CAS 2024/A/10975 Bursaspor Kulübü Derneği v. Massimo Bruno & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark

in the arbitration between

Bursaspor Kulübü Derneği, Turkey
Represented by Mr Yakub Kizilkaya, Attorney-at-Law, Turkey

-Appellant-

and

Massimo Bruno, Belgium
Represented by Mr Juan de Dios Crespo Pérez, Mr Alfonso León Lleo and Mr Gytis Rackaukas, Attorneys-at-Law, Valencia, Spain

- First Respondent-

and

Fédération Internationale de Football Association, Zürich, Switzerland
Represented by Ms Cristina Pérez González, Senior Legal Counsel, FIFA Litigation Department, Miami, United States of America

- Second Respondent-

I. PARTIES

1. Bursaspor Kulübü Derneği (the "Club" or the "Appellant") is a professional football club based in Turkey, currently not competing in the TFF 2. Lig, which is the third tier of Turkish football. The Club is affiliated with the Turkish Football Federation (the "TFF"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA" or the "Second Respondent").

2. Mr Massimo Bruno (the "Player" or the "First Respondent") is a professional football player of Brazilian nationality, born on 17 September 1993. The Player is currently under contract with KV Kortrijk.

3. FIFA is the world governing body of association football, whose headquarters are located in Zürich, Switzerland. FIFA is the governing body of international football and is recognised as such by the International Olympic Committee. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

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

II. FACTUAL BACKGROUND

A. *Background facts*

5. Below is a summary of the main relevant facts as established on the basis of the Parties' written submissions and the evidence examined in the course of these proceedings. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the award only refers to the submissions and evidence the Sole Arbitrator considers necessary to explain his reasoning.

6. On 14 May 2021, at a time when the Club was competing in the TFF Lig 1, which it the second tier of Turkish football, the Player and the Club signed an employment contract divided into two separate documents (labelled as a "Professional Player Transfer Contract" and an "Additional Protocol", jointly referred to as the "Contract"), valid from the day of signing until 31 May 2023.

7. On 12 January 2022, the Player put the Club in default of EUR 350,000 as outstanding remuneration, granting 15 days to remedy the breach and on 29 April 2022, the Player forwarded a second default letter to the Club demanding the sum of EUR 370,000 and granting further 15 days as the ultimate deadline to remedy the breach.

8. By letter of 17 May 2022, the Player notified the Club about his unilateral termination of the Contract due to overdue payables, and on 1 July 2022, he signed a new employment

contract with the Belgium club KV Kortrijk, valid from the day of signing until 30 June 2025.

9. On 30 June 2022, the Player filed a claim before FIFA arguing that the Club had failed to comply with its financial obligations, leaving him with no alternatives but to terminate the Contract. The Player requested the following payments from the Club:

> "*EUR 391,000 as outstanding remuneration*
>
> *- EUR 500,000 as compensation*
>
> *- EUR 8,000 as reimbursement for accommodation*
>
> *- A compensation for all the bonuses that the Claimant would have perceived if he had not terminated the Contract*
>
> *- Additional compensation per egregious circumstances, corresponding to three salaries*
>
> *- 5% interest on all the awarded sums".*

10. In its reply, the Club argued that the Player had terminated the Contract without just cause because the latter failed to properly notify the Club in writing, and the Club further submitted that it had complied – at least in part – with its financial obligations. The Club requested that the claim be rejected in its entirety.

11. On 15 September 202, the FIFA Dispute Resolution Chamber (the "FIFA DRC") rendered its decision (the "DRC Decision") stating that:

> "*1. The claim of the [Player] is partially accepted.*
>
> *2. The [Club] has to pay to the [Player] the following amount:*
>
> *EUR 41,000 as outstanding remuneration plus 5% interest p.a. as from 30 November 2021 until the date of effective payment.*
>
> *EUR 50,000 as outstanding remuneration plus 5% interest p.a. as from 31 December 2021 until the date of effective payment.*
>
> *EUR 50,000 as outstanding remuneration plus 5% interest p.a. as from 31 January 2022 until the date of effective payment.*
>
> *EUR 50,000 as outstanding remuneration plus 5% interest p.a. as from 28 February 2022 until the date of effective payment.*
>
> *EUR 50,000 as outstanding remuneration plus 5% interest p.a. as from 31 March 2022 until the date of effective payment.*

EUR 50,000 as outstanding remuneration plus 5% interest p.a. as from 30 April 2022 until the date of effective payment.

EUR 50,000 as outstanding amount plus 5% interest p.a. as from 9 May 2022 until the date of effective payment.

EUR 550,000 as compensation for breach of contract without just cause plus 5% interest p.a. as from 30 June 2022 until the date of effective payment.

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 enclosed Bank Account Registration Form within 30 days of notification of this decision.

5. If the aforementioned sum plus interest is not paid within 30 days of notification of this decision, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and formal decision.

6. This decision is rendered without costs."

12. On 31 October 2022, the grounds of the Appealed Decision were notified to the Appellant and the First Respondent.

13. On 12 January 2023, and on the initiative of the Club, the Club and the Player signed a Settlement Agreement relating to the dispute between them.

14. The Settlement Agreement stated, *inter alia*, as follows:

"***WHEREAS***

A) *The Player and Bursaspor were parties to the dispute before the FIFA Dispute Resolution Chamber with reference number FPSD-6574, and related to outstanding receivables of [the Player]*

B) *According to the [DRC Decision] Bursaspor was ordered to pay* ***EUR 891,000.00/-*** *(eight hundred ninety-one thousand Euro - hereinafter, the "Outstanding Debt") together with the following interests as declared in the relevant FIFA Decision:*

[…]

C) *As Bursaspor has relegated to the third division and has become a club financially broken, the Player understands the position of the lub and hereby accepts to settle the case amicably.*

D) *By signing of this Settlement Agreement, the parties accept to settle the above-given case in accordance with the following clauses:*

D.1). *Bursaspor shall pay the sum of* ***EUR 50,000 (fifty thousand euros)*** *to the Player via bank transfer on or before 20th January 2023. If Bursaspor does not pay this amount, the agreement will be accepted null and void.*

D.2). *Bursaspor shall pay the below-mentioned amounts on or before the below-mentioned dates:*

i. *15,000 Euros 31st January 2023*
ii. *65,000 Euros 28th February 2023*
iii. *15,000 Euros 31st March 2023*
iv. *15,000 Euros 30th April 2023*
v. *15,000 Euros 31st May 2023*
vi. *15,000 Euros 30th June 2023*
vii. *15,000 Euros 31st July 2023*
viii. *15,000 Euros 31st August 2023*
ix. *15,000 Euros 30th September 2023*
x. *15,000 Euros 31st October 2023*
xi. *15,000 Euros 30th November 2023*
xii. *15,000 Euros 31st December 2023*
xiii. *15.000 Euros 31st January 2024*
xiv. *15,000 Euros 28th February 2024*
xv. *15,000 Euros 31st March 2024*
xvi. *15,000 Euros 30th April 2024*
xvii. *15,000 Euros 31st May 2024*
xviii. *15,000 Euros 30th June 2024*
xix. *15,000 Euros 31st July 2024*
xx. *15,000 Euros 30th August 2024*
xxi. *15,000 Euros 30th September 2024*
xxii. *15,000 Euros 31st October 2024*
xxiii. *15,000 Euros 30th November 2024*
xxiv. *15,000 Euros 31st December 2024*

Article E). Penalties and acceleration clause:

E.1). *Subject to the entry into force of the Agreement subject to the payment by the Club of the first installment (clause D.1 above), in the event that the Club fails to pay any of the instalments set out in Article D.2 above in 15 days after its due date the following consequences shall apply:*

− the acceleration clause becomes effective, i. e. all the remaining instalments of D.2 which have not been paid by that moment shall become immediately due (hereinafter: the "Remaining Amounts");

− the Club shall pay the Player an additional penalty for the breach of this Agreement, amounting to 30% (thirty per cent) of the Remaining Amounts (hereinafter: the "Penalty");

− an interest of 10% p.a. shall be due on the Remaining Amounts, as from the date of the default until the date of effective payment.

