CAS 2024/A/10744 Silviu Lung v. Yukatel Kayserispor

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Mr. Lars Halgreen, Ph.D. Legal Director, Gentofte, Denmark

in the arbitration between

Silviu Lung, Bucharest, Romania

Represented by Mr. Dan Idita, Attorney-at-law, Bucharest, Romania

Appellant

and

Yukatel Kayserispor, Kayseri, Türkiye

Represented by Mr. Batu Mosturoğlu, Attorney-at law, Istanbul, Türkiye

Respondent

I. PARTIES

1. Silviu Lung (hereinafter "the Appellant" or "the Player") is a professional Romanian football goalkeeper, born on 4 June 1989, and is currently playing in CS Universitatea Craiova in Romania.

2. Yukatel Kayserispor (hereinafter "the Respondent" or "the Club") is a professional football club with its registered offices in Kayseri, Türkiye. The Respondent is registered with the Turkish Football Association, which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

3. The Appellant and the Respondent are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions, pleadings and evidence adduced at the hearing. Additional facts and allegations found in the parties' written submissions, pleadings and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 17 August 2020, the Parties entered an employment contract ("the Contract") for the period from 17 August 2020 to 31 June 2021.

6. The Contract contained a provision in Article 6, with the heading "*Obligations of the Club*". The provision was stipulated as follows:

"*The Club shall pay the amounts as written below to the Player in return of his services subject to this Contract, all payments indicated in this Contract are to be considered as "net" payments. The obligation of taxes and stamp duty shall be borne by the Club."*

a) ***A bonus for the signing of the present contract****, amounting to €204.000,00 payable as follows:*

- *Instalment 1 – 152.000,00 Euros on 19.08.2020.*

- *Instalment 2 – 52.000,00 Euros on 19.08 2021 (if the contract will not be extended for 2021/2022, this instalment will not be paid.)*

b) ***For 2020/2021 Football Season****:*

Salary of the Player*: €550.000*

The afore mentioned amount has to paid to the Player by the Club as the following:

€550.000 in ten (10) equal instalments of €55.000 as monthly salary due to be on the last day of the relevant month

31.08.2020 : 55.000-Euro

30.09.2020 : 55.000-Euro

31.10.2020 : 55.000-Euro

30.11.2020 : 55.000-Euro

31.12.2020 : 55.000-Euro

31.01.2021 : 55.000-Euro

28.02.2021 : 55.000-Euro

31.03.2021 : 55.000-Euro

30.04.2021 : 55.000-Euro

31.05.2021 : 55.000-Euro

c) For the 2021/2022 Football Season

31.08.2021 : 65.000-Euro

30.09.2021 : 65.000-Euro

31.10.2021 : 65.000-Euro

30.11.2021 : 65.000-Euro

31.12.2021 : 65.000-Euro

31.01.2022 : 65.000-Euro

29.02.2022 : 65.000-Euro

31.03.2022 : 65.000-Euro

30.04.2022 : 65.000-Euro

31.05.2022 : 65.000-Euro

a.2) ***Accommodation and Transportation Support***

In addition to the remuneration above, the Club shall pay the Player €10,000,00 per season accommodation and transportation of the Player.

The payments are to be due and payable to the Player on the above-mentioned dates and it shall be transferred to the bank account, which is to be provided by the Player. In case the Club falls into a default for any payment for more than sixty (60) days, then the Player shall have the option to terminate the Contract. In order to exercise this option, the Player shall first send a written notification to the Club by fax or by hand, and if the fails to pay the amount due to the Player within 15 days after the receipt by the Club of the notification, the Player shall be free to terminate the Contract."

7. Moreover, the Contract contained a provision in Article 11 named "Miscellaneous", which in subsection a) stipulated as follows:

"*The disputes arising from the present Contract may be referred to the FIFA Dispute Resolution Chamber as the first instance body. The Court of Arbitration for Sport (CAS) in Lausanne will act as the appeals body.*"

8. On 4 March 2022, the Club made a declaration "To Whom it May Concern" with the Club's letter head in the top, regarding the Club's guarantee for tax payments pursuant to the Contract. The declaration was made in a Turkish as well as an English version, and both were stamped on behalf of the Club, and signed with an illegible signature:

"*Due to the salaries paid by Kayserispor in accordance with the contracts signed between our club and our professional football player Silviu Lung between 29.06.2017-31.05.2020 and 17.08.2020-31.05.2022, Kayserispor guarantee to pay the tax that Silviu Lung has to pay to the Ministry of Finance of the Republic of Turkey in the past and future periods. Kayserispor Club Association will pay any tax.*"

9. On 25 January 2025, the Player sent a written payment notice by email to the Club, demanding payment of a debt of EUR 280'000 in outstanding un-paid salaries in accordance with the Contract, as well as payment of an amount of TL 1'648'803.92 TL in order for the Player to pay this amount to the tax authorities in Türkiye to settle outstanding un-paid taxes relating to his salaries received from his employment with the Club. The demand also included a reimbursement of legal costs in the amount of RON 11'830.98, equivalent to EUR 2'380 Euros.

