Arbitration CAS 2008/A/1447 E. v Diyarbakirspor, award of 29 August 2008

Sole Arbitrator: Dr. Christian Duve (Germany)

Football
Contract of employment and termination for just cause
Case-by-case definition of "just cause"
Compensation of terminating a contract without just cause

1. **The definition of just cause in Art. 14 of the FIFA Regulations (2005) and whether just cause exists is established on a case-by-case basis. If we fall back on Swiss law, an employment contract which has been concluded for a fixed term can only be terminated prior to expiry of the term of the contract if there is "good cause", that is any circumstance, the presence of which means that the party terminated cannot in good faith be expected to continue the employment relationship. In this respect, the non-payment or late payment of remuneration by an employer does in principle constitute 'just cause' for termination of the contract for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet his obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in the future.**

2. **For the interpretation of the compensation of Art. 17 of the FIFA Regulations (2005) apply the principles of Swiss employment law and the existing CAS jurisprudence. According to the Swiss Code of obligations, the injured party receives integral reparation of his damages and compensation taking into account all claims arising from the employment relationship. According to Swiss legal doctrine, the injured party is entitled to integral reparation of its damages. The damages taken into account are not only those that may have caused the act or the omission that justify the termination but also the positive interest. The positive damages of the employee are the salaries and other material income that he would have had if the contract would have been performed until its natural expiration.**

E. (the Appellant, "the Player") is a football player born in Slovenia in 1977 who played for the Respondent.

Diyarbakirspor Kulübü (the Respondent, the "Club") is a football club on the Turkish second division.

On February 2, 2006, the parties signed an employment contract (the "Contract") for the period between January 1, 2006 and June 30, 2007 which stipulated the following:

> *"Diyarbakirspor club will pay the net amount of 500.000 Euros (five hundred) to the player during the agreement term. […]*
>
> *"1 - Total amount of 133,000 (one hundred thirty three thousand) Euros net to be paid to the player by one che[q]ue iss[u]ed by Garanti Bank Diyarbakir Branch, dated 28.02.2006, 8001824 che[q]ue number and 133,000 Euros amount on.*
>
> *[Additions made by the Tribunal in brackets]*
>
> *2 - 183,000 net amount Euros will be paid in 15 equal installments, 15 months. Payments will be made between April 2006 and June 2007. Payment of each month will be made in time, during the month related.*
>
> *3 - The other 184,000 will be divided into 50 official league matches and paid as per match, 3.680 Euros for per match […]*
>
> *PRIVATE ARTICLES*
>
> *1 - If Diyarbakirspor goes to the 2nd division from the Turkish Turkcell Super League at the end of 2005-2006 seasons, the player will not demand any rights or payments for the 2006-2007- season, at the same time if he has received more than 166.666 Euros at the end of 2005-2006 season, till 31.5.2006 date he will pay back overpaid money, and will not demand any right or payment and will be free to get his certificate and cancel his agreement as single sided to be transferred any club he wishes. (Till 31.5.2006 date the player will receive net amount of 166.666 Euros, if he receives more than this amount he will pay back overpaid Money to the club.) […]".*

Regarding the match bonuses, the Contract stated that the Player would get €3,680 if he played from the start, €2,760 if he entered the game later and €1,840 if he stayed on the bench. If he was not summoned for a particular game, no bonus would be paid.

Consequently, at the time of signing the Contract, a cheque for €133,000 dated February 28, 2006 was issued to the Appellant in accordance with the contractual clause no. 1.

On February 28, 2006, however, when the Player went to Garanti Bank he was informed that the cheque was not payable.

Therefore, on March 6, 2006 the Appellant sent a payment reminder to the Respondent for the €133,000 due since February 28, 2006.

On March 17, 2006, however, the Club deposited in the Player's account only €65,000.

As a result, on April 17, 2006 the Appellant sent another payment reminder for the €68,000 still due since February 28, 2006; one monthly salary of €12,200; and eleven match bonuses (11 times €3,680 = €40,480).

On April 30, 2006 the Appellant declared the unilateral termination of the contract due to non-payment of contractual obligations by the Respondent.

At the end of the 2005/2006 season the Respondent was relegated from the first to the second division. According to information submitted by the Turkish Football Federation in the FIFA file, the Appellant played in eight matches from the beginning, entered the game later in six matches and stayed on the bench in one match.

