



**BASKETBALL**  
ARBITRAL TRIBUNAL

**ARBITRAL AWARD**

(BAT 0254/12)

by the

**BASKETBALL ARBITRAL TRIBUNAL (BAT)**

**Mr. Stephan Netzle**

in the arbitration proceedings between

**Mr. Rasid Mahalbasic**

- Claimant 1 -

**Mr. Admir Fazlic**

- Claimant 2 -

Both represented by Dr. Špelca Mežnar, Ceferin Law Office,  
Taborska 13, 1290 Grosuplje, Slovenia

vs.

**Fenerbahçe Ülker BC**

Fenerbahçe Spor Kulübü Lefter Küçükandoyadis Tesisleri,  
Münir Nurettin Selçuk Caddesi, Kiziltoprak – Kadıköy – Istanbul, Turkey

- Respondent -

Represented by Mr. Ersü Oktay Huduti, Huzur Mah. Oyaki Sitesi,  
Blok No: 27 Daire No: 29, Sisli, Istanbul, Turkey

## **1. The Parties**

### **1.1 The Claimants**

1. Mr. Rasid Mahalbasic (hereinafter the "Player") is a professional basketball player of Austrian nationality. He is represented by Dr. Špelca Mežnar, attorney-at-law in Grosuplje, Slovenia.
2. Mr. Admir Fazlic (hereinafter "Mr. Fazlic") is a FIBA certified agent of Slovenian nationality. He is also represented by Dr. Špelca Mežnar.

### **1.2 The Respondent**

3. Fenerbahce Ülker BC (hereinafter the "Club") is a professional basketball club located in Istanbul, Turkey. The Club is represented by Mr. Ersü Oktay Huduti, attorney-at-law in Istanbul, Turkey.

## **2. The Arbitrator**

4. On 21 February 2012, the President of the Basketball Arbitral Tribunal (hereinafter the "BAT"), Prof. Richard H. McLaren, appointed Dr. Stephan Netzle as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules"). None of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

### 3. Facts and Proceedings

#### 3.1 Summary of the Dispute

5. On 14 September 2010, the Player and the Club entered into an employment agreement (hereinafter the “Player Contract”) for a term of six basketball seasons, i.e. from the beginning of the 2010/2011 season to the end of the 2015/2016 season.
6. The Player Contract was identified in Clause 2 as a “fully guaranteed agreement” by which the parties agreed on a “fully guaranteed Base Salary” for the Player of EUR 2,100,000.00 net. However, according to Clause 1 of the Player Contract, the Parties agreed that the Club should have the right to unilaterally terminate the Player Contract at the end of the 2012/2013 season.
7. The Parties also agreed that the Player’s salaries should be paid in accordance with the payment schedule in Clause 2 of the Player Contract, i.e. a total net salary for the 2010/2011 season in the amount of EUR 125,000.00; for the 2011/2012 season in the amount of EUR 175,000.00; for the 2012/2013 season in the amount of EUR 250,000.00; for the 2013/2014 season in the amount of EUR 350,000.00; for the 2014/2015 season in the amount of EUR 500,000.00 and for the 2015/2016 season in the amount of EUR 700,000.00.
8. In addition, the Player Contract provided for a “commission fee” (hereinafter the “Agent Fee”) which had to be paid according to Clause 12 of the Player Contract as follows:

*“12. For services of locating and contracting the Player, Club shall pay to Agent commission fee according to the following schedule:*

*Club shall pay to Agent the amount of € 12,500.00 Euros (twelve thousand five hundred Euros) Net of taxes for the 2010/2011 basketball season on September 15<sup>th</sup> 2010.*

*Club shall pay to Agent the amount of € 17,500.00 Euros (seventeen thousand five hundred Euros) Net of taxes for the 2011/2012 basketball season on September 15<sup>th</sup> 2011.*

*Club shall pay to Agent the amount of € 25,000.00 Euros (twenty five thousand Euros) Net of taxes for the 2012/2013 basketball season on September 15<sup>th</sup> 2012.*

*Club shall pay to Agent the amount of € 35,000.00 Euros (thirty five thousand Euros) Net of taxes for the 2013/2014 basketball season on September 15<sup>th</sup> 2013.*

*Club shall pay to Agent the amount of € 50,000.00 Euros (fifty thousand Euros) Net of taxes for the 2014/2015 basketball season on September 15<sup>th</sup> 2014.*

*Club shall pay to Agent the amount of € 70,000.00 Euros (seventy thousand Euros) Net of taxes for the 2015/2016 basketball season on September 15<sup>th</sup> 2015.”*

9. According to the Preamble of the Player Contract, the Player was represented by “Mr. Robert Jablan, FIBA licence number 2007019205, from XL Basketball Agency” and by “Mr. Admir Fazlic”.
10. The Player joined the Club’s team at the beginning of the 2010/2011 season. He trained with the Club’s team but did not play any official game for the Club.
11. On 2 December 2010, the Player entered into a new employment contract with the basketball club “Tofas Sports Club” located in Bursa, Turkey. This new contract stated 2 December 2010 as the “Beginning Date” and 30 June 2011 as “Expiration Date”. It provided for monthly payments in the total amount of TRY 4,200.00 (approximately EUR 2,150.00 considering the exchange rate of 2 December 2010). Between 4 December 2010 and 29 January 2011, the Player played several games for Tofas Sports Club.
12. On 14 February 2011, the Player and Tofas Sports Club agreed to terminate their employment contract. The Player returned to Istanbul and trained with the Club’s team.
13. On 14 March 2011, the Turkish Basketball Federation (hereinafter the “TBF”) received from the Croatian Basketball Federation a request for a Letter of Clearance for the Player.