10. On 17 March 2024, after not having received any payment from the Club, the Player lodged his identical main claim before the FIFA Dispute Resolution Chamber ("FIFA DRC"). The demand for payment was specified as follows: a) Entitled rights for January 2022: EUR 10'000; b) outstanding and un-paid salaries for the months February, March, April and May 2022 (4 x EUR 65'000 = EUR 260'000); c) Obligations for both 2020/2021 and 2021/2022 seasons (2 x EUR 10'000 = EUR 20'000) all in a total of EUR 290'000 by the Player before FIFA and then before CAS.

11. In addition, the Player again demanded payment of an amount of TL 1'648'803.92 for the Player to pay this amount to the tax authorities in Türkiye to settle outstanding un-

paid taxes according to a payment order of 25 July 2022, as well as the prior demand for reimbursement of attorneys' fees.

12. Before the FIFA DRC, the Club acknowledged a debt of EUR 130'000. As for the tax claims, the Club argued that this was actually a tax penalty and that it was thus the Player's own obligations, not the Club. According to the Club, the Player was negligent and "*contractual obligation of compensating the player for taxes does not necessarily mean that the player is exempt from formalities before tax authorities*". The Club further stated that the deadline to seek remedy for allegedly unpaid taxes for the fiscal year 2020 had expired on 31 December 2022, and thus the claim should now be considered inadmissible. As for the remuneration claimed beyond the acknowledged EUR 130'000, the Club claimed that these claims were now time-barred, as these allegedly unpaid remuneration became in any event due more than two years before the claims were raised before the FIFA DRC.

13. With respect to the admissibility of the claims, the FIFA DRC noted the following in paras 5-10 of its ruling:

"*5. At this point, the Chamber referred to art. 23 par. 3 of the Regulations, which stipulates that the decision-making bodies of FIFA shall not hear any dispute if more than two years have elapsed since the facts leading to the dispute arose. The application of the time limit shall be examined ex officio in each individual case.*

6. In this context, the Chamber recalled that the present claim was lodged in front of FIFA on 17 March 2024. Therefore, in line with art. 23 par. 3 of the Regulations, any amount fallen due before 17 March 2022 are affected by the statute of limitation.

7. The Chamber noted that, in the present case, the Claimant inter alia requested the payment of certain amounts that were due prior to said date. The Chamber thus concluded that the Claimant's request is partially time-barred. Consequently, the specific part of the Claimant's claim related to the payment of due prior to 17 March 2022 is considered inadmissible.

8. The claim of the player was lodged on 17 March 2024. Therefore, any amount due prior to 17 March 2022 shall be considered time barred. As a result, the claim is partially time-barred.

9. In addition, the Chamber observed that the player requested the reimbursement of taxes for the year 2020, based on a notification from the Turkish tax authority received on 25 July 2022.

10. In this respect, the Chamber noted that the player attached a unilateral document stamped by the club and issued on 4 March 2022, in which the latter guarantees to pay the player's "past and future" taxes. The Chamber considered that this shall be understood as a novation of the debt and thus the claim for taxes is not time-barred."

14. On this basis, the FIFA DRC observed that "*the club does not contest its debt concerning the non-prescribed amounts*" and noted that the Player requested the payment of his remuneration from January until May 2022 before addressing these claims as follows:

"15. Given the partial prescription of the claim and the fact that the club did not contest that said amounts remained unpaid, the Chamber player is entitled to the following amounts:

March 2022	EUR 65,000
April 2022	EUR 65,000
May 2022	EUR 65,000
Accomodation	EUR 10,000 (due on 1 June 2022)
	EUR 205,000 net

16. In addition, following the longstanding jurisprudence of the DRC, the Chamber decided to award 5% interest p.a. as from the due dates".

Finally and with respect to the amount of TL 1'648'803.92 claimed as reimbursement for taxes, the FIFA DRC noted in this regard that "*the club committed on 4 March 2022 that it would cover the debt. Consequently, the club shall reimburse TRL 1,648,803.92 to the player, as per the aforementioned decision and in accordance with its own unilateral commitment*".

15. Accordingly, the DRC decided on the matter as follows:

"1. The claim of the [Player] is partially accepted insofar it is admissible.

2. The [Club] must pay to the [the Player] the following amounts:

*- **EUR 205,000 net as outstanding remuneration** plus interest p.a. as follows:*

- 5% interest p.a. over the amount EUR 65,000 net of as from 1 April 2022 until the date of effective payment.

- 5% interest p.a. over the amount EUR 65,000 net of as from 1 May 2022 until the date of effective payment.

- 5% interest p.a. over the amount EUR 65,000 net of as from 1 June 2022 until the date of effective payment.

- 5% interest p.a. over the amount EUR 10,000 net of as from 2 June 2022 until the date of effective payment.

*- **TRL 1,648,803.92 as reimbursement for taxes**.*

3. *Any further claims of the [Player] are rejected.*

4. *Full payment (including all applicable interest) shall be made to the bank account indicated in the Bank Account Registration Form.*

5. *Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made within 45 days of notification of this decision, the following consequences shall apply:*

   1. The [Club] shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.

   2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.

6. *The consequences shall only be enforced at the request of the Claimant in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.*

7. *This decision is rendered without costs.*

8. *A fine in the amount of USD 10,000 imposed on the [Club], which must be paid to FIFA within 30 days of notification of this decision. Such fine must be paid to the following bank account with a clear reference to the case FPSD-14090".*

16. The decision of the FIFA DRC ("the Appealed Decision") was passed on 13 June 2024, and the notification of the grounds of the decision was issued to the Parties on 21 June 2024.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 11 July 2024, the Appellant filed its Statement of Appeal with the CAS challenging the Appealed Decision in accordance with Article 57 par. 1 of the FIFA Statute and Article R48 of the Code of Sports-related Arbitration ("the Code") (2023 edition). In the Statement of Appeal, the Appellant requested the appointment of Mr. Petros Mavroidis as Sole Arbitrator to adjudicate the case.

