanding amount of what the Appellant already owed to the Respondent before the FIFA DRC. Therefore the "*total amount of EUR 210,00.00 is already due and payable, given that this concerns the wages that have remained unpaid by the Appellant*".
 - The Respondent has failed to provide any evidence for its alleged financial difficulties. In the absence of any evidence to the contrary the Respondent disputes that the Appellant experienced financial difficulties.
 - The Respondent is convinced that the Appellant's sole purpose for filing the present appeal is to postpone the payment of the amounts due. The Appellant repeatedly made promises to proceed with the payment, but never performed accordingly.
 - The FIFA DRC did not act ultra petita and was allowed to award the second and third installment. In any event, the Respondent notes that all installments have fallen due in the meantime. The Appeal has no suspensive effect. Furthermore, it is undisputed between the Parties, that the first installment has fallen due. Despite of this the Appellant did not pay the first instalment (just like the second and third installments). The Appellant has failed to provide any justification for such behavior. The Respondent therefore concludes that all three installments remained unpaid without just cause.
45. On a subsidiary basis, the Respondent has submitted a counterclaim in the event that the Appealed Decision is annulled. The counterclaim is aimed at obliging the Appellant to pay the outstanding amount of EUR 220,500.00 under Settlement Agreement.

V. JURISDICTION

46. Article R47 para. 1 of the CAS Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body".

47. Article 58 para. 1 of the FIFA Statutes (2019 edition) 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 receipt of the decision in question".

48. Article 24 para. 2 of the FIFA Regulations on the Status and Transfer of Players (“RSTP”; February 2021 edition) reads – in its pertinent parts – as follows:

“Decisions reached by the DCR or the DCR judge may be appealed before the Court of Arbitration for Sport (CAS)”.

49. The Appealed Decision constitutes a decision passed by a legal body of the FIFA, i.e., the FIFA DRC. Thus, the above prerequisites are fulfilled. The Sole Arbitrator also takes note of the fact that neither of the Parties objected to the jurisdiction of the CAS and that the OoP has been duly signed by both Parties without reservation.
50. It therefore, follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

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

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

52. The grounds of the Appealed Decision were notified to the Parties on 30 August 2021.
53. According to Article 58 para. 1 of the FIFA Statutes and Article R49 of the CAS Code the Statement of Appeal must be filed within 21 days, i.e. in the case at hand by 20 September 2021.
54. The Appellant filed its Statement of Appeal with the CAS by email on 20 September 2021 and via e-Filing on 22 September 2021.
55. The Sole Arbitrator notes, that the admissibility of the Appeal is no longer contested, since the Respondent on 5 January 2022 withdrew his objection and, furthermore, signed the OoP without any observations or comments.
56. For the sake of clarity the Sole Arbitrator notes, that the Statement of Appeal was filed within the appropriate time limit and that the Appeal is therefore admissible. The Statement of Appeal was filed by email within the set time limit and only due to administrative prerequisites related to the CAS Court Office the Appellant was not able to upload the Statement of Appeal onto the e-Filing platform before 22 September 2021. This was through no fault or delay on the part of the Appellant. Furthermore, the Sole Arbitrator notes that once the Appellant received the registration code from the CAS Court Office it uploaded the Statement of Appeal

only 4 hours later. The view held by the Sole Arbitrator is further backed by the CAS decision in the matter CAS 2020/A/7241. To conclude, therefore, the Sole Arbitrator finds that the appeal was filed within the deadline of 21 days and is therefore admissible.

VII. MANDATE OF THE PANEL

57. According to Article R57 of the CAS Code the Panel has full power to review the facts and the law. The mandate of the Panel, however, is limited – in principle – to the matter in dispute before the previous instance. Furthermore, the mandate of the Panel according to Article R57 of the CAS Code cannot exceed the authority of the previous instance. Thus, if the first instance was not authorized to adjudicate all of the Respondent’s claims, also the powers of the Sole Arbitrators are limited in that respect. In view of the above, the Sole Arbitrator has doubts whether he would be entitled to adjudicate the Respondent’s subsidiary claim under “II”, i.e. in case the *“Appellant’s claim is declared admissible and this claim is awarded, consisting of annulment of the Decision, the Respondent requests that the Sole Arbitrator rules and declares that the Appellant has failed imputably in the performance of the Mutual Termination and that the Appellant is therefore obliged to pay the amount of EUR 220,500 plus interests, determined by Sole Arbitrator in good justice, to the Respondent, within five (5) days following the day of the Sole Arbitrator Award and further”*. However, the Sole Arbitrator does not need to finally decide this question, since – according to his findings below – the DRC was entitled to award the Respondent all the instalments provided for in the Settlement Agreement (cf. no. 66 et seq.).

VIII. APPLICABLE LAW

58. 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 Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.

