

**Arbitration CAS 2021/A/8215 Altay SK v. Edin Cocalic, award of 11 April 2022**

Panel: Mr Lars Hilliger (Denmark), Sole Arbitrator

*Football**Termination of the employment contract with just cause by the player**Just cause for termination**Principle of the positive interest and duty to mitigate the damage*

1. **The non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated - constitute ‘just cause’ for termination of the contract; for the employer’s payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer’s obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be ‘insubstantial’ or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer’s attention to the fact that his conduct is not in accordance with the contract.**

2. **The injured party is entitled to a whole reparation of the damage suffered according to the principle of “*positive interest*”, under which compensation for breach must be aimed at reinstating the injured party to the position it would have been in had the contract been performed until its expiry. However, the injured party also has the duty to mitigate its damages.**

I. PARTIES

1. Altay SK (the “Appellant” or the “Club”) is a professional Turkish football club affiliated with the Turkish Football Federation, which in turn is affiliated with the Fédération Internationale de Football Association (“FIFA”). The Club is currently participating in the Turkish Süper Lig, which is the tier-1 league of Turkish football.

2. Mr Edin Cocalic (the “Respondent” or the “Player”) is a professional football player of Bosnia-Herzegovinian nationality. The Player is currently registered with the Greek football club Panetolikos FC, which is currently participating in the Greek Super League.

II. FACTUAL BACKGROUND

A. Background Facts

3. Below is a summary of the relevant facts and allegations as established by the Sole Arbitrator on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (the “FIFA DRC”) on 3 June 2021 (the “Appealed Decision”), the written submissions of the Parties and the evidence adduced. Additional facts and allegations found in the Parties’ written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Sole Arbitrator refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.
4. On 15 September 2020, the Club and the Player entered into a Professional Football Player’s Transfer Contract (the “Contract”) valid as from 15 September 2020 until 31 May 2022.
5. The Contract stated, *inter alia*, as follows:

“3 – PAYMENTS AND SPECIAL PROVISIONS

MINIMUM WAGE

2020-2021 FOOTBALL SEASON GUARANTEE FEE 200.000 EURO (WILL BE PAID BY THE CONDITIONS BELOW)

20.000 EURO THE OFFICIAL CONTRACT WILL BE PAID WHEN SIGNED.

The football player shall be paid 20.000 EURO in the first week of each month, for a total of 9 months, beginning as from the date 1 OCTOBER 2020 up to and including the date 1 JUNE 2021. (180.000 EURO Total)

2021-2022 FOOTBALL SEASON GUARANTEE FEE 220.000 EURO (WILL BE PAID BY THE CONDITIONS BELOW)

The football player shall be paid 22.000 EURO in the first week of each month, for a total of 10 months, beginning as from the date 1 AUGUST 2021 up to and including the date 1 MAY 2022. (220.000 EURO Total).

Special Provisions:

- *The football player agrees and undertakes that he is notified of the club’s internal regulations and complies with the club’s internal regulations.*
- *The club will assign a house with a rent up to 3.000 TL (three thousand Turkish Liras) and a personal car for the football player.*

- *If the football player plays in 20 or more league matches (TFF 1. League Match) in the 2020-2021 football season, then an additional payment of 20.000 € shall be paid to the football player end of the season.*
- *2020-2021 end of the season Altay Sports Club goes into Super Ligue, the football player shall receive a bonus in the amount of 20.000 €.*
- *If the football player plays in 20 or more league matches (TFF. 1. League Match) in the 2021-2022 football season, then an additional payment of 20.000 € shall be paid to the football player end of the season.*
- *2021-2022 end of the season Altay Sports Club goes into Super Ligue, the football player shall receive a bonus in the amount of 20.000 €.*

[...]” (emphasis omitted).

6. By letter of 29 December 2020, the Player put the Club in default of payment, stating, *inter alia*, as follows:

“[...]