18. On 19 July 2024, the CAS Court Office acknowledged receipt of the Statement of Appeal, which was notified to the Respondent.

19. On the same day, the CAS Court Office notified FIFA of the appeal stating that FIFA was not a party to the CAS proceedings. However, if FIFA pursuant to Article R41 (3) of the Code wished to become a party in these proceedings, the deadline for filing an application to this effect, was 10 days from the receipt of this letter.

20. On 22 July 2024, the Appellant filed his Appeal Brief.

21. On 24 July 2024, FIFA replied to the CAS Court Office letter of 19 July 2023, stating that it renounced its right to possibly intervene in the present CAS proceedings according to Articles R53 (2) and R41 (3) of the Code.

22. On 26 July 2024, the Respondent *inter alia* requested the CAS Court Office that the case was resolved through an expedited procedure. The Respondent could further not accept that Mr. Petros Mavroidis be appointed as Sole Arbitrator but suggested instead that the President of the Appeals Division of the CAS appointed another arbitrator as Sole Arbitrator to adjudicate the matter. Finally, the Respondent stated that it would not pay its share of the advance of costs and requested that the time-limit for the filing of the Answer be fixed upon payment of the requested advances of costs by the Appellant.

23. On 5 August 2024, the CAS Court Office acknowledged receipt of the Appeal Brief, a copy of which was sent to the Respondent, and of the Respondent's letter of 26 July 2024.The CAS Court Office *inter alia* confirmed that, pursuant to Article R55 par. 3 of the Code, the time-limit for the filing of the Answer would be fixed upon receipt of the Appellant's payment of his share of the requested advances of costs.

24. The letter of 24 July from FIFA was also enclosed for the Parties' attention, stating that FIFA had renounced its right to be a party in the present proceedings.

25. On 8 August 2024, the Appellant informed the CAS Court Office that he did not agree to have the case resolved under the expedited procedure rules, but he was willing to pay the full advance of costs in this matter, requesting that this would be considered in the final judgment.

26. On 9 August 2024, the CAS Court Office informed the Parties that, given the objection by the Appellant, no expedited procedure was to be implemented. A Sole Arbitrator was then to be appointed in accordance with Article R54 of the Code. Finally, the CAS Court Office replied that it would be upon to the Panel in its arbitral award to decide on the cost matter pursuant to Article R64.5 of the Code.

27. On 6 September 2024, the CAS Court Office acknowledged receipt of the Appellant's payment of the requested advance of costs for this procedure. In accordance with Article R55 of the Code, the Respondent was told that it should submit its Answer by 26 September 2024.

28. On 26 September 2024, the Respondent filed its Answer.

29. On 1 October 2024, the CAS Court Office acknowledged receipt of the Respondent's Answer, which was notified to the Appellant. The Parties were further invited to indicate by 8 October 2024 whether they preferred for a hearing and/or a case management conference pursuant to Articles R56 and R57 to be held. Pursuant to Article R54 of the Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division,

the Parties were further informed that the Panel to decide this matter had been constituted as follows:

Sole Arbitrator: Mr. Lars Halgreen, Ph.D. Legal director in Gentofte, Denmark.

30. On 8 October 2024, the Appellant stated that neither a case management conference nor a hearing would not be necessary, and he requested that the Sole Arbitrator decided the case based on the written documents on record. The letter also included several new arguments and submissions directed against the Respondent's Answer.

31. On 11 October 2024, the Respondent informed the CAS Court Office that it wished for a hearing to be held in the matter.

32. On the same day, on behalf of the Sole Arbitrator and pursuant to Article R57 of the Code, the CAS Court Office requested to FIFA a copy of its complete case file relating to this appeal.

33. On 18 October 2024, the CAS Court Offices wrote to the Parties addressing the issue of the new arguments and submissions that had been presented in the Appellant's letter of 8 October 2024, and on behalf of the Sole Arbitrator kindly reminded he Parties that in appeals procedure there was only allowed one round of written submissions. The Parties were informed that the Sole Arbitrator felt that the Appellant did not establish, nor even alleged, any exceptional circumstances as per the conditions in Article R56 that would justify the filing of his observations of 8 October 2024, which would thus be excluded from the CAS file, except if the Respondent expressed, by email on or before 22 October 2024, its agreement with their admission on file. In case of acceptance, the Respondent would then be granted with the opportunity to submit a second response.

34. On 18 October 2024, the Respondent objected against the admissibility of the new arguments and submissions, which had been presented in the Appellant's letter of 8 October 2024.

