Dispute Resolution Chamber

Date: 20 January 2021

Sent to:

Claimant: Mr Georgi Kitanov
c/o Mr Georgi Gradev
gradev@silalawyers.com

Respondent: AFC Astra Giurgiu
office@afcastra.ro and cosminlazarm@gmail.com

NOTIFICATION OF THE GROUNDS OF THE DECISION
EMPLOYMENT-RELATED DISPUTE CONCERNING THE PLAYER Georgi KITANOV
Ref. Nr.20-00706/pam

Dear Sirs,

Please find attached the grounds of the decision passed in the aforementioned matter.

We kindly invite you to take note of this decision.

We remain at your disposal.

Yours faithfully,

FIFA

Erika Montemor Ferreira
Head of Players' Status

Copy for information:
Romanian Football Federation

Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 29 September 2020,

regarding an employment-related dispute concerning the player Georgi KITANOV

COMPOSITION:

Omar Ongaro (Italy), Deputy Chairman
José Luis Andrade (Portugal), member
Roy Vermeer (Netherlands), member

CLAIMANT:

GEORGI KITANOV, Bulgaria

Represented by Mr. Georgi Gradev

RESPONDENT:

AFC ASTRA, Romania

I. FACTS OF THE CASE

1. On 18 June 2019, the Bulgarian player Georgi Kitanov (hereinafter: *the player* or *Claimant*) and the Romanian club AFC Astra (hereinafter: *the club* or *Respondent*) signed an agreement (hereinafter: *the contract*) valid as from the date of signature until 15 June 2022.

2. According to Clause IV.1 (a) of the contract, the Claimant had the "*right to be paid for the activity performed".*

3. Under Clause IV.4 of the contract, the Respondent, *inter alia*, undertook:

   "*e. to pay the amounts due to the football player;*

   k. to provide the football player with a housing, to the limit of 300 euros, the ancillary costs being incumbent on the football player, monthly."

4. According to Clause V of the contract, the Claimant is entitled to receive the following remuneration from the Respondent:

   "*1. The monthly indemnity is 5,000 euros net for the period between the date of signature and June 15th 2020.*

   2. The monthly allowance is € 6,000 net for the period between 01.07.2020 and 30.06.2021.

   3. The monthly allowance is € 6,000 net for the period between 01.07.2021 and 15.06.2022.

   4. In addition to the previous sums, the club grants the player the sum of EUR 5,000 net – the first instalment, the amount will be paid on 30.06.2019.

   (…)

   7. The payment of the amounts mentioned in the present contract will be paid in lei, at the exchange rate of the RNB for the payment date.

   8. The amounts calculated and due to the football player according to the present Contract will be paid by the Club on a monthly basis, on or before the 15th day of the month following the month for which the payment is made.

   9. The Club will retain and pay the taxes and charges related to the net amount of the contract so as to provide the [Claimant] monthly with the Net Allowance established in the Contract and with the amounts in the Financial Annex and in the way that the legislation on taxes and duties for independent activities will change, the contract will be updated so that the net amount due to the player is not changed."

5. Clause VII (a) of the contract provides that the "*amendment of any clause of the present contract may be done by an addendum, signed by both parties*".

6. According to Clause VIII, the parties agreed as follows:

   "*1. Force majeure, as it is defined by the law, exonerates parties in entire or in part of the liability in case of total or partial non-fulfilment, or the unfit execution, or the delayed execution of the obligations assumed by the present sport activity contract.*

   2. The party that invokes force majeure is obliged to notify the other Part in 5 (five) days from the date on which force majeure occurred and to take all the possible measures in order to limit its consequences, otherwise it will not benefit from the exonerating effects of its liability."

7. On 5 May 2020, the Claimant lodged a claim in front of FIFA for outstanding remuneration and breach of contract against the Respondent, requesting that the Respondent be ordered to pay to the Claimant the following amounts:

   Outstanding remuneration in the amount of EUR 24,666.67, plus interest of 5% *p.a.* until the date of effective payment, as follows:

   a. on EUR 1,000 as of 1 July 2019;
   b. on EUR 2,166.67 as of 15 July 2019;
   c. on EUR 300 as of 15 January 2020;
   d. on EUR 5,300 as of 15 February 2020;
   e. on EUR 5,300 as of 15 March 2020;
   f. on EUR 5,300 as of 15 April 2020; and
   g. on EUR 5,300 as of 4 May 2020.

   Compensation for breach of contract in the amount of EUR 192,150, plus interest of 5% p.a. as of 4 May 2020 until the date of effective payment.

8. In his claim, the Claimant pointed out that the Respondent has not been paying his remuneration with regularity and had previously been put in default on 16 December 2019.

9. Then, the Claimant explained that the Respondent sent a message to the team on a social media application on 9 April 2020 in which it "*offered the players to pay their salary arrears of January and February 2020 if they agree to a salary reduction of 50% for nine months from January until September 2020*", an offer that the team, including the Claimant, refused.

