Arbitration CAS 2020/A/6679 Bursaspor Kulübü Derneği v. Christian Chagas Tarouco, award of 3 August 2020

Panel: Mr Frans de Weger (The Netherlands), Sole Arbitrator

Football
Termination of the employment contract by mutual agreement
Burden of proof
Binding effect of a signature
Request to cancel a potential future sanction

1. **According to Article 8 of the Swiss Civil Code ("CC"), *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*.**

2. **As a general rule, a party signing a document of legal significance does so on its own responsibility and is so liable to bear the legal consequences arising from the execution of such document.**

3. **There is no ground to accept a request to cancel a potential future sanction allegedly being disproportionate if at the moment of the request the sanction is not yet in force and it remains in the power of the debtor club to avoid the sanction by paying the amounts deriving from the appealed decision.**

I. INTRODUCTION

1. This appeal is brought by Bursaspor Kulübü Derneği (the "Club" or the "Appellant") against the decision rendered by the Dispute Resolution Chamber (the "DRC") of the Fédération Internationale de Football Association ("FIFA") on 21 August 2019 (the "Appealed Decision"), regarding an employment-related dispute between the Club and the professional football player Mr Christian Chagas Tarouco (the "Player" or the "Respondent").

II. THE PARTIES

2. The Appellant is a professional football club based in Bursa, Turkey. The Club is affiliated to the Turkish Football Federation (the "TFF") which in turn is affiliated with FIFA.

3. The Respondent is a professional football player of Brazilian nationality, born on 12 March 1988.

4. The Appellant and the Respondent are referred together as the "Parties".

III. FACTUAL BACKGROUND

5. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions on the file and relevant documentation produced in this appeal. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further 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, the Award only refers to the submissions and evidence it considers necessary to explain its reasoning.

A. Background Facts

6. On 11 July 2017, the Player and the Club concluded an employment contract valid from 11 July 2017 until 31 May 2020 (the "Employment Contract").

7. The Employment Contract contains, *inter alia,* the following relevant terms:

> *"**3 – PAYMENT AND SPECIAL PROVISIONS***
>
> *[...]*
>
> *At the end of every season; If the collective team bonus amount remain under 75.000,00 EUR net after calculations that the player entitled receive during season, the Bursaspor will add the difference up to complete the amount for 100.000,00 EUR*
>
> *It will be determined by the Club Board of Directors whether to make the bonus payment to the Player or not, according to his success and it is entirely at the discretion of the Board of Directors and it is not the commitment of the club. The bonus which is paid to any member of the football team does not grant the right to the Player.*
>
> *All charges stated in this Contract are determined as NET.*
>
> *[…]".*

8. On 6 August 2018, the Player and the Club concluded and signed a mutual termination agreement (the "Termination Agreement").

9. The Termination Agreement contains, *inter alia*, the following relevant terms:

> *"[…]*
>
> ***2-** The promissory note in the amount of 100.000,00 EUR with the payment date of 31.07.2018 and the promissory note in the amount of 100.000,00 EUR with the payment date of 31.08.2018, which are unpaid and are previously given to the Player by Bursaspor Kulübü in exchange for the*

receivables, have become completely null and void. These promissory notes will be returned to Bursaspor by the Player. The sum of these two promissory notes 200.000,00 EURO and 43.762,55 Euro premium payments to be paid to the Player due to the 11.07.2018 dated contract, ie. total 243.762,55 Euro will be paid to the player as shown below. The player CHRISTIAN CHAGAS TAROUCO hereby acknowledges and declares that his total receivables until 06.08.2018, which is the date of mutual termination date are 243.762,55 EURO, due to the contract with the beginning date of 11.07.2017 and ending date of 31.05.2020 signed with Bursaspor, in addition, the Player acknowledges and declares with his own free will that he has no rights and receivables from Bursaspor Kulübü as of the date of 06.08.2018, and he has waived from his current and future receivables other than his receivable in the amount of 243.762,55 Euro. For this reason, the player acknowledges and declares not to claim the amount due claims, including match premiums or other financial interests, to waive all other receivables and discharge Bursaspor Kulübü Derneği from all claims arising from all contracts, agreements, protocols, debts, claims and liabilities due to the mutual early termination of the Professional Player Contract signed with Bursaspor .

- 43.762,55 Eur on 15.09.2018
- 50.000,00 Eur on 15.10.2018
- 75.000,00 Eur on 15.11.2018
- 75.000,00 Eur on 15.12.2018

3- *Player CHRISTIAN CHAGAS TAROUCO accept, declare and undertake that regarding the rights brought or shall be brought by the contracts signed previously, there remains no claims and receivables (advance payment, payments per match, guarantee payment, monthly payment, subsistence wage, premium and all other payments) of the parties from each other as of the mutual termination and acquittance date of this contract including the receivables connected with bill of exchange if there is any, and thus there shall emerge no objections before TFF or general courts and he withdraw his right of suit and they have acquitted each other's debits irreversibly and wholly.*

4- *Both parties hereby agree that this Agreement shall be subject to all applicable rules and regulations of FIFA. The parties agree to submit any dispute to the relevant FIFA tribunal and to Court of Arbitration in Lausanne, Switzerland. Swiss Civil Law shall be applicable.*

[…]".

