Arbitration CAS 2022/A/9279 Soroush Rafiei v. Foolad Khouzestan Sport and Cultural Club, award of 8 September 2023

Panel: Mr Steven Bainbridge (Canada), Sole Arbitrator

Football
Termination of employment contract without just cause by the club
Duty to comply with the formal requirements of the CAS Code
Player's health as fundamental right
Validity of a clause allowing for a unilateral termination of the employment contract
Just cause of termination
Interest rate applicable as penalty on overdue amounts

1. **It shall be for the parties to a CAS procedure to make sure to comply with the requirements of the CAS Code, amongst others with the formal requirement for filing the Answer.**

2. **Clubs have a legitimate interest in maintaining control over the physical condition and health of their players. This is crucial to ensure that players are always in optimal athletic condition, capable of fulfilling their contractual obligations and delivering top-level athletic performances. It is therefore generally acceptable that clubs have a say in medical matters concerning their players. However, a player's health is a fundamental right. Therefore, players, as a part of their personal rights, must also have the right to have a say in medical matters and input on decisions regarding how to proceed with the treatment of any injuries. This, of course, should be made in agreement with their clubs. However, clubs cannot unconditionally and systematically reject players' requests concerning their own health (such as requests for diagnostic assessments or further medical advice) without any compelling reason. In other words, a refusal to agree with a player's different will with respect to medical issues must be based on reasonable grounds and must not unduly jeopardize the player's integrity and career.**

3. **In principle, nothing prevents parties from defining when and under which circumstances a party may terminate an employment contract with just cause. However, such deviation from the general principles governing football contracts may in principle not be potestative, i.e. the conditions for termination may not be unilaterally influenced by the party wishing to terminate the contract. A contractual clause under which only the club, but not the player, may unilaterally terminate the employment contract is unilateral and potestative and therefore contrary to the regulations of FIFA. Consequently, it is null and void.**

4. **Only material breaches of a contract can possibly be considered as "just cause" for the termination of the latter. Therefore, the breach at the basis of the unilateral termination**

shall be of such intensity that a continuation of the contractual relationship could not be expected from the party terminating the contract. A breach of contractual obligation does not *per se* justify the termination of a contract. In any case, for a party to be allowed to validly terminate an employment contract, it must have warned the other party, in order for the latter to have had the chance, if it deemed the complaint to be legitimate, to comply with its obligations.

5. **A interest rate of 1% per day applicable as penalty on overdue amounts is usurious and, therefore, against public policy, as it would correspond to an interest rate of 365% per annum (or even higher, if the applicable interest is to be considered compounded). Interest rate / penalties of around 18% per annum are generally recognized as being the maximum limit, beyond which an interest rate would result to be usurious and, therefore, against the *ordre public.* Since the safeguard of Swiss public policy is a matter that has to be applied *ex officio,* an arbitral tribunal is entitled to review this point, even without having been asked to, without incurring in any risk of going *ultra petita.***

I. PARTIES

1. Mr. Soroush Rafiei Telgari (the "Appellant" or the "Player") is a professional football player of Iranian nationality.

2. Foolad Khouzestan Sport and Cultural Club (the "Respondent" or the "Club") is a professional football club based in Iran. The Club is currently competing in the Persian Gulf Pro League, which is the highest league in professional football in Iran, and is affiliated to the Islamic Republic of Iran Football Federation ("IRIFF"), which is a member of the Asian Football Confederation ("AFC"), which in turn is affiliated to the Fédération Internationale de Football Association ("FIFA").

3. The Appellant and the Respondent are jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

A. Background Facts

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

B. The Employment Contract

5. The Appellant entered into an employment contract with the Respondent on or about 23 July 2018 (the "Contract") further to which the Player was hired to provide playing services for the Club for the duration of one season, the 2018/2019 playing season.

6. The Contract stipulated (at Article 5 para. 1) the amounts that the Player was entitled to receive from the Club.

7. The total amount the Player would have been entitled to receive from the Club for the entire duration of the Contract term was USD 300,000.00.

8. The payment amounts were to be paid in the form of a ten percent (i.e., USD 30,000.00) advance upon signing the Contract, thereafter in nine monthly increments each of a further ten percent from August 2018 through April of 2019.

9. As a matter of agreed fact, the Appellant has received no payments from the Respondent either on signing the Contract or in any form of increment or lump sum thereafter.

10. It is further agreed that the Respondent took measures to unilaterally terminate the Contract, in late September 2018, *inter alia*, through issuing two letters to the Iran Football League Organization and completing an IRIFF form initiating a unilateral termination.

11. The Appellant asserts that he had been training with the Club and was unaware of the purported termination until 18 October 2018, at which point he was travelling with the Club to the city of Mashhad to play a match.

12. On 18 October, in Mashhad, Iran Football League officials announced that the Respondent had unilaterally terminated the Contract and, therefore, the Player was not permitted to play in the match.

13. The Appellant submits that the unilateral termination of the Contract by the Respondent was without cause, whereas the Respondent contends that its unilateral termination was with cause.

14. After termination of the Contract by the Respondent, the Appellant, in accordance with IRIFF Statutes and Regulations brought a case before the IRIFF Players' Status Committee ("IRIFF PSC").

