We Are Basketball

FIBA Arbitral Tribunal (FAT)

ARBITRAL AWARD

(0065/09 FAT)

by the

FIBA ARBITRAL TRIBUNAL (FAT)

Mr. Klaus Reichert

in the arbitration proceedings between

Mr. Vadim Mikhalevskiy of VM Sport Management, Ostrovnaya str 7, Office 4017, Moscow 121552, Russian Federation

- Claimant -

represented by Mr. Solly Laniado, Adv, Zysman, Aharoni, Gayer & Ady Kaplan & Co – Law Offices, 41-45 Rotshild Blvd., Tel Aviv 65784, Israel

vs.

Mr. Sergey Bikov, Mira Steet 5, Novodvinsk City, Russian Federation

- Respondent -

represented by Mr. José Lasa Azpeitia, Laffer Abogados, C/ Yerma 10 7° D, Madrid 28033, Spain

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1. The Parties

1.1. The Claimant

1. Mr. Vadim Mikhalevskiy ("Claimant") is a FIBA-licensed players' agent.

1.2. The Respondent

2. Mr. Sergey Bikov ("Respondent") is a professional basketball player.

2. The Arbitrator

3. On 9 November 2009, the President of the FIBA Arbitral Tribunal (the "FAT") appointed Mr. Klaus Reichert as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the FIBA Arbitral Tribunal (hereinafter the "FAT Rules"). None of the Parties has raised objections to the appointment of the Arbitrator or to his declaration of independence.

3. Facts and Proceedings

3.1. Background Facts – the Agreement

4. Claimant and Respondent entered into an agreement dated 3 May 2008 ("the Agreement") whereby the Respondent engaged the Claimant as his agent.

5. The relevant parts, for the purposes of this arbitration, of the Agreement are as follows:

> *"1.Engagement*
>
> *1.1 The Player hereby employs the Agent and the Agent hereby agrees to act as Agent*

for the Player.

1.2 The Agent shall advise, assist and represent the Player in connection with the engagement of the Player as a skilled basketball player by clubs worldwide. Particularly the Agent shall introduce the Player to any basketball club which might be interested to retain his services, shall then negotiate on behalf of the Player the relevant player contract to be signed by the Player and will subsequently liaise and deal in the Player's interest with the club on all matters of interest for the Player in connection with his engagement with the club.

[…]

3. Compensation

For any contract procured by the Agent and signed by the Player, the agent shall include a clause according to which the agent collects his agent fee directly from the club. The Agent's fee shall be compensation for all the services to be provided by the Agent according to this contract. The Agent shall not be entitled to reimbursement of any expenses unless otherwise agreed in writing.[1]

4. Term

This Agreement shall begin on the day of signature hereof by both parties and shall expire on 3.3.2010 [not to exceed two years] unless renewed by written agreement between the parties.

5. Applicable law

This Agreement shall be subject to the laws of Switzerland, except for the provisions of private international law.

6. Entire Agreement

This is the entire agreement of the parties. Any amendments and/or additions to this Agreement shall be made in writing; the foregoing shall also apply to any amendment to this clause 6.

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[1] The Arbitrator notes that the Request for Arbitration did not quote clause 3 of the Agreement in its entirety. In particular, section 2.1.3 notably omitted to quote the first sentence of clause 3 of the Agreement.

[…]

8. Arbitration

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

3.2. The Proceedings before the FAT

6. On 26 October 2009, the Claimant filed a Request for Arbitration dated 25 October 2009 in accordance with the FAT Rules, and on 26 October 2009 he duly paid the non-reimbursable fee of EUR 3,000. The Request for Arbitration sought payment of various sums stated to be due from the Respondent to the Claimant (in respect of fees and reputational damage), an entitlement to future sums paid to the Respondent by Dynamo Moscow and legal fees and expenses.

7. On 9 November 2009, the FAT informed the Parties that Mr. Klaus Reichert had been appointed as the Arbitrator in this matter, and fixed the amount of advance on costs to be paid by the Parties as follows (payable by 24 November 2009):

Claimant	EUR 4,000
Respondent	EUR 4,000

8. In addition on 9 November 2009, the FAT sent the Request for Arbitration, together with the Exhibits thereto, to the Respondent. In the covering letter the FAT notified the

Respondent that the Answer was due, in accordance with Article 11.2 of the FAT Rules, by 1 December 2009.

