



**Arbitration CAS 2019/A/6646 MKE Ankaragücü SKD v. Johannes Hopf, award of 4 May 2020  
(operative part of 24 January 2020)**

Panel: Mr Frans de Weger (The Netherlands), President; Mr Rui Botica Santos (Portugal); Mr Emin Özkurt (Turkey)

*Football*

*Sporting sanctions following the termination of an employment contract*

*Standing to be sued with regard to sanctions*

*Consequences attached to the failure to name the proper respondent(s) in CAS proceedings*

*CAS de novo powers*

1. A party has standing to be sued in CAS proceedings only if it has some stake in the dispute because something is sought against it in front of the CAS. FIFA, and not a player, is the legal body with the power to impose disciplinary sanctions on a party in the event of a violation of the FIFA Regulations. As a consequence, in an appeal against a FIFA decision, by means of which disciplinary sanctions have been imposed on a party for failing to comply with a previous FIFA decision, the intervention of FIFA as a party in the appeal proceedings is required. Therefore, an appeal against a sporting sanction inflicted by a FIFA decision-making body must include FIFA, as the body that has the power to impose disciplinary sanctions.
2. Parties to proceedings in front of CAS must be aware of the differences regarding the question as to who has standing to be sued in such proceedings. Parties which fail to name the required respondent(s) in CAS proceedings, must, as a general rule, bear the legal consequences. The consequences in cases in which an appeal is not filed against FIFA on matters questioning the validity of sanctions imposed by FIFA itself have long been settled – the CAS cannot uphold the appeal, which should generally be dismissed.
3. In appeal proceedings before CAS, the facts and the law are examined *de novo* by the CAS in accordance with the power bestowed on it by Article R57 of the CAS Code. The *de novo* principle grants a CAS panel not only that procedural flaws of the proceedings of the previous instance can be cured in the proceedings before the CAS, but also that it is authorized to admit new prayers for relief and new evidence and hear new legal arguments.

## I. INTRODUCTION

1. This appeal is brought by MKE Ankaragücü SKD (the “Club” or the “Appellant”) against the decision rendered by the Dispute Resolution Chamber (the “DRC”) of the Fédération Internationale de Football Association (“FIFA”) on 5 November 2019 (the “Appealed Decision”), regarding an employment-related dispute between the Club and Johannes Hopf (the “Player” or the “Respondent”).

## II. PARTIES

2. The Appellant is a professional football club, based in Ankara, Turkey. The Club is affiliated to the Turkish Football Federation (the “TFF”) which in turn is affiliated with FIFA.
3. The Respondent is a football player of Swedish nationality, born on 16 June 1987.
4. The Appellant and the Respondent are referred together as the “Parties”.

## III. FACTUAL BACKGROUND

### A. Background facts

5. Below is a summary of the main relevant facts, as established on the basis of the Parties’ written submissions on the file and relevant documentation produced in this appeal. Additional facts and allegations found in the Parties’ submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Award only refers to the submissions and evidence it considers necessary to explain its reasoning.
6. On 13 July 2018, the Club and the Player signed an employment contract valid from 13 July 2018 until 31 May 2021 (the “Employment Contract”).
7. The Employment Contract contains, *inter alia*, the following relevant terms:

“I 2018-2019 Football Season

#### 1.1. Guaranteed Fee

*250,000.00- Euro guarantee fee will be paid to the player. 150,000.00- Euro of the guarantee fee will be paid at the latest on 16.07.2018. 100.000,00- Euro balance will be paid at on 15.08.2018.*

*1.2 Interim Payment*

*Between September 2018 and June 2019, 40.000,00.-Euro monthly payment will be made for 10 months.*

*II. 2019-2020 Football Season*

*2.1. Guaranteed Fee*

*The guarantee fee of 250.000,00.-Euro will be paid to the footballer on 31.08.2019.*

*2.2. Interim Payment*

*Between September 2019 and June 2020, 40.000,00.-Euro monthly payment will be made for 10 months.*

*III. 2020-2021 Football Season*

*3.1. Guaranteed Fee*

*The guarantee fee of 250.000,00.-Euro will be paid to the footballer on 31.08.2020*

*3.2. Interim Payment*

*Between September 2020 and June 2021, 40.000,00.-Euro monthly payment will be made for 10 months.*

*[...]*

*IV. General Provisions*

*[...]*

*f. The parties shall declare, accept and undertake that a total of 10,000.00.-Euro (per season) will be paid by the club for the rents and transportation during the seasons when the contract is in force”.*

8. On 18 February 2019, the Player sent a default notice to the Club requesting for payment of outstanding amounts of net EUR 270,000 and granted the Club 15 days to pay the outstanding amount.
9. On 4 and 5 March 2019, the Club paid to the Player the amount of EUR 270,000 and EUR 40,000 respectively, corresponding to a total amount of EUR 310,000.
10. On 6 March 2019, the Player sent a termination notice to the Club whereby the Player declared that he unilaterally terminated the Employment Contract with just cause.

