CAS 2019/A/6171 Josué Filipe Soares Pesqueira v. Osmanlispor FK
CAS 2019/A/6175 Osmanlispor FK v. Josué Filipe Soares Pesqueira & Akhisar Belediyespor FC & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President: Mr Hendrik Willem Kesler, Attorney-at-Law, Enschede, the Netherlands

Arbitrators: Mr Stuart C. McInnes, Solicitor, London, United Kingdom

Mr João Nogueira Da Rocha, Attorney-at-Law, Lisbon, Portugal

Ad hoc Clerk: Mr Dennis Koolaard, Attorney-at-Law, Arnhem, the Netherlands

in the arbitration between

Mr Josué Filipe Soares Pesqueira, Portugal

Represented by Mr Nelson Soares, Attorney-at-Law, Amora, Portugal

- Appellant / Counter-Respondent -

and

Osmanlispor FK, Ankara, Turkey

Represented by Mr Talat Emre Koçak, Attorney-at-Law, Istanbul, Turkey

- Respondent / Counter-Appellant -

and

Akhisar Belediyespor FC, Akhisar, Turkey

Represented by Mr Levent Polat, Attorney-at-Law, Akçay & Polat, Istanbul, Turkey

- Counter-Respondent 2 -

and

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland

Represented by Ms Marta Ruiz-Ayucar, Senior Legal Counsel, FIFA Litigation Department, Mr Pascal Martens, Senior Legal Counsel, FIFA Players' Status, and Mr Oskar van Maren, Junior Legal Counsel, FIFA Players' Status, Zurich, Switzerland

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I. PARTIES

1. Mr Josué Filipe Soares Pesqueira (the "Player") is a professional football player of Portuguese nationality.

2. Osmanlispor FK ("Osmanlispor") is a professional football club with its registered office in Ankara, Turkey. Osmanlispor is registered with the Turkish Football Federation (the "TFF"), which in turn is affiliated with the *Fédération Internationale de Football Association* ("FIFA").

3. Akhisar Belediyespor FC ("Akhisarspor") is a professional football club with its registered office in Akhisar, Turkey. Akhisarspor is also registered with the TFF.

4. FIFA is an association under Swiss law, which has its registered office in Zurich, Switzerland. FIFA is the world governing body of international football. It exercises regulatory, supervisory and disciplinary functions over national associations, clubs, coaches, officials and football players worldwide.

5. The Player, Osmanlispor, Akhisarspor and FIFA are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the hearing and the evidence examined in the course of the proceedings. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Background Facts

7. On 24 August 2017, Osmanlispor and the Portuguese football club FC Porto concluded a transfer agreement for the transfer of the Player to Osmanlispor for a transfer fee of EUR 350,000. In addition, Osmanlispor paid an amount of EUR 80,000 to the Player's agent in relation to this transfer.

8. On 25 August 2017, the Player and Osmanlispor entered into an employment contract (the "Employment Contract") for a period of two seasons, i.e. valid as from the date of signature until 31 May 2019. Pursuant to the Employment Contract, the Player was entitled to receive a salary of EUR 805,000 for each of the 2017/2018 and 2018/2019 seasons.

9. On 24 November 2017, Osmanlispor played a league match against the Turkish club Gençlerbirliği SK ("Genclerbirligi"). Prior to and during this match, certain events unfolded. Although the nature of such events is highly contentious, it remains undisputed that the Player requested permission to leave the stadium before the commencement of the match and therefore not to be required to sit on the substitute's bench: such request was denied by Osmanlispor. Upon being informed of this

decision, the Player remained in the stadium and took his place on the substitute's bench during the match.

10. The following day, 25 November 2017, Osmanlispor's General Manager sent a letter to the Board, informing it as follows:

> "*On 24.11.2017, when the team was travelling to the stadium from the facilities and at the time that he learnt that he was not a member of starting 11,* [the Player] *came by my side and told me that he does not want to sit on the bench and asked permission to leave the stadium.*
>
> *I informed and warned him that this behaviour constitutes a clear breach of the contract. Upon our conversation, he stated that he is injured and cannot take part in the game, even on the bench. As a result of the medical check made by our club doctor,* [the Player] *detected 100% fit and ready to play.*
>
> *I hereby inform you about the happening.*"

11. On the same day, i.e. 25 November 2017, Osmanlispor's General Manager sent a letter to the Player, informing him as follows:

> "*This request letter is intended to inform you that the Club initiated a disciplinary procedure against you due to your declaration that you want to leave the stadium without any reason when there is 40 minutes to the kick-off and even your name is on the match sheet for the game Osmanlispor FK – Gençlerbirliği SK on 24.11.2017.*
>
> *In addition to that, you are also created a trouble with your undisciplined behaviours before the kick off of the game in the stadium.*
>
> *With this request for defence, we hereby give you the opportunity to submit your defence in writing for the above mentioned violation within 2 (two) days with the evidences that you deem necessary for your defence.*
>
> *As soon as you submit your defence, the disciplinary committee of the club will render its decision about the case in hand. In case you do not submit your defence within the granted deadline, it will be presumed that you waived your right to defend yourself.*"

12. Also on 25 November 2017, Osmanlispor's General Manager sent another letter to the Player, informing him as follows:

> "*Due to the decision of the Board, you will be pursuing your trainings with Osmanlispor FK U-21 Team because of your undisciplined and unprofessional behaviours.*
>
> *Until a new decision is taken, you will not be participating in the A-team trainings.*

Please take note of the above and attend all the training sessions according to the U-21 training program. In case you do not attend any training without getting any written permission from the General Manager of the Club, a disciplinary process may be initiated against you."

13. On 27 November 2017, the Player sent a letter to Osmanlispor, *inter alia*, informing it as follows:

"[…]

2. As you may confirm with the medical department, on the last few days I've been submitted consecutively to medical treatments, with the objective of healing a pubis injury (please see photo 1).

[…]

5. However, on the 24 of November, on the way to the stadium I felt a strong pain in the pubis zone, more intense than the usual, together with a constant discomfort. For that reason – and only because of that – I've asked to not be included in the match sheet, since I believed I was not in the proper conditions to give my contribution to the team.

6. It is important to stress that this episode happened soon after arriving to the stadium and not 40 minutes before the game start – contrarily to what is referenced in the accusation letter.

7. It is also important to highlight that despite my complaints and pains, after knowing that I was in the match sheet, I went to the bench as substitute and remain there at the trainer disposition.

8. I don't deny that I got very annoyed when I realized that my complaints were being misinterpreted and understood as an excuse for not playing, allegedly for being unhappy for not being in the team's starting eleven!

9. It is important for the Club to realize that, lately, I've been subjected to a great stress due to a serious illness of my wife, and I apologize if in that occasion I didn't express properly to the team's directors.

[…]

Therefore I hereby respectfully request to the Club's Disciplinary Committee to declare justified my behavior and close the present disciplinary case, without any disciplinary consequences.

Furthermore, considering that by Board's unilateral decision I was ordered to pursue trainings with U-21 team – situation that violates my employment contract and the Sports Regulations, I hereby respectfully request to be integrated immediately with first team training sessions and working schedules."

14. On 30 November 2017, counsel for the Player sent a letter to Osmanlispor, informing it as follows:

> "*I'm contacting your Club in my capacity of attorney of* [the Player]*, having as reference your communication dated 25.11.2017 (in annex).*
>
> *As you are certainly aware, there is no legal or contractual provision that allows your Club to separate my client from the first team players and impose him to train with the U21 team!*
>
> *Your order breaches the employment contract in force, constitutes an inadmissible act of discrimination, and reveals a conduct notoriously illegal!*
>
> *I remind you that constitute FIFA objectives "to improve the game of football constantly and promote it globally in the light of its unifying, educational, cultural and humanitarian values, particularly through youth and development programmes" (Art. 2 paragraph a) of FIFA Statutes) and "discrimination of any kind against a Country, private person or group of people on account of race, skin colour, ethnic, national or social origin, gender, language, religion, political opinion or any other opinion, wealth, birth or any other status, sexual orientation or any other reason is strictly prohibited and punishable by suspension or expulsion" (Art. 3 of FIFA Statutes).*
>
> *Therefore, your conduct constitutes a serious violation of the labour sportive contract, as well as of the Regulations applicable to the situation, besides being in direct conflict with the FIFA statutory objectives and subject to disciplinary procedure.*
>
> *Consequently, on behalf of* [the Player] *I hereby request your Club that within the next 72 (seventy two) hours, proceed to the* ***revocation of the command that imposes him to train with the U-21 Team****, in a way that he may be reintegrated in the first team activities, allowing him access to this team's training and physical sessions and respective schedule.*
>
> *Please note that in case that your Club persists in its conduct, we will have no other choice than to act in the defence of the player rights, accordingly to the Law and Regulations applicable to this case.*" (emphasis in original)

15. On 2 December 2017, Osmanlispor's General Manager sent the Player a document entitled "*Official Notification of Imposition of Disciplinary Sanctions*", stating as follows:

> "*As you know, you were requested to present your Letter of Defence regarding the breaches and disciplinary violations before and during the game played between Osmanlispor FK – Gençlerbirliği on 24.11.2017.*

The Board of the Club had its meeting and as a result of this meeting, you were sanctioned as follows:

- *Due to the clear provision of the Internal Disciplinary Regulations of the Club article 6.1.g; 26.666,60.-EUR*

- *Due to the clear provision of the Internal Disciplinary Regulations of the Club article 6.1.h; 26.666,60.-EUR*

As a result of these sanctions, the total fine imposed is 53.333,20.-EUR and this amount shall be set-off and deduct from your receivables already stemmed and/or will stem from the contract signed by and between you and the Club."

16. Also on 2 December 2017, Osmanlispor's General Manager sent a letter to the Player, informing him as follows:

"*As from 02.12.2017 you will be taking part in the trainings of Osmanlispor FK A team.* […]"

17. It is not disputed that the Player trained with Osmanlispor's U-21 squad between 25 November 2017 and 2 December 2017. It is also undisputed that the Player duly received his salary at the end of November 2017 in accordance with the Employment Contract. However, the Player submits that after 2 December 2017: he was not allowed to train with Osmanlispor's A-team; to have meals with his teammates; he could no longer use the resting room that had been allocated to him at the start of the season; that he only trained alone without a ball (i.e. fitness training only); he could not take part in the team's tactical or technical work; and could not take part in the head-coach's lectures. This is contested by Osmanlispor.

18. On 13 December 2017, counsel for the Player sent a letter to Osmanlispor, determining as follows:

"*I refer to my correspondence dated 30 November, that remained unanswered.*

Meanwhile I was informed by [the Player] *that following that communication your Club persists in* ***refusing him to join the main team activities****, despite instructing him to comply with the team schedules!*

In fact:

-On 5 of December at 16.30 h. the main team players and coaches travelled by Bus to a training camp located in "Ostim" for a training session, while [the Player] *remained in the Club facilities, training alone from 16.45 onwards;*

-On 6 of December at 10.45 h. the main team players and coaches travelled by Bus again to the training camp located in "Ostim" for a new training

session. My client remained in the Club facilities, training alone from 11.00 onwards, first in the gym and after running alone in the pitch;

-On 7 of December at 13.30 h. the main team started training normally in the Training Centre, while [the Player] *was separated from the group and instructed to make gym exercises and run around the pitch, always alone;*

-On 8 of December at 13.30 h. the main team trained normally in the Training Centre, while [the Player] *was separated from the group and instructed to run alone in the pitch;*

-On 9 of December at 15.00 h. the main team trained normally in the Training Centre, preparing the game on the day after, while [the Player] *was separated from the group and instructed to run alone around the pitch;*

-On 11 of December at 12.00 h. the main team trained normally in the Training Centre, while [the Player] *was again separated from the group and instructed to make gym exercises;*

Therefore, ***since 25 November 2017*** **[the Player]** ***is prohibited to join the main team's activities, including training, without any justification*** *– situation that constitutes an outrageous* ***discrimination*** *relatively to the other players!*

As you know, my client is a Portuguese citizen and travelled to Turkey, exclusively, with the motivation and purpose of represent your Club.

Your conduct and instructions are preventing my Client to develop his professional activity, and are causing him severe damages, both physically and psychologically!