E.2). *The Parties explicitly agree that both the acceleration clause, the penalty and the interest rate provided above are fully proportionate and therefore are not subject to any mitigation for whatsoever reason.*

F). Variable payments:

In addition to all the afore-referred payments:

> ***F.1).*** *if Bursaspor promotes to the Upper League (First League) Bursaspor shall pay an additional* ***50,000 Euros*** *(fifty thousand Euros) within 90 days after the promotion is mathematically obtained;*
>
> ***F.2).*** *if Bursaspor promotes to the Super League (Top League of Turkey) Bursaspor shall pay* ***50,000 Euros*** *(fifty thousand Euros) within 90 days after the promotion is mathematically obtained.*

G). *The payments will be made to the bank account of the Player: […]*

H). *By signing of this Settlement Agreement, the Player hereby accepts to release the Club from any other obligation except the amounts which are given above in Article D, E (if necessary), and F of this settlement agreement, and the Parties waive their right to pursue an appeal or any similar procedure before the CAS, FIFA or national courts, should the club respects in terms of full.*

I). *By signing of this Settlement Agreement, the Player hereby confirms that he will inform FIFA that the parties agreed and solved the case only, however upon the payment of EUR 50,000 (fifty thousand euros) having been made in full in favour of the Player which is an essential condition for this Settlement Agreement to enter into force, i.e. should it not be paid in due time, this Settlement Agreement will not enter into force. Moreover, if the club fails to pay EUR 65,000 (sixty five thousand euros) which will be paid on 28th February 2023, the agreement will be accepted null and void.*

[..]

K). *This settlement comes into force only if the payment of Article D.1 is done in due time.*

L). *This Settlement Agreement is ruled and governed exclusively by the current FIFA Regulations on the Status and Transfer of Players, with Swiss Law applying subsidiarily only.*

M). *Any dispute arising between the parties in relation to this Agreement will be submitted exclusively to the competent FIFA Football Tribunal. Furthermore, the parties recognize the eligibility of the Court of Arbitration for Sport (CAS), as ruled by both the FIFA Statutes and the CAS Code of Sports-related Arbitration, to hear the dispute as an appeal body.*

The panel of the arbitration shall be composed of a Sole Arbitrator and the language of the proceedings shall be English."

15. Following the signing of the Settlement Agreement, the Club executed the following payments to the Player:

12 January 2023	EU 50,000
30 January 2023	EUR 15,000
11 April 2023	EUR 15,000
9 June 2023	EUR 15,000
23 June 2023	EUR 15,000

B. ***Proceedings before the FIFA Disciplinary Committee (the "FIFA DC")***

16. On 23 July 2024, the Player requested the initiation of disciplinary proceedings against the Club for failure to comply with the DRC Decision.

17. On 25 July 2024, the Secretariat to the FIFA DC (the "Secretariat") proposed the following sanction to the Club in accordance with article 58 of the FIFA Disciplinary Code (the "FDC") (the "Proposal"):

"*The [Club] shall pay to [the Player] (the Creditor) as follows:*

EUR 41,000 as outstanding remuneration plus 5% interest p.a. as from 30 November 2021 until the date of effective payment.

EUR 50,000 as outstanding remuneration plus 5% interest p.a. as from 31 December 2021 until the date of effective payment.

EUR 50,000 as outstanding remuneration plus 5% interest p.a. as from 31 January 2022 until the date of effective payment.

EUR 50,000 as outstanding remuneration plus 5% interest p.a. as from 28 February 2022 until the date of effective payment.

EUR 50,000 as outstanding remuneration plus 5% interest p.a. as from 31 March 2022 until the date of effective payment

EUR 50,000 as outstanding remuneration plus 5% interest p.a. as from 30 April 2022 until the date of effective payment.

EUR 50,000 as outstanding amount plus 5% interest p.a. as from 9 May 2022 until the date of effective payment.

EUR 550,000 as compensation for breach of contract without just cause plus 5% interest p.a. as from 30 June 2022 until the date of effective payment.

2. The Respondent is granted a final deadline of 30 days as from the present proposal becoming final and binding in which to pay the amount(s)due. Upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the Decision within the period stipulated, a ban on registering new players will be issued until the complete amount due is paid.

3. The Respondent shall pay a fine to [sic] the amount of CHF 30,000".

18. On 29 July 2024, the Club rejected the Proposal and submitted its position, following which the two parties were informed that the matter would be referred to the next meeting of the FIFA DC.

19. Moreover, the Secretariat asked the Player for additional information, in particular clarification on whether the parties had entered into a settlement agreement and whether the Club had paid any of the sums claimed.

20. In support of his request, the Player submitted*, inter alia*, that the two parties had entered into the Settlement Agreement. However, the Club failed to comply with its terms and, therefore, the Settlement Agreement became null and void. More specifically, the Club failed to pay the instalment of EUR 65,000 on time, i.e. by 28 February 2023, which resulted in the nullity and invalidity of the Settlement Agreement pursuant to Article I thereof.

21. Considering that there is no longer a valid and binding settlement agreement between the two parties, the amount due from the Club to the Payer is the amount awarded in the DRC Decision less EUR 110,000, which the Club has already paid to date. Accordingly, the amount set out in the DRC Decision, i.e. EUR 550,000, must be reduced to EUR 440,000.

22. The Club, which first of all confirmed having entered into the Settlement Agreement after the DRC Decision had been notified, further stated that it had already made partial payments in accordance with the Settlement Agreement, including:

o EUR 50,000 on 20 January 2023
o EUR 15,000 on 30 January 2023
o EUR 15,000 on 11 April 2023
o EUR 15,000 on 09 June 2023
o EUR 15,000 on 23 June 2023

23. As a result, the Club submitted that the DRC Decision cannot be enforced and that the disciplinary case against it should be terminated.

24. Based on the circumstances of the dispute, the FIFA DRC decided to address the procedural aspects of matter, i.e. its jurisdiction and the applicable law, before dealing with the substance of the matter.

25. In this regard, it was noted that at no point during the proceedings had the Club challenged its jurisdiction or the applicability of the FDC. However, notwithstanding this and for the sake of good order, the FIFA DRC found that on the basis of articles 55.1(g) and 57 of the FDC, it was competent to hear the present dispute and to impose sanctions in case of corresponding violations. It further stressed that, in line with article 58 of the FDC, where a party rejects the proposed sanction from the Secretariat (as *in casu),* the matter should be referred to it for a formal decision to be rendered. Finally, it found that the Chairperson was competent to rule alone as a single judge of the FIFA DC pursuant to article 57.1(h) of the same regulations.

26. Regarding the applicable legal framework, initially, the FIFA DRC pointed out that the disciplinary offence, i.e. the Club's potential failure to comply with its financial obligation to the Player, was committed after the entry into force of the 2023 edition of the FDC. In this respect, it was deemed that the merits as well as the procedural aspects of the case should fall under the 2023 edition of the FDC.

27. Having recalled the content and scope of article 21 of the FDC and noted that the proceedings revolved around the Settlement Agreement reached between the parties on 12 January 2023 in the context of the DRC Decision.

28. In this respect, it was further noted that article 21 (9) of the FDC gives the FIFA DC the competence to decide on cases related to the failure to respect settlement agreements concluded in the context of disciplinary proceedings opened against a debtor with respect to a final and binding financial decision issued by a body, a committee, a subsidiary or an instance of FIFA or by the CAS.

29. Moreover, the FIFA DRC noted that, as clarified in FIFA Circular no. 1867, on the basis of the wording of article 21 (9) of the FDC and the rationale behind this provision – i.e. avoiding the need for the claimant to initiate new proceedings before the FIFA Football Tribunal or the competent body in order to enforce a settlement agreement reached in relation to a final and binding decision issued by FIFA or the CAS – the competence granted to the FIFA DC under the said article also covers private settlement agreements reached after a decision taken by a body, committee, subsidiary or instance of FIFA or by the CAS, particularly when disciplinary measures have been imposed in accordance with the said decision.