Subject: Requesting for payment outstanding credits amount of NET 60.000 EUR with due interests within 15 days AFTER NOTIFICATION OF THIS DEFAULT LETTER, OTHERWISE we will unilaterally terminate the contract with right cause and the club will be responsible for consequences of unilateral termination.

[...]

2. *The club did not pay the following remuneration of the player until the date of this default notifications: (salaries has to be paid first week of each month starting from October 2020 until June 2021 for duration of 9 months)*
 - *20.000.EUR unpaid salary of October 2020*
 - *20.000.EUR unpaid salary of November 2020*
 - *20.000. EUR unpaid salary of December 2020*
 - *The club also did not pay the monthly flat rent of 3.000,00.TL for the player, totally 3 three months 9.000,00.TL until December 2020.*
3. *Therefore, the club has essentially has breached the contract with the player and the club is in clear default.*
4. *According to FIFA regulation article 14/ bis the player has to granted the club for payment of outstanding debt of totally 60.000.EUR in 15 days after notification of this default.*
5. *We hereby sending this default letter under FIFA regulation R.STP article 14/ bis; If the club does not pay in (15) days the amount of NET 60.000.EUR to the player’s account in full, we will unilaterally terminate the contract with right cause according to the FIFA RSTP and the club will be responsible for consequences of unilateral termination and in order to obtain formal decision we will promptly apply to FIFA” (emphasis omitted).*

7. On 14 January 2021, the Player wrote as follows to the Club, thus unilaterally terminating the Contract:

“Subject: Unilateral termination of the contract with right cause

1. *There is a FOOTBALL PLAYER CONTRACT signed between the parties valid from 15.09.200 – until 31.05.2022.*
2. *The club did not pay the following remuneration of the player until the date of this default notification; (salaries has to be paid first week of each month starting from October 2020 until June 2021 for duration of 9 months)*
 - *20.000.EUR unpaid salary of October 2020*
 - *20.000.EUR unpaid salary of November 2020*
 - *20.000.EUR unpaid salary of December 2020*
 - *20.000.EUR unpaid salary of January 2021*
 - *The club also did not pay the monthly flat rent of 3.000,00.TL for the player, totally 3 three month 9.000,00.TL until December 2021.*
3. *Therefore, the club has essentially breached the contract with the player and the club is in clear default.*
4. *According to FIFA regulation article 14/ bis the player has to grant the club for payment of outstanding debt a totally 60.000.EUR in 15 days after notification of this default.*
5. *On 29th December 2020, we have sent default notice According to FIFA regulation article 14/ bis and we have granted the club 15 days for the payment of its due debt amounting 60.000.EUR and we have claimed other remunerations of the player as Pr. 2 of our claim. Nevertheless, the club did not pay the amount and did not responded.*
6. *Now the club is in essentially breached the contract with the player and clear in default.*
7. *We have already notified the club that “If the club does not pay in (15) days the amount of 60.000.EUR for the player’s account in full, we will unilaterally terminate the contract with right cause according to FIFA rules and Regulations and the club will be responsible for consequences of unilateral termination and in order to obtain formal decision we will promptly apply to FIFA”. By means of default notice on 29th December 2020.*
8. *The player is professional player and has no other option rather than termination of the contract since the player has done his best to wait his remuneration for payment.*

IN CONCLUSION

By means of this notice of unilateral termination notice:

- *We declare that we have terminated the players contract with right cause*
- *We kindly request from Turkish Football Federation to register unilateral termination and*

- *We will apply to FIFA to obtain formal decision and to recover outstanding remuneration of 60.000.EUR plus 20.000.EUR salary of January 2021 plus compensation the players' loss and damage due to unilateral termination with right cause".*

8. On 18 January 2021, the Player signed a new employment contract with the Greek football club Panetolikos FC valid as from 18 January 2020 until 30 June 2022.