15. On 7 June 2021, the IRIFF PSC issued a decision (the "IRIFF PSC Decision"), with the following operative part:

> *"1. Foolad Khuzestan Football Cultural and Sports Club is ordered to pay the original demand in the amount of 15,213,225,000 Rials (roughly 75,000 dollars at today's exchange rate using the Nima currency) and to pay the petitioner's legal fees in the amount of 331,648,305 Rials.*
>
> *Note 1: After deducting fees, Khuzestan Foolad Cultural and Sports Club must take action to pay the fine.*

> *Note 2: Using data from the website listed below, the Nima currency was calculated and announced on the day the decision was issued* […].
>
> *Note: The players' status committee requires the Khuzestan Foolad Cultural and Sports Club to provide receipts for the payment of contract registration fees (5 percent of the contract's amount).*
>
> *2- The players' status committee rules that Soroush Rafiei's lawsuit for late payment damages and termination compensation is rejected and inadmissible.*
>
> *3. The players' status committee has agreed to the Khuzestan Foolad Club's counterclaim regarding the cancellation and has deemed the club's announcement to be a "justified cancellation".*
>
> *4. Additional requests related to the main claims and counterclaims are denied.*
>
> *5- The penalty outlined in Articles 89 of the Disciplinary Regulations and 13 of the Regulations on Transfers and Determining the Status of Players approved in 1396 will be applied to the guilty party if the fine is not paid within the allotted time frame".*

16. The grounds of the IRIFF PSC Decision on the key point of termination may be summarized, in essence, as follows:

17. The Player's absences from practices and games and his arbitrary decision regarding the type and location of medical care were unjustified and a breach of the Contract, which, pursuant to paragraphs 5 and 9 of Article 7 of the Contract *"… leaving the country without the club's permission for any reason or excuse …".* justified the Club in terminating the Contract without compensation.

18. The head coach is not considered a competent authority in respect of medical issues and claims of verbal approvals (for travel) had not been proven.

19. The Club's right to terminate the contract was effectively made in accordance with the submission of the requisite form.

20. When notification of IRIFF PSC Decision provided for payment to the Appellant up to termination only, but without compensation, the Appellant, based on the IRIFF Statutes and Regulations, brought an appeal before the IRIFF Appeal Committee (the "IRIFF AC").

21. On 19 July 2022, the IRIFF AC issued a decision affirming the IRIFF PSC decision (the "Appealed Decision").

22. The Appealed Decision was notified to the Appellant on 31 October 2022.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

23. On 19 November 2022, in accordance with Article R49 of the CAS Code, the Appellant filed a Statement of Appeal against the Appealed Decision. In his Statement of Appeal the Appellant requested the case be submitted to a sole arbitrator.

24. The Appeal Brief was filed on 4 January 2023, within the period of extension previously granted and otherwise compliant with Article R51 of the CAS Code.

25. On 5 January 2023, the Respondent was served with a copy of the Appeal Brief and was invited to file an Answer within 20 days, in accordance with Article R55 of the Code. The Respondent was also reminded of the requirements of Article R31 of the Code concerning the filing of written submissions.

26. On 1 February 2023, the CAS Court Office acknowledged receipt of the Respondent's Answer filed by e-mail on 24 January 2023, and requested the Respondent to provide a proof of filing of the Answer by courier, as per Article R31 of the Code.

27. On the same date, the Respondent uploaded the Answer on the CAS e-Filing Platform.

28. On 6 February 2023, the CAS Court Office acknowledged receipt of an objection to the admissibility of the Answer, in essence on the grounds that it was uploaded on the CAS e-Filing Platform after the relevant deadline in accordance with Article R31 of the Code. The Respondent was granted a deadline of 5 days to reply to the objection.

29. On the same date, the CAS Court Office informed the Parties, on behalf of the Deputy President of the CAS Appeals Arbitration Division, that the arbitral tribunal appointed to decide the dispute was constituted ad follows:

Sole Arbitrator: Mr Steven Bainbridge, Attorney-at-Law in Dubai, United Arab Emirates

30. Also on 6 February 2023, the Appellant informed that he did not consider a hearing necessary in this matter, while the Club was of the opinion that such step was necessary.

31. On 10 February 2023, the CAS Court Office acknowledged receipt of the Respondent's defense of the admissibility of its Answer and informed the Parties that the Sole Arbitrator would rule on the issue in the final Award. Furthermore, the Parties were informed of the decision of the Sole Arbitrator to hold a hearing.

32. On 13 February 2023, the Appellant objected to the decision of the Sole Arbitrator to rule on the admissibility of the Answer in the final Award, and urged a decision in this respect. The Appellant, in a letter of 14 February 2023, noting that there is no rule in the CAS Code nor in case law dictating when the admissibility of the Answer has to be determined, confirmed the decision of the Sole Arbitrator.

33. On 1 March 2023, the CAS Court Office circulated an Order of Procedure, which was signed by both the Appellant and the Respondent, on 1 and 12 March 2023, respectively, without any reservation.

34. On 16 March 2023, a hearing was held, by video-conference. In addition to the Sole Arbitrator and Mr Giovanni Maria Fares, CAS Counsel, the following persons attended the video-hearing:

For the Appellant:

- Mr Vosough Ahmadi Rouzbeh, Attorney-at-Law

For the Respondent:

- Ms Yaraghi Esfahani Mahshid, Counsel
- Mr Arefnia Aref, Counsel
- Mr Ameri Saleh, Translator

35. At the outset of the hearing, all Parties confirmed that they had no objection as to the constitution and composition of the arbitral tribunal.

36. The Parties were given full opportunity to present their cases, submit their arguments in opening and closing statements, and to answer the questions posed by the Sole Arbitrator.

37. Before the hearing was concluded, the Parties expressly stated that they had no objection to the procedure adopted by the Sole Arbitrator and that their right to be heard had been respected.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

38. The Appellant's submissions, in essence, may be summarized as follows:

39. The Club unilaterally terminated the Player's contract contrary to the provisions of Article 17 of the IRIFF RSTP / Article 16 of the FIFA RSTP.

40. In the case of such unjust termination, Article 18 of the IRIFF RSTP / Article 17 of the FIFA RSTP, require that the breaching party shall pay compensation.

41. The Contract is silent as to the impact of unjust termination, so IRIFF RSTP and FIFA RSTP apply.

42. In all the circumstances, the Player's injury, conduct, absence and notification of the Club in respect of the same were reasonable and, in any event, were matters that could only ever have risen to be subject to a fine duly processed before the Club's disciplinary committee – not unilateral termination.

