BASKETBALL
ARBITRAL TRIBUNAL

ARBITRAL AWARD

(BAT 0278/12)

by the

BASKETBALL ARBITRAL TRIBUNAL (BAT)

Mr. Ulrich Haas

in the arbitration proceedings between

Ms. Ilona Korstin,

- Claimant -

represented by Mr. Josep Martin Ruiz,
58 Boulevard Aristide Briand, 66100 Perpignan, France

vs.

Beşiktaş Jimnastik Kulübü Dernegi,
Süleyman Seba Caddesi, No. 48 BJK Plaza
34357 Beşiktaş, Istanbul, Turkey

- Respondent -

represented by Ms. Başak Akbaş,
attorney-at-law, Istanbul, Turkey

BASKETBALL
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1. The Parties

1.1 The Claimant

1. The Claimant, Ms. Ilona Korstin, is a professional Russian-French basketball player (hereinafter referred to as “Player” or “Claimant”).

1.2 The Respondent

2. Beşiktaş Jimnastik Kulübü Dernegi (hereinafter referred to as “Club” or “Respondent”) is a professional basketball club located in Istanbul, Turkey. The Club is represented by its president, Mr. Yildirim Demirören, and its general manager, Mr. Levent Gifter.

2. The Arbitrator

3. On 24 May 2012, Prof. Richard H. McLaren, the President of the Basketball Arbitral Tribunal (the "BAT") appointed Prof. Dr. Ulrich Haas as arbitrator (the “Arbitrator”) pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (the "BAT Rules"). Neither 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

4. On 20 May 2011, the Parties signed an “Agreement” (hereinafter referred to as “the First Agreement”), according to which Respondent engaged the Player as a professional basketball player for the season of 2011/2012.

5. On 21 October 2011, the Parties signed a "Turkish Basketball Federation Contractual Agreement for the Turkish Basketball Leagues" (hereinafter referred to as "the Second Agreement"). This is a requirement of the Turkish Basketball Federation (the "TBF") for the registration of players participating in TBF competitions as per Art. 1 of the Second Agreement, which reads as follows:

> *"1. This contract has been prepared according to the "Regulation, Licence and Transfer Instructions" of the Turkish Basketball Federation. No other contract than this contract between the Club and the Player will be registered by the TBF. The two parties can not claim each other for amounts of payments that are not shown and / or shown incomplete in this contract."*

6. Article 4 of the First Agreement ("Obligations of the Club") provides as follows:

> *"All monies paid to the Player by the Club are "net". The Club assumes all charges of any kind linked to such payment, including wire transfer fees, all Turkish national, local taxes according to relevant Turkish law and Turkish Basketball Federation regulations. Should payment of any such taxes be required, it is the responsibility of the Club to pay them. An official tax receipt evidencing full payment of the Player's tax liability will be given to the Player by the Club upon her request.*
>
> *During the term of this agreement, all compensation is considered guaranteed to the Player by the Club. In the event the Player cannot perform as a professional player due to diminished skills, sickness, injury, should in no way affect her right to receive all amounts and compensation detailed in the Article 4.A of this present agreement.*
>
> ***A. Salary***
>
> *For the Player rendering services described herein, and for her agreement not to play basketball or engage in activities related to basketball for any other person, firm or corporation or institution during the term of this agreement, and for the undertakings of the Player herein, the Club agrees to pay the Player during the term of this agreement the sum of 165,000.00 € (one hundred sixty-five thousand euros) base salary for the 2011-2012 season. Payment of the Player's compensation shall be structured as follows:*
>
> ***2011-2012 Season***
> *August 31st, 2011* *25,000.00 Euros*

September 30th, 2011	*25,000.00 Euros*
October 31st, 2011	*25,000.00 Euros*
November 30th, 2011	*25,000.00 Euros*
December 31st, 2011	*25,000.00 Euros*
January 31st, 2012	*25,000.00 Euros*
February 29th, 2012	*15,000.00 Euros*
March 31st, 2012	*15,000.00 Euros"*

7. Articles 7 and 8 of the Second Agreement provide the same total amount of compensation and payment schedule.

8. On 19 October 2011, the Claimant sent a letter of notice to the Club reminding it of the scheduled salaries for 31 August and 30 September 2011 as foreseen in Article 4 of the First Agreement, and informing the Club about her right to terminate the agreement unilaterally in case the payments were not made within the following seven days. The Club effectuated the payment of EUR 25,000 for the August salary on 24 October 2011. The payment for September remained due.

