

# Decision of the Dispute Resolution Chamber

passed in Zurich, Switzerland, on 17 January 2020,

in the following composition:

**Omar Ongaro** (Italy), Deputy Chairman  
**Stefano Sartori** (Italy), member  
**José Luis Andrade** (Portugal), member

on the claim presented by the player,

**Player Kevin Constant**, France  
represented by Mr Ludovic Deléchat

*as Claimant*

against the club,

**Tractorsazi Tabriz**, IR Iran  
represented by Mr Koray Akalp

*as Respondent*

regarding an employment-related dispute between the parties

## I. Facts of the case

1. The French player, Kevin Constant (hereinafter also referred to as *the player* or *the Claimant*) and the Respondent (hereinafter also referred to as *Tractorsazi Tabriz* or *The Club*) concluded an employment contract on 4 January 2019 (hereinafter: *the contract*).
2. According to art. 2 of the contract, *“the contract will be valid for 3 and half season starting from 5<sup>th</sup> of Jan 2018 and valid till 30 of June 2022”*.
3. In continuation, art. 2 of the contract provided that the *“contract for season 2019/20, 2020/2021 and 2021/22 is optional and can be activated by [the Respondent] at end of each season based on satisfaction of technical committee from player performance. Therefore, the [Respondent] has the unilateral right to stop and terminate contract for season 2019/20, 2020/2021 and 2021/2022 without paying compensation to the player”*, and should the Respondent decide to exercise his right to the aforementioned termination provision, the Respondent *“is obliged to inform [the Claimant] officially maximum 14 days after the last match of the season, otherwise contract will be valid for next season”*.
4. The contract foresaw the following payments to be made by the Respondent to the Claimant:
  - (1) EUR 80,000 *“after signing the contract”*;
  - (2) EUR 30,000 as monthly salary between 15 February 2019 and 15 May 2019 (4 times);
  - (3) EUR 160,000 *“around”* 1 July 2019;
  - (4) EUR 24,000 as monthly salary between 30 August 2019 and 30 May 2019 (10 times);
  - (5) EUR 160,000 *“around”* 15 July 2020;
  - (6) EUR 34,000 as monthly salary between 30 August 2020 and 30 May 2021 (10 times);
  - (7) EUR 160,000 *“around”* 15 July 2021;
  - (8) EUR 34,000 as monthly salary between 30 August 2021 and 30 May 2022 (10 times).
5. In addition, on 4 January 2019, the parties signed a document titled *“Appendix to the employment contract”* (hereinafter: *Annexe*), which, *inter alia*, reads as follows:
  - “2. The Player has entered medical examination in Iran on 4 January 2019 which was conducted by the Club (...). According to the findings of the medical examination, which is an integral part of this Appendix, it was established that the Player had Silent Arrhythmia (“Condition”).*
  - 3. The Parties have mutually agreed to sign this Appendix to the Employment Contract dated 04.01.2019 to stipulate their obligations towards each other in case, during the term of the Employment Contract the Player is unable to train and/or play football due to the Condition (...).*