14. On 15 March 2011, the TBF issued the Letter of Clearance. On the same date, the Player entered into a new employment contract with the Croatian basketball club “KK Split” for a period until the end of the 2010/2011 season. This new contract did not provide for any salary but only for a “compensation of extraordinary lodging and catering expenses” in the amount of HRK 2,500.00 (approximately EUR 340.00 considering the exchange rate of 15 March 2011). From 19 March to 14 May 2011, the Player played several games for KK Split.
15. Thereafter, the Player left Croatia and returned to Istanbul where he allegedly participated in training sessions of the Club’s team until the end of 2011. He did not play any matches for the Club.
16. On 2 January 2012, the Claimants’ counsel sent the following letter to the Club:

“Re: **Termination of the Agreement – Mr Rasid Mahalbasic**

*Dear Sir/Madam,*

*As You have previously been informed, Our Law Office is representing **Mr Rasid Mahalbasic, a basketball Player** at Basketball Club BC Fenerbahce Ulker Istanbul. Despite our numerous written and oral request regarding the late payments to our Client Your Club has not fulfilled its obligations towards Mr Mahalbasic. The following payments have still not been made:*

- 9.000,00 Euros due from June 15th, 2011
- 35.000,00 Euros due from September 1st, 2011
- 14.000,00 Euros due from September 15th, 2011
- 14.000,00 Euros due from October 15th, 2011
- 14.000,00 Euros due from November 15th, 2011
- 14.000,00 Euros due from December 15th, 2011.

*Total amount due by the Club as of today is accordingly 100.000,00 Euros. In addition, the Club has not paid the amount of 17.500,00 Euros net of taxes for the 2011/2012 basketball season to the Agent. The amount was due on 15th September 2011.*

**According to Article 2 of the Agreement** concluded between Mr Mahalbasic and Basketball Club BC Fenerbahce Ulker Istanbul on 14th September **we inform You that Mr Mahalbasic is herewith exercising his right to terminate the Agreement** and is therefore no longer obligated to further perform for Your Club. We expressly reserve the right to claim all future payments to Player and Agent under and according to the Agreement.

*We kindly ask You to issue Our Client the FIBA Letter of Clearance as he is now clearly*

*free to leave Your Club (Article 2 of the Agreement).*

*Respectfully,*

*Dr Špelca Mežnar, Čeferin Law Office”*

17. On 21 January 2012, the Player signed a new employment agreement with the Slovenian club KK Zlatorog Lasko for the remaining part of the 2011/2012 season, i.e. from 21 January 2012 until five days after the team’s last official game of the 2011/2012 season. This agreement stipulated a total salary of EUR 14,000.00 net.
18. On 20 February 2012, during practice with the team of KK Zlatorog Lasko, the Player suffered an injury and has not participated in any practice or game of the Lasko team to date. According to the Player’s counsel, he has no new contract for the next season(s).

### **3.2 The Proceedings before the BAT**

19. On 3 February 2012, the BAT Secretariat received the Request for Arbitration dated 31 January 2012 filed by the Claimants’ counsel on behalf of the Claimants. The non-reimbursable handling fee of EUR 4,000.00 was received in the BAT bank account on 3 February 2012.
20. By letter of 23 February 2012, the BAT Secretariat confirmed receipt of the Request for Arbitration and informed the Parties of the appointment of the Arbitrator. Furthermore, a time limit was fixed for the Club to file its answer to the Request for Arbitration in accordance with Article 11.2 of the BAT Rules (hereinafter the “Answer”) by no later than 15 March 2012. The BAT Secretariat also requested the Parties pay the following amounts as an Advance on Costs by no later than 5 March 2012:

<i>“Claimant 1 (Mr. Rasid Mahalbasic)</i>	<i>EUR 4,500</i>
<i>Claimant 2 (Mr. Admir Fazlic)</i>	<i>EUR 1,000</i>
<i>Respondent (Fenerbahce Ülker BC)</i>	<i>EUR 5,500”</i>

21. On 20 March 2012, the BAT Secretariat acknowledged receipt of the full amount of the Advance on Costs paid by all Parties and informed the Parties that the Club had failed to submit the Answer within the time limit set and that the Club was granted a final opportunity to file the Answer by no later than 26 March 2012. Furthermore, the Club was informed that, in accordance with Article 14.2 of the BAT Rules, if the Respondent failed to submit an Answer, the Arbitrator could nevertheless proceed with the arbitration and deliver an award.
22. By email of 22 March 2012, the Club requested a one-week extension of the time limit to file the Answer, i.e. by 2 April 2012. On 23 March 2012, the BAT Secretariat acknowledged receipt of the Club's request and informed the Parties that, in view of the circumstances of the case, the Arbitrator had decided to grant an extension until 29 March 2012. The Claimants were asked to indicate by no later than 27 March 2012 whether they agreed to a further extension as requested by the Club. Because the Claimants did not submit any statements on this issue, the time limit to file the Answer was confirmed of 29 March 2012.
23. On 29 March 2012, the Club submitted its Answer and corresponding exhibits. It also objected to the BAT's jurisdiction.
24. By letter of 19 April 2012, the BAT Secretariat forwarded the Answer to the Claimants and informed the Parties that the Arbitrator had decided that he has jurisdiction to decide the present dispute. Furthermore, the Claimants were invited to comment on the Club's Answer by no later than 30 April 2012 and the Arbitrator underlined that the Claimants' submission should be strictly limited to commenting on the Answer.
25. On 24 April 2012, the Claimants' counsel submitted the Claimants' comments on the Club's Answer. By email of the same date, the BAT Secretariat forwarded Claimants' comments to the Club which was invited to provide its comments on the Claimants'

submission by no later than 7 May 2012. On 7 May 2012, the Club submitted its comments.

