



FIBA

We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0043/09 FAT)

rendered by

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Stephan Netzle

in the arbitration proceedings

Ms. Emilie Gomis, chez M. Tristan Delafosse, 31/421 Quai Hudson, 59650 Villeneuve d'Ascq, France

represented by Mr. Didier Domat, Taylor Wessing, 42, avenue Montaigne, 75008 Paris, France

- Claimant -

vs.

Women's Basketball Club Fenerbahçe, 34725 Kiziltoprak-Kadikoy, Istanbul, Turkey

- Respondent -

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1. The Parties

1.1. The Claimant

1. Ms. Emilie Gomis (hereinafter "Ms. Gomis" or "Claimant") is a professional basketball player of French nationality. She is represented by Mr. Didier Domat, an attorney-at-law, from Paris, France.

1.2. The Respondent

2. Women's Basketball Club Fenerbahçe (hereinafter "the Club" or "Respondent") is a professional basketball club with its seat in Istanbul, Turkey. Respondent is not represented by counsel.

2. The Arbitrator

3. On 19 May 2009, the President of the FIBA Arbitral Tribunal (the "FAT") appointed Dr. Stephan Netzle as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the "FAT Rules").
4. On 20 May 2009, the Arbitrator accepted his appointment and signed a declaration of acceptance and independence.



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5. None of the Parties has raised objections to the appointment of the Arbitrator or to the declaration of independence rendered by him.

3. Facts and Proceedings

3.1. Background Facts

6. On 18 and 19 June 2008, the Parties signed a so-called "Player-Club Agreement" (the "Agreement") by which Claimant undertook to play with Respondent's team from 1 October 2008 until the last official game of the Turkish Championship. In turn, Respondent undertook to compensate Claimant for her services. According to the compensation scheme set out in Exhibit 1 to the Agreement, the Respondent agreed to pay the Claimant a base salary of EUR 120,000.00 payable according to the following schedule:

*** Upon arrival and passing medical exam - 15,000.00 (fifteen thousand) Euro
* October 30, 2008 - April 30, 2009 seven (7) installments of 15,000.00 (fifteen thousand) Euro on the last day of each month"*

7. Claimant was also entitled to certain bonuses if the team would win the Turkish League, the Turkish Cup, the President's Cup or the Euroleague.
8. On 24 September 2008, the Parties signed an Addendum to the Agreement (the "Addendum") that reads as follows:

"In addition to the clauses previously agreed to and found in the contractual agreement referenced above, the following are also agreed to by both parties and hereby constitute



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contractually binding clauses between both parties:

- 1) *The Club and the Player agree to start the contract on the earlier date of September 18, 2008. All terms of the signed agreement will come into effect on September 18, 2008.*
 - 2) *The Club and the Player recognize that the problem with the cartilage of the Player's right knee has been diagnosed during the medical exam performed by the Club, under the terms of the contractual agreement. Therefore, our club doctors agree that if during the season the Player is not able to perform her duties under this agreement due to this problem with her right knee, the Club will have the right to terminate the Agreement."*
9. On 16 January 2009, Respondent issued a termination letter (the "Termination Letter") which was notified to Claimant by the fourth Kadikoy Notary Office. Claimant was informed that the Agreement was "hereby" terminated because she was not able to perform her duties due to health problems with her right knee.
10. By letter dated 6 February 2009 to Respondent, Claimant's representative challenged the validity of the termination of the Agreement and requested payment of outstanding salaries (EUR 7,500, for the period from 1st January to 16 January 2009), of salaries due until the end of the agreement (EUR 52,500), of "damages in respect with sport and other prejudices" (EUR 30,000) and of an advance on due bonuses (EUR 5,000).
11. There is no evidence on record that Respondent made any payments or responded to the above letter.