59. Article 57 para. 2 of the FIFA Statutes provides the following:

“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”.

60. The Sole Arbitrator is satisfied that primarily the various regulations of FIFA are applicable to the merits of this appeal, in particular the FIFA RSTP. Subsidiarily, Swiss law will apply should the need arise to fill a *lacuna* in the various regulations of FIFA.

IX. MERITS

A. Main Issues

61. The main issue to be resolved by the Sole Arbitrator in the case at hand is whether or not the FIFA DRC was right to award to the Respondent the total outstanding amount as per the Settlement Agreement.

B. Outstanding installments

62. Clause 2.b. of the Settlement Agreement signed between the Parties on 21 April 2021 provides that the Respondent is entitled to three instalments in the total amount of EUR 210,000.00 and that the instalments are due on 23 April 2021, 30 June 2021 and 30 July 2021.

63. The Sole Arbitrator notes, that it is undisputed between the Parties that the first instalment in the amount of EUR 70,000.00 has fallen due and remained unpaid by the Respondent. It is furthermore uncontested by the Parties that the Appellant is obliged to pay all of the instalments and that none of these have been paid by the Appellant.

1. *Alleged Financial Difficulties*

64. The Sole Arbitrator takes note of the explanation of the Appellant that it suffered financial difficulties and was, therefore, unable to pay the first installment. The Sole Arbitrator finds this submission is – from a factual point of view – generic and unsubstantiated. The Appellant has failed to describe the financial difficulties in any detail nor did it submit any evidence to back its position. From a legal perspective the Sole Arbitrator is bound by the principle of *pacta sunt servanda* and finds that the difficulties described by the Appellant are not such to allow to deviate from the clear obligations in the Settlement Agreement. This is all the more true considering that the subsidiary applicable Swiss law provides for the principle that (cf. SOGO, Zahlungsunfähigkeit im Vertragsverhältnis, 2015, p. 49 et seq.)

“Geld hat man zu haben”

free translation: one must have money.

65. It follows from this principle that a lack of financial means does not affect the obligation to pay a certain amount and that, more particularly, the debtor cannot claim impossibility of performance.

2. The filing of a claim for amounts not due

66. The Appellant contests that the FIFA DRC was allowed to award the second and third instalment since at the time the Respondent filed his claim with FIFA (4 June 2021) both instalments were not due.

67. The RSTP or the Rules Governing the Procedure of the Players' Status Committee and the Dispute Resolution Chamber are silent on the question whether or not a claim must have fallen due before it can be filed with FIFA.
68. The question whether a claim has fallen due is first and foremost a question on the merits. Thus, if a claim has not fallen due, the creditor's prayer for payment must be dismissed. However, according to the subsidiary applicable Swiss law the relevant point in time for the approval of a claim is not the filing of the claim, but when the competent body decides upon the claim (KuKo-ZPO-OBERHAMMER/WEBER, 3rd ed. 2021, article 84 CC note 12; BRUNNER/GASSER/SCHWANDER, ZPO, 2nd ed. 2016, article 84 CC note 3). This view held in the Swiss legal literature is also backed by Swiss jurisprudence. In SFT 9C_130/2015 recital 6.2 the Swiss Federal Tribunal held as follows:

“Im Übrigen muss die Fälligkeit der Forderung nicht schon im Zeitpunkt der Klageerhebung vorliegen. Es reicht, wenn sie im Zeitpunkt des Entscheids über die Klage gegeben ist”

Free translation: Moreover, the claim does not have to be due at the time the action is filed. It is sufficient if it is due at the time when the claim is adjudicated.

69. The Sole Arbitrator notes that all instalments fell due before FIFA adjudicated the Respondent's claims. The Sole Arbitrator further observes that the Respondent requested before the FIFA DRC the payment of all three instalments in the amount of EUR 210,000.00 plus interests. Thus all instalments form part of the matter in dispute before FIFA. Consequently, the Sole Arbitrator finds that there was no need for the Respondent to either amend his prayers for relief or to lodge a new claim before the FIFA DRC in order to be awarded the total amount of EUR 210,000.00.

3. The applicable interest rate

70. The FIFA DRC awarded 5% interest p.a. on the above claims. The percentage follows from the subsidiarily applicable Swiss law. The Appellant did not contest the interest rate. Consequently, the Appellant is liable to pay the Respondent the amount of EUR 210,000.00 plus interest at the rate of 5% p.a. as from the respective due dates until the date of effective payment.

4. Summary

71. The Sole Arbitrator concludes that the appeal filed by the Appellant against the Appealed Decision must be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Club Yeni Malatyaspor FK on 20 September 2021 against the decision issued on 12 August 2021 by the FIFA Dispute Resolution Chamber is dismissed.
2. The Decision issued on 12 August 2021 by FIFA Dispute Resolution Chamber is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.