10. The Claimant declared that after the aforementioned message he received a correspondence from the Respondent on 16 April 2020 by which he was informed that the contract was suspended in line with the "*Government Emergency Ordinance no. 30/2020*" that was published by the Romanian authorities following the state of emergency declaration on 16 March 2020, and he would be entitled to receive "*75% of the basic income*" to be paid by the state of Romania.

11. In the Claimant's opinion, this decision is "*invalid, unlawful and constitutes abuse*", and the Claimant put the Respondent in default a second time on 16 April 2020 for the total amount of EUR 19,366.67

corresponding to EUR 1,000 net as a balance to the signing-on fee, EUR 17,166.67 net as a balance to the wages due from 18 to 30 June 2019 (EUR 2,166.67 net *pro rata*) and from January through March 2020 (EUR 15,000 net), and EUR 1,200 as a balance to the accommodation allowance due from December 2019 through March 2020. The Claimant gave the Respondent a final 15-day deadline to comply, to no avail.

12. As a result, subsequently, the Claimant unilaterally terminated the contract on 4 May 2020 under art 14bis of the Regulations on the Status and Transfer of Players (RSTP). In fact, the Claimant deemed that at the time of termination, a sum amounting to more than three monthly salaries was due, giving him just cause to end the relationship.

13. The Claimant insisted that the Respondent did not act in line with the terms of the contract:

    - according to the so-called "*force majeure*" clause of the contract (i.e. clause VIII), the Respondent had up until 5 days after the declaration of the state of emergency in Romania, i.e. up until 21 March 2020, to inform him that it intended to rely on the COVID-19 situation to invoke force majeure, something the Respondent failed to do;

    - the variation of the terms of the contract made by the Respondent on 15 April 2020 was not ratified by the Claimant as per clause VIII (a).

14. The Claimant insisted that the Respondent failed to provide any valid reason as to the delay of payment of his remuneration, and that the Respondent rather used the COVID-19 situation in order to justify those delays. In this regard, the Claimant pointed out that the salaries of January and February 2020 were not paid, although they were due prior to the state of emergency declaration, and that the Respondent took one month to implement the measures taken by the Romanian government, and that it had tried before to "*force*" the acceptance of a 50% pay cut for 9 months by all the team (January to September 2020). The Claimant vehemently stated that the Respondent's conduct is abusive.

15. The Claimant further asked that the above payments shall be made on a net basis, free of any taxation, the Respondent being responsible for the filing and payment of all taxes relating to these payments due to the Claimant, and also requested that sporting sanctions shall be imposed on the Respondent.

16. In its response, the Respondent asked for the rejection of the Claimant's claim and argued that – in light of the COVID-19 outbreak – also Romanian law should be applied to the matter at hand, as the latter set of laws provides for more detailed rules regarding the conclusion, execution and termination of contracts.

17. The Respondent argues that on the date of the termination of the contract, according to the Respondent on 4 May 2020, the Claimant's contract "*was suspended*" based on the Romanian Labour Code and other Romanian legislation. Based on this set of regulations, the Claimant was, during the suspension of sports activities on Romanian territory, entitled to receive 75% of the '*average gross earnings provided by the Law of the state social insurance budget*'. Said decision about the suspension of the contract was communicated to the Claimant on 16 April 2020.

18. The Respondent further explains that the suspension of the contract of the Claimant was not based on "*force majeure*", but on the provisions of the Romanian Labour Code.

19. As a result of the foregoing, the Respondent concludes that the unilateral termination of the contract by the Claimant had no effect, as the contract was suspended at that time and therefore not in force.

20. Further, the Respondent argues that during the suspension of the contract, it paid a total amount of Romanian Lei (RON) 232,628 or EUR 49,250 to the Claimant. The Respondent explains that part of these amounts were paid by the club, and another part by a third party, on behalf of the Respondent.

21. In conclusion, the Respondent argues that it only owes and amount of EUR 2,968 to the Claimant, corresponding to part of the salary for February 2020, as well as the salaries for March and April 2020 in the amount of EUR 5,000 each.

22. At the request of the FIFA Administration, the parties submitted argumentation as to the applicability of Romanian law in the matter at hand.

23. The Claimant first highlighted that this is a dispute with an international dimension, therefore the FIFA rules and regulations shall prevail over any domestic rules and regulations. According to the Claimant, the Dispute Resolution Chamber (DRC) has always sustained that it is not appropriate to apply a particular national law or regulations, but rather the RSTP, general principles of law, and, where existing, the DRC's well-established jurisprudence.

24. The Claimant believes, therefore, that there is no room for the application of Romanian law in the case at hand.

25. As to whether the decision to vary the contract was made in accordance with national law or was permissible within collective bargaining agreement (CBA) structures or another collective agreement mechanism, the Claimant referred to the FIFA COVID-19 Guidelines as well as the FIFA Frequently Asked Questions, COVID-19 Football Regulatory Issues. In this context, the Claimant recalled that the letter dated 16 April 2020 from the Respondent, according to which the contract was suspended and his salary reduced to 75% of the '*average gross earnings provided by the Law of the state social insurance budget*' did not identify the exact provisions of Romanian law which the Respondent deemed applicable.