B. Proceedings before the FIFA Dispute Resolution Chamber

10. On 14 February 2019, the Player lodged a claim before FIFA against the Club for outstanding remuneration deriving from the Termination Agreement and requested payment of the total amount of EUR 243,762.55, plus 5% interest *p.a.* as from the due dates. In addition, the Player requested the payment of 20% of the due amount as compensation. Moreover, the Player requested the payment of legal fees in the amount of EUR 48,752.51 (i.e. 20% of the claimed amount), as well as procedural costs.

11. In its reply, the Club, first of all, argued that it paid the amount of EUR 77,705.37 *"for premiums payment"* and that therefore the Player *"has no any right to claim for 43.762.55 EUR on the other hand the* [Player] *has claimed 43.762.55 EUR for Premium payment"*. Furthermore, the Club noted

that it paid *"with 13 pieces of payment totally and equally 77,705.37 EUR Premium payment (…) during the season"*. In this respect, the Club submitted some payment receipts as evidence. The Club further rejected the payment of the legal fees.

12. On 21 August 2019, the DRC rendered the Appealed Decision, with, *inter alia*, the following operative part:

> *"1. The claim of the Claimant,* [the Player]*, is partially accepted.*
>
> *2. The Respondent,* [Club]*, has to pay to the* [Player] *outstanding remuneration in the amount of EUR 243,762.55, plus interest calculated as follows:*
>
> - *5% interest p.a. over the amount of EUR 43,762.55 as from 16 September 2018 until the date of effective payment;*
> - *5% interest p.a. over the amount of EUR 50,000 as from 16 October 2018 until the date of effective payment;*
> - *5% interest p.a. over the amount of EUR 75,000 as from 16 November 2018 until the date of effective payment;*
> - *5% interest p.a. over the amount of EUR 75,000 as from 16 December 2018 until the date of effective payment.*
>
> *[…]*
>
> *5. In the event that the amount due plus related interest in accordance with point 2. above are not paid by* [the Club] ***within 45 days*** *as from the notification by* [the Player] *of the relevant bank details to* [the Club], [the Club] *shall be banned from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24 bis of the Regulations on the Status and Transfer of Players).*
>
> *6. The ban mentioned in point 5. above will be lifted immediately and prior to its complete serving, once the due amounts are paid".*

13. Due to a technical error, the grounds of the Appealed Decision sent to the Club by FIFA on 18 November 2019, appeared not to have been properly transmitted. Therefore, FIFA sent a new copy of said correspondence to the Club on 10 December 2019.

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

- According to clause 2 of the Termination Agreement, the Club agreed to pay to the Player the following amounts:
  - EUR 43,762.55, on 15 September 2018;

- EUR 50,000[1], on 15 October 2018;
- EUR 75,000, on 15 November 2018;
- EUR 75,000, on 15 December 2018.

- The FIFA DRC *"noted that, according to the terms of the* [Termination Agreement] *concluded between the parties on 6 August 2018, the* [Club] *had to pay the* [Player] *the amount of EUR 243,762.55".*

- *"In continuation, the DRC noted that the* [Player] *alleged that the* [Club] *failed to pay him the aforementioned amount, the payment of which he requested together with the payment of compensation and of EUR 48,752.51 for legal fees plus procedural costs.*

- *Equally, the Chamber took note of the reply of the* [Club]*, which maintained that it provided the* [Player] *with payments.*

- *In this respect, the members of the DRC acknowledged that the* [Club] *submitted some payment receipts in support of his argumentation.*

- *In continuation, the members of the Chamber referred to the basic principle of burden of proof, as established in art. 12 par. 3 of the Procedural Rules, according to which any party claiming a right on the basis of an alleged fact shall carry the respective burden of proof.*

- *(…) the Chamber were eager to emphasise that the* [Club] *failed to submit such documents translated into one of the four official FIFA languages, documents which, therefore, could not be taken into account. What is more, the DRC was comforted with such conclusion by the fact that none of the above-mentioned payment receipts appeared to bear a later date than the date of the first instalment provided in the termination agreement.*

- *Consequently, the members of the DRC deemed that no substantial evidence was provided by the* [Club] *with regard to the alleged payments and, in accordance with the well-established jurisprudence of the DRC, the members of the Chamber had no other option than not to take into account the alleged payment receipts submitted by the* [Club]*".*

- On account of the above considerations, the DRC decided that, in accordance with *"the general principle of pacta sunt servanda, the* [Club] *must fulfil its obligations as per the* [Termination Agreement] *and, consequently, is to be held liable to pay the outstanding amount of EUR 243,762.55 to the* [Player].

