CAS 2023/A/10241 Istanbul Spor AS v. Club Estoril Praia & Racine Coly
CAS 2023/A/10247 Racine Coly v. Club Estoril Praia

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Ms Annett Rombach, Attorney-at-Law, Frankfurt am Main, Germany

between

Istanbul Spor AS, Turkey

Represented by Mr Sercan Teker, Attorney-at-Law, Istanbul, Turkey

Appellant in CAS 2023/A/10241

and

Club Estoril Praia Futebol SAD, Portugal

Represented by Mr João Filipe Lobão, Attorney-at-Law with L&SP Advogados, Lisbon, Portugal

First Respondent in CAS 2023/A/10241 & Second Respondent in CAS 2023/A/10247

Racine Coly, Senegal

Represented by Mr Pedro Macieirinha, Attorney-at-Law with JMPM Advogados, Vila Real, Portugal

Second Respondent in CAS 2023/A/10241 & Appellant in CAS 2023/A/10247

I. THE PARTIES

1. Istanbul Spor AS ("**Istanbul Spor**" or the "**Appellant**") is a professional football club with its registered office in Istanbul, Turkey.

2. Club Estoril Praia Futebol SAD ("**Club Estoril**" or the "**First Respondent**") is a professional football club with its registered office in Estoril, Portugal.

3. Mr Racine Coly (the "**Player**" or the "**Second Respondent**") is a professional football player from Senegal.

4. The First Respondent and the Second Respondent are collectively referred to as the "**Respondents**". The Appellant, and the Respondents are collectively referred to as the "**Parties**".

II. INTRODUCTION

5. These appeal proceedings concern a contractual dispute between Club Estoril and the Player. The central issue is whether Club Estoril had just cause to terminate the employment contract with the Player prematurely for breach of contract, and whether Istanbul Spor should be held jointly and severally liable for any compensation payable by the Player to Club Estoril.

III. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions, oral pleadings and evidence adduced during these proceedings. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, it refers in this award (the "**Award**") only to the submissions and evidence it considers necessary to explain its reasoning.

A. Background Facts

7. On 5 July 2021, the Player and Club Estoril concluded an employment contract (the "**Player Contract**") valid until 30 June 2024.

8. The Player's salary was agreed as follows (Clause 2 of the Player Contract):

> *"1. For the rendering of the activity mentioned in the previous Clause, the First Party undertakes to pay the Player the following global gross amounts:*
>
> *a) € 145. 000 ,00 for the activity rendered by the Player until the end of the sporting season 2021/2022 and the cession of the rights foreseen in the Eight Clause, amount which shall be paid in 12 (twelve) equal monthly instalments, in the gross amount of € 12.083,33, each, to be paid until the 5th day of the following month, which include the proportional amounts concerning vacation and Christmas allowances*

and food allowance

b) € 150.000,00 for the activity rendered by the Player until the end of the sporting season 2022/2023 and the cession of the rights foreseen in the Eight Clause, amount which shall be paid in 12 equal monthly instalments, in the gross amount of € 12.500,00, each. to be paid until the 5th day of the following month (...).

c) € 155.000,00 for the activity rendered by the Player until the end of the sporting season 2023/2024 and the cession of the rights foreseen in the Eight Clause, amount which shall be paid in 12 equal monthly instalments, in the gross amount of € 12.916,167 each, to be paid until the 5th day of the following month (...).

2. The First Party also undertakes to pay the Second Party and his immediate family 1 (one) air ticket per sporting season, between Portugal and Senegal, round trip, for his exclusive use.

3. If the First Party's main team finishes the 2021/2022 season in a position in the league table that determines that it will compete in the II Professional Football League in the 2022/2023 season, this sports employment contract will cease all effects on June 30th of 2022, pursuant to article 41, paragraph 1, al. d) of the collective labour agreement executed by the Professional Players' Union and the Football League, without the need for any communication between the Parties.

4. If the First Party's main team finishes the 2022/2023 season in a position in the league table that determines that it will compete in the II Professional Football League in the 2023/2024 season, this sports employment contract will cease all effects on June 30th of 2023, pursuant to article 41, paragraph 1, al. d) of the collective labour agreement executed by the Professional Players' Union and the Football League, without the need for any communication between the Parties."

9. In Clause 10 of the Player Contract, the parties stipulated notification requirements in case of a contractual breach:

"The Parties agree, following any violation of the present Sporting Employment Agreement and previously to any other initiative, to notify the other party in order to find a consensual solution to the dispute within 30 (thirty) days counting from the day of the notification, without which the violation will not be considered as a reason for the termination of the Agreement by any of the parties being this clause considered indispensable for the execution of the present Agreement and made in the mutual interest of the parties."

10. In Clause 15 of the Player Contract, the consequences of an unlawful termination of the employment are addressed as follows:

"Should one of the Parties terminate the present Contract invoking just cause and this is not acknowledged in Court, the Party which terminated the Contract illegally must compensate the other Party for the damages caused, agreeing the Parties that the amount of the penalty clause is:

> *a) If the First Party* [Club Estoril] *terminates the Contract illegally, it is obliged to pay to the Player compensation corresponding to the amount of the remunerations due until the term of the Contract, although it may deduct from the compensation the amounts that the Player should receive for the rendering of the same activity to another sporting entity during the period of time corresponding to the term of the terminated Contract;*
>
> *b) If the Second Party* [the Player] *terminates the Contract illegally, namely due to the violation of the previous Clause, his transfer to a third Club depends on the payment to the First Party of the amount of € 10.000.000,00 regardless of the right of the First Party to demand from the Player the payment of the compensation foreseen in the labor legislation. To this extent, it is assumed that any Club which executes an employment contract with the Player induced him to terminate this Contract without just cause, with the consequent damages to the First Party."*

11. In May 2022, the Player travelled to Senegal after the end of the 2021-22 season.

12. On 27 May 2022, Club Estoril submitted documents relating to the Player (including an "Expression of Interest", the Player Contract and a letter with explanations, the "**Player Documents**") to the Portuguese embassy in Senegal.

13. In June 2022, Club Estoril purchased a flight ticket for the Player.

14. On 18 June 2022, the Player asked Club Estoril to speak with his agent because of an alleged problem with the completion of the necessary paperwork allowing him to return to Portugal. His return flight to Portugal had been scheduled for 20 June 2022 (with Club Estoril having paid the respective ticket).

15. On 21 June 2022, the Player requested Club Estoril's in-house counsel to send the Player Documents to the Portuguese embassy in Senegal once again. The Player did not report to work on 27 June 2022, as ordered by Club Estoril.

16. In June, July and August 2022, Club Estoril contacted the Player several times regarding his return to Portugal and the status of his visa required for the return.

17. On 22 August 2022, the Senegalese authorities issued the Player's visa.

18. On 31 August 2022, the Player was enrolled in the Portuguese League.

19. On 20 October 2022, Club Estoril sent a "notice of fault" to the Player opening disciplinary proceeding against him and inviting him to file his position.

20. On 26 October 2022, the Player replied in writing denying the charges.

21. On 27 October 2022, the Player sent a default notice to Club Estoril requesting his salaries for August and September 2022 and the provision of accommodation.

22. On 9 December 2022, Club Estoril issued a "final decision" deeming that the charges

against the Player had been proven and that the appropriate disciplinary sanction was the immediate dismissal of the Player for just cause (hereinafter the "**Termination**").

23. On 8 February 2023, the Player sent a default notice to Club Estoril alleging that the Termination by Club Estoril was without just cause and requesting overdue salaries and compensation.

24. By e-mail to the Player's legal counsel of 17 February 2023, Club Estoril offered to hold a meeting "*on a day, time and place that you consider convenient, in order to better address the issue at hand and perhaps find a consensual solution to the dispute*." A meeting was held on 24 February 2023 without that any settlement of the matter could be reached.

25. On 24 February 2023, Club Estoril filed a claim against the Player before the Portuguese Tribunal Arbitral do Desporto ("**TAD**") requesting compensation on the basis that lawfully terminated the Player Contract for just cause. The Player did not participate in these proceedings.

26. On 26 February 2023, the Player filed a claim against Club Estoril before the FIFA Football Tribunal, requesting outstanding salaries and compensation.

27. On 21 July 2023, Istanbul Spor sent an e-mail to Club Estoril, transmitting the form of the "Proof of Last Contract End Date" (the "**POLCED**"). On the same day, Club Estoril returned the Stamped POLCED, signed by its General Manager Guilherme Müller, and stating as follows:

> *"By signing this document, I confirm that the employment contract between Estoril Praia – Futebol, SAD, and the Player RACINE COLY has ended on 09.12.2022."*

28. On 24 July 2023, Istanbul Spor and the Player signed a professional player contract (the "**Subsequent Player Contract**"), based on the signed and stamped POLCED sent by Club Estoril to Istanbul Spor.