26. On 10 May 2012, the BAT Secretariat confirmed receipt of the Parties' submissions and informed the Parties that the Arbitrator required additional information before rendering his decision: In particular, the Claimants were asked to provide further documents and information, *inter alia* copies of further employment contracts of the Player, by no later than 18 May 2012.
27. On 18 May 2012, the Claimants' counsel submitted the additional documents and information as requested by the Arbitrator.
28. By letter of 23 May 2012, the Arbitrator declared the exchange of documents complete and invited the parties to submit a detailed account of their costs by no later than 30 May 2012.
29. By letter of 29 May 2012, the Claimants' counsel submitted an Account of Costs as follows:

*"- Initial non-reimbursable handling fee – **4.000,00 EUR***

*- Advance on costs paid according to the decision by the arbitrator – **EUR***

***5.500,00** of which*

- o **4.500,00 EUR** was paid by Claimant 1 (Mr. Rasid Mahalbasic) and*
- o **1.000,00 EUR** was paid by Claimant 2 (Mr. Admir Fazlic).*

*- Attorney's Fees – **4.550,00 EUR** (13 hours per 350,00 EUR)*

*Total Amount: **14.050,00 EUR** (fourteen thousand and fifty euro)"*

30. On the same date, the Respondent submitted an Account of Costs as follows:

*"Advance of costs paid by Fenerbahçe Ülker BC € 5.500,-*

*Attorneys fees (21 hours at an hourly rate on € 300,-) € 6.300,-*

	18% VAT	€ 1.134,-
Other Costs		€ 50,-
<b>Total</b>		<b>€ 12.984,-</b>

31. On 5 June 2012, the BAT Secretariat acknowledged receipt of the accounts of costs submitted by the parties. The Parties were further invited to submit their comments, if any, on the opposite party's account of costs by no later than 11 June 2012. While the Club did not file any comments, the Claimants' counsel submitted the following comment:

*"[W]e have received the Respondent's Account and believe that 21 hours of attorney's workload is overrated considering the Answer to the Claim and further documents submitted by the Respondent."*

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

#### **4. The Positions of the Parties**

##### **4.1 The Claimants' Position**

33. The Claimants submit the following in substance:
- The Player Contract was agreed as a "fully guaranteed" agreement and the Club failed to prove an alleged material breach of the Player Contract by the Player. The Club is therefore obliged to pay the amounts claimed by the Claimants.
  - Despite numerous written and oral requests regarding late payments, the Club did not fulfil its obligations towards the Player. On 2 January 2012, a total amount of EUR 100,000.00 was due, but the Club failed to make any payments. This is why the Player unilaterally terminated the Player Contract.

- In addition to the above EUR 100,000.00, the Player is entitled to all remaining payments for the 2011/2012 season due after the termination letter of 2 January 2012 in the total amount of EUR 84,000.00, and all payments for the 2012/2013 season in the total amount of EUR 250,000.00. Such claim is based on Clause 2 (page 5) of the Player Contract. When the Player signed the new contract with KK Zlatorog Lasko stipulating a salary of EUR 14,000.00, he mitigated his loss as required by the BAT jurisprudence. He is therefore entitled to an amount of EUR 420,000.00.
- Any submissions of the Club about a “tacit termination” of the Player Contract prior to 2 January 2012 are completely incorrect. It was the Club that assigned the Player to Tofas Sports Club and KK Split in the 2010/2011 season. The Player agreed to these assignments because it was the Parties’ understanding that the Player Contract remained in force while the Player got some playing practice. The Letter of Clearance issued by the TBF to the Croatian Basketball Federation in March 2011 did not prejudice the civil law obligations of the Parties agreed in the Player Contract.
- Mr. Fazlic represented the Player when the Player Contract was signed and he conducted the negotiations between the Club and the agency “XL Basketball Agency”. Mr. Fazlic is therefore entitled to agent fees for the basketball seasons 2010/2011, 2011/2012, and 2012/2013. The agent fee for the first season (2010/2011) has already been paid. However, despite numerous requests, the agent fee for the 2011/2012 season in the amount of EUR 17,500.00 is still open, although it became due on 15 September 2011. Finally, Mr. Fazlic’s right to claim an agent fee for the 2012/2013 season in the amount of EUR 25,000.00 has to be interpreted in the same way as the Player’s right to claim future salary.

## **4.2 The Claimants' Request for Relief**

34. In their Request for Arbitration, the Claimants request the following relief:

*"According to the Agreement dated 14.9.2010, the Respondent BC Fenerbache(sic) is obliged to pay*

*(a) to the first Claimant Rasid Mahalbasic the amount 420.000,00 EUR (four hundred twenty thousand euro) net of taxes plus interests at the applicable rate:*

- since June 15th, 2011 for the amount 9.000,00 Euros,*
  - since September 1st, 2011, for the amount 35.000,00 Euros,*
  - since September 15th, 2011, for the amount 14.000,00 Euros*
  - since October 15th, 2011, for the amount 14.000,00 Euros*
  - since November 15th, 2011, for the amount 14.000,00 Euros*
  - since December 15th, 2011, for the amount 14.000,00 Euros*
  - since January 2nd, 2012, for the amount 320.000,00 Euros*
- as a customary and fair compensation for the late payment.*

*(b) to the second Claimant Admir Fazlic the amount 42.500,00 EUR (forty-two thousand and five hundred euro) net of taxes plus interests at the applicable rate*

- since September 15th, 2011, for the amount 17.500,00 Euros;*
  - since January 2nd, 2012, for the amount 25.000,00 Euros*
- as a customary and fair compensation for the late payment.*

*(c) The Respondent shall reimburse the Claimants the costs of these arbitral proceedings, including legal fees and expenses incurred in the connection with the proceedings."*

## **4.3 The Respondent's Position**

35. The Club submits the following in substance:

- The BAT lacks jurisdiction: the arbitration clause contained in the Player Contract is rather controversial: it does not clearly state whether the Parties' had opted for BAT or the Court of Arbitration for Sports (CAS) for an appeal or an ordinary arbitration proceeding.

