



Arbitration CAS 2020/A/7134 Altay SK v. Pedro Miguel Pina Eugenio, award of 31 May 2021

Panel: Mr Jan Raker (Germany), Sole Arbitrator

*Football*

*Termination of the employment contract with just cause*

*Conditions for the application of a subsidiary stipulation*

*Treatment of deadlines ending on a non-working day in Art. 14bis RSTP*

*Mitigated compensation due to a player in accordance with Art. 17 RSTP*

*Additional compensation due to a player in accordance with Art. 17 RSTP*

1. **Subsidiary application does not mean that any stipulation can be applied on each and every subject which is not explicitly stipulated to the otherwise in the main regulations. In order to warrant the application of a subsidiary stipulation, three conditions must be met: (i) there must be a lacuna in the primarily applicable regulations; (ii) it must reasonably be presumed that such lacuna must be unintentional and/or the result of an oversight of the respective legislator and (iii) the subsidiary stipulation must be considered reasonable to fill the lacuna.**
2. **Article 14bis para.1 of the FIFA Regulations on the Status and Transfer of Players (RSTP) contains a duration for the deadline which must be granted to the debtor. That duration is “at least 15 days”. However, Article 14bis FIFA RSTP not to contain a lacuna regarding the situation in which the deadline would end on a non-working day. Although it is not stated in this regulation that the specific case of the deadline ending on a public holiday shall be subject to special, i.e. divergent legal treatment, this does not constitute a legal loophole which must be filled in order to avoid a legally ungoverned situation. The lack of an according provision does not leave this situation technically ungoverned. The general rule of “15 days” is well capable of being applied to any case that may occur. Therefore, there is no need to resort to the subsidiarily Swiss applicable law to deal with this situation.**
3. **Article 17 FIFA RSTP contains special provisions for the calculation of the compensation due to players, which has priority over the general rule in the first paragraph. Under this rule, it is distinguished whether the player did or did not sign a new contract during the remaining period which his previous contract would have run if it had not been terminated. If the player did indeed sign a new contract, he is first due the so called “mitigated compensation”, which is the value of the residual contract from the date of the termination until its initially agreed expiry, mitigated by the amount which the player received under his new employment agreement.**
4. **In line with Article 17.1 para. 2 no. ii. FIFA RSTP, if a player terminated an employment contract due to overdue payables, he is furthermore entitled to an “additional**

**compensation” in the amount of three monthly salaries. This monthly salary shall be calculated by dividing the remaining value of the terminated contract by the number of months left on the contract. However, in accordance with Article 17.1 para. 2 no. ii. FIFA RSTP, the overall compensation may never exceed the remaining value of the terminated contract.**

## **I. PARTIES**

1. Altay SK (the “Appellant” or the “Club”) is a professional football club with its registered office in Izmir, Turkey. The Club is currently competing in the Turkish Super League, which is the top division in professional football in Turkey, and is registered with the Turkish Football Federation (the “TFF”), which in turn is a member of the Fédération Internationale de Football Association (FIFA).
2. Mr Pedro Miguel Pina Eugenio (the “Respondent” or the “Player”) is a professional football player of Portuguese nationality.
3. The Club and the Player are hereinafter jointly referred to as the “Parties”.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the relevant facts and allegations based on the parties’ written submissions. Additional facts and allegations 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.

### **A. Background Facts**

5. On 2 July 2018, the Club and the Player concluded an employment agreement (the “Agreement”) valid as from the date of signature until 31 May 2020.
6. The Agreement contained the following relevant terms (emphasis in original):