On May 17, 2006, the Appellant filed a claim against the Respondent before the Dispute Resolution Chamber (DRC) of FIFA claiming the total amount of €415,955 plus interest as a consequence of the Respondent's allegedly unjustified breach of contract.

In his claim, the Appellant argued that the Respondent owed the monies under the contract as at the time of filing the FIFA claim, the Respondent had only paid him the amount of €65,000 (out of €133,000 due since February 28, 2006) and €9,000 on account of match bonuses. The match bonuses, however, were not to be considered as the fulfillment by the Respondent of his contractual obligations, but as bonuses distributed equally to all team players.

The Appellant claimed that he was entitled to the following amounts before the DRC:

Amount due since February 28, 2006 under first clause of the payment plan contained in the contract Three monthly salaries	€ 133,000 € 36,600
Match bonuses for eleven matches	€ 38,640
Remaining value of contract • Salaries for season 2006/07 • Match Bonuses	€ 272,715 € 146,400 € 126,315
Total amount to which Appellant is entitled	€ 480,955
Amount already paid by Respondent	€ 69,000
Amount outstanding	€ 411,955

On May 31, 2006 the Respondent answered the claim by alleging at first that it had already paid €100,180 and, on July 5, 2006 it amended his position and stated that it paid €107,208 in total. The Club submitted bank statements according to which a total of €68,500 and Turkish Lira YTL 23,154 (approximately €12,000) had been paid to the Player.

Moreover, considering the fact that the Club had been relegated at the end of the season 2005/2006, and in view of the relevant contractual clause, the contract between the Player and the Club had terminated on June 30, 2006. Thus, the Player was only entitled to a maximum amount of €166,666.

Furthermore, the Respondent filed a counterclaim with the DRC against the Player since the latter had left the club without permission at the beginning of May 2006, therefore committing a breach of contract. Respondent accordingly claimed for damages under article 17 para. 1 of the Regulations in the amount of €100,000, the amount paid to the Player's former club for his transfer.

Regarding the Respondent's position and counterclaim, the Appellant stated that the Contract provided him with a unilateral option to terminate it in case of relegation of the club at the end of season 2005/2006. Therefore, since he did not exercise this option, he was entitled to the salaries due until the expiry of the contract on 30 June 2007.

On August 10, 2007 the DRC of FIFA ordered the following:

> *"1.The claim of the Slovenian player E. is rejected.*
>
> *2. The counterclaim of the Turkish club Diyarbakirspor is partially accepted.*
>
> *3. The player E. has to pay the amount of EUR 17,167 to the club Diyarbakirspor.*
>
> *4. The amount due to the club Diyarbakirspor has to be paid by the player E.* ***within the next 30 days*** *as from the date of notification of this decision".*

To arrive to these conclusions, the DRC addressed three issues: first, the duration of the contract; second, whether there was just cause for the Player to terminate the Contract; and third, the consequences of such termination.

With regard to the first issue, the DRC held that the termination date of the contract was under the non-potestative condition of relegation at the end of the season 2005/2006, and therefore, since the relegation of the Club had occurred at the end of the season 2005/2006, the Contract had ended on June 30, 2006.

Considering the second issue, the DRC ruled that, according to the wording of private article 1 of the Contract, the Appellant was entitled to receive only the maximum amount of €166,666 from the Club for the effective duration of the Contract. Since the signing-on fee plus the three monthly salaries already amounted to approximately €166,666, the DRC held that the match bonuses claimed could not *"be taken into consideration, as they would effect a significant excess of the payable amount of EUR 166,666".*

Moreover, since the Club was able to show via bank statements that it had paid an approximate amount of €12,000 to the Appellant, and since the latter had not proven the Club's failure to pay its position, the DRC regarded this payment as the salary for the month April 2006. In addition, pursuant to the new date of expiration of the Contract resulting from the Club's relegation, the DRC considered that the Appellant was entitled to only 2/3 of the signing-on fee, €88,666 of which an amount of €68,500 had already been paid to him. Therefore, the DRC concluded that less than 1/4 of the signing-on fee to which the Appellant was entitled was outstanding in April 2006. Thus, the DRC decided that the Respondent's failure to fulfill its obligations had not been persistent, and accordingly, the Appellant had no right to unilaterally terminate the contract.

On the third issue, the DRC held that the Club was entitled to compensation for the Player's unjustified breach under art. 17 para. 1 of the Regulations. The Club had initially paid a transfer fee of €100,000, and as the employment contract had terminated after 2/3 of its initially agreed duration, 1/3 of this amount or €33,333 had still not been amortized. Thus, the Club was entitled to receive this amount as compensation.