35. On 21 October 2024, FIFA produced the copy of the requested file.

36. On 25 October 2024 and after due consultation with the Parties, the CAS Court Office informed the Parties that a video-conference hearing would be held on 20 November 2024. A copy of FIFA's letter of 21 October 2024 was furthermore enclosed including a link to the requested FIFA file. As regards the observations in the Appellant´s letter of 8 October 2024, the CAS Court Office on behalf of the Sole Arbitrator informed the Parties as follows: "*I refer to the CAS Court Office letter of 18 October 2024 and, in view of the Respondent's objection, inform you that the Appellant's observations of 8 October 2024 are excluded from the CAS file. The Sole Arbitrator, however, notes that, while such observations amount to a Reply which shall be excluded from the CAS file, it would be appropriate, in view of the Answer, to order the filing of some observations on some specific issues which had not been addressed by the Appellant in his Appeal Brief. Accordingly, in view of the Answer and of Articles R44.3, R56 and R57 of the CAS Code, the Sole Arbitrator hereby grant the Appellant with the opportunity to submit, on*

or before 30 October 2024, observations strictly limited to the issues of (i) standing to be issued (absence of FIFA); (ii) the Panel's scope/power of review and (ii) mitigation (cf. pages 1- top of p. 8 of the Answer. The Respondent will then have the opportunity to submit short observations in reply."

37. On 30 October 2024, the CAS Court Office acknowledged receipt of the Appellant's observations of 29 October 2024, a copy of which was sent to the Respondent's attention with the instructions that any reply should be submitted on or before 4 November 2024.

38. On 4 November 2024, the Respondent filed its reply.

39. On 7 November 2024, the CAS Court Office enclosed for the Parties' attention an Order of Procedure. This Order was returned duly signed by the Appellant on 8 November 2024, and by the Respondent on 14 November 2024 without any objections or reservations.

40. On 20 November 2024, the hearing took place in the present case, by videoconference. In addition to the Sole Arbitrator, and Ms Pauline Pellaux, Counsel to the CAS, the following persons attended the hearing remotely:

For the Appellant:

– Mr. Dan Idita, legal counsel,

– Mrs Liliana Necsoiu, authorized English translator

For the Respondent:

– Mr. Batu Mosturoğlu, legal counsel

– Mr. Melih Akinci, tax accountant

– Ms. Dilara Ayca Kahraman, intern legal assistance

– Mr. Kaan Özcelik, intern legal assistance

– Ms. Begum Sackirk, interpreter

41. At the outset of the hearing, the Parties confirmed that they had no objections to the constitution of the Panel, i.e. the appointment of Mr. Lars Halgreen as Sole Arbitrator to adjudicate this matter.

42. The Parties made their submissions in support of their respective prayers and requests for relief, having amble time for closing and rebuttals. Mr. Akinci made a presentation about the general taxation principles in Türkiye, but he had no prior knowledge of, or involvement in, the matter before this appeal case, and the Sole Arbitrator made it clear that he would thus not be considered a witness during the proceedings. Mr. Batu Mosturoğlu questioned during the hearing the validity of the signatures on the

declaration of 4 March 2022 regarding the guarantee issued by the Club for the payment of future and past taxes according to the Contract, but this argument had not been brought forward at the CAS proceedings, nor before the FIFA DRC, and therefore the Sole Arbitrator dismissed this new argument, since no exceptional circumstances as per Article R56 of the Code could justify this admission during the hearing.

43. At the end of the hearing, the Parties expressly stated that their right to be heard and to be treated equally in these proceedings had been fully respected.

IV. SUBMISSIONS OF THE PARTIES

The position of the Appellant:

44. In the Appellant's Appeal Brief, the following requests for relief in these proceedings have been made:

"1. Allow the appeal

2. Annul the appealed Decision in part, with the consequence of admitting in full our claims in the action brought before FIFA, and order Club Parat to pay me all outstanding financial dues in the amount of 280,000 Euro and interest at the rate of 5% per annum from the date of each due date, as well as the fees due to the tax authorities, in accordance with their request for payment of the amount of TRL 1,648,803.92.

3. To order the Respondent to pay the expenses incurred in the steps necessary for the recovery of the debt, namely the attorney's fees in the amount of TRL [actually RON] *11,830.98.*

4. To order the Respondent to pay the expenses incurred for the resolution of the appeal, consisting of the fees to be paid to CAS."

45. The Appellant's submissions in support of his requests for relief were as follows:

"1. The decision is given with a misapplication of the legal provisions, as the DRC unjustly considered that the limitation period has expired for the amounts consisting of 10.000 Euro - the outstanding amount of the financial entitlements for the month of January 2022 and for the financial entitlements for the month of February 2022.

2. FIFA decides in cases referred to it on the basis of its regulations, which are supplemented by Swiss law.

3. Furthermore, in accordance with Art. 58 CAS, R58 on the law applicable to the merits of the dispute, as far as CAS is concerned, "The Panel shall decide the dispute in accordance with the applicable regulations and, in the alternative, with the rules of law chosen by the parties or, in the absence of such choice. In the latter case, the court shall give reasons for its decision".

