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We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(FAT 0056/09)

rendered by

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Stephan Netzle

in the arbitration proceedings between

Ms Albena Branzova, Blvd Demokrazia 164, 8000 Burgas, Bulgaria
represented by Mr. Josep Martin, 58 Boulevard Aristide Briand, 66100 Perpignan, France

- Claimant -

vs.

Basketball Club Nadezhda, 18 Gaya Street, 460000 Orenburg, Russia

- Respondent -

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1. The Parties

1.1. The Claimant

1. Ms. Albena Branzova (hereinafter “Ms. Branzova” or “Claimant”) is a professional basketball player of Bulgarian nationality. She is represented by Mr. Josep Martin, basketball agent certified by FIBA, from Perpignan, France.

1.2. The Respondent

2. Basketball Club Nadezhda (hereinafter "the Club" or "Respondent") is a professional basketball club with its seat in Orenburg, Russia. It is domiciled at 18 Gaya Street, 460000 Orenburg, Russia. Respondent is not represented by counsel.

2. The Arbitrator

3. On 24 July 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 24 July 2009, the Arbitrator accepted his appointment and signed a declaration of acceptance and independence.

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 7 May 2008, the Parties signed a so-called "Contractual Agreement" (hereinafter referred to as the "Player Contract") according to which Claimant was to be employed by Respondent for the 2008/2009 basketball season. According to the Player Contract, Respondent undertook to pay to Claimant a total base salary of EUR 120,000, payable in monthly installments of EUR 15,000 each, and certain bonuses if the team would meet certain defined sporting goals.

7. On 15 November 2008, both Parties agreed to terminate the Player Contract and signed a so-called "Agreement for pre-term termination of a labour contract" (hereinafter referred to as the "Termination Agreement"). The Termination Agreement's translation from Bulgarian into the English language reads as follows:

> *"The Orenburg city social organization "Nadezhda" Basketball club", hereinafter referred to as the "Club", represented by the Manager of the Club **LEONID BORISOVICH TSENAEV**, acting on the grounds of the Clubs's Statute, as the one party, and the citizen **ALBENA BOYCHEVA BRANZOVA-DIMITROVA**, hereinafter referred to as "Athlete", as the other one, lead by the agreement reached, signed the present understanding about the following:*
>
> *1. The Club undertakes to pay the Athlete as a compensation for termination of the labour contract the amount of 30 000 (thirty thousand) Euro, as follows: 15 000 (fifteen thousand) Euro – on January 20th, 2009 and 15 000 (fifteen thousand) Euro –*

on February 10th, 2009. The resources are transferred to a bank current account, provided by the Athlete.

2. The Club undertakes to pay the air ticket from Orenburg to Bulgaria, as well as the transfer from Domodedovo airport to Sheremetievo airport-2.

3. The Athlete on his part confirms that after the transfer of the sum specified in item 1 of the present Agreement, he will not make any claims to "Nadezhda" Basketball club", including financial, as well as claims regarding the pre-term termination of the labour contract.

4. The Athlete undertakes to vacate the house provided and to deliver it to a representative of the Club in the same conditions it was provided to the Athlete.

5. To deliver the entire sports outfit, provided by the Club, in its due condition.

6. All actions stipulated in items 3 and 4 of the present Agreement must be fulfilled not later than November 19th, 2008."

8. After the signing of the Termination Agreement, Claimant left the Club and the city of Orenburg and returned to her home country of Bulgaria.

9. Before the signing of the Termination Agreement, Respondent had paid three installments of Claimant's base salary in a total amount of EUR 45,000. However, to date, Respondent has not paid the amount of EUR 30,000 stipulated in the Termination Agreement. Claimant and her agent repeatedly reminded Respondent in writing of the agreed payments, e.g. by emails of 26 January 2009, 11 March 2009, and also on 17 May 2009. Respondent adduced various reasons for the delay in the payments, e.g. the arrival of a new expensive player or the uncertainty of how much financial support the Club might get from the regional government.

10. By letter dated 3 June 2009, Ms. Branzova wrote to Respondent:

"Dear President,

On 7th of May 2008 we signed an agreement in which I was recruited as a

professional basketball player playing for your club. The salary agreed was 120 000 euros for the full season.

15th of November we agreed together to terminate the contract signing a transaction. This transaction had included a payment compensation of 30 000 euros with the following schedule: 15 000 euros on 20th of January 2009 and 15 000 euros on 10th of February 2009.