30. With its jurisdiction being established, and the applicable law determined, the FIFA DRC subsequently turned its attention to the merits of the dispute and observed that the proceedings referred to a potential failure by the Club to comply with the DRC Decision, issued on 15 September 2022 and ordering the Club to pay to the Club a certain amount of money.

31. While the Club acknowledged the debt owed to the Player under the DRC Decision, the Club claimed that the parties had entered into the Settlement Agreement and that payments should continue to be made pursuant to the instalments set forth therein. The Club maintained that, since the parties have entered into the Settlement Agreement, the DRC Decision cannot be enforced, and the present disciplinary proceedings should be closed.

32. However, the FIFA DRC found that the Settlement Agreement is null and void. Indeed, pursuant to Article I of the Settlement Agreement, "*if the club fails to pay EUR 65,000 (sixty five thousand euros) which will be paid on 28th February 2023, the agreement will be accepted null and void".*

33. Notwithstanding this obligation, it was undisputed that by 28 February 2023, the Club had only paid the first two instalments (EUR 50,000 on 20 January 2023 and EUR 15,000 on 30 January 2023). The Club had thus failed to pay the third instalment of EUR 65,000 by the due date. Accordingly, it resulted in the Settlement Agreement becoming null and void.

34. As the Settlement Agreement was found to be null and void, the FIFA DRC found that the Player is entitled to enforce the DRC Decision under its original terms and concluded, by extension, that the Club had failed to pay the Player the total outstanding amounts due to it in accordance with the DRC Decision.

35. According to the DRC Decision, the Club had to pay the outstanding amounts within 30 days from the notification of the decision, and as the Club had not paid the full amount, it was therefore in breach of article 21 of the FDC and, as such, considered guilty of non-compliance with a financial decision under the terms of the said article.

36. As the Club had already paid to the Player the amount of EUR 110,000, it was found that the said amount should be deducted from the total outstanding amount due under the DRC Decision. Furthermore, and considering that the payment of EUR 110,000 did not correspond to any specific amount(s) listed in the DRC Decision, it was determined that it should be applied proportionately across all amounts ordered thereunder. In doing so and taking into account accrued interest, the FIFA DRC calculated that the Club then owed the Player as follows:

- EUR 340,796.29 as outstanding remuneration plus 5% interest *p.a.* as from 22 August 2024 until the date of effective payment.

- EUR 541,515.96 as compensation for breach of contract without just cause plus 5% interest *p.a.* as from 22 August 2024 until the date of effective payment.

37. With regard to the determination of the sanction, the FIFA DRC emphasised that the Club unlawfully withheld the amounts from the Player and that FIFA's attempts to urge the Club to fulfil its financial obligations had failed.

38. It further observed that the Club was a legal person and therefore was subject to the sanctions described under articles 6 (1) and 6 (3) of the FDC.

39. The FIFA DRC then recalled that article 21 of the FDC foresees specific sanctions for anyone who fails to pay another person a sum of money in full or in part, even though instructed to do so, in so far as the latter:

(i) will be fined and receive any pertinent additional disciplinary measure (lit. a); and

(ii) will be granted a final deadline of 30 days in which to pay the amount due (lit. b);

(iii) in the case of legal persons (as *in casu)* upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a ban on registering new players will be issued (lit. d).

40. In this respect, the FIFA DRC pointed out that Annexe 1 of the FDC provides for a list of specific disciplinary measures which may be taken into consideration in case of failure to respect financial decisions. As such, after analysing the circumstances pertaining to the case at hand, whilst taking into account the outstanding amounts in light of Annexe 1 of the FDC, the FIFA DRC decided to impose a fine of CHF 30,000 on the Club.

41. Furthermore, and in application of article 21.1(b) of the FDC, the Club was granted a final deadline of 30 days to pay the amounts due to the Player.

42. Finally, and consistently with article 21.1(d) of the FDC, the Club was warned and notified that, in the case of default within the period stipulated, a registration ban (at national and international level) would be automatically imposed until the complete amount due is paid.

43. On 22 August 2024, and based on the above, the FIFA DC rendered the Appealed Decision and decided that:

"1. Bursaspor Kulubu Dernegi is found responsible for failing to comply in full with the FIFA decision rendered on 15 September 2022 (Ref. FPSD-6574).

2. Bursaspor Kulubu Dernegi is ordered to pay to Mr Massimo Bruno as follows:

- EUR 340,796.29 as outstanding remuneration plus 5% interest p.a. as from 22 August 2024 until the date of effective payment.

- EUR 541,515.96 as compensation for breach of contract without just cause plus 5% interest p.a. as from 22 August 2024 until the date of effective payment.

3. Bursaspor Kulubu Dernegi is granted a final deadline of 30 days as from notification of the present decision in which to pay the amount due. Upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a ban on registering new players will be issued until the complete amount due is paid.

4. Bursaspor Kulubu Dernegi is ordered to pay a fine to the amount of CHF 30,000.

5. The fine is to be paid within 30 days of notification of the present decision."

44. On 16 October 2024, the grounds of the Appealed Decision were notified to the Appellant and the First Respondent.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

45. On 31 October 2024, the Appellant filed its Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code") against the Appealed Decision.

46. On 25 November 2024, and within the granted extension of time, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

47. On 21 February 2025the CAS Court Office informed the Parties that, pursuant to Article R54 of the CAS Code and on behalf of the President of the CAS Appeals Arbitration Division, the Arbitral Tribunal appointed to hear the appeal was constituted as follows:

Sole Arbitrator: Mr Lars Hilliger, Attorney-at-Law in Copenhagen, Denmark

48. On 7 February 2025 and 17 February 2025, respectively, and within the granted extension of time, the Second and First Respondents filed their Answers in accordance with Article R55 of the CAS Code.

49. By emails of 21 and 22 February 2025, the Parties all informed the CAS Court Office about their preference for the Sole Arbitrator to issue an award based on their written submissions only, however, the Appellant requested a second round of submissions "*to present our comments against the answers*". Both Respondents objected to such request based on lack of exceptional circumstance in accordance with Article R56 of the CAS Code.

50. By letter of 27 February 2025 from the CAS Court Office, the Parties were informed that the Sole Arbitrator, having considered the Parties' respective positions had decided not to grant a second round of submissions and to decide the case based solely on the written submissions without the need to hold a hearing as he deemed himself sufficiently well-informed.

51. The Parties all signed and returned the Order of Procedure, confirming, *inter alia*, the jurisdiction of the CAS to hear this dispute.

IV. SUBMISSIONS OF THE PARTIES

52. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator,

however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant

53. In its Appeal Brief, the Club requested the CAS to:
"I Accept the present Appeal and Appeal Brief,
II Set aside the Appealed Decision in its entirety,
III Order the respondents should bear the costs of the proceedings."

54. The Appellant's submissions, in essence, may be summarised as follows:

- The FIFA DC was not competent to render the Appealed Decision.

- FIFA Circular no 1628 of 9 May 20218 ("Circular 1628"), which was in force at the time of the signing of the Settlement Agreement, stated, *inter alia*, as follows:

  "*Finally, we wish to draw your attention to the fact that the FIFA Disciplinary Committee will no longer enforce financial decisions pronounced by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision should the parties reach a settlement agreement and/or a payment plan after the notification of said decision. In such cases, the conclusion of an agreement between the parties will automatically lead to the closure of disciplinary proceedings, and any claim resulting from the breach of such agreements will have to be lodged before the Players' Status Committee or Dispute Resolution Chamber, as applicable, or before*
  the competent bodies at national or international level mutually agreed by the parties."

- Accordingly, if the parties to a financial dispute before the FIFA DC conclude a settlement agreement, the FIFA DC does not have jurisdiction to enforce a decision passed by the FIFA DRC or by the CAS.

- Thus, the only criterion is whether such parties have concluded a settlement agreement or not, as Circular 1628 does not set out any requirement for such an agreement to be valid.

- Based on that, any dispute regarding the validity or breach of the Settlement Agreement should be submitted to the FIFA Football Tribunal for decision.