4. *Accordingly, Swiss law is applicable in the present case.*

5. *According to Article 135 of the Swiss Code of Obligations, " The limitation period is interrupted: 1. if the debtor recognizes the claim and, in particular, if he makes interest payments or partial payments, pledges an asset or provides a guarantee; 2^56 by a foreclosure proceeding, a request for conciliation, the filing of a statement of claim or defense with a court or arbitral tribunal, or a petition in bankruptcy."*

6. *The DRC has wrongly rejected my claim in respect of the outstanding amount of €10,000 in financial entitlements for January 2022. Of the total amount of 65,000 Euro due for the month of January 2022, the Respondent has made partial payment, leaving a remainder of 10,000 Euro. The partial payment made interrupted the prescription, as my Notification received by the Respondent on 25.01.2024 also interrupted the course of the prescription, having the value of a request for conciliation, within the meaning of art. 135 para. 1 and 2^56 of the Swiss Civil Code of Obligations.*

7. *Similarly, the 2-year statute of limitations was interrupted for the amount of 65,000 Euros owed by Parat for the month of February 2022, based on the Notification received on 25.01.2024, so that the total amount of 75,000 Euros, had to be admitted.*

8. *After the interruption of the statute of limitations operated by the Notification received on 25.01.2024, a new limitation period started to run, in accordance with Art. 138 of the Swiss Code of Obligations.*

9. *The contested decision is unfounded and unlawful also in the aspect of rejecting the request to order the defendant to pay the costs incurred by the necessary steps to recover the debt from the defendant, namely the lawyer's fees in the amount of 11,830.98 lei. I appreciate that the provision according to which the procedure before Fifa is "without costs" is interpreted in the sense that the DRC's procedural fees are not payable, but the expenses that I have incurred and proved in order to recover the debt from Parat, based on the fault of the defendant who did not make the payment in bad faith, must be borne by him. I beg to admit this petit also."*

46. The Sole Arbitrator has also taken note of the Appellant's observations in his letter of 29 October 2024, as a specific rebuttal to the submissions brought forward in the Respondent's Answer. The Sole Arbitrator will only insofar these additional remarks have any influence on the outcome of this case, address them below in this award.

The position of the Respondent:

47. In the Respondent's Answer the following requests for relief have been made:

1. *"CONFIRM FIFA DRC DECISION IN TERMS OF ALLEGEDLY UNPAID REMUNERATION OF JANUARY 2022 (€65.000), FEBRUARY 2022 (€65.000), ALLEGED OBLIGATION FOR 2020/2021 SEASON (€10.000), ALLEGED OBLIGATION FOR 2021/2022 SEASON (€10.000). UPHELD THE DECISION.*

2. DISMISS THE CLAIM OF THE APPELLANT IN TERMS OF ALLEGEDLY UNPAID TAXATION AND REDUCE THE PORTION CORRESPONDING TO PENALTY.

3. DISMISS THE CLAIM REGARDING FEES AND EXPENSES BEFORE FIFA.

4. ORDER THE APPELLANT THE COVER THE REPSONDENT'S LEGAL EXPENSES AND FEES."

48. The Respondent's submissions in support of its requests for relief, in essence, may be summarized as follows:

i) FIFA should have been a Party in these proceedings.

49. The Respondent submits that it should have been FIFA who was a Party in these proceedings, as the Appellant would not only challenge the outcome of the case but also FIFA's approach and FIFA's interpretation of its own rules. FIFA's absence from these proceedings thus puts the Respondent in an unusual and prejudicial position. The Respondent is forced to defend its own rights and act as a proxy for FIFA, while their interests are different.

The Respondent claims that the Sole Arbitrator should consider this procedural deficiency, since it was the Appellant who failed to bring FIFA before CAS as a party.

ii) The Appellant has failed to mitigate his alleged damages.

50. The Respondent submits that, by virtue of the CAS full power of review, the appeal allows for a complete examination of both factual and legal matters as well as the filing of new evidence.

51. The Respondent deems that the Appellant has failed his duty to mitigate his damages as per the tax amounts, which the Turkish tax authorities has demanded that he paid. The Appellant had consulted with his own tax advisers both in Türkiye and Romania, and he had nevertheless neglected to report and pay his personal taxes on time.

By neglecting to properly fulfil his tax obligations, he has failed to mitigate his damages, and any penalties incurred are the result of his own decision, rather than any action or omission by the Respondent.

The Respondent has referred to long-established CAS jurisprudence regarding a party's obligation to mitigate his losses, which the FIFA DRC in the Respondent's view failed to apply.

iii) Question of application of FIFA rules over Swiss law as regards statute of limitation and costs/fees.

52. The Respondent dismisses the Appellant's argument that the Swiss Code of Obligations holds primacy over FIFA Regulations. This assertion is wrong, as Swiss law may only be applied subsidiarily or in the absence of clear FIFA provisions.

CAS jurisprudence has confirmed this hierarchical structure many times, recognising the need for specialized rules in international football. The wording of the FIFA Regulations is also very clear: "*CAS shall primarily apply the various regulations of FIFA and,* additionally*, Swiss law*".

Article R58 of the Code states that this choice of law is relevant only "*subsidiarily*." As a result, Article R58 of the Code limits the autonomy of the parties, as even when a law has been chosen, the "applicable regulations" of the governing body that issued the initial decision take precedence, regardless of the parties' preference. These regulations are the independent rules of the association whose decision is being contested in the appeals arbitration.

The FIFA DRC observed that the Appellant sought payment for certain amounts that were due prior 17 March 2022, i.e. two years before the claim was brough before the FIFA. Consequently, it was concluded that the request was partially time-barred. According to Article 23, paragraph 3 of the FIFA Regulations on the Status and Transfer of Players ("RSTP"), any amounts that became due before 17 March 2022 hence were subject to the statute of limitations.

The Appealed Decision contains no substantive or procedural errors regarding the statute of limitations. The Appellant failed to file his claim within the prescribed time frame, as required by the relevant regulations. This failure to bring the matter before FIFA in a timely manner cannot be rectified through an appeal to CAS.