26. The Claimant further underlined that the Respondent did not unilaterally vary the contract but actually suspended it from 15 April 2020 until the lifting of the emergency situation, which ended on 15 May 2020. In this regard, the Claimant enclosed a copy of the Decree no. 195 of 16 March 2020 on the establishment of the state of emergency on the territory of Romania, which reads in its art. 1: "*The state of emergency is established on the entire territory of Romania for a period of 30 days*", as well as the Decree no. 240 of 14 April 2020 on the extension of the state of emergency on the Romanian territory, whereby the state of emergency was extended for another 30 days.

27. As to the period during which the state of emergency was declared, the Claimant emphasised that the prohibition against retroactivity is a fundamental principle of international law and forms part of

international public policy. Therefore, the Respondent's decision to suspend the contract notified on 16 April 2020 cannot be applied retroactively to the salaries due up to and including 15 April 2020.

28. The Claimant recalled that the Respondent sought to enforce unspecified provisions of Romanian law on him only after he refused to take a pay cut of 50% with a retroactive effect as of January 2020 to September 2020. Therefore, even assuming that the Respondent's decision to suspend the contract was made in accordance with Romanian law, *quod non*, still, it constitutes an abuse of rights.

29. The Claimant concludes that the Respondent's financial hardship was not caused by the COVID-19 outbreak but by its negligence in its daily financial decisions. Consequently, the Respondent cannot justify its default by invoking a force majeure or Romanian emergency law.

30. In addition, the Claimant invoked the fact that the Respondent was not entitled to unilaterally suspend the performance of the contract and reduce his salary as of 16 April 2020 as this is against the provisions of Clause VII(a) of the contract (i.e., the "*amendment of any clause of the present contract may be done by an addendum, signed by both parties*") and Clause VIII.2 of the contract (i.e., "*The party that invokes force majeure is obliged to notify the other Part in 5 (five) days from the date on which force majeure occurred and to take all the possible measures in order to limit its consequences, otherwise it will not benefit from the exonerating effects of its liability*").

31. In the Claimant's view, in any case the parties did not conclude an employment contract but a contract for sports services. Hence, the provisions of Romanian employment law do not apply to the contract and thus, the FIFA COVID-19 Guidelines do not apply to the present case either. Therefore, the Respondent's reference to Article 51(1)(c) of the Labour Code of Romania is misplaced, and the Respondent was not entitled to suspend the contract for sports services based on the Labour Code.

32. The Claimant, referring to art. 12 par. 3 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber, states that the Respondent should provide independent legal advice from a qualified legal practitioner in the relevant jurisdiction, which confirms that the unilateral suspension of the contract was valid in accordance with Romanian law, failing which the DRC should reject the Respondent's arguments as unsubstantiated and groundless.

33. Moreover, the Claimant denied the Respondent's allegation that "*the competitive activity in which [the Respondent] is involved [...] continued to be suspended even after the cessation of the state of emergency*". In this regard, the Claimant claimed that on 16 June 2020, the Respondent sent a letter to the Claimant dated 15 June 2020, in which the Respondent claimed that the Claimant was "*in default of respecting the contract of sports activity because [he] did not show up at the training schedule since the date of 16 May 2020*". Hence, it is clear that the Respondent resumed "*competitive activity*" as of 16 May 2020.

34. The Claimant emphasised that the Respondent did not adduce any material evidence whatsoever proving that proper insurance coverage was maintained, and adequate alternative income support arrangements were found during the period in question. Notably, it is a common ground between the parties that the Respondent did not pay any wage whatsoever to the Claimant during the period in question.

35. Finally, the Claimant underlined that the Respondent did not produce any evidence proving that the decision to suspend the contracts applied to the entire squad and not only to specific employees, which refused to take a pay cut of 50% for nine months from January to September 2020 (such as the Claimant). In fact, the Claimant claims that the decision to suspend the contracts did not apply to the entire squad, but only to those players that refused to take the aforementioned pay cut. It is for the Respondent to provide FIFA with evidence that it suspended the contracts of all the players on the team.

36. Therefore, the Claimant concludes that the Respondent's decision to suspend the contract from 15 April to 15 May 2020 is invalid, unlawful, and constitutes an abuse of rights. Even if it were valid, *quod non,* it would have been in force only from 16 April to 15 May 2020. In such a case, it is for the Respondent to prove to FIFA which was the exact amount of the reduced salary due to the Claimant during this period.

37. The Respondent, for its part, deems that both the national laws of Romania and the FIFA regulations are applicable to the matter at hand. In particular, one cannot exclude the applicability of the Romanian legislation due to the following facts:

    (i) the contract was executed and performed mainly in Romania;

    (ii) the club is subject to the Romanian law and thus must conduct its activity, in all its aspects (including the relationship with its employees) with the observance of the Romanian legislation (fiscal law, labour law, sporting law, etc.) and;

    (iii) from the sporting point of view, the club must also observe all the regulations issued by the Romanian Football Federation.