9. On 23 November 2009 the Claimant paid his share of the advance on costs. On 26 November 2009 the Respondent paid his share of the advance on costs.

10. The Respondent delivered an Answer on 30 November 2009.

11. After having carefully reviewed the Parties' first submissions, on 2 December 2009, the FAT sent to the Parties a series of questions posed by the Arbitrator:

> *"For the Claimant:*
>
> *1. What was the date of the contract referred to in the third line of paragraph 2.4 of the [Request for Arbitration ("RfA")]?*
>
> *2. The Arbitrator would like to receive precise details of the matters set out in paragraph 2.6 of the RfA. In particular, what correspondence/contact there has been between the Claimant and Dynamo Moscow.*
>
> *3. In respect of section 6 of the RfA:*
>
> *a) what actual evidence is there of damage to reputation; and,*
>
> *b) what principles of law are applicable to support the entitlement to such a claim? [the laws of Switzerland (clause 5 of the Agreement) or ex aequo and bono (clause 8 of the Agreement)].*
>
> *4. The Arbitrator would like further assistance as to the facts and legal principles which the Claimant says supports the claims being made at 8.2.2 and 8.2.3 of the RfA.*
>
> *For the Respondent:*
>
> *1. In respect of the section in the Answer headed "Termination of FIBA Standard Contract":*
>
> *a) whether Swiss law or principles ex aequo et bono apply given clauses 5 and 8 of the Agreement;*
>
> *b) what are the provisions of Article 404 of the Swiss Code of Obligations;*

c) what principles ex aequo et bono would be invoked to justify early termination of an agreement;

d) full factual details to back up paragraphs 70 and 71 of the Answer together with any documentary exhibits. Also, when were these matters verbally brought to the Claimant's attention? What was his response?"

12. The Parties were directed to provide their answers by no later than 16 December 2009.

13. The Parties' answers were received by the FAT on 16 December 2009.

14. On 21 December 2009 the FAT informed the Parties that the Arbitrator had directed a second round of submissions.

15. On 10 January 2010 the FAT received the second round of submissions from the Claimant.

16. On 25 January 2010 the FAT received the second round of submissions from the Respondent.

17. On 28 January 2010 the FAT asked the Parties whether they were satisfied that all documentary evidence upon which they relied was already before the Arbitrator.

18. On 10 February 2010 the Claimant sent additional material, namely references from other FAT cases. The Respondent made no comments in respect of the question posed by the FAT on 28 January 2010.

19. On 16 February 2010, the Arbitrator issued a procedural order providing that the exchange of documents was complete and invited the Parties to submit their claims for costs.

20. On 1 March 2010, the Claimant submitted his claim for costs which included claims for the non-reimbursable FAT fee of EUR 3,000.00, the advance on costs of EUR 4,000.00, legal fees of EUR 9,425.00 (including VAT) and EUR 875.00 for expenses.

21. The Respondent submitted his claim for costs on 2 March 2010 which included claims for EUR 10,000.00 for legal fees, EUR 3,000.00 for translations and legal fees related to the execution of the submissions presented, and EUR 4,000.00 in respect of the advance on costs.

4. The Positions of the Parties

4.1. The Position of the Claimant

22. The position of Claimant is, in summary, that Respondent unlawfully terminated the Agreement before the expiration date of 3 March 2010. This has had the effect of leaving Claimant without compensation for his agent's fee in respect of Respondent's contract with Dynamo Moscow and damaged his reputation. In the latter respect Claimant says that, amongst others, the manner in which Respondent terminated the agreement sent out the wrong signal to other elite players about his abilities as an agent. Claimant also says that Respondent thereafter signed a new agreement, upon more favourable terms, with Dynamo Moscow without reference to Claimant.

23. Claimant, in particular, has relied upon a communication from Dynamo Moscow to the effect that that club believes that it no longer has any liability to Claimant given the termination by Respondent of the Agreement.