## Clauses

1. *The Player irrevocably agrees and accepts the findings of the medical examination dated 4 January 2019 and accepts that he has a Condition of Silent Arrhythmia that may prohibit him from playing football in the future.*
  2. *The Player agrees and accepts to play football for the Club pursuant to the Employment Contract and understands that he will be solely responsible with any physical/medical consequences he might face and/or suffer in the future due to the occurring of the Condition of Silent Arrhythmia.*
  3. *The Player agrees and accepts that, in case in the future he is unable to play football (attend trainings and/or matches) with the Club due to the Condition (...) and this unavailability of the Player to play football lasts more than 10 (ten) days, the Player will not be entitled to his remuneration for the whole term of his unavailability to play football which will be calculated on a pro-rata basis taking into consideration the total remuneration of the Player for the relevant season which the unavailability takes place.*
  4. *The Player agrees and accepts that, during the term of the Employment Contract, should his unavailability of more than 10 (ten) days to play football (attend training and/or matches) for the Club occur more than 2 (two) times (per season), the Player will not be entitled to any of his remuneration from the Employment Contract for the term starting from the first date of Player's third unavailability to play football due to the Condition (...) until the full recovery of the Player from the Condition (...), which will be established by the Club's Physician.*
  5. *Finally, the Player also agrees and accepts that, during the term of the Employment contract, should he becomes unavailable to play football (attend trainings and/or matches) for the Club for any length of time (more or less than 10 days) due to the Condition (...) and this unavailability occurs more than 5 (five) times (per season), the Player will not be entitled to any of his remuneration from the Employment Contract for the term starting from the first date of Player's sixth unavailability to play football due to the Condition (...) until the full recovery of the Player from the Condition (...), which will be established by the Club's Physician.*
  6. *The player irrevocably agrees and accepts not to claim any of his remuneration and/or any compensation from the Club in case any of the conditions under clauses 3, 4 and/or 5 are exercised."*
6. Between 16 January 2019 and 21 January 2019, the player underwent different medical examinations in Iran, whereby different medical experts concluded that "professional sport is dangerous for this player and his cardiac health was not confirmed".
  7. On 4 February 2019, a doctor certified that the player showed a "very minor improvement", but attested that he could not play football for one year due to a "high risk of sudden death due to competitive sport activities".
  8. On 13 February 2019, the team doctor issued an internal report addressed to the club's managing director, summarizing the medical reports about the player's

condition and reassuring that *"doing professional sports is not recommended to him"*.

9. On 16 February 2019, the club sent a letter to the player informing him that on the basis of the medical examinations carried out, the player would not be able to play football for 3 months and that in accordance with the contract and clause 3 of the annex he would not be entitled to receive his salary as of this day. Further, the club pointed out that it would remove the player from the *"A List"* for the rest of the season and that he would have an appointment for a further medical examination on 13 May 2019.
10. On 14 March 2019, the player underwent a medical examination in France which confirmed that he does not have any health issue with his heart and that he is able to play football without restrictions.
11. On 25 May 2019, the player underwent another medical examination in Iran. According to the report dated 28 May 2019, the player would still face a *"high risk during football playing"* and concluded that the player *"cannot play in Iran Professional League due his heart problem"*. Said report also referred to the report dated 14 March 2019, issued in France and pointed out that said report was carried out *"under rest conditions"* and that this *"is not the criteria"* for a football player.
12. On 28 May 2019, the club sent a letter to the player terminating the contract due to his latest medical examination and in accordance with art.2 of the contract.
13. On 30 July 2019, the player lodged a claim for breach of contract against the club and requested the payment of the following amounts:
  - (1) EUR 30,000 as residual amount of the sign-on fee;
  - (2) EUR 120,000 as outstanding remuneration, corresponding to the salaries of February until May 2019;
  - (3) EUR 1,400,000 as compensation for breach of contract, corresponding to the residual value of the contract.
  - (4) Further, the player requested 5% interest *p.a.* as of the respective due dates.
14. In his arguments, the player maintained that the club violated the contract since it did not fulfil its financial obligations without a valid reason.
15. In this regard, he held that the club alleged that he was unable to play as a professional on the basis of *"heart issues"*. Said allegation was proven wrong by a well-known French doctor, who approved that the player is able to perform without restrictions.
16. On account of the above, the player argued that the Annex should not be taken into account since it goes against the spirit of contractual stability, and due to the fact that a contract cannot depend on medical examination.