9. On 15 November 2011, the Player issued a second letter of notice requesting the Respondent to pay the salaries that had become due on 30 September and 31 October 2011. Furthermore in said letter she reiterated her right to terminate the agreement unilaterally if the payments were not made within the following seven days. The payment of EUR 25,000 for the September salary was effectuated on 17 November 2011. However, the salary that fell due on 31 October remained unpaid.

10. On 16 December 2011, the Claimant sent another letter of notice to the Club, asking it to pay the October and November salaries, and again advising the Club of her right to terminate the First Agreement in case of non-payment by the Club. The Club effectuated the payment of EUR 25,000 for the October salary on 28 December, while the salaries for November remained due. However, the Club informed Claimant by telephone that the outstanding amount had been transferred, but had not arrived in her account on time due to bank holidays.

11. Contrary to the information provided by the Club, the outstanding amount was not transferred to Claimant's account. Therefore, the Player issued yet another letter of notice on 16 January 2012, requesting the Respondent to make said payment as well as the payment for the December salary. Once more, Claimant referred to her right to terminate the agreement unilaterally in case the salaries were not paid within the next seven days. Respondent, this time, did not effectuate any further payments.

12. On 26 January 2012, the Player informed the Respondent by e-mail and facsimile of her decision to terminate the First Agreement as follows:

> *"[…] Due to the fact that it has been more than seven (7) days since your side received the written notice and the payments are still not done, I hereby terminate the contractual agreement between Besiktas Jimnastik Kulubu Dernegi and me according to the Article 4-A of the said agreement […]"*

13. On 27 January 2012, the Claimant sent an official notice of termination, notarized by a Turkish notary in accordance with the TBF regulations, to the Club.

14. On 30 January 2012, the Respondent replied to the termination letter of 26 January. In its letter, Respondent rejected the Claimant's claims, which it qualified as *mala fide.* According to the Club, Claimant is still bound to the agreements and therefore obliged to participate in trainings and competitions with the Respondent's team. Furthermore, Respondent's letter requested the Player to immediately terminate any transfer negotiations with other clubs and stated that Respondent would otherwise be entitled to *"indemnifications for all kinds of losses and damages […] due to your unjust acts and behaviours".*

15. Eventually, on 31 January 2012, Claimant entered into a preliminary agreement with the Spanish club "Club Baloncesto Halcon Viajes" (hereinafter referred to as "Halcon Viajes"). The preliminary agreement reads as follows:

> *"[Halcon Viajes and the Player]* ***DECLARE***

> *A) That the Club and the Player are interested in reaching a contractual agreement in which the Player competes exclusively for the basketball team sponsored by the Club in the Spanish Female League, Queen's cup and the Euroleague league for the **2011/2012. The Club will inform the Player when she should arrive to the Club's training camp, approximately the 02/03/2012.***
>
> *B) Upon arriving at an agreement to sign a contract, both sides jointly stipulate […]"*

16. On the same date, the Spanish Basketball Federation sent a letter to the Turkish Basketball Federation requesting the letter of clearance for the Player. Such letter of clearance was, however, refused by the Turkish Basketball Federation because of an alleged existing player's contract with a Turkish club.

17. On 1 February 2012, the Player departed from Turkey.

18. On 2 February 2012, Claimant's counsel, on behalf of Claimant, addressed FIBA with a request for a letter of clearance. The Club submitted a response to FIBA on 13 February 2012, pointing out that the Player was still bound to the Second Agreement.