Finally, the DRC compensated the amounts owed between the parties and ordered the Player to pay the Club the total amount of €17,167.

The decision was served on the Appellant by fax on December 10, 2007.

On December 27, 2007 the Appellant filed its appeal of the DRC's decision dated December 10, 2007 to the CAS. And in his appeal brief dated January 9, 2008 he requested the following relief:

> *"1. For the sum of 88,666 EUR netto without taxes for the rest of the contract, payable to the account of the legal representative.*
>
> *2. For the interest thereon at the legal rate from above mentioned dates.*
>
> *3. For reasonable attorneys' fees and costs incurred herein in the amount of 3,000 EUR".*

In his submissions, Appellant informed the CAS of his preference for a sole arbitrator, English as the language of the proceedings, and Swiss law as the applicable law.

On January 4, 2008 the CAS served the Respondent with the statement of appeal on behalf of the Appellant. Moreover, the CAS invited the Respondent to inform the CAS whether it agreed with Appellant's suggestion of having a sole arbitrator appointed by the President of the CAS Appeals Arbitration Division pursuant to article R54 of the Code of Sports-related Arbitration (the "CAS Code"). Furthermore, the Respondent was invited to inform the CAS on its position on the applicable law and on the language of the proceedings.

On January 7, 2008 the CAS notified the FIFA of the present appeal proceedings and requested a clean copy of the decision issued by the FIFA DRC on August 10, 2007.

On January 10, 2008 the Appellant sent the Appeal Brief to the CAS.

On January 17, 2008 the Respondent sent a letter to CAS requesting that the Player's appeal be rejected and that CAS should not consider the evidence provided by the Player to CAS that had not been previously submitted to FIFA.

On January 18, 2008 FIFA sent CAS a letter informing that it renounced its right to intervene in the present arbitration proceeding.

On January 21, 2008 the CAS received a letter from the Respondent mentioning that *"the rejection of CAS to decision given by FIFA for E.'s appeal is need of* [both] *Swiss and international law".*

On January 23, 2008 the CAS acknowledged receipt of the Respondent's letter and invited him on or before February 4 to tell CAS if this was his answer to the appeal or, if not, to file his answer within the same time limit. Moreover, the CAS noted that the Respondent did neither raise any objections to the appointment of a sole arbitrator nor with respect to the application of Swiss law. Consequently, it informed the parties that a sole arbitrator would be appointed by the President of the Appeals Arbitration Division and that Swiss law would be applicable in addition to the relevant regulations.

On February 1, 2008 the Respondent filed its answer to the appeal again requesting that the Player's appeal be rejected

On April 1, 2008, the Sole arbitrator invited FIFA to lodge a copy of its file related to this matter.

On April 3, the CAS received a copy of the statement of additional facts dated March 25, 2008 filed by the Counsel for the Appellant.

On April 24, 2008 the Respondent submitted exhibits, in both English and Turkish and alleged that the appeal should be rejected *"according to CAS, FIFA and Swiss law"*.

On June 3, 2008 on behalf of the Sole Arbitrator, the CAS asked the Respondent to provide the CAS Court Office before June 9, 2008 with a clear listing of the submitted documents, particularly indicating for each of the numbered exhibits whether the document had been filed with FIFA and for the exhibits written in another language than English, whether an English translation had already been produced or not. Moreover, it invited the Respondent to file the translations in English for the documents that were part of the FIFA file before June 12, 2008, under the penalty of not considering them. Finally, on behalf of the Sole Arbitrator, the CAS indicated that failure to comply with the deadlines would entail their non-consideration.

Nevertheless, the Respondent did not comply with the above-mentioned requests of the CAS.

On June 23, the Appellant submitted exhibits and rejected the evidence presented by Respondent on April 24, 2008.

On July 11, 2008 the Parties were requested to sign and return by fax a copy of the Procedural Order to the CAS Court Office on or before July 18, 2008.

On July 24, 2008 the CAS Court Office informed the parties of the Sole Arbitrator's decision regarding the documents filed by the parties in April and June 2008. Firstly, the documents filed on April 24, 2008 were found inadmissible after considering the Appellant's objection to them and the fact that no exceptional circumstances were alleged for the late filing. However, the documents that had been part of the FIFA file that were in English were included in the CAS file. Regarding the documents filed by Appellant on June 23, 2008, the CAS notified the parties that, since the Respondent raised no objections, their production was admitted. Finally, the CAS Court Office requested that the parties returned by fax a signed Order of Procedure on or before August 4, 2008.