43. The basis of the IRIFF PSC decision relies on provisions that are potestative, unilateral and have no reciprocal value for the Player and are, therefore, incompatible with the jurisprudence of FIFA DRC and the CAS.

44. In general, a warning should be provided in advance of any such termination, and it was not.

45. In principle, termination in such circumstances would require a breach so severe as to render it unreasonable to expect the parties to continue. This was not the case on the facts.

46. Even if there were misconduct or non-material breach on the part of the Player, there were less stringent sanctions or disciplinary measures available, which the Club did not consider before taking this *ultima ratio* action, which FIFA and CAS jurisprudence tells us is of last resort.

47. On this basis, the Appellant submits the following prayers for relief:

"1) To declare the appeal admissible.

2) To annul and set aside the appealed decision and decision of the IRIFF PSC.

3) To rule that the Club terminated the Contract without just cause.

4) To rule that the Appellant is entitled to receive remuneration equivalent to ***USD 107.000****.*

5) To rule that the Appellant is entitled to receive compensation equivalent to ***USD 193.000****.*

6) To rule that all the mentioned above should be paid in US dollars. Alternatively, in case the amount mentioned above should be paid in Iranian currency, the exchange rate should be based on the amount in the free market (not Nimaei currency) and based on the exchange rate on the day of payment (Not the day of decision.)

7) To rule that the Appellant is entitled to receive a ***daily 1% penalty*** *from the beginning of the Contract until the date of payment.*

8) To condemn the Respondent for paying all costs related to the present arbitration proceedings".

B. The Respondent

48. Without prejudice to the decision of the Sole Arbitrator regarding the admissibility of the Answer (see *infra paras 75-87*), the Respondent's submissions (including those presented at the hearing) are summarized below:

49. In the main it appears the Respondent's primary contention is that the Player is in breach of the Contract (specifically paragraph 15 of Clause 6-1) because he did not expressly follow all prescribed steps of injury notification, consultation and supervision.

50. Further, the Club contends that Article 7 of the Contract permits the Club to make an *"… independent unilateral termination of the [C]ontract by the [C]lub without requiring the [C]lub to pay any money or any costs or damage …".*

51. Specifically, the Club suggests 7-4 (feigning illness), 7-5 (repetition of non-attendance) and/or 7-9 (leaving the country without the permission of the Club for any reason) would be sufficient reasons to justify unilateral termination.

52. On that basis the Respondent seeks a judgement that the Player breached the Contract, unjustly, by his conduct and a declaration that the Club was justified in terminating the Contract as it subsequently did.

V. JURISDICTION

53. Article R47 of the Code provides as follows:

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

54. Article 49 paragraph 2 of the Statutes of the IRIFF state that the IRIFF PSC is the competent body to resolve employment and contractual disputes between players and clubs.

55. Article 64 paragraph 2 of the Statutes of the IRIFF state that the IRIFF AC is responsible for hearing appeals from the IRIFF PSC.

56. According to Article 58 paragraph 1 of the Statutes of the IRIFF, decisions made by the Iran Federation, after going through all the internal steps may be appealed before the CAS.

57. Article 64 paragraph 3 of the Statutes of the IRIFF states that the decisions of the IRIFF AC can be challenged only before the CAS.

58. The IRIFF PSC Procedural Rules provide in part that:

Article 2.7 The players' status committee of the Football Federation of Iran has the authority to review and decide on all disputes related to the contracts of members, players, coaches, managers, officials, medical staff, technical staff, match agents and intermediaries throughout the country in accordance with regulations and instructions related to transfers and other codes and instructions of FIFA and regulations and codes and instructions approved by the Football Federation of Iran ….

Article 4.1 The players' status committee must supervise and judge in accordance with the statutes, codes, regulations, directives and instructions approved by FIFA, the confederation, the football federation, and, if necessary, the relevant laws of the country and considering the contractual agreements ….

Article 20 In case of silence or ambiguity in this code, the players' status committee will act in accordance with the regulations related to the status of FIFA players and the instructions of the World Football Federation, and after consulting the legal committee and formulating the rules and approval of the board of directors of the football federation ….

59. Further, Article 17 paragraph 4 of the IRIFF Procedural Rules require that an appeal before the CAS must be made according to the Code of Sports-Related Arbitration (the "CAS Code").

60. The challenged decision is of the IRIFF AC, which pursuant to Article 64 paragraph 3 of the Statutes of the IRIFF and Article 17.4 of the IRIFF PSC Procedural Rules is appealable before the CAS.

61. The Appellant has exhausted all internal legal remedies including before the IRIFF PSC and the IRIFF AC.

62. The appeal was duly brought before the CAS pursuant to Article R49 of the CAS Code and the Appeal Brief complies with Article R51 of the CAS Code.

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

64. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

65. Article R49 of the 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. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.

66. The Appealed Decision was notified to the Appellant on 31 October 2022. The Appellant filed his Statement of Appeal on 19 November 2022, thus within the time limit of 21 days set by Article R49 of the Code.

67. The admissibility of the Appeal is not contested by the Club.

68. It follows that the Appeal is admissible.

VII. APPLICABLE LAW

69. Article R58 of the Code provides as follows:

The Panel shall decide the dispute according to the applicable regulations and 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.

70. The Sole Arbitrator notes that Article 4 of the Contract records that the Parties agreed that: *"This contract … adhering to the regulations and status of player transference as devised by FIFA, Football Federation, and Iran Football League Organization"*.

71. Further, at Article 9 paragraph 5 of the Contract, the Parties agreed: *"The applicable law will be the regulation of the Islamic republic of Iran and International regulations in the field of football"*.

72. Based on the above, the Sole Arbitrator finds that the dispute shall be primarily governed by the rules of the IRIFF and, subsidiarily, by the Law of the Islamic Republic of Iran.

73. However, as the Parties made several references in their Contract, as well in their submissions, to *"International regulations in the field of football"* and to FIFA, the Sole Arbitrator finds that the Parties have accepted that he shall be authorized to resort to FIFA regulations, where necessary.

