



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0019/08 FAT)

rendered by

FIBA ARBITRAL TRIBUNAL (FAT)

Mr Raj Parker

in the arbitration proceedings

Mr Samuel Clancy Jr, 1300 W. 9th Street, 634 Cleveland, Ohio 44113, USA

- Claimant 1 -

Mr Massimo Raseni, Players Group, Via Balbo 68, 60044 Fabriano, Italy

- Claimant 2 -

Pinnacle Management Company, Milburn, NJ, 07041, USA

- Claimant 3 -

or jointly the "Claimants"

vs.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

Ural Great Professional Basketball Club, Perm Regional public organization, Lebedeva str., 13, Perm, 614990 Russia

- Respondent -

together with the Claimants, the “Parties”



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

1. The Parties

1.1. The Claimants

Samuel Clancy Jr (hereinafter "Mr Clancy" or "Claimant 1") is a citizen of the United States of America and a professional basketball player. Claimant 1 is represented by Massimo Raseni.

Massimo Raseni (hereinafter "Mr Raseni" or "Claimant 2") is a citizen of Italy and FIBA licensed player agent employed by the Players Group.

Pinnacle Management Company (hereinafter "Pinnacle" or "Claimant 3") is a basketball agency domiciled in the USA. Claimant 3 is represented by Massimo Raseni.

1.2. The Respondent

Ural Great Professional Basketball Club, (hereinafter "the Club" or the "Respondent") is a basketball club with its seat in Perm, Russia. The Respondent is not represented by counsel.

2. The Arbitrator

On 15 December 2008, the President of the FIBA Arbitral Tribunal (the "FAT") appointed Raj



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

Parker 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

In the summer of 2008, the Respondent sent to one or more of the Claimants a contract between Claimant 1 and the Respondent (the "Supplementary Agreement"); and a contract between Claimant 3 and the Respondent (the "Agent's Contract"). The copies of the Supplementary Agreement and the Agent's Contract that were sent to the Claimants were signed by the Respondent only.

Article 9 of the Supplementary Agreement states:

"9.1 The Parties agree that the signing of the Labour contract and the Supplementary agreement realizes by means of signing and sending the Labour and the Supplementary agreement by fax. The Parties agree that signatures on the Labour contract and the Supplementary agreement are to be put in Perm up to August 5th 2008."

Article 2 of the Supplementary Agreement states that Claimant 1 has, among others, the following obligations:

"2.2 To come to the Club's disposal not later than on August 5th 2008.

2.3 To pass medical/physical examination according to unit 5 of this Supplementary Agreement."



We Are Basketball

FIBA Arbitral Tribunal (FAT)

Article 3 of the Supplementary Agreement states that the Club has, among others, the following obligations:

“3.4 To provide the Player with two economy class round trip air tickets from USA to Perm, Russia for each season. This very point also spreads on the Player’s family. Under this point the Club carries the expenses. In case the Player buys the tickets, the Club compensates after receiving the originals of the ticket.

3.5 The Club agrees to provide the Player with a letter of invitation and visa expenses for the term of the Contract with a view to participate in the Club’s competitions abroad or in the training camp. This very point also spreads on the Player’s family.”

Article 5 of the Supplementary Agreement states:

“5.1 This Supplementary agreement becomes valid and in force after the fulfillment of the unit 5.2 of this Supplementary agreement and lasts till the date of the ending of the Contract.

5.2 The Player starts to fulfill his obligations (the Contract becomes valid) the next day after positive passing of medical examination that should be held no later than 3 days after his arrival to Perm, Russia.

5.3 Nonpassage of medical examination means that the Contract isn’t valid.

[...]

5.5 The Player should take medical examination on the date and in time appointed by the Club. In case the Player doesn’t come to medical examination or comes but in different time, this Supplementary agreement and the Contract are terminated but if it isn’t agreed by the Club and the Player.”

the Agent’s Contract states:

“Under this Agreement Club/Agent Agent agrees as follows:

- To search and provide the Club with the information on basketball player Sam Clancy;*
- To negotiate terms of contracting by the club and basketball player Sam Clancy for the 2008/2009 season;*
- To negotiate signing contract (Labour agreement) between the Club and basketball player*



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

Sam Clancy for the 2008/2009 season.