24. Claimant seeks an award for:

I. 10% of Respondent's salary for the 2009/2010 season which is estimated to be USD 500,000.00 – therefore the claimed figure is USD 50,000.00

II. 10% of any future salary of Respondent from Dynamo Moscow

III. USD 50,000.00 for fundamental breach of contract and reputational damage

IV. Legal fees and expenses

4.2. Respondent's Position

25. Respondent denies, with some vehemence, the claims made by Claimant. Pertinently for the purpose of this Award, Respondent points to the provisions of clause 3 of the Agreement and the manner in which the Parties agreed that Claimant would secure compensation. Respondent also draws attention to the circumstances of the new agreement he signed with Dynamo Moscow on 1 September 2009 and, in particular, to the Russian law requirements which required such a new contract – not a materially improved set of terms of employment.

26. Respondent invokes Swiss law as regards the termination of the Agreement. As to the factual circumstances Respondent says that Claimant was not properly looking after his interests, particularly in relation to payments of salary and the provision of a car.

5. Jurisdiction

27. 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

28. The jurisdiction of the FAT presupposes the arbitrability of the disputes and the existence of valid arbitration agreements between the parties.

5.1.1 Arbitrability

29. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus

arbitrable within the meaning of Article 177(1) PILA[2].

5.1.2 Formal and substantive validity of the arbitration agreement

30. The existence of a valid arbitration agreement is to 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."*

31. The jurisdiction of the FAT over the present dispute results from the arbitration clause already described above (para. 5 *supra*).

32. The Agreement submitted with the Request for Arbitration is in written form and thus the arbitration agreement fulfills the formal requirements of Article 178(1) PILA.

33. 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 agreement as between the Claimant and the Respondent under Swiss law (referred to by Article 178(2) PILA).

34. Finally, at no stage have the Parties called into question the Arbitrator's jurisdiction. The submissions have proceeded upon the clear footing that the arbitration agreement is valid and that the Arbitrator has jurisdiction to determine the matters in dispute.

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

6. Discussion

6.1. Applicable Law – *ex aequo et bono* or Swiss law

35. With respect to the law governing the merits of the dispute as between the parties, 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 Arbitrator to decide "*en équité*" instead of choosing the application of rules of law. Article 187(2) PILA is generally translated into English as follows:

> *"the parties may authorize the arbitral tribunal to decide ex aequo et bono".*

36. 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."*

37. As already noted above, the Agreement reads in relevant part as follows:

> *"5. Applicable law*
>
> *This Agreement shall be subject to the laws of Switzerland, except for the provisions of private international law.*
>
> *8. Arbitration*
>
> *Any dispute arising from or related to the present contract shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved in accordance with the FAT Arbitration Rules by a single arbitrator appointed by the FAT President. 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) in 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."*

38. At first sight there is an obvious conflict between clauses 5 and 8. On the one hand, clause 5 says that the Agreement shall be subject to the laws of Switzerland. On the other hand, clause 8, consistent with standard form FIBA agreements, directs in mandatory language that both the Arbitrator and CAS upon appeal have to decide the dispute *ex aequo et bono*. Respondent, in particular, urges the applicability of Swiss law in the answers he submitted to the questions posed by the Arbitrator.

39. The Arbitrator resolves this conflict within the Agreement in favour of *ex aequo et bono* for the following reasons. First, clause 5 is restricted in its terms; "subject to" is not as extensive as language often seen in governing law clauses to contracts which might include "shall in all respects be governed and construed in accordance with the laws of …" or similar language. Secondly, the clear and mandatory language contained within the arbitration agreement, both in respect of an arbitrator and of CAS upon appeal leaves the reader in no doubt as to the positive obligation to decide the dispute upon *ex aequo et bono* principles.

40. Turning next to a more detailed treatment of *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[3] (Concordat)[4], 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*

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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.

those rules."[5]

41. 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]

42. This is confirmed by Article 15.1 of the FAT Rules according to which the Arbitrator applies "*general considerations of justice and fairness without reference to any particular national or international law*".

43. In light of the foregoing considerations, the Arbitrator makes the findings below:

6.2. Findings

6.2.1 Discussion of *ex aequo et bono* and the relevant principles for this Arbitration

42. The Arbitrator has identified the principal consideration which reflects justice and fairness for the purposes of this Arbitration.