- *In addition, taking into account the* [Player's] *request as well as the constant practice of the Dispute Resolution Chamber in this regard, the Chamber decided that the* [Club] *must pay to the* [Player] *interest on the aforementioned amount as follows:*

[1] Under point 3 ("I. Facts of the case") of the Appealed Decision, the DRC erroneously referred to an amount of EUR 90,000.- (instead of EUR 50,000.-).

- *5% interest p.a. over the amount of EUR 43,762.55 as from 16 September 2018 until the date of effective payment;*
- *5% interest p.a. over the amount of EUR 50,000 as from 16 October 2018 until the date of effective payment;*
- *5% interest p.a. over the amount of EUR 75,000 as from 16 November 2018 until the date of effective payment;*
- *5% interest p.a. over the amount of EUR 75,000 as from 16 December 2018 until the date of effective payment.*

- *The DRC further decided that the* [Player's] *request for compensation shall be rejected as the* [Club] *shall already pay the entire value of the* [Termination Agreement] *and, thus, the aforementioned request of the* [Player] *has no legal basis.*

- *Finally, the Dispute Resolution Chamber decided to reject the* [Player's] *claim pertaining to legal costs and procedural fees, in accordance with art. 18 par. 4 of the Procedural Rules and the Chamber's respective longstanding jurisprudence in this regard.*

- *The Dispute Resolution Chamber concluded its deliberations in the present matter by establishing that any further claim lodged by the* [Player] *is rejected".*

- In this regard, the Chamber pointed out 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 and for the maximum duration of three entire and consecutive registration periods.*

- *Therefore, bearing in mind the above, the DRC decided that, in event that the* [Club] *does not pay the amounts due to the* [Player] *within 45 days as from the moment in which the* [Player]*, following the notification of the present decision, communicates the relevant bank details to the* [Club]*, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on the* [Club] *in accordance with art. 24 bis par. 2 and 4 of the Regulations.*

- *Finally, the Chamber recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 24bis par. 3 of the Regulations".*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

15. On 31 December 2019, the Club filed an appeal against the Player before the Court of Arbitration for Sport (the "CAS") in accordance with Articles 57 and 58 of the FIFA Statutes and Articles R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code"). Furthermore, the Club requested that the appeal be decided by a Sole Arbitrator.

16. On 9 January 2020, the Club filed its Appeal Brief pursuant to Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. The Club challenged the Appealed Decision, submitting the following requests for relief:

"1. To accept this appeal and cancel the Decision rendered by the FIFA DRC,

2. To cancel the Decision which states that the Club has to pay in the amount of EUR 243,734.55 with %5 interest and to cancel all the sanctions against the Appellant which decided in the said decision.

3. To condemn the Respondent to payment of the whole CAS administration costs and the Arbitrators' fees".

17. On 10 January 2020, the Respondent was invited by the CAS Court Office to submit its Answer to the CAS within twenty (20) days upon receipt of the letter by courier. Per the same letter, it was communicated to the Parties that if the Respondent would fail to submit his Answer by the given time limit, the Panel or the Sole Arbitrator as the case be, may nevertheless proceed with the arbitration and deliver the Award.

18. On 21 January 2020, the CAS Court Office informed the Parties, referring to its correspondence dated 6 January 2020, that it noted that the Respondent had not filed any comments regarding the Appellant's request for the appointment of a Sole Arbitrator within the giving time limit.

19. On 24 January 2020, the Parties were informed by the CAS Court Office that, pursuant to Article R50 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the Deputy Division President had decided to submit the matter to a Sole Arbitrator.

20. On 18 February 2020, the CAS Court Office informed the Parties that it had not received the Respondent's Answer, or any communication from the Respondent in relation to the Answer. Furthermore, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the Panel appointed to hear the appeal was constituted as follows:

- Sole Arbitrator: Mr Frans M. de Weger, Attorney-at-Law, Haarlem, the Netherlands

21. In addition, the Parties were invited to inform the CAS Court Office within seven (7) days whether they preferred a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

22. On 20 February 2020, the Respondent, referring to the correspondence of the CAS, dated 18 February 2020, stated that it submitted its Answer within the deadline determined by the CAS. Hence, it follows from said correspondence that:

"….due to the trainee's error, the remittance was made to the address of FIFA (first judge) and not TAS.

Nevertheless, the defence was sent by email to the official email address of TAS.

Thus, the defence, at least electronically, was sent correctly".

In addition, the Player stated that:

"in the event that the defense sent by the Respondent to the official email address of the TAS is not used, in this case, a hearing is required, so that the Respondent can exercise his defense".

23. On 21 February 2020, the CAS Court Office acknowledged the receipt of the Respondent's letter of 20 February 2020. Furthermore, the CAS Court Office confirmed that it had never received the Respondent's Answer by courier. In addition, the CAS Court Office informed that it only received on 19 February 2020 the Respondent's email apparently sent on 28 January 2020.