3.2. The Proceedings before the FAT

12. On 20 April 2009, Claimant filed a Request for Arbitration in accordance with the FAT Rules.



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13. By letter dated 19 May 2009, the FAT Secretariat confirmed receipt of the Request for Arbitration as well as the non-reimbursable handling fee and informed the Parties of the appointment of the Arbitrator. In the same letter, a time limit was fixed for Respondent to file its Answer to the Request for Arbitration until 9 June 2009 (the "Answer"). The letter also requested the Parties to pay the following amounts as an Advance on Costs by no later than 2 June 2009:

"Claimant (Ms Gomis): EUR 4,000.00
Respondent (WBC Fenerbahce): EUR 4,000.00"

14. No answer was received from Respondent within the above-mentioned time limit.
15. By email of 26 June 2009, Claimant's representative asked the FAT Secretariat whether a hearing date had already been fixed.
16. By letter dated 28 June 2009, the FAT Secretariat noted that both parties had failed to pay their share of the Advance on Costs. In accordance with Article 9.3 of the FAT Rules, the FAT Secretariat informed the Parties that the arbitration would not proceed until the full amount of the Advance on Costs was received. Both parties were reminded to pay their share of the Advance on Costs until 7 July 2009.
17. By letter dated 17 July 2009, the FAT Secretariat acknowledged receipt of Claimant's share of the Advance on Costs. It informed the Parties that Respondent had failed to submit its Answer to the Request for Arbitration and to pay its share of the Advance on Costs. In accordance with Article 9.3 of the FAT Rules, Claimant was invited to substitute for the missing payment of the Respondent until 31 July 2009. Claimant paid Respondent's share of the Advance on Costs on 24 July 2009.
18. By letter dated 12 August 2009, the Arbitrator declared the exchange of documents



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complete and invited the Parties to submit a detailed account of their costs by no later than 21 August 2009.

19. By letter dated 31 August 2009, the FAT Secretariat reminded the Parties to submit their summaries of costs and legal fees and set a final deadline until 7 September 2009.

20. By letter dated 1 September 2009, Claimant submitted the following statement of costs:

“EUR 3,000 (three thousand Euros) corresponding to the non-reimbursable Fee covered by the Claimant.

EUR 4,000 (four thousand Euro) corresponding to the Claimant’s share of the Advance on Costs.

EUR 4,000 (four thousand Euros) corresponding to the Respondent’s share of the Advance of Costs paid by the Claimant.

EUR 12,000 (twelve thousand Euros) corresponding to the Attorneys Fee and other related (such as translation Fee).”

21. In its Request for Arbitration, Claimant had requested the FAT to hold a hearing. After the closing of the written submissions, taking into account all the circumstances of the case and in particular the fact that Respondent was not participating in the arbitration, the Arbitrator decided in accordance with Article 13.1 of the FAT Rules not to hold a hearing.



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4. The Parties' Submissions

4.1. The Claimant's Submissions

22. Claimant submits that the Parties signed the Agreement by which Claimant undertook to provide professional services as a basketball player for Respondent's basketball club. In turn, Respondent was obliged to pay compensation to Claimant for the 2008/2009 season, consisting of a base salary of EUR 120,000.00, to be paid in monthly installments, and certain bonus payments. Whereas she had performed her duties in compliance with the Agreement, Respondent breached its obligations by not paying the full salary and terminating the Agreement without just cause.
23. Claimant submits that after the 2008 Christmas break and upon her return to the Club on 12 January 2009, Respondent prevented Claimant from participating in the training without any valid reason.
24. On 16 January 2009, Respondent slipped a letter terminating the Agreement under the Claimant's front door. According to the Termination Letter, Claimant was injured and was thus "not able to perform her duties under this agreement".
25. The Claimant's December salary was paid after receipt of the Termination Letter. Since then, Claimant has not received any payments from the Respondent.



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4.2. Claimant's Request for Relief

26. Claimant requests FAT to:

"- Hold that the Agreement was improperly terminated by the Respondent, and that such termination is the exclusive fault of the Club.

- Order the Respondent to pay to the Claimant the following amounts as relief:

EUR 7,500 (seven thousand five hundred Euros) corresponding to her salary from 1st to 16 January,

EUR 52,500 (fifty two thousand five hundred Euros) corresponding to the financial loss sustained,

EUR 5,000 (five thousand Euros) corresponding to an advance on bonuses due,

EUR 30,000 (thirty thousand Euros) corresponding to damages for the harm caused to her sports career and other damages suffered,

EUR 1,600 (thousand six hundred Euros) corresponding to late payment penalties according to "Exhibit 1-Basic salary and bonuses" and EUR 25,00 (twenty five Euros) per additional day of delay.