B. The Proceedings before the FIFA Football Tribunal

29. On 26 February 2023, the Player filed a claim against Club Estoril before the FIFA Football Tribunal, requesting outstanding salaries and salary compensation (totaling EUR 242,500.00) for the 2022-23 and 2023-24 seasons, together with a declaration that the termination of the Player Contract by Club Estoril was without just cause.

30. On 10 April 2023, Club Estoril filed a counterclaim against the Player, requesting compensation in the amount of EUR 242,500.00 due to the Player's breach, and a penalty of EUR 10,000,000.00 to fall due upon the Player's registration with a third club occurring until 30 June 2024.

31. Upon FIFA's invitation, Istanbul Spor intervened in the proceedings.

32. On 16 October 2023, the Dispute Resolution Chamber of the FIFA Football Tribunal

passed its decision (the "**Appealed Decision**"). On 30 November 2023, FIFA notified to the Parties the grounds of the Appealed Decision.

33. The operative part of the Appealed Decision reads as follows:

> *"1. The claim of the Claimant / Counter-respondent, Racine Coly, is admissible.*
>
> *2. The claim of the Claimant / Counter-respondent, Racine Coly, is rejected.*
>
> *3. The counterclaim of the Respondent / Counter-claimant, Estoril Praia, is admissible.*
>
> *4. The counterclaim of the Respondent / Counter-claimant, Estoril Praia, is partially accepted.*
>
> *5. The Claimant / Counter-respondent must pay to the Respondent / Counter-claimant the following amount(s):*
>
> ***- EUR 161,250 as compensation for breach of contract without just cause** plus 5% interest p.a. as from 10 April 2023 until the date of effective payment.*
>
> *6. The intervening party, Istanbulspor, is jointly and severally liable for the payment of the compensation under point 5 above."*

34. With respect to its finding that the Termination declared by Club Estoril was justified, the Appealed Decision explained as follows:

> *"91. The foregoing having been established, the Chamber moved to the substance of the matter, and took note of the fact that the parties strongly dispute the justice of the early termination of the Contract by Estoril on 9 December 2022.*
>
> *92. In this context, the Chamber went on to analyse the allegation of Estoril – disputed by the Player – that the temporary absence of the latter for a period of approximately 6 months, without authorisation or justification, consisted of a breach of contract on his part.*
>
> *93. In this scenario, the Chamber recalled its long-standing jurisprudence, according to which only a breach or misconduct which is of a certain severity justifies the termination of a contract. In other words, only when there are objective criteria which do not reasonably permit to expect the continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures which can be taken in order for an employer to assure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. A premature termination of an employment contract can only be an ultima ratio.*
>
> *94. The Chamber underlined that, in accordance with its well-established jurisprudence, a longlasting absence of a Player from his club without authorisation and without any other justification consists of a valid reason to suspend the payment of the Player's salaries and is to be considered as an unjustified breach of the employment contract by the Player.*

95. With the above in mind and after having carefully analysed the parties' submissions, the Chamber concluded that the Player's absence of approximately 6 months was indeed a long one and no substantial evidence of such absence having been authorised by the club or otherwise justified by any other particular circumstances was provided by the Player in his submissions to the Chamber.

96. In particular, the Player is unspecific in his submissions as to what "vicissitudes" he experienced for not being able to return and therefore failed to properly substantiate his argumentation. The Chamber acknowledges in this respect that both parties recognise that for a period of around 3 months there were issues in obtaining the renewal of the Player's visa. However, at the same time, the Chamber underlines that the Player acknowledges that on 22 August 2022 he was in possession of a valid visa to return to Portugal. As from that moment on, the Player should have returned to Portugal, but he failed to do so, instead sending a default notice in October 2022 for the salaries of August and September 2022; salaries that would presumably been paid if the Player would have returned to Portugal as soon as his visa was obtained. Given the circumstances, the Chamber finds that the Player had no justification not to return to Portugal as from 22 August 2022, and also considers that by that time Estoril had no outstanding obligations towards the Player.

97. Furthermore, Estoril provides evidence that a disciplinary proceeding was conducted, including a written submission and hearing, which the Player attended via video conference and was assisted by a legal representative. In this proceeding the Player admitted that he had not returned from Senegal but adduces that it is due to his lack of sufficient means to purchase a flight which costs "around EUR 1,000 – 1,200". However, the Chamber observed that Estoril had already purchased a flight ticket for the Player in June 2022, reason for which the Chamber deemed that this was no longer the obligation of the Club in August 2022.

98. The Chamber noted that during the said disciplinary proceeding or in this claim, the Player had neither provided any evidence of attempting to return to Portugal nor that his absence was consented or authorised by Estoril.

99. Therefore, the Chamber understood that the Player indeed committed a severe breach of the employment contract and that the suspension of the payment of his remuneration for the months he was absent, and the subsequent termination of the Contract by Estoril, was indeed justified and the termination of the contract by Estoril was with just cause."

35. Regarding the consequences of Club Estoril's justified Termination, the Appealed Decision found that Clause 15 of the Player Contract could not be taken into account for establishing the payable compensation, because it lacked both reciprocity and proportionality. As a consequence, the Appealed Decision determined the amount of compensation in accordance with the criteria listed in Art. 17 (1) of the FIFA Regulations on the Status and Transfer of Players ("**FIFA RSTP**") as follows:

105. As a consequence, the Chamber determined that the amount of compensation payable by the Player to Estoril had to be assessed in application of the other parameters set out in art. 17 par. 1 of the Regulations. The Chamber recalled that said provision provides for a non-exhaustive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.

106. Bearing in mind the foregoing as well as the claim of Estoril, the Chamber proceeded with the calculation of the monies payable to the Player under the terms of the contract until its term. Consequently, the Chamber concluded that the amount of EUR 242,500 (i.e. the residual value from December 2022 until June 2024) serves as the basis for the determination of the amount of compensation for breach of contract.

107. In continuation, the Chamber verified whether the Player had signed an employment contract with another club during the relevant period of time. According to the constant practice of the Chamber as well as art. 17 par. 1 of the Regulations, such remuneration under a new employment contract shall be taken into account in the calculation of the amount of compensation for breach of contract due by a player to his former club. In particular, the Chamber explained that its standard practice is to calculate the average between the player's remuneration with his former club and his remuneration with the new club, for the exact same period of time comprised between the early termination of the employment contract with the old club and the original expiry date of such contract.

108. In this respect, the Chamber noted indeed, the Player found new employment with Istanbulspor. In accordance with the pertinent employment contract, for the overlapping period (i.e. September 2023 – June 2024), the Player is entitled to EUR 80,000.

109. Thus, the Chamber concluded that between the date of early termination of the Player's contract with his former club and its original expiry date, the average between his remuneration with Estoril and his current remuneration amounts to EUR 161,250 [242,500 + 80,000 / 2].

110. Consequently, on account of all of the above-mentioned considerations and the specificities of the case at hand, the Chamber decided that the Player must pay the amount of EUR 161,250 to Estoril, which was to be considered a reasonable and justified amount of compensation for breach of contract in the present matter."

IV. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

36. By e-mail of 19 December 2023, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "**CAS**") against the Appealed Decision, pursuant to Article R47 *et seq.* of the Code of Sports-related Arbitration (the "**CAS Code**") (the "**10241 Appeal**"). The Appellant requested the appointment of a sole arbitrator.

37. On 21 December 2023, the Second Respondent filed his Statement of Appeal with the CAS against the Appealed Decision (the "**10247 Appeal**"). The Second Respondent also requested the appointment of a sole arbitrator, to be appointed from the CAS Football List.

38. On 29 December 2023, relating to the 10241 Appeal, the CAS Court Office informed that it had not received the Appellant's Statement of Appeal in hard copy or via the CAS e-Filing platform (access to which had been granted to the Appellant on 20 December 2023). The Appellant was requested to provide the CAS Court Office with proof of its filing of the Statement of Appeal via courier or the CAS e-Filing platform. On the same day, the Appellant uploaded the Statement of Appeal to the CAS e-Filing platform.

39. By correspondence of 1 January 2024, the Appellant explained that it had dispatched seven copies of the Statement of Appeal via courier (through the DHL Express Service Point) on 20 December 2023. It submitted by e-mail copies of a delivery receipt and photos as evidence that the shipment had been dispatched on 20 December 2023.

40. On the same day, the Appellant filed its Appeal Brief relating to the 10241 Appeal.

41. On 9 January 2024, the Second Respondent filed his Appeal Brief relating to the 10247 Appeal.

42. On 15 January 2024, the CAS Court Office informed the Appellant that it had not received the Statement of Appeal via courier. The Appellant was requested to provide an update of its submission of the Statement of Appeal by courier within three days.