24. In this regard, the Appellant was invited to inform the CAS Court Office by 25 February 2020 whether it agreed to the admissibility of the Respondent's Answer. In case of objection, it would be for the Sole Arbitrator to decide on this issue pursuant to Article R32 of the Code.

25. On 25 February 2020, the Appellant requested to hold a hearing in this matter.

26. On 28 February, the CAS Court Office informed the Parties, on behalf of the Sole Arbitrator, pursuant Articles R31 and R55 of the CAS Code, that the Respondent's Answer was deemed late and, therefore, it was not admitted into the file. Furthermore, the Parties were advised that the Sole Arbitrator had decided to hold a hearing in this matter.

27. On 18 March 2020, the CAS Court Office informed the Parties that in light of the current COVID-19 outbreak, the Sole Arbitrator was no longer in the position to offer alternative hearing dates to the Parties. As soon as the emergency situation was solved, new alternative hearing dates would be offered to the Parties.

28. On 23 April 2020, the CAS Court Office informed the Parties that in view of the COVID-19 outbreak, the Sole Arbitrator expressed its doubts whether a hearing in person could be held in the near future. Therefore, the Parties were invited to inform the CAS Court Office, by 30 April 2020, whether they preferred:

"1. to hold an in-person hearing at a later stage, the time frame for which cannot presently be predicted.

2. to hold the hearing by video-conference.

3. to waive a hearing and request the Sole Arbitrator decide the case on the basis of the written submissions only.

4. to waive a hearing and have the possibility to file a second round of written submissions".

29. On 28 April 2020, the Appellant informed the CAS Court Office that it preferred a hearing in-person. Therefore, the Appellant requested *"to postpone and offer another day for the hearing when this emergency situation is solved cause* [the Club] *do not think it will be efficient to hold the hearing via video conference".*

30. On 30 April 2020, the Respondent stated that it preferred an award rendered on the sole basis of the Parties' written submissions and, subsidiarily, for a video-conference hearing.

31. On 4 May 2020, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold the hearing by video-conference, pursuant to Article R57 and R44.2 of the Code.

32. On 8 May 2020, on behalf of the Sole Arbitrator, the Parties and their witnesses were called to appear at the hearing, which would be held by video-conference on 2 June 2020.

33. On 11 May 2020, the Parties returned duly signed copies of the Order of Procedure to the CAS Court Office.

34. On 21 May 2020, the Appellant informed the CAS Court Office that it waived its request for a hearing and stated that it will not be able to attend the hearing. Furthermore, the Appellant requested the CAS to make the decision on the written procedure.

35. On 22 May 2020, the CAS Court Office informed the Parties that considering the Appellant's sudden change of position regarding the hearing, which was deemed as an exceptional circumstance, the Respondent was allowed to file its Answer by 1 June 2020, in accordance with Article R56 of the CAS Code. Moreover, and in view of the Parties' agreement, the Sole Arbitrator considered that no hearing was needed and, therefore, the virtual hearing scheduled was cancelled.

36. On 2 July 2020, the CAS Court Office informed the Parties that it noted that the Respondent failed to file its Answer within the given deadline. Furthermore, on behalf of the Sole Arbitrator, who had considered the Parties' positions with respect to a hearing and pursuant to Article R57 of the CAS Code, the Parties were advised that the Sole Arbitrator deemed himself well-informed to decide the case based solely on the Parties' written submissions, without the need to hold a hearing.

V. SUBMISSIONS OF THE PARTIES

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

A. Position of the Appellant

38. The Club's submissions, in essence, may be summarised as follows:

- The Club submits that *"The Appellant and the Respondent concluded an employment contract on 11 July 2017 for the 2017/2018, 2018/2019 and 2019/2020 football seasons. On 06.08.2018 Parties agreed that terminated the Employment Contract with Mutual Termination Agreement"*.

- In this regard, the Club states that *"the Parties made a crucial mistake by calculation of the unpaid receivables of the Player. According to the Mutual Termination Agreement, Parties agreed that; with a crucial mistake, the amount of 243.762,55-EUR shall be paid by the Club to the Player as overdue receivables of the Player from the Employment Contract in 4 instalments as follows;*

  - *43.762,55-EUR 15.09.2018*
  - *50.000,00-EUR 15.10.2018*
  - *75.000,00-EUR 15.11.2018*
  - *75,000,00-EUR 15.12.2018".*

- Furthermore, the Club states that *"in the Termination Agreement the overdue payables has been written 243.762,55-EUR instead of 200.000,00-EUR by mistake. The difference is 43.762,55-EUR. This amount difference is derived from a miscalculation of the bonus payments".*

- The miscalculation is explained by the Club as follows:

  "According to the art. 3. Of the Employment Contract "at the end of every season, If the collective team bonus amount remain under 75.000-EUR net after calculations that the Player entitled receive during the season, the Club will add the difference up to complete the amount for 100.000,00-EUR". In the Termination Agreement; overdue payables of the bonus payments calculated as 43.762,55-EUR, and the amount of 200.000,00-EUR corresponds July and August payments".