B. Proceedings before the FIFA Dispute Resolution Chamber

9. On 27 January 2021, the Player lodged a claim against the Club before FIFA, requesting the following:

- *EUR 80,000 as outstanding salaries for the months of October 2020 to January 2021;*
- *TRY 9,000 (equivalent of EUR 1,000) as outstanding monthly rent expenses;*
- *5% interest p.a. on the salary and remuneration from due dates;*
- *EUR 193,000 as compensation for breach of contract.*

10. In support of his claim, the Player submitted that the Club had failed to fulfil its contractual obligations despite reminders to do so, and the Player therefore unilaterally terminated the Contract with just cause.

11. As a result of the Club's failure to pay the Player, the Player was entitled to outstanding remuneration and compensation for breach of contract.

12. However, since the Player had signed a new employment contract with Panetolikos FC valid as from 18 January 2021 until 30 June 2022, the net loss incurred by the Player only amounted to EUR 193,000.

13. In its reply to the claim, the Club submitted, *inter alia*, that it had met its financial obligations to the Player and, accordingly, made timely payments up until the Player terminated the Contract.

14. The Club further objected to the Player's assertion that he had sent a default notice granting the Club a deadline of 15 days within which to make payment of the amount due and owing to the Player in unpaid receivables.

15. Furthermore, the Club submitted that the Player's calculation of compensation was misleading and inaccurate and that the Player's new employment contract in any case should be taken into account when calculating the compensation.

16. Consequently, the Club submitted that the Player's unilateral termination of the Contract was without just cause and requested the FIFA DRC to dismiss the Player's claim.

17. Having established its competence to deal with the matter, the FIFA DRC referred to the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "FIFA Procedural Rules") and recalled the basic principle of burden of proof,

according to which any party claiming a right on the basis of an alleged fact carries the respective burden of proof, and the FIFA DRC further concluded that since the claim was filed in January 2021, the January 2021 edition of the FIFA Regulations on the Status and Transfer of Player (the “Regulations”) was applicable to the matter at hand.

18. With regard to the substance of the matter, the FIFA DRC took note of the fact that the Parties were disputing whether the Player on 14 January 2021 had just cause to unilaterally terminate the Contract in view of the alleged outstanding salaries, combined with the fact that the FIFA DRC was entrusted with the task of determining whether or not, on that date, the Club was in arrears with its financial obligations to the Player and whether this could provide the Player with a reason to validly terminate the Contract on the said date.
19. In this respect, the FIFA DRC took note that the Player argued that the Club owed him outstanding remuneration in the amount of EUR 80,000 as outstanding salaries for October 2020 to January 2021 and TRY 9,000 as outstanding monthly rent expenses.
20. The Club, on the other hand, submitted that these amounts were already paid to the Player in a timely manner.
21. The FIFA DRC then recalled the basic principle of burden of proof, as stipulated in Article 12 par. 3 of the FIFA Procedural Rules, according to which a party claiming a right on the basis of an alleged fact carries the respective burden of proof.
22. In that regard, the FIFA DRC noted that the Club only submitted proof of payment in the Turkish language for the unspecified amount of TRY 177,212 apparently made to the Player on 17 September 2020. The FIFA DRC further noted that the Club failed to clarify, upon request from FIFA, in which currency the alleged payment was made and to which period the payment related. Furthermore, the Appellant failed to respond to FIFA’s request to clarify these issues.
23. With that in mind, the FIFA DRC highlighted, *inter alia*, that the Club had failed to demonstrate the alleged payments of the Player’s remuneration, since the documentation provided was not translated into one of the four official FIFA languages, for which reason the FIFA DRC decided to disregard the submitted document.
24. In view of these circumstances, the FIFA DRC found that, based on the submission, almost four monthly salaries remained outstanding on the date of termination of the Contract, i.e. 14 January 2021. In addition, the FIFA DRC also noted that the Player put the Club in default of payment and provided it with 15 days to remedy its default.
25. In view of the above, the FIFA DRC established that the Club was in serious violation of its contractual obligations to the Player on the date of termination of the Contract, concluding that the Player terminated the Contract with just cause on 14 January 2021 and that the Club was therefore liable for the early termination of the Contract with just cause by the Player.