43. By e-mail of 17 January 2024, the Appellant informed the CAS Court Office that due to a human error provoked by the intensity of the holiday season, the shipment containing its copies of the Statement of Appeal was not forwarded from the DHL Service Point to DHL. On the same day, the CAS Court Office requested the Appellant to produce all records which demonstrated that the shipment was kept among the "Lost-Returned, Undeliverable" shipments. The Appellant provided its response on 19 January 2024.

44. By letters of 25 January 2024, the First Respondent requested that the 10241 Appeal and the 10247 Appeal be submitted to panels of three arbitrators, respectively. For both cases, the First Respondent nominated Mr Efraim Barack as arbitrator.

45. On the same day, the Appellant submitted two translations as Exhibits 11 and 12, requesting that these exhibits be admitted to the record. While the First Respondent objected the admissibility of the additional exhibits, the Second Respondent agreed to admit them to the case file.

46. By letter of 26 January 2024, the CAS Court Office informed the Parties of the consolidation of the 10241 Appeal and the 10247 Appeal (jointly referred to as the "**Appeals**"), following the Parties' respective agreement.

47. By letter of 30 January 2024, FIFA renounced its right to request its possible intervention in the present arbitration proceedings.

48. On 12 February 2024, the Second Respondent submitted his Answer in the 10241 Appeal.

49. On 16 April 2024, the First Respondent submitted its Answer for both Appeals.

50. On 17 April 2024, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the panel appointed to decide the present matter was constituted as follows:

    Sole Arbitrator: Ms Annett Rombach, Attorney-at-Law, Frankfurt am Main, Germany

51. On 24 April 2024, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing by videoconference in this matter. In the following days, the Sole Arbitrator and the Parties conferred in respect of a suitable hearing date.

52. On 15 May 2024, the CAS Court Office informed the Parties that the online hearing was scheduled to take place on 4 July 2024.

53. On 28 May 2024, the CAS Court Office transmitted the Order of Procedure to the Parties. The Second Respondent and the Appellant returned duly signed copies of the Order of Procedure on 2 and 3 June 2024, respectively.

54. On 1 and 3 July 2024, the First Respondent sent comments on the Order of Procedure to the CAS Court Office. The CAS Court Office informed the First Respondent that any comments on the Order of Procedure shall be made directly in the document.

55. On 2 July 2024, the CAS Court Office sent the Parties a tentative hearing schedule.

56. Also on 2 July 2024, the First Respondent submitted a decision of the Portuguese Court of Arbitration for Sport dated 27 May 2024, allegedly addressing the same claims as the present proceedings ("**TAD Decision**"). The First Respondent requested that the TAD Decision be taken into consideration against the Player.

57. On 4 July 2024, an online hearing took place. At the outset of the hearing, all Parties confirmed that they had no objections to the constitution and composition of the panel.

58. In addition to the Sole Arbitrator and Mr Björn Hessert, Counsel to the CAS, the following persons attended the video hearing:

For Istanbul Spor:	Mr Sercan Teker, Counsel Ms Anıl Gürsoy Artan, Counsel
For Club Estoril:	Mr João Lobão, Counsel Mr Ricardo Magalhães Tavares, Counsel
For Mr Coly:	Mr Racine Coly, Second Respondent Mr Pedro Macieririnha, Counsel Mr Joaquim de Almeida Pizarro, Counsel
Witnesses:	Ms Andreia Cunha, Club Estoril Praia Mr Vasco Varão, Club Estoril Praia Mr Francisco Costa, Club Estoril Praia

59. The hearing began at 9:30 am and ended at 6:40 pm without any technical interruption or difficulty. The Parties were given the opportunity to present their cases, to make their submissions and arguments and to answer questions posed by the Sole Arbitrator. The First Respondent submitted new documentary evidence, which was shared with all Parties and on which the Parties were given the opportunity to comment. After the Parties' final and closing submissions, the hearing was closed and the Sole Arbitrator reserved her detailed decision for this Award.

60. At the end of the hearing, the Parties expressly confirmed that they had no objections in relation to their respective rights to be heard and that they had been treated equally in these arbitration proceedings.

61. On 10 July 2024, upon a respective reminder by the CAS Court Office, the First Respondent submitted a duly signed copy of the Order of Procedure.

62. On 10 October 2024, the Appellant filed a submission introducing the decision rendered by the Second Chamber of the Court of Justice of the European Union on 4 October 2024, (C-650/22, hereinafter the "**Diarra Decision**"). Both Respondents were invited by the CAS Court Office to comment on the Diarra Decision. The first Respondent filed comments on 31 October 2024.

63. On 10 January 2025, the Appellant submitted further information on the Diarra Decision, more specifically a link to the FIFA Circular No. 1917 dated 23 December 2024 ("**FIFA Interim Regulations**"). The First Respondent filed comments on 15 January 2025.

64. In reaching the present decision, the Sole Arbitrator has carefully taken into account all the evidence and the arguments presented by the Parties, even if they have not been summarised in the present Award.

V. THE POSITIONS OF THE PARTIES

65. The following outline of the Parties' positions is illustrative only and does not necessarily comprise every submission advanced by the Parties. The Sole Arbitrator confirms, however, that she has carefully considered all the submissions made by the Parties, whether or not there is specific reference to them in the following summary.

A. Istanbul Spor's Position and Request for Relief

66. Istanbul Spor submits the following in substance:

On the admissibility of its Statement of Appeal:

- The Statement of Appeal must be considered to have been filed on time. The Appellant dispatched seven copies of the Statement of Appeal on 20 December 2023, and it was only due to a "human error" at the DHL Service Point that the shipment was not delivered to the CAS, but wrongly categorized as an "undeliverable" parcel and held mistakenly at the DHL Service Point amongst the "Lost-Refunded-Undeliverable" shipments. The Appellant only found out about the mistake on 15 January 2024, upon CAS's information that no courier shipment

had been received by it.

On the merits of its Appeal:

- Club Estoril is not entitled to any compensation, because its termination of the Player Contract was not supported by just cause. While it is true that the Player was absent from Club Estoril for 60 days, his absence was Club Estoril's fault, not the Player's. Club Estoril bore responsibility for the Player's work permit and visa and it failed to provide both so that the Player could not return to Portugal.

- The Player's only responsibility in respect of obtaining his visa for Portugal was to submit the visa documents to the Portuguese authorities in Senegal, while all subsequent actions should have been undertaken by Club Estoril.

- Club Estoril sent incorrect documents to the Player, which resulted in significant errors in his visa application.

- The visa eventually granted to the Player, covering the period from 18 August 2022 to 15 December 2022 (*i.e.* a duration of less than 4 months), did not guarantee the continuation of the contractual relationship until the designated expiry date of the Player Contract, which was 30 June 2024.

- The fact that Club Estoril asked the Player for a mutual termination of the Player Contract during the visa application process, indicates that it had no desire to continue the employment relationship with the Player. Consequently, it did not unfold sufficient efforts in obtaining the Player's visa.

- Club Estoril failed to honor Clause 10 of the Player Contract, which required that it puts the Player on notice before termination. For the same reason, the termination was not supported by just cause. As a result of the unjust termination, the Player became a "free agent".

- Article 17 (2) of the FIFA RSTP is inapplicable because the Appellant neither provoked the alleged breach nor the termination of the Player Contract. Club Estoril should not benefit from the protection of Article 17 (2) of the FIFA RSTP under the circumstances of the present case. The Appealed Decision completely ignored the Appellant's arguments presented during the first instance proceedings.

- Before signing the Subsequent Player Contract with the Player, the Appellant had been informed by the Player that his contract with Club Estoril had been mutually terminated due to "family reasons".

- The Appellant even confirmed the termination of the Player Contract with Club Estoril, which sent the signed and stamped POLCED indicating that the Player Contract had ended already in December 2022. The Appellant communicated with Club Estoril through the official e-mail addresses registered in the FIFA Transfer Matching System ("**TMS**").

- The Appellant understood from the information received from the Player and Club Estoril that there was no unilateral termination of the Player Contract between the

Respondents. Only upon its reassurance of the absence of a unilateral termination, the Appellant initiated contract negotiations with the Player. That the Appellant believed in a natural expiration of the Player Contract is also evidenced by the request for the International Transfer Certificate ("**ITC**"), in which it chose the option "contract expired" (instead of "unilaterally terminated").

- In accordance with Annex, Title IV, Article 11 (2) a) of the FIFA RSTP,[1] and upon a respective request by the Portuguese Football Federation, the First Respondent confirmed that the Player Contract between the Player and Club Estoril had "expired". Both the Portuguese Football Federation and the First Respondent had an obligation to notify the Appellant of the unilateral termination of the Player Contract.