On date of today I didn't receive any payment. I called you and send you many emails about solving this matter (directly or by the agent). You always postponed this payment. I contacted you again last week and you ask me to postpone again the payment.

Let me inform you that OFFICIALLY I don't agree to postpone anymore any payment. I give you five (5) working days, from the delivery of this mail, to make the payment to my official bank account included below.
If this payment is not effective in this time, I will go to Fiba FAT and CAS according our arbitration clause to ask the nullity of our transaction because the club didn't execute its obligation of payment. I will ask for the payment of the full salary (120 000 euros).

Bank name: UNICREDIT BULBANK
Bank Adress: PL. SVETA NEDELYA 7
1000 SOFIA
BULGARIA

BIC: UNCRBGSF
IBAN: BG38 UNCR 7630 1115 3330 07
Account name: ALBENA BRANZOVA

Regards,

Albena Branzova"

11. By email dated 6 June 2009, Respondent answered to Claimant as follows:

"Dear Albena,

We did receive your letter addressed to our Club. We do confirm our engagement to pay to you the amount of 30 000 euro. Because of the tough economic times we could not afford to pay our debt to you earlier.
Now when we ensured our 2009-2010 budget we will start to cover what we own you. We will contact you on Monday over the phone to set the details"

12. Since the signing of the Termination Agreement, Claimant has not signed a new employment agreement nor has she played for another basketball club.

3.2. The Proceedings before the FAT

13. On 8 July 2009, Claimant filed a Request for Arbitration in accordance with the FAT Rules.

14. By letter dated 29 July 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 26 August 2009 (the "Answer"). The letter also requested the Parties to pay the following amounts as an Advance on Costs by no later than 19 August 2009:

> *"Claimant (Ms. Branzova)* *EUR 3,500*
> *Respondent (BC Nadezhda)* *EUR 3,500"*

15. On 24 August 2009, Respondent submitted its Answer together with some exhibits, including a DVD-disk with video-recordings of certain episodes of the games of Claimant for BC Nadezhda.

16. By letter dated 4 September 2009, the FAT Secretariat confirmed receipt of payment of the Advance on Costs from both Parties.

17. By email dated 7 September 2009, Claimant sought leave from the FAT Secretariat to introduce some comments about Respondent's Answer.

18. By letter dated 11 September 2009, the Arbitrator invited Claimant to file a Reply to Respondent's Answer by no later than 24 September 2009 and allowed Respondent to file a Second Answer to the Claimant's Reply until 1 October 2009.

19. By letter dated 20 September 2009, Claimant filed her Reply to Respondent's Answer together with further exhibits.

20. By letter dated 1 October 2009, Respondent filed a Second Answer to Claimant's Reply and added two more exhibits.

21. By letter dated 9 September 2009, Respondent submitted the following account of costs:

    "DHL express mail sent the August 25th 2009: 2 311,86 rur = 51,20 euros"

22. By email dated 10 September 2009, Claimant submitted a detailed account of her costs for the first round of submissions (*Honoraires relatifs à la procedure d'introduction d'arbitrage auprès du FAT FIBA - 1ère instance*; DHL fees; Translation fee), in the amount of EUR 3,058.00.

23. By letter dated 14 October 2009, the Arbitrator declared the exchange of documents completed and invited the Parties to submit an updated account of their costs until 21 October 2009.

24. By letter dated 15 October 2009, Claimant submitted a second account of costs (*Honoraires relatifs à la deuxième réponse Tribunal Arbitral FIBA*) in the amount of EUR 956.80 including taxes. The total costs claimed by Claimant thus amount to EUR 4,014.80. Respondent did not submit another account of costs.

25. The Parties did not request the FAT to hold a hearing. The Arbitrator therefore decided in accordance with Article 13.1 of the FAT Rules not to hold a hearing and to deliver the award on the basis of the written submissions of the Parties.

4. The Parties' Submissions

4.1. Summary of Claimant's Submissions

26. Claimant claims the payment of EUR 75,000, that is, the difference between the full base salary for the 2008-2009 season (EUR 120,000) and the part of that salary which she had actually received before the signing of the Termination Agreement (EUR 45,000). She also claims interest of 5% on the amount of EUR 75,000, the reimbursement of her legal costs and the cancellation of the Termination Agreement.

27. Claimant submits that while she had complied with her obligations under the Termination Agreement, Respondent had failed to do so. Therefore, Respondent forfeited its rights under the Termination Agreement and Claimant was entitled to cancel the Termination Agreement and claim the full amount of the base salary as provided by Article 11, first sentence, of the Player Contract. Under these circumstances and according to Article 10 of the Player Contract, Respondent was also responsible for any and all legal costs of the FAT proceeding as well as the costs of Claimant’s counsel.