Therefore, as a last attempt to regain the compliance of that sportive labour contract, and on behalf of my client, I ***formally ask your Club to reintegrate immediately*** **[the Player]** *in all the team normal activities, allowing him to develop his professional activity.*

If until ***19th December 2017*** *your Club persists illegally in the mentioned conduct, blocking my client's access and participation in the main team training sessions, we'll be forced to conclude by the definitive and irreparably breach of his sportive employment contract, by your exclusive fault.*

In that case, please be aware that **[the Player]** ***reserves himself in the right to terminate unilaterally the contract that binds him your Club with just cause****, as well as to fill a complaint in the FIFA Dispute Resolution Chamber, for serious breach of the contractual obligations, requesting your condemnation in all salaries, as well as in the due financial compensation.*" (emphasis in original)

19. On 15 December 2017, counsel for Osmanlispor sent a letter to the Player, informing him as follows:

> "*First of all, it should be underlined that your letter was not remain unanswered. Osmanlispor has taken all necessary steps and the player is now training with A-team in accordance with the agenda of A-team. This notification is made directly to your client on 02.12.2017 which is also signed by the Player.*
>
> *Secondly, the training plan is made by the head coach of the club and no one can intervene in the strategy of the training plans. As you may know, the coach is dividing the players into groups in accordance with their needs and the his plans* [sic]. *Many of the players (that are also A-team players) are training together with your client in the same facilities and at the same time with your client.*
>
> *We hereby kindly ask you not to try to impose any kind of training method for your client which is completely unacceptable and not in line with FIFA regulations and jurisprudence. In addition to that, this act and claim clearly shows that the Player is trying to find a gap to terminate his contract. As you may know, he tried to leave the stadium when he was on the bench and due to the reason that he was not listed as first 11 team player.*
>
> *The player is an A-team player and he has the same rights and obligations as his teammates. No one can say how he should train other than the head coach of the team.*
>
> *Osmanlispor hereby asks the Player to act in line with the rules of employment law and respect the contract signed by the parties. As there is no obligation (financial or any other) which has not been respected by Osmanlispor, the Player also must act in good faith and stop threatening the club by terminating the contract "with just cause" and ask compensation.*"

20. On 18 December 2017, counsel for the Player sent a letter to Osmanlispor, informing it as follows:

> "*I confirm the receipt of your e-mail of 15th December, which content was duly noted.*
>
> *However, we strongly refuse the conclusion that* [the Player] *is integrated in the A-team normal activities, and regret your attempt of excluding the Club's responsibility based on the alleged Head-Coach choices…*
>
> *The present situation has nothing to do with sportive choices, but instead with an outrageous and continuous discrimination perpetrated against my client!*

As certainly it is of your knowledge, [the Player] *has the legitimate right to participate in the A-team normal activity, namely to participate in the same physical and tactical trainings sessions than his colleagues and to be integrated in the A team group.*

Notwithstanding, without any medical or legal justification, he has been discriminated and putted aside, he's only running and performing gym work – always apart from the remaining team group and without any objective purpose!

As further examples of that discrimination, please note that the room initially assigned to my client at the beginning of the season was withdrawn and he was also prohibited of having meals with his colleagues. Moreover, yesterday (17.12.2017), the A-team players that were not called to participate in the official match against Besiktas (the players Numan, Tugay, Hasan, Branislav, Mehmet and Mami) trained at 11:00 in group, properly assisted by a coach. While during that training, it was imposed to [the Player] *to train alone in the Gym!*

As you well know, my client's requests are legitimate and it is the Club's conduct that it is not in line with the FIFA Regulations nor with FIFA DRC and CAS jurisprudence!

Finally, we refute peremptorily the accusation that [the Player] *is trying to find a gap to terminate his contract. It is not true! It is Osmanlispor that is breaching the employment contract in question. My client's wish is to fulfil that contract until its term. However, should the Club's breach continue he will have no other option than to terminate it, in order to safeguard his career and avoid the increase of the damages he's been suffering.*

Consequently, [the Player] *is willing to extend the deadline granted in my last e-mail until* ***22 of December****!*

Once again, in my capacity of [the Player's] *attorney,* ***I hereby kindly ask that your Client ceases its illegal conduct and reintegrate my client in all A-Team activities, allowing him to access and to participate in the team's training sessions****.*

However if until 22 of December 2017 the Club persists in its illegal conduct, we'll be forced to conclude by the definitive and irreparably breach of his sportive employment contract by its exclusive fault and, in this scenario, as you may understand, **[the Player]** ***reserves himself in the right to terminate unilaterally his employment contract with just cause****, with all legal and contractual consequences.*

In any case, I'm available to discuss and clarify any doubts regarding this matter and to contribute to its amicable solution. For that, please fell [sic]

free to contact me to my office contacts or to my personal mobile number ([…]*).*" (emphasis in original)

21. On 26 December 2017, in the absence of any reply from Osmanlispor and after allegedly having been prevented from training with Osmanlispor's A-team, the Player sent a letter to Osmanlispor, informing it that he unilaterally terminated the Employment Contract with immediate effect, invoking just cause as the grounds to do so:

"*I refer to the sportive employment contract concluded with your Club, dated 25.08.2017, valid for the 2017/2018 and 2018/2019 sportive seasons.*

As you well know, ***since 25 November 2017*** *that I am prohibited, without justification, to participate in the main team's activities, namely to participate in the same physical and tactical training sessions that the other team players and prevented to join the main team group.*

Furthermore, during this period I've been putted aside and obliged to execute solely running and gym work, always apart from the remaining team group and without any objective purpose. Moreover, by Club's order I've been prohibited to have meals with my colleagues and to access the resting room that was assigned to me in the beginning of the season!

The mentioned situation was decided arbitrarily and unilaterally by the Club and is not supported by any medical or legal justification.

Your conduct constitutes an outrageous and gross discrimination relatively to my colleagues, as well as a gross breach the employment contract concluded on 25.08.2017 and of my legitimate rights!

Despite my repeated oral requests and the formal notices sent by my attorney on 30 November, 13 December and 18 December 2017, ***your Club refuses to reintegrate me and continues blocking my access and participation in the main team training sessions****.*

Please note that notwithstanding the final deadline conferred by my attorney having expired on 22 December, I've decided to wait until today's date in the expectative that you would change your conduct… however, unfortunately, your Club persists in breaching the contract!

Your disregard of my successive communications, together with the mentioned conduct, configures a guilty and conscientious failure of your contractual duties.

Furthermore, your persistent conduct, configures a serious and irreparably breach of the contract – situation that moreover is causing me severe psychological damages, namely anguish, suffering and anxiety, besides sportive damage.

> *Confronted with such persistent and guilty contractual breach of your part, as well as the damages that this situation carries to me, I must conclude that there are no conditions to continue developing my professional activity at your service.*
>
> *Therefore, based in the referred situation and specifically in your guilty breach of the employment contract, I formally hereby* ***terminate unilaterally the contract that binds me to your Club with just cause*** *and* ***with immediate effects****.*
>
> *Finally, I also inform that within the next days, I will submit a complaint in jurisdictional and disciplinary competent bodies of FIFA, for serious breach of the contractual obligations, and request your condemnation in all remunerations and default interests, together a financial compensation motivated by your contractual breach and the proper disciplinary sanctions.*" (emphasis in original)

B. Proceedings before the FIFA Dispute Resolution Chamber

22. On 5 January 2018, the Player lodged a claim against Osmanlispor for breach of the Employment Contract before the FIFA Dispute Resolution Chamber (the "FIFA DRC"), requesting compensation for breach of contract in the amount of EUR 1,368,500, plus interest.

23. On 23 March 2018, Osmanlispor submitted its reply to the Player's claim and filed a counterclaim, requesting compensation for breach of contract in the amount of EUR 1,368,500 corresponding to the residual value of the Employment Contract, compensation in the amount of EUR 283,334 corresponding to the non-amortised part of the transfer fee of EUR 350,000 paid to acquire the Player's services, and a sporting ban of six months to be imposed on the Player.

24. On 19 July 2018, the Player concluded an employment contract with Akhisarspor, under which the latter undertook to pay the Player a salary of EUR 450,000 per season.

25. On 14 September 2018, the FIFA DRC rendered its decision (the "Appealed Decision"), with the following operative part:

> "*1. The claim of the* [Player] *is rejected.*
>
> *2. It is established that the* [Player] *has terminated the employment relationship with* [Osmanlispor] *without just cause.*
>
> *3.* [Osmanlispor's] *claim for compensation for breach of contract is rejected.*"

26. On 8 February 2019, the grounds of the Appealed Decision were communicated to the Parties determining, *inter alia*, the following:

- "*The Chamber acknowledged that the* [Player] *and* [Osmanlispor] *signed an employment contract on 25 August 2017 valid until the end of the Turkish 2018/2019 season. In this regard, the DRC established that according to the information in the TMS, the Turkish 2018/2019 season will end on 31 May 2019. Moreover, the DRC noted that the* [Player] *unilaterally terminated his contract on 26 December 2017 invoking just cause for allegedly being excluded from the A-team and forced to train alone. The Chamber further took into consideration that* [Osmanlispor]*, for its part, rejected the* [Player's] *allegations and held that he terminated the contract without just cause.*

- *Having said that, the Chamber established that the primary issue at stake is to determine as to whether the* [Player] *had a just cause to terminate the contract with* [Osmanlispor] *on 26 December 2017. In this respect, the Chamber deemed it essential to make a brief recollection of the facts as well as the parties' main arguments and the documentation on file.*

- *In this context, the Chamber firstly noted that, on 25 November 2017,* [Osmanlispor] *informed the* [Player] *to train with the U-21 team, because of alleged undisciplined behaviour the day before. In continuation, the DRC evoked that, on 2 December 2017,* [Osmanlispor] *reinstated the* [Player] *to the A-team. However, the Chamber brought to mind that the* [Player] *held that he continued to be excluded from all of the A-team's activities and instructed to train alone as from the first training day following his reinstatement to the A-team, i.e. as from 5 December 2017. The DRC further recalled that, after sending two default letters on 13 December 2017 and 18 December 2017 respectively, in which the* [Player] *asked to be reintegrated in all of the A team's activities, the* [Player] *terminated the contract on 26 December 2017.*

- *In this sense, the members of the Chamber agreed that the series of events in the matter at stake need to be separated in two parts: On the one hand, the period of time between 25 November up until 2 December 2017, during which the* [Player] *was instructed to train with the U-21 team and, on the other hand, the period of time as of 5 December until 26 December 2017, during which the* [Player] *allegedly continued to be excluded from* [Osmanlispor's] *A-team activities and was forced to train alone.*

- *As regards* [Osmanlispor's] *decision to send the* [Player] *to train with the U-21 team, the Chamber took into account that a) the contract at stake does not include any clause which would prohibit* [Osmanlispor] *to take such measure; b) the decision to send the* [Player] *to train with the U-21 team was temporary only, as was demonstrated by* [Osmanlispor's] *written communication to the* [Player] *dated 2 December 2017; and c) it has remained undisputed that* [Osmanlispor] *continued to pay the* [Player's] *salary during this relevant period of time.*

- *On account of these circumstances, the Chamber unanimously agreed that* [Osmanlispor] *did not act in breach of contract when it sent the* [Player]

to train with the U-21 team as of 25 November 2017 until 2 December 2017.