- This is confirmed by FIFA Circular no 1867 of 7 December 2023 ("Circular 1867") which states, *inter alia*, as follows:

  "*Prior to the entry into force of the 2023 edition of the FDC, the conclusion of a settlement agreement would lead to the termination of (or prevent the initiation of)*

disciplinary proceedings. Indeed, in accordance with FIFA circular no. 1628, non-compliance with the agreement had to be resolved by the Football Tribunal or the relevant competent body as chosen by the parties.
[…]
Notwithstanding the foregoing and taking into account the rationale behind the implementation of such provision as explained supra., it is considered that the competence granted to the Disciplinary Committee under article 21 paragraph 9 of the FDC shall also cover agreements concluded after any decision passed by a body, a committee, a subsidiary or an instance of FIFA or by CAS.

In other words, following the notification of such decision rendered by FIFA or CAS, if the relevant parties then conclude a private settlement agreement in order to settle their dispute, the Disciplinary Committee shall also be competent to enforce such agreement in accordance with article 21 paragraph 9 of the FDC, without the need for a new complaint to be lodged before the Football Tribunal (or the relevant competent body as chosen by the parties).

Similarly, the above shall exclusively apply to those agreements concluded following the entry into force of the 2023 edition of the FDC, i.e. as from 1 February 2023. […]"

- As such, it is clear that the FIFA DRC did not have jurisdiction as the Player and the Club signed the Settlement Agreement on 12 January 2023 and, therefore, before 1 February 2023.

- On 12 January 2023, the 2019 edition of the FDC was still in force as the 2023 edition of the FDC only entered into force on 1 February 2023. The 2019 edition of the FDC is therefore applicable to this case.

- Based on that, the FIFA DC rendered the Appealed Decision beyond its jurisdiction.

- The Settlement Agreement is a valid agreement between the Player and the Club.

- The submission of the Player regarding the alleged invalidity of the Settlement Agreement due to the Club's failure to pay in a timely manner the instalment due on 28 February 2023 must be dismissed.

- In accordance with Article E1 of the Settlement Agreement, the Settlement Agreement entered into force when the Club paid the instalment of EUR 50,000 on 12 January 2023, which payment is not disputed by the Player.

- The instalment of EUR 65,000, payable on 28 February 2023, is governed by Article D.2 of the Settlement Agreement.

- In this regard, Article E.1 of the Settlement Agreement states, *inter alia*, as follows: "*Subject to the entry into force of the Agreement subject to the payment by the Club of the first installment (clause D.1 above), in the event that the Club fails to pay any of the instalments set out in Article D.2 above in 15 days after its due date the following consequences shall apply:*
  − the acceleration clause becomes effective, i. e. all the remaining instalments of D.2 which have not been paid by that moment shall become immediately due (hereinafter: the "Remaining Amounts");
  − the Club shall pay the Player an additional penalty for the breach of this Agreement, amounting to 30% (thirty per cent) of the Remaining Amounts (hereinafter: the "Penalty");
  − an interest of 10% p.a. shall be due on the Remaining Amounts, as from the date of the default until the date of effective payment."

- The FIFA DRC never took this provision into consideration and issued the Appealed Decision as if the Settlement Agreement had never existed and never came into force.

- In any case, the Club did in fact make the following payments to the Player under the Settlement Agreement:
  o EUR 50,000 on 20 January 2023
  o EUR 15,000 on 30 January 2023
  o EUR 15,000 on 11 April 2023
  o EUR 15,000 on 9 June 2023
  o EUR 15,000 on 23 June 2023

- The Player never rejected these payments, even the ones made after 28 February 2023, and he never claimed that the Settlement Agreement was null and void until the initiated the procedures before the FIFA DC.

- As such, the Settlement Agreement should be considered as a valid agreement between the Club and the Player, and issues regarding its validity and breach should be determined by the FIFA Football Tribunal.

- As a consequence of the Settlement Agreement being valid, the outstanding receivables of the Player should be determined according to the provision set out in the same agreement.

- As the Settlement Agreement includes considerable discounts for the Club compared to the DRC Decision, any enforcement of the DRC Decision by the FIFA DC will cause irreparable harm to the Club.

- In any case, and even if it is assumed that the Settlement Agreement is to be considered null and void and that the FIFA DC did have jurisdiction, the latter made an erroneous decision as to the merits as it deducted the amount of EUR 110,000 already paid by the Club proportionately across all amounts ordered under the Appealed Decision, taking into account accrued interest instead of deducting it from the amount of compensation as set out in the DRC Decision.

- This calculation is wrong and contrary to Article 86(2) of the Swiss Code of Obligations, according to which:

  "In the absence of any statement from the debtor, the payment will be allocated to the debt indicated by the creditor in his receipt, unless the debtor objects immediately."

- As the Appealed Decision is rendered by the FIFA DC beyond its jurisdiction and, furthermore, is erroneous in its substance, it should be set aside and the Player be ordered to open a case in front of the FIFA DRC.

B. The First Respondent

55. In his Answer, the Player requested the CAS:

"1. To dismiss the Appellant's appeal in its entirety;

2. To uphold the decision of the FIFA Disciplinary Committee in its entirety;

3. To fix a sum to be paid by Bursaspor, in order to contribute to the payment of the Players legal fees and costs in the amount of CHF 10,000/-;

4. To condemn Bursaspor to the payment of the whole CAS administration costs and arbitrators' fees - if any; and

5. To determine any other relief the CAS Panel may deem appropriate."

56. The Player's submissions, in essence, may be summarised as follows:

- Article 4(1) of the 2023 edition of the FDC states as follows:

  "This Code applies to all disciplinary offences committed following the date on which it comes into force".

- The present case is related to the Club's failure to respect the DRC Decision, which violation was committed after the entry into force of the 2023 edition of the FDC on 1 February 2023.

- This is not altered by the fact that the Player and the Club attempted to settle the dispute amicably before the entering into force of the said edition of the FDC as the Settlement Agreement never entered into force.

- As a result, the current case is primarily governed by the 2023 edition of the FDC and Circular 1867.

- In any case, the final outcome of the case would have been the same under the 2019 edition of the FDC as the Settlement Agreement never entered into force, which is why the Club would in any case have to fulfil the DRC Decision, and since the consequences of failure to respect the decision rendered by FIFA (Article 21 of the 2023 edition or Article 15 of the 2019 edition) are the same.

- This case is not related to the non-compliance with the Settlement Agreement and the consequences of such breach since the Club's failure to satisfy the condition precedent set out in the Settlement Agreement resulted in the said agreement never entering into force – and, accordingly, being null and void.

- According to Article 151(1) of the Swiss Code of Obligations (the "SCO"): "*A contract is conditional if its binding nature is made dependent on the occurrence of an event that is not certain to happen.*" and it is further stated in Article 151(2) of the SCO that: "*The contract takes effect as soon as this condition precedent occurs, unless the parties clearly intended otherwise.*"

- The validity of the Settlement Agreement was dependent of the Club's timely fulfilment of two payments: EUR 50,000 payable on or before 20 January 2023 and EUR 65,000 to be paid on 28 February 2023, respectively.

- As confirmed by the CAS in CAS 2018/A/5628, para. 93: "*As a matter of principle, Swiss law allows parties to make the validity of a contract subject to the fulfilment of one or more conditions. According to Article 151(1) of the Swiss Code of Obligations (hereinafter "CO"), a contract "is conditional if its binding nature is made dependent on the occurrence of an event that is not certain to happen".*

- In the present case, the entry into force of the Settlement Agreement was subject to the fulfilment of the mutually agreed conditions and required the desired conduct from the Club: the payment of the agreed amounts in due time (it was *essentialia negoti* for any amicable settlement, which was not possible in the absence of the satisfaction of the said condition).

- The Club ignores Article I of the Settlement agreement, which expressly provides the conditional precedent (the payment of EUR 65,000, which fell due on 28 February 2023) for the agreement to enter into force.

- Considering the above and the mutually agreed clauses, constituting conditional precedent (Articles D.1 and I of the Settlement Agreement), together with Art. 151 of the SCO, it is evident that the entry into force and the validity of the Settlement Agreement were dependent on the fulfilment of the conditions provided under these articles.

- It is undisputed by the Club that it did not pay the amount due on the 28 February 2023 on time. As such, the Settlement Agreement never entered into force and the Settlement Agreement must be considered null and void *ab initio*, as it corresponds to the common intention of the parties.