- Award the Claimant full cover of the costs of this arbitration."

27. In its submission of 1 September 2009 Claimant adjusted the late payment penalties to EUR 4,975.

4.3. Respondent's Submission

28. Despite several invitations, Respondent did not engage in the proceedings at hand and did not make any submissions.



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5. Jurisdiction and other Procedural Issues

29. 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 Swiss Act on Private International Law (PILA).

5.1. The jurisdiction of FAT

5.1.1 Review *ex officio*

30. 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.¹

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

5.1.2 Arbitrability

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

¹ ATF 120 II 155, 162.



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is thus arbitrable within the meaning of Article 177(1) PILA.²

5.1.3 Formal and substantive validity of the arbitration agreement

33. The existence of a valid arbitration agreement will be examined 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"

34. The jurisdiction of the FAT over the dispute between Claimant and Respondent results from Clause 7 of the Agreement which reads as follows:

"7. This agreement is to be governed and interpreted in accordance to the FIBA regulations, the FIBA Arbitral Tribunal. All parties in this agreement (Club, Player and Agent) consent to the jurisdiction of the FIBA Arbitral Tribunal relative to any action or procedure that may arise relating to this agreement. All parties to this agreement accept the present English version of this contractual agreement as fully binding under both Croatian and FIBA laws and guidelines."

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

36. With respect to substantive validity, the Arbitrator considers that there is no indication

² Decision of the Federal Tribunal 4P.230/2000 of 7 February 2001 reported in ASA Bulletin 2001, p. 523.



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which could cast doubt on the validity of the arbitration agreement under Swiss law (cf. Article 178(2) PILA). In particular, the wording “*any action or procedure that may arise relating to this agreement*” clearly covers the present dispute.³

5.2. Other Procedural Issues

37. Article 14.2 of the FAT Rules, which the Parties have declared to be applicable in the Agreement, 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 law⁴ and the practice of FAT.⁵
38. In the present case, Respondent was informed of the initiation of the proceedings and of the appointment of the Arbitrator, in line with the relevant rules. It was also given ample opportunity to respond to the Request for Arbitration. However, Respondent has chosen not to respond at all. In light of these circumstances, the Arbitrator considers himself fit to proceed with the arbitration and deliver the award.

³ See for instance BERGER/KELLERHALS, *Internationale und Interne Schiedsgerichtsbarkeit in der Schweiz*, Bern 2006, No. 466, pp. 160-161.

⁴ Swiss Federal Tribunal SJ 1982, 613, 621; see also KAUFMANN-KOHLER/RIGOZZI, *Arbitrage international*, Bern 2006, No. 483; LALIVE/POUDRET/REYMOND, *Le Droit de l'arbitrage interne et international en Suisse*, Lausanne, 1989, No. 8 ad Art. 182 PILA; RIGOZZI, *L'Arbitrage international en matière de sport*, Basle 2005, No. 898; SCHNEIDER, *Basler Kommentar*, No. 87 ad Art. 182 PILA.

⁵ FAT Decision 0001/07 (Ostojic, Raznatovic vs. PAOK); FAT Decision 0018/08 (Nicevic v Besiktas JK).



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6. Discussion

6.1. Applicable Law – *ex aequo et bono*

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

40. 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.”

In the present case, considering the explicit reference made in the Agreement to FAT Arbitration the arbitrator finds that the authorization to decide the dispute *ex aequo et bono* (pursuant to article 15.1 of the FAT Rules) prevails over the inconsistent references to Turkish and Croatian laws contained in clauses 5 and 7 of the Agreement.



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41. 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*⁶ (Concordat),⁷ 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.”*⁸

42. 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”.⁹
43. 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”.
44. In light of the foregoing developments, the Arbitrator makes the following findings:

⁶ That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA. Today, the Concordat governs exclusively domestic arbitration.