**B. Proceedings before the FIFA Dispute Resolution Chamber**

11. On 13 March 2019, and on behalf of the Player, his lawyers filed a claim against the Club in front of the DRC requesting the following:

*“As we have explained in detail above;*

- a) *We have unilaterally terminated the players’ contract on 6th March 2019 with right cause due to the fact that the respondent club has essential breached the employment contract, after delivering notice of default letter under FIFA RSTP Article 14/ bis.*
- b) *At the time of termination on 6th March 2019, the player has 317.999.EUR outstanding salaries and remunerations, we claim the player’ outstanding due credits at the time of termination the amount of 317.999.EUR from the club’ with interest per year minimum %5 from due dates of each salaries and remunerations as detailed explained in page 2 of the application.*
- c) *We also claim compensations for the amount of 1.451.999.EUR for the players’ remaining remunerations of the contract with interest per year minimum %5 from the date of termination on 6th March 2019.*
- d) *We also request that termination has been done within protective period and the respondent club has to receive sportive sanction due to termination”.*

12. The DRC noted that the Club failed to present its response to the claim of the Player, despite having been invited to do so.

13. On 5 November 2019, the DRC rendered its decision (the “Appealed Decision”) with, *inter alia*, the following operative part:

- “1. *The claim of [the Player] is partially accepted.*
2. *[The Club] has to pay to the [the Player] within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of EUR 310,000 plus interest of 5% p.a. as follows:*
  - a. *On the amount of EUR 100,000 as from 16 August 2018 until the date of effective payment;*
  - b. *On the amount of EUR 40,000 as from 1 November 2018 until the date of effective payment;*
  - c. *On the amount of EUR 40,000 as from 1 December 2018 until the date of effective payment;*
  - d. *On the amount of EUR 40,000 as from 1 January 2019 until the date of effective payment;*

- e. *On the amount of EUR 40,000 as from 1 February 2019 until the date of effective payment;*
- f. *On the amount of EUR 40,000 as from 1 March 2019 until the date of effective payment;*
- g. *On the amount of EUR 10,000 as from 21 June 2018 until the date of effective payment.*

[...]

- 7. *[The Club] shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision”.*

14. On 18 November 2019, the grounds of the Appealed Decision were communicated to the Parties determining, *inter alia*, the following:

- The DRC acknowledged that the Player and the Club signed an employment contract on 13 July 2018, pursuant to which the Club undertook to pay to the Player the amounts as stipulated in the Employment Contract.
- In addition, the DRC further acknowledged “*that [the Player] put [the Club] in default of payment of the total amount of EUR 270,000 granting it 15 days to cure it*”.
- The DRC also noted that the Player unilaterally terminated the Employment Contract on 6 March 2019.
- Consequently, “*when [the Player] terminated the contract, at least two monthly salaries were due despite the fact that [the Player] provided [the Club] with 15 days to remedy the default, the DRC concluded that, on 6 March 2019, [the Player] had a just cause to unilaterally terminate the employment contract*”.
- The DRC established that the Club had to be held liable for the early termination of the Employment Contract. The DRC decided that “*[the Club] is liable to pay to [the Player] outstanding remuneration in the amount of EUR 310,000, consisting of EUR 100,000 due on 15 August 2018, 5 unpaid salaries for the months of October 2018 to February 2019 à EUR 40,000 each as well as EUR 10,000 in accommodation costs for the season 2018/2019. The Chamber deemed that the amount requested by [the Player] pertaining to 6 days of his salary for the month of March 2019 should be part of the compensation due to him*”.
- Furthermore, the DRC took note that “*the early termination of the employment contract by [the Player] had occurred on 6 March 2019, i.e. 8 months following the entry into force of the contract at the basis of the dispute*”. The DRC concluded that the breach of contract had occurred within the protected period.
- Therefore, the DRC decided that “*by virtue of art. 17 par. 4 of the Regulations and considering that [the Club] is held liable for the early termination of the employment contract with [the Player]*

*without justification and consequently was found to be in breach of the employment contract without just cause, the Chamber decided that [the Club] shall be banned from registering any new players, either nationally or internationally, for the next two entire and consecutive registration periods following the notification of the present decision".* The DRC emphasised that the Club clearly acted in breach of the contract within the protected period and had also on several occasions in the recent past been held liable by the DRC for the early termination of other players.