- When signing the Player Contract, the Player was represented by Mr. Robert Jablan, FIBA players' agent of the agency XL Basketball Management to whom the first instalment of the agent fee was paid. Although Mr. Fazlic is also mentioned in the Player Contract, he was neither introduced as the Player's agent, nor as Mr. Jablan's partner. At that time, Mr. Fazlic was not a FIBA licensed agent and according to the FIBA rules not permitted to represent players. Mr. Fazlic is therefore not entitled to an agent fee.
- After the start of the 2010/2011 season, the Player complained that he was never selected for the Club's team in an official match. It was the Player who wanted to leave the Club and the Club agreed to release the Player. When the Player signed new employment agreements with the Turkish club Tofas Sports Club and the Croatian club KK Split, "it was clear for the Club" that the Player did not want to play for its team any longer. According to clause 1 and 8 of the Player Contract, the Club had no right to assign the Player to another club.
- By signing the new employment agreements, the Player tacitly terminated the Player Contract (para 34 of the Answer) and breached it (para 36 of the Answer). He therefore cannot rely on it for claiming remuneration. Furthermore, the Player requests payments due after his transfer to KK Split. Those claims have to be rejected because at that time, the Player had already terminated the Player Contract and the Club had tacitly agreed (para 38 of the Answer).
- The Club gave its permission to the Letter of Clearance forwarded by the TBF to the Croatian Basketball Federation. It would never have done so if the Player Contract had still been in force. By that time, "the Club knew" that it could never call the Player back unless a new employment contract would have been agreed. It was also clear from the Letter of Clearance that the Player was free from any contractual obligation towards the Club.

- The Club objects to the admissibility of new facts and new evidence submitted by the Claimants in their second round submission. In case such documents would be admitted, the Club submits that the Player has never been paid for the time he was playing for KK Split. The payments mentioned by the Player were rather paid for “the term he actually served” for the Club and Tofas BC. The amounts paid to the Player after he had left the Club had become due before his departure.
- During the 2011/2012 season, the Player has never been registered with the Club and no agreement was signed by the Parties. The Player has only practised with the team like several young players who are seen as “hot prospects”.

#### **4.4 The Respondent's Request for Relief**

36. In its Answer, the Club requests the following relief:

*"The Respondent will seek an award in the hereby arbitration:*

- (a) declaring that Fenerbahçe Ülker BC was not in breach of the Agreement*
- (b) rejecting claims of the first and the second (sic)*
- (c) ordering the Claimant's(sic) to pay all costs and legal fees related to the hereby arbitration"*

#### **5. The Jurisdiction of the BAT**

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

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

39. 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.
40. Clause 11 of the Player Contract contains an arbitration agreement which reads as follows:
- “Any disputes arising or related to the present Agreement shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved definitively 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 parties’ domicile.  
The seat of the arbitration shall be Geneva, Switzerland.  
The language of the arbitration shall be English.  
The arbitrator and the CAS shall decide the dispute ex aequo et bono”.*
41. In accordance with Article 1.1 of the BAT Rules, these rules “shall apply whenever the parties to a dispute have agreed in writing to submit the same to the BAT – including by reference to its former name “FIBA Arbitral Tribunal (FAT)” (emphasis in the original). Article 18.2 of the BAT Rules says: “Any reference to BAT’s former name “FIBA Arbitral Tribunal (FAT)” shall be understood as referring to the BAT.” The Parties’ reference to the “FIBA Arbitral Tribunal (FAT)” in Clause 11 of the Player Contract is therefore understood as a reference to the BAT.
42. The Player Contract is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA.
43. With respect to substantive validity, the Arbitrator considers that the Player Contract was concluded between the Club and the Player and signed by the Club, the Player and the FIBA agent Mr. Jablan but not by Mr. Fazlic. Therefore, the question remains whether the arbitration agreement can also be binding upon non-signatories such as Mr. Fazlic.

44. The Swiss Federal Tribunal has held in a decision dated 16 October 2003 (BGE 129 III 727) that while the validity of the arbitration agreement between the initial parties was subject to the formal requirements of Article 178 (1) PILA, the validity of its extension to non-signatory parties was not.<sup>1</sup> Therefore, once an arbitration agreement complies with the formal requirements with respect to its initial signatories, the extension of that arbitration agreement to other parties does not need to satisfy such requirements.<sup>2</sup>
45. However, an extension of the arbitration agreement requires a legal relationship between the third party and the initial parties to the arbitration agreement, which must be of a certain intensity to justify the extension. According to consistent BAT jurisprudence, the relationship between a player and his agent and the club is sufficiently strong and justifies an extension of the arbitration agreement to the agent. The Preamble of the Player Contract expressly states that Mr. Fazlic is considered as one of the Player's representatives. The Arbitrator finds therefore that the arbitration agreement in the Player Contract must also apply to disputes between the Club and Mr. Fazlic (irrespective of his denomination) insofar as such disputes relate to the payment of the Agent Fee.
46. The Arbitrator also considers that there is no other indication in the file which could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA). In particular, the wording "*[a]ny disputes arising or related to the present Agreement*" in Clause 11 of the Coach Contract covers the present dispute.
47. In its Answer, the Club objected to the BAT's jurisdiction because of the ambiguity of the arbitration clause. It submitted, in particular, that the arbitration clause is not clear but rather a controversy exists regarding the Parties' desire to have their dispute

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<sup>1</sup> Decision of the Swiss Federal Tribunal dated 16 October 2003, BGE 129 III 727, 735, cons. 5.3.1.