- Although such conclusion is confirmed by the clear wording of the Settlement Agreement, according to the well-established CAS jurisprudence, the factors beyond the mere wording should be considered on a subsidiary basis in order to establish the true and common intention of the parties.

- The interpretation of the Settlement Agreement must be done in accordance with the principles set out in Article 18 of the SCO and CAS jurisprudence.

- The mutual intention of the Club and the Player to make the validity of the Settlement Agreement (and its entry into force) conditional on the payment of the agreed amounts on their due dates is clear from Articles D and I in their entirety.

- The only two payments that are exponentially higher than the others were the payments scheduled for 20 January 2023 and 28 February 2023. Notably, these two higher amounts correlate with the conditional clauses. The remaining amounts to be paid were significantly lower, corresponding to EUR 15,000.00 each.

- The Player expressed his intent to settle the dispute amicably and provide the Club with a significant discount only if the Club paid the part of its debt efficiently strictly on the agreed dates. In the absence of any of these payments, the Settlement Agreement would not enter into force (was accepted as null and void).

- In case the Club complied with the condition precedent and the Settlement Agreement entered into force (which did not happen), the failure to pay the instalments of EUR 15,000.00 would not have influenced the validity of the Settlement Agreement.

- The contractual parties agreed that, subject to the Settlement Agreement entering into force, the payments would be made between January 2023 and December 2024, i.e. over a 24-month period. However, the Player was acutely aware of the Club's continuous disregard for its contractual obligations. In order to avoid that, the Club and the Player made the validity of the Settlement Agreement subject to two larger payments being made on the mutually agreed dates.

- Therefore, it was always clear for both parties that no amicable solution was possible if the Club failed to satisfy the condition precedent agreed. Any other interpretation would be contrary to the intent of the parties and therefore should not be followed.

- The subsequent conduct of the two parties confirms the Settlement Agreement having never entered into force (being accepted as null and void) due to the Club's failure to comply with the condition precedent: i) the Club has still not paid the amount of EUR 65,000 in full, ii) the last payment from the Club was made on 23 June 2023. This confirms that the Club considered the Settlement Agreement to have not entered into force.

- The conditions for entry into force of the Settlement Agreement were not subject to any conduct of the Player. Upon non-fulfilment of the said conditions, the contract was automatically accepted as null and void (not having entered into force) without the necessity of any further actions of the Player. And the fact that the Player subsequently accepted three payments of EUR 15,000 from the Club does not alter this solely for the reason that the Player was entitled to receive such amounts in accordance with the DRC Decision. Moreover, the Player never disputed having received the actual payments made by the Club in the amount of EUR 110,000 in total and that such amount should be set off against the amount stated in the DRC Decision.

- In light of the above, it is clear from the express wording of the Settlement Agreement, the structure of the amounts to be paid and the Club's own conduct that both Articles D.1 and I were conditional clauses affecting the validity of the agreement, as mutually agreed by both parties during the negotiation of the same.

- The current change of the position of the Club is in breach of the general principle of the prohibition of inconsistent behaviour ("*venire contra factum proprium*" or "*estoppel*"). According to these principles, where the conduct of and/or assurances given by one party have induced legitimate expectations in another party, the first party is estopped from suddenly changing its course of action and to act contrary to such assurances to the detriment of the second party.

- In addition, it is noteworthy that according to the well-established CAS jurisprudence: *"contra stipolatorem principle may apply on a subsidiary basis, i.e if the primary interpretation in application of the principle of good faith does not lead to a clear result (BSK-OR I/WIEGAND, Art. 18 N. 40)"* (cf. CAS 2017/A/5172, para. 84).

- Although the interpretation of the Settlement Agreement in good faith leads to a clear result that the parties made the validity of the said agreement subject to the mutually agreed condition precedent (which was not satisfied), for avoidance of any doubt, it must be noted that the said agreement was drafted by the Club.

- Whereas the Settlement Agreement was accepted as null and void, the Player at his sole discretion may anytime recourse to the FIFA DC, requesting the assistance in enforcing the DRC Decision, which is also abundantly clear from the FIFA DRC Decision (para. 5 of the operative part), and there is no requirement for the Player to do so within a particular time period.

- As the Settlement Agreement is considered null and void, there is no doubt that the FIFA DC was competent to impose a sanction on the Club for its failure to respect the DRC Decision.

- The Club's submission that the validity of the Settlement Agreement is not a requirement for the application of Circular 1628 must be rejected as it lacks any legal grounds since the Club is trying to attribute legal consequences to non-valid legal agreements.

- In any case, the fact that there were conditions for the entry into force of the Settlement Agreement which could only be triggered as of the 28 February 2023 makes it clear that Circular 1867 should apply.

- On a subsidiary basis, it must be recalled that the argumentation put forward by the Club gives reasons to believe that it was, actually, the strategy of the latter since the beginning of the negotiations between the parties for the amicable solution.

- Only for the sake of argument, assuming (wrongly) that the validity of the Settlement Agreement is irrelevant in terms of the application of Circular 1628, the Club seems to have aimed for the conclusion of the Settlement Agreement without even planning to comply with it only to avoid the payment of the debt to the Player, which had been rightly adjudicated by the DRC.

- In this respect, it is noteworthy that the duty to act in good faith must be considered as one of the main principles applied towards any legal relationships under Swiss Civil law and that it is obvious that the Club manifestly abused the law attempting to avoid the payments of its debts to the Player, which is not worth of any protection.

- The Player was aiming to enforce the DRC Decision and not the Settlement Agreement, which is null and void.

- According to both the 2019 edition and the 2023 edition of the FDC, the FIFA DC had/has jurisdiction to impose a sanction on a club for its failure to respect a final and binding decision of the FIFA DRC.

- Such competence is further confirmed by the operative part of the DRC Decision itself.

- Moreover, and for the sake of good order, the 2019 edition of the FDC is not applicable since the Settlement Agreement was in any case only to enter into force after the entry into force of the 2023 edition of the FDC.

- Furthermore, the Club is prevented to rely on a submission regarding alleged lack of jurisdiction since the Club failed to challenge the jurisdiction of the FIFA DC, but simply argued that the Settlement Agreement was still valid.

- With regard to the calculation of the overdue amount, the Club's submission must be rejected.

- Article 85(1) of the SCO states as follows: "*A debtor may offset a part payment against the debt principal only if he is not in arrears with interest payments and expenses.*"

- The Club has overdue payables from the first year of the Contract. According to the DRC Decision, interest was to be charged on various amounts. More specifically, interest was to be charged at 5% per annum from 30 November 2021, 31 December 2021, 31 January 2022, 28 February 2022, 31 March 2022, 30 April 2022, 9 May 2022, respectively, until the date of effective payment, *in lieu* of the outstanding amounts due under the Contract.

- Additionally, the FIFA DRC found that interest at 5% per annum was to be paid on the 550,000.00 as from 30 June 2022, which was compensation due to the Player as compensation for the Club's breach of contract.

- Thus, before offsetting any amounts required, the FIFA DC examined all interest that was due at the time of the initiation of proceedings by the Club. The amount of EUR 110,000.00 was first offset against this amount, and only thereafter could the remaining amount be offset against the principal amount due.

C. The Second Respondent

57. In its Answer, FIFA requested the CAS;"
    a) To reject the Appellant's appeal in its entirety;
    b) To confirm the Appealed Decision; and
    c) To order the Appellant to bear all costs incurred with the present procedure and to
    a) cover all the legal expenses of FIFA related to the present procedure."

58. FIFA's submissions, in essence, may be summarised as follows:

    - The present dispute concerns a challenge of a decision of the FIFA DC concerning an infringement of Article 21 of the FDC, more specifically the Club's failure to comply with a decision issued by the FIFA DRC.

- The Club's failure to make the second payment of EUR 65,000 by the stipulated deadline of 28 February 2023 triggered the automatic nullity of the Settlement Agreement, as expressly agreed by the parties to the agreement.

- Given that the Settlement Agreement ceased to have any legal effect, the role of the FIFA DC remained unchanged: it had to determine whether the Club had complied with the original terms of the DRC Decision.

