



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0001/07 FAT)

rendered on 16 August 2007 by the

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Ulrich Haas

in the arbitration proceedings between

Mr. **Djuro Ostojic**, Makedonska 17, 85000 Bar, Montenegro
represented by Mr. Miodrag Raznatovic, Attorney at Law, (licensed FIBA Agent
2007018138), 18 Strahinjica Bana, Belgrade, Serbia

- Claimant 1-

and

Mr. **Miodrag Raznatovic**, 18 Strahinjica Bana, Belgrade, Serbia

- Claimant 2-

or jointly "the Claimants"

vs.

Basketball Club **PAOK KAE**, Antoniou Tristi 12, 55510 Thessaloniki, Greece

- Respondent -



We Are Basketball

FIBA Arbitral Tribunal (FAT)

1. The Parties

1.1. The Claimants

Djuro Ostojic (hereinafter “Mr. Ostojic” or “Claimant 1”) is a citizen of Montenegro and a professional basketball player. He is domiciled at Makedonska 17, 85000 Bar, Montenegro.

Miodrag Raznatovic (hereinafter “Mr. Raznatovic” or “Claimant 2”) is a citizen of Serbia. He is domiciled at 18 Strahinjica Bana, Belgrade, Serbia.

Claimant 2 is an attorney-at-law and a FIBA–licensed player agent. In these proceedings he is acting as counsel for Claimant 1 as well as on his own behalf in his capacity as agent of Mr. Ostojic.

1.2. The Respondent

Basketball Club PAOK KAE (hereinafter "PAOK" or the "Respondent") is a Greek basketball club with its seat in Thessaloniki, Greece. It is domiciled at Antoniou Tristi 12, 55510 Thessaloniki, Greece. Respondent is not represented by counsel.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

2. The Arbitrator

On 7 June 2007, the President of the FIBA Arbitral Tribunal (the "FAT") appointed Prof. Ulrich Haas as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the "FAT Rules").

3. Facts and Proceedings

3.1. Background Facts

On 24 January 2007, Claimant 1 and the Respondent concluded a player contract (hereinafter the "Contract") for "the 2006/2007 basketball season" in which the amount of EUR 60,000 was stipulated for the services of Mr. Ostojic as a basketball player. The Contract reads – inter alia – as follows:

"2. PAYMENTS

For rendering his services as a basketball player, the Club agrees to pay the Player the amount of 60.000 Euros net of all Greek taxes, for the 2006-2007 basketball season as follows:

- 1) Upon Player's arrival and passing medical and doping control test..... 15.000 Eur net.*
- 2) February 28th, 2007 15.000 Eur net.*
- 3) March 30th, 2007 15.000 Eur net.*
- 4) April 30th, 2007 or 48 hours from the last official game 15.000 Eur net."*



We Are Basketball

FIBA Arbitral Tribunal (FAT)

The Appendix to the Contract provides for a commission due to Claimant 2 as follows:

"The basketball Club PAOK KAE ("Club") shall pay the amount of 6.000 Euros, net of all Greek taxes to Misko Raznatovic/Nick Lotsos, for them to split equally, for their services in the securing the basketball player Djuro Ostojic ("Player") and negotiating the Agreement [...] as follows

6.000 Euros net of all taxes upon the Player's passing successfully medical examinations and doping control tests."

In addition, Claimant 1 concluded a contract with his Greek agent Mr. Nick Lotsos that reads - inter alia - as follows:

"art. 1

The contractual parties cooperate in signing the player Djuro Ostojic in Greek club, PAOK, and were entitled to receive agents fees in the total amount of 6.000 Euro. [...]

art. 3

The contractual parties agree that Mr Miodrag Raznatovic will lead the procedure as well as cover all the costs of Arbitration. The contractual parties agree that Mr Miodrag Raznatovic, will receive all commission in the case of positive decision, done by FAT, while Mr Nick Lotsos will have no responsibility for the mentioned case, as well as not any costs. With signing of this agreement, Mr Nick Lotsos confirms that he has no further requests against Mr Miodrag Raznatovic and PAK Kac. concerning the agent fee, stipulated in appendix of the contract, PAOK – Ostojic."

3.2. The Proceedings before the FAT

On 29 May 2007 the Claimants filed a Request for Arbitration in accordance with the FAT Rules. The non-reimbursable fee of EUR 3,000.00 was received in the FAT account on 25 May 2007.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

On 7 June 2007 the President of FAT appointed Prof. Haas as the Arbitrator in this matter.