**“3 - PAYMENTS AND SPECIAL PROVISIONS**

<p><b>Net Monthly Salary</b> (Not to be less than the minimum wage)</p>	<p>MINIMUM WAGE (NET)</p>
<p><b>Other Fees Undertaken by the Club and Payment Method</b></p> <p><i>If the payment shall be made in instalments, the amounts and dates of payment shall be clearly specified. Otherwise, the general principles of the Code of Obligations and Regulation on the Status and Transfer of Professional Players shall apply.</i></p>	<p><b><u>PAYMENT FOR 2018 – 2019 SEASON</u></b></p> <p><u>GUARANTEE PAYMENT OF TL 640.000 (SIX HUNDRED AND FOURTY THOUSAND TURKISH LIRA):</u></p> <p>TL 324.000 - (THREE HUNDRED TWENTY - FOUR THOUSAND TURKISH LIRA) SHALL BE PAID BY CHECK WITH MATURITY DATE ON 6 JULY 2018;</p> <p>TL 100.000 - (ONE HUNDRED THOUSAND TURKISH LIRA) SHALL BE PAID BY CHECK WITH MATURITY DATE ON 13 JULY 2018;</p> <p>TL 216.000 (TWO HUNDRED AND SIXTEEN THOUSAND TURKISH LIRA) SHALL BE PAID BY CHECK WITH MATURITY DATE ON 30 NOVEMBER 2018.</p> <p><b><u>PAYMENT FOR 2019 – 2020 SEASON</u></b></p> <p><u>GUARANTEE PAYMENT OF TL 594.000 (FIVE HUNDRED AND NINETY - FOUR THOUSAND TURKISH LIRA):</u></p> <p>TL 356.400 - (THREE HUNDRED AND FIFTY - SIX THOUSAND FOUR HUNDRED TURKISH LIRA) SHALL BE PAID ON 10 JULY 2019;</p> <p>TL 237.600 - (TWO HUNDRED THIRTY-SEVEN THOUSAND AND SIX HUNDRED TURKISH LIRA) SHALL BE PAID ON 14 NOVEMBER 2019.</p>
<p><b>Special Provisions</b></p>	<p>[...]</p> <ul style="list-style-type: none"> <li>• The Club shall pay to the football player a monthly salary in the amount of TL 40,500 (fourty thousand and five hundred Turkish Lira) payable in the first week of each month, beginning from 1 October 2018 up to and including 1 May 2019;</li> <li>• The Club shall pay to the football player a monthly salary in the amount of TL 44,550 (fourty-four thousand and five hundred fifty Turkish Lira) payable in the first week of each month, beginning from 1 October 2019 up to and including 1 May 2020; [...].”</li> </ul>

7. On 17 December 2018, the Player put the Club in default and granted it “*an ultimate deadline to pay his monthly remunerations in a lump sum until 1 January 2019*”, arguing that he had not received his salaries of October, November and December 2018. He further warned the Club that, in the absence of full payment within that deadline, he would be “*forced to unilaterally and prematurely terminate his Contract with Altay SK with just cause pursuant to Article 14bis of FIFA R.STP and without further notice*”.
8. On 28 December 2018 and 31 December 2018 respectively, the Player sent two further e-mails to the Club in which the Player explicitly reminded the Club of the ‘final notice before termination’ and the according payment deadline set on 17 December 2018 for 1 January 2019.
9. On 2 January 2019, in the absence of any response or payment from the Club, the Player terminated the Agreement.
10. On 29 January 2019, the Player signed an employment agreement with the Bulgarian club PFC Beroe Stara Zagora, valid as of the date of signature until 31 May 2020, which provides for a monthly salary of Bulgarian Lev (BGN) 1,500.

#### **B. Proceedings before FIFA**

11. On 8 January 2019, the Player lodged a claim in front of the FIFA Dispute Resolution Chamber (the “FIFA DRC”) against the Club alleging that the latter had breached the Agreement without just cause and requesting the payment of Turkish Lira (TRY) 1,965,900, plus 5% interest p.a.
12. The Club contested the Player’s claims and filed a counterclaim in the amount of TRY 1,152,900.
13. On 9 April 2020, the FIFA DRC rendered its decision (the “Appealed Decision”), the operative part of which reads as follows:

“1. *The claim of the [Player] is partially accepted.*

2. *The counterclaim of the [Club] is rejected.*

3. *The [Club] has to pay to the [Player] outstanding remuneration in the amount of Turkish Lira (TRY) 221,500, plus 5% interest p.a. until the effective date of payment as follows:*

- *on the amount of TRY 40,500 as from 1 November 2018 until the date of effective payment;*
- *on the amount of TRY 40,500, as from 1 December 2018 until the date of effective payment;*
- *on the amount of TRY 40,500 as from 1 January 2019 until the date of effective payment;*
- *on the amount of TRY 100,000 as from 14 July 2018 until the date of effective payment;*

4. *The [Club] has to pay to the [Player] compensation in the amount of TRY 1,152,900 plus interest of 5% p.a. as from 8 January 2019 until the date of effective payment.*

5. *Any further claim lodged by the [Player] is rejected.*

[...]