2. The Agent is obliged to render the services mentioned in point 1.1 up to July 31st 2008.

3. The Club further agrees that for the services rendered by the Agent, the Club will pay a commission as following:

- for the basketball season 2008/2009 the amount of 50000 (fifty thousand) US Dollars

[...]

5. The payment for the services is made after the signing of the Report of the services rendered, confirming their proper rendering after positive passing of medical examination by Sam Clancy in Perm, Russia

[...]

10. The parties agree that the signing of the agreement realizes by means of signing and sending it by fax. The Parties agree that original signatures of the authorized representatives on the Agreement are to be put and send to each other by mail up to August 1st 2008."

3.2. The Proceedings before the FAT

On 14 November 2008 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 11 December 2008.

By email dated 15 December 2008 the Arbitrator accepted his appointment and signed a declaration of acceptance and independence. Neither party has raised objections to the appointment of the Arbitrator or to the declaration of independence rendered by him.

By letter dated 15 December 2008 a time limit was fixed until 5 January 2009 for the Respondent to file its Answer to the Request for Arbitration. The letter also contained a



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

request addressed to the Claimants to provide missing information relating to the address of Claimant 3 and a request to provide the FAT with a Power of Attorney confirming that Claimant 2 was acting on behalf of all of the Claimants.

By the same letter dated 15 December 2008, and with a time limit until 29 December 2008, the following amounts were fixed as an advance on costs:

<i>"Claimant 1:</i>	<i>EUR 2,500.00</i>
<i>Claimant 2:</i>	<i>EUR 2,500.00</i>
<i>Claimant 3:</i>	<i>EUR 2,500.00</i>
<i>Respondent:</i>	<i>EUR 7,500.00"</i>

By letters received on 29 December 2008 and 5 January 2009 the Respondent requested an extension of the time limit to pay its share of the Advance on Costs and to file an Answer to the Request for Arbitration respectively.

By letter dated 7 January 2009 the Arbitrator granted a new time limit for the Respondent to submit its Answer and to pay its share of the Advance on Costs by no later than 12 January 2008.

By letter dated 12 January 2009 the Respondent filed an Answer. The Respondent has failed to pay its share of the advance on costs. Accordingly, by letter dated 13 January 2008, the FAT Secretariat informed the parties that the arbitration would not proceed until the full amount of the advance on costs was received. The letter referred to Article 9.3 of the FAT Arbitration Rules, which provides that: *"If a party fails to pay its share, the other party may substitute for it"*. A time limit until 23 January 2009 was fixed for the Claimants to pay the Respondent's share of EUR 7,500.00.

The Claimant paid the Respondent's share of the advance on costs on 28 January 2009.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

On 9 February 2009 the Arbitrator issued a Procedural Order, requesting the Parties to answer factual questions and provide further supporting evidence (the “Procedural Order”).

On 19 February, the Claimants submitted their answer to the Procedural Order (the “Answer to the Procedural Order”). The Respondent did not make any submissions within the set time limit.

On 20 March 2009, the FAT Secretariat informed the Parties that the exchange of documents was complete. The FAT Secretariat also invited the Parties to submit their detailed account of costs by 27 March 2009.

The Parties did not request the FAT to hold a hearing.

On 27 March 2009 the Claimants submitted the following account:

- *“the FAT fee for to [sic] open the claim, paid by Massimo Raseni/Players Group, 3.000,00€*
- *The advance on costs asked by the FAT from our side paid by mr. Clancy, 7,500,00€*
- *The advance on costs asked by the FAT from the Respondent side paid by Pinnacle M. 7.500,00€*
- *Legal advises [sic] from mr. Storelli, attorney in law in Lucca, Italy, paid by Players Group 1.500,00€”*

The Respondent failed to submit an account of costs.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

4. The Parties' Submissions

4.1. The Claimant's Submissions

In the Request for Arbitration the Claimants submit that the Supplementary Agreement was signed on 28 July 2008 and that Mr Clancy had to report at the disposal of the Club no later than 5 August 2008. However, as no flight tickets were provided by the Club he was not able to do so. The Claimants contend that the Club committed a one-sided violation of the Supplementary Agreement by avoiding it from 14 August 2008.