<sup>2</sup> PHILIPP FISCHER: When can an arbitration clause be binding upon non-signatories under Swiss law?, in: Jusletter of 4 January 2010.

definitely resolved by BAT or referred to the CAS. In his procedural order of 19 April 2012, the Arbitrator explained in detail his finding to have jurisdiction over the present dispute as follows:

*"The Arbitrator has noted the Respondent's objection for lack of BAT's jurisdiction (para. 21 to 26 of the Answer). However, the Arbitrator finds that he has jurisdiction to decide the present dispute in accordance with the BAT Rules of 1 April 2011 for the following reasons:*

1. *According to Article 2.1 of the BAT Rules, the seat of the BAT and of each arbitral proceeding shall be Geneva, Switzerland. Furthermore, according to Article 2.2 of the BAT Rules arbitration proceedings before the BAT are governed by Chapter 12 of the Swiss Private International Law Act (PILA), irrespective of the parties' domicile. Therefore, the validity of the arbitration agreement agreed by the parties shall be determined in accordance with Swiss law.*
2. *According to Article 186 para. 1 PILA, the arbitral tribunal shall rule on its own jurisdiction. This is confirmed by Article 1.3 of the BAT Rules which states that the Arbitrator shall have the power to rule on his/her own jurisdiction, including on any objection with respect to the existence, scope or validity of the arbitration agreement. Therefore, the Arbitrator of the present dispute has the power to decide about his own jurisdiction.*
3. *According to Swiss law the decisive elements of a binding arbitration agreement are:*
  - a) *the agreement of the parties to submit their dispute to arbitration by designating a particular arbitral tribunal or at least one that is determinable by objective interpretation,*
  - b) *the description of the dispute or the legal relationship which shall be covered by the arbitration agreement (Berger/Kellerhals, International and domestic arbitration in Switzerland, 2nd edition, para 272 et seq.).*
  - c) *These elements are subject to a restrictive interpretation of the arbitration agreement (Berger/Kellerhals, para 414 et seq.) whereas all other elements of the clause shall be interpreted more broadly and in favor of the validity of the arbitration agreement.*
4. *By Article 11 of the parties' agreement dated 14 September 2010, the parties have agreed the following:*

*"11. Any disputes arising or related to the present Agreement shall be submitted to the FIBA Arbitral Tribunal (FAT) in Geneva, Switzerland and shall be resolved definitely 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 seat of the arbitration shall be Geneva, Switzerland.*

*The language of the arbitration shall be English.*

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

5. *The Arbitrator finds that it is the BAT alone which has been determined in the first sentence of Article 11 as the arbitral institution to which the parties shall submit their disputes. Furthermore, the agreement refers to "any dispute arising or related to the present contract" which is a sufficient description of the disputes which shall be submitted to the arbitration tribunal.*
  6. *The Respondent claims that the arbitration agreement is "problematical and creates controversy" because it is allegedly not clear whether the parties wanted their dispute definitely resolved by the BAT only or to have the right for appeal to CAS or directly referred to CAS for an ordinary procedure.*
  7. *No reference to CAS was made when the parties agreed on the competent arbitral tribunal which is the BAT in the first sentence of the arbitration clause. The arbitration clause mentions the CAS only in the context of the applicable law. The text of the arbitration agreement does therefore not allow concluding that CAS could be understood as an alternative arbitration tribunal of first instance in addition to the BAT.*
  8. *The question remains whether the reference to the CAS in the last sentence of the arbitration clause might be in conflict with the condition that the disputes "shall be resolved definitely in accordance with the FAT Arbitration Rules" (emphasis added) as provided in the first sentence of the arbitration clause.*
  9. *The Arbitrator finds however, that the mentioning of the CAS in the context of the applicable law only does not support the conclusion that the parties also agreed to arbitration with CAS at least as an appellate instance. Whether or not the CAS would have jurisdiction to accept an appeal under this arbitration clause despite the parties agreed that the disputes shall definitely be decided in accordance with the BAT Arbitration Rules is not to be decided by the Arbitrator but eventually by the CAS. This does however not impair the initial finding of the Arbitrator that he is competent to decide on the present dispute."*
48. Such finding was then expressly accepted by the Club in its submission dated 7 May 2012: *"4. The Respondent shall first state that it has no objections regarding the honorable Arbitrator's decision on BAT jurisdiction"*.
49. For the above reasons, the Arbitrator finds that he has jurisdiction to decide the present dispute and to adjudicate the Claimants' claims.

## 6. Other Procedural Issues

### 6.1 Admissibility of further documents and facts submitted by the Claimants

50. The Club objects to the admissibility of new facts and new evidence submitted by the Claimants in their second submission of 23 April 2012. The Club submits that according to Article 12.2 of the BAT Rules, in his procedural order of 19 April 2012, the Arbitrator did not grant the Claimants the right to produce new evidence or submit new facts but rather to comment on the Answer only. In particular, the bank account details proving the Player's claim must be declared inadmissible.
51. It is true that the Claimants submitted certain facts and evidence only in their second submission of 23 April 2012 and in their further submission of 18 May 2012 upon the Arbitrator's invitation of 10 May 2012 to provide further documents. Since Article 9.1 of the BAT Rules provides for a comprehensive Request for Arbitration, the Arbitrator will admit only those later submissions which were made in compliance with the Arbitrator's orders.
52. Consequently, the Arbitrator admits those arguments and exhibits contained in the Claimants' submission of 23 April 2012 which have been made in direct response to the Club's Answer, namely:
- *"5. [...] It was in fact the Respondent (BC Fenerbahce) who was paying Mr Mahalbasic's salaries during the time he had been playing for Tofas and Split (Exhibit No 4, bank statement, payments received by the Respondent are marked- 05/10/2012(sic), 22/10/2010, 09/11/2010, 14/12/2010, 25/02/2011, 24/03/2011, 06/05/2011, 02/06/2011). [...] If Respondent had actually believed that the Agreement was terminated prior to January 2<sup>nd</sup> 2012, it is difficult to understand why he(sic) kept on paying for Mr Mahalbasic's performance."*
  - *"8. In June 2011, Mr Mahalbasic returned to play with Fenerbache. He had continuously performed practice sessions with the Respondent; he was also a member of the Fenerbache team w (exhibit No 6, the photo taken on 9 October 2011, posted on Euroleague website [...])."*

53. All other new arguments and exhibits of Claimants' submission of 23 April 2012 are not admitted.
54. Further, the Arbitrator admits the following documents submitted by the Claimants on 18 May 2012 upon the Arbitrator's request of 10 May 2012, namely:
- the employment contract between the Player and the club KK Split, and
  - the statement of the club KK Lasko confirming the Player's current injury,
55. The authorization document by the Club to the Player regarding adidas Eurocamp 2011 is not admitted.