38. The Respondent emphasised that the adoption of the SARS CoV-2 specific measures by the Romanian authorities and the Romanian Football Federation created a legal possibility for the employers which were affected by this pandemic (not only the football clubs, but all other legal persons who's activity was stopped by the authorities), to suspend the agreements concluded with their employees, in order to support them in the period of the state of emergency.

39. Also, the Respondent argues that in any case, even the Romanian Labour Code (art. 52 par. 1 letter c) allows the employers to proceed with the suspension of the labour agreements in case their activity is suspended. Therefore, in the context of the emergency state declared at a national level and of the cessation of all football activity in Romania, the Respondent proceeded with the suspension of the contract in accordance with the applicable legislation.

40. Finally, the Claimant informed the FIFA Administration that after the unilateral termination of the contract, he remained unemployed.

41. Moreover, the Claimant confirmed to have received the amount of EUR 49,250, and amended his claim for outstanding remuneration to the amount of EUR 12,968, plus interest of 5% p.a. until the date of effective payment, as follows:

a. on EUR 2,968 as of 15 March 2020;
b. on EUR 5,000 as of 15 April 2020; and
c. on EUR 5,000 as of 4 May 2020.

II. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 5 May 2020. Taking into account the wording of art. 21 of the 2019 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.

2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 in combination with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition March 2020), the Dispute Resolution Chamber is competent to deal with the matter at stake. The matter concerns an employment-related dispute with an international dimension between a Bulgarian player and a Romanian club, and the competence is not disputed by the parties.

3. In continuation, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, the DRC confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (August 2020 edition), and considering that the claim was lodged on 5 May 2020, the March 2020 edition of the aforementioned regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

4. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. In this respect, the Chamber started by acknowledging all the above-mentioned facts as well as the arguments and the documentation submitted by the parties. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.

5. Having said that, the members of the Chamber acknowledged that on 18 June 2019, the Claimant and the Respondent signed an agreement valid as from the date of signature until 15 June 2022, pursuant to which the Respondent undertook to pay to the Claimant, *inter alia*, the following amounts:

   - EUR 5,000 net in the period between the date of signature of the contract and 15 June 2020;
   - EUR 6,000 net in the period between 1 July 2020 and 15 June 2022;
   - EUR 5,000 net – the first instalment – to be paid on 30 June 2019.

6. What is more, the members of the Chamber noted that the Claimant explained that on 4 May 2020, he had terminated the contract in force between the parties, invoking a just cause based on art. 14bis of the Regulations, because of several outstanding salaries. On 16 April 2020, the Claimant had put the Respondent in default, requesting the payment of the overdue amount of EUR 19,366.67, corresponding to several amounts due in the period between June 2019 and March 2020, and providing a 15 days deadline to comply with said request, however to no avail.

7. The Claimant, on the one hand, maintained that the Respondent – throughout the entire duration of the contract - failed to timely pay him some of the amounts he was contractually entitled to and that on 16 December 2019, he had put the Respondent in default for the first time, with "*mitigated success*".

8. Moreover, the Claimant argues that on 9 April 2020, the Respondent, via social media, offered to its players the payments of the arrears of their salaries for January and February 2020, if they would agree to a salary reduction of 50% for a period of nine months, between January and September 2020, and explained that said offer was rejected by the entire team.

9. In addition the Claimant points out that on 16 April 2020, he received a notification from the Respondent that the contract was suspended, in line with the "*Government Emergency Ordinance no. 30/2020*" that was published by the Romanian authorities following the state of emergency declaration as a result of the COVID-19 pandemic. Moreover, the Respondent informed him that the contract would be suspended and that 75% of his basic income could be collected from the state of Romania, which – according to the Claimant – was an invalid and unlawful decision.

10. In this respect, the Claimant argued that the so-called "*force majeure*" clause of the contract was not applied correctly at all, as well as that the variation of the terms of the contract made by the Respondent on 15 April 2020, were not ratified by the Claimant in line with clause VIII (a) of the contract. Also, the Claimant insisted that the Respondent rather used the COVID-19 pandemic as an excuse to justify previous delays in payment prior to the outbreak of the COVID-19 pandemic, i.e. the salaries for January and February 2020, as well as that the Respondent took one month to implement the measures taken by the Romanian government.

11. The Chamber noted that the Respondent, on the other hand, rejected the claim put forward by the Claimant and argued that the suspension of the contract was not based on a situation of force majeure, but rather on the *"Government Emergency Ordinance no. 30/2020"* as well as on provisions of the Romanian Labour Code. In this respect, the Respondent points out that the unilateral termination of the contract by the Claimant on 4 May 2020 was without any effect, as the contract was suspended.