- Ultimately, the issue at hand is straightforward and revolves around a single, decisive question: did the Club pay its debt to the Player in accordance with the DRC Decision? The answer is a clear and unequivocal "no". Despite having the financial capacity to comply and having already benefited from additional time to fulfil its obligations, the Club has not honoured its obligations.

- The Appealed Decision is the result of the disciplinary proceedings opened against the Club for a violation of Article 21 FDC (former Article 15 FDC) due to its failure to comply with the DRC Decision.

- Pursuant to Article 21(1) of the FIFA FDC, anyone who fails to pay another person – such as a player, a coach or a club – or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (financial decision), is subject to a wide range of sanctions in the spirit of ensuring the respect for such decisions.

- The particular proceedings provided for under Article 21 FDC could arguably be perceived as enforcement proceedings pursuant to Swiss law and, consequently, the FIFA DC could be regarded as acting similarly to an "enforcement authority". Nonetheless, proceedings under Article 21 FDC are to be considered not as an enforcement, but rather as the imposition of a sanction for breach of the association's regulations and under the terms of association law.

- Alongside this, it should be recalled that the FIFA DC cannot review or modify the substance of a previous decision, which is final and binding, which is why its sole task is to analyse whether the debtor complied with the final and binding decision of the relevant body. As a consequence, the CAS can only address the question of whether the Club respected and fulfilled that decision, but cannot address its content.

- Therefore, in order to impose any possible disciplinary sanction on a natural and/or legal person as provided for under Article 21 of the FDC, the main question to be answered by the FIFA DC – and now by the Sole Arbitrator – is limited to the fact of whether or not the financial amounts as defined in a final and binding decision have been paid to the party claiming them, i.e. the creditor

and/or FIFA (as the case may be), or if for a certain reason the outstanding amounts are not due anymore.

- If the FIFA DC is not provided with proof that the payment has been executed or that an alternative payment plan was agreed upon, it will render a decision imposing a fine on the debtor for failing to comply with the final and binding decision (or the alternative payment plan) and will grant the latter a final period of grace as from the notification of the decision to settle its debt to the creditor and/or FIFA and to avoid further sanctions.

- Thus, as a general principle, in order to be able to assess the issue of whether or not the financial amounts as defined in the decision (or the alternative payment plan) have been paid to the creditor and/or FIFA or, for a certain reason, the outstanding amount is no longer due, the FIFA DC can only take into consideration the facts arising after the date on which the relevant decision has been rendered. Any other consideration would fall outside the scope of the disciplinary proceedings under Article 21 of the FDC.

- With regard to the present dispute, the Club's submission that the validity of the Settlement Agreement should be submitted to the FIFA Football Tribunal for decision must be rejected.

- The FIFA DC's sole task is to analyse whether the payment was made or if a payment plan was agreed upon.

- In this respect, it is important to emphasise that the provisions of Article 21(9) of the FDC (2023 edition) clearly establish that the FIFA DC is perfectly competent to decide on cases related to settlement agreements that had arisen directly from a final and binding decision issued by FIFA.

- The Settlement Agreement was concluded to establish a payment plan for settling the dispute which led to the DRC Decision.

- Thus, even if the Settlement Agreement had been valid and binding on the Player and the Club (*quod non,* as the Club failed to comply with the conditions required for the settlement to be binding upon the parties), the FIFA DC would have been fully competent to analyse the issue with respect to the Settlement Agreement.

- However, as pointed out in the Appealed Decision, since the Settlement Agreement became null and void due to the Club's failure to comply with Article I thereof, the FIFA DC was entitled to enforce the DRC Decision under its original terms. Differently put, the FIA DC could issue a decision as if the Settlement Agreement had never existed.

- The Club's submission that the Settlement Agreement "*is a valid agreement*" because of the Club´s payment of EUR 50,000 on 12 January 2023 must be rejected since this payment was not the only condition precedent included in the agreement.

- According to the Settlement Agreement, there were two mandatory requirements for the agreement to validly enter into force:
  (i) The Club's payment of EUR 50,000 on or before 2023 (as per Articles D.1). and I). of the Settlement Agreement, and
  (ii) The Club's payment of the amount of EUR 65,000 on or before 28 February 2023 (as per Articles D.2).ii. and I of the Settlement Agreement).

- While the timely payment mentioned under (i) above is not disputed, the payment of the amount of EUR 65,000 on or before 28 February 2023 was undisputedly never executed as expressly required under the terms of Articles D.2)ii and I of the Settlement Agreement.

- Based on that, the Settlement Agreement became "null and void" due to the Club's failure to comply with both mandatory requirements for the validity of the Settlement Agreement, as stipulated in Article I of the Settlement Agreement.

- Consequently, as correctly concluded by the FIFA DC, "*Having established that the Settlement Agreement is null and void,* […] *[the Player] is entitled to enforce the [DRC] Decision under its original terms."*

- In sum, it is without a doubt that the Disciplinary Committee correctly applied Article 21 of the FDC to the facts at its disposal in the case at stake; in particular, considering that the Club had breached the said article by not complying with the final and binding DRC Decision. Consequently, the FIFA DC rightfully imposed disciplinary measures on the Club (i.e. a fine and, additionally and subject to the persistent payment failure within the period of grace, a registration ban). That means that the conditions set out in Article 21 of the FDC were met.

- With regard to the sanction itself, the Club did not question the proportionality of the fine nor the imposition of the potential registration ban, on which ground the Sole Arbitrator is estopped from reviewing the proportionality of the sanction imposed as already confirmed by the CAS in CAS 2023/A/9637, para 227.

- Accordingly, once it is established that the Appealed Decision was correctly issued pursuant to Article 21 of the FDC, points 3 and 4 of the operative part of the Appealed Decision must be confirmed without further delay.

- Finally, and with regard to the Club's submission regarding the deduction of the amount of EUR 110,000 already paid by the Club to the Player, it is important to clarify that the FIFA DC applied the principle of proportional allocation based on considerations of fairness, which approach ensures that no specific debt or obligation is unduly prioritised over others when a partial payment is made without a clear designation by the debtor.

V. JURISDICTION AND ADMISSIBILITY

59. The present arbitration is governed by Chapter 12 of the Swiss Private International Law Act ("PILA"), which provides in Article 186 par. 1 that the Panel is entitled to rule on its jurisdiction ("Kompetenz-Kompetenz").

60. Article R47 of the CAS Code reads as follows:

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

61. Article 50 par. 1 of the FIFA Statutes (2024 edition) reads:

> "*Appeals against final decisions passed by FIFA and its bodies shall be lodged with CAS within 21 days of receipt of the decision in question."*

62. In addition, neither the Appellant nor the Respondents objected to the jurisdiction of the CAS with respect to the Appealed Decision, and the Parties confirmed the CAS jurisdiction when signing the Order of Procedure.

63. With regard to admissibility, Article R49 of the CAS Code provides, *inter alia*, 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.* […]*".*

64. As already set out above, it follows from Article 50 par. 1 of the FIFA Statutes that appeals filed against final decisions passed by FIFA's legal bodies must be lodged with the CAS within 21 days of receipt of the decision in question.

65. The grounds of the Appealed Decision were notified to the Appellant on 16 October 2024, and the Appellant's Statement of Appeal was lodged on 31 October 2024, i.e. within the statutory time limit of 21 days set forth in Article R49 of the CAS Code and in Article 57 of the FIFA Statutes, which is not disputed.

66. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the CAS Code.

67. It follows that the appeal of the Appealed Decision is admissible and that the CAS has jurisdiction to decide on it.

VI. APPLICABLE LAW

68. Article R58 of the CAS Code provides as follows:

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

69. Article 56 par. 2 of the FIFA Statutes provides the following:

"*The provisions of the CAS Code of Sports-related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.*"

70. Based on the above, and with reference to the filed submissions, the Panel is satisfied that the various regulations of FIFA are primarily applicable and that Swiss law is subsidiarily applicable should the need arise to interpret the various regulations of FIFA.