26. With regard to the consequences of such termination, the FIFA DRC took into consideration the issue of unpaid remuneration at the moment when the Contract was terminated and decided that, in accordance with the general legal principle of *pacta sunt servanda*, the Club was liable to pay the Player the amount of EUR 80,000, corresponding to four monthly salaries of EUR 20,000 each, i.e. in the period between October 2020 and January 2021, and TRY 9,000 as outstanding rent expenses.
27. Furthermore, and in line with its constant practice, the FIFA DRC decided to award the Player interest at the rate of 5% p.a. on the outstanding amount of EUR 80,000 as well as 5% p.a. on the outstanding amount of TRY 9,000.
28. Secondly, the FIFA DRC took into consideration Article 17 (1) of the Regulations and decided that the Club was liable to pay compensation to the Player for breach of contract.
29. With regard to the calculation of the amount of compensation for breach of contract in the case at stake, the FIFA DRC first summed up that, in accordance with Article 17 (1) of the Regulations, the amount of compensation must be calculated, in particular and unless otherwise provided for in the contract at issue, with due consideration for the law of the country concerned, the specificity of sport and any other objective criteria, including, 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, and depending on whether the contractual breach falls within a protected period.
30. Since the Contract did not contain a provision under which the Parties had agreed beforehand on an amount of compensation payable by the parties to the Contract in the event of breach of contract, the FIFA DRC proceeded with the calculation of the monies payable to the Player under the terms of the Contract until the natural expiry of the Contract and concluded that the amount of EUR 320,000 should serve as the basis for the final determination of the amount of compensation for breach of contract in the case at hand.
31. Furthermore, the FIFA DRC verified whether the Player had signed an employment contract with another club within the relevant period of time, which would have enabled him to reduce his loss of income. According to the constant practice of the FIFA DRC, such remuneration under a new employment contract must be taken into account in the calculation of the amount of compensation for breach of contract in connection with the Player's general obligation to mitigate his damages.
32. The FIFA DRC noted that the Player had in fact signed a new employment contract with the Greek club Panetolikos FC valid as from 18 January 2021 until 30 June 2022, according to which the Player was entitled to a total amount of EUR 124,900.
33. In determining the mitigated amount, the FIFA DRC noted that only the period between February 2021 and May 2022 should be taken into consideration and also noted that the Player would in principle have been entitled to additional compensation in accordance with Article 17 (1) (ii) of the Regulations.

34. However, since the Player had limited his claim for compensation to EUR 193,000, even though the Player would in fact be entitled to a total mitigated compensation of EUR 195,800 and additional compensation, and on account of all of the above-mentioned considerations, the FIFA DRC decided to accept the Player's claim and found that the Club must pay the amount of EUR 193,000 as compensation for breach of contract in the case at hand.
35. In addition, taking into account the Player's request as well as its constant practice in this regard, the FIFA DRC decided that the Club must pay to the Player interest at 5% p.a. on the amount of EUR 193,000 from 27 January 2021, i.e. the date of the claim, until the date of actual payment.
36. Finally, the FIFA DRC decided that, in the event that the Club does not pay the amount due to the Player within 45 days from the moment when the Player 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 will be applicable to the Club in accordance with Article 24bis (2) and (4) of the Regulations.
37. On 3 June 2021, the FIFA DRC rendered the Appealed Decision and decided, *inter alia*, that:
- “1. *The claim of [the Player] is accepted.*
 2. *[The Club] has to pay to [the Player], EUR 80,000 as outstanding remuneration plus 5% interest p.a. until the effective date of payment as follows:*
 - *on the amount of EUR 20,000 as from 1 November 2020;*
 - *on the amount of EUR 20,000 as from 1 December 2020;*
 - *on the amount of EUR 20,000 as from 1 January 2021;*
 - *on the amount of EUR 20,000 as from 1 February 2021.*
 3. *[The Club] has to pay to [the Player] TRY 9,000 as outstanding rent expenses plus 5% interest p.a. as follows:*
 - *on the amount of TRY 3,000 as of 1 November 2020;*
 - *on the amount of TRY 3,000 as of 1 December 2020;*
 - *on the amount of TRY 3,000 as of 1 January 2021.*
 4. *[The Club] has to pay to [the Player] the amount of EUR 193,000 as compensation for breach of contract, plus 5% interest p.a. as of 27 January 2021 until the effective date of payment.*
 5. *A warning is imposed on the Respondent.*
 6. *Full payment (including all applicable interest) shall be made to the bank account set out in the enclosed Bank Account Registration Form.*
 7. *Pursuant to article 24bis of the Regulations on the Status and Transfer of Players if full payment (including all applicable interest) is not paid within 45 days of notification of this decision, the following consequences shall apply:*