12. What is more, the Respondent argues that during the suspension of the contract, it paid the Claimant the total amount of RON 232,628 or EUR 49,250, and that, as a result, it only owes the Claimant the amount of EUR 12,968 as outstanding remuneration. Said circumstance – insofar as it involves the outstanding remuneration – is confirmed by the Claimant, who amended the part of his claim relating to outstanding remuneration to the amount of EUR 12,968.

13. Furthermore, after having been asked by the FIFA Administration, the Claimant explained that he deems that Romanian law should not be applied to the matter at hand. Moreover, the Claimant brought forward that the variation of the contract was not made in line with the FIFA COVID-19 Guidelines and the FIFA COVID-19 FAQ (cf. FIFA circular letters no. 1714 and 1720 respectively), as the notification letter from the Respondent concerning the salary reduction dated 16 April 2020, did not refer to specific provisions under Romanian law, and that instead of varying the contract, the Respondent immediately suspended the contract from 15 April to 15 May 2020.

14. Moreover, the Claimant explained that the Respondent's financial hardship was not caused by the COVID-19 pandemic, but by its negligence in its daily financial decisions, as result of which the decision to suspend the contract and to ask for a retroactive salary reduction of 50% from its players over a period of nine months, is an abuse of rights. Further, the Claimant argues that the contract was not an employment contract but a sports service contract, and that as a result thereof, the provisions of Romanian employment law and the Labour Code of Romania could not apply to the matter at hand.

15. The Respondent, on the other hand, insisted that Romanian law should apply as the contract was performed in Romania and the Respondent was subject to Romanian law and the regulations issued by the Romanian Football Federation. Based on the foregoing, the Respondent argues that it had the possibility and right to suspend the contract

16. The members of the Chamber explained that the underlying issue in this dispute, considering the diverging positions of the parties, was to determine as to whether the contract had been validly terminated, with or without just cause, by the Claimant on 4 May 2020. The Chamber also underlined that, subsequently, it would be necessary to determine the consequences of the early termination of the contractual relationship.

17. The Chamber, first of all, wished to highlight that the unilateral termination of the contract by the Claimant on 4 May 2020, was based on the fact that several contractually agreed amounts due to the Claimant, were not paid by the Respondent. The Respondent, on the other hand, while not contesting the outstanding amounts for part of the February 2020 salary, as well as the entire salaries for the months of March and April, as per the Claimant's amended claim for outstanding remuneration, pointed out that, at the time of the unilateral action of the player, the contract was suspended and that therefore, said unilateral termination was without effect.

18. Bearing in mind the above, the Chamber wished to refer to the fact that, in light of the worldwide COVID-19 outbreak, FIFA issued a set of guidelines, the COVID-19 Guidelines, which aim at providing appropriate guidance and recommendations to member associations and their stakeholders, to both mitigate the consequences of disruptions caused by COVID-19 and ensure that any response is harmonised in the common interest. Moreover, on 11 June 2020, FIFA issued an additional document, referred to as FIFA COVID-19 FAQ, which provides clarification about the most relevant questions in connection with the regulatory consequences of the COVID-19 outbreak and identifies solutions for new regulatory matters.

19. Analysing the concept of a situation of force majeure, the members of the Chamber noted that, based on the contents of the FIFA COVID-19 Guidelines and the FIFA COVID-19 FAQ, FIFA did not declare that the COVID-19 outbreak was a force majeure situation in any specific country or territory, or that any specific employment or transfer agreement was impacted by the concept of force majeure.

20. In other words, in any given dispute, it is for a party invoking force majeure to establish the existence of said event under the applicable law/rules as well as the consequences that derive in connection thereto. The analysis of whether a situation of force majeure existed has to be considered on a case-by-case basis, taking into account all the relevant circumstances.

21. Furthermore, the deciding body recalled that the aforementioned COVID-19 documents issued by FIFA - as per the explicit wording of FAQ no. 16, as well as pages 6 and 7 of the FIFA COVID-19 Guidelines - are only applicable to "*unilateral variations to existing employment agreements*". Therefore, except where a termination of a contract occurred following a unilateral variation made as a result of COVID-19 (in which case the validity of the variation must first be assessed under the guidelines), said guidelines do not apply to assess unilateral terminations of existing employment agreements. The members of the Chamber further noted that for the assessment of disputes that are presented before the FIFA judicial bodies concerning the unilateral termination of a contract, the FIFA Regulations as well as the established jurisprudence of the Chamber, shall apply.

22. Following these general observations, the members of the Chamber went on to analyse whether in the matter at hand, any of the parties to the contract had made a unilateral variation to their existing agreement prior to the unilateral termination of the contract by the Claimant.

23. In this respect, the members of the Chamber unanimously agreed that the decision of the Respondent to unilaterally suspend the contract as well as the salary payments, has to be considered as a unilateral variation to the employment relationship between the parties. It is clear to the members that the Respondent did not terminate the employment contract, but only altered several aspects of the contract, such as the salary payment. As a result, the members of the Chamber concluded that the FIFA COVID-19 Guidelines and the FIFA COVID-19 FAQ are applicable to the matter at hand when having to assess the legitimacy of the pertinent unilateral alteration.