28. The corresponding excerpts from Article 10 and Article 11 of the Player Contract read as follows:

> *"**TENTH:***
> *[…] The **Club** understands that it will be responsible for any and all legal costs, which may be necessary should the **Player or her agent** have to obtain the assistance of an attorney in Russia.*
>
> ***ELEVENTH:***
> *If the **Club** unilaterally rescinds the present contract without justification, the **Player** will have the right to receive the totality of the salary amounts stipulated in the **Third** clause of this present contract. […] "*

29. Claimant rejects Respondent's submission that her physical condition was insufficient for a high-salaried basketball professional and that a better sporting performance was expected when she was contracted.

30. With regard to Respondent's alleged financial problems, Claimant notes that after her departure Respondent was still able to replace her by a higher-paid player named Betty Lenox. Moreover, at end of May 2009 Respondent paid to the Russian federation the fees requested to participate in the FIBA Eurocup of the following season.

4.2. Claimant's Request for Relief

31. Claimant requests the FAT to:

    1) Cancel the pre-term termination agreement, dated 15 November 2008.

    2) Order the Respondent to pay to the Claimant the amount of EUR 75,000, with interest rate of 5%.

    3) Hold that the costs of the present arbitration be borne by the Respondent alone.

    4) Order the Respondent to reimburse the Claimant the arbitration handling fee of EUR 3,000 as well as her legal costs and other expenses, to be ascertained.

4.3. Summary of Respondent's Submissions

32. In Respondent's opinion, Ms. Branzova's claim to receive the full season salary is unjustified.

33. Respondent acknowledges however that it is obliged by the Termination Agreement to pay to Claimant the amount of EUR 30,000 and to reimburse Claimant's expenses connected with this FAT proceeding.

34. Respondent reiterates that its financial situation was critical because of the global financial crisis, which led to a deterioration of the RUB/EUR exchange rate by 30%. According to Respondent, this was the main reason for its failure to comply with the obligations under the Termination Agreement. Respondent had no other option but to postpone the payment of Claimant's compensation because it preferred to finish the Russian championship and to pay the salary to the members of the team who were actively participating in the championship games.

35. Finally, Respondent submits that Claimant did not fulfill her promise to be in good physical form at the beginning of the season and did not make any efforts to improve her physical shape although Respondent had offered support for that purpose. Claimant was supposedly the best-paid player but did not perform adequately. Respondent was therefore forced to terminate the Player Contract.

4.4. Respondent's Request for Relief

36. Respondent did not file a formal request for relief, but it is evident that it is asking for FAT to reject Claimant's requests, although it agrees to pay the compensation provided

for in the Termination Agreement and Claimant's costs related to this arbitration proceeding.

5. The Jurisdiction of FAT

37. 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).

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

6. Arbitrability

39. The Arbitrator notes that the dispute referred to him is clearly of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.[1]

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

6.1. Formal and substantive validity of the arbitration agreement

40. 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."*

41. The jurisdiction of the FAT over the dispute between Claimant and Respondent results from Article 13 of the Player Contract, which reads as follows:

> *"THIRTEENTH:*
> *Any disputes arising from or related to the present contract shall 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. The language of the arbitration shall be English. Awards of the 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 Sports (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."*

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

43. With respect to substantive validity, the Arbitrator considers that there is no indication in the file which could cast doubt on the validity of the arbitration agreement under Swiss law (cf. Article 178(2) PILA).

44. The Termination Agreement does not contain an arbitration clause. However, what matters is that Claimant's claim actually arises from the Player Contract, which includes an arbitration agreement, namely Article 13. The wording "[a]ny dispute arising from or related to the present contract" clearly covers the present dispute.[2]

45. The arbitration clause must be construed independently and separately from the contract in which it is contained. By the same token, the existence and validity of the arbitration clause in the Player Contract does not depend on whether the Player Contract is still in force.

46. Furthermore, no objection regarding the jurisdiction of the FAT has been raised and both Parties participated in the arbitration proceeding without reservation.

47. The Arbitrator thus finds that he has jurisdiction to decide the present dispute.

7. Discussion

7.1. Applicable Law – *ex aequo et bono*

48. 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

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

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".*

49. 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."*

50. By Article 13 of the Player Contract, the Parties have explicitly authorized the Arbitrator to decide the dispute *ex aequo et bono*:

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

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

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

52. 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*[3] (Concordat),[4] under which

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

[4] P.A. KARRER, Basler Kommentar, No. 289 *ad* Art. 187 PILA.