The Claimants stress in the Request for Arbitration that they consider the Supplementary Agreement valid and in full effect, and as such, have requested "relief" from the FAT.

In Answer to the Procedural Order the Claimants submit that the Supplementary Agreement is the only document governing the relationship between Mr Clancy and the Club and that the "Labor contract" referred in the Supplementary Agreement has not been signed by any Parties. The Claimants also submit in the Answer to the Procedural Order that Mr Clancy signed the Supplementary Agreement on 5 August 2008.

On the basis of these submissions, the Claimants seek relief from FAT affirming the validity of the Supplementary Agreement.

4.2. The Respondent's Submissions

In the Answer the Respondent submits that it is common business practice for sports



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

clubs to commence negotiations with players by sending contracts to them, already signed by the club. The Respondent agrees that it sent a signed Supplementary Agreement and Agent's Contract to the Claimants in this manner, but submits that it did not receive a signed copy back from any of the Claimants. The Respondents submit that the Supplementary Agreement and the Agent's Contract are therefore not binding. Furthermore, the Respondents note that Claimant 1 did not arrive in Perm and did not take a medical examination, as required under the Supplementary Agreement.

On the basis of these submissions, the Respondent requests that the claim be denied on the basis that there is no contract between the parties.

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 (PILA).

5.1. The jurisdiction of FAT

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

5.1.1 Arbitrability

The Arbitrator notes that the dispute referred to him is clearly of financial nature and is



We Are Basketball

FIBA Arbitral Tribunal (FAT)

thus arbitrable within the meaning of Article 177(1) PILA.¹

5.1.2 Formal and substantive validity of the arbitration agreement

The existence of a valid arbitration agreement is to be examined separately for each Claimant in light of Article 178 PILA, 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 "

Article 8.1. of the Supplementary Agreement contains the following arbitration clause:

8.1. Any dispute arising from or related to the present contract may be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved in accordance with the FAT Arbitration Rules by a single arbitrator appointed by the FAT President.

The seat of the arbitration shall be Geneva, Switzerland.

The arbitration shall be governed by chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of the parties domicile.

Awards of FAT can be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland. The parties expressly waive recourse to the Swiss Federal Tribunal against awards of the FAT and against decisions of the Court of Arbitration for Sport (CAS) upon appeal, as provided in Article 192 of the Swiss Act on Private International Law.

The arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono."

¹ Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

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

Article 7 of the Agent's Contract states:

"If any disputes arising from this Agreement cannot be solved by mutual consent of the parties, such disputes have to be presented in court in the place of location of the Club (Perm, Russia) or in FIBA arbitration tribunal (Geneva)."

None of the Parties dispute that the Agent's Contract is in written form, thus fulfilling the formal requirements of Article 178(1) PILA.

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

In any event, none of the Parties dispute the jurisdiction of the FAT.

6. Discussion

6.1. Applicable Law – *ex aequo et bono*

With respect to the law governing the merits of the dispute, Article 187(1) PILA



We Are Basketball

FIBA Arbitral Tribunal (FAT)

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 case has the closest connection. Article 187(2) PILA adds that the parties may authorize the arbitrators to decide “*en équité*”, as opposed to a 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.”

Article 8.1 of the Supplementary Agreement states:

“the arbitrator and CAS upon appeal shall decide the dispute ex aequo et bono”.

The Arbitrator will therefore decide the present matter *ex aequo et bono*.