On July 24, 2008, the Appellant returned to the CAS Court Office the signed Order of Procedure.

As both parties agree not to have a hearing in this case, the Sole arbitrator proceeds without holding a hearing.

LAW

Admissibility and jurisdiction

1. The decision of the DRC was notified to the parties on December 10, 2007, the Appellant, therefore, had under article 61 of the FIFA Statutes until December 31, 2007 to file the appeal statement, which he did on December 27, 2007. Hence, the appeal is admissible as it was filed within the stipulated deadline.

2. The jurisdiction of CAS, which is not disputed, derives from articles 60 and 61 of the FIFA Statutes and article R47 of CAS Code gives also basis for the jurisdiction of this Court.

3. The scope of the Panel's jurisdiction is defined in article R57 of the CAS Code, which provides that: *"The Panel shall have 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"*. The CAS, therefore, is not bound by the facts as established by the DRC if parties present new facts in the present proceedings.

Applicable Law

4. Abiding by article R58 CAS Code, the CAS settles the disputes according to the applicable regulations and 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 CAS deems appropriate.

5. Moreover, article 60(2) FIFA Statute states: *"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"*.

6. In this case, the parties have agreed with the application of Swiss law in addition to the applicable regulations.

7. The Sole Arbitrator deems applicable the 2005 edition of the Regulations for the Statutes and Transfer of Players ("FIFA Regulations") rather than the 2008 edition for two reasons: first,

that the relevant contract at the basis of the present dispute was signed in February 2006; and second, that the claim was lodged at FIFA in May 2006.

Merits of the Appeal

8. In order to decide on this case, the Sole Arbitrator considers that there are four issues that need to be addressed: first, whether there was "just cause" for the Player to terminate the Contract on April 30, 2006; second, if there was just cause, the legal consequences of that justified termination; third, the duration of the employment contract between the parties; and fourth, what amount of compensation is owed to the Player under the FIFA Regulations for the unilateral termination of the contract by the Club.

A. Existence of just cause for the Player to unilaterally terminate the Contract

9. According to article 14 of the FIFA Regulations, *"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) in the case of just cause".*

10. Nevertheless, the definition of just cause and whether just cause exists is established on a case-by-case basis. Since the FIFA Regulations do not define what constitutes *"just cause"*, there is a need to look into the relevant provisions of the applicable law.

11. This view was supported by a CAS Panel (CAS 2006/A/1062) stating that: *"The FIFA Regulations do not define when there is such "just cause". One must therefore fall back on Swiss law. Pursuant to this, an employment contract which has been concluded for a fixed term can only be terminated prior to expiry of the term of the contract if there is 'good cause' (see also ATF 110 I 167). In this regard Art. 337(2) of the Code of Obligations (CO) states – in loose translation: 'Particularly any circumstance, the presence of which means that the party terminated cannot in good faith be expected to continue the employment relationship, is deemed to be good cause'. The courts have consistently held that a grave breach of duty by the employee is good cause (ATF 121 III 467; ATF 117 II 72)"* (CAS 2006/A/1062, par. 13).

12. Another CAS Panel (CAS 2006/A/1180) ruled that *"According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (…). Particular importance is thereby attached to the nature of the obligation. The Swiss Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, of an objective or personal nature, under which the contract was concluded are no longer present (…). In other words, it may be deemed as a case of application of the* clausula rebus sic stantibus. *According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (…). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties such as serious breach of confidence (…). Pursuant to the jurisprudence of the Swiss Federal Supreme Court, the early termination for valid reasons shall be however restrictively admitted"* (CAS 2006/A/1180, para. 8.4).

13. In particular, the Panel considered that *"the non-payment or late payment of remuneration by an employer does in principle (…) constitute 'just cause' for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa, CAS 2003/O/540-541, of 6 August 2004), for the employer's payment obligation is his main obligation towards the employee. If, therefore, he fails to meet his obligation, the employee can, as a rule, no longer be expected to continue to be bound by the contract in the future. Whether the employee falls into financial difficulty by reason of the late or non-payment, is irrelevant. The only relevant criteria is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be 'insubstantial' or completely secondary. Secondly, a prerequisite for terminating the contract because of the late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100)"* (CAS 2006/A/1180, para. 8.4.1).