1. *The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of three entire and consecutive registration periods.*
 2. *The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not paid by the end of the of the three entire and consecutive registration periods.*
 8. *The consequences shall only be enforced at the request of the Claimant in accordance with article 24bis paragraphs 7 and 8 and article 24ter of the Regulations on the Status and Transfer of Players.*
 9. *This decision is rendered without costs” (emphasis omitted).*
38. On 19 July 2021, the grounds of the Appealed Decision were communicated to the Parties.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

39. On 9 August 2021, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the “CAS”) in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the “CAS Code”) against the Appealed Decision.
40. On 26 August 2021, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.
41. On 28 September 2021, the Respondent filed his Answer in accordance with Article R55 of the CAS Code.
42. Also on the 28 September 2021, and in accordance with Article R54 of the CAS Code, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows:
- Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark
43. By letter of 7 October 2021, the Parties were informed that 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, which was in line with the preference of the Parties.
44. Both Parties duly signed and returned the Order of Procedure, confirming, inter alia, the jurisdiction of the CAS to hear this dispute.

IV. SUBMISSIONS OF THE PARTIES

A. The Appellant

45. In its Appeal Brief, the Appellant requested the CAS:
- “1- *To decide that the termination by the Player is without just cause,*

- 2- *To adjudicate that Appellant shall not make any payment to the Player under the name of unpaid salaries, rental fees and compensation,*
- 3- *To fix a sum of CHF 4.000.- (Four Thousand Swiss francs Only) to be paid by the Respondent to the Appellant, to help the payment of its legal fees and costs”.*

46. The Appellant’s submissions, in essence, may be summarised as follows:

- According to the Contract, the guarantee payment to the Player under the Contract for the 2020-2021 football season is EUR 200,000 and for the 2021-2022 football season EUR 220,000.
- From the beginning of the employment relationship, the Appellant acted in line with the employment law and rules, and the Appellant made all the payments to the Player on due dates and had no overdue and unpaid debt to the Player until the termination date.
- Nevertheless, the Player terminated the employment relationship and the Contract without having just cause.
- As a general principle of law and according to the well-established jurisprudence of FIFA and the CAS, no party is liable to pay any compensation in case the relevant party acts in line with the contract and makes payment on due dates as written therein.
- As such, the Appellant has no obligation to pay any unpaid remuneration and compensation.

B. The Respondent

47. In his Answer, the Respondent simply requests the CAS to confirm the Appealed Decision.

48. The Respondent’s submissions, *in essence*, may be summarised as follows:

- The provisions of the contractual relationship between the Parties are not disputed.
- Apart from the down payment of EUR 20,000 (TRY 177,212) pursuant to the Contract made by the Club on 17 September 2020, the Club never made any payments to the Player.
- The document submitted by the Club during these proceedings refers to this payment only.
- Since the Player did not receive his salaries for October, November and December 2020 on time, on 29 December 2021 the Player forwarded a default notice to the Club in accordance with Article 14bis of the Regulations, granting the Club 15 days to proceed with the payment of all outstanding salaries.
- The Club never responded to this default notice and never paid the outstanding salaries.