24. Following these conclusions, the Chamber analysed the factual circumstances that eventually led the Claimant to unilaterally terminate his contract.

25. First of all, the members of the Chamber deemed it important to outline that it remained uncontested – after the payment by the Respondent of several older debts to the Claimant and the subsequent amendment of the claim by the Claimant - that the Respondent had not fulfilled its financial obligations set forth in the contract signed between the parties and that it failed to pay to the Claimant part of the salary for February 2020, as well as the full salaries for the months of March and April 2020 in the amount of EUR 5,000 each, part of these amounts falling due before the suspension of the contract on 16 April 2020, a result of the outbreak of the COVID-19 pandemic.

26. Moreover, the Chamber noted that on 16 April 2020, the Respondent unilaterally suspended the contract as well as the salary payments, referring to the "*Government Emergency Ordinance no.*

30/2020" that was published by the Romanian authorities following the state of emergency declaration as a result of the COVID-19 pandemic, on the basis of which said suspension was allowed. Furthermore, in its response to the claim, the Respondent maintains that the suspension of the contract was justified also on the basis of the Romanian Labour Code. The Claimant, for his part, does not agree with this position and brought forward several arguments, amongst others and in particular that (a) Romanian law was not applicable, (b) the contract between the parties was not to be considered a labour contract, but a contract for sports services, as a result of which the Respondent was not entitled to suspend the contract based on the Romanian Labour Code and (c) that the Respondent did not adduce any material evidence whatsoever proving that the unilateral variation was in line with the COVID-19 Guidelines, and that proper insurance coverage was maintained and adequate alternative income support arrangements were found during the period in question.

27. As regards the nature of the contract, and with reference to art. 12 par. 3 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof, the members of the Chamber acknowledged that the Claimant had not provided any corroborating documentary evidence to back his allegation that it was not an employment contract but rather a sports services contract. Equally, the player has not presented any evidence to sustain his position that the Romanian Labour Code would *per se* not apply to the contract.

28. Consequently, it was concluded that, on the specific circumstances of the case and based on the elements available to the Chamber, the relationship between the Claimant and the Respondent had to be considered an employment relationship and not a kind of '*service provider relationship*'.

29. Irrespective of the above, and referring to the notification of the Respondent dated 16 April 2020, the DRC recalled that the suspension of the contract was in any case primarily based on the the "*Government Emergency Ordinance no. 30/2020*" that was published by the Romanian authorities. While contesting the applicability of Romanian law, the player had not explicitly objected to the applicability of the latter ordinance to his contractual relationship.

30. Following the aforementioned reasoning, the members of the Chamber went on to analyse whether or not the Respondent had sufficiently demonstrated that, based on Romanian law, the "*Government Emergency Ordinance no. 30/2020*" that was published by the Romanian authorities and the Romanian Labour Code, it was allowed to suspend the contract of the Claimant and to refer him to the payments made by the state of Romania during the alleged state of emergency declared as a result of the COVID-19 pandemic.

31. As a first step in this respect, the Chamber analysed whether Romanian law was applicable to the contractual relationship at stake. The DRC acknowledged that there is extensive documentation on file, submitted by both parties, regarding the potentially applicable national law provisions, as well as the effects of the COVID-19 pandemic to the territory of Romania. From the latter, the members of the Chamber were, in particular, able to take note of the following aspects: (a) based on art. 52 par. 1 under c. of the Romanian Labour Code, there is a possibility to suspend the contract of an employee in case of "*temporary interruption or reduction of the activity, without termination of the employment relationship, for economic, technological, structural or similar reasons*"; (b) that during the suspension of the contract, based on art. XV of the Government Emergency Ordinance no. 30/2020 and art. I

par. 9 of the Government Emergency Ordinance no. 32/2020, the player would be entitled to a maximum of 75% of the '*average gross earnings provided by the Law of the state social insurance budget*' to be paid by the state of Romania; (c) that the state of Romania had initially declared a state of emergency from 16 March 2020 until 16 April 2020, and that said state of emergency had been extended first until 15 May and subsequently until 31 May 2020 and; (d) that the football competition in Romania was intended to restart as from June 2020.

32. Based on the foregoing circumstances, the Chamber focused its attention on the COVID-19 Guidelines, which, in summary, provide that the parties should first try to find a mutual agreement, preferably on a collective (team or even league) basis, to face the consequences of the financial impact of COVID-19, before they explore the option to possibly unilaterally vary a contract in line with applicable national law or within Collective Bargaining Agreement (CBA) structures. If no agreement can be reached or applicable national law or CBA do not address the situation, a unilateral variation should be analysed by FIFA's deciding bodies on a case by case basis, subject to certain defined criteria. Alternatively, a suspension of the contract can be explored, provided that proper insurance coverage is maintained, and adequate alternative income support arrangement are in place.