14. Furthermore, the Commentary on the Regulations for the Status and Transfer of Players (the "Commentary"), when explaining the application of article 14 gives a very similar example to the facts of the present case based on simplified decisions of the DRC. It states the following:

"A player has not been paid his salary for over 3 months. Despite having informed the club of its default, the club does not settle the amount due. The player notifies the club that he will terminate the employment relationship with immediate effect. The fact that the player has not received his salary for such a long period of time entitles him to terminate the contract, particularly because persistent non-compliance with the financial terms of the contract could severely endanger the position and existence of the player concerned".

(Commentary on the Regulations for the Status and Transfer of Players, page 39, para. 3).

15. It the present case, it was established that by the time of the notice of termination (April 30, 2006), the payment of the following amounts had become due to the Player:

Amount due since February 28, 2006 under first clause of the payment plan contained in the contract	€ 133,000
Amount due pursuant to the second clause of the payment plan	€ 12,200
Match bonuses due for fifteen matches stipulated according to the third clause of the payment plan	€ 47,840
• 8 matches where the Player played from the beginning of the game	€3,680 x 8 = €29,440
• 6 matches where the Player entered the game later	€2,760 x 6 = €16,560
• 1 match where the Player stayed in the bench during the game	€1,840 x 1 = €1,840
Total amount to which Appellant was entitled by the time of contract termination	€ 193,040

16. It is important to highlight that the Player is entitled to receive the full amount of the first payment of €133,000 pursuant to the first clause of the payment plan because it was due in full since February 28, 2006, two months before the Contract termination. According to the first clause of the payment plan contained in the Contract, this amount should have been paid by the cheque issued by the Respondent and given to the Appellant upon Contract conclusion in the beginning of February. Had the Appellant not been refused payment at the bank when trying to cash the cheque, he would have received the full amount of the €133,333 on February 28, 2008 as stipulated in the Contract.

17. Furthermore, with regard to the match bonuses, considering that the Appellant played in eight matches from the beginning, entered the game later in six matches and stayed on the bench in one match and the fact that the Contract stated that the Player would get €3,680 if he played from the start, €2,760 if he entered the game later and €1,840 if he stayed on the bench, the Player is entitled to receive in full a total of € 47,840.

18. In contrast with the amounts owed, Player received only approximately €82,663 according to the evidence and submissions provided by the parties and the FIFA file. In particular, bank statements were produced for:

Bank receipt dated March 14, 2006	€ 1,000
Bank receipt dated March 17, 2006	€ 65,000
Bank receipt dated April 18, 2006	€ 6,800
Bank receipt dated April 21, 2006	€ 3,500
Bank receipt dated July 4, 2006	€ 4,030
Bank receipt dated July 4, 2006	€ 2,333
Total amount received by Player to date	€ 82,663

19. Even though two more receipts were submitted for the amounts of €4,030 and €2,333 with payment date of July 4, 2008, it appears that these payments were made to another player. Therefore, these documents are not considered as proof of payment to the Appellant.

20. Additionally, there is evidence that the Appellant sent two notices to the Respondent requesting the payment of the money owed to him, one on March 6, 2006 and the other one on April 17, 2006.

21. Since the payments still outstanding by April 30, 2006 amounted to €76,300, they are substantial. As the Player had given the Club two warnings, he has alerted the employer. Therefore, the Sole Arbitrator finds that both conditions required for a non or late payment to be considered "just cause" for termination of the contract were fulfilled by the Player.

22. In light of the foregoing, the Sole Arbitrator concludes that the club, by failing to fulfill its financial obligations to the Player, breached the Contract. This behavior gave the Appellant "just cause" for termination of the contract. As a result, the Respondent cannot claim any compensation from the Appellant.

23. To the contrary, the question is indeed whether the Appellant is entitled under Swiss law to compensation for the Respondent's breach.

B. Legal consequences of Termination with Cause

24. Article 14 of the FIFA Regulations does not fully address the consequences of a unilateral termination of the employment contract with just cause. It only states that the injured party can terminate the contract without consequences of any kind in the case of just cause but leaves open to interpretation what the consequences for the other party of the contract are.

25. The Commentary sheds some light on this issue when dealing with the application of article 14 of the FIFA Regulations:

"In the event of just cause being established by the competent body, the party terminating the contract with valid reason is not liable to pay compensation or to suffer the imposition of sporting sanctions.