19. The FIBA Secretary General issued the letter of clearance on 14 February 2012. The decision by the FIBA Secretary General (hereinafter referred to as the FIBA Decision) justifies the issuance of the letter of clearance as follows:

> *"[…] Lastly, the Club's argument that the refusal of a letter of clearance is justified because the Second Contract is still valid, must fail. As mentioned above, the prevailing contract is the First Contract and therefore the employment relationship of the parties came to an end upon notification of the Termination Letter. However, even if one were to argue that the Second Contract prevails contrary to the expressed will of the parties, the Player also took administrative steps required under the TBF regulations and terminated also the Second Contract due to non-payment for a period longer than 30 days, namely for a fact which has remained undisputed;*
>
> *FIBA concludes that the Player is not subject to a validly binding contract in Turkey. Therefore, in accordance with Article 3-97 of the FIBA Internal Regulations, FIBA herewith decides that the player Ilona Korstine is allowed to register with a club in Spain. […]"*

20. The Club did not file an appeal against the FIBA Decision.

3.2 The Proceedings before the BAT

21. On 18 April 2012, Claimant's counsel filed a Request for Arbitration (with several exhibits) on behalf of Claimant and in accordance with the BAT Rules. The non-reimbursable fee of EUR 2,000 was received in the BAT bank account on 10 April 2012.

22. On 30 May 2012, the BAT informed the Parties that Prof. Dr. Ulrich Haas had been appointed as Arbitrator in this matter, invited the Respondent to file its answer in accordance with Article 11.2 of the BAT Rules by no later than 20 June 2012 (the "Answer"), and fixed the amount of the Advance on Costs to be paid by the Parties by no later than 11 June 2012 as follows:

"Claimant (Ms. Ilona Korstin)	*EUR 4,500*
Respondent (Besiktas Jimnastik Kulubu Dernegi)	*EUR 4,500"*

23. On 20 June 2012, the BAT Secretariat confirmed receipt of Claimant's share of the Advance on Costs (in the amount of EUR 4,500). Furthermore, it informed that Respondent had submitted an Answer and that, however, Respondent had failed to pay its share of the Advance of Costs. It therefore informed Claimant of her right to pay the Respondent's share of the Advance on Costs, in order to ensure that the arbitration proceeded, by no later than 29 June 2012.

24. On 3 July 2012, the BAT Secretariat acknowledged receipt of the full amount of the Advance on Costs.

25. On 25 July 2012, the Arbitrator informed the Parties that the exchange of documents was completed and that he would be rendering the award as soon as possible.

26. On 27 August 2012 the Arbitrator received unsolicited submissions by Claimant. In view of the fact that the exchange of documents had been closed, these documents were not taken into account by the Arbitrator.

4. The Positions of the Parties

4.1 Claimant's Position

27. Claimant submits the following in substance:

- According to Art. 8.V. of the First Agreement, the terms and conditions therein shall prevail in case of conflict with any later agreements. Therefore, the procedure to be followed by Claimant in order to terminate the contractual relationship with the Club was the one set out in the First Agreement.

- The salary of EUR 25,000 fell due on 30 November 2011 and was not paid within 45 days, being 16 January 2012. By serving a written notice on the Club on 17 January 2012 requesting termination of the First Agreement in case such payment was not executed within the next seven days, and by thereafter serving the Club a final written notice of termination on 26 January 2012, Claimant timely and properly exercised her right to terminate the First Agreement pursuant to its Art. 4.

- Even assuming that the Second Agreement prevails, Claimant also properly terminated the Second Agreement since she complied with Art. 37 and 38 of the TBF Regulations by sending a written notice on 17 January 2012 and by sending the notarized notice of termination on 27 January 2012.

- According to the Claimant, *"it's a universal principle and one deeply rooted in the most fundamental principles of good faith that parties should adhere to the bargain they strike <pacta sunt servanda>."* Given that the Club, from the very beginning,

always postponed the payments to Claimant until the end of all possible deadlines, and despite the multiple warning letters and notices Claimant sent, expressing her disagreement with such conduct, the exercise of her right to terminate the Agreements cannot be regarded as *mala fide*. In particular, the fact that Claimant did not terminate the contractual relationship on 27 December 2011, when the October salary remained outstanding for 45 days plus 7 days after the Claimant's first notice (16 December 2011), does not constitute a tacit waiver of her right to terminate the Contract. This follows from Art. 8.I. of the First Agreement, which provides that the failure of one party to demand strict performance by the other party shall not be construed as a waiver of such party's rights under the Contract.