74. That said, the Sole Arbitrator, reserves the possibility, should the need arise, to apply additional rules he deems appropriate.

VIII. PRELIMINARY ISSUE: ADMISSIBILITY OF THE RESPONDENT'S ANSWER

75. As mentioned above, the Appellant challenges the admissibility of the Answer, on the grounds that it was not filed in accordance with Article R31 of the Code. In particular, the Appellant notes that the Respondent filed its Answer on 24 January 2023 by email only, and it was only on 1 February 2023 that it uploaded its Answer on the CAS e-Filing Platform. For this reason, the Appellant submits that the Respondent filed its Answer after the relevant time limit.

76. Respondent's defense indicates that its defense-bill was sent by email within the requisite period and that the e-filing procedure did not permit sufficient time for filing.

77. The Sole Arbitrator recalls Article R31 of the Code, which reads as follows:

"[…] The request for arbitration, the statement of appeal and any other written submissions, printed or saved on digital medium, must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself, failing which the CAS shall not proceed. If they are transmitted in advance by facsimile or by electronic mail at the official CAS email address (procedures@tas-cas.org), the filing is valid upon receipt of the facsimile or of the electronic mail by the CAS Court Office provided that the written submission and its copies are also filed by courier or uploaded to the CAS e-filing platform within the first subsequent business day of the relevant time limit, as mentioned above".

78. Now, it is not contested that the Respondent's email with the Answer was sent within the deadline granted to the Respondent by e-mail on 24 January 2023, which is within the time limit to file the Answer fixed to the Respondent by letter of the CAS Court Office dated 5 January 2023. However, in application of the above provision of the Code, the Respondent's filing by e-mail should have been validated by either a filing by courier or an upload on the CAS e-Filing platform *"the first subsequent business day of the relevant time limit"* (*in casu,* 26 January 2023 at the latest).

79. The Sole Arbitrator notes that the Respondent only proceeded to upload the Answer on the CAS e-Filing platform on 1 February 2023 after having been advised by the CAS Court Office that no valid Answer was received until that date.

80. It is, therefore, indisputable that the upload on the CAS e-Filing Platform occurred after the specific time limit to file the Answer elapsed. As such, the Answer should be declared, in principle, inadmissible, in accordance with Article R55 *iuncto* R31 and R32 of the Code.

81. That said, the Sole Arbitrator notes the Respondent's defense to the objection of admissibility, filed on 7 February 2023, which was formulated as follows (*verbatim*):

"1. The club has sent its defense-bill on time by email.

2. On Wednesday, February 1st 2023, the club received an email from that esteemed court. In that letter, it was written that unfortunately the court could not receive the club's defense. We were asked to upload the defense through the e-filling panel. And only one working day was given to this club. The club's legal department also uploaded its defense in the mentioned e-filling panel an hour after receiving this email.

3. The club reiterates that the court had given the club one working day to upload the documents. And due to the fact that Iranian offices are closed on Thursdays and Fridays, the first working day is on Saturdays. However, this club sent its defense an hour after receiving the email from that honorable court".

82. From the above, it appears that the Respondent is adducing that because the CAS Court Office *"could not receive the* [Answer]*"*, the Respondent was granted only one working day to file the Answer on the CAS e-Filing platform.

83. The Respondent's defense is not to follow.

84. First of all, the Sole Arbitrator notes that by letter of 1 February 2023, the CAS Court Office limited itself to a) note that no Answer was uploaded on the CAS e-Filing Platform and b) to ask the Respondent whether it filed the Answer by courier. The Respondent's submission according to which it was granted with only one day to proceed with the upload on the CAS platform is, therefore, not correct.

85. Second, the Sole Arbitrator notes that by letter of 5 January 2023, the CAS Court Office invited the Respondent to file its Answer within 20 days, in accordance with Article R55 of the Code, and specifically advised the as follows:

"Pursuant to Article R31 (3) of the Code, the Answer shall be filed by courier, in at least seven (7) copies or uploaded on the CAS e-Filing platform. Exhibits can be filed by email to the following address: procedures@tas-cas.org. Regardless of whether the Answer is filed by courier or via the e-Filing platform, the Respondent is kindly requested to transmit a copy to the CAS Court Office by email (while noting that email alone is not a sufficient form of filing under the Code)".

86. Therefore, the Sole Arbitrator, reminding that, in any event, it shall be for the parties to a CAS procedure to make sure to comply with the requirements of the Code, considers that the Respondent was duly informed about the formal requirement for filing the Answer. Therefore, the Respondent's attempt to shift responsibility for its own procedural mistake on the CAS Court Office is rejected.

87. Since the Respondent's did not advance any valid reason for justifying the failure to follow the proper procedure, the fact remains that the Answer was filed after the relevant time limit. And, as such, it has to be declared inadmissible.

88. The above findings, however, do not prevent the Sole Arbitrator from delivering the present Award, as provided for by Article R55(2) of the Code.

89. That said, the Sole Arbitrator notes that despite the above decision, the Respondent was able to present its case at the hearing, which both Parties confirmed was conducted in respect of their right to be heard and procedural rights.

IX. MERITS

90. The main issues to be resolved by the Sole Arbitrator are:

A) Was the Contract terminated without just cause?

B) In case the aforementioned question is answered in the affirmative, what are the financial consequences?

C) In addition to the financial consequences arising from the termination of the Contract, if any, is the Appellant entitled to receive any additional remuneration? In the affirmative, which amount?

A. The Question of Termination With or Without Cause

91. The central issue upon which this matter turns is whether or not the Respondent's termination of the Contract was valid and enforceable given the applicable law, i.e. whether the Respondent had good cause to unilaterally terminate the Player's Contract with immediate effect following the Appellant's leave.