The Respondent respectfully requests that the Sole Arbitrator affirms the FIFA DRC's ruling in this regard, as the decision concurs with both CAS and FIFA DRC jurisprudence.

Finally, the Respondent respectfully requests that the Sole Arbitrator rejects the Appellant's claim for legal expenses at every level of these proceedings.

V. JURISDICTION

53. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with the 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. […]"

54. The Appellant relies on Article 57 of the Statutes of FIFA as conferring jurisdiction on the CAS. This provision 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*".

55. The jurisdiction of CAS on appeal cases is further also agreed upon in Article 11 a) in the Contract. The Respondent does not contest the jurisdiction of CAS, which has been confirmed by the signing the Order of Procedure. Thus, the Sole Arbitrator rules that CAS has jurisdiction in the matter at hand.

VI. ADMISSIBILITY OF THE APPEAL

56. Article R49 of the Code provides as follows:

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

57. According to Article 57 par. 1 of the FIFA Statutes, a decision made by FIFA's Dispute Resolution Chamber may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of the decision. Thus, this deadline for filing an appeal supersedes the rule in Article R49 of the Code, since Article 57 par 1 of the FIFA Statutes takes precedence in this football-related matter, although the deadline would have been the same according to the CAS rules.

58. The Appealed Decision with grounds was notified by FIFA to the Parties on 21 June 2024.

59. The Statement of Appeal was filed by courier with the CAS Court Office on 11 July 2024. Hence, the Sole Arbitrator rules that the appeal filed by the Appellant was timely within the 21-days deadline pursuant to Article 57 par 1 of the FIFA Statutes.

60. The Player also complied with all other requirements of Article R48 Code, including the payment of the CAS Court Office fee.

61. It follows that the appeal is admissible.

VII. OTHER PROCEDURAL ISSUES

62. The Sole Arbitrator observes that, while it has not filed an appeal against the Appealed Decision, the Respondent, referring to the CAS full power of review, requests not only the confirmation of the Appealed Decision but also the dismissal of the Appellant' claim "*in term of allegedly unpaid taxation and reduce the portion corresponding to penalty*" (cf. Respondent's second request for relief, supra para. 47).

63. The Sole Arbitrator further notes that, in his letter of 29 October 2024, the Appellant objected against taking the Respondent's claim into consideration during these proceedings because the Respondent neither lodged an appeal with the CAS within the statutory time limit lodge, nor paid the fees related to its claim.

64. On this issue, the Sole Arbitrator considers that the Respondent's second request for relief, which goes beyond a request for the confirmation of the Appeal Decision or a mere statement of defence, *de facto* amount to a counterclaim.

65. The Sole Arbitrator hereby notes that, while Article R57 of the Code provides that "[t]*he Panel has full power to review the facts and the law*", this power is limited to the matters in dispute brought before it (CAS 2019/A/6483, para. 134). The CAS power of review is indeed limited by the scope of the decision under appeal (CAS 2012/A/2874, MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, p. 522, no 54, with references) and by the conclusions of the appeal brought against it, counterclaims being inadmissible in appeals proceedings.

66. The Sole Arbitrator recalls here that according to CAS constant jurisprudence, counterclaims and cross-appeals are no longer admissible following the 2010 amendments of the Code (CAS 2021/A/8277 para. 70 and numerous quoted references). "*This means that, if a potential respondent wants to challenge part or all of a decision, it must file an independent appeal with the CAS within the applicable time limit for appeal*" (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport, 2015, pp. 249 and 488, with references).

67. Accordingly, for the Respondent to raise the issue of the validity of the Appellant's claim relating to unpaid taxation in a lawful manner, it should have filed its own independent appeal against the Appealed Decision (CAS 2021/A/8277 para. 70, CAS 2020/A/7605 paras. 185-188).

68. As a result, the Sole Arbitrator finds that the Appellant's protest against the *de facto* counterclaim of the Respondent shall be accepted and concludes that the Respondent's second request for relief is inadmissible.

VIII. APPLICABLE LAW

69. Article R58 of the Code provides as follows:

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

70. In addition, Article 57(2) of the FIFA Statutes stipulates 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*".

71. In light of the above and the absence of any choice of law in the Contract, the Sole Arbitrator is satisfied to primarily apply the various regulations of FIFA and, subsidiarily, Swiss law should the need arise to fill a possible gap or lacuna in the various regulations of FIFA.

72. The Sole Arbitrator underlines here that he has taken due note of the Parties' respective position with respect to the applicability of Articles 135 and 138 of the Swiss Code of Obligations ("SCO"). Such issue will, if needed, be addressed under the section dedicated to the merits of the case.

IX. MERITS

73. Keeping in mind the submissions of the Parties, the Sole Arbitrator considers that in deciding the merits of this matter, the following issues need to be addressed:

i. Has the status of FIFA as a (non) party in these proceedings any influence on the merits of the case?

ii. Does FIFA correctly consider that the Appellant's claims for allegedly outstanding remuneration was partially time-barred?

iii. Should the Respondent pay the Appellant's prior expenses incurred in the recovery of the alleged debt in the form of attorney's fees of TL (actually RON) 11'830.98 as per the Appellant's third request of relief?