⁷ P.A. KARRER, Basler Kommentar, No. 289 *ad* Art. 187 PILA.

⁸ JdT 1981 III, p. 93 (free translation).

⁹ POUURET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626.



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6.2. Findings

6.2.1 Was there a binding Agreement?

45. Claimant has submitted an Agreement pursuant to which Respondent undertook to pay to her the amount of EUR 120,000.00 net, due in eight monthly installments of EUR 15,000.00 each.
46. On 24 September 2008, the Parties signed an Addendum to the Agreement providing that the Agreement would start already on 18 September 2008. The Parties further agreed that Respondent would have the right to terminate the Agreement if during the season Claimant would be unable to perform her duties due to the recognized problem with the cartilage of Claimant's right knee which had been diagnosed at the medical exam performed upon Claimant's arrival at the club.
47. Failing any indication to the opposite, the Arbitrator finds that the Agreement and the Addendum had been validly agreed by the Parties.

6.2.2 Did the Respondent terminate the Agreement with just cause?

48. In its Termination Letter dated 16 January 2009, Respondent informed Claimant that it had decided to terminate the Agreement. In particular, the letter states as follows:

"We notify that a contract signed between you and our Club dated 18 June 2008 and a contract which certified by the Turkish Basketball Association on 10 October 2008 have hereby terminated (sic) according to article 2 of addendum agreement signed on 24 September 2008 and medical report. Article 2 of this agreement says that The Club and the Player recognize that the problem with the cartilage of the Player's right knee has been diagnosed during the medical exam performed by the Club, under the terms of the contractual agreement. Therefore, our club doctors agree that if during the season the



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Player is not able to perform her duties under this agreement due to this problem with her right knee, the Club will have to terminate the agreement. In addition to this the results of analysis are enclosed."

49. Claimant submits that the alleged reason for terminating the Agreement was unfounded because Claimant was by all means able to perform her duties, and that the real cause for the termination was Respondent's plan to recruit a new player, namely Katie Smith, who was eventually employed by the Club in January 2009. Claimant asserts that she has received the Termination Letter without any enclosure. Since she started playing for the Club and throughout the season, until 16 January 2009, she was never examined by the club doctors and therefore could not have been diagnosed with any injury. Respondent has not submitted any medical certificate or performed any medical examination demonstrating that the Claimant was injured.
50. At the outset, the Arbitrator notes that the Parties are free to agree on the grounds for terminating their Agreement. In Article 2 of the Addendum, the Parties agreed that "*if during the season the Player is not able to perform her duties under this agreement due to this problem with her right knee, the club will have the right to terminate the Agreement.*" The burden to prove Claimant's inability to perform her duties is on Respondent. However, Respondent's flat allegation of Claimant's health problem in the Termination Letter was neither substantiated nor supported by any evidence. In fact, Claimant was obviously capable of playing competition basketball in January 2009 and during the whole 2008/2009 season: as is evidenced in her submissions, from 2 to 12 January 2009 she participated in the training with the French national Basketball team without any physical problem being reported. Furthermore, on 28 January 2009, she signed a contract with the Italian Club of Napoli Basket Vomero and has been playing since then with that team. In the absence of any evidence of Claimant's incapability to perform her contractual duties, the Arbitrator finds that Respondent has not demonstrated a valid cause to terminate the Agreement.



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6.2.3 The consequences of terminating the Agreement without just cause

51. According to established case law of the FAT, a notice of termination of a labor agreement is final, binding and puts an end to the employment contract if the content of the notice is unambiguous and if it must be understood by the employee as the employer's will to terminate the employment. An employee cannot be compelled to continue to offer his services to an employer who is no longer willing to solicit these services. If an employer terminates a labor contract without just cause, his obligation to pay the salary is replaced by an obligation to compensate the employee for the loss of salaries and other benefits relating to the employment. Since the Respondent terminated the Agreement without just cause, it is obliged to pay all monies due under the Agreement until the early termination date, i.e. 16 January 2009, and to compensate the Claimant for the loss of the remaining income under the Agreement.