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*²

² That is the Swiss statute that governed international and domestic arbitration before the enactment of the PIL. Today, the Concordat governs exclusively domestic arbitration.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

(Concordat),³ under which Swiss courts have held that arbitration *en équité* is fundamentally different from arbitration *en droit* :

“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.”⁴

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”.⁵

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

In light of the foregoing developments, the Arbitrator makes the following findings:

³ P.A. KARRER, Basler Kommentar, No. 289 *ad* Art. 187 PILA.

⁴ JdT 1981 III, p. 93 (free translation).

⁵ POUURET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

6.2. Findings

6.2.1 The Supplementary Agreement

The Arbitrator finds that the Respondent's act of sending the signed Supplementary Agreement to the Claimants constituted an offer. Deciding *ex aequo et bono*, the Arbitrator finds that to become a binding agreement, such an offer must be accepted by the Claimants by signing the Supplementary Agreement and that this acceptance must be communicated to the Respondent, in accordance with the terms of the offer.

The terms of the offer were contained in the Supplementary Agreement. One such term is at Article 9.1 of the Supplementary Agreement which states that "*signatures on the Labour contract and the Supplementary agreement are to be put in Perm up to August 5th 2008.*" The Claimants stated in the Request for Arbitration that the Supplementary Agreement was signed by Mr Clancy on 28 July 2008. However, in the Answer to the Procedural Order the Claimants stated that the Supplementary Agreement was signed by Mr Clancy on 5 August 2008.

The Arbitrator notes that the copy of the Supplementary Agreement supplied with the Request for Arbitration was not signed by the Claimants. After the Respondent pointed this out in its Answer, the Claimants supplied a copy of the Supplementary Agreement signed by all parties.

The Arbitrator finds that the Claimants have not provided sufficient proof that a signed copy of the Supplementary Agreement was sent to the Respondent by 5 August 2008. The Claimants submitted a copy of the Supplementary Agreement, signed by all parties, with a web address across the bottom of the page which includes the date "8/5/2008". This of itself is not sufficient proof that the email was sent on 5 August



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

2008. In the Procedural Order, the Arbitrator asked the Claimants for any evidence that Claimant 1 intended to play for the Club and that this was communicated to the Club. The Claimants were unable to provide this evidence and stated that a computer virus meant that the Club no longer had access to emails sent to the Club which may have constituted such evidence.

Furthermore, Article 9 of the Supplementary Agreement states that:

"9.1 The Parties agree that the signing of the Labour contract and the Supplementary agreement realizes by means of signing and sending the Labour and the Supplementary agreement by fax."

The Claimants failed to send the Supplementary Agreement by fax, as specified, and instead sent it by email.

The Claimants contend that the Supplementary Agreement is valid and binding. Article 5 of the Supplementary Agreement states:

"5.1 This Supplementary agreement becomes valid and in force after the fulfillment of the unit 5.2 of this Supplementary agreement and lasts till the date of the ending of the Contract."

5.2 The Player starts to fulfill his obligations (the Contract becomes valid) the next day after positive passing of medical examination that should be held no later than 3 days after his arrival to Perm, Russia."

5.3 Nonpassage of medical examination means that the Contract isn't valid."

[...]

5.5 The Player should take medical examination on the date and in time appointed by the Club. In case the Player doesn't come to medical examination or comes but in different time, this Supplementary agreement and the Contract are terminated but if it isn't agreed by the Club and the Player."

Accordingly, the Arbitrator finds that the Supplementary Agreement is not binding,



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

firstly because Claimant 1 has not taken the medical examination and secondly because acceptance of the Respondent's offer was not validly communicated to the Respondent, as explained above.

The Claimants argue that Claimant 1 failed to arrive in Perm, as required by the Supplementary Agreement, because the Respondent did not provide Claimant 1 with flight tickets. According to Article 3.4 of the Supplementary Agreement, the Club is required to provide Claimant 1 with two economy class round trip air tickets from the USA to Perm. However, at no point does the Supplementary Agreement stipulate that the tickets must be provided in advance of Claimant 1's arrival in Russia. In fact, Article 3.4 of the Supplementary Agreement states:

"In case the Player buys the tickets, the Club compensates after receiving the originals of the ticket."