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

15. On 11 December 2019, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Article 58 of the FIFA Statutes and Articles R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code"). Furthermore, the Club requested that the appeal be decided by a Sole Arbitrator.
16. By letter of 18 December 2019, the CAS Court Office invited FIFA, since the appeal was not directed at FIFA, whether it intended to participate as a party in the present arbitration.
17. On 19 December 2019, the Club filed its Appeal Brief pursuant to Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. The Club challenged the Appealed Decision, submitting the following requests for relief:
  - a. *initially to order stay of execution of the challenged decision,*
  - b. *to set aside the challenged decision of the FIFA Dispute Resolution Chamber in its entirety,*
  - c. *to rule that the termination of the Respondent as termination without just cause,*
  - d. *to condemn that the Respondent is not entitled to any compensation for the premature termination of the employment agreement between the Parties,*
  - e. *in subsidiary order, to rule that the ban from registering new players, either nationally or internationally, for two next entire and consecutive registration periods following the notification of the said decision to be lifted completely or alternatively, to be reduced to one registration period,*
  - f. *to condemn the Respondent to pay the Appellant the legal fees and other expenses in connection with the proceedings".*
18. On 23 December 2019, FIFA informed the CAS Court Office, *inter alia*, that it renounced its right to request its possible intervention in the present arbitration proceedings.
19. On 23 December 2019, the Player informed the CAS Court Office that he did not agree to submit the matter to a Sole Arbitrator. Furthermore, the Player stated that he reserved to submit his Answer until the Club paid its share of the advance costs.

20. On 24 December 2019, the Player informed the CAS Court Office that he had no adequate fund to pay his share of the advance of cost and will thus not pay such advance costs.
21. On 27 December 2019, the Club requested, in accordance with Article R44.4 of the CAS Code, to proceed the matter in an expedited manner. Furthermore, the Club requested that the Panel makes an order for provisional measures in accordance with Article R37 of the CAS Code.
22. On 27 December 2019, the CAS Court Office informed the Parties that it is of the understanding that the Parties were about to sign a settlement agreement to be ratified in a CAS Consent Award. The CAS Court Office suggested that the Parties provide the CAS Court Office with the signed settlement agreement without delay and if the Parties were still on the point to conclude a settlement agreement, they were invited, by 30 December 2019, to comment to the suggestions of the CAS Court Office.
23. On 30 December 2019, the Player requested the CAS Court Office to extend the time limit to finalise the negotiations to find a settlement agreement until 6 January 2020. The CAS Court Office confirmed on the same day that the extension was granted and the proceedings were suspended until further notification from the CAS Court Office.
24. On 6 January 2020, the Player informed the CAS Court Office that the terms and conditions of the settlement agreement had not been completed by 6 January 2020 and requested an extension of the time limit to finalise the settlement agreement until 9 January 2020. On the same day, the CAS Court Office confirmed that the time limit was extended.
25. On 9 January 2020, the Player informed the CAS Court Office that he preferred “*an expedited procedure for the present case*” and requested the matter to be submitted to a three-member panel. Further, the Player appointed Mr Emin Özkurt as arbitrator.
26. On 9 January 2020, the Club informed the CAS Court Office that it preferred CAS “*to apply expedited procedure on this matter*” and also requested that the matter was submitted to a three-member panel. The Club appointed Mr Rui Botica Santos as arbitrator. Furthermore, the Club highlighted that “*the FIFA DRC, while delivering its judgment, failed to provide a solid justification for the enforcement of sporting sanctions [...]. In addition to that, FIFA DRC issued this measure on challengeable decision. Moreover, this sanction is a disciplinary sanction which is neither requested by the Respondent nor can be subjected to contractual disputes*”. In this regard, “*taking into consideration that the winter transfer window opened on 4th January 2020 and will close on 31st January 2020, [the Club] is already suffering from injustice transfer ban sanction*”. Therefore, the Club requested the “*suspension of transfer ban sanction to be decided by CAS Panel until CAS Award*”.
27. On 10 January 2020, the CAS Court Office confirmed the procedural calendar, as was communicated to the CAS Court Office by both the Parties per joint letter of the same day, determining the following:

“ Respondent to answer to the application for provisional measures by 14 January 2020;

- Respondent to file his Answer by 16 January 2020;
- Order on provisional measures – at least the operative part – to be notified by 24 January 2020;
- Final arbitral award – at least the operative part – to be released by 31 May 2020”.