On the other hand, the other party to the contract, who is responsible for and at the origin of the termination of the contract[1], is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed[2]" (Commentary on the Regulations for the Status and Transfer of Players, page 40, paras. 4-5).

[Footnotes 1 and 2 are part of the original text of the Commentary]

26. Furthermore, when the Commentary deals with article 17 of the FIFA Regulations, it maintains that contractual breaches, whether inside or outside the protected period, give rise to compensation (Commentary on the Regulations for the Status and Transfer of Players, page 46, para. 1). According to article 17, this compensation has to take into account three main factors: the law of the country concerned, the specificity of the sport and any other objective criteria.

27. Due to the fact that there seems to be a gap in the FIFA Regulations, this Panel will apply subsidiarily the principles of Swiss employment law and look into previous CAS jurisprudence.

28. Firstly, article 97 of the Swiss CO requires that the injured party receives an integral reparation of his damages by stating that:

"The debtor who fails to perform his obligation or does not fulfil it properly is liable for damages, unless he proves that there is no fault on his part. […]".

29. Article 337b of the Swiss CO, article which deals with the consequences of justified employment termination, provides that:

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[1] Footnote part of the original text of the Commentary: With regard to the consequences of terminating a contract without just cause, reference is made to art. 17.

[2] Footnote part of the original text of the Commentary: Just cause for termination of a contract by one party is usually the consequence of a violation of the contract by the other party.

"If the valid reason for the termination of the employment relationship without notice is one party's conduct contrary to the agreement, such party shall fully compensate for damages, taking into account all claims arising from the employment relationship.

In all other cases, the judge shall decide in his discretion on the financial consequences of a termination without notice, taking into account all circumstances".

30. Article 337c of the Swiss CO, article which deals with the consequences of unjustified employment termination, provides that:

"If the employer dismissed the employee without notice in the absence of a valid reason, the latter shall have a claim for compensation of what he would have earned if the employment relationship had been terminated by observing the notice period or until the expiration of the fixed agreement period. […]".

31. As it can be appreciated from the wording of both articles, article 337b is less specific than 337c with regard to the scope of the damages that the injured party is entitled to. According to Swiss legal doctrine, the injured party is entitled to an integral reparation of its damages pursuant to the general principles set forth in article 97 of the Swiss CO. Thus, the damages taken into account are not only those that may have caused the act or the omission that justify the termination but also the positive interest. The positive damages of the employee are the salaries and other material income that he would have had if the contract would have been performed until its natural expiration. Nevertheless, since the law does not say this explicitly, article 337c applies by analogy. (ENGEL P., Contrats de droit suisse, Berne 2000, p. 499, section 2.1.2).

32. Furthermore, the CAS case law agrees that *"in principle the harmed party should be restored to the position in which the same party would have been had the contract been properly fulfilled"* (CAS 2005/A/801, para 66; CAS 2006/A/1061, para. 15; and CAS 2006/A/1062, para. 22).

33. A similar scenario to the facts in this case can be found in the case CAS 2006/A/1061. That case was about a South American player who had signed a four-year employment contract with a Football Club in the Middle East that entitled the Player to receive a salary, a singing-on fee and image rights payments. Nevertheless, the Club never paid him because it could not register the Player before the end of the registration period, and the Player had refused to accept a transfer back to his club of origin. The Player brought a claim before the DRC arguing that the Club had failed to pay the salaries and the amount due till that period of the *"signing fee"*, and had therefore breached the Employment Contract. As a result, the Player requested FIFA to confirm the termination of the Employment Contract as declared by him, to award him damages, and to impose on the Club *"a severe disciplinary sanction"*. The DRC ruled in the Player's favor and partially accepted his claim (in the amount requested). As a result, the Club filed an appeal with the CAS.

34. The Sole Arbitrator in that case ruled that the problem with the registration did not constitute just cause, and therefore, the Club had breached the contract and owed the Player compensation under article 17. He held that, in light of the criteria provided by the FIFA Regulations and article 337c of the Swiss CO (CAS 2006/A/1061, para. 14), applying

subsidiarily (CAS 2006/A/1061, para. 4), for the quantification of the compensation for damages following the breach of a contract, the injured party should in principle:

"be restored to the position in which it would have been if the contact had been properly fulfilled. As a result, the Player should be entitled to claim payment of the entire amount it could have expected, and compensation for the damages it would have avoided, if the Contract had been implemented up to its natural expiration" (CAS 2006/A/1061, para. 15).