8. *In the event that the amounts due in accordance with points 2. and 3. 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 amount is paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).*

9. *The ban mentioned in point 8. above will be lifted immediately and prior to its complete serving, once the due amounts are paid.*

10. *In the event that the aforementioned sums are still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision".*

14. In the Appealed Decision, the FIFA DRC, *inter alia*:

- held that the main legal issue at stake was to determine whether the Player had just cause or not in order to terminate the Agreement;
- considered that, although the Club argued that it paid to the Player "by check" the amount of TRY (Turkish Lira) 640,000, corresponding to "all Guarantee payment", the documentation provided by the Club could not be considered in any manner as a proof of payment;
- concluded that, at the date of termination of the Agreement on 2 January 2019, it could be established beyond reasonable doubt that the total amount of TRY 221,500 remained outstanding;
- decided that the Club must be held liable for breach of contract without just cause;
- held that, since the Player sent a default notice to the Club, granting "de facto" at least 15 days for the Club to settle its debt, the Player complied with the basic formal requirements of Article 14bis of the FIFA Regulations on the Status and Transfer of Player (the "FIFA RSTP");
- considered that the Player was entitled to his outstanding remuneration pending at the date of the termination of the Agreement, i.e. TRY 221,500, as well as mitigated compensation for breach of contract in the amount of TRY 1,078,692;
- awarded additional compensation up to the maximum amount of TRY 1,152,900; and
- imposed on the Club a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods, in case the amounts due were not paid within 45 days.

15. On 5 May 2020, the FIFA DRC notified the grounds of the Appealed Decision to the Parties.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

16. On 27 May 2020, the Player filed a Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) against the Appealed Decision, in accordance with Articles R47 and R48 of the 2019 edition of the CAS Code of Sports-related Arbitration (the “Code”). In its Statement of Appeal, the Club requested for a sole arbitrator to be appointed.
17. On 4 June 2020, the CAS Court Office initiated the present appeals proceedings and *inter alia* invited the Appellant to file its Appeal Brief within the deadline stated in Article R51 of the Code. Separately, on the same day, the CAS Court Office informed FIFA of its possibility to request its intervention to the present proceedings.
18. On 8 June 2020, the Appellant requested a two-week extension of the time limit to file its Appeal Brief.
19. On the same day, the Respondent requested that the procedure be terminated on the grounds that the time limit to file the Appeal Brief expired on 5 June 2020 and that the Appellant’s request for extension was therefore late.
20. On 10 June 2020, the Appellant filed its comments on the timeliness of its request for extension of the time limit to file the Appeal Brief, explaining in particular that the last day for the filing of the Statement of Appeal, i.e. 26 May 2020, was an official holiday in Turkey and that, accordingly, the deadline expired only on 27 May 2020. It followed that the ten-day time limit to file the Appeal Brief expired on 8 June 2020.
21. On the same day, the Respondent maintained his request for termination of the present procedure on the grounds that the Turkish official holiday on 26 May 2020 only affected the time limit to file the Statement of Appeal, not the time limit to file the Appeal Brief.
22. On 15 June 2020, the President of the CAS Appeals Arbitration Division denied the Respondent’s request, noting that the Statement of Appeal expired on 27 May 2020, that the Appeal Brief thus had to be filed “*Within ten days following the expiry of the time limit for the appeal*”, i.e. by 6 June 2020, and that since this was a Saturday, the deadline expired on the first subsequent business day, i.e. 8 June 2020.
23. On 22 June 2020, the Appellant filed its Appeal Brief, in accordance with Article R51 of the Code.
24. On 28 July 2020, in accordance with Article R54 of the Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

Sole Arbitrator: Dr Jan Räker, Attorney-at-law in Stuttgart, Germany

25. On 16 August 2020, the Respondent filed his Answer, in accordance with Article R55 of the Code.
26. On 17 and 24 August 2020 respectively, upon being invited to express their opinion in this respect, both Parties indicated that they did not consider a hearing necessary.
27. On 8 September 2020, the CAS Court Office informed the Parties that, after considering the Parties' positions with respect to a hearing, the Sole Arbitrator deemed himself sufficiently well-informed to decide this case based solely on the Parties' written submissions, without the need to hold a hearing.
23. On 9 and 29 September 2020, both Parties returned a signed copy of the Order of Procedure, confirming, *inter alia*, that the Sole Arbitrator would decide this matter solely based on the Parties' written submissions and that their right to be heard had been respected.