- *The Chamber then focused its attention on the second series of events, i.e. the alleged exclusion of the* [Player] *from all of the A-team's activities, including team trainings, team discussions and team meals as from 2 December 2017 until 26 December 2017.*

- *In this sense, the DRC recalled that the* [Player] *had sent a first default notice on 13 December 2017, in which he held that he had been excluded from all A-team's activities, requesting his reintegration in the main team by 19 December 2017 at latest. The Chamber further noted that, in its email reply dated 15 December 2017,* [Osmanlispor] *denied that the* [Player] *was excluded from the A-team and insisted that he was training at the A-team's facilities, in accordance with the head coach's training program. Moreover, the DRC took into account the* [Player's] *second default letter, dated 18 December 2017, by which he inter alia insisted that he was not reintegrated in the A-team, but instead told to run and perform gym work by himself, and asked to be reintegrated in the A-team activities by 22 December 2017, warning that otherwise he would terminate the contract. Furthermore, the Chamber noted from the documentation on file that* [Osmanlispor] *had not replied to the* [Player's] *letter of 18 December 2017.*

- *In addition, the Chamber took into account the documentation provided by the* [Player] *in support of his allegations, which consisted inter alia of photos and videos taken of him allegedly doing solitary gym work as well as a written statement of a former performance coach of* [Osmanlispor]. *In this regard, the members of the Chamber noted that according to* [Osmanlispor], *these images were taken at the A team's training facilities and thus demonstrate that the* [Player] *was part of the club's A team.*

- *Having analysed all of the above listed evidence, the DRC made reference to the principle of the burden of proof stipulated in art. 12 par. 3 of the Procedural Rules and determined that the photos, videos and the written statement provided by the* [Player] *in support of his allegations are not sufficiently convincing due to their subjective nature. Indeed, the Chamber agreed that the photos and videos do not unequivocally prove that* [Osmanlispor] *obliged the* [Player] *to train alone during the alleged period of time. In addition, the Chamber deemed that the written statement of an employee of* [Osmanlispor] *cannot be considered objective evidence. Consequently, the members of the Chamber were of the opinion that the* [Player] *did not manage to prove to the DRC's satisfaction that he was excluded from all of the A-team's activities as from 2 December 2017 and training alone as from 5 December 2017 until 26 December 2017.*

- *At this stage, in addition, the DRC recalled and took into account that no remuneration had been outstanding when the* [Player] *terminated the contract on 26 December 2017.*

- *In light of the above, the Chamber established that the* [Player] *had no just cause to terminate the contract on 26 December 2017 and decided that, consequently, the* [Player's] *claim for compensation must be rejected.*

- *It follows from the conclusion of the preceding paragraph that, taking into consideration the counterclaim of* [Osmanlispor] *as well as art. 17 par. 1 of the Regulations,* [Osmanlispor] *is, in principle, entitled to receive from the* [Player] *compensation for breach of contract.*

- *In this context, the Chamber wished to emphasise that the* [Player] *signed on with another club only six months after terminating his contract. In other words, the Chamber deemed that such fact indicates that the* [Player's] *decision to terminate the contract was not influenced by the possibility of signing on with another club.*

- *Furthermore, the members of the Chamber deemed of relevance to recall and take into consideration that* [Osmanlispor] *never replied to the* [Player's] *final default letter of 18 December 2018. In addition, the DRC emphasised the fact that after the* [Player] *terminated the contract on 26 December 2017,* [Osmanlispor] *did not react for more than three months and that it was only after FIFA notified the claim of the* [Player] *to* [Osmanlispor] *that the latter decided to react by lodging the relevant counterclaim.*

- *In particular, if* [Osmanlispor] *would have considered the* [Player's] *services a valuable asset one would have expected a more proactive conduct from it in order to try to keep such services or, in the alternative, in order to be compensated for their loss. Along these lines, the Chamber determined that* [Osmanlispor] *did not present any evidence to corroborate its allegation that it refused the alleged request of the* [Player] *to terminate the contract.*

- *In view of the aforementioned objective considerations and facts, the members of the Chamber were of the unanimous conclusion that the conduct of* [Osmanlispor] *surrounding the early termination of the contract by the* [Player] *clearly shows that it was not genuinely interested in continuing making use of his services and did not attribute any value to the* [Player's] *services at that moment.*

- *Consequently, the members of the DRC considered fair and reasonable not to grant any compensation for breach of contract to* [Osmanlispor] *and, therefore, decided to reject* [Osmanlispor's] *claim for compensation for breach of contract.*"

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

27. On 28 February 2019, 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 Code of Sports-related Arbitration (the "CAS Code"). In this submission, the Player named Osmanlispor as the only Respondent.

28. On the same date, Osmanlispor filed a Statement of Appeal with CAS against the Appealed Decision, in accordance with Articles R47 and R48 of the 2019 edition of the CAS Code. In this submission, Osmanlispor named the Player, Akhisarspor and FIFA as Respondents.

29. On 4 March 2019, the CAS Court Office initiated an appeals arbitration proceeding under the reference *CAS 2019/A/6171 Josué Filipe Soares Pesqueira v. Osmanlispor FK*.

30. On 5 March 2019, the CAS Court Office initiated an appeals arbitration proceeding under the reference *CAS 2019/A/6175 Osmanlispor FK v. Josué Filipe Soares Pesqueira & Akhisar Beledizespor FC & FIFA*.

31. On 7 and 8 March 2019 respectively, following an enquiry of the CAS Court Office, Osmanlispor agreed to consolidate the two arbitration proceedings, FIFA indicated it had no objection to the consolidation and the Player agreed to the consolidation. Akhisarspor did not object to the consolidation.

32. On 12 March 2019, the CAS Court Office informed the Parties on behalf of the Division President of the CAS Appeals Arbitration Division that *CAS 2019/A/6171* and *CAS 2019/A/6175* were consolidated further to the Parties' agreement under Article R52 of the Code.

33. On 12 and 15 March 2019 respectively, Osmanlispor and the Player filed their respective Appeal Briefs, in accordance with Article R51 of the CAS Code.

34. On 22 March 2019, Osmanlispor nominated Mr Stuart C. McInnes, Solicitor in London, United Kingdom, as arbitrator.

35. Also on 22 March 2019, the Player nominated Mr João Nogueira Da Rocha, Attorney-at-Law in Lisbon, Portugal, as arbitrator.

36. On 4 April 2019, Akhisarspor and FIFA informed the CAS Court Office that they had no objection to the arbitrator nominated by the Player.

37. On 23 April 2019, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

President:	Mr Hendrik Willem Kesler, Attorney-at-Law, Enschede, the Netherlands
Arbitrators:	Mr Stuart C. McInnes, Solicitor, London, United Kingdom
	Mr João Nogueira Da Rocha, Attorney-at-Law, Lisbon, Portugal

38. On 20 May 2019, the CAS Court Office informed the Parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *ad hoc* Clerk.

39. Osmanlispor, Akhisarspor, the Player and FIFA respectively filed their Answers on 7, 7, 10 and 13 May 2019, pursuant to Article R55 of the CAS Code. The Player's Answer contained a request for production of documents addressed against Osmanlispor.

40. On 27 May 2019, further to an enquiry of the CAS Court Office, the Player indicated his preference for a hearing to be held, whereas FIFA and Osmanlispor indicated that they did not consider a hearing necessary.

41. On 29 May 2019, on behalf of the Panel, the CAS Court Office invited the Player to provide further details concerning his request for production of documents vis-à-vis a Redfern Schedule.

42. On 30 May 2019, the Player returned the completed Redfern Schedule. Although invited to respond to the Player's request for production of documents, Osmanlispor failed to respond within the time limit granted.

43. On 17 June 2019, the CAS Court Office informed the Parties that the Panel had decided to partially uphold the Player's request for production of documents, granting Osmanlispor a time limit to submit the "*Training plan of the Club's first team, in the period 2 to 26 December 2017*."

44. On the same date, the CAS Court Office provided the Parties with an Order of Procedure, which was duly signed and returned by the Player, Osmanlispor, FIFA and Akhisarspor on 17, 18, 20 and 21 June 2019 respectively.

45. On 20 June 2019, Osmanlispor requested the Panel's permission to call Mr Tayfun Türkmen, Assistant of Osmanlispor's former Head Coach, as a witness at the hearing.

46. On 21 June 2019, the CAS Court Office informed the Parties that the Panel had determined that it would decide upon Osmanlispor's request that Mr Türkmen appear as a witness as a preliminary matter at the hearing scheduled on 25 June 2019.

47. On the same date, with reference to the CAS Court Office letter of 17 June 2019, Osmanlispor provided the CAS Court Office with five documents, which it alleged comprised its "*monthly plan covering the dates of 02.12.2017 – 25.12.2017*".

48. On 24 June 2019, upon being invited to express its view, FIFA indicated that it left the acceptance of Mr Türkmen's appearance as a witness up to the Panel.

49. On 25 June 2019, upon being invited to do so, Osmanlispor provided the CAS Court Office with a witness statement of Mr Türkmen.

50. On 25 June 2019, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, all Parties confirmed that they had no objection as to the constitution and composition of the Panel.

51. The following persons attended the hearing, in addition to the Panel, Ms Kendra Magraw, CAS Counsel, and Mr Dennis Koolaard, *ad hoc* Clerk:

a) For the Player:

1) Mr Josué Filipe Soares Pesqueira, the Player;
2) Mr Nelson Soares, Counsel;
3) Ms Mariana Queiroga Peixoto e Villas-Boas Piras, Interpreter.

b) For Osmanlispor:

1) Mr Cenk Karayel, General Manager;
2) Mr Talat Emre Koçak, Counsel.

c) For Akhisarspor:

1) Mr Levent Polat, Counsel.

d) For FIFA:

1) Ms Marta Ruiz-Ayucar, Senior Legal Counsel, Litigation Department;
2) Mr Pascal Martens, Senior Legal Counsel, Players' Status Department;
3) Mr Oskar van Maren, Junior Legal Counsel, Players' Status Department.

52. At the start of the hearing, following an enquiry from the Panel, the Player, Akhisarspor and FIFA indicated they had no objection to Mr Türkmen giving evidence to the Panel and accordingly, as no objections were raised, the Panel decided to grant Osmanlispor's request to call Mr Türkmen as a witness.

53. The Panel heard evidence from the following persons, in order of appearance:

1) The Player (in person);
2) Mr Luis Carlos Martins Moreira, former player of Osmanlispor, witness called by the Player (by video-conference);
3) Mr Tiago Miguel Baia Pinto, former player of Osmanlispor, witness called by the Player (by video-conference);
4) Mr Thorsten Völler, former coach of Osmanlispor, witness called by the Player (by video-conference);
5) Mr Simão Pedro Fernandes Coutinho, football agent with activity organized in the company "Proeleven – Gestão Desportiva Lda, witness called by the Player (by video-conference);
6) Ms Joana Isabel Ramalhete da Fonseca, the Player's wife, witness called by the Player (in person);
7) Mr Tayfun Türkmen, Assistant of Osmanlispor's former Head Coach, witness called by Osmanlispor (in person).

54. During the hearing, the Player questioned Mr Türkmen about alleged inconsistencies in the training schedules provided to the CAS Court Office by Osmanlispor on 21 June 2019 and confronted him with other training schedules that the Player had in his possession but that were not on the record. Upon being invited to comment on the relevance of such difference for the outcome of the present proceedings, the Player indicated that it was important to ascertain the truth and that he could not accept the veracity of documents on the file that did not correspond with the truth.

55. As the training schedules in the possession of the Player were available to him before Osmanlispor provided the other training schedules on 21 June 2019, and in the absence of any satisfactory explanation as to why the training schedules in possession of the Player had not been previously produced and/or in the absence of any material relevance for the outcome of the present proceedings, the Panel decided to reject the Player's request that the training schedules presented by him be admitted to the case file.

56. All witnesses were invited by the President of the Panel to tell the truth subject to the sanction of perjury. All Parties and the Panel had the opportunity to examine and cross-examine the witnesses.

57. The Parties were given the full opportunity to present their cases, submit their arguments in opening and closing statements, and to answer the questions posed by the Members of the Panel.

58. Before the hearing was concluded, all the Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been fully respected.

59. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. CAS 2019/A/6171

60. The Player's submissions in *CAS 2019/A/6171*, in essence, may be summarised as follows:

The breach of the Employment Contract

- Article 28 of the Swiss Civil Code (the "SCC") protects the legal personality of every person. In turn, Article 328 of the Swiss Code of Obligations (the "SCO") establishes that within an employment relationship, the employer is bound to protect the employee's personality rights and to ensure his moral welfare, besides having the responsibility to protect the employee's health and well-being at the workplace. It is confirmed in legal doctrine and jurisprudence (of the Cantonal Court of Valais, CAS, and the Swiss Federal Tribunal (the "SFT")) that

this principle also applies to sport, and that if an athlete does not participate in competitions, he loses market value and reduces his future career opportunities.

- The violation of an athlete's personality rights, and the "*right to perform its functions*", constitutes a material breach of contract, justifying the termination of the contract with just cause.