- Based on that, the Player terminated the Contract with just cause by letter of 14 January 2021.
- After the termination of the Contract, the Player signed a new employment contract with Panetolikos FC valid as from 18 January until 30 June 2022, pursuant to which the Player would be paid the total amount of EUR 127,000 during the contract period.
- However, since the claim for compensation for breach of contract before FIFA was limited to the amount of EUR 193,000, the Player simply requests that the Appealed Decision be confirmed.

V. JURISDICTION

49. Article R47 of the CAS Code provides, *inter alia*, 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”.

50. With respect to the Appealed Decision, the jurisdiction of the CAS derives from Article 58 par. 1 of the FIFA Statutes. In addition, neither the Appellant nor the Respondent objected to the jurisdiction of the CAS, and both Parties confirmed the CAS jurisdiction when signing the Order of Procedure.

51. It follows that the CAS has jurisdiction to decide on the appeal of the Appealed Decision.

VI. ADMISSIBILITY

52. 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”.

53. It follows from Article 58 of the FIFA Statutes that:

“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, members or leagues shall be lodged with CAS within 21 days of receipt of the decision in question”.

54. The grounds of the Appealed Decision were notified to the Appellant on 19 July 2021, and the Appellant’s Statement of Appeal was lodged on 9 August 2021, i.e. within the statutory

time limit of 21 days set forth in Article R49 of the CAS Code and in Article 58 of the FIFA Statutes, which is not disputed.

55. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.
56. It follows that the appeal is admissible.

VII. APPLICABLE LAW

57. Article R58 of the CAS Code provides as follows:

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

58. Article 57 par. 2 of the FIFA Statutes determines the following:

“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”.

59. Based on the above, and with reference to the filed submissions, the Sole Arbitrator is satisfied that the various regulations of FIFA are primarily applicable and that Swiss law is subsidiarily applicable should the need arise to fill a possible gap in the various regulations of FIFA.

VIII. MERITS

60. Initially, the Sole Arbitrator notes that it is undisputed that the Parties signed the Contract valid from 15 September 2020 until 31 May 2022 and that, according to the Contract, the Player was entitled to receive, *inter alia*, the following amounts as remuneration for the work performed under the Contract:

- EUR 200,000 for the season 2020-2021 and
- EUR 220,000 for the season 2021-2022,

and the Player was also entitled to a house with rent up to TRY 3,000 per month.

61. It is further undisputed that the Player fulfilled his obligations under the Contract until 14 January 2021 when the Player, following a written default letter to the Club due to the Club's alleged non-payment of the Player's salaries, unilaterally and prematurely, terminated the contractual relationship between the Parties.

62. However, the Parties disagree over whether the termination of the Contract by the Player was with or without just cause and, accordingly, what the financial consequences of this termination, if any, should be for the Parties.
63. Thus, the main issues to be resolved by the Sole Arbitrator are:
- a) Did the Player terminate the Contract with or without just cause?
 - b) What are the financial consequences for the Parties of the early termination of the Contract?