- In this regard, the Club further submits that *"there are no overdue payables from bonus payments of the Player. The bonus payment paid in Turkish Liras, while the Termination Agreement has been signed; the calculation of the exchange has been made incorrect. TL payments, which have been made by the Club, have been calculated incorrectly as 56.237,45-EUR on the date of the signing of the Termination Agreement. Due to the miscalculation, the Parties decided that the Club shall pay to the Player in the amount of 43.762,55-EUR mistakenly. But if the TL payments (bonus payments) were converted to Euro in accordance with the correct exchange rate, it would be seen that the Player had been paid 77.685,37-EUR as bonus payment and in this case the bonus payments would be more than 75.000-EUR and there would be no completion and no bonus payments were made".*

- The Club submits a diagram with the miscalculated exchange following which the bonus payments of the Player are, following the Club, *"in Total 77.685,37-EUR (more than 75.000-EUR)".*

- In this regard, the Club submits that *"according to art.3 of the Employment Contract there are no overdue payables from the bonus payments. In this context, taking into consideration of the miscalculation of the bonus payments, there isn't any debts with regards to the bonus payments and as of the date of the Termination Agreement between the Parties the total unpaid receivable of the Player were 200.000-EUR in total".*

- The Club states that *"With this regard, there isn't any bonus payment receivables of the Player on the date of the signing of the Termination Agreement and consequently as of the date of the Termination Agreement between the Parties the overdue payables of the Player; should not be more than 200.000,00-EUR"*.

- In conclusion, the Club also states, referring to the Appealed Decision, that *"in particularly the parts of having the transfer ban in case of non-payment the amount due, is disproportionate and exercising the appealed decision of FIFA DRC will cause irreparable damages on the future of the Club and definitely it will put the Club in a very difficult situation"*.

- In conclusion, the Club submits that *"Under the light of the above explanations, the Club has no choice but to appeal the decision of FIFA DRC in order to prevent the transfer ban which decided in the appealed FIFA DRC decision"*.

B. Position of the Respondent

39. The Respondent's Answer was deemed too late, and consequently, not admitted to the file, as communicated by the CAS Court Office to the Parties on 28 February 2020.

40. The Respondent was given another chance to submit its Answer. In fact, on 22 May 2020, the CAS Court Office informed the Parties that considering the Appellant's sudden change of position regarding the hearing, which was deemed as an exceptional circumstance, the Respondent was invited to file its Answer by 1 June 2020, following Article R56 of the CAS Code. However, the Respondent, again, failed to file an Answer within the deadline, which was confirmed by the CAS Court Office on 2 July 2020.

41. The grounds for the decision by the Sole Arbitrator not to admit the Answer of the Respondent to the file of this arbitration, are further set out below (under "Timeliness").

VI. JURISDICTION

42. Article R47 of the CAS Code provides as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS 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 it prior to the appeal, in accordance with the statutes or regulations of the said sports-related body"*.

43. The jurisdiction of CAS derives from Article 58 (1) of the FIFA Statutes (2019 edition) which reads:

> *"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"*.

44. The jurisdiction of CAS is not disputed by the Parties. Accordingly, in the Appeal Brief the Appellant explicitly submits that CAS *"has full jurisdiction to decide on the case"*.

45. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Parties.

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

VII. ADMISSIBILITY

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

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

48. The Sole Arbitrator notes that pursuant to Article 58 (1) of the FIFA Statutes, the time limit to file an appeal is 21 days of receipt of the Appealed Decision.

49. The Sole Arbitrator observes that the grounds of the Appealed Decision were notified to the Respondent on 18 November 2019.

50. However, due to a technical error, according to FIFA, the grounds of the Appealed Decision sent to the Appellant by FIFA on 18 November 2019 appeared not to have been properly transmitted. Therefore, FIFA sent a new copy of said correspondence to the Appellant on 10 December 2019.

51. In this regard, the Sole Arbitrator notes that the time limit of 21 days to file an appeal commenced on 10 December 2019.

52. As the Statement of Appeal was filed by the Respondent on 31 December 2019, which is within the 21 days deadline, the appeal was timely submitted. It complies with all the other requirements set forth by Article R48 of the CAS Code and is therefore admissible.

VIII. APPLICABLE LAW

53. Article R58 of the CAS Code provides more specifically the following:

> *"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".

54. Article 57 (2) of the FIFA Statutes reads as follows:

"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the dispute has the closest connection".

55. The Sole Arbitrator notes that the Termination Agreement provides for a choice-of-law clause, referring to the FIFA Regulations and subsidiary Swiss Law.

56. The Respondent did not submit a statement regarding the applicable law.

57. The Sole Arbitrator is satisfied that the FIFA Regulations are applicable, with Swiss law applying to fill in gaps or *lacuna* within those regulations.