43. It is a matter of universal acceptance that *pacta sunt servanda*, i.e., that parties who entered into contracts are bound by their terms. Observance of obligations entered into is a fundamental and integral matter common throughout all civilized nations and legal systems. Without such a principle, commerce, honesty, and the integrity of dealings would all but vanish. It is just and fair that when parties enter into the sort of contracts which they did in this matter, then the provisions of such contracts should be observed.

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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.

6.2.2 Discussion and conclusion on the facts in light of the principle of *pacta sunt servanda*

44. The Arbitrator has been particularly struck with the provision concerning the compensation of Claimant, namely:

> *"3. Compensation*
>
> *For any contract procured by the Agent and signed by the Player, the agent shall include a clause according to which the agent collects his agent's fee directly from the club. The Agent's fee shall be compensation for all the services to be provided by the Agent according to this contract. The Agent shall not be entitled to reimbursement of any expenses unless otherwise agreed in writing."*

It is noteworthy that the Agreement does not contain any express provision whereby Claimant is entitled to payment of money from Respondent. Rather, what the Parties have expressly chosen to do in this case is to place a mandatory onus upon Claimant to ensure that he secures his fee from the club. Claimant's financial fate is thereby in his own hands; if he succeeds in inserting a clause in the contract to the relevant effect then he creates an obligation as between himself and the club independent of Respondent.

45. The Arbitrator has also been struck by the explanation proffered by Claimant as regards the position of Dynamo Moscow, namely that it considered itself free of obligation to Claimant once it learned of Respondent's termination of the Agreement. In effect, Claimant is suggesting that such a step by Dynamo Moscow is a sufficient trigger for liability on the part of Respondent.

46. This position of Claimant vis a vis Dynamo Moscow is unsustainable. He can have been in no doubt whatsoever that his obligation was to have a clause inserted into the player/club contract in order to secure his fees. The Agreement is neither long nor complex, and Claimant cannot possibly have been blind to the manner in which he was

to secure his fees. If he failed to have such a clause inserted into the player/club contract, then upon his own head be it and the consequences cannot, as a matter of contractual interpretation, be visited upon Respondent.

47. Secondly, the Arbitrator cannot accept the suggestion that a mere denial of liability by Dynamo Moscow should have the sort of consequences which Claimant is advancing in this arbitration. Were Claimant's position to have any credence, then a mere denial of liability in a letter would have the effect of allowing a club to avoid obligations in the easiest manner imaginable and shift liability onto a player, which, in the Arbitrator's view is unsustainable. In reality, Claimant should have: (a) inserted a clause in the contract between Respondent and Dynamo Moscow (it is unclear to the Arbitrator if this actually happened) in order to secure his agent fee as an independent obligation; and (b) as soon as Dynamo Moscow refused to pay such a fee he should have initiated an arbitration in order to secure it from that club. That is the clear intent of the Parties to the Agreement and clause 3 in particular. Respondent is not liable for the fees of Claimant and that is clear from the express language of the Agreement which, in particular, includes an entire agreement clause (clause 6) which has the effect of excluding any implied terms or the like. Indeed clause 3 goes to the extent of excluding expenses unless otherwise agreed – this is entirely consistent with placing the burden upon Claimant as the agent to secure his fee from the club and not from Respondent in any manner whatsoever.

48. Claimant must be bound by the terms of the Agreement – that is consistent with *pacta sunt servanda*. He arranged his affairs with Respondent in a particular way and cannot now put those arrangements to one side merely because either, on the one hand, he failed to protect himself by having the appropriate clause inserted into the player/club contract, or, on the other hand, is put off by a mere declining by Dynamo Moscow of its liability.

49. With this analysis in mind, Claimant cannot succeed against Respondent for the first of his claims, namely 10% of the salary of Respondent for the 2009/2010 season. Indeed this finding is reinforced by the fact that nowhere in the Agreement is such a percentage mentioned. While it is well known that such a percentage represents custom and practice in the basketball agency business, the entire agreement clause (clause 6) excludes all such matters and the Parties' complete bargain is to be found within the terms written in the Agreement.