Moreover, in the same letter the Parties were informed that the suspension of the proceedings was lifted.

28. On 13 January 2020, the Player filed its Answer in accordance with Articles R55 and R64.2 of the CAS Code. The Player submitted, *inter alia*, the following:

“3. After notification of the decision ground of the appealed decision FIFA DRC, [the Club] has contacted to us. He stated that [the Club] paid his unpaid salary in complete and full before 6th March 2019, but it was [the Player]’s negligence and forgot to update us.

[...]

5. Since [the Player] has received his payment, we are informed by [the Player] that [the Player] has no legal interest remained from [the Club]. Moreover, we have not demanded sportive sanction according to RSTP Article 17/4 from FIFA DRC.

6. Since and in accordance with [the Player], we have no legal grounds left for this trial. Therefore, we will not submit any answer with regards to appeal brief.

7. We kindly ask CAS Panel to discuss the matter at hand depending on the documents submitted by the Parties”.

29. On 16 January 2020, the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel appointed to decide the case was constituted as follows:

President: Mr Frans M. de Weger, Attorney-at-law, Haarlem, the Netherlands

Arbitrators: Mr Rui Botica Santos, Attorney-at-law in Lisbon, Portugal

Mr Emin Özkurt, Attorney-at-law in Istanbul, Turkey

30. On 22 January 2020, the CAS Court Office, on behalf of the Panel, sent a letter to FIFA containing, *inter alia*, the following:

“It appears from the file that [the Club] paid EUR 310,000 to [the Player] as outstanding salaries in two instalments: EUR 270,000 on 4 March 2019 and EUR 40,000 on 5 March 2019 (See enclosures 1 and 2), i.e. before the initiation of the proceedings before the FIFA DRC.

*The payment of these amounts has been confirmed by [the Player] within the frame of the arbitral proceedings captioned above and the latter informed the Panel that he has no claims against [the Club] anymore (see enclosure 3).*

*Due to the lack of communication between [the Player] and his counsel, this information has recently been transmitted to the Panel, and it appears that the FIFA DRC may have rendered a decision on an erroneous chain of events with, as a result, a ban from registering new players for two consecutive transfer windows imposed on [the Club].*

*Since FIFA has not been properly designated as a party in these proceedings, the Panel invites FIFA, no later than 23 January 2020 at 3.00 pm (CET), to submit its observations on a possible lifting of the disciplinary sanction imposed on [the Club].*

*Within the same time limit, and if possible, FIFA is also invited to provide the DRC file in relation with this matter”.*

31. The next day, on 23 January 2020, FIFA sent a letter and replied, *inter alia*, as follows:

“(…)

*However, we also note that it appears from the CAS case file that [the Club] paid to [the Player] the amount of EUR 310,000 as outstanding salaries before the initiation of the proceedings before the FIFA DRC, and that the payment of this amount has been confirmed by [the Player] within the frame of the arbitral proceedings, with the latter confirming that he no longer has claims against [the Club]. As a result of this, you mention that “due to the lack of communication between the Respondent and his counsel, this information has recently been transmitted to the Panel, and it appears that the FIFA DRC may have rendered a decision on an erroneous chain of events with, as a result, a ban from registering new players for two consecutive transfer windows imposed on [the Club].*

*Bearing in mind the above-described scenario (and that the entire DRC system is aimed at reaching the goal that the parties are satisfied with their respective claims when these are sufficiently proven), FIFA understands that these exceptional circumstances could lead the Panel to render an exceptional award, which will not be disputed by FIFA”.*

Further, along with its letter, FIFA provided the requested FIFA file.

32. On 24 January 2020, the CAS Court Office, on behalf of the Panel, informed the Parties that the operative part of the Award was rendered by the CAS. The decision of the operative part of the Award contained the following:

- “1. The appeal filed on 11 December 2019 by [the Club] against [the Player] with respect to the decision issued on 5 November 2019 by the FIFA Dispute Resolution Chamber is upheld.
2. The decision issued on 5 November 2019 by the FIFA Dispute Resolution Chamber is annulled.
3. (…).