IX. TIMELINESS OF THE ANSWER

A. Positions Parties

58. The Sole Arbitrator recalls that on 10 January 2020, the Player was invited by the CAS Court Office to submit its Answer to the CAS within twenty (20) days upon receipt of the letter by courier. Per the same letter, it was communicated to the Parties that if the Respondent would fail to submit his Answer by the given time limit, the Sole Arbitrator may nevertheless proceed with the arbitration and deliver the Award.

59. On 18 February 2020, the CAS Court Office informed the Parties that it had not received the Respondent's Answer, or any communication from him in relation to the Answer.

60. On 20 February 2020, the Respondent, referring to the correspondence of the CAS, dated 18 February 2020, stated that it submitted its Answer within the deadline determined by the CAS. In this regard, and as set out above, the Respondent submitted that due to its trainee's error, the Answer was sent to FIFA and not the CAS. However, the Respondent claimed that the Answer was also sent by email on 28 January 2020 to the official email address of CAS, which was received by CAS on 19 February 2020.

61. Per letter of 21 February 2020, the CAS Court Office acknowledged the receipt of the Player's letter of 20 February 2020. Per the same letter, the CAS Court Office confirmed that it had never received the Respondent's Answer by courier and that it only received on 19 February 2020 the Respondent's email apparently sent on 28 January 2020. In this regard, the Appellant was invited to inform the CAS Court Office by 25 February 2020 whether it agreed to the admissibility of the Respondent's Answer. In case of objection, it would be for the Sole Arbitrator to decide on this issue pursuant to Article R32 of the Code. However, the Appellant did not file any comments to the admissibility.

62. Per letter of 28 February 2020, the Parties were informed that the Sole Arbitrator had decided not to admit the Respondent's Answer. The Sole Arbitrator now confirms the decision not to admit the Respondent's Answer in this Award and explains as follows.

B. Findings Sole Arbitrator

63. As a starting point, and a general legal principle in proceedings before CAS, the Sole Arbitrator emphasises that deadlines are of crucial importance for the proper conduct of CAS proceedings and must, therefore, be strictly respected by the Parties involved.

64. The Sole Arbitrator observes that the deadline for filing the Answer was 3 February 2020. As set out above, it was only on 19 February 2020 that the CAS Court Office received the Respondent's email which was apparently sent on 28 January 2020. In other words, the CAS Court Office only received the respective email more than two weeks after the deadline of filing the Answer elapsed.

65. Considering Article R31 of the CAS Code, the Sole Arbitrator wishes to stress that the Answer itself had to be filed by courier, which was also clearly communicated by the CAS Court Office to the Respondent per letter of 10 January 2020. The Respondent, however, failed to do so. The Sole Arbitrator wishes to underline that no submissions were received from the Respondent by courier, at all, also not at a later stage. Despite the fact that the Appellant did not object to the admissibility by not expressing its view on the admissibility, although invited by the CAS Court Office, the Sole Arbitrator feels fully comforted in its decision not to admit the Answer to the arbitration file.

66. For the sake of completeness, the Sole Arbitrator wishes to recall that, as set out above, the Respondent was given another chance to submit its Answer to the file. In fact, on 22 May 2020, the CAS Court Office informed the Parties that considering the Appellant's sudden change of position regarding the hearing, which was deemed as an exceptional circumstance, the Respondent was invited to file its Answer by 1 June 2020, following Article R56 of the CAS Code. However, the Respondent, again, failed to file an Answer within the given deadline, which was confirmed by the CAS Court Office per letter of 2 July 2020.

X. MERITS

A. Introduction

67. By addressing the merits of the case, the Sole Arbitrator observes that a valid and binding Termination Agreement has been concluded between the Parties, which is not disputed by the Appellant. It is also not disputed by the Appellant that an amount of in total EUR 243,762.55, deriving from the respective Termination Agreement, is not paid to the Player. In this regard, the FIFA DRC decided to award this amount as well as that a transfer ban from registering new players would be imposed in case said amount would not be paid in time, as communicated to the Parties by means of the Appealed Decision.

68. The Sole Arbitrator understands from the Club's position that it acknowledges that an amount of EUR 200,000.- is due to the Player. However, the Club disputes that, from the total amount of EUR 243,762.55, an amount of EUR 43,762.55 should not be due.

69. The question is, therefore, whether the Appellant is obliged to pay EUR 200,000.- instead of EUR 243,762.55 and whether there are any grounds present in order for the Club to successfully claim this. The Sole Arbitrator will enter into this legal issue first.

70. Further to this, the Club also asks the Sole Arbitrator to cancel any future sanctions against the Club in relation to the awarded amount of EUR 243,734.55. As such, the DRC decided that a ban from registering new players would be imposed if said amounts would not be paid, as communicated to the Parties by means of the Appealed Decision.

71. In this regard, the Appellant claims that this part of the Appealed Decision is disproportionate and causes irreparable damages on its future. Therefore, in the second part under the merits, the Sole Arbitrator will deal with the legal issue of the sanctions.