This suggests that the provision of flight tickets is not a condition precedent to Claimant 1's arrival in Russia. The Arbitrator sees no reason why Claimant 1 could not have bought the flight tickets himself and then been reimbursed for them later. In the Procedural Order, the Arbitrator asked the Claimants to provide evidence of Claimant 1's attempts to contact the Club in order to arrange travel. The Claimants submitted an email sent to the Club on 29 July 2008, which contained no writing, but a copy of two pages of Claimant 1's passport. The Arbitrator does not consider this sufficient evidence of an intention to contact the Club in order to arrange travel by 5 August 2008 and thus to fulfill Claimant 1's obligation under Article 2.2 of the Supplementary Agreement to *"come to the Club's disposal not later than on August 5th 2008."*

Accordingly, the Arbitrator finds that the Claimants are not entitled to relief in relation to the Supplementary Agreement.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

6.2.2 The Agent's Contract

Article 1 of the Agent's Contract states that Claimant 3 has an obligation to:

"negotiate signing contract (Labour agreement) between the Club and basketball player Sam Clancy for the 2008/2009 season"

As stated above, the Arbitrator finds that no contract (be it the Supplementary Agreement, or an other Labour Agreement) has been concluded between the Parties. The Arbitrator therefore finds that Claimant 3 has not fulfilled all of his obligations under Article 1 of the Agent's Contract and so is not entitled to relief in relation to the Agent's Contract.

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 reasonable legal fees and expenses incurred in connection with the proceedings.

On 28 April 2009, the President of the FAT rendered the following decision on costs:

"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



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

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:

<i>Arbitrator's fees (33 hours at an hourly rate of EUR 300 plus 15% VAT)</i>	<i>EUR 11,385.00</i>
<i>Arbitrator's costs</i>	<i>-----</i>
<i>Administrative and other costs of FAT</i>	<i>-----</i>
<i>Fees of the President of the FAT</i>	<i>EUR 1,200.00]</i>
<i>Costs of the President of the FAT</i>	<i>-----</i>
<i>TOTAL</i>	<i><u>EUR 12,585.00"</u></i>

As a matter of principle, given the outcome of the arbitration, the costs should be borne by the Claimants alone, in line with Article 19.2 of the FAT Rules. However, the Arbitrator considers that although the claimants have not established that they complied with the formalities of the Supplementary Agreement, it was reasonable for the Claimants' to bring a claim under the specific circumstances of the case. Under these circumstances, and in the exercise of the discretion which Swiss law vests in him, the Arbitrator decides that it is fair and reasonable for each party to bear its own costs.

The Arbitrator notes that the advance on costs was paid as follows: Mr Clancy paid EUR 7,500.00 and Pinnacle paid EUR 7,485.00. Accordingly, the Arbitrator decides that the FAT shall reimburse EUR 2,400.00 to the Parties as follows: EUR 1,200.00 to Mr Clancy and EUR 1,200.00 to Pinnacle. The Arbitrator also notes that the Respondent did not pay its share of the advance on costs.



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

For the reasons mentioned above, and taking into account the fact that the Claimants paid a non-reimbursable handling fee of EUR 3,000, the Arbitrator deems it fair that each party bear its own legal fees and expenses and that half the costs of arbitration be borne by Respondent.

As a result, the Arbitrator decides that the Respondent shall reimburse EUR 3,146.25 to Mr Clancy and EUR 3,146.25 to Pinnacle.

8. AWARD

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

- I. Samuel Clancy's, Massimo Raseni's and Pinnacle Management Company's claims are dismissed.**
- II. Ural Great Professional Basketball Club shall pay to Samuel Clancy EUR 3,146.25, and to Pinnacle Management Company EUR 3,146.25, as a reimbursement of the advance of arbitration costs**
- III. All other or further reaching claims for relief are dismissed.**

Geneva, place of the arbitration 4 May 2009

Raj Parker
(Arbitrator)



FIBA

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."