33. The DRC acknowledged that the contractual alteration it was facing, related to a suspension of the contract.

34. From the information on file, the members of the Chamber noted that, despite the parties not having reached an agreement prior the suspension of the contract, the Respondent provided a detailed explanation on how the suspension of the contract would be permitted on the basis of the Governmental Emergency Ordinance, to which it referred in its communication of 16 April 2020.. What is more, the Chamber noted that at the time of the suspension of the contract, there was an alternative income support arrangement in place, which provided for a specific percentage of the Claimant's salary to be paid by the state of Romania.

35. Besides, the DRC established that the suspension of the contract could in any case not have been imposed retroactively, i.e. to deploy any effects prior to its notification to the player on 16 April 2020. Indeed, the Respondent did not attempt to act in such way. On the contrary, it even recognises owing the entire salary for the month of April 2020 to the player.

36. In view of the above, taking into account the specific circumstances of the case and based on the elements available to the Chamber, the members of the Chamber concluded that the Respondent was able to demonstrate to their satisfaction that based on art. XV of the Government Emergency Ordinance no. 30/2020 and art. I par. 9 of the Government Emergency Ordinance no. 32/2020, it was allowed to temporarily suspend the employment contract of the Claimant, while referring the Claimant to the possibility of collecting a part of his salary from the state of Romania,.

37. Such temporary suspension of the contract was legitimate as from its notification to the player on 16 April 2020, until the end of the state of emergency in Romania, which was on 31 May 2020.

38. For the sake of good order, the DRC wished to clarify that at no point in time the Respondent referred to a situation of force majeure to justify the suspension of the contract, reason why respect or not of

the deadline stipulated in the so-called "force majeure clause" (Clause VIII) of the contract, is irrelevant.

39. In continuation, the members of the Chamber turned their attention to the outstanding amounts that are claimed by the Claimant and that fell due (partially) before the suspension of the contract. As to the position of the Respondent whether there exists any justification for the non-payment of the pertinent salaries, the DRC noted that the Respondent did not bring forward any valid arguments in this respect and that it even confirmed that it was willing to pay these outstanding amounts.

40. In particular, the members of the Chamber pointed out that the recognised outstanding salary payments for February and March 2020, as well as older debts subsequently settled during the suspension of the contract, should have been paid already before the suspension of the contract on 16 April 2020. Specifically, the Chamber concluded that the COVID-19 outbreak shall not be used as an opportunity to escape from debts that fell due already at an earlier stage.

41. Bearing in mind the above considerations, the DRC concluded that the Respondent had not provided any valid justification for the non-payment of the amounts that were undisputedly outstanding at the time of the unilateral termination of the contract by the Claimant on 4 May 2020.

42. Subsequently, the Chamber observed that the Claimant had unilaterally terminated the contract on 4 May 2020, after he had put the Respondent in default on 16 April 2020 and granted a deadline of 15 days for the Respondent to comply with its financial obligations. In this respect, reference was made to art. 14bis par. 1 of the Regulations, which, *inter alia*, stipulates that, in the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s).

43. On account of all the above-mentioned considerations, specifically considering that, when the Claimant terminated the contract, more than two salary payments were due despite the fact that the Claimant provided the Respondent with 15 days to remedy the default, the Chamber decided that the Claimant had just cause to unilaterally terminate the employment relationship on 4 May 2020 based on art. 14bis par. 1 of the Regulations. Consequently, the Respondent is to be held liable for the respective consequences.

44. As to the Respondent's claim that the player was not in a position to terminate his contract while it was suspended, the DRC deemed that such argumentation cannot be backed since the Respondent had admittedly not respected its contractual obligations and such stance does not deserve any protection, irrespective of the suspension of the contractual relationship.

45. As to the specific consequences, first of all, the members of the Chamber concurred that the Respondent must fulfil its obligations towards the Claimant as per the employment contract up until the date of termination of the contract in accordance with the general legal principle of "*pacta sunt servanda*".

46. On this basis the Chamber decided that the Respondent is liable to pay to the Claimant the salaries that were outstanding at the time of the termination, i.e. the amount of EUR 12,968, consisting of the overdue payment of EUR 2,968 for part of the salary for the month of February 2020, the overdue salary payment of EUR 5,000 for the month of March 2020 and the overdue salary payment of EUR 5,000 for the month of April 2020.

47. In addition, taking into account the Claimant's claim as well as the Chamber's longstanding jurisprudence in this respect, it was decided to award the Claimant interest of 5% *p.a.* as of the respective due dates.

48. In continuation, the Chamber decided that, taking into consideration art. 17 par. 1 of the Regulations, the Claimant is entitled to receive from the Respondent compensation for breach of contract in addition to any outstanding remuneration on the basis of the relevant employment contract.

49. In this context, the Chamber outlined that, in accordance with said provision, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the Claimant under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.

50. In application of the relevant provision, the Chamber held that it first of all had to clarify whether the pertinent employment contract contained any clause, by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake.