35. For these reasons, the Sole Arbitrator rules the Player should therefore be entitled to claim payment of the entire amount he could have expected, and compensation for the damages he would have avoided, if the Contract had been implemented up to the end of the contract. However, before addressing the calculation of this specific amount, it is crucial to determine the duration of the employment Contract.

C. Duration of the employment Contract between the parties

36. Both the Appellant in his appeal brief filed on January 14, 2008 and the Respondent in his submissions before the DRC have recognized that with the Club's relegation to the Turkish Second Division at the end of the 2005/2006 football season, the duration of the employment contract between the parties was from January 1, 2006 to June 30, 2006. This is a consequence of the fulfillment of the condition for anticipated termination contained in private article 1 of the Contract.

37. The above-mentioned stipulated condition is an expression of party autonomy and based on a condition that is not under the control of the Parties. As expressed by the DRC's in its decision of August 10, 2006 in the present case, *"the general principle [is] that the parties to an employment contract may agree that the anticipated termination of a short-term employment contract is subject to the fulfillment of a condition, as long as such condition is not of a potestative nature, i.e. not depending on the will of a party to the contract or a third party. The condition of the relegation of a club is certainly not a potestative condition, since such relegation is depending on other circumstances than the will of a party to the employment contract. In fact it has to be presumed that the will of clubs and players is always to avoid relegation. The fulfillment of the condition of relegation is thus solely depending on sporting circumstances. In other words, the condition of relegation is a casual condition, not a potestative condition".*

[Additions made by the Tribunal in brackets]

38. Furthermore, it is important to mention that such relegation clauses are mainly a way of protecting the player's careers, as their employment opportunities and market values would be reduced by playing in lower divisions during their short-term careers.

39. Therefore, the Sole Arbitrator considers that the employment contract would have expired due to the relegation clause by June 30, 2006.

D. Calculation of the compensation for the breach of the Contract by the Respondent

40. For the above-mentioned reasons and considering that the fact that the condition set in private article 1 was fulfilled ending the employment Contract ended on June 30, 2006 (fact recognized by the Appellant), the Sole Arbitrator in this case rules the Player should therefore be entitled to claim payment of the entire amount he could have expected, and compensation for the damages he would have avoided, if the Contract had been implemented up to the end of the Contract but with the maximum cap contained in private article 1.

41. Therefore, the compensation should be calculated taking into consideration all the amounts due to the Player until June 30, 2006 but with a maximum value of €166,666, as we can see in the following table:

Amount due since February 28, 2006 under first clause of the payment plan contained in the contract	€ 133,000
Amount due pursuant to the second clause of the payment plan, i.e.: salaries for April, May and June 2006.	€12,200 x 3 = €36,600
Match bonuses due for fifteen matches stipulated according to the third clause of the payment plan	€ 47,840
• 8 matches where the Player played from the beginning of the game	€3,680 x 8 = €29,440
• 6 matches where the Player entered the game later	€2,760 x 6 = €16,560
• 1 match where the Player stayed in the bench during the game	€1,840 x 1 = €1,840
Subtotal amount to which Player is entitled under the Contract without considering the maximum cap contained in private article 1	€ 217,440
Total amount to which Player is entitled under the Contract considering the maximum cap contained in private article 1	€ 166,666

42. Nevertheless, since the Appellant already received €82,663 from the Respondent, the Appellant is entitled to receive the remaining €84,003 as payment not only for the amounts already due at the time of termination but also as compensation for the Club's breach of the Contract.

Total amount to which Player is entitled under the Contract considering the maximum cap contained in private article 1	€ 166,666
Amount already paid by the Respondent	€ 82,663
Amount outstanding payable to Appellant	€ 84,003

Interests

43. In his Appeal brief Appellant asked to be awarded *"interest at the legal rate from above mentioned dates"*. However, he was not clear in his submissions on which dates he was referring to and failed to differentiate between the different due dates of the different types of financial obligations of Respondent. Furthermore, except for the first clause of the payment plan, the Contract failed to determine the exact payment dates of the obligations or the interest rate applicable in case of late payment.