- It would be unfair to sanction the Appellant under Article 17 (2) FIFA RSTP. The Appellant fully met its obligations when it contracted the Player. The Appellant applied the principle of *"bona fides"* during the conclusion of the Subsequent Player Contract and obtained confirmation from all parties involved in the Player's transfer that, to the best of their knowledge, the transfer was a free transfer due to the natural expiry of the Player Contract.

- Even if Club Estoril's termination was justified (*quod non*), the calculation of damages should consider "net" instead of "gross" amounts. Otherwise, Club Estoril would be unjustly enriched by receiving unpaid taxes under the guise of compensation. The compensation amount determined in the Appealed Decision (EUR 242,500.00 gross) should be reduced to EUR 126,100.00 net (after a 48% tax deduction).

- According to Turkish tax law, the tax deduction on payments to athletes is 35%. The net amount of the Player's gross salary under the Subsequent Player Contract (EUR 80,000.00) would be EUR 52,000.00 (EUR 80,000.00 minus 35%). In conclusion, the compensation payable to Club Estoril would be at maximum of EUR 89,050.00 ([126,100.00 + 52,000.00] / 2).

On the impact of the Diarra Decision and the FIFA Interim Regulations:

- The Diarra Decision held that a new club cannot be held jointly and severally liable for a contract termination if it played no role in such termination. This decision, protecting the free movement of workers and competitions of undertakings, is binding on FIFA and also impacts the present case, as it applies retroactively. Since Istanbul Spor bears no responsibility for the termination of the Player Contract, Article 17 (2) FIFA RSTP is inapplicable.

- On 1 January 2025, the FIFA Interim Regulations entered into force. They included a revision of Article 17 (2) of the FIFA RSTP, which now reads as

[1] Annex, Title IV, Article 11 (2) of the FIFA RSTP reads as follows: Where the player was a professional at his former club, upon notification of the ITC request, the former association shall immediately request the former club to confirm whether or not: a) the employment contract has expired; or b) an early termination was mutually agreed.

follows:

"[…] *A player's new club shall be held jointly liable to pay compensation if, having regard to the individual facts and circumstances of each case, it can be established that the new club induced the player to breach their contract*."

67. In its Appeal Brief, Istanbul Spor requests the following relief:

> *"**1.** Acceptance of our appeal and deciding that the annulment of the DRC decision subject to appeal,*
>
> ***2.** Deciding that the termination is a termination without just cause and rejection of the claims of the First Respondent,*
>
> ***3.** In case the termination is deemed a termination with just cause:*
>
> ***a.** Deciding that, due to the malicious and intentional actions of the First and Second Respondents, the joint and several liability of the Appellant regarding compensation is lifted under Article 17/2 of the RSTP, and determining that, based on official documents such as the ITC carrying the approval of FIFA and Turkiye and Portugal Footbal Federations, and the POLCED with the approval of the First Respondent, the Appellant is not liable for compensation,*
>
> ***b.** Deciding that the Appellant has no any responsibility (including all the sanctions) due to the relevant termination and decision,*
>
> ***c.** Deciding that the responsibility for compensation is solely the responsibility of the Second Respondent due to culpable actions of him,*
>
> ***d.** Due to the incorrect calculation of the compensation amount based on gross figures, deciding that the amounts should be calculated as net in accordance with the relevant tax regulations and the compensation amount is 89,050 Euros,*
>
> ***e.** Deciding that this new compensation amount, in line with the responsibility for his wrongful actions, will be paid solely by the Second Respondent,*
>
> ***f.** In the event that only the Second Respondent is held responsible for compensation, deciding that sanctions applicable to the Second Respondent for fulfilling this responsibility should be determined in a way that does not harm the Appellant,*
>
> ***g.** In the event that the Appellant is held responsible for damages, a decision should be made that allows the Appellant to recover the compensation amount from the Second Defendant, based on the bad faith and conduct contrary to the principle of good faith by the Second Defendant.*
>
> ***4.** To impose on the First and the Second Respondent the obligation to cover the entire CAS administration costs, arbitrators' fees, legal expenses, and attorney fees incurred in relation to the DRC and CAS decisions."*

B. Club Estoril's Position and Request for Relief

68. Club Estoril submits the following in substance:

On the admissibility of Istanbul Spor's Statement of Appeal:

- Istanbul Spor's Statement of Appeal is inadmissible, because it did not upload its submission to the CAS e-Filing Platform, or submitted it for courier delivery, within due time.

On the merits of the Appeals:

- The Player was obligated to return to Estoril by 27 June 2022 but failed to do so. He failed to provide any evidence about the initiation of the required visa procedures in Senegal before this date. Club Estoril had provided the Player with the relevant documents and support to obtain the visa, but the Player undertook no effort to contact the Portuguese embassy in Senegal. The first time the Player informed Club Estoril about a problem with his visa was two days before his return flight to Portugal.

- The Player failed to provide any justification for his absence from Club Estoril between 27 June 2022 and 20 October 2022 (i.e. more than 60 days). For this reason, Club Estoril was entitled to send the Player a notice of fault on 20 October 2022.

- Club Estoril paid the Player's flight ticket to Senegal (including extra baggage, which it was not contractually obligated to do), and his return ticket for the flight from Senegal to Portugal, scheduled for 20 June 2022.

- Club Estoril was not obligated to pay the Player an extra ticket, and the Player never asked for one after he had finally obtained his visa. The Player's assertion that he could not afford a flight ticket for appr. EUR 1,000.00 is not credible. After his departure from Portugal for summer break, he had received EUR 20,000.00 (net) in salaries and holiday allowance.

- The Player's behavior was consistent with a total reluctance to return to Club Estoril and perform his duties, and all the reasons given were merely tenuous excuses not to comply with the Player Contract.

- Club Estoril fully complied with the requirements of Clause 10 of the Player Contract. At first, it tried to help the Player with the issuance of his visa, then offered the Player a mutual termination of the employment relationship, then initiated disciplinary proceedings in order to allow the Player to present his version and only – as an *ultima ratio* – did it decide to terminate the Player Contract for just cause.

- Having given cause for the termination of the Player Contract, the Player must indemnify Club Estoril for the total amount of EUR 242,500.00 corresponding to the residual amount the Player would have received had he fulfilled his contractual

obligations.

- The TAD Decision confirmed the validity of Club Estoril's claims and must be taken into account by the Sole Arbitrator.

69. Club Estoril requests the following relief:

> *"**I.** **Estoril SAD** requests to the honourable **Court of Arbitration of** Sport to immediately reject the appeal lodged by **ISTANBUL SPOR** AS on the procedure **CAS 2023/A/10241 Istanbul Spor AS v. Club Estoril Praia & Racine Coly** as it was not timely presented;*
>
> ***II.** **Estoril SAD** requests to the honourable **Court of Arbitration of Sport** to **DISMISS** the appeals lodged by **ISTANBUL SPOR AS** on the procedure **CAS 2023/A/10241 Istanbul Spor AS v. Club Estoril Praia & Racine Coly** (if it is considered to have been timely filed) **AND DISMISS** the appeal lodge by the Player Racine Coly on the procedure **CAS 2023/A/10247 Racine Coly v. Estoril Praia – Futebol, SAD;***
>
> ***III.** **Estoril SAD** requests to the honourable **Court of Arbitration of Sport** to **CONFIRM** the decision passed by the **FIFA Tribunal** on the employment-related dispute concerning the player **Racine Coly** Ref. Nr. FPSD-9398, and **consequently**:*
>
> *a. Recognize that **Estoril SAD** had just cause to terminate the Player's sport employment contract; and;*
>
> *b. **Recognize** that in light of **FIFA Nr. FPSD-9398** Decision the Player shall be liable to pay EUR 161,250 to Estoril SAD as compensation for breach of contract without just cause plus 5% interest p.a. as from 10 April 2023 until the date of effective payment;*
>
> *c. Recognize that **ISTANBULSPOR**, is jointly and severally liable for the payment of the compensation of EUR 161,250 to **Estoril SAD** as compensation for breach of contract without just cause plus 5% interest p.a. as from 10 April 2023 until the date of effective payment;*
>
> ***IV.** To condemn the PLAYER and/or ISTANBULSPOR to pay of the whole CAS Administration costs and the Sole Arbitrator's fee;*
>
> ***V.** PLAYER and/or ISTANBULSPOR shall reimburse ESTORIL SAD legal fees in relation to this procedure in amount of EUR 20.000,00"*

C. The Player's Position and Request for Relief

70. The Player submits the following in substance:

On the admissibility of Istanbul Spor's Statement of Appeal:

- Istanbul Spor's Statement of Appeal is inadmissible, because it did not upload its submission to the CAS e-Filing Platform, or submitted it for courier delivery, within due time.