92. The IRIFF PSC and the IRIFF ACR held that, *inter alia*, the Player materially breached Article 6 para. 15 of the Contract regarding the treatment of injuries (for which the contractual sanction was a fine) and Article 7 para. 9 of the Contract, by: *"Leaving the country without the permission of the* [C]*lub for any reason or excuse …"*, thereby providing the Respondent with just cause for unilateral termination. However, the Sole Arbitrator notes that the reasoning of the IRIFF PSC in support of its conclusion is ambiguous and hard to follow, possibly also because of translation quality issues. In order to avoid any possible misunderstanding, the Sole Arbitrator will make full use of his power to review the dispute *de novo*. The Sole Arbitrator will refer to specific reasoning provided in the IRIFF PSC Decision and the Appealed Decision where necessary.

93. That said, the Sole Arbitrator first notes that it is uncontested that the Player was injured and it follows that some form of diagnostic and/or treatment plan would be necessary. The record is also clear that there was some communication between Player and Club officials – albeit the Club contends that this was not made with the specifically prescribed officials – as to the

Player's proposed plan to visit a medical centre in Doha (ASPETAR in Qatar) for diagnostic analysis (an MR Scan, not treatment).

94. Specifically, the evidence also shows, and the Club did not contest, that the Player did leave the country briefly, during a period when there were no scheduled matches for the Club in the Persian Pro League, with the knowledge of the Head Coach of the Club. However, the Club contended that the Player should have sought permission from the CEO of the Club, not only by informing the Head Coach, as the Player did.

95. In this respect, the Sole Arbitrator first observes that the Respondent, neither in its inadmissible Answer nor orally at the hearing, cited any specific provision in the Contract obligating the Player to inform and seek permission from the CEO of the Club, nor any other Club official, for any sort of leave. At the same time, the Club, as mentioned above, did not contest that the Player did in fact inform the Head Coach of his intended short trip to Qatar. Therefore, failing any specific provision in the Contract or in any other Club regulation providing for any specific procedure to follow in order to obtain permission to leave the country, the Sole Arbitrator concludes that the uncontested knowledge of the Club's Head Coach was sufficient for the Player to be entitled to leave the Club and the country and to travel to Doha. As such, the Club's submissions that the Player left the country without the necessary authorisation shall be dismissed.

96. Be this as it may, even assuming that the Player did breach the terms of the Contract, either because he sought medical examination against the opinion of the Club's medical staff, or just because he left the country without the prior consent of the Club (*quod non*), such behaviour would not constitute grounds justifying the unilateral and immediate termination of the Contract.

97. First of all, the Sole Arbitrator notes that the Club's requests for termination of the Player's Contract addressed to the IRIFF on 25 September 2018 and 26 September 2018 only mention a breach of Article 7 para. 9 of the Contract, and not Article 6 para 15. However, the Sole Arbitrator understands that both provisions would have to be applicable for a unilateral termination of the Contract by the Club, as the latter required the Player to strictly abide by any direction given and decision taken by the Club and the Club's medical staff with respect to his health, so that any treatment or diagnostic outside of the Club's medical premises would have been strictly prohibited and, as a consequence, a breach of the Contract. However, the Sole Arbitrator finds that the Player was entitled to undergo medical diagnostics abroad.

98. The Sole Arbitrator recognizes that clubs have a legitimate interest in maintaining control over the physical condition and health of their players. This is crucial to ensure that players are always in optimal athletic condition, capable of fulfilling their contractual obligations and delivering top-level athletic performances. It is therefore generally acceptable that clubs have a say in medical matters concerning their players. However, as stated by the Panel in CAS 2015/A/4327, a player's health is a *"fundamental right"*. Therefore, the Sole Arbitrator acknowledges that players, as a part of their personal rights, must also have the right to have a say in medical matters and input on decisions regarding how to proceed with the treatment of any injuries. This, of course, should be made in agreement with their clubs. However, the Sole

Arbitrator holds that clubs cannot unconditionally and systematically reject players' requests concerning their own health (such as requests for diagnostic assessments or further medical advice) without any compelling reason. In other words, a refusal to agree with a player's different will with respect to medical issues must be based on reasonable grounds and must not unduly jeopardize the player's integrity and career.

99. In the case at hand, the Sole Arbitrator observes that the Club did not formally prohibit the Player from seeking medical advice in Doha. Neither in the inadmissible Answer nor at the hearing did the Club cite any such express prohibition given to the Player, either orally or in writing. The Club did not present any specific compelling reason as to why the Player's intended plan to go to Doha for diagnostic evaluation would have jeopardized the Club's interests. In any event, the Sole Arbitrator finds that the Club did not have any justifiable grounds for a categorical prohibition in this case. In fact, it is worth noting that the facility in question is recognized as one of the finest orthopaedic sports centres in the Gulf region. Considering that the Player, who was 28 years old at the time and at the pinnacle of his career, had a legitimate interest in maximizing his efforts to diagnose and treat an injury and maintain optimal athletic performance, the Sole Arbitrator does not believe that seeking diagnostic consultation at one of the region's premier orthopaedic clinics could reasonably have jeopardized the sporting and economic interests of the Club, so as to justify a refusal to give permission for such a trip. On the contrary, it is not unreasonable to assert that the Player's plan to go to Qatar for diagnostic evaluation likely would have been advantageous for the Club itself.

100. Be this at it may, the Sole Arbitrator notes that, in any case, any breach of Article 6 para. 15 of the Contract could have resulted in disciplinary proceedings only, sanctioned by a fine, and not with the unilateral termination of the Contract. However, as further noted below, no disciplinary procedure was ever formally instituted against the Player.

101. The Club relied on Article 7 para. 9 of the Contract as giving it the right to unilaterally terminate the Contract in case of unauthorized leave. Even though it has already been established that the Player did inform the Head Coach, such that the leave cannot be considered unauthorized, the Sole Arbitrator finds that such a clause would, in any event, be ineffective and invalid.