- This principle is also recognised in Article 14(2) of the FIFA Regulations on the Status and Transfer of Players (the "FIFA RSTP"), and by the principle of *pacta sunt servanda*.

- Osmanlispor was obliged to fulfil its contractual obligations as per the Employment Contract and, consequently, to provide working conditions for the Player to perform his professional activity and to allow him to participate in training sessions, together with his teammates. As recognised in CAS jurisprudence, the persistent failure of a club to provide a player with the appropriate training conditions constitutes a serious material breach of the contract, and should be regarded as just cause for the unilateral termination of an employment contract.

- In analysing the facts set out above, it is indisputable that the Player had just cause to terminate the Employment Contract.

- For 31 consecutive days, Osmanlispor segregated and discriminated the Player, preventing him from developing his professional activity. During this period, the Player was subjected to constant and persistent harassment by Osmanlispor, with the objective of creating an unfavourable working environment for him, and to force him to terminate his Employment Contract. It is obvious from Osmanlispor's conduct that it was no longer interested in the Player.

- Osmanlispor subjected the Player to a disciplinary procedure, which besides being unfair and groundless, was forged with the only purpose of putting pressure on the Player and arranging a formal excuse for the Player's exclusion from the team. The accusal of the Player based on untrue facts, his punishment without any objective evidence in support of Osmanlispor's allegations, and the high fine imposed upon him (two fines amounting more than 66% of the Player's monthly salary), indicates that the disciplinary procedure constituted in itself, an instrument of harassment against the Player's personality rights and dignity.

- After the disciplinary procedure and despite Osmanlispor's announcement that the Player would be re-integrated into Osmanlispor's A-team, the Player never again took part in the A-team trainings or participated in any training sessions in accordance with the preparation plan of that A-team. To the contrary, the Player was obliged to train alone, mostly in Osmanlispor's gymnasium. During this period, the Player never trained with the ball. This situation devalued his technical and physical abilities and reduced his market value as a football player. The Player was excluded from the Head Coach's training plans and he was also forbidden to have meals with his colleagues or to use the same locker room.

- As evidence to support his isolation, the Player submitted into evidence video and photos of him, e.g. in the gym or running sprints on the side of the practice pitch.

- Osmanlispor decided to act in that precise moment, because it was aware that the Player was particularly nervous and sensitive at that time, due to the fact that a few days before his wife had been diagnosed with cancer and was informed that she had to undergo urgent surgery.

- Despite several verbal requests and the three written notices, Osmanlispor persisted in its conduct. Osmanlispor did not even answer the final notice.

- All this should be regarded as a serious material breach of the Employment Contract, which allowed the Player to terminate it with just cause.

The consequences of the alleged breach of contract

- Compensation for breach of contract should be settled pursuant to the principle of "positive interest", in accordance with CAS jurisprudence.

- On this basis, the Player is entitled to receive financial compensation in an amount equivalent to the residual value of the Employment Contract. This amounts to EUR 1,368,500 net of taxes and fees.

- The Player however also has a duty to mitigate his damages. In the present case, the Player concluded an employment contract with Akhisarspor, valid as from 19 July 2018 until 31 May 2020, with a salary of EUR 450,000 per season. Accordingly, an amount of EUR 450,000 is to be deducted from the amount of EUR 1,368,500. The compensation to be paid to the Player by Osmanlispor is therefore EUR 918,500, plus interest at a rate of 5% *per annum* as from the date of termination of the Employment Contract.

61. On this basis, the Player submits the following prayers for relief:

"*a) To **declare the jurisdiction** over the present dispute;*

*b) To **accept the present appeal** against the decision passed by FIFA Dispute Resolution Chamber on 14 September 2018 in the case with the ref. 18-00035/osv, with grounds notified to the parties on 8 of February 2019;*

*c) **Annul the mentioned decision passed by FIFA Dispute Resolution Chamber** on 14 of September 2018 in the case with the reference no. 18-00035/osv, in the part that had established that the Player had no just cause to terminate his employment contract with the Respondent and decided to reject his claim for financial compensation for breach of contract;*

*d) **Render a new award that replaces the challenged decision**, declaring and recognizing that:*

i) ***The Appellant had just cause and*** **good reason** ***to terminate the*** **employment agreement** ***contract with the Respondent****;*

ii) ***The Appellant is entitled to receive from the Respondent a compensation for breach of the contract*** *in an amount never less than* ***Eur. 918.500,00 (nine hundred and eighteen thousand five hundred euros)****, plus default interest at the rate of 5% p.a. as of the date of the employment agreement termination, until effective and integral payment of that financial compensation;*

e) ***Condemn the Respondent to support the totality of arbitration and administrative costs inherent to the current appeal*** *and also a* ***contribution towards the Respondent's legal fees and other expenses*** *incurred in connection with the proceeding, as provided in article R.64.5 of the Code*." (emphasis in original)

62. Osmanlispor's submissions in *CAS 2019/A/6171*, in essence, may be summarised as follows:

The breach of the Employment Contract

- It should be underlined that all the photos and evidences presented by the Player were taken in the facilities of Osmanlispor's A-team, which shows that the Player was always with the A-team, contrary to his assertions.

- Additionally, the Player claims that he was injured and that this is why he could not take part in the game between Osmanlispor and Genclerbirligi. A coach can make a special training plan for such a player, and that does not mean he was forced to be out of the team and treated unfairly.

- Osmanlispor had no reason to unfairly treat an important player in which it had made a big investment. It should not be forgotten that the dispute commenced after the Player left the stadium when he was not included in the starting 11 in the match against Genclerbirligi.

- Due to his actions, the Player was sent to Osmanlispor's U-21 team on 25 November 2017 and was reintegrated to the A-team on 2 December 2017. This means that the decision of Osmanlispor's Board was temporary and intended to maintain the discipline within the team. With reference to CAS jurisprudence (*CAS 2014/A/3642*), Osmanlispor submits that it was entitled to do so.

- Osmanlispor imposed no other sanction on the Player and paid him his salary until the date of termination. Osmanlispor also clearly replied to counsel for the Player on 15 December 2017 and explained its reasoning, while reintegrating the Player with Osmanlispor's A-team within a week.

- It is clear from all the evidence that the Player terminated the Employment Contract without just cause, as decided in the Appealed Decision. To this end,

Osmanlispor is entitled to claim compensation for breach of contract from the Player.

63. On this basis, Osmanlispor submits the following prayers for relief:

"*1- To dismiss all claims of the Appellant.*

2- To condemn the Appellant to the payment of the whole CAS administration costs and arbitration fees.

3- To fix a sum of CHF 10.000.- (Ten Thousand Swiss Francs Only) to be paid by the Appellant to the Respondent, to help the payment of its legal fees and costs."

B. CAS 2019/A/6175

64. Osmanlispor's submissions in *CAS 2019/A/6175* state the following, in full:

The breach of the Employment Contract

- "*It is important to note in the beginning that the dispute started with the undisciplined behaviours of the Player. It is the most important obligation of a professional player to take part in an official game even sitting on the bench. This is the Head Coach's decision to field one player as first 11-team player or as a substitute. This point is not denied by the Player side.*

- *Due to his actions, the Player was sent to U-21 team on 25.11.2017 and reintegrated to A-team on 02.12.2017. This means that this decision of the Board was temporary and just to maintain the discipline within the team.*

- *In its decision of CAS 2014/A/3642, a similar subject was discussed as:*

  (…) A coach and a club also have the right, in certain sporting circumstances, to move players between the first team and other teams.

- *As stated previously, the Club never imposed any other sanction upon the Player and made all the payments until the date of termination. The Club also clearly replied to the legal counsel of the Player on 15.12.2017 and explained the reasoning and informed him that the Player reintegrated within a week with an invitation letter which was signed by the Player.*

- *As stated in front of FIFA, the photos and all relevant evidences provided by the Player was taken in the facilities of A team which also shows that the Player was with A-team not U-21 team.*

- ***It is clear from all these evidences that the Player terminated his Contract without just cause as decided in the decision of FIFA. To this end, the Club is entitled to claim compensation***." (emphasis in original)

The consequences of the alleged breach of contract

- "*The Club paid 350.000 EUR to Porto for the transfer of the Player and the unamortised part of this amount of 262.500 EUR must be paid as compensation to the Club.*

- *Secondly, the unamortised part of the agency commission of 40.000 EUR must be paid as compensation to the Club. Additionally, the Second Respondent shall be jointly and severally responsible for the total compensation of 302.500 EUR as it is the next club of the Player.*"

The imposition of sporting sanctions

- "*As the termination was made within the protected period, the Player must be imposed 6-months ban and Second Respondent shall be banned from registering any new player, nationally or internationally for 2 (two) entire and consecutive registration periods.*"

65. On this basis, Osmanlispor submits the following prayers for relief:

"*1- To decide that the termination made by the Player is without just cause within the protected period,*

2- To condemn the First and the Second Respondent to pay the following amounts as compensation;

a. 262.500 EUR as the unamortised part of the transfer fee

b. 40.000 EUR as the unamortised part of the agency commission

3- To impose sporting sanctions upon the First Respondent for 6 (six) months,

4- To impose a ban on Second Respondent from registering any new player for consecutive 2 (two) transfer windows.

5- To fix a sum of CHF 15.000.- (Fifteen Thousand Swiss Francs Only) to be paid by the Respondent to the Appellant, to help the payment of its legal fees and costs."

66. The Player's submissions in *CAS 2019/A/6175*, in essence, may be summarised as follows:

The breach of the Employment Contract

- Osmanlispor limits itself to requesting the Player's condemnation in sporting sanctions and in financial compensation, without invoking any relevant facts that would be able to support its demand and without pointing out a sole objective justification for its disagreement with the Appealed Decision. Osmanlispor fails to discharge the burden of proof.

- Reference is made to the Player's submissions in *CAS 2019/A/6171* to show that the Player had just cause to terminate the Employment Contract, as a consequence of which Osmanlispor's argument that the Player terminated the Employment Contract without just cause is to be dismissed.

- Proof of his devaluation as a professional football player due to Osmanlispor's conduct lies in the fact that, despite being a free agent, the Player only succeeded to find a football club interested in his services more than six months after the termination of the Employment Contract, for a salary significantly below what he was paid by Osmanlispor.

- The Player did not want to terminate the Employment Contract, but he was forced to do so by Osmanlispor. Osmanlispor suggested a mutual termination of the Employment Contract, for which the Player would have to waive all his credits and any eventual compensation, a situation that was considered unacceptable since the Player's Employment Contract was still valid for one and half seasons. Osmanlispor acted consciously and illicitly, with the objective of forcing the Player to terminate his contract, and aware that its conduct was materially breaching the Employment Contract.

- Importantly, Osmanlispor did not contest the facts as described by the Player in *CAS 2019/A/6171* and further omits any reference to the Player's daily activity between 2 and 26 December 2017.

The consequences of the alleged breach of contract

- Because the Player had just cause to terminate the Employment Contract, Osmanlispor is not entitled to claim compensation or to request for sporting sanctions to be imposed on the Player.

- Osmanlispor needs to prove damage in order to be awarded compensation for breach of contract but has failed to do so. For instance, insofar Osmanlispor claims that the unamortised part of the transfer fee paid to FC Porto for the Player was already paid, which is not the case.

- Osmanlispor benefitted from the Player's termination, as, once the Player was no longer included in Osmanlispor's A-team, his presence would constitute a cost without benefit.

- Any financial claim of Osmanlispor is time-barred in accordance with Article 337d(3) of the SCO, since Osmanlispor's counter-claim was submitted more than three months after the termination of the Employment Contract.

- It should be taken into account that during the following six months until the Player found new employment, he did not receive any professional income, and when he finally found new employment, his salary was less than half of his salary with Osmanlispor.

The imposition of sporting sanctions

- The imposition of any sporting sanction against the Player would constitute a double sanction, because this would disregard the fact that he could not perform his profession for a certain period. The Player's salary is the only source of income for him and his family. As a 28-year old football player, the imposition of a suspension would damage his career and even its precipitate end.