On the merits of the Appeals:

- The Player's absence from Club Estoril is not attributable to him. Club Estoril had failed to obtain a valid work permit for the Player, although it was contractually obligated to do so. Had Club Estoril obtained a valid work permit for the Player, the Player could have returned to Portugal without a visa.
- Club Estoril refused to pay for the Player's and his family's air travel from Senegal to Portugal, despite being contractually obliged to do so. Instead, Club Estoril sent a flight ticket to the Player for 20 June 2022 knowing that he would not be able to use it due to the expiration of his visa before the respective return date.
- The Player lacked the financial resources to buy a ticket on his own after he had obtained a visa.
- It is established CAS jurisprudence that it is a club's responsibility to arrange for their players' visas and work permits.
- The Player was prevented from returning to Portugal because he had no housing in Estoril. Club Estoril was obliged to pay for the Player's accommodation throughout the duration of the Player Contract for which purpose it had entered into a lease agreement with a landlord. However, Club Estoril did not pay the respective rents, water and electricity charges for the months of June, July and August 2022. Consequently, the landlord terminated the lease agreement based on non-payment.
- Club Estoril's termination of the Player Contract was not supported by just cause. The Player did not breach the Player Contract. Club Estoril failed to honor the procedure for finding an amicable solution under Clause 10 of the Player Contract. It was the Player who was entitled to terminate the Player Contract as a result of the club's breaches.

71. In his Statement of Appeal in the 10247 Appeal, the Player requested the following relief:

"The Appellant hereby respectfully requests the Court of Arbitration for Sports to:

a) Accept the present appeal against the Decision of FIFA Football Tribunal passed on 16 October 2023, regarding an employment-related dispute concerning the player Racine Coly, with the composition Frans DE WEGER (The Netherlands), Chairperson Mario FLORES CHEMOR (Mexico), member Roy VERMEER (The Netherlands), member, with the Ref. FPSD 9398, which ruled that: (Exhibit 1).

1. The claim of the Claimant / Counter-respondent, Racine Coly, is admissible.

2. The claim of the Claimant / Counter-respondent, Racine Coly, is rejected.

3. The counterclaim of the Respondent / Counter-claimant, Estoril Praia, is admissible.

4. The counterclaim of the Respondent / Counter-claimant, Estoril Praia, is partially accepted.

5. The Claimant / Counter-respondent must pay to the Respondent / Counter-claimant the following amount(s):

- EUR 161,250 as compensation for breach of contract without just cause *plus 5% interest* p.a. *as from 10 April 2023 until the date of effective payment.*

6. The intervening party, Istanbulspor, is jointly and severally liable for the payment of the compensation under point 5 above.

7. Any further claims by any of the parties are rejected.

b) *Set aside the Appealed Decision.*

c) *To carry out an Award with the following provisions:*

The claim of the Appellant towards the Dispute Resolution Chamber of FIFA was admissible;

The Appellant hasn't terminated the employment contract with the Respondent without just cause;

To condemn the Respondent Club to pay to the Appellant the following amounts regarding outstanding salaries:

i) August 2022, in the gross amount of 12 500,00 €, overdue on 5 September 2022;
ii) September 2022, in the gross amount of 12 500,00 €, overdue on 5 October 2022;
iii) October 2022, in the gross amount of 12 500,00 €, overdue on 5 November 2022;
iv) November 2022, in the gross amount of 12 500,00 €, overdue on 5 December 2022.

TOTAL = 50.000,00 € plus interest at 5% rate since the overdue dates until effective payment.

The Panel shall condemn the Respondent Club to pay to the Appellant the compensation in the total amount of 242 500,00 €, plus interest at 5% rate since 9 December 2022 until effective payment, for termination of the contract without just cause.

All according to the Sporting Employment Contract signed by the parties, the FIFA Statutes and regulations, as well the specificity of sport, under penalty of imposition of disciplinary measures to the Respondent if the above obligation is not observed.

d) Condemn the Respondent Coach to pay the whole CAS administration and Arbitrators fees"

72. In his Appeal Brief, the Player adjusted his prayers for relief as follows:

"The Appellant hereby respectfully requests the Court of Arbitration for Sports to:

a) Accept the present appeal;

b) Set aside the Appealed Decision in full;

c) To carry out an award as follows:

- The Panel shall declare that the termination of the Contract signed between the parties was unilaterally terminated by the Respondent without just cause.

- The Panel shall condemn the Respondent Club to pay to the Appellant the following amounts regarding outstanding salaries:

i) August 2022, in the gross amount of 12 500,00 €, overdue on 5 September 2022;
ii) September 2022, in the gross amount of 12 500,00 €, overdue on 5 October 2022;
iii) October 2022, in the gross amount of 12 500,00 €, overdue on 5 November 2022;
iv) November 2022, in the gross amount of 12 500,00 €, overdue on 5 December 2022.

TOTAL = 50.000,00 € plus interest at 5% rate since the overdue dates until effective payment.

The Panel shall condemn the Respondent Club to pay to the Appellant the compensation in the total amount of 242 500,00 €, plus interest at 5% rate since 9 December 2022 until effective payment, for termination of the contract without just cause.

- The Appellant must not pay to the Respondent the following amount(s):

***- EUR 161,250 as compensation for breach of contract without just cause** plus 5% interest* p.a. *as from 10 April 2023 until the date of effective payment.*

- The intervening party, Istanbulspor is not jointly nor severally liable for the payment of the compensation under point 5 of the appealed decision and 297 above.

- *Condemn the Respondent to pay the whole CAS administration and the Arbitrators fees;*

- *Grant to the Appellant a contribution towards its legal fees and other expenses incurred in connection with the proceedings, taking in account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties."*

VI. JURISDICTION

73. Clause 13 of the Player Contract provides the following:

> *"To settle all disputes arising from the interpretation of the present Sporting Employment Agreement, its execution, validity or enforcement, or any of its'* [sic] *clauses, the Court of Arbitration for Sport in Portugal is competent, being expressly waived by the other."*

74. Article R47 of the CAS Code provides the following:

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

75. Article 57 (1) of the FIFA Statutes provides as follows:

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

76. This case involves appeals against final decisions passed by the Dispute Resolution Chamber of the FIFA Football Tribunal. Whether or not the FIFA Football Tribunal itself was competent to adjudicate the matter (in view of Clause 13 of the Player Contract) is irrelevant for the jurisdiction of the CAS, which is directed against FIFA decisions. For appeals against FIFA decisions, Articles R47 of the CAS Code and Article 57 (1) of the FIFA Statutes provide for the relevant appeal track to CAS. Therefore, the CAS has jurisdiction to hear the present case.

77. The Parties further confirmed that CAS has jurisdiction by the execution of the Order of Procedure.

78. As a result, the CAS has jurisdiction to decide the present matter.

VII. ADMISSIBILITY

79. Article R49 of the CAS Code provides – in its pertinent parts – 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."*

80. According to Article 57 (1) of the FIFA Statutes, the Appealed Decision may be appealed before the CAS within 21 days from receipt of notification of the decision. In accordance with these provisions, because the grounds of the Appealed Decision were notified to the Parties (including Istanbul Spor, which had intervened in the proceedings before FIFA) on 30 November 2023, the time limit to file an appeal against the Appealed Decision expired on 21 December 2023.

81. The Second Respondent timely filed his Statement of Appeal in the 10247 Appeal on 21 December 2023.

82. The situation is more complicated regarding the 10241 Appeal, which the Respondents claim was filed belatedly by the Appellant. The Appellant filed its Statement of Appeal by e-mail on 19 December 2023. According to Articles R31 (3) and (4) of the CAS Code:

> *"The request for arbitration, the statement of appeal and any other written submissions, printed or saved on digital medium, must be filed by courier delivery to the CAS Court Office by the parties in as many copies as there are other parties and arbitrators, together with one additional copy for the CAS itself, failing which the CAS shall not proceed. If they are transmitted in advance by facsimile or by electronic mail at the official CAS email address (procedures@tas-cas.org), the filing is valid upon receipt of the facsimile or of the electronic mail by the CAS Court Office provided that the written submission and its copies are also filed by courier or uploaded to the CAS e-filing platform within the first subsequent business day of the relevant time limit, as mentioned above.*
>
> *Filing of the above-mentioned submissions via the CAS e-filing platform is permitted under the conditions set out in the CAS guidelines on electronic filing."*

83. Undisputedly, the CAS did not receive the Appellant's Statement of Appeal via courier or through the CAS e-filing platform by 22 December 2023 (the "*first subsequent business day of the relevant time limit*"). The Appellant filed the Statement of Appeal via the CAS e-filing platform on 29 December 2023, and via courier in January 2024.