102. While the Sole Arbitrator accepts that parties to a contract shall be free to determine under which circumstances a contract can be terminated by a party with just cause, he is also mindful that CAS jurisprudence places some limitations on any deviation from general principles governing football contracts (see CAS 2015/A/4042; CAS 2017/A/5056 & 5059):

> *"Furthermore, the Sole Arbitrator considers this provision to be a deviation from the general principles enshrined in the FIFA Regulations. The Sole Arbitrator finds that, in principle, nothing prevents parties from defining when and under which circumstances a party may terminate the Employment Contract with just cause. For if the parties are free to arrange in the employment contract the method of compensation for breach of contract, then, in principle, the same must apply to specifying when there is "just cause" (CAS 2006/A/1180). Such deviation may in principle not be potestative, i.e. the conditions for termination may not be unilaterally influenced by the party wishing to terminate the contract".*

103. The Sole Arbitrator also notes that a *"contractual clause contained in a footballer's employment contract under which only the club, but not the player, may unilaterally terminate the employment contract is unilateral and potestative and therefore contrary to the regulations of FIFA. Consequently, it is null and void"* (CAS 2016/A/4852).

104. In the case at hand, the Sole Arbitrator finds that the specific clause in the Player's Contract is potestative and only for the benefit of the Club, since it gives to the latter an undue measure of control and a disproportionate predominant position over the Player. In fact, the Club could in theory deny its agreement for even justified and absolutely necessary leaves for the Player simply with the intent of creating a circumstance which would justify the termination of the Contract.

105. Therefore, the Sole Arbitrator finds that Article 7 para. 9 of the Contract is null and void and cannot be used against the Player in such circumstances in order to justify the unilateral termination of his Contract.

106. That said, irrespective of the mentioned provision of the Contract, the Sole Arbitrator notes that, in any event, the Club did not have any just cause to unilaterally terminate the Contract. In this respect, the Sole Arbitrator recalls that CAS longstanding jurisprudence *"only material breaches of a contract can possibly be considered as "just cause" for the termination of the latter"* (CAS 2018/A/6005, para. 66). Therefore, the breach at the basis of the unilateral termination shall be of such intensity that a continuation of the contractual relationship could not be expected from the party terminating the contract (CAS 2013/A/3091, 3092 & 3093). The Sole Arbitrator also recalls that a breach of contractual obligation does not per se justify the termination of a contract (CAS 2013/A/3091, 3092 & 3093). In any case, as per constant CAS jurisprudence, *"[…] for a party to be allowed to validly terminate an employment contract, it must have warned the other party, in order for the latter to have had the chance, if it deemed that the complaint to be legitimate, to comply with its obligations"* (CAS 2013/A/3091, 3092 & 3093).

107. In the case at hand, the Sole Arbitrator has noted that the Player was not even aware of the Club's intention to terminate the Contract or of the termination process introduced by the Club. He became aware of the termination only some weeks after the Club initiated the termination process with IRIFF; and, he was subsequently notified of the purported termination by IRIFF officials before an away match against the team Shahr Khodro Mashhad.

108. It appears that the Club did in fact take steps to initiate disciplinary proceedings against the Player and sought to impose sanctions on him. However, the records of the file show that the date of the disciplinary decision was 29 September 2018, while the Club initiated the process for terminating the Player's contract on 25 and 26 September 2018. Also, it appears that the Player was not given an opportunity to be heard by the disciplinary committee of the Club, which fact is not contested by the latter. In the inadmissible Answer, the Club states the following: *"Determining the need to invite or not to invite the player to the judicial authority of the club is solely the responsibility of the investigating authority, and this matter is not at the discretion of the offending player. Even if we believe that the player did not have the opportunity to defend himself, basically the question will be raised, what defense could he raise as defense?"*. Such contentions, of course, cannot be accepted and the Sole Arbitrator is convinced that the Club violated the Player's right to be heard.

109. The behaviour of the Club is in contrast to the above-mentioned principles governing the termination of contracts. The fact that the IRIFF internal system validated and accepted the termination request of the Club cannot cure an egregious procedural flaw in the process followed by the Club.

110. It follows from the above that the Club did not have just cause to terminate the Contract.

B. In case the aforementioned question is answered in the affirmative, what are the financial consequences?

111. Having determined that the Club did not have just cause to terminate the Player's Contract, the Sole Arbitrator, by virtue of his power to review the matter *de novo,* shall now determine the financial consequences of the Club's breach of the Contract.

112. The Sole Arbitrator notes Article 17 of the IRIFF RSTP, which reads as follows:

> *"A contract cannot be unilaterally terminated during the course of a season.*
>
> *In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortized over the term of the contract) and whether the contractual breach falls within a protected period".*

113. Also, the Sole Arbitrator notes Article 18 of the RSTP IRIFF, which reads as follows:

> *"In all cases, the party in breach shall pay compensation.*
>
> *Considering the regulations related to the training compensation, the compensation due to termination without just cause is calculated based on the provisions of the contract, and if the compensation is not clearly mentioned in the contract, the compensation for the termination of the contract is in compliance with the laws and regulations regarding the rights of contracts and obligations, subject the country (especially in the field of sports if it exists) is calculated to the extent that it does not contradict FIFA regulations and any other objective criteria.*
>
> *These criteria can include the salary and other benefits of the player in the previous contract and the new contract, the remaining time of the previous contract, the expenses and costs paid or incurred by the former club (which is divided according to the length of the contract) and whether the breach of contract occurred during the protected period or not".*

114. Based on these provisions, which are similar to those of the FIFA RSTP, the Player is entitled to receive compensation amounting to the residual value of the Contract.

115. *In casu*, considering that the Contract was terminated by the Club on 18 October 2018, i.e., the date on which the Player was notified of the termination, and that the Contract was valid for one sporting season, after salary due to such termination date, the residual value of the Contract is USD 193,000.