#### IV. SUBMISSIONS OF THE PARTIES

28. The following summary of the Parties' positions is illustrative and does not necessarily include 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.
29. The Appellant's submissions, in essence, may be summarised as follows:
  - The Player did not terminate his contract with just cause, since the Club made all the necessary payments to the Player.
  - Pursuant to Article 14bis of the FIFA RSTP, the Player shall grant a deadline of at least 15 days for the debtor club to fully comply with its financial obligations, failing which he will not be deemed to have just cause to terminate his contract. In the present case, the Player granted a 15-day deadline to the Club; however, since such deadline was due to expire on 1 January 2019, which is an official holiday, the last day for the Club to make the payment was 2 January 2019. Accordingly, the Agreement "*should have been terminated 03.01.2019 instead of 02.01.2019 which results a clear breach of the mentioned article 14bis*". The termination was not made in accordance with FIFA rules.
  - The Club was not in breach of its obligations and shall not be obliged to make any payment to the Player under the name of compensation and/or outstanding remuneration.
30. In its Appeal Brief, the Appellant submitted the following requests for relief:
  - 6.1. *to set aside the decision of the FIFA DRC and to dismiss all claims of the Player and decide that the termination was made without just cause,*
  - 6.2. *to decide that the Club is not obliged to make any compensation claim to the Player,*

6.3. *to condemn the Player to bear all the costs of this arbitration and to condemn to pay a attorneyship fee of 4.000 CHF to the Club*".

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

- The Appellant did not prove any of its allegations, either during the FIFA procedure or before CAS.
- The only argument raised by the Appellant is that the Respondent did not observe the procedure provided in Article 14bis of the FIFA RSTP. In this regard, the Respondent states that *"he duly complied with the provisions of Art. 14bis of FIFA RSTP by granting the Appellant 15 days to fulfill its financial obligations"*.
- Article 14bis of the FIFA RSTP refers to *"15 days"* and not 15 business (working) days. Article 16 of the FIFA Procedural Rules, which provides that *"If the final day of the time limit is an official holiday or a non-working day [...], the time limit shall expire at the end of the next working day"*, only concerns the proceedings before FIFA bodies. It is not applicable to Article 14bis of the FIFA RSTP.
- If the Appellant had the intention in good faith to fulfill its financial obligations towards the Respondent, it could have paid before 1 January 2021, or it could have paid via internet banking on 1 January 2019. It could also have requested an additional day to execute the payment or it could have paid on 2 January 2021. The Appellant did nothing of the sort, because it *"did not have the intention to pay to the Respondent his outstanding remunerations"*, thus demonstrating its bad faith.
- In the period between 17 December 2018 and 2 January 2019, the Respondent sent three more letters to the Appellant, reminding it of the 1 January 2019 deadline. All letters remained without response. In particular, the Appellant never complained that the ultimate time limit given by the Respondent expired on 1 January 2019.
- The Appellant made no efforts to keep the Respondent and did not pay him, clearly because he was *"completely disinterested in the Respondent's future services"*, as confirmed by the fact that the Appellant *"suspended without having any valid reason the Respondent from the team for a very long time as a repressive measure"*.

32. In his Answer, the Respondent submitted the following requests for relief:

- “1) *Rejects the present appeal against the decision of the FIFA Dispute Resolution Chamber dated 9 April 2020 and to confirm the relevant decision in its entirety.*
- 2) *That the CAS orders the Appellant to cover all legal expenses in the amount of CHF 5000 of Pedro Eugenio related to the proceeding at hand*".



## V. JURISDICTION

33. Article R47(1) of the Code provides as follows:

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

34. The jurisdiction of CAS derives from Article 58(1) of the FIFA Statutes (2019 Edition), as it determines that “[a]ppeals 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”. The jurisdiction of CAS is not contested by the Respondent and is further confirmed by the Order or Procedure duly signed by both Parties.

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

## VI. ADMISSIBILITY

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

37. The appeal was filed within the deadline of 21 days set by Article 58(1) of the FIFA Statutes. The appeal complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

38. It follows that the appeal is admissible.

## VII. APPLICABLE LAW

39. The Appellant submits that, pursuant to Article R58 of the Code, the FIFA Regulations and Swiss law shall apply.

40. The Respondent did not submit any position in respect of the law to be applied, but relied on the FIFA RSTP.

41. Article R58 of the Code provides as follows:

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

42. Article 57.2 of the FIFA Statutes provides as follows:

*“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*

43. The Agreement provides that *“in case of a dispute FIFA, CAS regulations will be applicable”.*

44. The Sole Arbitrator therefore applies the various regulations of FIFA, in particular the FIFA RSTP, June 2018 edition, and, subsidiarily, Swiss law.