B. The amount due by the Club based on the Termination Agreement

72. The Sole Arbitrator notes that the Club claims that the Parties *"made a crucial mistake by calculation of the unpaid receivables of the Player"*. As such, the Club submits that the *"overdue payables has been written 243.762,55-EUR instead of 200.000,00-EUR by mistake"*. According to the Club, the difference, corresponding to an amount of EUR 43,762,55, *"derived from miscalculation of the bonus payments"*. More specifically, the Club claims that the difference is related to Article 3 of the Employment Contract.

73. From Article 3 of the Employment Contract it follows that *"At the end of every season; If the collective team bonus amount remain under 75.000,00 EUR net after calculations that the player entitled receive during season, the Bursaspor will add the difference up to complete the amount for 100.000,00 EUR"*. In this respect, the Club submits that it erroneously concluded, by applying an incorrect exchange rate from Turkish Liras to Euros, that the Player received only an amount of EUR 56,237.45 as bonuses in light of said provision, whereas the Player actually had received an amount of EUR 77,685.37.

74. Consequently, and considering that the amount of EUR 77,685.37 exceeds the amount of EUR 75,000.- as referred to in the above-mentioned Article 3 of the Employment Contract, the Club finds that no payment had to be made under said provision and, more specifically, that the amount of EUR 43,762.55 was not due by the Club to the Player.

75. In order to support its position, that an incorrect exchange rate from Turkish Liras to Euros has been applied, and that an amount of EUR 56,237.45 as bonuses had been paid to the Respondent, the Club submitted proof of payments by means of bank statements. From these bank statements it seems to follows that an amount of EUR 77,685.37 has been paid by the Club to the Player. However, the explanation on the bank statements is not entirely clear as it only refers to the season and, presumably, the opponent clubs.

76. In this regard, it is not clear to the Sole Arbitrator whether these payments actually concerned the collective team bonuses under Article 3 of the Employment Contract. The Sole Arbitrator cannot rule out that these payments concerned other sorts of payments due to the Player, such as advance payments or individual match payments.

77. In any event, in order for the Appellant to succesfully claim in the present proceedings that the amounts paid to the Player indeed concerned payments under Article 3 of the Employment Contract, the Sole Arbitrator must be convinced that the payments, evidenced with the bank statements, must actually concern the payments in light of Article 3 of the Employment Contract. However, the Sole Arbitrator is not convinced.

78. The Sole Arbitrator takes note of the Termination Agreement and concludes that this agreement does not shed more light on this issue either. In fact, it is also not clear to the Sole Arbitrator whether the amount of EUR 43,762.55, as referred to in the Termination Agreement, referring to a "premium payment", has any connection with the "collective team bonuses" that were due under Article 3 of the Employment Contract. The Termination Agreement does not explicitly specify on what exact grounds the payment of EUR 43,762.55 is due by the Club to the Player. Also here, the Sole Arbitrator is not convinced that the payments, proven by means of the bank statements, were the payments due under Article 3 of the Employment Contract. The Appellant did not demonstrate, with conclusive evidence, that the difference of EUR 43,762.55 is related to the "collective bonuses" as is referred to in Article 3 of the Employment Contract.

79. In this context, the Sole Arbitrator follows the rule established in Article 8 of the Swiss Civil Code ("CC"), according to which *"Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact"*. Therefore, the burden of proof that that the difference of EUR 43,762.55 is related to the "collective team bonuses" as referred to in Article 3 of the Employment Contract, which burden of proof lies on the Appellant, is not fulfilled in the present case. The Sole Arbitrator finds it is not sufficient that the Appellant only refers to bank statements without any further clarification on the statement from which any connection can be demonstrated with the payments under Article 3 of the Employment Contract.

80. In light of the foregoing, the Sole Arbitrator does not want to leave unmentioned, as referred to above, that from the total outstanding amount of EUR 243,762.55, only an amount of EUR 43,762.55 is disputed by the Appellant. The fact that the amount that rests, i.e. EUR 200,000.- , is also not paid, apparently without any further reason, at the least, undermines the argument in relation to any miscalculation by the Appellant resulting in the non-payment of EUR 43,762.55. In other words, it is not clear to the Sole Arbitrator why the amount of EUR 200,000.- would not be paid in that scenario. It would have made more sense, when following the argument of the Appellant regarding the miscalculation, that the amount that was not disputed by Appellant had been paid.

81. In addition, the Sole Arbitrator does not want to leave unmentioned that a party signing a document of legal significance, as a general rule, does so on its own responsibility and is so liable to bear the legal consequences arising from the execution of such document. Therefore, the Sole Arbitrator deems it fair to say that it is the Appellant's responsibility to bear legal consequences arising from the execution of the Termination Agreement.

82. By the same token, the Sole Arbitrator can also not ignore that it follows from the Termination Agreement that the Parties explicitly granted each other full discharge as to the termination of their relationship. As such, it follows from the Termination Agreement that *"… there remains no claims and receivables (advance payment, payments per match, guarantee payment, monthly payment, subsistence wage, premium and all other payments) of the parties from each other as of the mutual termination …"*. In this regard, the Sole Arbitrator observes that the Parties also agreed, as also explicitly follows from the Termination Agreement, that no further objections would be raised.