A. Did the Player terminate the Contract with or without just cause?

64. To reach a decision on this issue, the Sole Arbitrator has conducted an in-depth analysis of the facts of the case and the information and evidence gathered during the proceedings, including the information and evidence gathered during the proceedings before the FIFA DRC.
65. Initially, the Sole Arbitrator notes that the Player submits that, on the date of the Player's termination of the contractual relationship, i.e. 14 January 2021, the Club was in default with its payments to the Player in the amount of EUR 80,000, corresponding to part of his salaries for October, November and December 2020 and January 2021, as well as the payments of TRY 9,000 covering the monthly flat rent for October, November and December 2020. Based on that, the Player was entitled to terminate the contractual relationship with just cause.
66. The Club, on the other hand, submits that it has fulfilled all its payment obligations to the Player pursuant to the Contract and that the termination of the contractual relationship was consequently made without just cause.
67. Based on the facts of the case and the Parties' submissions, the Sole Arbitrator finds that it is up to the Club to discharge the burden of proof to establish that it had in fact fulfilled its payment obligations pursuant to the Contract at the time of the Player's termination of the Contract, i.e. on 14 January 2021.
68. In doing so, the Sole Arbitrator adheres to the principle of *actori incumbit probatio*, which has consistently been observed in CAS jurisprudence, and according to which "*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (..) The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*" (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810 & 1811, para. 46 and CAS 2009/A/1975, para. 71ff).

69. However, the Sole Arbitrator finds that the Club has not adequately discharged the burden of proof to establish that it had in fact fulfilled its payment obligations pursuant to the Contract at the time of the Player's termination of the Contract.
70. In that connection, the Sole Arbitrator attaches particular importance to the failure by the Club to produce evidence to document the alleged payments of the outstanding amount, and – also after having examined the only evidence allegedly presented to the FIFA DRC – the Sole Arbitrator finds that insufficient evidence has been produced to show that the payment made on 17 September 2020 relates to the payments of the Player's remuneration pursuant to the Contract for October, November, December 2020 or January 2021.
71. The Sole Arbitrator further notes that the FIFA DRC did in fact request the Club to submit clarification regarding the nature of this payment, which request the Club failed to respond to, and the Club only submitted the same document in the Turkish language in these procedures before the CAS.
72. The Sole Arbitrator therefore concludes that the Club was in default with its payments to the Player in the amount of EUR 80,000, corresponding to (part of) the Player's salaries for October, November and December 2020 and January 2021, as well as with its payments of TRY 9,000 covering the monthly flat rent for October, November and December 2020.
73. With regard to the question of whether the Player, based on the above, had just cause to terminate the Contract on 14 January 2021, the Sole Arbitrator notes that Article 14 (1) of the Regulations states as follows:
- “A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause”.*
74. Furthermore, Article 14bis of the Regulations has the following wording:
- “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”.*
75. Moreover, the Sole Arbitrator notes that, according to the CAS jurisprudence, *“the non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated [...] - constitute ‘just cause’ for termination of the contract [...]; for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet this obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be ‘insubstantial’ or completely secondary. Secondly, a prerequisite for*

terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract" (see CAS 2006/A/1180, para. 26).

76. In the present case, the Sole Arbitrator finds that the Club failed to comply with a major part of its payment obligation, i.e. more than three months' remuneration.
77. Furthermore, the Player did in fact warn the Club in writing about the possible consequences of its breach of obligations by his letter of 29 December 2020.
78. The said letter pointed out not only the Club's breach of its obligations, but also quite clearly and unambiguously emphasised that the Player was not prepared to tolerate such breach of obligations in the future and stated, *inter alia*, that "*If the club does not pay in (15) days the amount of NET 60.000.EUR to the player's account in full, we will unilaterally terminate the contract with right cause according to the FIFA RSTP and the club will be responsible for consequences of unilateral termination and in order to obtain formal decision we will promptly apply to FIFA*".
79. Based on these facts, the Sole Arbitrator finds that the Club was in breach of the Contract, that it had been duly warned about the possible consequences and that the Player therefore had just cause to terminate the Contract on 14 January 2021.