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."*[5]

53. 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"*.[6]

54. 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".

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

8. Findings

8.1 Cancellation of the Termination Agreement

56. Claimant's claim of EUR 75,000 is based on Article 11 of the Player Contract as quoted in para. 28 above. Claimant argues that the Player Contract was reinstated because

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

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

Respondent did not comply with its payment obligation under the Termination Agreement. Thus, Claimant was entitled to cancel the Termination Agreement.

57. Before the Arbitrator turns to the question whether the conditions set out in Article 11 of the Player Contract (under which Respondent was obliged to reimburse the full salary to Claimant) were met, he must examine whether Respondent's default entitled Claimant to cancel the Termination Agreement, or whether there was another ground which would oblige Respondent to pay the full base salary.

58. When the Parties signed the Termination Agreement as reproduced in para. 7 above, it was their intention that this Termination Agreement would replace the Player Contract and all rights and obligations stipulated therein. There is no indication in the Termination Agreement or the Parties' correspondence that it was considered to be just an addendum as Claimant parenthetically mentions in her Complement Request for Arbitration.

59. According to the Termination Agreement, Respondent was obliged, *inter alia*, to pay to Claimant a compensation of EUR 30,000 which obligation has always been acknowledged by Respondent. However, the Termination Agreement does not contain a provision according to which the full base salary would become due if Respondent failed to pay the compensation for termination of EUR 30,000 in time, or to the effect that Claimant would be entitled to unilaterally cancel the Termination Agreement, in which case the Player Contract would resurrect.

60. The interpretation of Article 3 of the Termination Agreement does not lead to a different result. It reads:

> *3. The Athlete on his [sic] part confirms that after the transfer of the sum specified in item*

> *1 of the present Agreement, he [sic] will not make any claims to "Nadezhda" Basketball club", including financial, as well as claims regarding the pre-term termination of the labour contract.*

61. Article 3 of the Termination Agreement must be understood as a full and final settlement clause to make sure that once the compensation for termination of the Player Contract was paid, Claimant could not raise further claims based on the Player Contract. Article 3 may not be construed in the opposite way, namely that as long as the Club had not paid the compensation the Player was also still entitled to claim payments under the Player Contract. By signing the Termination Agreement, the Parties simultaneously replaced the Player Contract and there are no indications that the Parties' intention was to grant Claimant an option to claim either the compensation under the Termination Agreement or to raise any claims under the Player Contract.

62. Also Article 6 of the Termination Agreement may not support Claimant's standpoint:

> *"6. All actions stipulated in items 3 and 4 of the present Agreement must be fulfilled not later than November 19th, 2008."*

63. This clause merely states the date by which certain obligations stipulated in the Termination Agreement must be fulfilled. The Arbitrator does not read this provision as a general termination clause which would give the Parties a right to unilaterally terminate the Termination Agreement if the stipulated obligations had not been met.

64. Whilst the Termination Agreement does not contain a clause which would give Claimant the right to unilaterally terminate the Termination Agreement if Respondent was in default or a right to claim the full base salary instead of the compensation for termination, such a unilateral termination right might still be found to exist depending on

the circumstances and based on considerations of fairness. For instance, it is generally accepted that a creditor may choose to continue enforcing his claim against the debtor in default or to withdraw from the contract and refuse also his own performance. If the creditor intends to withdraw from the contract, he must notify the debtor accordingly, set a reasonable deadline and, upon expiration this deadline, promptly and unconditionally declare his withdrawal from the contract. The contract is then deemed to be cancelled retroactively and the *status quo ante* (i.e. the situation before the contract was concluded) is deemed to be restored, which means that any benefits under the cancelled contract must be restituted to the other party.

65. By letter of 3 June 2009, Claimant reminded Respondent of its payment duty, set a final deadline for compliance of five (5) working days and announced her intention to *"go to Fiba FAT and CAS according our arbitration clause and ask the nullity of our transaction (…)"* if the payment was not executed in time. When Respondent failed to timely execute the payment, Claimant filed the Request for Arbitration with the FAT on 8 July 2009.