Re i.) - *Has the status of FIFA as a (non) party in these proceedings any influence on the merits of the case?*

74. FIFA has not been named a party in this case, when the Appellant on 11 July 2024 filed his Statement of Appeal with the CAS, challenging the Appealed Decision in accordance with Article 57 par. 1 of the FIFA Statute and Article R48 of the Code. Hence, on 19 July 2024, the CAS Court Office routinely notified FIFA of the appeal informing that FIFA was not a party to the CAS proceedings.

75. On 24 July 2024, FIFA replied to the CAS Court Office, stating that it renounced its right to possibly intervene in the present CAS proceedings according to Articles R53 (2) and R41 (3) of the Code. Thus, FIFA has never been a Party in the present case.

76. Neither Parties have made any prayers or requests for relief as regards the elements of a disciplinary nature in the Appealed Decision, but if that had that been the case, FIFA would be the only party that had standing to be sued with respect to the imposition of a sanction (CAS 2017/A/ 5322 at para. 58).

77. However, this is - in the opinion of the Sole Arbitrator - a moot point, since the matter at hand solely concerns the financial grievances between the Parties in relation to the Contract, which the FIFA DRC in the Appealed Decision has adjudicated in accordance with the relevant provisions in the FIFA Regulations.

78. The Sole Arbitrator fully concurs with the FIFA DCR's own decision that it was the competent governing body according to the FIFA Statutes and Regulations to have dealt with this matter in the first instance, as it concerns an employment-related dispute of an international dimension between a Romanian player and a Turkish club, pursuant to the rules in art. 23 par. 1 in combination with art. 22 lit. b) in the FIFA RSTP (2023 edition).

79. When FIFA has not been named a party in these proceedings by either Parties, and has renounced its right to intervene in the present case, the question of the status of FIFA as a possible party in this matter, has therefore no influence whatsoever on the merits of the case, and the Sole Arbitrator must for that reason dismiss the argument by the Respondent that the fact that FIFA is not a party in this case, should amount to a "procedural deficiency" in this case, as alleged by the Respondent. This claim is meaningless and groundless.

Re ii) - Does FIFA correctly consider that the Appellant's claims for allegedly outstanding remuneration was partially time-barred?

80. In its decision to consider a part of the Appellant's claim against the Respondent time-barred, the FIFA DRC stated the following regarding the admissibility of the claim in accordance with FIFA regulations:

"5. At this point, the Chamber referred to art. 23 par. 3 of the Regulations, which stipulates that the decision-making bodies of FIFA shall not hear any dispute if more than two years have elapsed since the facts leading to the dispute arose. The application of the time limit shall be examined ex officio in each individual case.

6. In this context, the Chamber recalled that the present claim was lodged in front of FIFA on 17 March 2024. Therefore, in line with art. 23 par. 3 of the Regulations, any amount fallen due before 17 March 2022 are affected by the statute of limitation.

7. The Chamber noted that, in the present case, the Claimant inter alia requested the payment of certain amounts that were due prior to said date. The Chamber thus concluded that the Claimant's request is partially time-barred. Consequently, the specific part of the Claimant's claim related to the payment of due prior to 17 March 2022 is considered inadmissible.

8. The claim of the player was lodged on 17 March 2024. Therefore, any amount due prior to 17 March 2022 shall be considered time barred. As a result, the claim is partially time-barred."

81. The Sole Arbitrator notes here that there is no document or evidence on record in the FIFA file, or produced by the Appellant during these proceedings, to suggest or even

contemplate that the amount of EUR 85'000 (allegedly unpaid remuneration for January 2022 (EUR 10'000), for February 2022 (EUR 65'000) and EUR 10'000 for accommodation (season 2020/2021)) that according to the stipulations in the Contract originally fell due before 17 March 2022 has for example been acknowledged by the Respondent at a later stage in such a way that a *novation* of the debt obligation has occurred.

82. In this context, the Sole Arbitrator understands that the Appellant in his submissions above has relied on Article 135 ff SCO, which relates to "*the interruption of the prescriptive period*" under Swiss law. The FIFA Regulations do not expressly address this issue, but the FIFA Commentary on Article 23 para. 3 in the FIFA RSTP (edition 2023) points to a very strict interpretation vis-a- vis which actions will interrupt the two-year limitation period:

"*Finally, the two-year time limit will only be respected if a complete claim in line with the requirements of the Procedural Rules is submitted to FIFA within this timeframe. **Any exchanges between the parties**, specifically including attempts to reach an amicable settlement, default notices, warnings, notices that a claim will be submitted if the payment is not received by a specific date, or any other similar communications between the parties outside of a formal procedure and investigation based on a relevant claim**, will not, in principle, interrupt the limitation period**.*

***One exception is noted in the jurisprudence, i.e. circumstances in which a party acknowledges or admits a debt**. Such instances have been recognized by CAS as a valid ground on which a claim should be ruled admissible in spite of the (original) event giving rise to the dispute having occurred more than two years prior to the claim being lodged. Some decisions of the FT also reflect this approach."* [emphasis added]

83. The CAS jurisprudence, which the FIFA Commentary refers to in the last paragraph, is the case, CAS 2012/A/2919. In this matter, "*the Sole Arbitrator* [was] *satisfied that …. a valid admission by the debtor was made in respect of the debt, accompanied by a request for an extension of the deadline for payment. A request that was kindly and in the highest degree of bona fide accepted by the Appellant*" (cf. para 65).