84. To support the admissibility of the Appellant's Statement of Appeal, the Appellant argues that it took all necessary steps to dispatch the package containing the Statement of Appeal in a timely manner. The Appellant provided photographic evidence of a DHL receipt dated 20 December 2023, indicating express delivery to the CAS in Lausanne, and images of the package and its contents, which resemble the Statement of Appeal. Additionally, the Appellant submitted documentation explaining that due to an error at the DHL Service Point, the shipment was mistakenly retained as "lost and undeliverable" and was not processed for courier delivery.

85. While the Player's submissions in support of his challenge to the admissibility of Istanbul Spor's Statement of Appeal are vague and generic, Club Estoril challenged the Appellant's explanation, highlighting the absence of a tracking number and typical DHL documentation, suggesting the Appellant's Statement of Appeal was never dispatched as claimed.

86. The Sole Arbitrator acknowledges that while the Appellant's explanations may appear unusual, the submitted documents lend support to the Appellant's claim that the Statement of Appeal was handed over for DHL dispatch on 20 December 2023. This in particular because the Respondents have not provided specific evidence of a significant deviation from DHL procedures nor proposed an alternative scenario that effectively counters the Appellant's allegations. Furthermore, the Respondents did not request any evidentiary measures to further investigate the matter or verify the consistency of the Appellant's submissions.

87. Therefore, the Sole Arbitrator finds herself in a position where the evidence and circumstances presented leave little alternative but to accept the scenario that the Appellant diligently dispatched its Statement of Appeal on 20 December 2023. The documentation provided by the Appellant, including the DHL receipt and photographs of the package, substantiates both the fact that the Statement of Appeal was duly handed over for dispatch and that the subsequent delay was caused by a human error at the DHL Service Point, potentially due to increased workload during the holiday season.

88. In light of the scenario presented by the Appellant, which the Respondents failed to effectively rebut, the Sole Arbitrator concludes that the Appellant's Statement of Appeal was filed in compliance with the CAS Code and, as such, is admissible.

VIII. APPLICABLE LAW

89. Article R58 of the CAS Code regarding the law applicable to the merits provides the following:

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

90. The Sole Arbitrator notes that Article 56 (2) of the FIFA Statutes states 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."*

91. The Sole Arbitrator, therefore, applies the relevant FIFA rules and regulations, as in force at the relevant time of the dispute. Furthermore, the Sole Arbitrator will apply Swiss law as an interpretive tool should the need arise to fill gaps in the various regulations of FIFA.

IX. OTHER PROCEDURAL ISSUES

92. Before turning to the merits of the dispute, the Sole Arbitrator has to address whether the First Respondent's filing of the TAD Decision on the day before the oral hearing can be admitted to the record, or must be rejected as belatedly.

93. On 2 July 2024, the First Respondent filed the TAD Decision. While not raising express arguments in respect of the potential *res judicata* effect of the TAD Decision for the present proceedings, the First Respondent requests that the TAD Decision (which held in favor of the First Respondent) be taken into consideration by the Sole Arbitrator.

94. During the hearing, the Second Respondent argued that the TAD Decision was filed belatedly, while the First Respondent maintained that the TAD Decision was new information it could not have filed earlier.

95. Pursuant to Article R56 of the CAS Code:

> *"Unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument, to produce new exhibits, or to specify further evidence on which they intend to rely after the submission of the appeal brief and of the answer."*

96. The TAD Decision was issued on 27 May 2024, i.e. more than five weeks before the First Respondent submitted it in these CAS proceedings. Irrespective of whether "exceptional circumstances" would have justified the submission of the TAD Decision promptly after its notification, the Sole Arbitrator finds that the document cannot be admitted to the record, because it could have been submitted earlier. The First Respondent's argument that the decision needed to be translated is no valid excuse for its decision to wait for more than five weeks, until the day before the hearing, to submit the TAD Decision. Admitting the document would have delayed the proceedings and would likely have required the re-opening of written briefings after the hearing with respect to the legal effects of the decision for the present proceedings. Such submissions could have been exchanged before the hearing had the First Respondent introduced the decision promptly after its notification.

97. As a result, the Sole Arbitrator decides that the TAD Decision was filed belatedly and cannot be admitted to the record.

X. SCOPE OF REVIEW

98. According to Article R57 para. 1 of the CAS Code:

> *"The Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance. […]"*

99. Against this background, the Sole Arbitrator finds that her power to review the facts and the law of the present case is not limited.

XI. MERITS

100. As an initial matter, and before moving to the Parties' submissions on the substance of the pertaining issues, the Sole Arbitrator notes that certain procedural issues had been discussed before the FIFA Football Tribunal. Notably, Club Estoril had challenged the FIFA Football Tribunal's jurisdiction based on Clause 13 of the Player Contract, providing for the jurisdiction of the TAD, and invoking the concept of *lis pendens* because of the earlier filing of its claims against the Player before the TAD. The Appealed Decision elaborately discussed its jurisdiction (paras. 73-84 of the Appealed Decision) and confirmed its competence to decide over the dispute. None of the Parties has challenged substantively the findings of the Appealed Decision in this respect. Neither the Player nor Istanbul Spor required that the Appealed Decision be set aside on the grounds of the FIFA Tribunal's lack of jurisdiction or due to a violation of the doctrine of *lis pendens*.

101. The Sole Arbitrator will now address, in turn, the 10247 Appeal (below at **A.**) and the 10241 Appeal (below at **B.**).

A. The 10247 Appeal

102. In the 10247 Appeal, the Player seeks the following relief, which the Sole Arbitrator will address, in turn, below:

- A determination that Club Estoril terminated the Player Contract without just cause (below at **1.**);
- A determination that Club Estoril shall pay the Player outstanding salaries for the months from August until November 2022 (below at **2.**);
- A determination that the Player must not pay Club Estoril compensation for breach of Player Contract (below at **3.**).

1. The validity of Club Estoril's unilateral termination of the Player Contract

103. The Player is of the opinion that Club Estoril's termination of the Player Contract dated 9 December 2022 was not supported by just cause. He argues that Club Estoril violated its fundamental duty to provide the Player with a valid work permit and visa, which prevented him from the fulfillment of his playing services. Club Estoril's position is that the Player was unjustifiably absent from Club Estoril for almost 6 months and that it was therefore permitted to terminate the Player Contract with immediate effect.

104. At the outset, the Sole Arbitrator notes that it is undisputed that the Player did not return to Estoril on 27 June 2022, when he was supposed to be back from his summer vacation, and that he was indeed absent for more than 5 months, *i.e.* for a considerable period of time when he was terminated in December 2022.

105. CAS panels have recognized that a player's repeated failure to report to work or an unauthorized absence can, in principle, constitute just cause for a contract termination, see, e.g. CAS 2016/A/4408:

> *"114. According to Swiss law, the individual employment contract is a contract whereby the employee has the obligation to perform work in the employer's service for either a fixed or indefinite period of time, during which the employer owes him a wage (Article 319 para. 1 CO).* […]
>
> *115. There is an unjustified non-appearance at or leaving of the working place when the employee is absent for a certain amount of time and the employer can reasonably assume that it is not in the employee's intention to return and that his decision is final. This is particularly true if the employee is summoned to return to work or to justify his non-appearance (for instance by means of a medical certificate) and does not comply or is unable to provide a just cause (ATF 108 II 301, consid. 3 b; decisions of the Swiss Federal Court of 21 December 2006, 4C.339/2006, consid. 2.1; of 6 July 2005, 4C.155/2005, consid. 2.1; of 14 March 2002, 4C.370/2001, consid. 2a; WYLER R., op. cit., p. 499; AUBERT G., in Commentaire romand, Code des obligations, vol. I, 2nd edition, 2012, ad art. 337d, N. 2, p. 2107). Likewise, if the employee does not return to work after vacation and leaves his employer without any news for several months, the employer can – in good faith - assume that the employee's employment has ended without having to dismiss him or the employee having explicitly resigned (ATF 121 V 277)."*

106. The seriousness and frequency of the facts, the circumstances under which they occurred and the parties' attitude with regard thereto, before, during and after they occur, is decisive in terms of the evaluation of the extent of the employee's fault and whether the facts amount *per se* to grounds for the termination of the employment relationship (CAS 2011/A/2567, para. 96). A just cause termination principally requires that the player is warned by the club and/or that disciplinary proceedings have been initiated (CAS 2011/A/2567; CAS 2016/A/4408).

107. The central question in this case is whether the Player's absence was unjustified. If it was not, Club Estoril had no right to terminate the Player Contract.