66. However, when examining both the Claimant's letter of 3 June 2009 and her submissions before the FAT, the Arbitrator finds it difficult to acknowledge that Claimant's notice and requests amounted to a prompt and unconditional cancellation of the Termination Agreement. Claimant did not notify Respondent of her intention to terminate the Termination Agreement, nor did she proceed to terminate it, but, rather, she announced that she would undertake certain legal steps if Respondent did not pay the compensation due under the Termination Agreement. When the time limit she had set to Respondent for payment of the said compensation expired, Claimant did not promptly declare that the Termination Agreement would be cancelled but waited more than 3 weeks before filing the Request for Arbitration. The Request for Arbitration also

did not contain a clear declaration of termination of the Termination Agreement but rather reiterated the statements made by Claimant in her letter of 3 June 2009.

67. When considering all the evidence presented in this FAT proceeding and especially when interpreting the agreements and correspondence between the Parties, the Arbitrator finds *ex aequo et bono* that the Termination Agreement itself did not entitle Claimant to unilaterally withdraw from this agreement or to claim the initially agreed full base salary in case of default by Respondent. The Arbitrator also finds that Claimant's letter dated 3 June 2009 and the Request for Arbitration did not lead to the unilateral termination of the Termination Agreement, which is therefore still enforceable and binding upon the Parties.

68. Under these circumstances, it is not necessary to review whether the condition of Article 11 par. 1 of the Player Contract was met, namely that Respondent provoked Claimant's departure "by psychological pressure" (*see* Claimant's Complement Request for Arbitration, Conclusions) and thus unilaterally rescinded the Player Contract.

69. Based on the Termination Agreement, Claimant is still entitled to a compensation of EUR 30,000 which was repeatedly acknowledged by Respondent. The Arbitrator finds that Respondent's reasons for the delay in the payments are not acceptable. Respondent has also acknowledged that it is liable for the "expenses connected with the request of Arbitration in FIBA FAT" (Answer, *in fine*).

8.2 Default interest

70. Article 1 of the Termination Agreement provides for clear payment dates. By missing these payment dates, Respondent was *ipso facto* in default for the respective payments. Although neither the Termination Agreement nor the Player Contract explicitly provide that there is an obligation for the debtor to pay default interest this is a generally accepted principle which is embodied in most legal systems. The Arbitrator, deciding *ex aequo et bono* and in line with the jurisprudence of the FAT, decides that the interest rate of 5% per annum shall be applied to the amounts due, starting on the day following the dates when each of the outstanding installments of the compensation for termination became due.

71. The first installment of EUR 15,000 fell due on 20 January 2009 and the second installment of further EUR 15,000 fell due on 10 February 2009. Thus, Respondent has to pay interest on these amounts since 21 January 2009 and 11 February 2009, respectively.

9. Costs

72. Respondent has explicitly accepted to reimburse Claimant's expenses connected with her request to FAT and has again acknowledged this in its Second Answer. Claimant's arbitration costs include the non-reimbursable handling fee of EUR 3,000.00, the fees for her counsel in the first round of submissions (EUR 3,000.00), DHL-fees (EUR 43) and translation costs (EUR 15), as well as her costs related to the second round of submissions (EUR 956.80). Such costs amount to EUR 7,014.80 in total.

73. On 24 November 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 5,250.00. In view of the Respondent's explicit declaration that it would reimburse Claimant's expenses connected with her request to FAT and the fact that, to date, Respondent has refused to make the payments due to Claimant although it had repeatedly acknowledged its obligation to do so, the arbitration costs shall be borne exclusively by Respondent.

74. Given that both Parties paid their respective shares, in the amount of EUR 3,500.00, of the Advance on the arbitration costs, as fixed by the Arbitrator, the Arbitrator decides that

    (i) the FAT shall reimburse EUR 1,750.00 to Claimant;
    (ii) Respondent shall pay to Claimant EUR 1,750.00.

75. Furthermore, in the present case, the Arbitrator considers it appropriate that the Respondent pay its own costs and expenses (Article 19.3 of the FAT Rules).

10. AWARD

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

1. **Basketball Club Nadezhda is ordered to pay to Ms. Albena Branzova the amount of EUR 30,000.00 together with:**

   (a) 5% interest p.a. on EUR 15,000.00 from 21 January 2009;

   (b) 5% interest p.a. on EUR 15,000.00 from 11 February 2009.

2. **Basketball Club Nadezhda is ordered to pay to Ms. Albena Branzova the amount of EUR 1,750.00 as a reimbursement of the Advance on Costs for the arbitration.**

3. **Basketball Club Nadezhda is ordered to pay to Ms. Albena Branzova the amount of EUR 7,014.80 as a reimbursement of her legal fees and expenses.**

4. **Any other or further-reaching claims for relief are dismissed**

Geneva, seat of the arbitration, 25 November 2009

Stephan Netzle

(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."