4. (...).

5. *All other and further motions or prayers for relief are dismissed*".

33. Considering (i) the Appellant's request for a stay of the Appealed Decision – in respect to the awarded sporting sanctions – before the closing of the winter window transfer, i.e. before 31 January 2020; (ii) the Respondent's position confirming that the outstanding amounts to him were fully paid; and (iii) the FIFA letter dated 22 January 2020 confirming the exceptional circumstances of the present appeal, the Panel has decided to enter immediately into the merits of the appeal, without the need to hold a hearing. For this reason, the decision of the request for a stay of the Appealed Decision became moot and, also due to the urgency of the present Award, the Panel considered irrelevant the execution of an Order of Procedure.

## V. SUBMISSIONS OF THE PARTIES

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

- As to the "*Rightfulness of the Termination and Calculation of Compensation*", the Club submits that the Player did not sign an employment agreement with another club after the termination and that this suggests that the Player may have ended his professional football career. If the Player had not ended his professional football career, there is a significant chance that the Player may conclude another employment agreement, which may cover the period until 31 May 2021. In this regard, the Club submits that the remuneration provided under the employment agreement, in return, must be deducted from the amount of the requested compensation in accordance with the relevant clauses of the FIFA Regulations on the Status and Transfer of Players, i.e. Article 17 (1) (sub ii).
- Furthermore, the Club is of the opinion that even if the Player does not sign a new contract, "*the adjudicated compensation amount must be challenged*".
- The Club states that the remuneration of the Player with the Club was "*relatively high*", which was based on the "*strong belief in his sporting skills*".
- The Player did not meet the expectations of the Club, which, according to the Club, "*resulted in [the Club] to suffer both financially and reputation*". The Club "*sadly doubts that this may have arisen from [the Player]'s reluctance to live in a humble city, like Ankara. Despite being kindly requested to do so since the first match he appeared on, [the Player] did not pay the required attention to his health and trainings. Which resulted in the deterioration of his performance to even worse standards*". Moreover, the Club submits that the fact, the Player could not find another employment, "*even one with humbler conditions also proves the lack of sporting performance of [the Player]*".
- In this regard, the Club further submits that the decision of the DRC constituted a violation of justice "*as none of these facts were taken into consideration*".

- As to the sporting sanctions, the Club underlines that the DRC, while delivering its judgement, failed to provide a solid justification for the enforcement of sporting sanctions. The Club submits that *“this also arose from the inadequate inspection of the facts”* and based on these facts the transfer ban must be considered as *“a unrighteously harsh sanction”*.
- In conclusion, the Club *“is in strong belief that the current proceedings will finalize with the decision in favour of it since it is not culpable for the termination. As the sporting sanctions will impair [the Club] irreparably, it is requested [...] to order the stay of execution”*.

35. The Player’s submissions, in essence, may be summarised as follows:

- The Player stated that the Club paid the entire outstanding salaries before 6 March 2019. Reference is made to a letter from the Player in which he explained the situation in more detail, which letter was attached to the Answer.
- In the letter, the Player explained that the Club successfully paid his unpaid salaries before 6 March 2019, but it was his negligence as he forgot to inform his lawyer with regard to the payment. The Player submits that due to the lack of communication with his lawyer, the latter thought that the Player’s salaries were still unpaid and therefore sent a termination notice to the Club. In the letter, the Player further stated that the Club contacted with him and stated that the Club was facing compensation and also a transfer ban despite payment had been made. From the letter it follows that the Club became aware of this situation once the national federation informed the Club about the Appealed Decision and its consequences. The Club now asked the Player *“to clean this mess”* and that was the reason why the Player wrote this letter.
- The Player acknowledges that since he received the outstanding payments he has *“no legal interest remained from [the Club]”*. Moreover, the Player submits that he did not ask before the DRC for sporting sanctions according to the RSTP.
- In conclusion, the Player stated that it will not submit an answer to the Appeal Brief filed by the Club. The Player requested that the Panel *“discuss the matter at hand depending on the documents submitted by the Parties”*.