108. The Player, on the one hand, maintains that he would have returned to Portugal by 27 June 2022 as ordered, but that he was unable to do so due to "*various vicissitudes*" relating to the grant of his visa, caused by Club Estoril's failure to obtain a work permit for him. After he had eventually been provided with his visa, he could not return because of Club Estoril's refusal to purchase his flight ticket. The Player alleges that Club Estoril deliberately provoked the termination of the Player Contract because it wanted to get rid of the Player.

109. Club Estoril, on the other hand, argues that it took the necessary arrangements for the Player's visa, but that the Player had cooperation duties (including the duty to visit the Portuguese embassy in Senegal), which he failed to honor. Because it was the Player's own fault that he could not use the flight ticket purchased by Club Estoril, he was

responsible for buying a new ticket himself after he had eventually obtained a visa in August 2022.

110. It is undisputed that Club Estoril had purchased the Player's flight ticket for him to return to Estoril on 20 June 2022. It is also undisputed that the Player did not return on this date, and that he could not return because he was not in possession of a valid visa.

111. Based on the record before her, and based on the witness testimony heard during the oral hearing, the Sole Arbitrator is satisfied that the reason why the Player was unable to return to Estoril by 27 June 2022 was the lack of a proper visa. Whether or not there were additional issues in regard of his work permit for Portugal is irrelevant for the Player's absence. It was clear for the Player already when he left Portugal to go to Senegal that he would need a visa, and that for obtaining a visa, he would have to visit the Portuguese embassy in Senegal.

112. Generally, the Sole Arbitrator follows CAS jurisprudence according to which it is the employer's duty to take the necessary measures to obtain a visa for an employee to enter and perform his professional activity in a particular country (see, e.g., CAS 2009/A/1838; CAS 2017/A/5164; CAS 2017/A/5092). However, in obtaining a visa, the employer is dependent on the cooperation of the employee. In the present case, undisputedly, the Player's duty to cooperate involved his visit of the Portuguese embassy in Senegal during his vacation at said country. The Player had to go to the embassy personally. For this purpose, it was required for the Player to make an appointment with the embassy via telephone or other means. It is not unreasonable to expect a player to organise a personal appointment at the embassy as part of his cooperation duties under an employment contract. Based on the witness testimony provided during the hearing, the Sole Arbitrator is satisfied that Club Estoril made it sufficiently clear to the Player that he had to go to the embassy personally.

113. As confirmed by Club Estoril's legal counsel, Mr Costa, he had already sent the Player Documents to the Portuguese embassy in Senegal on 20 May 2022. In contrast, the Player has not demonstrated any meaningful efforts to visit the embassy when he was in Senegal, or to make an appointment for his visit. While the Player testified that he had tried to call the embassy twice (not stating on what day and at what time), this is certainly not a sufficient cooperation when it comes to ensuring the timely issuance of a visa required for his return to his place of employment. What is more, undisputedly, the first time that the Player contacted Club Estoril to inform it of problems with his visa was on Saturday, 18 June 2022, two days before his scheduled flight back to Estoril on the following Monday morning. It is self-evident that it was impossible to fix any visa problem from far away over the weekend when the Player had never been at the embassy and had not secured any appointment. The Player has not explained why he did not notify Club Estoril of any alleged problems earlier. The only problem for which sufficient evidence is on record in these proceedings is the Player's failure to visit the Portuguese embassy in Senegal. There is nothing Club Estoril could have done about this problem, let alone over a weekend two days before the Player's scheduled return flight to Portugal.

114. Furthermore, Club Estoril's team manager confirmed that the Player did not appropriately communicate his absence from the first training on 27 June 2022. He also failed to take measures to postpone his flight, or to avoid the forfeiture of the paid flight ticket.

115. As a result, the Sole Arbitrator concludes that it was the Player who was responsible for his inability to return to Portugal by the scheduled date. There is no evidence on record that there was any problem with the documents sent by Club Estoril to the Portuguese embassy in Senegal. There is also no evidence on record for the Player's allegation that the reason why the visa could not be issued was the lack of a work permit in Portugal. The Player's submissions in respect of his inability to return to Portugal are blurred and not corroborated by evidence.

116. As a consequence, it was also the Player's responsibility to obtain a new flight ticket after he had culpably missed his flight on 20 June 2022, and after he had finally been provided with a visa on 22 August 2022. At that time, Club Estoril was still awaiting his return. The Player's argument that he did not purchase a new ticket because he did not have enough funds is not credible and, in any event, irrelevant. The cost of such ticket would have been approximately EUR 1,000.00, which is a minimal amount compared to the Player's salary, bonuses and further allowances, which he had duly received from Club Estoril until he left. Even if the Player's statement was taken at face-value, there is no proof that he asked Club Estoril to advance him the funds necessary to purchase a ticket (or to advance for his benefit the flight ticket for the upcoming season, which the Player had a contractual right to receive under Clause 2 (2) of the Player Contract). The Sole Arbitrator agrees with the finding in the Appealed Decision that as from the moment he was in possession of a valid visa at the latest, he should have returned to Portugal but failed to do so without justification.

117. In conclusion, the Sole Arbitrator finds that the Player breached the Player Contract by failing to return to Estoril as from 27 June 2022, and in any event as from 22 August 2022, with his continued absence constituting a serious violation of the Player Contract's terms.

118. This breach entitled Club Estoril to terminate the Player Contract for just cause after it had conducted disciplinary proceedings, in which the Player participated and was represented by legal counsel. Notably, the Player chose to remain absent even after the initiation of the disciplinary proceedings, which served as a clear warning that his conduct was a breach of Player Contract Club Estoril would not accept. The Player's continued absence cannot be justified by Club Estoril's non-payment of the Player's September and October salary, because the Player had no right to receive these salaries without rendering his playing services.

119. Given that the Player has not shown any intention at all to return to Portugal for a prolonged period of time and give that Club Estoril requested his return several times, he cannot invoke Clause 10 of the Player Contract to invalidate the termination. In view of the Player's unresponsiveness, it was clear that no consensual solution could be found, and any such further request would have been an empty formality.

120. Against this background, the Sole Arbitrator finds that Club Estoril's termination for just cause was valid, and that the Appealed Decision correctly found so.

2. The Player's salary for the months from August until November 2022

121. As determined above, the Player's failure to return to Estoril as from 27 June 2022 constituted a breach of the Player Contract. The immediate result is that the Player, who did not perform any services for Club Estoril in August, September, October and November 2022 without justification, is not entitled to any salaries for this period.

122. Similarly, the Player is not entitled to compensation for any other future salaries, because Club Estoril duly terminated the Player Contract for just cause in December 2022.

123. Therefore, the Appealed Decision correctly found that the Player has no right to receive salary compensation for the months in which he was absent or to claim any other damages.

3. Club Estoril's claim for compensation as a result of the Player's breach

124. The Player argues that the Appealed Decision wrongfully ordered him to pay to Club Estoril the amount of EUR 161,250.00 as compensation for breach of contract. However, the Player does not specifically contest the quantum of the ordered compensation, but solely relies on his primary argument that Club Estoril has no damage claim absent any basis for just cause.

125. As explained above, because Club Estoril rightfully terminated the Player Contract for just cause, it is principally entitled to compensation. The Sole Arbitrator agrees with the primary premise of the Appealed Decision that Clause 15 of the Player Contract (quoted above at para. 10) cannot serve as a basis for calculating Club Estoril's compensation, because such clause is excessive and lacks reciprocity. Club Estoril has not challenged these findings and expressly accepts (in its Answer) the quantum of the compensation ordered by the FIFA DRC.

126. Therefore, in accordance with the Appealed Decision, the amount of compensation payable by the Player to Club Estoril must be calculated pursuant to the other criteria established in Article 17 (1) of the FIFA RSTP. The FIFA DRC followed the common approach to take the residual value of the Player Contract from the date of termination until the natural expiry of the contract (December 2022 until June 2024), amounting to EUR 242,500.00, and the amount the Player was entitled to under his Subsequent Player Contract with Istanbul Spor (EUR 80,000.00) and calculated the average between the two amounts ([EUR 242,500.00 + 80,000.00] ÷ 2). The average of these two amounts is EUR 161,250.00. The Sole Arbitrator agrees with the calculation applied in the Appealed Decision.