VII. MERITS

71. Initially, the Sole Arbitrator notes that the factual circumstances of this case are in essence undisputed by the Parties, including the fact that on 15 September 2022, the FIFA DRC rendered the unappealed DRC Decision, following which, on 12 January 2023, the Player and the Club entered into the Settlement Agreement.

72. It is further undisputed that the Club made the following payments after the signing of the Settlement Agreement:

- EUR 50,000 on 20 January 2023
- EUR 15,000 on 30 January 2023
- EUR 15,000 on 11 April 2023
- EUR 15,000 on 09 June 2023
- EUR 15,000 on 23 June 2023

73. Furthermore, it is undisputed that on 22 August 2024, the FIFA DC rendered the Appealed Decision.

74. While it is undisputed that the Club failed to fulfil its payment obligations pursuant to the Settlement Agreement, the Parties disagree whether the FIFA DC had in fact jurisdiction to enforce the DRC Decision due to the "Settlement Agreement".

75. While the Club on the one hand submits, *inter alia*, that since the Club and the Player entered into the Settlement Agreement, the FIFA DC had no jurisdiction to deal with the dispute, which, if so needed, should instead be brought before the FIFA Football Tribunal, the Player and FIFA submit on the other hand, *inter alia*, that the FIFA DC had jurisdiction to enforce the DRC Decision for the mere reason that the Settlement Agreement was null and void due to the Club's undisputed failure to pay the instalment of EUR 65,000 to be paid on 28 February 2023 at the latest.

76. Thus, the main issue to be resolved by the Sole Arbitrator is whether the FIFA DC had jurisdiction to deal with the dispute between the Club and the Player and render the Appealed Decision, and what are the consequences hereof?

77. Article 15(1) of the FDC 2019 edition ("FDC 2019") reads as follows:

"*Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS:*

a) will be fined for failing to comply with a decision; in addition:

b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;

c) in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a transfer ban will be pronounced until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a transfer ban in the event of persistent failure, repeated offences or serious infringements or if no full transfer could be imposed or served for any reason.

d) in the case of associations, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, additional disciplinary measures may be imposed;

e) in the case of natural persons, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period

stipulated, a ban on any football-related activity for a specific period may be imposed. Other disciplinary measures may also be imposed."

Furthermore, Article 52(1) f reads as follows: "*Proceedings are opened by the secretariat of the Disciplinary Committee: […]) on the basis of article 15 of this Code;[…]*".

Article 21(1) of the FDC 2023 edition ("FDC 2023"), which came into force on 1 February 2023 (Article 76 of the FDC 2023), states as follows:

"*Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee, a subsidiary or an instance of FIFA or a CAS decision (financial decision), or anyone who fails to comply with another final decision (non-financial decision) passed by a body, a committee, a subsidiary or an instance of FIFA, or by CAS:*

a) will be fined for failing to comply with a decision and receive any pertinent additional disciplinary measure; and, if necessary:

b) will be granted a final deadline of 30 days in which to pay the amount due or to comply with the non-financial decision;

c) may be ordered to pay an interest rate of 18% p.a. to the creditor as from the date of the decision of the Disciplinary Committee rendered in connection to a CAS decision on an appeal against a (financial) decision passed by a body, a committee, a subsidiary or an instance of FIFA;

d) in the case of clubs, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a ban on registering new players will be issued until the complete amount due is paid or the non-financial decision is complied with. A deduction of points or relegation to a lower division may also be ordered in addition to a ban on registering new players in the event of persistent failure (i.e. the ban on registering new players has been served for more than three entire and consecutive registration periods following the notification of the decision), repeated offences or serious infringements or if no full registration ban could be imposed or served for any reason;

e) in the case of associations, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, additional disciplinary measures may be imposed;

f) in the case of natural persons, upon expiry of the aforementioned final deadline and in the event of persistent default or failure to comply in full with the decision within the period stipulated, a ban on any football-related activity for a specific period may be imposed. Other disciplinary measures may also be imposed."

Moreover, Article 21(9) of the FDC 2023 states as follows:

"*The Disciplinary Committee shall be competent to decide on cases related to the failure to respect settlement agreements concluded in the context of disciplinary proceedings opened against a debtor with respect to a final and binding financial decision issued by a body, a committee, a subsidiary or an instance of FIFA or by CAS.*"

Finally, Article 55(1) g reads as follows: "*Proceedings are opened by the secretariat of the Disciplinary Committee: […] g) on the basis of article 21 of this Code;[…]*".

78. In this regard, the Sole Arbitrator notes that it is not disputed between the Parties that, pursuant to both FDC 2019 and FDC 2023, the FIFA DC is granted jurisdiction to enforce, *inter alia*, final and binding decisions rendered by the FIFA DRC. Moreover, it appears to be undisputed that, pursuant to the Article 21(9) of FDC 2023, the FIFA DC "has also jurisdiction *to decide on cases related to the failure to respect settlement agreements concluded in the context of disciplinary proceedings opened against a debtor with respect to a final and binding financial decision issued by a body, a committee, a subsidiary or an instance of FIFA or by CAS"*. However, the Club submits that the latter is only the case if such settlement agreements are entered into after 1 February 2023 when the FDC 2023 entered into force, which is not the case with the Settlement Agreement since this agreement was signed on 12 January 2023.

79. Based on that and the circumstances of the case, including the fact that the Player requested the initiation of the disciplinary procedures based on the Club's failure to comply with the DRC Decision, the Sole Arbitrator finds that it is up to the Club to discharge the burden of proof to establish that the FIFA DC had no jurisdiction to decide on the case and render the Appealed Decision.

80. In doing so, the Sole Arbitrator adheres to the principle established by CAS jurisprudence that "*in CAS arbitration, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them (..). The Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some fact and persuade the deciding body, it must actively substantiate its allegations with convincing evidence" (e.g. CAS 2003/A/506, para. 54; CAS 2009/A/1810&1811, para. 46; and CAS 2009/A/1975, paras. 71ff)*."

81. However, the Sole Arbitrator finds that the Club has failed to adequately discharge its burden of proof to establish that this was in fact the case.

82. The Club's main argument in support of its submission regarding the alleged lack of jurisdiction is the fact that the Club and Player entered into the Settlement Agreement on 12 January 2023. According to the Club, and since the Settlement Agreement was signed by the two parties before the entering into force of the FDC 2023, the FDC 2019 and the

Circular 1628 are applicable, which excludes the FIFA DC from having jurisdiction to enforce a decision.

83. In this regard, the Club refers to Circular 1628, which states, *inter alia*, as follows:

Finally, we wish to draw your attention to the fact that the FIFA Disciplinary Committee will no longer enforce financial decisions pronounced by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision should the parties reach a settlement agreement and/or a payment plan after the notification of said decision. In such cases, the conclusion of an agreement between the parties will automatically lead to the closure of disciplinary proceedings, and any claim resulting from the breach of such agreements will have to be lodged before the Players' Status Committee or Dispute Resolution Chamber, as applicable, or before the competent bodies at national or international level mutually agreed by the parties.

84. However, the Player and FIFA both reject this argumentation and submit that whether the FIFA DC was/is competent to enforce a settlement agreement based on a FIFA and/or CAS decision is not of any material importance in this dispute since the Settlement Agreement is to be considered null and void due to the Club's undisputed failure of timely payment of the agreed instalment of EUR 65,000 on 28 February 2023 at the latest pursuant to the said agreement. In this regard, the two parties refer to Article I of the Settlement Agreement, which states as follows:

"*By signing of this Settlement Agreement, the Player hereby confirms that he will inform FIFA that the parties agreed and solved the case only, however upon the payment of EUR 50,000 (fifty thousand euros) having been made in full in favour of the Player which is an essential condition for this Settlement Agreement to enter into force, i.e. should it not be paid in due time, this Settlement Agreement will not enter into force. Moreover, if the club fails to pay EUR 65,000 (sixty five thousand euros) which will be paid on 28th February 2023, the agreement will be accepted null and void.*"

85. While the Club does not dispute its breach of the said contractual payment obligation, it rejects the submission of the other parties that such payment failure should render the Settlement Agreement null and void, which would only have been the case had the Club failed to pay the first instalment of EUR 50,000 on or before the 20 January 2023 pursuant to Article D.1 of the same agreement. As the Club did in fact pay such an amount in due time, the Settlement Agreement entered into force, based on which the jurisdiction of the FIFA DC pursuant to Article 15 of the FDC 2019 is excluded.