## **7. Applicable Law – *ex aequo et bono***

56. 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*" 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".*

57. Under the heading "Applicable Law", Article 15.1 of the BAT 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."*

58. In the arbitration agreement in Clause 11 of the Player Contract, the Parties have explicitly directed and empowered the Arbitrator to decide this dispute *ex aequo et*

*bono* without reference to any other law. Consequently, the Arbitrator will decide the issues submitted to him in this proceeding *ex aequo et bono*.

59. 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 of 1969<sup>3</sup> (Concordat),<sup>4</sup> under which Swiss courts have held that “arbitrage en *équité*” is fundamentally different from “arbitrage 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.”<sup>5</sup>*

60. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives

*“the mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he must stick to the circumstances of the case at hand.”<sup>6</sup>*

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

## 8. Findings

62. The Player requests the amount of EUR 420,000.00 plus interest for outstanding salary and compensation while Mr. Fazlic claims agent fee in the amount of EUR 42,500.00 plus interest.

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<sup>3</sup> That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and, most recently, the Swiss Code of Civil Procedure (governing domestic arbitration).

<sup>4</sup> KARRER, in: Basel commentary to the PILA, 2<sup>nd</sup> ed., Basel 2007, Art. 187 PILA N 289.

<sup>5</sup> JdT (Journal des Tribunaux), III. Droit cantonal, 3/1981, p. 93 (free translation).

<sup>6</sup> POUURET/BESSON, Comparative Law of International Arbitration, London 2007, N 717, pp. 625-626.

**8.1 Is the Player entitled to the amount of EUR 420,000.00?**

63. The Player claims (1) the amount of EUR 100,000.00 as outstanding salaries due on 2 January 2012 and (2) the amount of EUR 320,000.00 as compensation equal to the Player's salaries for the remaining 2011/2012 season and the 2012/2013 season.

**8.1.1 The outstanding salary of EUR 100,000.00**

64. The main question to be answered is: how long did the Player Contract last, i.e. was it terminated on 2 January 2012 by virtue of the termination letter, as suggested by the Claimants, or at an earlier date when the Player joined Tofas Sports Club (December 2010) or KK Spilt (March 2011), as suggested by the Club?

65. The termination letter is the only written evidence of a termination of the Player Contract before the agreed term. There is no documentary evidence of an earlier termination of the Player Contract either by a termination notice of either party or a termination agreement. The Club however submits that the employment was "tacitly" terminated when the Player left the Club with the Club's consent and joined another team.

66. Undisputedly, the Player left the Club in December 2010 in order to play for the team of Tofas. The Arbitrator finds however that this change cannot be interpreted as an implied termination of the Player Contract. Although the Player Contract contains a prohibition to assign the Player "to any other subdivision of the Club other than the senior professional team of the Club," this did not prohibit an assignment of the Player to another club, especially if such assignment was agreed between the Player and the Club. The Club does not submit that the Player changed to Tofas against the Club's will.

67. The Arbitrator finds that the engagement of the Player with Tofas was always intended to be temporary because (a) the agreement between the Player and Tofas expressly provides that the Club could call the Player back; (b) the Player only played with Tofas for two months and returned to the Club without a new contract when one of the first-team's main players was injured, and (c) the Player received only a minor compensation from Tofas, while on 14 December 2010, the Club still made a salary payment according to the Player Contract. The Club did not submit any compelling evidence according to which the change to Tofas terminated the Player Contract. The Arbitrator finds therefore that the temporary assignment of the Player to Tofas did not terminate the Player Contract.

68. The Arbitrator also finds that the change of the Player to KK Split did not terminate the Player Contract because of the following reasons: (1) as a matter of fact, the Player only played for KK Split for the rest of the 2010/2011 season; and (2) the Player did not receive any salary compensation from KK Split except a “*compensation of extraordinary lodging and catering expenses*”; (3) while the Player was away, the Club continued paying the salaries agreed in the Player Contract. Although the Club's payments were not entirely timely but sometimes delayed, the Player received the contractual salaries until the Club's last payment on 2 June 2011 and those payments covered the periods when the Player played for KK Split (and Tofas); (4) after his assignment with KK Split, the Player returned again to the Club and was undisputedly present at the Club's premises from the start of the next season 2011/2012 until 2 January 2012, i.e. the date of the termination notice, although he was not integrated in the roster of the Club's first team, and there is no clear evidence to which extent the Player participated in the preparatory games. Also, the media reported the Player's assignment to KK Split as a “loan”<sup>7</sup>, although this is not considered strictly as evidence.

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<sup>7</sup> See for instance online news of 14 March 2011 ([www.sportando.net](http://www.sportando.net)) and 15 March 2011 ([www.salsabasket.net](http://www.salsabasket.net)).

69. The Club submits that a Letter of Clearance was issued which pre-supposed that the former employment was terminated and all claims were settled. The Arbitrator is not convinced. The Letter of Clearance became necessary because the Player was loaned to a foreign club belonging to another national basketball federation. A Letter of Clearance is also required if the respective player is assigned on loan to a foreign club. The mere fact that the Club did not refuse the issuance of a Letter of Clearance from Turkey to Croatia by invoking the Player Contract, does not necessarily mean that the Player Contract had been (or was at that moment) terminated. It simply confirms that the Club agreed to the change of the Player to another club.
70. Although the Letter of Clearance procedure reminds all parties involved to take care that all claims are finished and that there are no disputes left which would be difficult to settle after the player left the country; it does not constitute a binding settlement agreement between the former club and the player on existing or future claims. In fact, the Letter of Clearance is issued upon unilateral declaration of a club and does not need any agreement by the player. Therefore, it does not bar the club or the player from raising a claim against each other.
71. The Arbitrator concludes that during the time the Player temporarily played with Tofas and KK Split the Player Contract remained in full force and was not terminated before 2 January 2012.
72. Furthermore, it is not disputed that the Club stopped paying the monthly salaries after 2 June 2011. The remaining payments which became due on 15 June 2011 until December 2011 remained unsettled. It was this delay which entitled the Player to exercise his right to terminate the employment with the Club according to Clause 2 of the Player Contract (p. 5):