## VI. JURISDICTION

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

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

37. The jurisdiction of CAS, which is not disputed, derives from Article 58 (1) of the FIFA Statutes (2019 edition) which reads:

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

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

## VII. ADMISSIBILITY

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

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

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

41. The Panel observes that the grounds of the Appealed Decision were notified by FIFA to the Parties, with copy for information to UEFA and the TFF, per email on 18 November 2019. The Club submits that it only received the Appealed Decision from the TFF on 20 November 2019, which was demonstrated by the Club with the documents provided along with the letter of the TFF per that same date.

42. In accordance with Articles R47 and R48 of the CAS Code, the Club filed its Statement of Appeal on 11 December 2019, which is within the 21 days deadline.

43. Therefore, the appeal was timely submitted and is admissible.

## VIII. APPLICABLE LAW

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

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

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

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

46. The Panel notes that the Employment Agreement provides for a choice-of-law regarding *“the laws, regulations or decisions / regulations of FIFA, Turkey Football Federation, the clubs and other institutions and organizations”*.
47. Further, the Club submitted that the case is governed primarily by FIFA Regulations on the Status and Transfer of Players and, subsidiary, Swiss law applies pursuant to Article 57 (2) of the FIFA Statutes and the jurisprudence of the CAS.
48. The Player did not submit a statement regarding the applicable law.
49. In light of the above, the Panel is satisfied that the FIFA Regulations are applicable, with Swiss law applying to fill in any gaps or lacuna within those regulations.

## **IX. MERITS**

### **A. Preliminary**

50. The Panel observes that in addition to the imposed sporting sanctions, the Club has also appealed against other legal matters arising from the Appealed Decision, *inter alia*:
  - a) its finding that the termination of the Player was without just cause; and
  - b) that the Club is not entitled to any compensation for the termination.
51. However, as it became clear during the CAS proceedings, in the FIFA proceedings the Player based its claim on outstanding salaries and initiated the FIFA proceedings whilst the Club had already paid his outstanding salaries. More specifically, the Player initiated the FIFA proceedings on 6 March 2019, whilst on 4 and 5 March 2019, the Club had paid the Player his outstanding salaries in the amount of EUR 270,000 and EUR 40,000 respectively, corresponding to a total amount of EUR 310,000. This was also corroborated with evidence by the Player and is therefore no longer in dispute between the Parties.
52. As such, the issues under a) and b) above are not at stake anymore as the matter of outstanding salaries by the Club to the Player has been settled between the Parties, as set out above. Therefore, the Panel will now limit its analysis to the issue of the sporting sanctions as this issue is now the key legal matter under the CAS appeal proceedings.

## **B. Sporting sanctions**

### **1. In general**

53. In light of the above, the present case in essence only centers around the question whether or not the sporting sanctions can be lifted. In fact, by means of the Appealed Decision, and based on incomplete facts to the disposal of the FIFA DRC, the FIFA DRC imposed a transfer ban on the Club from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods.
54. In this regard, the Club asked the CAS to annul the sporting sanctions that were imposed upon the Club and asked to receive an Order on Request for a Stay of the Appealed Decision. On 24 January 2020, the operative part of the present Award was issued by the CAS Court Office, on behalf of the Panel. Based on the very exceptional circumstances of the present case, and for reasons that will now be motivated by the Panel in the present Award, the request for stay became moot since it was replaced by this Award. In this respect, the Panel points out that it willfully address the issue as to whether the sanctions can be annulled.
55. In this regard, the Panel, however, takes note that there is an issue here with the identification of the required respondents. In fact, in its submissions the Club only mentioned the Player as a respondent, and not FIFA. This issue raises the legal question whether or not the Panel can annul the awarded sporting sanctions without the mandatory intervention of FIFA as a respondent. In other words, the question in this case is whether, in view of the Club's prayers for relief, and in the context of standing to be sued (i.e. "légitimation passive"), the Club has named all required respondents in order for the Panel to be entitled to lift the transfer ban.
56. In this sense, and as established in the longstanding jurisprudence of the CAS, confirmed by the Swiss Federal Court, the Panel wishes to note that standing to sue and standing to be sued are to be treated as an issue of merits, and not as a question for the admissibility of the appeal (see, *inter alia*, CAS 2017/A/5359, CAS 2017/A/5322, CAS 2017/A/5227, CAS 2016/A/4585, CAS 2015/A/4131, and ATF 114 II consid. 3a; ATF 126 III 59 consid. 1a). Therefore, the question of standing to be sued shall be treated by the Panel as a substantive matter or, to put in a different way, as an issue of the merits.