### **VIII. MERITS**

45. The dispute between the Parties centers around the issue whether the Player did have just cause to terminate the Agreement, in particular, whether he complied with the procedure foreseen in Article 14bis para.1 of the FIFA RSTP.

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

- a. Did the Player have just cause to terminate the Agreement on 2 January 2019?
- b. If the Player had just cause to terminate the Agreement, what are the consequences thereof?

#### **A. Did the Player have just cause to terminate the Agreement on 2 January 2019?**

47. The Sole Arbitrator shall first determine whether the Player had just cause to terminate the Agreement.

48. Whereas prior to the enactment of the June 2018 edition of the FIFA RSTP there was extensive jurisprudence on what constituted just cause for termination in the context of the non-payment of agreed salaries, Article 14bis of the FIFA RSTP now stipulates an explicit according rule, which reads:

*“1.*

*In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.*

2.

*For any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered. Delayed payment of an amount which is equal to at least two months shall also be deemed a just cause for the player to terminate his contract, subject to him complying with the notice of termination as per paragraph 1 above.*

3.

*Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in paragraphs 1 and 2 above. The terms of such an agreement shall prevail".*

49. The Sole Arbitrator notes that the first condition for a valid termination for the failure to pay salaries is the non-payment of at least two monthly salaries on their due dates, with the particularity that one-time payments shall be considered pro rata in addition to the amounts which are due on a monthly basis.
50. In the Appealed Decision, it was held that a total amount of TRY 221,500, consisting of three monthly payments of TRY 40,500 each and one one-time payment of TRY 100,000 were overdue.
51. The Sole Arbitrator notes that under clause 3 of the Agreement the Player was due to receive a salary during the 2018/2019 season of TRY 640,000 in a one-time payment and of 8 monthly salaries of TRY 40,500 each, i.e. a total of TRY 964,000, which equals an average monthly salary of TRY 80,333.
52. The amount of TRY 221,500 therefore exceeds the sum of two monthly salaries in the understanding of Article 14bis FIFA RSTP.
53. The Sole Arbitrator notes that the Club in its Statement of Appeal made the claim that it "*made all the necessary payments to the Player*", but did at no point mention this argument in its Appeal Brief, in which it exclusively focussed on the argument that the Player terminated the Agreement too soon.
54. The Sole Arbitrator further determines that the Club did not substantiate its claim by any means, or even provide evidence or proof.
55. The Sole Arbitrator refers to the general legal principle of burden of proof, according to which any party claiming a right on the basis of an alleged fact must carry the burden of proof, proving that the alleged fact is as claimed. This is in line with Article 8 of the Swiss Civil Code, which stipulates as follows: "*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*". This principle was also established by CAS jurisprudence: "*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them [...] Hence, if a party wishes to establish some facts and persuade*

*the deciding body, it must actively substantiate its allegations with convincing evidence*”(CAS 2009/A/1810 & 1811, para. 18).

56. The Sole Arbitrator therefore holds that the Club did not discharge its burden of proof and that the Club’s allegation that it *“made all the necessary payments to the Player”* must be rejected.
57. The first condition mentioned in Article 14bis para. 1 FIFA RSTP is therefore met.
58. In line with the second condition stipulated in Article 14bis para. 1 FIFA RSTP, the Player should have *“put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s)”*.
59. The Player sent a letter to the Club on 17 December 2018, putting the Club in default and setting a deadline for the payment of the overdue amounts of 15 calendar days, until 1 January 2019.
60. The Club did not pay any of the overdue amounts to the Player before the Player terminated the Agreement on the morning of 2 January 2019, i.e. after 15 calendar days had passed since the default notice.
61. The Club, however, argues that the deadline could not expire on 1 January 2019, because this day was a public holiday in most countries of the world. Instead therefore, the Club considers the following working day, 2 January 2019, as the last day of the deadline. In result, the Club argues, that the Player terminated the Agreement too soon as the Club would have been able to pay the overdue amount until the end of that day.
62. The Sole Arbitrator notes that the FIFA RSTP does not contain a rule which deals with the case that a deadline would end on a weekend or a public holiday.
63. The Sole Arbitrator, when analysing other related sources of law, did however locate the following stipulations:
  - Article 18.7 and 18.8 of the 2018 edition of the FIFA Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber (the “FIFA Procedural Rules”), which reads as follows:

“7.  
*All time limits shall be suspended in the period from 20 December up to and including 5 January and for a period of five days before and five days after an Ordinary or an Extraordinary FIFA Congress. During the FIFA World Cup™ (finals) time limits shall be suspended if so decided, ex officio or on application by a party, by the decision-making body.*
  - 8.  
*If the final day of the time limit is an official holiday or a non-working day in the country where the party submitting a document is domiciled, the time limit shall expire at the end of the next working day”.*
- Article R32 para. 1 of the Code, which reads as follows:

*“[...] Official holidays and non-working days are included in the calculation of time limits. [...] If the last day of the time limit is an official holiday or a non-business day in the location from where the document is to be sent, the time limit shall expire at the end of the first subsequent business day”.*

- Article 78 para. 1 Swiss Code of Obligations, which reads as follows:

*“Where the time of performance or the last day of a time limit falls on a Sunday or on a day officially recognised as a public holiday at the place of performance, the time of performance or the last day of a time limit is deemed to be the next working day”.*

64. The Sole Arbitrator further recalls Article R 58 of the Code and Article 57.2 of the FIFA Statutes, which read as follows:

- Article R58 of the Code:

*“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”.*

- Article 57.2 of the FIFA Statutes:

*“The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*

65. The Sole Arbitrator therefore acknowledges that he is held to apply Swiss law, including Article 78 of the Swiss Code of Obligations as cited above, subsidiarily and/or in addition to the regulations of FIFA.

66. The subsidiary nature of the application of Swiss Law however calls for an analysis of the regulations to which such law may be subsidiarily applied. Subsidiary application does not mean that any stipulation can be applied on each and every subject which is not explicitly stipulated to the otherwise in the main regulations. In order to warrant the application of a subsidiary stipulation, three conditions must be met: (i) there must be a lacuna in the primarily applicable regulations; (ii) it must reasonably be presumed that such lacuna must be unintentional and/or the result of an oversight of the respective legislator and (iii) the subsidiary stipulation must be considered reasonable to fill the lacuna.

67. In the case of Article 14bis para. 1 FIFA RSTP, the Sole Arbitrator already considers questionable whether this regulation contains a lacuna at all. Article 14bis para.1 FIFA RSTP after all does contain a duration for the deadline which must be granted to the debtor. That duration is *“at least 15 days”*.

68. What is indeed not stated in this regulation, is that the specific case of the deadline ending on a public holiday shall be subject to special, i.e. divergent legal treatment. However, the Sole Arbitrator notes that this does not constitute a legal loophole which must be filled in order to

avoid a legally ungoverned situation. The lack of an according provision does not leave this situation technically ungoverned. The general rule of “15 days” is well capable of being applied to any case that may occur. This provision regulates a deadline that ends on 1 January as well as one that ends on any other day of the year.

69. The Sole Arbitrator therefore holds that, *prima facie*, Article 14bis para.1 FIFA RSTP contains a rule under which the minimum deadline which is to be granted to a debtor on 17 December 2018 would have ended on 1 January 2019.
70. The provision which is “lacking”, would therefore constitute an additional provision and not one which was required to create a meaningful regulation.
71. Such provision could therefore only be considered to constitute a lacuna if a legislator must reasonably be expected to create an according additional provision which explicitly deals with the specific case of deadlines which end on public holidays.
72. The Sole Arbitrator notes, that there is no explicit information available as to whether FIFA consciously chose not to include an according provision in Article 14bis or any other Article of the FIFA RSTP.
73. The Sole Arbitrator further notes that according provisions could however be found in various other regulations, such as Article R32 of the Code, Article 18.8 of the FIFA Procedural Rules and Article 78 of the Swiss Code of Obligations.
74. At the same time, such regulations also contain further provisions, which could be, but were not, added to the 15-day rule, such as the clarification that holidays and other non-working days are also counted in the calculation of deadlines, as stipulated in Article R32 of the Code, or the provision that all deadlines are suspended between 20 December and 5 January of each year, as stipulated in Article 18.7 of the FIFA Procedural Rules.
75. The Sole Arbitrator considers that the former addition appears to be much more common than the latter ones. At the same time, the Sole Arbitrator also considers that the commonness of according stipulations in other regulations by itself does not coerce FIFA to include an according provision to the same effect into any of its regulations where deadlines are governed.
76. A divergent treatment of deadlines which end on non-working days is not a mandatory content of each and every regulation, but an optional way of dealing with such situations.
77. This is indeed true for the entire content of the stipulations of Article 14bis FIFA RSTP. This stipulation was only introduced into the FIFA RSTP in the applicable June 2018 edition and did not exist before. Previously, cases of terminations of employment contracts by football players for just cause due to overdue salary payments were dealt with on a case by case basis that tended to be more favourable than Article 14bis FIFA RSTP both to the clubs and the players in different particular aspects. On the one hand, the jurisprudence previously tended to consider three overdue monthly salaries as required to constitute just cause for a player to