84. Under those circumstances, and "*applying article 135 of the Swiss Code of Obligations to the matter at stake the Sole Arbitrator [was led] to the conclusion that the limitation period of article 25(5) of the FIFA Regulations was interrupted ….and that, pursuant to article 137(1) of the Swiss Code of Obligations, a new limitation period commenced on the same date. As such, the claim of FC Seoul dated 30 March 2010 was filed within the two-year limitation period and as such should be deemed admissible*" (cf. para 68).

85. Against this background, the Sole Arbitrator finds that a debtor's recognition of his debt obligation that would otherwise have been time-barred, is the only valid exception recognized according to Article 23 para 3 of the FIFA RSTP (2023 edition). Thus, any other action taken by a creditor than submitting the un-paid and un-recognized claim before FIFA would *a priori* not interrupt the two years limitation period according to FIFA's own interpretation of Article 23 para. 3 in the FIFA RSTP (2023 edition), which

understanding is based on the above-mentioned CAS jurisprudence, and the Sole Arbitrator concurs with this interpretation of the provision in the FIFA Regulations.

86. The Sole arbitrator will then turn to the question whether the issue of admissibility of the financial claims that fell due before 17 March 2022 should be decided *exclusively* according to the FIFA Regulations, as maintained by the Respondent, or also according to Swiss law, as maintained by the Appellant, who deems that Articles 135 and 137 SCO should be applied to the present case.

87. In the view of the Sole Arbitrator, the wording of Article R58 on "applicable law" without a doubt dictates in which order of possible regulatory remedies, a dispute at the CAS should be resolved: "*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.*".

88. The above underlined stipulation of this central provision in the Code thus provides a very clear answer to the question, namely that the issue of admissibility of claims raised before the FIFA DRC shall be resolved first and foremost at the CAS according to the *applicable regulations* in football, i.e. Article 23 par. 3 of the FIFA RSTP (2023 edition), and subsidiarily according to Swiss law.

89. The Sole Arbitrator further notes that, contrary to the Appellant's submission, FIFA Regulations in this matter hold primacy over Swiss law since the admissibility of claim is regulated by Article 23 para 3 of the FIFA RSTP (2023 edition).

90. The obligation to bring a matter before FIFA within the stipulated two years is in fact previously confirmed by CAS jurisprudence. As pointed out in the Respondent's Answer, the correct understanding of the rule was in particular clarified in CAS 2015/A/4350: "*Pursuant to the clear wording of the applicable regulations, the statute of limitation requires the creditor to bring suit within two years and runs from the day his claim fell due, not when a formal notice is given, when the contract is terminated, or when a dispute actually arises. The triggering moment is the maturity of the debt. A player's claim for the payment of the last instalment of contractual expenses is time-barred if it is filed outside this deadline.*"

91. The Sole Arbitrator fully concurs with the findings in the previous CAS jurisprudence that the maturity of the debt marks the starting point of the statute of limitation period. In this regard, the Respondent is also correct when pointing out that this passage underscores the requirement to file claims within the two-year statute of limitations, starting from the due date of the claim, not from later events such as formal notices or contract termination.

92. Against this background, the Sole Arbitrator deems that the decision of the FIFA DRC's ruling that any amount due prior to 17 March 2022 thus shall be considered time barred, is correct.

93. For the sake of completeness, the Sole Arbitrator further notes that, even if Articles 135 and 137 would have been applicable and if other interruptive actions provided by Article 135 could maybe also be recognized, the FIFA decision – given the actual facts of this case - on the timeliness of the claim would still be correct and that there is thus no need to rule on this issue in the present case.

94. Indeed, with respect to the letter sent on 25 January 2024 by the Appellant to the Respondent, while Article 135 para. 2 SCO provides that an application for conciliation interrupts the prescriptive period, this provision actually refers to requests for conciliation brought before the relevant judge (cf. CARRON/GAURON-CARLIN, CC&CO ANNOTES, 12 ed, ad. Article 135, p. 142) and, with respect to the partial payment of the salary of January 2022, the Sole Arbitrator notes that while Article 137 para. SCO, provides that "[a] *new prescriptive period commences as of the date of the interruption*", the Appellant did not even allege that such partial payment would have been made after 17 March 2022.

95. In light of the above, the Appellant's second request for relief should be dismissed.

Ad iii) - Should the Respondent pay the Appellant's prior expenses incurred in the recovery of the alleged debt in the form of attorney's fees of RON 11'830.98 as per the Appellant's third request of relief?

96. The Sole Arbitrator notes that the Appellant finally challenged the Appealed Decision in so far as it dismissed his claim for the reimbursement of his Attorney fee then amounting to RON 11'830.98. On this point, the Sole Arbitrator can only endorse FIFA ruling which is in full compliance with Article 25 para. 8 of its Procedural Rules, as such provision expressly provides that "[n]*o legal costs shall be awarded. Parties shall bear all their own costs in connection with any procedure*".

X. COSTS

(…).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Silviu Lung on 11 July 2024 is dismissed.

2. Yukatel Kayserispor's second request for relief is inadmissible.

3. The decision rendered by the Dispute Resolution Chamber of the FIFA Football Tribunal on 13 June 2024 is confirmed.

4. (…).

5. (…).

6. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 20 March 2025

THE COURT OF ARBITRATION FOR SPORT

Lars Halgreen
Sole Arbitrator