### **2. Consequences not naming FIFA as party**

57. In this regard, referring to the Club's prayers for relief, the Club requests the CAS to set aside or reduce the sporting sanctions imposed on it by FIFA under Article 17 (4) of FIFA Regulations on the Status and Transfer of Players ("FIFA Regulations"). In essence, the Club seeks relief from FIFA, which is the body that imposed the sanction.
58. However, in the present case the Club only identified the Player as sole respondent, and not FIFA or the specific body that had issued the Appealed Decision. In this regard, the Panel notes that FIFA, and not the Player, is the legal body with the power to impose disciplinary sanctions on the Club in the event of a violation of the FIFA Regulations.

59. The Panel wishes to recall that, pursuant to the CAS jurisprudence, a party has standing to be sued in CAS proceedings only if it has some stake in the dispute because something is sought against it in front of the CAS (see, *inter alia*, CAS 2015/A/4310, CAS 2014/A/3831 and CAS 2014/A/3850). Therefore, the only body that would have the authority to withdraw the sanction on the Club in the present case, would be FIFA.
60. As a consequence, in an appeal against a FIFA decision, by means of which disciplinary sanctions have been imposed on a party for failing to comply with a previous FIFA decision, it is required the intervention of FIFA as a party in the appeal proceedings. Therefore, an appeal against a sporting sanction inflicted by a FIFA decision-making body must include FIFA, as the body that has the power to impose disciplinary sanctions (see, *inter alia*, CAS 2017/A/5359, CAS 2015/A/4310 and CAS 2007/A/1367). The Panel fully adheres to this consistent CAS jurisprudence.
61. Turning to the case at hand, by means of the Appealed Decision the FIFA DRC imposed a sanction upon the Club. It goes without saying that the Player does not have the power to directly affect the legal situation of the Club in this respect. In fact, as to the sporting sanctions that were imposed by FIFA on the Club, there is nothing that can be requested from the Player in this respect, and indeed there is nothing the Player can do to alleviate the burden of the Club as to this issue.
62. Under the circumstances of the present case, the Panel considers that, in light of the claims of the Club made to CAS with respect to the annulment of the sporting sanctions, the respondent in this appeal cannot be only the Player. It should have also been FIFA itself. Yet, FIFA has not been identified as a respondent by the Club, neither in its Statement of Appeal, nor in the Appeal Brief. In casu, the Panel wishes to underline that the Club should have directed its appeal also against FIFA as the party with standing to be sued in addition to the Player as respondent or separately – the latter only if the prayers of relief concerned the disciplinary (sporting) sanctions (see, *inter alia*, CAS 2017/A/5359).
63. In this context, it is not in dispute that FIFA has not been named as a respondent by the Club in these proceedings. In this regard, it is in line with the CAS Code and standard CAS procedure to ask FIFA to state whether it would like to participate as a party in appeals against decisions rendered by FIFA's judicial bodies. FIFA replied to CAS by renouncing its right to take part in these proceedings. By doing so, FIFA cannot be seen to have accepted to sit as a party. FIFA's role would of course turn into that of a respondent if the Club would have named FIFA as a respondent, as it could – and should – have done, or if FIFA goes a step further by requesting the intervention (which it did not, as FIFA renounced to its right to intervene) and if the other parties had then agreed thereto.
64. In consideration of the above, the Panel finds that the Club erred in filing the appeal procedure aiming to reverse the sanction imposed by the FIFA DRC only against the Player, as the latter lacks standing to be sued (alone) in connection with the awarded sporting sanctions. In this sense, the Panel also finds that parties to proceedings in front of CAS must be aware of the differences regarding the question as to who has standing to be sued in such proceedings. Put

differently, the Panel stresses that parties which fail to name the required respondent(s) in CAS proceedings, must, as a general rule, bear the legal consequences. The consequences in cases in which an appeal is not filed against FIFA on matters questioning the validity of sanctions imposed by FIFA itself have long been settled – the CAS cannot uphold the appeal, which should generally be dismissed.