83. Consequently, as the Sole Arbitrator understands from the Termination Agreement, the Club explicitly waived its right for future claims in connection to the Termination Agreement, which also includes, at least in the Sole Arbitrator's view, any refusal to pay the amount of EUR 43,762.55 which was due under the Termination Agreement.

84. In light of the above, and weighing all the relevant factors, the Sole Arbitrator does not see any reason to accept the arguments of the Club. As set out above, the Sole Arbitrator is not convinced that the payments, evidenced with the bank statements, were, indeed, the payments that were due based on Article 3 of the Employment Contract. It is not clear to the Sole Arbitrator that the difference, corresponding to an amount of EUR 43,762.55, derived from the miscalculation of the team bonus payments and, as such, that this difference bears any clear connection with Article 3 of the Employment Contract. To the contrary, the Sole Arbitrator cannot rule out that the payment of the amount of EUR 43,762.55 derives from other payments due by the Club to the Player.

85. Therefore, the Sole Arbitrator agrees with the DRC as decided by means of the Appealed Decision that the Appellant must pay to the Respondent the amount of EUR 243,762.55 with an interest rate of 5% *p.a.* as from the due dates until date of effective payment.

C. The cancellation of any future sporting sanctions

86. With regard to the second issue, i.e. any future sporting sanctions, the Club states, referring to the Appealed Decision, that *"in particularly the parts of having the transfer ban in case of non-payment the amount due, is disproportionate and exercising the appealed decision of FIFA DRC will cause irreparable damages on the future of the* [Club] *and definitely it will put the* [Club] *in a very difficult situation"*. In this regard, the Club submits, and requests the CAS, that *"all the sanctions"* against the Club must be cancelled. However, the Sole Arbitrator sees no ground to accept such request either.

87. In this regard, the Sole Arbitrator observes, and explicitly notes, that it follows from the Appealed Decision that only if the amount of EUR 243,762.55, plus the awarded interest, as granted by the FIFA DRC, will not be paid within 45 days as from the notification by the

Player of the relevant bank details to the Club, the Club shall be banned from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods. In other words, the Sole Arbitrator wishes to emphasise that such transfer ban is not in force yet. The transfer ban will only come into force in the event the Club will not pay the amounts due under the Appealed Decision. Therefore, at this stage, there is nothing to appeal against insofar as it concerns any future transfer ban.

88. In addition to the above, the Sole Arbitrator also wishes to note that any future ban on the Club could be avoided by paying the amounts due, as awarded by the FIFA DRC. Put differently, in the event the Club complies with its financial obligations and, as such, pays the amounts due, as confirmed by the Sole Arbitrator, as set out above, no transfer ban will be imposed. Consequently, at this stage, it is in the power of the Club to avoid any future transfer ban by paying the amounts deriving from the Appealed Decision.

89. Moreover, the Sole Arbitrator does not want to leave unmentioned either, by referring to the above-cited Article 8 CC, that, also in relation to the request of the Club to cancel any future transfer ban on it, the burden of proof is not fulfilled. In fact, also with regard to the request of the Club that that the transfer ban must be cancelled, the burden of proof lies on the Club. In other words, in the event any transfer ban was already imposed by the FIFA DRC, which is, once again, not the case here because it is only subject to payment of the amounts due and is, therefore, of a conditional nature, the burden of proof is not fulfilled. The Club only submits that a transfer ban is disproportionate, that a ban would cause irreparable harm, and, as a result, that the Club would be put in a difficult situation, without submitting any further evidence. Therefore, also in the event the ban would have been imposed by the FIFA DRC and the Club could have appealed against this part of the decision, it is also not sufficiently demonstrated that a transfer ban is disproportionate, would cause irreparable harm, as a consequence, the Club would be put in a difficult situation. This is far from sufficiently proven by the Club.

90. Therefore, in view of the above, the Sole Arbitrator decides that it cannot uphold the appeal by the Club in relation to its request to cancel a future transfer ban if the amounts due under the Appealed Decision will not be paid, which request will also be dismissed.

D. Conclusion

91. Based on the foregoing, and after having taken into due consideration the regulations and evidence produced and the arguments submitted, the Sole Arbitrator finds that:

i. the Club cannot validly claim that the amount of EUR 43,762,55, is not due, and, consequently, the entire amount of EUR 243,762.55 is due by the Club with an interest rate of 5% *p.a.* as from the due dates until date of effective payment.

ii. the Club's request to cancel any future transfer ban must also be rejected.

92. Consequently, the appeal against the Appealed Decision must be dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Bursaspor Kulübü Derneği against Christian Chagas Tarouco on 31 December 2019 with respect to the decision rendered by the FIFA Dispute Resolution Chamber on 21 August 2019 is rejected.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 21 August 2019 is confirmed.

3. (…).

4. (…).

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