17. Further, he pointed out a contract cannot be terminated for medical reasons, as established by the Chamber's jurisprudence. It is the club's obligation to do such medical examination before signing the contract.
18. In this regard, the player maintained that the club decided to enter into a contractual relationship with the player, but then stopped paying him and did not let him perform as a professional football player due to alleged "*heart issues*".
19. What is more, he brought forward that he remained unemployed up to date, due to the fact that the club went public with its false allegations.
20. The player acknowledged having received the amount of EUR 50,000 as a sign-on fee, but pointed out that ever since the club did not pay him anymore.
21. In its reply to the claim, the Respondent rejected the player's claim, while referring to his "*serious health issue*".
22. The club argued that the medical examination was carried out before entering into a contractual relationship and that therefore the contract was not dependant on the medical examination. Therefore, it maintained that the contract and the Annex are valid.
23. Furthermore, the club held that the player acknowledged the results of said examinations when signing the contract and the Annexe thereto.
24. Moreover, the club argued that the player entered into the contract and the appendix with his "*free will*" and that he accepted not being paid in case he would not be able to perform in connection with his medical condition.
25. Additionally, the club pointed out that the player never challenged the validity of the annexe before lodging his claim.
26. As to the outstanding remuneration claimed by the player, the club argued having paid the sign-on fee in full and that the player is not entitled to receive the salaries as of February to May 2019 in accordance with the Annexe, since he was unable to perform. In this respect, the Respondent provided a receipt apparently signed by the player and according to which the parties acknowledge the payment of EUR 80,000 in cash on 4 January 2019, corresponding to the signing-on fee.
27. As to the termination of the contract, the club brought forward having been entitled to end the contractual relationship in accordance with art. 2 of the contract.
28. Alternatively, the Respondent requested to substantially reduce the compensation due to the special circumstances surrounding this case.
29. Upon FIFA's request, the Claimant declared that he remained unemployed as from 29 May 2019 onwards.

## II. Considerations of the Dispute Resolution Chamber

1. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *DRC*) analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was submitted to FIFA on 30 July 2019. Taking into account the wording of art. 21 of the 2019 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
2. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and confirmed that in accordance with art. 24 par. 1 and par. 2 in conjunction with art. 22 lit. b) of the Regulations on the Status and Transfer of Players (edition January 2020), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a French player and an Iranian club.
3. Furthermore, the Chamber analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players, and considering that the present claim was lodged on 30 July 2019, the June 2019 edition of said regulations (hereinafter: *Regulations*) is applicable to the matter at hand as to the substance.
4. The competence of the Chamber and the applicable regulations having been established, the Chamber entered into the substance of the matter. The members of the Chamber started by acknowledging the facts of the case, as well as the documentation contained in the file. However, the Chamber emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.
5. In this respect, the Chamber noted that the player is arguing the club never complied with its financial obligations in full, and subsequently terminated the contract without just cause on the basis of wrongful medical reports on 28 May 2019, and the player is claiming outstanding amounts and compensation for breach of contract.
6. On the other hand, the DRC observed that the Respondent is of the opinion that it had fully complied with its financial obligations towards the player and had rightfully terminated the contract of the player in accordance with the provisions set out in the Annexe.
7. The DRC highlighted that the central issue in the matter at stake would be, thus, to determine the validity of the contract and its Annexe.