51. Subsequently, and in order to evaluate the compensation to be paid to the Claimant by the Respondent, the members of the Chamber took into account the remuneration due to the Claimant in accordance with the employment contract as well as the time remaining on the same contract, along with the professional situation of the Claimant after the early termination occurred. In this respect, the Chamber pointed out that at the time of the termination of the employment contract on 4 May 2020, the contract would run until 15 June 2022.

52. However, and referring to previous considerations (cf. point II./31. above), the members of the Chamber noted that based on the information on file, it could be concluded that the Respondent was entitled to temporarily suspend the contract and that a maximum of 75% of the '*average gross earnings provided by the Law of the state social insurance budget*' would have been paid by the state of Romania during the pertinent period of time. Consequently, considering that the state of emergency in Romania was ended on 31 May 2020, had the contract not been terminated by the player on 4 May 2020, the remuneration due for the month of May 2020 would have had to be paid by the state of Romania and not by the club. Therefore, the Chamber held that the month of May 2020 shall not be taken into account for the calculation of the compensation for breach of contract.

Hence, the members of the Chamber concluded that the Claimant should only be compensated for his financial damages as of the month of June 2020.

53. Consequently, taking into account the financial terms and the duration of the contract, as well as the claimed amounts and the reference period stated by the Claimant, the Chamber concluded that the remaining value of the contract in the period between 1 June 2020 until the regular expiry of the contract can be specified as follows:

- EUR 2,500 as salary for the period between 1 and 15 June 2020;
- EUR 72,000 related to the 12 monthly salaries of EUR 6,000 in the season 2020/2021;
- EUR 69,000 related to 11.5 monthly salaries of EUR 6,000 in the season 2021/2022.

As a result, the DRC decided that the amount of EUR 143,500 shall serve as the basis for the final determination of the amount of compensation due to the player for breach of contract.

54. In continuation, the Chamber remarked that following the early termination of the employment contract at the basis of the present dispute, the Claimant was not able to find new employment. As a result, the Claimant was not able to mitigate his damages.

55. In view of all of the above, the Chamber decided that the Respondent must pay the amount of EUR 143,500 to the Claimant as compensation for breach of contract without just case, which is considered by the Chamber in this particular matter, given the circumstances described above, to be a reasonable and justified amount as compensation.

56. In addition, taking into account the Claimant's claim as well as the Chamber's longstanding jurisprudence in this respect, it was decided to award the Claimant interest of 5% *p.a.* as of 5 May 2020 on the compensation payable.

57. Finally, the DRC decided to reject the request for additional compensation, since the members did not find any particular reason for such adjustment. Furthermore, reference was also made to art. 17 par 1. lit ii of the Regulations, which provides for additional compensation only in case the player was able to mitigate his damage and the early termination of the contract being due to overdue payables. As previously mentioned, the player was not able to secure new employment following the early termination of his contract.

58. In conclusion, the DRC decided that the Respondent is liable to pay the total amount of EUR 156,468 to the Claimant, consisting of the amount of EUR 12,968 corresponding to the Claimant's outstanding remuneration at the time of the unilateral termination of the contract with just cause by the Claimant and the amount of EUR 143,500 corresponding to compensation for breach of contract.

59. The Dispute Resolution Chamber concluded its deliberations in the present matter stipulating that any further claim lodged by the Claimant is rejected. In conclusion, the Claimant's claim is partially accepted.

60. Furthermore, taking into account the consideration under number II./3. above, the Chamber referred to par. 1 and 2 of art. 24bis of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.

61. In this regard, the Chamber pointed out that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods.

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

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

III. DECISION OF THE DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant, Georgi Kitanov, is partially accepted.

2. The Respondent, AFC Astra, has to pay to the Claimant, the following amounts:

   - EUR 2,968 as outstanding remuneration plus 5% interest *p.a.* as from 15 March 2020 until the date of effective payment.
   - EUR 5,000 as outstanding remuneration plus 5% interest *p.a.* as from 15 April 2020 until the date of effective payment.
   - EUR 5,000 as outstanding remuneration plus 5% interest *p.a.* as from 5 May 2020 until the date of effective payment.
   - EUR 143,500 as compensation for breach of contract without just cause plus 5% interest *p.a.* as from 5 May 2020 until the date of effective payment.

3. Any further claims of the Claimant are rejected.

4. The Claimant is directed to immediately and directly inform the Respondent of the relevant bank account to which the Respondent must pay the due amount.

5. The Respondent shall provide evidence of payment of the due amount in accordance with this decision to **psdfifa@fifa.org**, duly translated, if applicable, into one of the official FIFA languages (English, French, German, Spanish).

6. In the event that the amount due, plus interest as established above is not paid by the Respondent **within 45 days,** as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:

   1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid. (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

   2. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.

For the Dispute Resolution Chamber:

Emilio García Silvero
Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 20 of the Procedural Rules).

CONTACT INFORMATION:

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