127. In conclusion, the FIFA DRC correctly established the compensation to which Club Estoril is entitled.

4. Summary for the 10247 Appeal

128. Based on the findings above, the 10247 Appeal is to be dismissed in its entirety.

B. The 10241 Appeal

129. Istanbul Spor challenges the Appealed Decision in respect of the finding that it is jointly and severally liable under Article 17 (2) of the FIFA RSTP for the damages to be paid by the Player. The applicable edition of the FIFA RSTP at the time of the event on which Istanbul Spor's liability is based (the signing of the contract with the Player in July 2023) is the 2023 FIFA RSTP (which entered into force in March 2023). Article 17 (2) of the 2023 FIFA RSTP reads as follows:

> *"*[…] *If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties."*

130. On 4 October 2024, the Diarra Decision was issued by the Court of Justice of the European Union. The Diarra Decision found that Article 17 (2) of the FIFA RSTP in its present form was incompatible with Article 45 of the Treaty on the Functioning of the European Union (the "**TFEU**"). In response to the Diarra Decision, FIFA passed the FIFA Interim Regulations on 23 December 2024, which confined the scope of Article 17 (2) FIFA RSTP in respect of a new club's joint and several liability as follows:

> *"*[…] *A player's new club shall be held jointly liable to pay compensation if, having regard to the individual facts and circumstances of each case, it can be established that the new club induced the player to breach their contract."*

131. There is no notion in the present case that Istanbul Spor induced the Player to breach his contract with Club Estoril. Neither the Player nor Club Estoril make any such allegation, and the Sole Arbitrator finds no indication for any inducive action on Istanbul Spor's part on record. The Appealed Decision does not provide any reasoning for its order to hold Istanbul Spor jointly liable for the compensation to be paid by the Player but that such liability is based on Article 17 (2) of the FIFA RSTP (2023 edition).

132. At the outset, the Sole Arbitrator notes that Istanbul Spor's joint liability is principally governed – *rationae temporis* – by the 2023 FIFA RSTP, which was in place at the time Istanbul Spor hired the Player. Whether or not the finding in the Diarra Decision of the incompatibility of Article 17 (2) of the FIFA RSTP with EU competition law may benefit Istanbul Spor retroactively is a question which has to be addressed only if the Sole Arbitrator finds that the latter is indeed liable under the 2023 edition of Article 17 (2) of FIFA RSTP.

133. Article 17 (2) of the 2023 FIFA RSTP provides for a strict liability of the new club. The primary purpose of Article 17 (2) of the 2023 FIFA RSTP is to safeguard contractual stability in football. The provision shall serve as a deterrent for new clubs to approach players that are under a valid contract with another club to avoid that players breach their contracts. It is irrelevant for the new club's liability under Article 17 (2) of the 2023 FIFA

RSTP whether the new club induced the player's breach or was otherwise at fault. The underlying concept of the 2023 edition of Article 17 (2) is the presumption that the new club was, in one way or the other, causative for a player's decision to leave a club to which he is bound, and to join a new club before the natural expiry of his contract with the old club.

134. The purpose of Article 17 (2) of the 2023 FIFA RSTP is not affected when there is evidently no causal link between the (premature) end of the old contract and the singing of the new contract. This may be the case, for example, when the old club terminates its contract with the player for just cause, and the new club hires the player at a later time without that there is any link between these two events. A respective factual scenario has been underlying the case in CAS 2013/A/3365 & 3366, which found as follows (relating to Article 14.3 of the FIFA RSTP, which preceded Article 17 (2)):

> *"169. There must be a balance between players' fundamental right to free movement and the principle of stability of contracts, as supported by the legitimate objective of safeguarding the integrity of the sport and the stability of championships.*
>
> *170. On the facts of this case, it appears unreasonable to assert – as Chelsea does – that, according to Article 14.3, joint liability could be imposed upon a New Club, even in the absence a) of the New Club being proven to have induced the player's breach or b) of the New Club otherwise being at fault, or irrespectively c) of the manner in which the player's employment contract came to an end. It is undisputed that the joint and several liability for compensation (together with disciplinary sanctions if the requirements are met) will discourage any club from inducing a player to breach his contract with a former employer.* ***However, such a deterrent effect has no purpose when a Player was dismissed by his former employer and is left with no other option but to find a new employer. If Chelsea's interpretation were to be followed, it would mean that Article 14.3 would result in the imposition upon the New Club of an automatic and unconditional liability, without a finding of a fault or negligence and without a contractual basis – and hence without causation. Swiss law does not countenance such a result*** *(SFT 105 II 183 and TEVINI S., op. cit., ad art. 17, n 4, p. 129 and numerous references).*
>
> […]
>
> *172.* […] *If the New Club had to pay compensation even if it is established that it bears no responsibility whatsoever in the breach of the Employment Contract, the player would be hindered from finding a new employer. As a matter of fact, it is not difficult to perceive that no New Club would be prepared to pay a multimillion compensation (or transfer fee), in particular for a player who was fired for gross misconduct, was banned for several months, and suffered drug problems.*
>
> […]

175. Chelsea's interpretation of Article 14.3 is overly broad. It goes beyond the objective of protecting contractual stability. If Chelsea's interpretation were accepted, the balance sought by the 2001 RSTP between the players' rights and an efficient transfer system, which responds to the specific needs of football and preserves the regularity and proper functioning of sporting competition would be upset. It is incompatible with the fundamental principle of freedom to exercise a professional activity and is disproportionate to the protection of the old club's legitimate interests. For the reasons already exposed, if Chelsea's position were to be upheld, New Clubs would be put off employing players carrying a compensation obligation. These players would then end up being permanently deprived of any source of professional revenue.

176. The obvious complication, which would arise if a potential New Club were to absorb the damages possibly assessed against a player sacked because of his misconduct, is considerable. The New Club might face the prospect of having to wait for a long time before knowing the amount due. This would likely have the consequence of freezing the player's prospect on the job market. These effects are so obvious and significant that the failure to regulate them indicates that the author of Article 14.3 did not conceive that the text would apply to a player who had not wanted to leave the old club."

135. The Sole Arbitrator fully endorses the panel's considerations in CAS 2013/A/3365 & 3366. On the basis of these considerations, she finds that Article 17 (2) of the 2023 FIFA RSTP does not apply in cases where it was the employer's decision to dismiss with immediate effect a player who, in turn, had no intention to leave the club in order to sign with another club and where the new club has not committed any fault and/or was not involved in the termination of the employment relationship between the old club and the Player. As correctly explained in CAS 2013/A/3365 & 3366, these findings do not compromise contractual stability, as a player will still be dissuaded from unilaterally breaching his contract (in some other way than terminating it), because he will then face the burden of a potential compensation awarded in favour of his previous club. The prospect of having to pay a high compensation may actually serve as a broader deterrent for players willing to put an end to their employment contracts than if a new club were to be found jointly and severally liable.

136. As a result, the Sole Arbitrator finds that Istanbul Spor is not jointly and severally liable for the Player's obligation to pay damages. Istanbul Spor's appeal is, therefore, upheld.

C. Summary

137. The 10247 Appeal is dismissed in its entirety. Club Estoril's termination of the Player Contract was based on just cause. The Appealed Decision correctly found that the Player has to pay compensation to Club Estoril, and it correctly established the quantum of such compensation.

138. As to the 10241 Appeal, Istanbul Spor is not jointly and severally liable under Article 17(2) of the 2023 FIFA RSTP to pay compensation to Club Estoril. In view of the above

finding confirming the quantum of the compensation, which Istanbul Spor requested to review in case the termination was found to have been made with just cause (see Istanbul Spor's Prayers for Relief, item 3d), as it is the case, such request, if not *per se* moot, shall be considered as dismissed, so that, formally, the Appeal of Istanbul Spor shall be considered as partially upheld.

XII. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 19 December 2023 by Istanbul Spor AS against the decision by the FIFA Football Tribunal rendered on 16 October 2023, notified with grounds on 30 November 2023 (*CAS 2022/A/10241 Istanbul Spor AS v. Club Estoril Praia Futebol SAD & Racine Coly*), is admissible.

2. The appeal filed on 19 December 2023 by Istanbul Spor AS against the decision by the FIFA Football Tribunal rendered on 16 October 2023, notified with grounds on 30 November 2023 (*CAS 2022/A/10241 Istanbul Spor AS v. Club Estoril Praia Futebol SAD & Racine Coly*), is partially upheld.

3. The appeal filed on 21 December 2023 by Mr Racine Coly against the decision by the FIFA Football Tribunal rendered on 16 October 2023, notified with grounds on 30 November 2023 (*CAS 2022/A/10247 Racine Coly v. Club Estoril Praia Futebol SAD*), is dismissed.

4. The decision by the FIFA Football Tribunal rendered on 16 October 2023, notified with grounds on 30 November 2023, is partially set aside in respect of its No. 6 of the operative part, holding that Istanbul Spor is jointly and severally liable for the payment of compensation due by Mr Racine Coly to Club Estoril Praia Futebol SAD.

5. (…).

6. (…).

7. (…).

8. Any other and further motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland
Date: 4 June 2025

THE COURT OF ARBITRATION FOR SPORT

Annett Rombach
Sole Arbitrator