8. In this context, the Chamber first focused on the duration of the contract. In fact, the DRC observed that art. 2 of the contract provided for a validity as from 5 January 2019 until 30 June 2022, whilst also providing for unilateral termination provisions at the end of each season at the sole benefit of the Respondent. In particular, the DRC duly noted that the Respondent unilaterally terminated the contract based on the aforementioned termination provisions on 28 May 2019.
9. In this respect, the Chamber observed that said unilateral termination provisions stipulated that the club would be entitled to terminate the contract at the end of each season by giving the player a 14-day notice and without any compensation being owed to the player. The DRC remarked that such provision was not reciprocal to the player.
10. In view of the above, and in line with its extensive jurisprudence in this respect, the Chamber concluded that the potestative character of art. 2 of the contract could not be deemed acceptable, and should therefore be considered invalid, and consequently determined that the contract was valid as from 5 January 2019 until 30 June 2022.
11. Therefore, the DRC concurred that art. 2 of the contract does not constitute a reason that can be validly invoked by the Respondent nor a legal basis to unilaterally terminate the contract.
12. Consequently, the Chamber determined that the Respondent did not have just cause to terminate the contract under the auspices of art. 2 of the contract. As such, the DRC determined that the Respondent is to be held liable for the early termination of the employment contract without just cause.
13. Bearing in mind the previous considerations, the Chamber went on to deal with the consequences of the early termination of the employment contract without just cause by the Respondent.
14. In this context, the DRC concurred that the Respondent must fulfil its obligations as per the employment contract up until the date of termination of the contract in accordance with the general legal principle of "*pacta sunt servanda*".
15. In this respect, the Chamber remarked that the Claimant alleged that he had only received EUR 50,000 of the EUR 80,000 signing-on fee and that all his salaries as from 4 January 2019 until the unilateral termination had not been paid to him. The DRC however acknowledged that the Respondent had provided proof that EUR 80,000 representing the full amount of the signing-on fee had been indeed remitted to the player, and that he acknowledged payment by signing a receipt. Consequently, the Chamber decided to reject the Claimant's request for EUR 30,000 corresponding to the alleged remainder of the signing-on fee.

16. The DRC, however, observed that it was undisputed that the club never paid any of the player's monthly salaries until the date of termination, i.e. 28 May 2019, that is to say the salaries as from February 2019 until May 2019. As such, the Chamber came to the conclusion that the player shall be awarded EUR 120,000 as outstanding remuneration.
1. In addition, and taking into consideration the player's claim and the jurisprudence of the Chamber, the DRC decided to award on the aforementioned amounts interest until the date of effective payment as follows:
  - a. 5% *p.a.* as of 16 February 2019 on the amount of EUR 30,000;
  - b. 5% *p.a.* as of 16 March 2019 on the amount of EUR 30,000;
  - c. 5% *p.a.* as of 16 April 2019 on the amount of EUR 30,000;
  - d. 5% *p.a.* as of 16 May 2019 on the amount of EUR 30,000.
17. In continuation, the Chamber decided that, taking into consideration art. 17 par. 1 of the Regulations on the Status and Transfer of Players, the Claimant is entitled to receive from the Respondent compensation for breach of contract in addition to any outstanding salaries on the basis of the relevant employment contract.
18. In this context, the Chamber outlined that, in accordance with said provision, the amount of compensation shall be calculated, in particular and unless otherwise provided for in the contract at the basis of the dispute, with due consideration for the law of the country concerned, the specificity of sport and further objective criteria, including, in particular, the remuneration and other benefits due to the Claimant under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period.
19. In application of the relevant provision, the DRC held that it first of all had to clarify whether the pertinent employment contract contained any clause, by means of which the parties had beforehand agreed upon a compensation payable by the contractual parties in the event of breach of contract. In this regard, the Chamber established that the contract contained provisions with regards to the termination of the contract by the parties. In fact, the DRC remarked that the contract contained clauses regarding the unilateral termination by the Respondent only. Therefore, the Chamber concluded that there was no valid compensation clause that could be taken into account.
20. Subsequently, and in order to evaluate the compensation to be paid by the Respondent, the Chamber took into account the remuneration due to the Claimant in accordance with the employment contract as well as the time remaining on the same contract, along with the professional situation of the Claimant after the early

termination occurred. At the time of the termination of the employment contract on 28 May 2019, the contract would run until 30 June 2022, i.e. for another 36 months. Consequently, the Chamber concluded that the remaining value of the contract as from its early termination by the club until the natural expiry of the contract amounts to EUR 1,400,000 and that such amount shall serve as the basis for the final determination of the amount of compensation for breach of contract.