### **3. *Special circumstances of the case***

65. The Panel is, however, confronted here with a very unique situation.
66. On the one hand, the Club omitted to mention FIFA as a respondent, which can obviously be regarded as negligent. On the other hand, it is established that the Club paid the outstanding amount prior to the initiation of the proceedings before the FIFA DRC, which was confirmed by the Player. Due to the lack of communication between the Player and his counsel, there is no doubt, in view of the Panel, that the FIFA DRC rendered the Appealed Decision on an erroneous chain of events, which led to a ban from registering new players for two consecutive transfer bans imposed on the Club.
67. The Panel underlines that as a general rule, in the absence of FIFA as a party, it could not decide to lift the sporting sanctions. However, the present case is different from all cases that so far have been decided by the CAS in similar matters.
68. In order to reach a fair solution considering the incomplete chain of events, as set out above, the Panel decided to address FIFA during the present CAS proceedings informing them about the exceptional circumstances in this case. Therefore, by letter of 22 January 2020, on behalf of the Panel, FIFA was informed about the fact that the Club had already paid the outstanding amount to the Player before the initiation of the FIFA DRC proceedings and that the Appealed Decision seemed to be based on an erroneous chain of events, which led to a ban from registering new players for two consecutive transfer windows imposed on the Club. Per the same letter, the Panel invited FIFA, in order to have its position, to submit its observations, by no later than the next day, as to the issue on a possible lifting of the disciplinary sanctions for the Club.
69. In this way, and so with this letter, the Panel involved FIFA, at least as to the disciplinary matter, in the CAS proceedings, similar as to the previous request to FIFA to participate as a party in this appeal, which was rejected by then.
70. Although FIFA was officially not a party to the CAS proceedings, with its reply per letter of 23 January 2020, FIFA, as it were, intervened in the proceedings and, at the least, expressed its legal position as to the sporting sanctions and became aware of the exceptional circumstances of the case. Confronted with the erroneous chain of events, which led to the Appealed Decision, and the evidence that the outstanding salaries were paid by the Club before the initiation of the FIFA proceedings, FIFA informed the Panel that it understood that the exceptional circumstances at hand could lead the Panel to render an exceptional award in this case, which was not going to be disputed by FIFA.

71. In light of FIFA's position, and the fact that the Panel has serious difficulties that sporting sanctions are imposed on a club based on erroneous facts, which is proven by conclusive evidence, the Panel finds it fair, considering the exceptional circumstances, to annul the sporting sanctions, without violating the principle of standing to be sued.
72. In addition, the Panel wishes to stress and does not want to leave unmentioned that in appeal proceedings before CAS, the facts and the law are examined *de novo* by the CAS in accordance with the power bestowed on it by Article R57 of the CAS Code. The *de novo* principle grants the Panel the entitlement not only that procedural flaws of the proceedings of the previous instance can be cured in the proceedings before the CAS, but also that the Panel is authorized to admit new prayers for relief and new evidence and hear new legal arguments (see MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport, Commentary, Cases and Materials*, Edition 2015, comment under article R57, n. 12, p. 508) subject to some limited restrictions (see, *inter alia*, CAS 2009/A/1881 & 1882 and CAS 2015/A/4346). Therefore, also for this reason, and considering the position of FIFA expressed to the Panel, the Panel feels comforted and is fully entitled to accept the Club's request to annul the sporting sanctions imposed upon it.
73. As a final remark, and for the sake of clarity and to avoid any misunderstanding, the Panel wishes to underline the uniqueness of the present case and that the specific circumstances of this case are different from the cases in the long-standing CAS jurisprudence as quoted above. Due to these specific circumstances, such as the fact that FIFA has replied in a positive manner and the fact that it was clearly demonstrated that no payments were outstanding to the Player at the moment of the filing of the claim before the FIFA DRC, the Panel feels fully comforted, also considering the principle of fairness and reasonableness, to make use of its power to annul the disciplinary sanctions.
74. In this context, and as was correctly underlined by FIFA in its letter of 23 January 2020, the FIFA DRC system is aimed at reaching the goal that parties are satisfied with their respective claims when these are sufficiently proven. The same applies to CAS proceedings, noting that CAS is essentially created to order fair and just decisions. With this decision, the Panel finds that the outcome in this case is now fair and reasonable.

### **C. Conclusions**

75. In light of the above, considering the very exceptional circumstances of the present case, the Panel will accept the appeal of the Club, and the sporting sanctions will be lifted.

## ON THESE GROUNDS

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

1. The appeal filed on 11 December 2019 by MKE Ankaragücü SKD against Johannes Hopf with respect to the decision issued on 5 November 2019 by the FIFA Dispute Resolution Chamber is upheld.
2. The decision issued on 5 November 2019 by the FIFA Dispute Resolution Chamber is annulled.
3. (...).
4. (...).
5. All other and further motions or prayers for relief are dismissed.