116. The Appellant is, in principle, entitled to this compensation as a consequence of the breach of the Contract committed by the Respondent, as part of the salary payments that he would have earned had the Respondent not breached the Contract. However, the Sole Arbitrator notes that it remained undisputed between the Parties that the Appellant found new employment with the Iranian Club Persepolis before the expiry of the Contract. The Sole Arbitrator notes that the Appellant concedes that for the purposes of determining the level of compensation the value of the new contract with Persepolis, which the Appellant quantified in 1'000'000'000 Iranian Tomen, should be taken into consideration. Due to the fluctuations of Iranian currency, the Appellant further submitted that the calculation should be made based on the value the day of the execution of this Award. The Respondent, on its side, argued, without submission of any evidence, that the figures indicated by the Appellant could not be correct.

117. The Sole Arbitrator notes that in accordance with the above provisions of the IRIFF RSTP, which are mostly identical to those of FIFA, the value of any new contract shall be taken into consideration for the determination of the level of compensation payable by the party in breach of the contract. This is a concretization of the burden on the party claiming compensation for breach of contract to mitigate the damages it sustains.

118. As a consequence, the Sole Arbitrator, shall take into consideration the figures contained in the new contract with Persepolis, which was produced by the Appellant upon request of the Sole Arbitrator, which include the following:

    1'000'000'000 Iranian Tomen (payable in a single tranche for the second half of the 2018-2019 season); and

    Additional payments of Iranian Rials (payable in multiple tranches for the subsequent - and for current purposes immaterial - 2019-2020 season).

119. It results that the Appellant was able to partially mitigate his damage in the amount of 1'000'000'000 Iranian Tomen. In this respect, the Sole Arbitrator notes that the Appellant asks to consider the exchange rate for this amount to USD on the date of the present Award. However, the Sole Arbitrator sees no basis for such approach: although the high volatility of Iranian currency could justify the need to find flexible solutions, the Sole Arbitrator considers that the relevant time to take into consideration is when the new contract was signed, on or about 7 January 2019.

120. In light of the above, the Sole Arbitrator determines that the compensation for breach of contract is to be reduced from USD 193,000 by USD 23,440 to USD 169,560.

121. As to the applicable interest on the amount of compensation for breach of contract, the Sole Arbitrator notes that the Appellant refers to Article 5 of the Contract, which governs the

"Contract amounts and terms of payment", which reads as follows: *"[i]f any of the Club's payments are not made on the due date […] for each day of delay, 1% of the amount that the club must pay will be calculated as a penalty"*.

122. Now, the Sole Arbitrator understands that such clause of the Contract only concerns the interest rate (or penalty amount, see below) which shall apply in case the Club fails to meet the payment terms stipulated in the Contract for salaries and bonuses. In the Sole Arbitrator's view, the mechanics of the clause, which forms part of the terms governing the remuneration of the Player, exclude an application of such rate to any claim the Player may have against the Club, such as a claim for compensation for breach of contract.

123. Therefore, the Sole Arbitrator rejects the Appellant's request to apply a daily interest rate of 1% on the amount of compensation due by the Club.

124. Since the Appellant, however, made a specific request regarding the application of interest to the amount due, albeit founded on an incorrect legal basis, the Sole Arbitrator finds that he still has the possibility to apply interest on such amount, without going *ultra petita*, however, with a different rate.

125. In this respect, the Sole Arbitrator notes that apart from referring to Article 5 of the Contract, the Player did not make any substantive reference to interest rates otherwise applicable to his claim for compensation. Based on the above findings in *re* applicable law, the issue shall, in principle, be assessed under Iranian law. However, the Sole Arbitrator has noted that the Parties did not make specific reference to Iranian law on this matter. Rather, the Parties made references to FIFA regulations, in particular FIFA RSTP, to FIFA's decisions, to CAS jurisprudence and to *"International regulations in the field of football"* (Article 9 para. 5 of the Contract). As such, the Sole Arbitrator finds that the Parties implicitly accepted that some general principles which are usually applied to decisions rendered by the FIFA bodies, as well by the CAS, can be applied *mutatis mutandis* to the present dispute. As such, the Sole Arbitrator finds that the Parties implicitly accepted that the benchmark the Sole Arbitrator has to apply for his assessment of the dispute at issue can be the same used in decisions of FIFA and the CAS in employment-related disputes.

126. Among these principles, the Sole Arbitrator is mindful that the longstanding case law concerning the application of interest rates based on Swiss law can also be applied to the present claim. In this respect, the Sole Arbitrator recalls that FIFA RSTP does not contain any specific rule as to the application of default interest on employment-related claims. Therefore, according to well-established CAS jurisprudence, Swiss law is applied for the determination of default interest (see, *ex plurimis* CAS 2009/A/1960):

> *"La réglementation de la FIFA ne prévoit rien pour les intérêts moratoires. En vertu de l'article 104 al. 1 CO, applicable à titre de droit suisse supplétif, le débiteur en demeure pour le paiement d'une somme d'argent doit l'intérêt moratoire à 5 % l'an. En matière de droit du travail et selon l'article 339 al. 1 CO, à la fin du contrat, toutes les créances qui en découlent deviennent exigibles. L'indemnité découlant d'une résiliation prématurée, unilatérale et sans juste cause constitue également une créance tombant sous le coup de l'art. 339 al. 1 CO. Dans ces cas, il y a lieu d'admettre que la créance porte intérêt dès la fin des rapports de travail,*

sans qu'il soit nécessaire d'interpeller le débiteur. Dès lors, le montant alloué doit être assorti d'un intérêt moratoire à 5 % l'an à partir de la date à partir de laquelle la partie les a requis dans ses conclusions tant devant le TAS que devant la FIFA".