*"[...] In addition, if any scheduled payment is not received by Player's bank within fifteen (15) days of the date due, the Player's performance obligations shall cease, Player shall have the right, at Player's option, to terminate this Agreement and accelerate all future payments required under this Agreement. [...]"*

73. Moreover, the Club does not present any evidence which would lead to the conclusion that the Player was himself in breach of the Player Contract when he terminated the employment. There is no indication that he disregarded any instructions of the Club, refused to participate in the training sessions or matches, or walked away. In addition, it must be taken into consideration that the Player Contract was a “fully guaranteed agreement” which meant that the salary payments were also due when the Club decided not to field the Player for whatever reasons, including lack of skill. Failing any evidence of a breach of the Player Contract by the Player, the Arbitrator holds that the Player is entitled to the contractually agreed salary until the notice of termination, i.e. until 2 January 2012.

74. The Arbitrator also finds that the payments which the Player obtained while he was assigned to Tofas (EUR 2,150.00) and KK Split (EUR 340.00) are not to be considered as salary payments but as contributions to the additional costs caused by the temporary changes and do not have to be deducted from the payments due by the Club.

**8.1.2 Compensation of EUR 344,000.00 (mitigation of damage and anticipation of future income)**

75. The Player requests payment of the salaries for the period beginning on the termination date (2 January 2012) until the Club would have been entitled to prematurely terminate the Player Contract according to Clause 1, p. 2 of the Player Contract, i.e. the end of the 2012/2013 season, amounting to EUR 344,000.00 (and not for the entire term of the Player Contract including the 2015/2016 season).

76. Clause 2, p. 5 of the Player Contract stipulates that in case of a justified termination of the Player Contract by the Player, the latter is not only entitled to all unpaid salary payments but also to “all future payments required under this Agreement”. As stated

above, the Player was indeed entitled to terminate the Player Contract. Thus, he is entitled to a compensation corresponding to the future contractually agreed salaries.

77. Regarding the remaining 2011/2012 season, the agreed salaries for January to June 2012 amount to EUR 84,000.00 (six instalments of EUR 14,000.00 each). From that amount, the Player's income of EUR 14,000.00 earned during the remaining 2011/2012 season when the Player played with KK Zlatorog Lasko must be (and has been) deducted. The remaining salary for the 2011/2012 season due by the Club therefore amounts to EUR 70,000.00.
78. The Arbitrator agrees with the Claimants that the future salaries until the end of the 2012/2013 season as claimed by the Player must also be compensated by the Club. However, amounts otherwise earned during that time period must be deducted to avoid double earnings and the Player has a duty to mitigate the Club's damage and to undertake reasonable efforts to find a new assignment during the time period which is basically covered by the Club's compensatory payment. Failing such efforts, those amounts which the Player failed to earn must be taken into consideration when determining the final amount due by the Club.
79. The Arbitrator has expressly invited the Player to inform him about his efforts to find a new club for the 2012/2013 season. The Player submitted evidence of an injury suffered during the morning practice of 20 February 2012, but there are no further details about the kind of his injury. Also the information about the Player's efforts to find a new club has been rather scarce and was not supported by any evidence.
80. The Player submitted that he has not yet signed a new employment contract for the 2012/2013 season. The Arbitrator must therefore anticipate the income that the Player can be expected to earn in the next season. It is practically impossible for the Arbitrator to assess the market value of a player and the employment opportunities available for the next season. From the information provided by the Player, the Arbitrator concludes

at least that the injury will not prevent the Player from playing professional basketball in the upcoming season. He also expects that the Player and his agent will be able to find an assignment with a better salary than the one he obtained from KK Zlatorog Lasko which he joined in the middle of the season. On the other hand, it is not realistic under the circumstances to assume that the Player would be hired for the same salary he would have earned at the Club. Under these circumstances, the Arbitrator prefers to take recourse to a flat sum as a hypothetical income, reflecting the expectation of the Player to find an employment with a higher salary than his last one, but also taking into account the fact that it may be difficult for the Player to earn a salary on the level as agreed in the Player Contract. The expected income shall thus constitute an incentive for the Player not to rest on the compensation for the future salaries as awarded by BAT and to find an employment with distinctively more favourable terms than the last one.<sup>8</sup>

81. In order to assess the expected income for the 2012/2013 season, the Arbitrator finds it reasonable and fair to fix that amount at 50% of the salary agreed with the Club for the 2012/2013 season (i.e. EUR 250,000.00) leading to an expected income for the 2012/2013 season of EUR 125,000.00. Such amount corresponds also with the Player's first year-salary at the Club.
82. By doing so, the Arbitrator accepts that the Player may eventually reach a higher income or a lower salary than the above mentioned amount. However, since the expected income results from an *ex aequo et bono* assessment by the Arbitrator which necessarily includes a considerable margin of discretion, a deviation of the real income from the expected income shall not entitle either party to claim a later adjustment of the arbitral award.

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<sup>8</sup> BAT 0014/08, *van de Hare, Glushkov, Hammink vs. Azovmash Mariupol Basketball Club*, award of 16 April 2009; fully confirmed by the Court of Arbitration for Sport, CAS 2009/A/1846 *Azovmash Mariupol Basketball Club vs. van de Hare, Glushkov, Hammink*, award of 30 November 2009.

83. The overall compensation to be paid by the Club to the Player therefore consists of EUR 195,000.00, i.e. EUR 70,000.00 for the remaining 2011/2012 season (EUR 84,000.00 minus income from KK Zlatorog of EUR 14,000.00) plus EUR 125,000.00 for the upcoming 2012/2013 season.

**8.2 Is Mr. Fazlic entitled to an Agent Fee in the amount of EUR 42,500.00?**

84. Mr. Fazlic claims Agent Fees in the amount of EUR 17,500.00 for the 2011/2012 season and of EUR 25,000.00 for the 2012/2013 season.