In a letter of the same date, the Arbitrator accepted his appointment and signed a declaration of acceptance and independence provided by the FAT Secretary, which was sent to the parties by way of fax of 14 June 2007.

By Procedural Order (No 1) dated 14 June 2007, a deadline was fixed on 2 July 2007 for the Respondent to file the Answer to the Request for Arbitration. In the same Procedural Order, and with the same deadline, the following amounts were fixed as the advance on costs:

"Mr. Djuro Ostojic: EUR 2,500.00
Mr. Misko Raznatovic: EUR 1,000.00
Basketball Club PAOK: EUR 3,500.00"

By the deadline of 2 July 2007, only the Claimants had paid their share of the advance on costs. The Respondent did not submit an Answer nor did it pay the advance on costs.

On 5 July 2007 a fax was sent to the Claimants (with a copy to the Respondent) informing them of the failure of the Respondent to enter an appearance. The Claimants were further advised that, in accordance with 9.3 of the FAT Rules, they had the possibility of paying the Respondent's share of the advance on costs so that the arbitration can proceed.

On 20 July 2007 the Claimant 2¹ paid the Respondent's share of EUR 3,500 into the FAT account.

¹ By letter of 20 July 2007, the FAT Secretariat acknowledged the payment by "Claimants". Following Claimants' letter of 14 August 2007 "informing [the FAT] about [their] legal costs and expenses", it became clear that the Respondent's share of EUR 3,500 was paid by Claimant 2 (see below at 3.2. *in fine*).



We Are Basketball

FIBA Arbitral Tribunal (FAT)

By Procedural Order (No 2) dated 25 July 2007, the Respondent was once again advised of the consequences of not participating in the proceedings. It was further given an extended period of time until 1 August 2007, in order to present its position on the merits. The Respondent did not respond by the deadline.

By Procedural Order (No 3) dated 13 August 2007, the parties were invited to provide to the FAT Secretariat "by no later than Thursday, 16 August 2007 a detailed account of their costs, particularly their legal costs and expenses, incurred in connection with these proceedings".

On 14 August 2007, the Claimants submitted the following account:

"DJURO OSTOJIC

- 1) *Non reimbursable handling fee EUR 3,000.00*
- 2) *Payment of EUR 2,500.00 on the 5th of July 2007*
- 3) *Lawyer s costs and expenses EUR 2,000.00*

TOTAL / EUR 7,500.00

MIODRAG RAZNATOVIC

- 1) *Payment of EUR 1,000.00 on the 5th of July 2007*
- 2) *Payment instead of BC PAOK on the 19th of July 2007 of EUR 3,500.00*

TOTAL/ EUR 4,500.00"

The Respondent did not submit any determination within the deadline indicated in Procedural Order (No 3).



We Are Basketball

FIBA Arbitral Tribunal (FAT)

4. The Positions of the Parties

4.1. The Claimants' Position

The Claimants submit that, out of the obligations under Section 2 of the Contract, the Respondent has honoured the agreement only to the amount of EUR 15,000. Therefore, on the basis of the Contract, the Respondent owes Claimant 1 a further EUR 45,000. The Claimants further submit that "the Respondent did not completely fulfill obligation required by the Contract appendix". Therefore, on the basis of the Appendix of the Contract, the Respondent further owes Claimant 2 EUR 6,000. Claimant 1 is also entitled to, and may claim this amount, on the basis of the Contract between him and Mr Nick Lotsos of 16 June 2007 alone. Both Claimants further submit that they have fulfilled all the obligations under the Contract and the Appendix of the Contract. Reference is otherwise made to the Claimants' submissions.

On the basis of these contentions, Claimants request the Tribunal to make an award to:

"... bind the respondent to pay 45.000 euro to the player as well as 6.000 euro of agent's interest with obligation to cover all the expenses of arbitrage proceedings."

4.2. The Respondent's Position

The Respondent did not engage in the proceedings at hand and did not make any submissions.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

5. Jurisdiction and other Procedural Issues

Pursuant to Article 2.1 of the FAT Rules, “[t]he seat of the FAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland”. Hence, this FAT arbitration is governed by Chapter 12 of the Federal Statute on Private International Law (PIL).