6.2.4 Outstanding salaries / Compensation for future salaries

52. Respondent owes to Claimant the salary for the period between the last salary payment it has effected (December 2008) and the early termination date (16 January 2009), i.e. fifteen days' salary from 1st to 16 January 2009, which corresponds to an amount of EUR 7,500.

53. The compensation for Claimant's loss of income corresponds to the guaranteed base salary for the entire 2008/2009 season, as agreed in Article 2 and Exhibit 1, para. A of the Agreement, minus the salary payments due by the Respondent until termination (i.e. EUR 120,000 minus EUR 67,500). This amounts to EUR 52.500.

54. However, any income the Claimant earned or could have reasonably earned by



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providing her services elsewhere must be deducted from compensation. When it comes to the assessment of the compensation which Claimant was able to earn or failed to earn because she was no longer bound by the Agreement with the Respondent, the Arbitrator must look at the contract which Claimant signed with the new club, i.e. Napoli Basket Vomero. This contract started on 28 January 2009 and ended after all official competitions of the 2008/2009 season, providing for a player's salary in the net amount of EUR 21,000.

55. Obviously, there is a substantial gap between the salary agreed by Claimant with Respondent and the salary that she subsequently agreed with Napoli Basket Vomero. However, there are no indications that the player contract with Napoli Basket Vomero did not reflect the true agreement between the parties to the contract, or that Claimant failed to accept the best offer available when Respondent unilaterally terminated the Agreement on short notice. Under the circumstances, the Arbitrator does not deem it appropriate to impose strict requirements on the efforts of Claimant to find a comparable employment. Indeed, in the middle of the 2008/2009 season, Claimant found herself in a rather hopeless situation to find an employment on terms comparable to the prior Agreement.

56. Therefore, the Arbitrator deems it just and equitable under the specific circumstances of the case to award Claimant the salary agreed with the Respondent for the rest of the 2008/2009 season (EUR 52,500), minus the salary agreed with Napoli Basket Vomero for the whole duration of the latter contract (EUR 21,000), that is EUR 31,500.



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6.2.5 Outstanding bonuses

57. Claimant further requests FAT to award an advance on the bonus compensation in the total amount of EUR 5,000 for the results obtained by the team in the Euroleague, the Turkish League and the Turkish Cup. According to Exhibit 1 to the Agreement (para. B), such payments are part of the agreed compensation scheme. Furthermore, according to the Agreement, such payments are not contingent upon the active participation of Claimant in the matches but it suffices that the Club achieved certain sport results.
58. The Claimant has provided evidence of Respondent's qualification for the quarterfinals of the Euroleague, which triggers a bonus payment of EUR 4,000.00. In the meantime it has become public knowledge that the Respondent's team also won the Turkish League in the 2008/2009 season, which triggers an additional bonus payment of EUR 10,000.00.
59. Therefore, the Claimant is entitled to a bonus compensation in the amount of EUR 14,000.00. That said, Claimant did not amend its prayers for relief in the present arbitration. Hence, the Arbitrator can only award "EUR 5,000.00 corresponding to an advance on bonuses due".

6.2.6 Payment of damages

60. The Claimant further requests a compensation in the amount of EUR 30,000 for the harm caused by the unjust termination to her sports career. According to the Claimant, she chose to play with the Respondent because of its reputation and achievements. By playing with this team she could improve her technical skills and remain at international



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level. When Respondent dismissed Claimant without valid reasons, she was put under great stress and anxiety for being without a club in the middle of the season. She had to accept the offer of the Italian Club of Napoli Basket Vomero with a smaller structure and achievements incomparable to the Respondent. Therefore, Claimant is seeking payment of damages in the amount of EUR 30,000.00 corresponding to the harm she suffered with regard to her sports career.

61. The Arbitrator finds that Claimant can only request such damages which she actually suffered because of the unjust dismissal by Respondent. Claimant has to prove the damage and the causal connection. Claimant did not explain further how she had calculated the claimed compensation. Furthermore, Claimant also failed to demonstrate the causal connection between her dismissal and the alleged damages. Since Claimant has not provided any further information which would support her claim, the claim does not reach the minimum standard of substantiation and is therefore dismissed.