44. In absence of stipulation by the parties in the translated documents available to the Sole Arbitrator, therefore, he applies the principles of Swiss law on interests. They state that the Appellant is entitled to receive interests at the annual legal rate of 5% for the obligations not performed under the Contract as from the date in which the Respondent was put in default by the Appellant demanding performance. Moreover, Appellant is also entitled to receive interests at the annual legal rate of 5% from the date of termination of the Contract for the compensation that arises from article 337b of the Swiss CO. Additionally, the Sole Arbitrator rules that the payments made by Respondent will be attributed to the financial obligations of the Club in a chronological way, starting with the amount payable under the first clause of the payment plan.

45. Addressing first the date from which interests should be awarded, article 102 of the Swiss CO provides:

"Where an obligation is due, the creditor may put the debtor in default by demanding performance.

Where a certain date has been agreed upon for the performance, or where such a date results from a stipulated notice duly given, the debtor is in default on the expiration of such date".

46. Furthermore, article 339 of the Swiss CO adds in connection with the compensation due for the termination of the contract:

"All claims resulting from the employment relation become due upon the termination of the employment relation. […]".

47- Regarding the legal interest rate applicable, article 104 of the Swiss CO states:

"Where the debtor is in default with the payment of a money debt, he shall pay thereon 5% interest per annum, irrespective of a lower contractual rate of interest. […]".

48. Concerning the effects of the partial performance of obligations, article 85 of the Swiss CO states:

"A debtor can only appropriate part payments to capital if he is not in arrear with interest or costs. […]".

49. Furthermore, article 86 of the Swiss CO provides:

"Where a debtor owes several debts to the same creditor, the debtor, when making a payment, is entitled to declare which debt he intends to discharge.

In default of such declaration, the payment is appropriated to the debt which the creditor indicates in his receipt, unless the debtor objects forthwith".

50. Lastly, article 87 of the Swiss CO adds on this issue:

"Where there is no valid declaration concerning discharge, nor any indication in the receipt, then the payment is to be appropriated to the debt which is due; in the case of several debts which are due, to the one first proceeded on, and where none has been proceeded on, to the debt which was first due. […]".

51. For the above-mentioned reasons, the Sole Arbitrator rules that Appellant is entitled to receive from Respondent interests on the amount of €84,003 according to the following considerations:

52. Concerning the date from which interests should be awarded in the present case, on March 6, 2006 Appellant sent the first letter of warning to Respondent demanding payment owed under the first clause of the payment plan. In this way, Appellant put Respondent in default for that debt pursuant to article 102 of the Swiss CO and a 5% annual interest rate for that payment will be awarded from that date onwards until the date of final payment. Since Respondent made partial payments and did not comply with his obligations under the second and third clause of the payment plan, Appellant sent another letter of warning on April 17, 2006. Thus, Appellant put Respondent in default pursuant to article 102 of the Swiss CO for the debts arising out of the second and third clauses of the Contract and a 5% annual interest rate for that payment will be awarded from that date onwards until the date of final payment. Additionally, according to article 339 of the Swiss CO, Respondent has to pay Appellant a 5% annual interest rate on the compensation owed under article 337b of the Swiss CO for the termination of the Contract as from the date of termination.

53. With regard to the appropriation of part payments, due to the fact that Respondent did not declare according to article 86 of the Swiss CO which debts it intended to discharge when making those payments, the Sole Arbitrator rules that the payments made by the Respondent will be attributed to the financial obligations of the Club in a chronological way pursuant to article 87 of the Swiss CO, starting with the amount payable under the first clause of the payment plan. Since the amount already paid by Respondent (€82,663) is insufficient to cover the total amount owed under the first clause of the payment plan (€133,000), all payments made will be attributed to that debt. As a result, Respondent still has to pay €50,337 for the obligation arising under the first clause of the payment plan, and after considering the maximum cap contained in private article 1, €33,666 for the obligations arising under the second and third clause of the payment plan.

The Court of Arbitration for Sport rules:

1. The appeal by the Player E. against the decision issued on August 10, 2007 by the FIFA Dispute Resolution Chamber is partially upheld.

2. The decision issued on August 10, 2007 by the FIFA Dispute Resolution Chamber is annulled.

3. The Club Diyarbakirspor Kulübü is ordered to pay to Mr. E. the total amount of EUR 84,003 according to the following scheme:
   a. EUR 50,337 plus interests at the annual rate of 5% (five percent) as from March 6, 2006; and
   b. EUR 33,666 plus interests at the annual rate of 5% (five percent) as from April 17, 2006.

(…).