85. The Agent Fee is governed by Clause 12 of the Player Contract. The requested Agent Fee corresponds to the payment schedule for the seasons of 2011/2012 and 2012/2013.

86. The preamble of the Player Contract indicates that the Player was represented by two individuals, namely FIBA agent Mr. Robert Jablan and by Mr. Fazlic. Only Mr. Jablan was explicitly defined as “Agent” but not Mr. Fazlic. Accordingly, Clause 12 of the Player Contract stipulates that the Agent Fee must be paid to the “Agent” and not to further representatives of the Player.

87. According to the Request for Arbitration, the Club has already paid the first instalment of the Agent Fee of EUR 12,500.00. In its Answer, the Club specifies that this payment was made to Mr. Jablan. This statement remained undisputed. There is no other evidence on record that Mr. Fazlic was paid by the Club. Nor has Mr. Fazlic presented any proxy or assignment which would entitle him to claim Agent Fee in Mr. Jablan’s or in his own name.

88. Considering the clear wording of Clause 12 of the Player Contract and the above-mentioned circumstances, the Arbitrator finds that Mr. Fazlic is not entitled to claim the Agent Fee under Clause 12 of the Player Contract.

### 8.3 Interest

89. The Claimants request interest “*at the applicable rate*” from the due dates of the outstanding payments or since 2 January 2012, i.e. the termination date of the Player Contract. Given that Mr. Fazlic is not entitled to claim Agent Fee, he is also not entitled to claim interest. Only the Player is entitled to request interest on the amount of EUR 295,000.00 (EUR 100,000.00 for outstanding salaries and EUR 195,000.00 for compensation).
90. The Player Contract does not provide for the payment of default interest. Furthermore, in their termination notice of 2 January 2012, the Claimants only requested the Club pay the due amounts of EUR 100,000.00 and EUR 17,500.00 for the Player’s outstanding salaries and the outstanding Agent Fee respectively. However, no interest was claimed by the Claimants. Considering the Parties’ submissions, the Claimants have requested interest only in the Request for Arbitration.
91. According to BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest.<sup>9</sup> This is a generally accepted principle which is embodied in most legal systems. However, it is also generally accepted that the obligee has to request payment of interest from the obligor if not agreed in the underlying agreement in advance.
92. The Arbitrator, deciding *ex aequo et bono* and taking into consideration that the Claimants have not claimed interest before filing the Request for Arbitration, finds that the starting date for the calculation of the default interest shall be the day of receipt of the Request of Arbitration by the BAT Secretariat which is 3 February 2012.

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<sup>9</sup> See, *ex multis*, the following BAT awards: 0092/10, *Ronci, Coelho vs. WBC Mizo Pecs 2010*; 0069/09, *Ivezic, Draskicevic vs. Basketball Club Pecs Noi Kosariabda Kft*; 0056/09, *Branzova vs. Basketball Club Nadezhda*.

93. Regarding the interest rate, still deciding *ex aequo et bono* and in line with BAT jurisprudence, the Arbitrator considers interest in the rate of 5% p.a. to be fair and equitable in the present case.

## **9. Costs**

94. Article 17 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and that the award shall determine which party shall bear the arbitration costs and in what proportion; and, as a general rule, shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.

95. On 23 July 2012 - considering that pursuant to Article 17.2 of the BAT Rules “the BAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of BAT and the fees and costs of the BAT 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 BAT 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 BAT President determined the arbitration costs in the present matter to be EUR 10,997.50.

96. A comparison of the requested total amount of EUR 462,500.00 and the awarded total amount of EUR 295,000.00 indicates that the Claimants prevailed by approximately 2/3 of their claims. Considering the outcome and the circumstances of the present case, the Arbitrator finds it fair that 2/3 of the arbitration costs shall be borne by the Club and 1/3 by the Claimants.

97. Given that the Claimants paid an advance on the arbitration costs of EUR 5,497.50 while the Club paid an advance on the arbitration costs of EUR 5,500.00, in application of article 17.3 of the BAT Rules, the Arbitrator decides that the Club shall pay to the

Claimants the amount of EUR 1,831.67, i.e. the difference between the costs advanced by the Claimants and 1/3 of the arbitration costs..

98. Furthermore, the Arbitrator considers it adequate that the Claimants are entitled to a contribution towards their legal costs (Article 17.3. of the BAT Rules). When assessing the expenses incurred by the Parties in these proceedings, on the one hand the Arbitrator deems it appropriate to take into account the non-reimbursable handling fee of EUR 4,000.00 totally paid by the Claimants. On the other hand, the fact that the proceedings required more than one round of written submissions, that the Arbitrator had to seek further information from the Claimants (e.g. about the Player's further employments) and that the Arbitrator had to decide about the admissibility of unsolicited documents submitted by the Claimants is partially attributable to the Claimants. Therefore, the Arbitrator deems it appropriate that the Parties' legal fees and expenses shall be borne by each party itself, except the non-reimbursable handling fee which shall be borne by the Parties by the same ratio as the arbitration costs (2/3 by the Club and 1/3 by the Claimants). Consequently, the Arbitrator fixes the contribution to be paid by the Club to the Claimants at EUR 2,667.00 (i.e. 2/3 of EUR 4,000.00).

## **10. AWARD**

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

- 1. Fenerbahce Ülker BC is ordered to pay to Mr. Rasid Mahalbasic the amount of EUR 295,000.00 net plus interest of 5% p.a. since 3 February 2012.**
- 2. Fenerbahce Ülker BC is ordered to pay to Mr. Rasid Mahalbasic and Mr. Admir Fazlic the amount of EUR 1,831.67 as a reimbursement of their advance on arbitration costs.**
- 3. Fenerbahce Ülker BC is ordered to pay to Mr. Rasid Mahalbasic and Mr. Admir Fazlic the amount of EUR 2,667.00 as a contribution towards their legal fees and expenses.**
- 4. Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 26 July 2012

Stephan Netzle  
(Arbitrator)