Since FIBA is not a party to the arbitration, there is no issue that the FAT complies with the strict requirements imposed by Swiss law regarding the independence of a dispute resolution body and thus qualifies as a "true arbitral tribunal".²

5.1. The jurisdiction of FAT

5.1.1 Review *ex officio*

As a preliminary matter, the Arbitrator wishes to emphasize that, since the Respondent did not participate in the arbitration, he will examine his jurisdiction *ex officio* on the basis of the record as it stands.³

5.1.2 Arbitrability

The jurisdiction of the FAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the parties.

² ATF 80 I 336, 341; 119 II 271, 275 *seq.*; 129 III 445, 454.

³ ATF 120 II 155, 162.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

The Arbitrator notes that the dispute referred to him is clearly of financial nature and is thus arbitrable within the meaning of Article 177(1) PIL.⁴

5.1.3 Formal and substantive validity of the arbitration agreement

The existence of a valid arbitration agreement will be examined separately for each Claimant in light of Article 178 PIL, which reads as follows:

"1 The arbitration agreement must be made in writing, by telegram, telex, telecopier or any other means of communication which permits it to be evidenced by a text.

2 Furthermore, an arbitration agreement is valid if it conforms either to the law chosen by the parties, or to the law governing the subject-matter of the dispute, in particular the main contract, or to Swiss law."

(a) With respect to Claimant 1

The jurisdiction of the FAT over the dispute between Claimant 1 and the Respondent results from Section 9 of the Contract which reads as follows:

"Any dispute arising from or related to the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved definitely in accordance with the FAT Arbitration Rules.

The arbitrator shall decide the dispute ex aequo et bono.

Awards of the FAT can be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland. To the extent legally possible under Swiss law recourses

⁴ Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal shall be excluded."

The Contract is in written form and thus the arbitration agreement fulfills the formal requirements of Article 178(1) PIL.

With respect to substantial validity, the Arbitrator considers that there is no indication in the file that could cast doubt as to the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PIL). In particular, the wording "[a]ny dispute arising from or related to the present contract" clearly encompasses the present dispute.⁵

(b) With respect to Claimant 2

The jurisdiction of the FAT over the dispute between Claimant 2 and the Respondent results from the Appendix to the Contract between the Parties dated 24 January 2007 which in its relevant part reads as follows:

"Any violation of this agents' fee agreement shall be considered as a violation to the Agreement between PAOK KAE and player Djuro Ostojic and will have the same legal effect."

The aforementioned clause does not contain an explicit reference to the jurisdiction of the FAT, but it does certainly contain an implied agreement on this matter. The Parties have clearly stated that a breach of the

⁵ See for instance BERGER/KELLERHALS, Internationale und Interne Schiedsgerichtsbarkeit in der Schweiz, Bern 2006, No. 466, pp. 160-161.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

obligations set out in the Appendix to the Contract should have the same "legal effects" as a breach of the obligations of the Contract. One important "legal effect" resulting from a breach of the Contract obligations, is that the FAT, rather than the national courts, is competent to adjudicate any claims arising out of or related to the Contract. Thus the relevant clause in the Appendix to the Contract must be understood as to mean that the Parties intended to refer to Section 9 of the Contract and to make it part of the Appendix to the Contract. Therefore, an agreement to arbitrate also exists between Claimant 2 and the Respondent. The Arbitrator is reinforced in this conclusion by the openly "liberal" case law of the Federal Tribunal with respect to arbitration agreements by reference⁶ and the predisposition of the Federal Tribunal to take into account the interconnection between different contracts when examining the substantial validity of an arbitration agreement.⁷

Assuming that the reference in the Appendix to the "legal effects" under the Contract could not be construed as a reference to the arbitration agreement contained in the Contract pursuant to Swiss law, the Arbitrator would have to assess the substantial validity of the arbitration agreement under "the law chosen by the parties [to govern the validity of the arbitration agreement], or to the law governing the subject matter of the dispute" (Article 178(2) PIL). In the present case, the subject matter of the dispute has to be

⁶ ATF 129 III 727, 735 using the word "liberal" with reference to ATF 121 III 38, 45 and the decisions 4P.126/2001; 4C.40/2003 of 19 May 2003 at 4, reported in ASA Bulletin 2004, p. 344; 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.