6.2.7 Penalties for non-payment of salary

62. The Agreement specifically regulates the consequences of late payment. The salary payment schedule in Exhibit 1 to the Agreement lists the dates on which the Respondent was obliged to pay the eight monthly installments of EUR 15,000. According to Exhibit 1 to the Agreement, salary payments which are received fifteen (15) days later than the dates noted shall be subject to a penalty of EUR 25 per day. The Claimant requests such penalty payments of EUR 25 per day of delay. At the date of the Request of Arbitration (20 April 2009) such penalty amounted to EUR 1,600. Claimant subsequently adjusted this amount to EUR 4,975, to cover the period until 31 August 2009.



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63. The Arbitrator is of the view that late payment penalties of EUR 25 per day are owed for due payments (made with a delay of 15 days) until the date of this Award. Since the January salary was due on 31 January 2009, late payment penalties accrue from 16 February 2009 until 13 October 2009, i.e. the date of this Award. This amounts to a total of EUR 5,975.00 for 239 days.

6.2.8 Summary

64. To sum up, the Claimant is entitled to:

Outstanding salaries in the amount of	EUR 7,500
Compensation in the amount of	EUR 31,500
Bonus payments in the amount of	EUR 5,000
Late payment penalty in the amount of	EUR 5,975
Total	EUR 49,975

65. In light of the aforementioned principles, the Arbitrator concludes, deciding *ex aequo et bono* that Claimant is entitled to claim EUR 49,975 from Respondent.

66. The Arbitrator's conclusions rest on the record as it stands and not on the mere fact that Respondent has defaulted. Under these circumstances, the Arbitrator does not deem it necessary to call for further evidence.



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7. Costs

67. On 7 October 2009, considering that pursuant to Article 19.2 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”, and 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”, taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised, the FAT President determined the arbitration costs in the present matter at EUR 5,950.00.
68. Taking into consideration that (i) Claimant completely failed in her EUR 30,000 claim in damages for harm caused to her sports career and (ii) the Arbitrator reduced her compensation claim for lost salaries to take into account the new contract signed with Napoli Vomero, it is fair that the costs shall be charged to the Parties as follows: 60% to Respondent (=EUR 3,570) and 40% to Claimant (=EUR 2,380).
69. Given that Claimant has paid the totality of the Advance on the arbitration costs of EUR 8,000.00, as fixed by the Arbitrator, the Arbitrator decides that:
- (i) the FAT shall reimburse EUR 2,050 to Claimant;
 - (ii) Respondent shall pay to Claimant 60% of the difference between the costs advanced by her and the amount which is going to be reimbursed to her by the FAT, i.e. EUR 3,570.
70. Furthermore, the Arbitrator considers it adequate that Claimant is entitled to the payment of a contribution towards her reasonable legal fees and other expenses



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(Article 19.3 of the FAT Rules). Since in the case at hand the payment by Claimant of the non-reimbursable handling fee was not taken into account when allocating the costs of the arbitration, the Arbitrator considers it adequate to take into account the non-reimbursable fee when assessing the expenses incurred by Claimant in connection with these proceedings. After having reviewed and assessed the submission by Claimant, the Arbitrator fixes the contribution towards the legal fees and expenses of Claimant at EUR 10,000.



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8. AWARD

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

- 1. Women's Basketball Club Fenerbahçe is ordered to pay to Ms. Emilie Gomis EUR 49,975.00 for outstanding salaries, bonuses, compensation and late payment penalties.**
- 2. Women's Basketball Club Fenerbahçe is ordered to pay to Ms. Emilie Gomis EUR 3,570.00 as a reimbursement of the Advance on Costs of the Arbitration.**
- 3. Women's Basketball Club Fenerbahçe is ordered to pay to Ms. Emilie Gomis EUR 10,000.00 as a contribution to her legal fees and expenses.**
- 4. Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 13 October 2009

Stephan Netzle
(Arbitrator)



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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."