terminate his employment contract, so that the new rule is now stricter to the clubs, requiring just two monthly salaries to be overdue. On the other hand, previous jurisprudence in many cases considered final warnings with shorter deadlines as sufficient or even did not consider that explicit warnings that the contract may be terminated were required, which was more favourable to players.

78. The Sole Arbitrator is aware that the enactment of Article 14bis FIFA RSTP as well as its content were the result of a political process in which FIFA included various football stakeholders, most notably the European Club Association and the players' union FIFPro. Still, the enactment and the design of this regulation were within FIFA's freedom of scope.
79. In a situation in which the entire regulative content is contingent, FIFA would also have been able to enact a regulation under which no further warning by the player was required or a deadline of 10 or even just 7 days would have sufficed. In such situation, it cannot be held that, having stipulated that 15 days is the deadline which must be granted to the debtor, such deadline must necessarily end on a working day.
80. This assessment is reinforced, at least for a deadline of 15 days, by the consideration that the act which is required from the club to avoid the negative legal consequence is the payment of an amount of money, which via bank transfer does usually not last longer than two banking days. In this regard, 15 calendar days, ending on a working day or not, is by any means a sufficient amount of time for the reception and comprehension of the warning letter, the scrutiny of the claim's legitimacy and amount and the effectuation of the payment of the overdue amount.
81. The Sole Arbitrator therefore holds that it shall not be considered a reasonable expectation that FIFA should have explicitly regulated, in one way or the other, the situation in which an Article 14bis deadline would end on a non-working day. Accordingly, the Sole Arbitrator considers Article 14bis FIFA RSTP not to contain a lacuna in this regard and therefore considers Article 78 of the Swiss Code of Obligations to be inapplicable to this situation.
82. The Sole Arbitrator would get to the same result, if he had applied a much wider understanding of the term lacuna, i.e. one under which any non-existing stipulation was to be considered a lacuna.
83. The aforementioned elaborations would in the understanding of the Sole Arbitrator strongly advocate against the assumption of an unintentional oversight of FIFA in not including an according provision in the RSTP. This would have been reinforced by the fact that FIFA did include an according provision in Article 18.8 of the FIFA Procedural Rules. This regulation demonstrates that the FIFA legislator was well aware of the opportunity to enact an according stipulation, so that it appears to be a conscious decision not to do so in another regulation which also contains deadlines of high material importance.
84. In the absence of any concrete indication to the contrary, one would therefore with sufficient likelihood have had to consider the lacuna as intentional.

85. The Sole Arbitrator therefore holds that the deadline set by the Player to the Club in his letter dated 17 December 2018 ended on 1 January 2019, in line with the requirements stipulated in Article 14bis para. 1 FIFA RSTP.
86. The Club failed to make any payment to the Player on the overdue amount before the end of that deadline.
87. The Player therefore did have just cause to terminate the Agreement on the morning of 2 January 2019.

**B. If the Player had just cause to terminate the Agreement, what are the consequences thereof?**

88. Having established that the Player did have just cause to terminate the Agreement, the Sole Arbitrator evaluates which consequences this shall have.
89. First of all, the Player shall receive the salaries, which have remained overdue to him until the present day, which is an amount of TRY 221,500 net.
90. The Sole Arbitrator recalls that the Player is further entitled to receive an additional compensation, which is governed by Article 17 FIFA RSTP, which reads as follows:

*“1. 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 (amortised over the term of the contract) and whether the contractual breach falls within a protected period.*

*Bearing in mind the aforementioned principles, compensation due to a player shall be calculated as follows:*

- i. in case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated;*
- ii. in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the “Mitigated Compensation”). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the “Additional Compensation”). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract.*