⁷ Decision of 8 December 1999, reported in ASA Bulletin 2000, p. 546.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

decided *ex aequo et bono* (see below at 6.1).⁸ Considering all the circumstances of the case, and in particular the close relationship between the Contract and the Appendix as well as the wording of the latter, the Arbitrator finds that it would be contrary to equity to consider that the Appendix does not validly refer to the arbitration agreement contained in Section 9 of the Contract.

5.2. Other Procedural Issues

In the case under consideration, the Claimants have asserted claims relating to different disputed matters as part of a single complaint. Accordingly, Claimant 1 seeks payment in the amount of EUR 45,000 on the basis of the Contract. Claimant 2, on the other hand, claims payment to him in the amount of EUR 6,000 on the basis of the Appendix to the Contract. As there is an intrinsic connection between the matters in dispute, both being based on the same set of facts, there is no reason to prevent the Arbitrator from deciding in a single award.

Article 14.2 of the FAT Rules, which the Parties have declared to be applicable both in the Contract and also in the Appendix to the Contract, specifies that: “the Arbitrator may nevertheless proceed with the arbitration and deliver an award” if “the Respondent fails to submit an Answer”. The arbitrator’s authority to proceed with the arbitration in the case of default of one of the parties is in accordance with Swiss arbitration law.⁹ However, the

⁸ BERGER/KELLERHALS, *op. cit.*, No. 1324, p. 469.

⁹ Swiss Federal Tribunal SJ 1982, 613, 621; see also KAUFMANN-KOHLER/RIGOZZI, *Arbitrage international*, Bern 2006, No. 483.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

Arbitrator must make every effort to allow the defaulting party to assert its rights.¹⁰

This requirement is met in the current case. The Respondent has been informed of the initiation of the proceedings and of the appointment of the Arbitrator in line with the relevant rules. Furthermore, in Procedural Order (No 1) of 14 June 2007, the Respondent was given a time limit within which to respond to the Request for Arbitration. The Respondent did not respond to this Order. The correspondence of 8 and 9 July 2007 from the FAT to the Claimants was also sent to the Respondent, in which reference was made, amongst other issues, to the possibility of proceedings by default, if the respondent did not pay the advance on costs, nor participate in the proceedings. Finally, the Arbitrator issued Procedural Order (No 2), granting the Respondent a grace period (*délai de grace*) in order to comment on the case and clarifying once again the legal consequences of failing to observe the time limit. The Respondent did not respond to this Procedural Order either. In light of these circumstances, the Arbitrator considers himself fit to proceed with the arbitration and deliver the award.

6. Discussion

6.1. Applicable Law – *ex aequo et bono*

With respect to the law governing the merits of the dispute, Article 187(1) PIL provides that the arbitral tribunal must decide the case according to the rules of law chosen by the parties or, in the absence of a choice, according to the rules of law with which the

¹⁰ KAUFMANN-KOHLER/RIGOZZI, *op. cit.*, No. 484.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

case has the closest connection. Article 187(2) PIL adds that the parties may authorize the arbitrators to decide “*en équité*”, by opposition to the decision according to the rule of law referred to in Article 187(1). Article 187(2) PILA is generally translated into English as follows:

“the parties may authorize the arbitral tribunal to decide ex aequo et bono”.

Under the heading “Applicable Law”, Article 15.1 of the FAT Rules reads as follows:

“Unless the parties have agreed otherwise the Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law.”

6.1.1 The statutory concept of *ex aequo et bono* arbitration

Unlike an *amiable compositeur* under French law, an arbitrator deciding *en équité* according to Article 187(2) PIL will not begin with an analysis of the applicable law and of the contract to possibly moderate their effects if they are too rigorous. He/she will rather ignore the law and focus exclusively on the specific circumstances of the case at hand. The concept of *équité* (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the *Concordat intercantonal sur l'arbitrage*¹¹ (Concordat),¹² under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit* :

¹¹ That is the Swiss statute that governed international and domestic arbitration before the enactment of the PIL. Today, the Concordat governs exclusively domestic arbitration.

¹² P.A. KARRER, Basler Kommentar, No. 289 *ad* Art. 187 PIL.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

“When deciding ex aequo et bono, the arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules.”¹³

In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives “a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case”.¹⁴

This is confirmed by the provision in Article 15.1 of the FAT Rules *in fine* that the arbitrator applies “general considerations of justice and fairness without reference to any particular national or international law”.