67. On this basis, the Player submits the following prayers for relief:

"*a)* ***Reject the appeal*** *submitted by Osmanlispor Futbol Kulübü against the decision passed by FIFA Dispute Resolution Chamber on 14 September 2018 in the case with the ref. 18-00035/osv;*

b) ***Recognize that the Player had just cause and*** *good reason* ***to terminate the employment contract with that Club****;*

c) ***Reject all requests made by Osmanlispor Futbol Kulübü in its appeal****;*

d) ***Condemn the Appellant Osmanlispor Futbol Kulübü to support the totality of arbitration and administrative costs inherent to the current appeal and also a contribution towards the Respondent's legal fees and other expenses*** *incurred in connection with the proceeding, as provided in article R.64.5 of the Code*." (emphasis in original)

68. Akhisarspor's submissions in *CAS 2019/A/6175*, in essence, may be summarised as follows:

- Akhisarspor started negotiations and signed an employment contract with the Player after seven months from the unilateral termination of the Employment Contract. Therefore, Akhisarspor had in effect, no knowledge and/or any kind of involvement in the unilateral termination of the Employment Contract.

- Akhisarspor did not have any contact with the Player or Osmanlispor in the transfer window immediately following the termination of the Player's Employment Contract with Osmanlispor.

- The Appealed Decision holds that the Player's decision to terminate the Employment Contract was "*not influenced by the possibility of signing with another Club*".

- Consequently, even if it would be decided by CAS that the Player's termination was without just cause, sporting sanctions cannot be imposed on Akhisarspor and it can also not be held jointly liable with the Player to pay any amount of compensation.

69. On this basis, Akhisarspor submits the following prayers for relief:

"*1) to decide that Akhisaspor did not induce the Player to terminate his Contract and therefore **no** sporting sanctions imposed to Akhisaspor and also Akhisaspor is **not** jointly liable for the payment of any possible compensation.*

2) to decide that Akhisarspor is not liable for the payment of the costs of this arbitration proceedings.

3) to decide an amount of 15.000 Euros to be paid to Akhisarspor as its legal fees."

70. The submissions of FIFA in *CAS 2019/A/6175*, in essence, may be summarised as follows:

- Within the context of the current appeals – which orbit around a contractual dispute between Osmanlispor and the Player, and therefore concern a purely horizontal dispute – the analysis of FIFA's standing to be sued has to be made under the premise that FIFA is an independent Respondent. In accordance with CAS jurisprudence, the only party that has standing to be sued in a horizontal dispute, is the counterparty in the legal relationship. The only requests for relief that concern FIFA are points 3 and 4 of Osmanlispor's requests for relief, namely the request to impose sporting sanctions on the Player and Akhisarspor. FIFA has no standing to be sued in relation to all the other requests for relief of the Player and Osmanlispor.

- Osmanlispor lacks standing to request sporting sanctions to be imposed on the Player and Akhisarspor. Osmanlispor does not have any legitimate interest in the Player being restricted in playing in official matches or in Akhisarspor being banned from registering players. CAS jurisprudence is well established in that a club or player do not have any legitimate interest in requesting the imposition of sporting sanctions on a party that breached the relevant contract during the protected period.

The breach of the Employment Contract

- Subsidiarily, and as to the substance of the contractual dispute, the FIFA DRC correctly decided that the alleged circumstances that the Player was forced to train alone as from 25 November 2017 until 2 December 2017 did not constitute a breach of the Employment Contract. It appeared that such measure was temporary, that the Player was still being paid his full salary and that the dropping to the reserve team was not prohibited per a contractual clause.

- As to the period between 3 and 26 December 2017, the FIFA DRC determined that the evidence provided by the Player, i.e. several photos and videos, were not sufficiently convincing due to their subjective nature. Also because there was no outstanding remuneration, the FIFA DRC established that the Player's decision to terminate the Employment Contract constituted an unjustified breach. The Player did not meet his burden of proof in this respect.

- Accordingly, the requests for relief from the Player that he had terminated the Employment Contract with just cause and that he is entitled to compensation for breach of contract should not be upheld. In the unlikely situation that CAS would conclude that the Player did have a just cause to terminate the Employment Contract, it is left up to CAS to decide on the financial consequences of such breach.

The consequences of the alleged breach of contract

- As to Osmanlispor's claim that, considering that the Player had no just cause to terminate the Employment Contract, the Player should pay compensation to it, the FIFA DRC indeed held that Osmanlispor was "*in principle*" entitled to compensation. However, the FIFA DRC considered that in this specific matter, it would not be fair and reasonable to award compensation.

- Osmanlispor seeks compensation based on the non-amortised parts of the transfer fee paid for the Player and the alleged agent commission. Considering that Osmanlispor never replied to the Player's final default letter of 18 December 2017, that Osmanlispor did not respond to the Player's termination letter dated 26 December 2017 and that Osmanlispor only filed a counterclaim once it was notified of the Player's claim before the FIFA DRC, the FIFA DRC correctly concluded that Osmanlispor was not genuinely interested in continuing making use of the Player's services and did not attribute any value to his services at the time of the breach.

- In this respect, according to CAS jurisprudence, the contributory conduct of the respective parties in the termination of the employment relationship can be taken into account in determining that no compensation should be awarded.

- As to the request for compensation based on the alleged agent commission, this claim was not brought forward at any point in time in the scope of the proceedings before the FIFA DRC. Such claim therefore goes beyond the scope of the previous litigation and, as such, cannot be reviewed by CAS on appeal. The contract underlying the payment of the agent commission was not presented in the proceedings before the FIFA DRC. It is therefore requested that such document be excluded on the basis of Article R57.3 of the CAS Code.

The imposition of sporting sanctions

- As to sporting sanctions, the FIFA DRC has formed its jurisprudence in the sense of adopting a more flexible application of Articles 17(3) and (4) of the FIFA RSTP, according to which the deciding authority, in view of the particular and specific circumstances involved in each individual case brought to its consideration, has the discretion to renounce the application of sporting sanctions on a player or a club found in breach of contract without just cause, even if such breach occurred during the protected period. This practice is well established in CAS jurisprudence.

- In the Appealed Decision, the FIFA DRC refrained from imposing sporting sanctions on the Player and Akhisarspor. The FIFA DRC took into account the fact that the Player was apparently training alone for a specific period, as well as the fact that it appeared that Osmanlispor was not genuinely interested in making use of the Player's services. Equally, the FIFA DRC found also the fact that Osmanlispor never replied to the Player's default letter dated 18 December 2018 could, to a certain extent, be taken into account. The FIFA DRC further established that Akhisarspor could sufficiently demonstrate that it did not induce the Player to commit a breach of contract without just cause, given that an employment contract between the Player and Akhisarspor was only concluded six months after the termination of the Employment Contract by the Player.

71. On this basis, FIFA submits the following prayers for relief:

"*1. To reject the Appellant's appeal in its entirety.*

2. To confirm the decision rendered by the Dispute Resolution Chamber on 14 September 2018.

3. To order the First and Second Appellant to bear all costs incurred with the present procedure and to cover all the legal expenses of FIFA related to the present procedure.

4. To order the Second Appellant to cover all legal expenses of FIFA related to the proceedings at hand."

V. JURISDICTION

72. 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 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.*
>
> *An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.*"

73. The jurisdiction of CAS, which is not disputed, derives from Article 58(1) of the FIFA Statutes (2018 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*" and Article R47 of the CAS Code. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by the Parties.

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

VI. ADMISSIBILITY

75. 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 of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.*"

76. Both appeals were filed within the deadline of 21 days set by Article 58(1) of the FIFA Statutes. Both appeals complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

77. It follows that both appeals are admissible.

VII. APPLICABLE LAW

78. Osmanlispor submits that, in accordance with Article R58 of the CAS Code, in the absence of any choice of law and given that FIFA issued the Appealed Decision, Swiss law shall be applied.

79. The Player submits that, in accordance with Article 2.2 of the Employment Contract and Article 62(2) of the FIFA Statutes, the FIFA regulations and Swiss law are applicable to the material relationship under analysis.

80. Akhisarspor did not make any submissions in respect of the law to be applied.

81. FIFA submits that, in accordance with Article 57(2) of the FIFA Statutes, the provisions of the CAS Code shall apply to the proceedings. Pursuant to this provision, CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.

82. Article R58 of the CAS 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.*"

83. Article 57(2) of the FIFA Statutes provides 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.*"

84. Article 2.2 of the Employment Contract provides as follows:

"*This instrument shall be governed and construed according to FIFA's – Federation Internationale de Football Association arbitration, which is competent to settle any dispute that might arise from it.*"

85. In view of the choice of the Player and Osmanlispor to refer their dispute to the FIFA DRC, the Panel finds that the Parties chose to refer their dispute to the FIFA DRC and thereby accepted the applicability of Article 57(2) of the FIFA Statutes. In accordance with this provision, the regulations of FIFA are primarily applicable, and, if necessary, subsidiarily, Swiss law.

VIII. MERITS

A. The Main Issues

86. The main issues to be resolved by the Panel are:

i. Did the Player have just cause to terminate the Employment Contract?
ii. What are the consequences thereof?

87. The Panel will examine each issue in turn below.

i. Did the Player have just cause to terminate the Employment Contract?

88. The Panel observes that the core of these proceedings centres around the question whether or not the Player had just cause to terminate the Employment Contract on 26 December 2017.

89. Article 14 of the FIFA RSTP determines 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.*"

90. Given that the Player terminated the Employment Contract, the burden of proof in establishing that such premature termination was justified lies with the Player.

91. The Panel notes that the FIFA Commentary on the RSTP (the "FIFA RSTP Commentary") provides guidance as to when an employment contract is terminated with just cause:

"*The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact,*

behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally."

92. In this regard, the Panel notes that in *CAS 2006/A/1180*, a CAS panel stated the following:

"*The RSTP 2001 do not define when there is "just cause" to terminate a contract. In its established legal practice, CAS has therefore referred to Swiss law in order to determine the purport of the term "just cause". Pursuant to this, an employment contract which has been concluded for a fixed term, can only be terminated prior to expiry of the term of the contract if there are "valid reasons" or if the parties reach mutual agreement on the end of the contract (see also ATF 110 I 167; WYLER R., Droit du travail, Berne 2002, p. 323 and STAEHELIN/VISCHER, Kommentar zum Schweizerischen Zivilgesetzbuch, Obligationenrecht, Teilband V 2c, Der Arbeitsvertrag, Art. 319-362 OR, Zurich 1996, marg. no. 17 ad Art. 334, p. 479). In this regard Art. 337 para. 2 of the Code of Obligations (CO) states – according to the translation into English by the Swiss-American Chamber of Commerce: "A valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship". According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (ATF 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa). Particular importance is thereby attached to the nature of the breach of obligation. The Swiss Federal Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, whether of an objective or personal nature, under which the contract was concluded are no longer present (ATF 101 Ia 545). In other words, it may be deemed to be a case for applying the clausula rebus sic stantibus (ATF 5 May 2003, 4C.67/2003 no. 2). According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., op. cit., p. 364 and TERCIER P., Les contrats spéciaux, Zurich et al. 2003, no. 3402, p. 496). Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., op. cit., p. 364*

and TERCIER P., op. cit., no. 3394, p. 495)." (*CAS 2006/A/1180*, para. 25 of the abstract published on the CAS website)

93. The Panel fully adheres to such legal framework, which is still applied in recent CAS jurisprudence (cf. *CAS 2016/A/4846*, para. 175 of the abstract published on the CAS website), and will therefore examine whether Osmanlispor's conduct was of such a nature that the Player could no longer be reasonably expected to continue the employment relationship with Osmanlispor.

94. In assessing whether the Player had just cause to terminate the Employment Contract, the starting point should be the arguments advanced by the Player as set out in the letter by means of which he terminated the Employment Contract. On 26 December 2017, the Player sent a detailed termination letter to Osmanlispor, which provides, *inter alia*, as follows:

"[…] *As you well know,* ***since 25 November 2017*** *that I am prohibited, without justification, to participate in the main team's activities, namely to participate in the same physical and tactical training sessions that the other team players and prevented to join the main team group.*

Furthermore, during this period I've been putted aside and obliged to execute solely running and gym work, always apart from the remaining team group and without any objective purpose. Moreover, by Club's order I've been prohibited to have meals with my colleagues and to access the resting room that was assigned to me in the beginning of the season!