86. Any failure of timely fulfilment of the instalment of EUR 65,000 due on 28 February 2023 in accordance with the Settlement Agreement was never agreed as a condition precedent, and the Club's failure to pay the said instalment does not render the Settlement Agreement null and void.

87. As such, and since the Club and the Player are not in agreement about the consequences pursuant to the Settlement Agreement with regard to the Club's failure to pay the said

instalment, the Sole Arbitrator needs to interpret the content of the said agreement in this regard in accordance with the principles of Swiss law.

88. Initially, and for the sake of completeness, the Sole Arbitrator notes that as set out in CAS 2017/A/5172, para. 69, "*Swiss Law does not follow a concept of "sens clair" (cf. SFT 111 II 287 and 99 II 285). Reference is made also to SFT 127 III 444 para. b) where it was held as follows:*

"A cet égard, la jurisprudence récente a nuancé le principe selon lequel il y aurait lieu de recourir à des règles d'interprétation uniquement si les termes de l'accord passé entre parties laissent planer un doute ou sont peu clairs. On ne peut ériger en principe qu'en présence d'un "texte clair", on doit exclure d'emblée le recours à d'autres moyens d'interprétation. Il ressort de l'art. 18 al. 1 CO que le sens d'un texte, même clair, n'est pas forcément déterminant et que l'interprétation purement littérale est au contraire prohibée. Même si la teneur d'une clause contractuelle paraît claire à première vue, il peut résulter d'autres conditions du contrat, du but poursuivi par les parties ou d'autres circonstances que le texte de ladite clause ne restitue pas exactement le sens de l'accord conclu".

***Free translation**: "In this respect, recent case law has modified the principle according to which the rules of interpretation should apply only if the terms of the agreement between the parties leave room for doubt or are unclear. One cannot state that in the presence of a "clear text" one must exclude all other means of interpretation. It derives from Article 18 para. 1 CO that the meaning of a text, even a clear one, is not necessarily determining and that the purely literal interpretation is on the contrary prohibited. Even if a contractual clause appears clear at first view, it can result from the conditions of the contract, from the objectives sought by the parties or from other circumstances that the text of such contractual clause does not convey exactly the content of the agreement that was concluded.*"

89. Consequently, and even if the Sole Arbitrator notes that the wording of Article I of the Settlement Agreement appears to have a clear literal (i.e. unambiguous) meaning, he must assess whether or not the contractual parties truly intended to attribute such a meaning to this specific term.

90. In this regard, the Sole Arbitrator notes that Article 18 of the SCO stipulates as follows (free translation):

"*When assessing the form and terms of a contract, the true and common intention of the parties must be ascertained without dwelling on any inexact expressions or designations they may have used either in error or by way of disguising the true nature of the agreement.*"

91. Article 18 of the SCO is based on the assumption that the contractual parties have concluded a contract and, in principle, do not dispute its effectiveness, which is the case in this matter. The dispute rather concerns the content of the agreement reached.

92. As such, Article 18 par. 1 of the SCO rules that the content of the agreement must be construed according to the true intentions of the parties. Thus, the parties' subjective will has priority over any contrary declaration in the text of the contract. In case a common subjective will of the parties cannot be ascertained, the content of the contract must be determined by application of the principle of mutual trust (CAS 2017/A/5172, para. 73). In SFT 127 III 444 para. b), the Swiss Supreme Court indicated as follows (free translation):

"To determine if there has been an agreement between the parties one must first seek their true and common intention (art. 18 para.1 SCO). The judge must therefore first establish the true will of the parties, empirically as the case may be, based on clues. If he cannot establish the true will or he finds that one of the parties did not understand the true will expressed by the other party, the judge will seek the meaning that the parties could and should have given to their respective declarations in accordance with the rules of good faith (application of the principle of trust)."

93. With these principles in mind, the Sole Arbitrator notes that it is not disputed that the Club did in fact breach its contractual payment obligations to the Player which led the Player to terminate the Contract with just cause, which subsequently led to the DRC Decision according to which the Player was entitled to receive the amount of EUR 891,000 from the Club as outstanding salary and compensation for breach of contract.

94. It is furthermore undisputed that by entering into the Settlement Agreement, the Player accepted to grant the Club a significant "discount" and that the Parties agreed that in case of the Club's failure to pay in due time the first instalment in the amount of EUR 50,000 payable on or before 20 January 2023, "*the agreement will be accepted null and void*" as set out in Article D.1 of the agreement.

95. However, regardless of the same wording being used in Article I regarding the agreed instalment of EUR 65,000 payable on 28 February 2023 at the latest, the Club now submits that even if the said instalment was never paid on time, such failure should not cause the Settlement Agreement to become null and void.

96. The Sole Arbitrator cannot support such an interpretation of the said unambiguous provision, not least based on the circumstances of the case as he does not find any arguments or circumstances in support of such understanding.

97. On the contrary, the Sole Arbitrator finds it logical that the same wording used in the same manner in the same contract in order to regulate the consequences of the potential failure to fulfil almost identical instalments must in good faith be understood to have the same meaning, i.e. that the failure to pay such an instalment on time will lead to the Settlement Agreement becoming null and void.

98. Based on that, the Sole Arbitrator agrees with the FIFA DRC' finding that the Settlement Agreement is to be considered null and void due to the Club's failure to fulfil in a timely

manner its payment obligation of the instalment of EUR 65,000 payable on 28 February 2023 at the latest.

99. With the Settlement Agreement being null and void and taking into consideration that the jurisdiction of the FIFA DC to enforce decisions rendered by the FIFA DRC pursuant to both FDC 2019 and FDC 2023 are undisputed, the Sole Arbitrator confirms that the FIFA DC had jurisdiction to deal with the Player's request based on the DRC Decision and to render the Appealed Decision.

100. In this regard, the Sole Arbitrator finds it irrelevant that the Club executed and the Player accepted several payments in accordance with the provisions of the Settlement Agreement for the mere reason that the Player was entitled to receive such an amount pursuant to the DRC Decision.

101. With regard to the merits of the Appealed Decision, the Sole Arbitrator notes that the Club did not appeal the potential ban of registering a new player, nor the fine in the amount of CHF 30,000 imposed on it.

102. The Club only objected to the deduction made by the FIFA DC of the amount of EUR 110,000 already paid by the Club, submitting that such a deduction should have been made from the amount of compensation payable pursuant to the DRC Decision and not proportionately across all amounts ordered under the said decision.

103. The Sole Arbitrator notes in this regard that Article 85(1) of the SCO states as follows:

"*A debtor may offset a part payment against the debt principal only if he is not in arrears with interest payments and expenses.*",

while Article 86(2) of the same code states that:

"*In the absence of any statement from the debtor, the payment will be allocated to the debt indicated by the creditor in his receipt, unless the debtor objects immediately.*"

104. In the payment receipts from the Club with regard to the payments made to the Player, the Club only stated "*Masimo Bruno 12/01/2023 Settlement Agreement*".

105. Without any other statements from the Club at the time of payment of the said amounts and based on the consideration of the FIFA DC as set out in the Appealed Decision, the Sole Arbitrator does not find sufficient grounds for considering the deduction made by the FIFA DC as erroneous, not least taking into consideration the Club's obligation to pay interest of the outstanding amount as set out in the DRC Decision.

106. Based on the above, the Club's appeal is dismissed and the Appealed Decision is confirmed.

X. COSTS

(…)

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Bursaspor Kulübü Derneği on 31 October 2024 against the decision of the FIFA Disciplinary Committee issued on 22 August 2024 is dismissed.

2. The decision of the FIFA Disciplinary Committee issued on 22 August 2024 is confirmed.

3. (…).

4. (…).

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

Seat of Arbitration: Lausanne, Switzerland
Date: 1 July 2025

THE COURT OF ARBITRATION FOR SPORT

Lars Hilliger
Sole Arbitrator