- To the present date, Respondent has only paid EUR 75,000 out of the EUR 165,000 provided for in both Agreements, which results in an outstanding debt of the Club of EUR 90,000.

- In accordance with the Claimant's duty to mitigate her loss, she sees herself entitled to the outstanding amount, reduced by the salaries she receives from Halcon Viajes, amounting to EUR 6,000 per month for a duration of three months (EUR 18,000), resulting in a claim against Respondent in the amount of EUR 72,000. The lower salaries from Halcon Viajes compared to the salaries negotiated with the Respondent are the result of the Claimant's immediate need to find a new club. Claimant explains that she had only a restricted choice of clubs with which she could negotiate, since most clubs had to observe a deadline for registering new players by mid of February. However, this deadline could not be met in the case of Claimant due to TBF's refusal to issue the letter of clearance. Furthermore, the Player joined Halcon Viajes as an additional player – not as a player replacing an injured or waived player –, for which reason the salaries were rather low.

28. In her Request for Arbitration, Claimant requests the following relief:

"a) Outstanding Salaries

- *About payment scheduled November 30th 2011: 20,000 euros + 5% legal interests from December 1st 2011 included*
- *About payment scheduled December 31st 2011: 20,000 euros + 5% legal interests from January 1st included*
- *50'000 euros about payments of January 31st, February 29th and arch 31st (sic) with a deduction of 18,000 euros earned with her new club = 31,000 euros*

b) Reimbursement of legal fees:

Handling fee: 2,000 euros
Counsel fee: 4,200 euros
Turkish lawyer fee: 2,527 euros (5,965 Turkish Lira)
8,727 euros total legal fees

In case that the Arbitrator decides that a partial reimbursement of player's legal fees we request kindly to have a detailed list (how much about legal fee, how much about counsel fee and how much about Turkish lawyer fee).

[….]

d) Tax certificates:

One about the sums paid during the year 2011. Second about the sums that should be paid according to the award of the current Arbitration."

4.2 Respondent's Position

29. Respondent submits the following in substance:

- The delays in payments had become inevitable *"owing to the shortage of cash flow experienced by our Club like many other clubs because of the global economic crisis. All the payments made by our Club to the player were accepted by him without any reservation."* The claims of the Player should therefore be denied, particularly since she declared the termination of the First Agreement on 26 January 2012 and left Turkey soon afterwards, which is to be regarded unfair and unacceptable.

- Furthermore, the counsel fee of EUR 4,200 is excessive and the methods used to calculate it are ambiguous, since Claimant did not provide documents proving that the claimed amounts were actually collected.

- Finally, Respondent submits that the attorney fee invoice of EUR 2,527 for the Turkish attorney did not only include attorney fees, but also notary costs and payments made to TBF, which were not related to the present arbitration. Claimant's claim for the Turkish attorney fee of EUR 2,527 should therefore be denied.

5. Jurisdiction

30. Pursuant to Art. 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).

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

5.1 Arbitrability

32. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Art. 177(1) PILA[1].

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

5.2 Formal and substantive validity of the arbitration agreement

33. Art. 7 of the First Agreement contains an arbitration clause that reads as follows:

> *"**Dispute***
>
> *[…] Any dispute arising from or related to the present contract shall be submitted to the Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT 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, irrespective of the parties' domicile.*
>
> *The language of the arbitration shall be English.*
>
> *The arbitrator shall decide the dispute ex aequo et bono."*

34. This arbitration clause included in the First Agreement and signed by all three parties to the Contract fulfils the formal requirements of Article 178(1) PILA.

35. With respect to substantive validity, the Arbitrator considers that there is no indication in the file which could cast any doubt on the validity of the arbitration agreement in the present matter under Swiss law (cf. Article 178(2) PILA). In particular, the wording *"[a]ny dispute arising from or related to the present contract"* in Art. 7 of the First Agreement clearly covers the present dispute.[2]

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[2] *See for instance* BERGER/ KELLERHALS: International and domestic Arbitration in Switzerland, Berne 2010, N 466.