The mentioned situation was decided arbitrarily and unilaterally by the Club and is not supported by any medical or legal justification.

Your conduct constitutes an outrageous and gross discrimination relatively to my colleagues, as well as a gross breach the employment contract concluded on 25.08.2017 and of my legitimate rights!

Despite my repeated oral requests and the formal notices sent by my attorney on 30 November, 13 December and 18 December 2017, ***your Club refuses to reintegrate me and continues blocking my access and participation in the main team training sessions****.*

Please note that notwithstanding the final deadline conferred by my attorney having expired on 22 December, I've decided to wait until today's date in the expectative that you would change your conduct… however, unfortunately, your Club persists in breaching the contract!

Your disregard of my successive communications, together with the mentioned conduct, configures a guilty and conscientious failure of your contractual duties.

> *Furthermore, your persistent conduct, configures a serious and irreparably breach of the contract – situation that moreover is causing me severe psychological damages, namely anguish, suffering and anxiety, besides sportive damage.*
>
> *Confronted with such persistent and guilty contractual breach of your part, as well as the damages that this situation carries to me, I must conclude that there are no conditions to continue developing my professional activity at your service.*
>
> *Therefore, based in the referred situation and specifically in your guilty breach of the employment contract, I formally hereby* ***terminate unilaterally the contract that binds me to your Club with just cause*** *and* ***with immediate effects****.* […]" (emphasis in original)

95. The Panel observes that the Player basically invoked four arguments in justifying the unilateral termination of the Employment Contract: i) the internal disciplinary proceedings commenced against him by Osmanlispor were unfair and groundless; ii) he was illegitimately excluded from group training with the A-team; iii) he was prohibited from having meals with his teammates; and iv) he was prohibited from accessing the resting room that was assigned to him.

96. The Panel will examine these four arguments separately below, before drawing a final conclusion as to the question of whether the Player had just cause to terminate his Employment Contract.

97. The Panel observes that it is not disputed by the Parties that the period between 25 November 2017 and 26 December 2017 is to be divided in two parts, i.e. the period from 25 November 2017 until 2 December 2017 and the period from 2 until 26 December 2017. The Panel will assess these periods separately below.

a) The Player's exclusion from group training from 25 November 2017 until 2 December 2017

98. As to the first period, it is not disputed that the Player was not allowed to participate in group training with Osmanlispor's A-team, because of a (arguably provisional or temporary) measure imposed on him by Osmanlispor's General Manager on 25 November 2017, pending the disciplinary proceedings commenced against the Player following his alleged "*undisciplined behaviours before the kick off of the game*" against Genclerbirligi on 24 November 2017.

99. The Panel was not able to establish what happened exactly prior to the Genclerbirligi match, i.e. whether the Player was injured, whether the Player was emotionally affected by the recent news that his wife had been diagnosed with cancer, whether the Player became angry because he was not in the starting 11, or a combination of these factors.

100. It is however not in dispute that the Player requested permission not to sit on the substitute's bench and to go home. This request was rejected by Osmanlispor and the Player honoured such decision and took his place on the substitute's bench.

101. The Panel finds that the internal disciplinary proceedings contained certain flaws. On the same day the Player was informed that disciplinary proceedings were instigated against him, he was informed that he was temporarily excluded from Osmanlispor's A-team and that he had to train with the U-21 team "[u]*ntil a new decision is taken*". However, Osmanlispor's letter dated 25 November 2017 also indicates that such measure was taken "*because of your undisciplined and unprofessional behaviours*." The Panel considers this latter remark to be an indication that Osmanlispor already considered the Player guilty before the Player was even provided with the opportunity to express his views on the incident. This raises serious doubts about the fairness of the internal disciplinary procedure.

102. Although the Panel finds that Osmanlispor was in its right to commence disciplinary proceedings against the Player and even to sanction him, it finds the sanctions imposed on the Player very severe. Osmanlispor imposed a fine of EUR 53,333.20 on the Player, excluded him from the A-team for an indefinite period (which finally turned out to arguably be for a week) and instructed him to train with the U-21 team in the interim.

103. In a situation where Osmanlispor may have justifiably been unhappy with the Player's request to leave the stadium, it must be taken into account that the Player respected Osmanlispor's decision, remained in the stadium and took his place on the substitute's bench. Furthermore, in circumstances where the Player invoked the fact that his wife had recently been diagnosed with a serious illness, which was confirmed by the testimony of the Player's wife, and that this was the reason for his emotional outburst, the Panel finds it not very sympathetic from an employer to impose a fine equalling 80% of a monthly salary, to say the least.

104. Although Osmanlispor indicated at the hearing that such fine was never executed, there is no evidence on file suggesting that Osmanlispor ever informed the Player formally that such fine would not be executed. Indeed, given that the fine was imposed by letter dated 2 December 2017, the Panel finds that the most logical way for Osmanlispor to proceed would have been to set-off this fine against the Player's salary over December 2017 and that this finally did not happen because the Player terminated the Employment Contract before the December 2017 salary fell due.

105. Although the Panel has its doubts about the procedure followed and the proportionality of the sanctions imposed, the Panel finds that it does not have sufficient evidence on file to conclude that the disciplinary proceedings against the Player or the sanctions imposed on him were illegal *per se*. The Panel however finds that the stance taken by Osmanlispor was harsh and formalistic, and that this is indicative that Osmanlispor did not value the Player's services very highly.

106. The Panel finds that this harsh and formalistic stance in respect of the internal disciplinary proceedings may have contributed to the Player's loss of confidence in

his employer and that this must be taken into consideration in assessing whether the Player had just cause to terminate the Employment Contract on 26 December 2017.

b) The Player's exclusion from group training from 2 December until 26 December 2017

107. As to the second period, the factual situation is more contentious. The Player argued that he was fit and eager to participate in Osmanlispor's group training and claimed that he was excluded therefrom despite Osmanlispor's letter dated 2 December 2017 in which the Player was informed that he was eligible to participate in group training with the A-team again. Osmanlispor submits that the coach was entitled to develop a special training plan for the Player and that the Player did not participate in group training because the Player claimed to be injured, notwithstanding that the team doctor considered him to be fit.

108. Contrary to the situation as presented to the FIFA DRC, in this appeal arbitration proceedings before CAS, Osmanlispor no longer denied that the Player did not participate in group training with the A-team. Osmanlispor instead argued that, although the Player was not training with the A-team, he was training at the A-team facilities and was accordingly not excluded from the A-team.

109. The FIFA DRC's finding that "*the* [Player] *did not manage to prove to the DRC's satisfaction that he was excluded from all of the A-team's activities as from 2 December 2017 and training alone as from 5 December 2017 until 26 December 2017*" can therefore not be fully sustained in the present appeal arbitration proceedings before CAS.

110. The Panel observes that the Player's contention that he did not participate in group training with the A-team is supported by witnesses who testified at the hearing, namely Mr Martins Moreira, Mr Baia Pinto, Mr Völler, Mr Fernandes Coutinho and Mr Türkmen. In view of this evidence, the Panel considers the videos and photos provided by the Player to evidence that he was training alone are immaterial and irrelevant to its findings.

111. The question before the Panel is rather whether the fact that the Player was training alone should lead to the conclusion that he was illegitimately excluded from the A-team activities. There may have been legitimate reasons for the Player's non-participation in the group training sessions, such as an injury or a valid decision of Osmanlispor's head coach for sporting reasons.

112. In this respect, the Panel notes that the Player requested Osmanlispor to be reintegrated in the A-team activities by letter dated 13 December 2017 and provided a detailed day-by-day account of what had allegedly happened during the past days.

113. On 15 December 2017, Osmanlispor replied that "*the player is now training with A-team in accordance with the agenda of A-team*", while submitting at the same time that "*the coach is dividing the players into groups in accordance with their needs and the his plans* [sic]. *Many of the players (that are also A-team players) are*

training together with your client in the same facilities and at the same time with your client".

114. Accordingly, Osmanlispor did not argue at this stage that the Player made any claim or suggestion of being injured.

115. The Panel finds that this letter of Osmanlispor is not entirely accurate insofar as Osmanlispor contended that the Player was participating with the A-team. This letter rather shows that the Player was permitted access to the A-team facilities, but that the coach had decided to let the Player train in a specific group, without however giving any reason or justification to do so.

116. On 18 December 2017, the Player indicated and stated to "*strongly refuse the conclusion that* [the Player] *is integrated in the A-team normal activities*" and that "*without any medical or legal justification, he has been discriminated and putted aside, he's only running and performing gym work – always apart from the remaining team group and without any objective purpose!*".

117. Osmanlispor did not reply to the Player's letter dated 18 December 2017 and it appears the situation remained unchanged until the Player terminated the Employment Contract on 26 December 2017.

118. Given that all Parties accept that the Player was training at the A-team facilities, but separately from the A-team from 2 December 2017 until 26 December 2017 and in view of the Player's letters dated 13 and 18 December 2017 by means of which he requested to be permitted to participate in the group training of Osmanlispor's A-team, the Panel finds that it is for Osmanlispor to prove that there was legitimate reason not to allow the Player to participate in the group training with the A-team.

119. The Panel observes that two justifications are advanced in this respect. The first is that the A-team coach was entitled to disallow the Player's participation from the A-team group training. The second is that the Player did not want to train with the A-team. In this respect, Mr Türkmen testified that one hour before every training session, the doctor would provide the coaching staff with a report about who could train with the team and who not. It was Mr Türkmen's evidence that "*the doctor told us that every day the Player had pains*" and that "*the doctor told us that he did not have big problems*".

1. The alleged injury of the Player

120. Commencing with the latter argument, the Panel notes that the relevant part of Mr Türkmen's evidence is entirely based on hearsay, more specifically on what the doctor had allegedly told him.

121. There is no evidence on file suggesting that the Player was injured during the period between 2 December 2017 and 26 December 2017. The Player may have been injured on or around the day of the match against Genclerbirligi, but the Player testified that he participated in group training with the ball with Osmanlispor's U-21 team during the period between 25 November 2017 and 2 December 2017, which suggests that

the Player was fit enough to participate in group training, and no evidence has been provided, nor has it been sustained by Osmanlispor, that the Player sustained a new injury after his one-week tenure with Osmanlispor's U-21 team. Quite to the contrary, Osmanlispor confirmed at the hearing that it was not its submission that the Player was injured after 2 December 2017.

122. This is confirmed by the Player's testimony and, more importantly, by the Player's letters to Osmanlispor dated 13, 18 and 26 December 2017 by means of which he indicated a willingness to take part in group training with the A-team. In the absence of any direct evidence from persons with direct knowledge of the Player's physical well-being (for instance Osmanlispor's team doctor), the Panel must accept the Player's testimony in this regard.

123. Consequently, the Panel finds that Osmanlispor did not provide any evidence that the Player was excluded from participating in group training with Osmanlispor's A-team because the Player (falsely or not) claimed to be injured and that this should be taken into account in assessing whether the Player had just cause to terminate the Employment Contract on 26 December 2017.

2. The right of the coach to disallow the Player from participating in group training

124. Insofar as Osmanlispor submits that the coach was within his right to disallow the Player from participating in group training with the A-team, the Panel observes that there is a significant body of CAS jurisprudence as to the balancing of a player's personality rights and a coach's right to decide not to field a player and exclude a player from the A-team.