[free translation]

"The FIFA regulations do not provide for late payment interest. According to Article 104(1) of the SCO, which applies as supplementary Swiss law, a debtor who is in default for the payment of a sum of money is obliged to pay default interest at a rate of 5% per year. In terms of labor law and according to Article 339(1) CO, at the end of the employment contract, all resulting claims become due. The compensation arising from a premature, unilateral, and unjustified termination also constitutes a claim falling under Article 339(1) CO. In these cases, it is appropriate to assume that the claim accrues interest from the end of the employment relationship without the need to demand payment from the debtor. Therefore, the awarded amount must be accompanied by default interest at a rate of 5% per year from the date on which the party requested them in its submissions, both before the CAS and before FIFA".

127. Based on the above, the Sole Arbitrator finds that the compensation for termination without just cause shall be accompanied by 5% default interest. As to the *dies a quo,* the Sole Arbitrator notes that the Player claims interests *"from the beginning of the Contract"*. However, as mentioned above the claim for compensation has become due with the termination of the Contract without just cause, which is 18 October 2018. As such, the interest rate shall run from such date until the date of effective payment.

C. Is the Player entitled to any further remuneration?

128. The Sole Arbitrator notes that the Player, in addition to compensation for breach of contract, also claims USD 107,000 as overdue salary.

129. The Sole Arbitrator notes that based on the Contract, the Club, for the entire duration of the Contract, undertook to pay the Player USD 300,000 in accordance with the following amounts:

USD 30,000 – as an advance payment on issuance of the ITC and report of the Iran League Medical Center.

USD 30,000 – payable 28 August 2018.

USD 30,000 – payable 28 September 2018.

USD 30,000 – payable 28 October 2018.

USD 30,000 – payable 27 November 2018.

USD 30,000 – payable in December 2018.

USD 30,000 – payable in January 2019.

USD 30,000 – payable in February 2019.

USD 30,000 – payable in March 2019.

USD 30,000 – payable in April 2019.

130. It appears that the Club, however, failed to pay any and all amounts due under the Contract until the date of its termination on 18 October 2018.

131. Therefore, the Club, at the time of the termination of the Contract, was in default to pay to the Player the USD 107,000 plus interest in unpaid salary, as follows:

- USD 30,000 + 5% interest/a from 29 July 2018
- USD 30,000 + 5% interest/a from 28 August 2018
- USD 30,000 + 5% interest/a from 28 September 2018
- USD 17,000 + 5% interest/a from 18 October 2018

132. In Article 5 of the Contract the Parties agreed that: *"… if any of the* [C]*lub's payments are not made on the due date while creating the right of immediate termination and without the need for correspondence for the* [P]*layer and demanding the amount of the contract and its value for each day of delay 1% of the amount that the* [C]*lub must pay will be calculated as a penalty"*.

133. The proposed 1% daily penalty applicable on overdue amounts would correspond to an interest rate of 365% per annum (or even higher, if the applicable interest is to be considered compounded).

134. The Sole Arbitrator recalls that arbitral awards rendered by the CAS, being an arbitral tribunal seated in Switzerland, can be set aside by the SFT if found to be in breach of public policy (Article 190 para. 2 lett. e Swiss Private International Law Act). Although it was recognized above that, in principle, Iranian law shall apply to the merits of the dispute, the Swiss public policy shall be respected (see SFT 120 II 155; CAS 2010/A/2128). Therefore, the Sole Arbitrator, recalls that based on standing case law, interest rate / penalties of around 18% are generally recognized as being the maximum limit, beyond which an interest rate would result to be usurious and, therefore, against *ordre public* (see *ex plurimis* CAS 2019/A/6511). Since the safeguard of Swiss public policy is a matter that an arbitral tribunal has to apply *ex officio,* the Sole Arbitrator finds that he is entitled to review this point, even without having been asked by the Respondent to reduce the amount of the penalty clause / interest rate, without incurring in any risk of going *ultra petita.*

135. As such, the Sole Arbitrator is satisfied to apply the same benchmark applied for the determination of the interest rate applicable on the amount of compensation (see above, ad para. 127).

136. Therefore, the Sole Arbitrator determines that a default interest of 5% shall be applied to each of the overdue instalments due to the Player. As such, the Player is entitled to interest of 5%

per annum on any outstanding salary payment highlighted in paragraph 131 above from the day after the respective salary payment was due.

D. Conclusion

137. Based on the above findings, the Sole Arbitrator, deciding the dispute *de novo*, concludes that the Appeal shall be partially upheld and the Appealed Decision shall be set aside and replaced by a new decision determining that:

- The Club did not have just cause to terminate the Player's Contract;

- As a consequence of the termination of the Appellant's Contract without just cause, the Appellant is entitled to receive as compensation the (mitigated) amount of USD 169,560, plus interests of 5% *p.a.* as of 18 October 2018;

- In addition, the Club shall be liable to pay the Appellant outstanding salary payment highlighted in paragraph 131 above.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Mr. Soroush Rafiei Telgari on 4 January 2023 against the decision of the Appeal Committee of the Islamic Republic of Iran Football Federation dated 19 July 2022 is partially upheld.

2. The decision of the Appeal Committee of the Islamic Republic of Iran Football Federation dated 19 July 2022 is set aside.

3. The decision of the Players' Status Committee of the Islamic Republic of Iran Football Federation dated 7 June 2021 is replaced as follows:

    1. *Foolad Khouzestan Sport and Cultural Club terminated the employment contract with Mr. Soroush Rafiei Telgari without just cause.*

    2. *Foolad Khouzestan Sport and Cultural Club shall pay Mr. Soroush Rafiei Telgari USD 169,560.00 as compensation, plus 5% interests per annum as of 18 October 2018.*

3. *Foolad Khouzestan Sport and Cultural Club shall pay Mr. Soroush Rafiei Telgari the following amounts:*

   USD 30,000 + 5% interest/a from 29 July 2018

   USD 30,000 + 5% interest/a from 28 August 2018

   USD 30,000 + 5% interest/a from 28 September 2018

   USD 17,000 + 5% interest/a from 18 October 2018.

4. (…).

5. (…).

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