6.1.2 The limits of the arbitrator’s mandate to decide *ex aequo et bono*

It is generally acknowledged that the arbitrator deciding *ex aequo et bono* is not required to apply mandatory provisions of the law that would otherwise be applicable to the dispute.¹⁵ Under the PIL, the only limit to the arbitrator’s freedom in deciding a dispute *ex aequo et bono* is international public policy.¹⁶

When the parties authorize the arbitrator to decide *ex aequo et bono*, the

¹³ JdT 1981 III, p. 93 (free translation).

¹⁴ POUURET/BESSON, *Comparative Law of International Arbitration*, London 2007, No. 717, pp. 625-626.

¹⁵ ATF 107 Ib 63, 66.

¹⁶ Under the Concordat, an award *ex aequo et bono* can be set aside in case of “evident violation of equity” (Art. 36 let. f Concordat).



We Are Basketball

FIBA Arbitral Tribunal (FAT)

arbitrator is required to decide *ex aequo et bono*.¹⁷ That said, this duty does not prevent the arbitrator from referring to the solution which arises from the application of the law before reaching a decision *ex aequo et bono*,¹⁸ in particular to “guide or reinforce” his/her own understanding of fairness.¹⁹

6.2. Findings

6.2.1 Claim in the amount of EUR 45,000

In light of the aforementioned principles, the FAT concludes that Claimant 1 is entitled to his claim of EUR 45,000 from the Respondent. Claimant 1 presented the FAT with the Contract, pursuant to which the Respondent owes him the amount of EUR 60,000. It also follows from Sections 2 and 5 of the Contract that this debt is due to be paid in its entirety by the Respondent. As Claimant 1 now submits, the Respondent has, up to now, made payment of only EUR 15,000 of this debt, there remains a shortfall of EUR 45,000.

The arbitrator bases this conclusion on the record and not on the mere fact that the Respondent has defaulted. Under these circumstances, the Arbitrator does not deem it necessary to call for further evidence.

¹⁷ P.A. KARRER, *op. cit.*, No. 302 *ad* Art. 187 PIL, p. 1725.

¹⁸ ATF 110 Ia 56, 58.

¹⁹ JdT 1981 II 93.



We Are Basketball

FIBA Arbitral Tribunal (FAT)

6.2.2 Claim in the amount of EUR 6,000

Claimant 2 has a claim in the amount of EUR 6,000. The Appendix to the Contract lays out that Mr Raznatovic and Mr Lotsos are entitled to EUR 6,000 within the context of the transfer of the Player “for them to split equally”. With the agreement of 16 June 2007, Mr Lotsos assigned to Claimant 2 his rights arising out of the Appendix to the Contract. Therefore, Claimant 2 alone is entitled to assert the claim. In reference to the quantum of the "agent fee", the Appendix to the Contract clearly establishes that all taxes and respective miscellaneous duties connected to the transfer are to be paid by the Respondent. According to Claimant 2's submission, the Player played for the Respondent until the end of the 2006/2007 season, it is therefore assumed that the Player successfully passed all of the medical examinations and doping control tests that were necessary for him being hired. Therefore, the claim made by Claimant 2 on the basis of the Appendix to the Contract is both justified and due to be paid.

7. Costs

Article 19.2 of the FAT Rules provides that the final amount of the costs of the arbitration shall be determined by the FAT President and may either be included in the award or communicated to the parties separately. Furthermore Article 19.3 of the FAT Rules provides that the award shall grant the prevailing party a contribution towards its legal fees and expenses incurred in connection with the proceedings.

On 16 August 2007, the President of the FAT rendered the following decision on costs:



We Are Basketball

FIBA Arbitral Tribunal (FAT)

“Considering that under Swiss law the arbitrators have the obligation to decide on the amount and the allocation of the arbitration costs as well as on the contribution towards the parties’ legal fees (BERGER/KELLERHALS, Internationale und Interne Schiedsgerichtsbarkeit in der Schweiz, Bern 2006, No. 1477, p. 521).

Considering that pursuant to Article 19.2(1) of the FAT Rules “the FAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of FAT and the fees and costs of the FAT President and the Arbitrator”.

Considering that Article 19.2(2) of the FAT Rules adds that “the fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the FAT President from time to time”.