125. The CAS panel in *CAS 2013/A/3091, 3092 & 3093* addressed this issue in a quite detailed and elaborate manner, with which the Panel fully concurs:

> "*With regard to the deregistration as such, the Panel agrees with the FIFA DRC's position in the Appealed Decision, that it may infringe upon the Player's personality rights.*
>
> *According to Articles 28 et seq. of the Swiss Civil Code (hereinafter referred to as "CC"), any infringement of personality rights caused by another is presumed to be illegal and subject to penalties unless there is a justified reason that overturns this presumption.*
>
> *As stated by FC Nantes, it is generally accepted in jurisprudence (ATF 120 II 369; ATF 102 II 211; ATF 137 III 303; Judgment of the Swiss Federal Tribunal 4A_558/2011, dated March 27, 2012) and among legal scholars (Margaret Baddeley, Le sportif, sujet ou objet?, in: Revue de droit Suisse; 1996 II, pp. 135 et seq., p. 162; Kai Ludwig/Urs Scherrer, Sportsrecht, eine Begriffserläuterung, Zürich, 2010, p. 212; Regina Aebi-Müller/Anne-Sophie Morand, Die personlichkeitsrechtlichen Kernfragen der "Causa FC Sion", in: CaS 2012, p. 234-235) that personality rights apply to the world of sport.*

For athletes, personality rights encompass in particular the development and fulfilment of personality through sporting activity, professional freedom and economic freedom (Baddeley, op. cit, p. 171). Under this definition, personality rights protect the right of movement, which comprises in particular the right to practice a sports activity at a level that accords with the abilities of the athlete (Andreas Bucher, Personnes physiques et protection de la personnalité, Basel 1999, N 467). When the sport is practised professionally, a suspension or any other limitation on access to the sport may impede the economic development and fulfilment of the athlete, the freedom of choosing his professional activity and the right to practice it without restriction (Denis Oswald, Le règlement des litiges et la repression des comportement illicities dans le domaine sportif; in: Mélanges Grossen, Basel 1992, p. 74). This freedom is particularly important in the area of sport since the period during which the athlete is able to build his professional career and earn his living through his sporting activity is short (Aebi Müller/Morand, op. cit. 236). In football in particular the length of a career is appreciably shorter than in other sports (Aebi Müller/Morand, op. cit. 237).

Professional freedom, in particular for professional athletes, therefore includes a legitimate interest in being actually employed by their employer (Rehbinder/Stockli, Berner Kommentar, 2010, N 13 to Art. 328). Indeed, an athlete who is not actively participating in competitions depreciates on the market and reduces his future career opportunities (Judgment of the Cantonal Court of Valais, decision of November 16, 2011, in: CaS 2011, 359). It is thus widely accepted in jurisprudence and among legal scholars that athletes have a right to actively practice their profession (ATF 137 III 303). To the extent that Articles 28 et seq. CC protect parties from negative actions and require offending parties to refrain therefrom, but do not grant rights to positive actions, such right to actively practice one's profession is resolved notably by labour law (ATF 137 III 303).

Upholding this approach, the Swiss Federal Tribunal stated with regard to a professional football player that "it is obvious that a professional football player playing in the premier division must, in order to retain his value on the market, not only train regularly with players of his level but also compete in matches with teams of the highest possible level" (Judgment 4A_53/2001 of March 2011).

Furthermore, legal scholars (Baddeley, op. cit., p. 182), and jurisprudence (ATF 137 III 303; ATF 120 II 369) acknowledge that decisions relating to selection, qualification and suspension, as well as licensing refusals, may constitute an infringement of the personality rights of the athlete from the standpoint of his economic freedom (Baddeley op. cit., p. 182).

In view of the above-mentioned jurisprudence of the Swiss Federal Tribunal and Swiss legal scholars, the Panel agrees with the FIFA DRC, which, in the case at hand, concluded that "among a player's fundamental rights under an

> *employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the possibility to compete with his fellow team mates in the team's official matches" and that "by "de-registering" a player, even for a limited period, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, is violating one of his fundamental rights as a football player" and that therefore "the de-registration of a player could in principle constitute a breach of contract since it de facto prevents a player from being eligible to play for his club"*." (*CAS 2013/A/3091, 3092 & 3093*, paras. 222-228 of the abstract published on the CAS website)

126. In *CAS 2014/A/3642*, para. 112 (with reference to *CAS 2013/A/3091, 3092 & 3093*), a CAS award referred to by Osmanlispor in its written submissions, the following six key factors were identified in determining whether a football player's personality rights had been violated, which the Panel also considers relevant in the matter at hand:

- Why was the player dropped to the reserve team?
- Was the player still being paid his full wage?
- Was it a permanent or temporary measure?
- Were there adequate training facilities for the player with the reserve team?
- Was there an express right in the contract for the club to drop the player to the reserve team?
- Was the player training alone or with a team?

127. Applying therefore such criteria to the present case, the Panel will briefly comment on each factor.

128. First, the Panel observes that although Osmanlispor provided the Player with a specific reason as to why he was ordered to train with the U-21 team from 25 November 2017 until 2 December 2017, no such reason was provided for the period between 2 and 26 December 2017 beyond the explanation that it was the coach's right to do so. Because the Player had already been sanctioned for his alleged misconduct prior to and during the match against Genclerbirligi on 24 November 2017, such conduct cannot be taken into account to justify the Player's continued exclusion from group training with the A-team after 2 December 2017. No evidence was provided by Osmanlispor that the coach considered that the Player should be excluded from group training with the A-team for sporting reasons. Accordingly, the Panel finds that Osmanlispor did not invoke any valid argument to justify the Player's exclusion from group training with the A-team.

129. Second, the Player was still being paid his full wage, i.e. despite the incidents that took place on 24 November 2017, the Player was still paid his salary at the end of November 2017. The Player did not receive his December 2017 salary because the Player had terminated the Employment Contract on 26 December 2017, while the salary only fell due on 31 December 2017. This condition cannot therefore be taken into account.

130. Third, whereas the period of exclusion between 25 November 2017 and 2 December 2017 was temporary, the period of exclusion as from 2 December 2017 appears to have been indefinite. At least, the Panel finds that at the moment of termination of the Employment Contract by the Player on 26 December 2017, there was no indication that the Player's situation would change anytime soon.

131. Fourth, there is no indication that the Player was permitted to train with the reserve team. Although it appears that he was accompanied by a fitness coach most of the time, the Panel accepts the Player's evidence that he was training alone. The facilities provided to the Player are not in issue but the regime imposed is considered to be insufficient in terms of interaction with his teammates and training with the ball, where there does not appear to have been a particular reason to disallow him to do so.

132. Fifth, no clauses have been incorporated in the Employment Contract specifically permitting or prohibiting Osmanlispor to exclude the Player from group training with the A-team or determining that the Player was hired specifically for the A-team.

133. Sixth, the Player was not permitted to participate in group training with the A-team or any other team of Osmanlispor. The Player rather performed physical training by himself, although at least sometimes under the guidance of a physical trainer.

134. The Panel agrees with the following considerations of the panel in *CAS 2014/A/3642* on the severity of the measure to disallow a player from training with the A-team:

> "[…] *The Panel recognises that one club's set up may differ from another's, but believes that a squad of players tend to train together as the first team squad, only some of which will actually play in the first team on match days. In view of this, the Panel finds that a measure to prevent a player from training with the first team squad is potentially a much harsher measure than solely assigning a player to play matches with the second team while being allowed to train with the first team squad. The former seriously prejudices the player's future perspectives with the first team, since such measure is of a more definite nature than the latter. There may be individual reasons, such as recovery from injury, which may dictate that a player trains away from the first team squad, which would need reviewing in each particular case.*" (*CAS 2014/A/3642*, para. 118 of the abstract published on the CAS website)

135. Considering these elements — in particular: that no valid reason was advanced by Osmanlispor to prevent the Player from participating in group training with the A-team; that the Player informed Osmanlispor twice (by letters dated 13 and 18 December 2017) that he was not satisfied with his exclusion before terminating the Employment Contract on 26 December 2017; and that such measure was of indefinite duration; that the Player was ordered to train alone — the Panel finds that, on balance, the evidence falls in favour of the Player and that Osmanlispor and/or the A-team coach should not, without justification, have prevented the Player from participating in group training from 2 December 2017. Whether this is sufficient reason for the Player to terminate the Employment Contract with just cause will be addressed in

more detail below, but the Panel finds that this is an important factor that should be taken into account in making such assessment.

c) The alleged prohibition from accessing the resting room assigned to the Player

136. The Player's submission that, following the events that unfolded on the day of the match against Genclerbirligi on 24 November 2017, he was prevented from using the resting room that was assigned to him at the start of the season is supported by the testimonies of Mr Martins Moreira, Mr Baia Pinto, while Mr Völler indicated that he believed the Player had told him that he had to leave his room.

137. At the same time, Mr Türkmen testified that he believed that the Player still had access to his resting room after 2 December 2017 but that he was not sure about this. The Panel notes that besides this statement of Mr Türkmen, there is no evidence on file suggesting that the Player continued to have access to his resting room, nor is this contended by Osmanlispor in its written submissions or its pleadings.

138. Considering the evidence provided by the witnesses, in conjunction with the fact that the Player notified Osmanlispor on 18 December 2017 that "[…] *the room initially assigned to my client at the beginning of the season was withdrawn and he was also prohibited of having meals with his colleagues*", which letter remained unanswered by Osmanlispor, the Panel is satisfied to accept that Osmanlispor indeed prevented the Player from using the resting room that was assigned to him and that this should be taken into account in assessing whether the Player had just cause to terminate the Employment Contract on 26 December 2017.

d) The alleged prohibition from having meals with his teammates

139. The Player's submission that, following the events that unfolded on the day of the match against Genclerbirligi on 24 November 2017, he was also prevented from having meals together with his teammates of Osmanlispor's A-team is supported by the testimony of Mr Martins Moreira. Mr Baia Pinto testified that he could not remember whether the Player was allowed to have meals with his teammates.

140. At the same time, Mr Türkmen testified that the Player continued to have meals with his teammates.

141. The Panel finds that evidence given by Mr Martins Moreira and the Player cannot be reconciled with the evidence provided by Mr Türkmen.

142. The assessment of the evidence provided therefore comes down to an assessment of the credibility of the witnesses. In this respect, the Panel considers it crucial that the evidence of the two players was entirely coherent and it has no reason to doubt about the credibility thereof. The Panel however finds that the testimony of Mr Türkmen was not convincing. Indeed, the majority of the Panel had the impression that Mr Türkmen was not telling the truth when he answered a question from counsel for the Player as to

whether the Player had breakfast, lunch and dinner with the other players with a short "*yes*".

143. Furthermore, the Player notified Osmanlispor on 18 December 2017 that "[…] *the room initially assigned to my client at the beginning of the season was withdrawn and he was also prohibited of having meals with his colleagues*", which letter remained unanswered by Osmanlispor. In its Answer, Osmalispor did not contest the Player's allegation that he was prevented from having meals with his teammates.

144. In light of such circumstances, the Panel is satisfied that Osmanlispor indeed prevented the Player from having meals together with his teammates and that this should be taken into account in assessing whether the Player had just cause to terminate the Employment Contract on 26 December 2017.

e) Conclusion

145. Considering the above circumstances as a whole, the Panel notes that a number of arguments speak in favour of concluding that the Player terminated the Employment Contract with just cause, in particular: Osmanlispor's harsh and formalistic stance in sanctioning the Player for the events that occurred prior to and during the match against Genclerbirligi on 24 November 2017; that the Player did not participate in group training with Osmanlispor's A-team after 2 December 2017 while the Player informed Osmanlispor that he wanted to do so and while Osmanlispor did not substantiate with any direct evidence that the Player claimed to be injured or that he was excluded from group training sessions for other valid reasons after 2 December 2017; that the Player was prevented from having meals together with his teammates; that the Player was prevented from using his resting room; and that the Player's default notice of 18 December 2017 remained unanswered.

146. There are also a number of arguments that speak against concluding that the Player had just cause to terminate the Employment Contract, in particular: that the Player was still granted access to the A-team facilities after 2 December 2017; that he still received his November 2017 salary; that he appears to have been supervised by physical trainers during at least some of his workout sessions; and that the period during which the Player was not participating in group training with Osmanlispor's A-team from 2 until 26 December 2017 was a period of only 24 days and that this is rather short to legitimately terminate an employment contract with just cause, because termination of an employment contract is an *ultima ratio*.

147. As to this last aspect, the Panel observes that the Player was excluded from group training with the A-team for no particular reason for a period of 24 days (i.e. from 2 to 26 December 2017), following a temporary exclusion of another 8 days (i.e. from 24 November 2017 until 2 December 2017).

148. The Panel notes that an exclusion of 8 days has been considered to give insufficient ground for a player to terminate his employment contract without just cause (*CAS 2014/A/3643,* paras. 139-141 of the abstract published on the CAS website). In another precedent, a player that was "*not permitted to train with any of the*

Appellant's teams for the latter part of June and/or early July 2011" was held to be entitled to terminate his employment contract (*CAS 2013/A/3074*, paras. 52 and 60 of the abstract published on the CAS website).