36. Finally, the Arbitrator notes that the jurisdiction of BAT has not been contested by either Claimant or Respondent. In view of all the above, the Arbitrator, therefore, holds that he has jurisdiction to decide the present dispute.

6. Applicable Law

37. 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 reads as follows:

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

38. 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."*

39. Article 7 of the First Agreement provides in relation to the applicable law as follows:

> *"[…] The arbitrator shall decide the dispute ex aequo et bono."*

40. Consequently, the Arbitrator will decide the present matter *ex aequo et bono*.

41. The concept of équité (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the Concordat intercantonal sur l'arbitrage of 1969[3] (Concordat),[4] under

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[3] This Swiss statute governed international and domestic arbitration prior to the enactment of the PILA (governing international arbitration) and, most recently, the Swiss Code of Civil Procedure (governing domestic arbitration).

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."*[5]

42. 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".*[6]

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

7. Findings

44. In essence, Claimant requests the payment of the (outstanding) salaries (7.1), interests of 5% on the outstanding salaries (7.2), tax certificates about the paid and outstanding salaries (7.3), and the reimbursement of all legal fees related to this litigation (7.4).

7.1 Salaries in the amount of EUR 72,000

45. It is undisputed that the Claimant and Respondent are parties to the First Agreement, which was entered into on 20 May 2011, and the Second Agreement pursuant to the TBF regulations, entered into on 21 October 2011. The First Agreement contains in its Article 8.V. the following clause:

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

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

6 POUDRET/BESSON, Comparative Law of International Arbitration, London 2007, N 717, pp. 625-626.

> *"Full agreement is to be adjusted in accordance to all FIBA, FIBA Europe, Turkish Basketball Federation and Turkish Women's Basketball League rules and regulations. For avoidance of doubt, in each case of controversy, this agreement's terms and conditions shall prevail."*

46. It follows from the clear wording that the First Agreement shall prevail over the Second Agreement in case of conflict. The latter was signed as a sheer formality in order to be able to register the Player with the TBF. It was the parties' clear and unambiguous understanding that their relationship should be governed by the First Agreement only. Therefore, the following considerations are based on the First Agreement.

47. According to Article 4.A. of the First Agreement, a salary of EUR 20,000 fell due on 30 November 2011. The same provision further provides as follows:

> ***"Late payments***
>
> *In case of scheduled payments not being made to the Player or Agents by the Club within forty-five (45) days of the scheduled payment date, the Player will have right to request terminating this agreement unilaterally by serving a written notice to the Club. In case of the scheduled payments not being made within the next seven (7) days after such a written notice is received by the Club, the Player will have right to terminate this agreement unilaterally by serving the Club a final written notice of termination. In this case, the Player shall immediately be entitled to the all salaries [sic!] under this agreement and shall have no further obligations to the Club. The Club shall retain no rights to the Player except for the obligation to pay all salaries and earned bonuses under the terms of this agreement. Upon receipt of a request from the Turkish Basketball Federation to issue the Player's Letter of Clearance, the Club must authorize the federation to do so unconditionally within twenty four (24) hours without charging a transfer fee."*

48. Precisely 46 days after the due date, namely on 16 January 2012, Claimant notified the Club by written notice that in case the abovementioned payment was not made within the next seven days, she would have the right, anytime and until execution of the full payment, to terminate the contractual relationship unilaterally by serving a final written notice. Respondent did neither respond to this letter nor effectuate payment within the required 7 days. Respondent has thus breached its duties under the contract.

49. Therefore, according to Article 4.A. of the First Agreement, Claimant was entitled to unilaterally terminate it as of 24 January 2012. Claimant did so by letter dated 26 January 2012. The fact that Claimant in the past had accepted late payments does not constitute a waiver of her right to terminate the First Agreement. Also, the fact that Claimant left Turkey shortly after the termination of the First Agreement cannot be regarded as unfair or unacceptable, as she did not have any further obligations towards the Club.