50. Turning to the termination of the Agreement by Respondent, it is quite clear that the Agreement was for a fixed term with no provision for early termination. Consistent with the previous findings resting upon *pacta sunt servanda* it appears clear to the Arbitrator that Respondent was obliged to observe the terms of the Agreement (insofar as there were any obligations on his side) until its conclusion on 3 March 2010. The alleged lack of performance of Claimant was not so serious as to represent an intention by Claimant not to perform his obligations at all. The Arbitrator does find it credible that Respondent felt that Claimant's activities in securing payment of salary and a car were not as diligent as might be desired, but that is a different issue to not performing at all (or actively telling a club not to pay due monies) which might be tantamount to repudiatory conduct. If such repudiatory conduct was proven and immediately relied upon to terminate a fixed term contract, that might be a different matter. That, though, as the Arbitrator understands the submissions, was not the case being made by Respondent. Indeed Claimant does make a claim for repudiation, but that is, in light of the findings in this Award, not material.

51. However, insofar as the foregoing could be construed as adverse comments concerning Respondent, that is where the matter stops as far as he is concerned. While the termination by Respondent in May 2009 did not comport with any terms of the Agreement, Claimant's claim for reputational damage or breach of contract cannot succeed in light of the findings above. Further, Claimant either did not negotiate a

clause for his own fees into the player/club contract, or was put off from pursuing his rights by a mere letter from the club. This would not augur well for Claimant in the context of a reputational damage claim. Respondent's actions, while strictly not within the terms of the Agreement, cannot have had any adverse impact on Claimant's reputation in the light of Claimant's approach to Dynamo Moscow as shown in this matter. With this in mind, Claimant's claim for reputational damage cannot succeed.

52. Finally, the Arbitrator will address the claim by Claimant for a percentage of future earnings by Respondent in relation to his being a player for Dynamo Moscow. The Arbitrator finds it difficult to connect such a claim to the terms of the Agreement, and appears to be unsustainable. In light of the findings already made in connection with clause 3 of the Agreement, it is simply impossible for Claimant to assert such an overarching and open-ended claim for relief. His opportunity to earn an agent's fee came solely at the point of negotiation of club/player contracts within the time frame of the Agreement. Given his apparent failure to either have an appropriate provision made for the 2009/2010 season in the contract between Respondent and Dynamo Moscow, or what seems to be, at its most neutral, a non-robust approach with Dynamo Moscow as regards his own fee, it would not augur well for future negotiations conducted by him.

53. While the Parties' submissions touched upon other arguments concerning the claims in this Arbitration, it is unnecessary for the Arbitrator to address these in this Award given the foregoing findings. However, for the avoidance of doubt, the Arbitrator did carefully weigh up all the matters put before him and distilled the relevant issues, facts and principles which underpin these findings.

7. Costs

54. 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 determine which party shall bear the arbitration costs and in what proportion; and, as a general rule, it shall grant the prevailing party a contribution towards its legal fees and expenses incurred in connection with the proceedings.

55. On 8 April 2010 – 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 to be EUR 8,000.00.

56. Considering that Claimant failed in respect of all of his claims, it is appropriate that he should bear the burden of the arbitration costs and the legal costs and expenses of Respondent.

57. The Arbitrator decides that in application of article 19.3 of the FAT Rules, Claimant shall pay Respondent EUR 10,000.00 for legal fees, EUR 3,000.00 for translations and legal fees related to the execution of the submissions presented, and the sum of EUR 4,000.00 paid by Respondent by way of advance on costs.

8. AWARD

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

1. **The claims of Mr. Vadim Mikhalevskiy as against Mr. Sergey Bikov are dismissed in their entirety;**

2. **Mr. Vadim Mikhalevskiy shall pay Mr. Sergey Bikov EUR 10,000.00 for legal fees, EUR 3,000.00 for translations and legal fees related to the execution of the submissions presented, and EUR 4,000.00 as a reimbursement of the advance of FAT costs paid by Mr. Sergey Bikov.**

3. **All other or further requests for relief are dismissed.**

Geneva, seat of the arbitration, 12 April 2010

Klaus Reichert

(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."