149. Considering that a period of 24 days is considerably longer than a period of 8 days, and particularly given that the Player notified Osmanlispor several times that he considered the exclusion from group training with the A-team a violation of the Employment Contract, with which allegation the Panel concurs, while the Player's letter dated 18 December 2017 was not even answered by Osmanlispor (including the Player's proposal to find an amicable solution), the Panel finds that this is an important factor to be taken into account in assessing whether the Player terminated the Employment Contract with just cause.

150. Weighing these different elements, the majority of the Panel finds that the Player's confidence in Osmanlispor was legitimately seriously affected by Osmanlispor's conduct to such an extent that he could therefore in good faith no longer be expected to continue the employment relationship on 26 December 2017. The majority of the Panel finds that circumstances mentioned above in support of concluding that the Player terminated the Employment Contract with just cause, particularly if considered together, outweigh the fact that the period during which the Player did not participate in group training with Osmanlispor's A-team was, admittedly, rather short.

151. Consequently, the majority of the Panel finds that the Player had just cause to prematurely and unilaterally terminate the Employment Contract on 26 December 2017.

ii. What are the consequences thereof?

152. The first consequence of the above finding is that Osmanlispor's principal prayer for relief in *CAS 2019/A/6175* ("[t]*o decide that the termination made by the Player is without just cause within the protected period*") is dismissed, as a consequence of which its further prayers for relief must be dismissed as well, for Osmanlispor's claim for damages as well as its request for sporting sanctions to be imposed on the Player and Akhisarspor are entirely premised on the assumption that the Player terminated the Employment Contract without just cause. The Panel therefore does not deem it necessary to address whether Osmanlispor had standing to claim for sporting sanctions to be imposed on the Player and Akhisarspor.

153. The remaining issue to be considered by the Panel is the Player's request for compensation of damages caused by Osmanlispor's breach of contract in *CAS 2019/A/6171*.

154. Although it has been established that the Player had just cause to terminate the Employment Contract with Osmanlispor, Article 14 of the FIFA RSTP does not specifically determine that a player is entitled to any compensation for breach of contract by the club in such scenario.

155. The Panel, however, is satisfied that the Player is in principle entitled to compensation because of Osmanlispor's breach of its contractual obligations under the Employment Contract. In this respect, the Panel makes reference to the FIFA RSTP Commentary. According to Article 14(5) and (6) of the FIFA RSTP Commentary, a party "*responsible for and at the origin of the termination of the contract is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed*". Hence, although it was the Player who terminated the Employment Contract, Osmanlispor was at the origin of the termination by breaching its contractual obligations towards the Player and is thus liable to pay compensation for the damages incurred by the Player as a consequence of the early termination. This approach has also been applied in CAS jurisprudence (*e.g.* in *CAS 2012/A/3033*, para. 72 of the abstract published on the CAS website).

156. The Panel observes that Article 17(1) FIFA RSTP provides as follows:

> "*The following provisions apply if a contract is terminated without just cause:*
>
> *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.*"

157. The Parties did not deviate from the application of Article 17(1) of the FIFA RSTP by means of a liquidated damages clause. The compensation for breach of contract to be paid to the Player by Osmanlispor is therefore to be determined in accordance with Article 17(1) of the FIFA RSTP.

158. The Panel takes due note of previous CAS jurisprudence establishing that the purpose of Article 17(1) of the FIFA RSTP is basically to reinforce contractual stability, i.e. to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (*CAS 2008/A/1519-1520*, para. 80, with further references to: *CAS 2005/A/876*, p. 17*: "*[…] *it is plain from the text of the FIFA Regulations that they are designed to further 'contractual stability'* […]*"*; *CAS 2007/A/1358*, para. 90; *CAS 2007/A/1359*, para. 92: *"*[…] *the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability* […]*"*; confirmed in *CAS 2008/A/1568*, para. 6.37).

159. In respect of the calculation of compensation in accordance with Article 17(1) of the FIFA RSTP and the application of the principle of "positive interest", the Panel follows the framework set out by a previous CAS panel as follows:

> "*When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.*
>
> *As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or "expectation interest"), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have if no breach had occurred.*
>
> *The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see Streiff/von Kaenel, Arbeitsvertrag, Art. 337d N 6, and Staehelin, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also Wyler, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) (…).*
>
> *The principle of the "positive interest" shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the player by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the player from a third party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including the specificity of sport, as foreseen in art. 17 FIFA Regulations.*" (*CAS 2008/A/1519-1520*, paras. 85 *et seq.* of the abstract published on the CAS website)

160. The Panel finds that the legal framework set out above and the principle of positive interest are applicable to the present case. Against this background, the Panel will proceed to assess the Player's objective damages, before applying its discretion in adjusting this total amount of objective damages to an appropriate amount, if deemed necessary.

161. The Employment Contract was terminated on 26 December 2017 and set to expire on 31 May 2019. The only salaries paid by Osmanlispor to the Player were the salaries of September, October and November 2017 (i.e. three payments of EUR 80,500 each). Since the Employment Contract was terminated at the end of December

2017, the salary due for this month (i.e. EUR 80,500) should be awarded to the Player as outstanding salary and is therefore not damages.

162. As noted *supra* (cf. para. 105), although the Panel has its doubts about the procedure followed and the proportionality of the fine of EUR 53,333.20 imposed on the Player by the Club on 2 December 2017, the Panel finds that it does not have sufficient evidence on file to conclude that the disciplinary proceedings against the Player or the sanctions imposed on him were illegal *per se*.

163. Accordingly, and as announced by the Club in its letter to the Player dated 2 December 2017, the Panel finds that the fine of EUR 53,333.20 is to be set-off against the Player's salary of December 2017 (i.e. EUR 80,500). The Player is therefore only entitled to outstanding salary in an amount of EUR 27,168.80.

164. Given that the entire value of the Employment Contract was EUR 1,610,000 net, the Player therefore in principle incurred damages equivalent to the remaining value of the Employment Contract in the amount of EUR 1,288,000 net (EUR 1,610,000 / EUR 322,000).

165. The Player acknowledged having concluded an employment contract with Akhisarspor on 19 July 2018, pursuant to which the Player was entitled to receive a salary of EUR 450,000 gross over the 2018/2019 season.

166. The Panel however notes that the Player's employment contract with Akhisarspor contains the following clause:

> "*For 2018/2019 Season, Player will receive team/win bonuses which will be decided by the Board in the minimum amount of 100.000 Euros. In this context, if the total amount of the team/win bonuses which will be decided by the Board is less than 100.000 Euros in 2018/2019 Season, the Club will pay the difference between 100.000 Euros and the total team/win bonuses until 15th July 2019.*"

167. Accordingly, the Player was entitled to a guaranteed bonus of EUR 100,000 gross over the 2018/2019 season, which the Player would not have been entitled to in case his Employment Contract with Osmanlispor had not been terminated early. The Panel therefore finds that the Player mitigated his damages with an amount of EUR 550,000 gross (i.e. EUR 450,000 + EUR 100,000).

168. Considering the Player's duty to mitigate his damages, the Panel considers it reasonable and fair to deduct the amount of EUR 550,000 gross from the Player's damages as calculated above. Unfortunately, the Panel was not provided with any details on the Player's tax obligations, as a consequence of which the Panel is not put in a position to "gross up" the net amount or "net down" the gross amount. The Panel can therefore not be more specific than determining that the Player is entitled to receive compensation for breach of contract from Osmanlispor in an amount of EUR 1,288,000 net, minus the net equivalent to EUR 550,000 gross.

169. The Panel sees no reason to use its discretion to increase or reduce this amount of objective damage.

170. Finally, as to interest, the Panel observes that Article 339(1) of the SCO determines as follows in a free translation into English:

> "*When the employment relationship ends, all claims arising therefrom fall due.*"

171. Accordingly, the Panel finds that the outstanding salary as well as the compensation to be paid fell due on the day following the date of termination of the employment relationship (i.e. 26 December 2017).

172. Consequently, Osmanlispor shall pay to the Player outstanding remuneration in the amount of EUR 80,500 and compensation for breach of contract in the amount of EUR 1,288,000 net, minus the net equivalent to EUR 550,000 gross, with interest at a rate of 5% *per annum*, as from 27 December 2017 until the effective date of payment.

B. Conclusion

173. Based on the foregoing, the majority of the Panel finds that:

i) The Player had just cause to terminate the Employment Contract on 26 December 2017;
ii) Osmanlispor shall pay to the Player outstanding remuneration in the amount of EUR 27,168.80 net with interest at a rate of 5% *per annum*, as from 27 December 2017 until the effective date of payment;
iii) Osmanlispor shall pay to the Player compensation for breach of contract in the amount of EUR 1,288,000 net, minus the net equivalent to EUR 550,000 gross, with interest at a rate of 5% *per annum*, as from 27 December 2017 until the effective date of payment.

174. All other and further motions or prayers for relief are dismissed.

IX. COSTS

175. Article R64.4 of the CAS Code provides as follows:

> "*At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*
> - *the CAS Court Office fee,*
> - *the administrative costs of the CAS calculated in accordance with the CAS scale,*
> - *the costs and fees of the arbitrators,*
> - *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
> - *a contribution towards the expenses of the CAS, and*

- *the costs of witnesses, experts and interpreters.*

The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."

176. Article R64.5 of the CAS Code provides as follows:

"*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.*"

177. Having taken into account the outcome of the arbitration, in particular that Osmanlispor's appeal was dismissed in full and that the Player's appeal was largely upheld, save for a reduction of the amount of compensation for breach of contract sought, the Panel considers it reasonable and fair that the costs of the arbitration, in an amount that will be determined and notified to the Parties by the CAS Court Office, shall be borne for 10% by the Player and for 90% by Osmanlispor.

178. Furthermore, pursuant to Article R64.5 of the CAS Code and in consideration of the complexity and outcome of the proceedings as well as the conduct and the financial resources of the Parties, the Panel rules that Osmanlispor shall bear its own costs and pay a contribution towards the Player's legal fees and other expenses incurred in connection with these arbitration proceedings in the amount of CHF 5,000 and an amount of CHF 1,000 to Akhisarspor.

179. Considering that FIFA was not represented by external counsel and presumably has significantly more financial resources than Osmanlispor, FIFA shall bear its own costs.

* * * * * * * * *

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 28 February 2019 by Josué Filipe Soares Pesqueira against the decision issued on 14 September 2018 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is partially upheld.

2. The appeal filed on 28 February 2019 by Osmanlispor FK against the decision issued on 14 September 2018 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is dismissed.

3. The decision issued on 14 September 2018 by the Dispute Resolution Chamber of the *Fédération Internationale de Football Association* is set aside.

4. Osmanlispor FK shall pay outstanding remuneration to Josué Filipe Soares Pesqueira in the amount of EUR 27,168.80 net (twenty-seven thousand one hundred sixty-eight Euros and eighty cents), with interest at a rate of 5% (five percent) *per annum* accruing as from 27 December 2017 until the effective date of payment.

5. Osmanlispor FK shall pay compensation for breach of contract to Josué Filipe Soares Pesqueira in the amount of EUR 1,288,000 net (one million two hundred eighty eight Euros), minus the net amount equivalent of EUR 550,000 gross (five hundred fifty thousand Euros), with interest at a rate of 5% (five percent) *per annum*, as from 27 December 2017 until the effective date of payment

6. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne for 10% (ten percent) by Josué Filipe Soares Pesqueira and for 90% (ninety percent) by Osmanlispor FK.

7. Osmanlispor FK shall bear its own costs and is ordered to pay to Josué Filipe Soares Pesqueira the total amount of CHF 5,000 (five thousand Swiss Francs) and to Akhisar Belediyespor FC the total amount of CHF 1,000 (one thousand Swiss Francs) as contributions towards their legal fees and other expenses incurred in connection with these arbitration proceedings.

8. The *Fédération Internationale de Football Association* shall bear its own costs.

9. All other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 3 April 2020

THE COURT OF ARBITRATION FOR SPORT

Hendrik Willem Kesler
President of the Panel

Stuart C. McInnes
Arbitrator

João Nogueira Da Rocha
Arbitrator

Dennis Koolaard
Ad hoc Clerk