*iii. Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in the points i. and ii. above. The terms of such an agreement shall prevail".*

91. The Sole Arbitrator first notes that under the regulations, a liquidated damages clause in the Agreement or a collective bargaining agreement would have priority over the residual criteria laid down in Article 17 FIFA RSTP. Yet, neither a liquidated damages clause, nor a collective bargaining agreement are present in the case at hand.
92. The Sole Arbitrator further notes that Article 17 FIFA RSTP contains special provisions for the calculation of the compensation due to players, which has priority over the general rule in the first paragraph.
93. Under this rule, it is distinguished whether the player did or did not sign a new contract during the remaining period which his previous contract would have run if it had not been terminated. In this case, on 29 January 2019, the Player signed an employment agreement with the Bulgarian club PFC Beroe Stara Zagora, valid as of the date of signature until 31 May 2020, which provides for a monthly salary of BGN 1,500.
94. Accordingly, the additional compensation due to the Player is to be calculated in line with the stipulations in no. ii. above. Under this clause, the Player is first due the so called "mitigated compensation", which is the value of the residual contract from the date of the termination until its initially agreed expiry, mitigated by the amount which the player received under his new employment agreement.
95. With regards to the remaining value of the Agreement, the Sole Arbitrator analyses that the Player would have been due another five monthly salaries in the amount of TRY 40,500 net each, which is a total of TRY 202,500 net, in the remaining 2018/2019 season. In the 2019/2020 season, the Player would have been due a "guarantee payment" of TRY 594,000 net and eight monthly salaries in the amount of TRY 44,500 net each, which is a total of TRY 356,400 net. The entire remaining value of the Agreement was therefore TRY 1,152,900 net.
96. This amount is to be mitigated by the amount earned by the Player under his new contract with his new club. Under this contract the Player was entitled to receive 16 monthly salaries in the amount of BGN 1,500 each, which corresponded to about TRY 4,638 at the date of signature, on 29 January 2019. The Player therefore earned from said contract a total amount of TRY 74,208 (i.e. TRY 4,638\*16), which is to be withdrawn from the residual value of the Agreement.
97. The "mitigated compensation" therefore amounts to TRY 1,078,692.
98. In line with Article 17.1 para. 2 no. ii. FIFA RSTP, the Player is, due to the circumstance that he was entitled to terminate the Agreement due to overdue payables, furthermore due an "additional compensation" in the amount of three monthly salaries. In line with the rule in Article 14.2 FIFA RSTP, this monthly salary shall be calculated in the basis of both the "monthly salaries" and the "guarantee salary" provided for in the Agreement. The amount of

a monthly salary is therefore the remaining value of the Agreement, which was TRY 1,152,900, divided by the number of months left on the contract, which at the time of the unilateral termination was 16. One monthly salary shall therefore be considered to amount to TRY 72,056.

99. Accordingly, the “additional compensation” shall be a total of TRY 216,168. The “mitigated compensation” and the “additional compensation” together shall amount to a total compensation of TRY 1,369,068.
100. However, in accordance with Article 17.1 para. 2 no. ii. FIFA RSTP, the overall compensation may never exceed the remaining value of the terminated contract, which was TRY 1,152,900. Therefore, the compensation due to the Player in line with Article 17.1 para. 2 no. ii. FIFA RSTP is TRY 1,152,900.
101. The overall amount due to the Player from overdue payments and compensation under Article 17 FIFA RSTP shall therefore be TRY 1,374,400 net. This is the amount awarded to the Player in the Appealed Decision.
102. Regarding the interests on the payable amounts, the Sole Arbitrator notes that the interest rate of 5% p.a. was awarded in line with the constant practice of FIFA, and that the starting date of the interest payments was based on the agreed due dates for the respective overdue payments and the day when the Player lodged his claim with FIFA for the compensation due under Article 17 FIFA RSTP. The Sole Arbitrator agrees with both the amount and the starting dates of the interests.
103. The Sole Arbitrator therefore holds, that the Appealed Decision was correct. The Appeal of the Club shall therefore be dismissed.

## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed by Altay SK on 27 May 2020 against Mr Pedro Miguel Pina Eugenio with respect to the decision rendered by the FIFA Dispute Resolution Chamber on 9 April 2020 is dismissed.
2. The decision rendered by the FIFA Dispute Resolution Chamber on 9 April 2020 is confirmed.

3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.