Considering all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and of the procedural questions raised, the President of the FAT determines the arbitration costs as follows:

• Arbitrator’s fees (15 hours at an hourly rate of EUR 300 plus 19% VAT)	EUR 5,355.00
• Arbitrator’s costs	EUR 95.00
• Administrative and other costs of FAT	-----
• Fees of the President of the FAT	EUR 500.00
• Costs of the President of the FAT	-----
TOTAL	EUR 5,950.00”

In the present case, the costs shall be borne by the Respondent alone in line with Article 19.2 of the FAT Rules, as the Claimants have been awarded their claims in their entirety and there is no indication that either the financial resources of the parties or any other circumstance compels otherwise.

Moreover, the Arbitrator wishes to note that given the above allocation there is no need to take into account the handling fee when allocating the costs of the arbitration to the parties



We Are Basketball

FIBA Arbitral Tribunal (FAT)

as provided for by Article 19.1(2) of the FAT Rules.

Given that (i) in accordance to Procedural Order No. 1 and to the Arbitrator's direction of 5 July 2007 the Claimants paid the totality of the advance of the arbitration costs of EUR 7,000 fixed by the Arbitrator and (ii) that according to the Claimants' letter of 14 August 2007 Claimant 1 paid EUR 2,500 and Claimant 2 paid EUR 4,500, the Arbitrator decides that:

- (i) the FAT shall reimburse EUR 1,050.00 to the Claimants in proportion to the advance on costs paid by them. Accordingly, the FAT shall reimburse EUR 375 (EUR 1,050 x EUR 2,500 ÷ EUR 7,000) to Claimant 1 and EUR 675 (EUR 1,050 x EUR 4,500 ÷ EUR 7,000) to Claimant 2;
- (ii) the Respondent shall pay to Claimant 1 the difference between the costs advanced by him and the amount which is going to be reimbursed to him by the FAT, i.e. EUR 2,125 (EUR 2,500 – EUR 375). Furthermore, the Arbitrator considers it is adequate that the Claimant 1 is entitled to the payment of a contribution towards his legal fees and other expenses (Article 19.3 of the FAT Rules). Since in the case at hand the payment by Claimant 1 of the non reimbursable handling fee was not taken into account when allocating the costs of the arbitration, the Arbitrator thinks it adequate to take into account the non reimbursable fee when assessing the expenses incurred by the Claimant 1 in connection with these proceedings. After having reviewed and assessed the submissions by the Claimant 1 in accordance with Procedural Order No. 3, the Arbitrator fixes the contribution towards the Claimant 1's legal fees and expenses at EUR 3,500;
- (iii) the Respondent shall pay to Claimant 2 the difference between the costs



We Are Basketball

FIBA Arbitral Tribunal (FAT)

advanced by him on 5 and 19 July 2007 and the amount which is going to be reimbursed to him by the FAT, i.e. EUR 3,825 (EUR 4,500 – EUR 675). Since Claimant 2 has not submitted that he incurred legal fees or expenses in these proceedings no contribution is ordered by the Arbitrator insofar.

8. Interest

Since the Claimants did not request payment of interest, the Arbitrator will not award any interest (Article 190(2)(c) PIL).



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

9. AWARD

For the reasons set forth above, the Arbitrator decides as follows:

- 1. PAOK KAE shall pay to Mr. Djuro Ostojic EUR 45,000.00.**
- 2. PAOK KAE shall to pay to Mr. Miodrag Raznatovic EUR 6,000.00.**
- 3. PAOK KAE shall pay EUR 2,125.00 to Mr. Djuro Ostojic as a reimbursement of the advance of arbitration costs.**
- 4. PAOK KAE shall pay EUR 3,825.00 to Mr. Miodrag Raznatovic as a reimbursement of the advance of arbitration costs.**
- 5. PAOK KAE shall pay to Mr. Djuro Ostojic EUR 3,500.00 as a contribution towards his legal fees and other expenses.**
- 6. Any other or further reaching relief is dismissed.**

Geneva, place of the arbitration 16 August 2007

Ulrich Haas
(Arbitrator)



We Are Basketball

FIBA Arbitral Tribunal (FAT)

Notice about Appeals Procedure

cf. Article 17 of the FAT Rules
which reads as follows:

"17. Appeal

Awards of the FAT can only be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland and any such appeal must be lodged with CAS within 21 days from the communication of the award. The CAS shall decide the appeal *ex aequo et bono* and in accordance with the Code of Sports-related Arbitration, in particular the Special Provisions Applicable to the Appeal Arbitration Procedure."