21. In continuation, the Chamber remarked that following the early termination of the employment contract at the basis of the present dispute the Claimant did not find any employment.
22. As such, the DRC emphasised that, in principle, the player should be awarded EUR 1,400,000 as compensation for breach of contract without just cause by the club.
23. Notwithstanding the fact that the club terminated the contract without just cause, the members of the DRC paid particular attention to the contents of the Annexe signed by the parties. In particular, it appeared that the club offered the player the contract in good faith and knowing that the player had a pre-existing medical condition that may affect his availability, and that the player agreed to enter into such agreement knowing the consequences that his unavailability due to said medical condition.
24. What is more, the Chamber was keen to highlight that the Respondent had publicly revealed that the Claimant had a medical condition that may hinder his future professional opportunities.
25. After thoroughly debating the particulars of the above matter, and in view of the irreconcilable position of the clubs' and players' representatives, the chairman took the casting vote and the majority of the DRC decided to reduce the compensation to EUR 700,000, plus 5% interest p.a. as of 30 July 2019 until the date of effective payment.
26. In addition, the DRC established that any further claim lodged by the Claimant is rejected.
27. Furthermore, the DRC referred to par. 1 and 2 of art. 24bis of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
28. In this regard, the DRC pointed out that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods.

29. Therefore, bearing in mind the above, the DRC decided that, in the event that Tractorsazi Tabriz does not pay the amount due to the player within 45 days as from the moment in which the player, following the notification of the present decision, communicates the relevant bank details to Tractorsazi Tabriz, a ban from registering any new players, either nationally or internationally, for the maximum duration of three entire and consecutive registration periods shall become effective on Tractorsazi Tabriz in accordance with art. 24bis par. 2 and 4 of the Regulations.
30. Finally, the DRC recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amount, in accordance with art. 24bis par. 3 of the Regulations.

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### III. Decision of the Dispute Resolution Chamber

2. The claim of the Claimant, Kevin Constant, is partially accepted.
3. The Respondent, Tractorsazi Tabriz, has to pay to the Claimant the amount of EUR 120,000 as outstanding remuneration, plus interest until the date of effective payment as follows:
  - a. 5% *p.a.* as of 16 February 2019 on the amount of EUR 30,000;
  - b. 5% *p.a.* as of 16 March 2019 on the amount of EUR 30,000;
  - c. 5% *p.a.* as of 16 April 2019 on the amount of EUR 30,000;
  - d. 5% *p.a.* as of 16 May 2019 on the amount of EUR 30,000.
4. The Respondent has to pay to the Claimant the amount of EUR 700,000 as compensation for breach of contract, plus interest of 5% *p.a.* as of 30 July 2019 until the date of effective payment.
5. Any further claim lodged by the Claimant is rejected.
6. The Claimant is directed to inform the Respondent, immediately and directly, preferably to the e-mail address as indicated on the cover letter of the present decision of the relevant bank account to which the Respondent must pay the amount mentioned under points 2. and 3. above.
7. The Respondent shall provide evidence of payment of the due amount in accordance with points 2 and 3. above to FIFA to the e-mail address [psdfifa@fifa.org](mailto:psdfifa@fifa.org), duly translated, if need be, into one of the official FIFA languages (English, French, German, Spanish).
8. In the event that the amounts due plus interest in accordance with points 2. and 3. above are not paid by the Respondent **within 45 days** as from the notification by the Claimant of the relevant bank details to the Respondent, the Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods (cf. art. 24bis of the Regulations on the Status and Transfer of Players).
9. The ban mentioned in point 7. above will be lifted immediately and prior to its complete serving, once the due amounts are paid.

10. In the event that the aforementioned sum plus interest is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

**Note related to the publication:**

The FIFA administration may publish decisions issued by the Players' Status Committee or the DRC. Where such decisions contain confidential information, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 20 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber).

**Note related to the appeal procedure:**

According to art. 58 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS.

The full address and contact numbers of the CAS are the following:

Court of Arbitration for Sport  
Avenue de Beaumont 2  
1012 Lausanne  
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For the Dispute Resolution Chamber:

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