B. What are the financial consequences for the Parties of the early termination of the Contract?

80. The Sole Arbitrator notes that since the Contract was terminated with just cause by the Player, it has to address (i) the Player's claim for payment of the outstanding remuneration and (ii) the Player's claim for compensation for breach of contract.
81. With regard to the Player's claim for payment of the outstanding remuneration of EUR 80,000 and TRY 9,000, and in view of the fact that it is undisputed that the Player fulfilled his obligations under the Contract until the termination date and in accordance with the general principle of *pacta sunt servanda*, the Sole Arbitrator finds that the Club should have fulfilled its contractual obligations to the Player until the date of termination of the Contract on 14 January 2021.
82. As set out above, at the time of the Player's termination of the Contract on 14 January 2021, remuneration in the total amount of EUR 80,000 and flat rate in the amount of TRY 9,000 were still owing from the Club to the Player.
83. The Sole Arbitrator agrees with the FIFA DRC that the Club is therefore clearly obligated to pay this amount to the Player as outstanding remuneration.
84. Further, the Sole Arbitrator sees no reason to deviate from the Appealed Decision concerning the interest rate and therefore confirms that the Player is entitled to receive interest on the outstanding remuneration as set out in the Appealed Decision.

85. With regard to the Player's claim for compensation for breach of contract, and since the Club is held liable for the early termination of the Contract due to its breach of contract, the Sole Arbitrator finds that the Player is entitled, subject to Article 17 (1) of the Regulations, to receive financial compensation for breach of contract in addition to the above-mentioned payments of outstanding remuneration.

86. Article 17 (1) of the Regulations states as follows:

"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".*

87. With reference to the foregoing, the Sole Arbitrator finds that it is undisputed that no agreement has been concluded between the Parties on the amount of compensation payable in the event of breach of contract, and the Sole Arbitrator also notes that the Parties do not disagree that the Player, for the remainder of the period of contract, would have been entitled to receive a salary of EUR 320,000.

88. Finally, it is undisputed that the Player, after the termination of the Contract, signed a new employment contract with the Greek football club Panetolikos FC, valid as from 18 January 2021 until 30 June 2020, according to which the Player should receive a total remuneration of EUR 127,000 for the entire contract period.

89. Initially, the Sole Arbitrator notes, in consistency with the well-established CAS jurisprudence, that the injured party is entitled to a whole reparation of the damage suffered according to the principle of “*positive interest*”, under which compensation for breach must be aimed at reinstating the injured party to the position it would have been in had the contract been performed until its expiry (CAS 2012/A/2698; CAS 2008/A/1447).
90. Moreover, the Sole Arbitrator observes that Article 337c par. 1 and 2 of the Swiss Code of Obligations (“CO”) provides the following: “(1) *Where the employer dismisses the employee with immediate effect without good cause, the employee is entitled to damages in the amount he would have earned had the employment relationship ended after the required notice period or on expiry of its agreed duration. (2) Such damages are reduced by any amounts that the employee saved as a result of the termination of the employment relationship or that he earned by performing other work or would have earned had he not intentionally foregone such work*”.
91. In view of the above, the Sole Arbitrator is satisfied to note that the Player has the right to have his compensation determined under the provisions of Article 17 (1) of the Regulations in the light of the principle of “*positive interest*” as specified above and with due consideration to the duty to mitigate damages according to Swiss law, which is consistent with CAS jurisprudence (CAS 2005/A/909-910-911; CAS 2005/A/801; CAS 2004/A/587).
92. Based on the circumstances of this particular case and the fact that the Player’s claim for compensation for breach of contract submitted before FIFA amounted only to EUR 193,000, the Sole Arbitrator agrees with the FIFA DRC that the amount of compensation granted to the Player in the Appealed Decision for the Club’s breach of contract is not excessive and therefore must be confirmed.
93. Furthermore, the Sole Arbitrator sees no reason to deviate from the Appealed Decision concerning the interest rate and, therefore, confirms that the Player is entitled to receive interest on the said amount at the rate of 5% p.a. from the date of the claim, i.e. from 27 January 2021.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 9 August 2021 by Altay SK against the decision rendered by the FIFA Dispute Resolution Chamber on 3 June 2021 is dismissed.

2. The decision rendered by the FIFA Dispute Resolution Chamber on 3 June 2021 is confirmed.
3. (...).
4. (...).
5. All other motions or prayers for relief are dismissed.