50. The First Agreement expressly deals with the consequences of termination in case of late payment. According to its Art. 4.A. the Club is obliged to pay to Claimant the full outstanding salary, unconditional upon any further obligation of Claimant towards the Club. Respondent has not submitted any valid reasons as to why the Arbitrator should deviate from the clear and unambiguous wording of Art. 4.A. of the First Agreement. Thus, Claimant is, in principle, entitled to outstanding salaries in the amount of EUR 90,000.

51. However, in accordance with constant BAT jurisprudence, the Claimant has the duty to mitigate her loss in order to prevent unjust enrichment. The Player did so by starting negotiations with various clubs after terminating the contractual relationship with Respondent. In light of the fact that most clubs had to comply with deadlines to register new players for the national championships, Claimant was pressed for time and had only limited choice. Moreover, TBF's refusal to deliver the letter of clearance made it impossible for her to enter into an agreement with most of the clubs. Nevertheless, Claimant succeeded in finding an employment with Halcon Viajes and signed an agreement, providing for a monthly salary of EUR 6,000 from March to May 2012, totalling EUR 18,000. Hereby, Claimant has fulfilled her duty to mitigate her loss.

52. Accordingly, the salary of EUR 90,000 owed by Respondent has to be reduced by the amount Claimant earned from playing with Halcon Viajes, resulting in EUR 90,000 – 18,000 = EUR 72,000.

53. To conclude, the Arbitrator finds that Respondent is under a duty to pay Claimant outstanding salaries in the amount of EUR 72,000.

7.2 Interest on outstanding salaries

54. The First Agreement provides no rule for the payment of interest in case Respondent fails to duly fulfill its obligations. However, the payment of interest as well as the interest rate follow from general principles acknowledged by constant BAT jurisprudence. According thereto, a rate of 5% p.a. applies to avoid that the Club derives any profit from the non-fulfillment of its obligations. Interest is owed as of the day following the due date.

55. The first outstanding installment of EUR 20,000 fell due on 30 November 2011. Accordingly, interests of 5% p.a. are owed as of 1 December 2011. The second installment of EUR 20,000 became due on 31 December 2011, hence interests of 5% p.a. are owed as of 1 January 2012. The rest of the outstanding salary, amounting to EUR 32,000, fell due on the date the First Agreement was terminated, i.e., 26 January 2012. Claimant does not expressly demand interests on this sum in the section "request for relief" of her Request for Arbitration. However, it follows from the section "Legal Analysis" of the Request for Arbitration (page 11) that Claimant also claims interest on this amount. In particular, Claimant states:

> *"the constant jurisprudence of the FAT, establishes an interest rate of 5 % as reasonable and equitable, and what is the interest expected by the claimant"*.

56. It follows from the above that the Arbitrator does not act *ultra petita* by awarding Claimant interest at the rate of 5% p.a. also concerning the amount of EUR 32,000.

57. To conclude, the Arbitrator grants the Claimant payment of interest at a rate of 5% p.a. as of 1 December 2011 on the amount of EUR 20,000, as of 1 January on the amount of EUR 20,000, and as of 27 January on the amount of EUR 32,000.

7.3 Tax certificates

58. Article 4.C.XII of the First Agreement states that the Club *"shall provide the Player upon her request with the appropriate certificate of tax credit indicating that all required income tax due in club's nation, state or providence and the city and all salary and bonus sums have been paid."*

59. The Arbitrator finds that in light of this clear and express provision Respondent is under a duty to provide the requested tax certificates to Claimant for all monies paid under this award.

7.4 Legal fees

60. Claimant requests to be reimbursed for the legal costs related to the present litigation. The BAT Rules contain provisions dealing with the reimbursement of legal costs and expenses incurred, relating, however, only to legal costs and expenses incurred in connection with the arbitration proceeding. Since the expenses incurred for mandating the Turkish lawyer are not related to the arbitration proceeding, reimbursement cannot be claimed under the BAT Rules. Nevertheless, Claimant is not prevented from requesting such reimbursement of costs under the principle of *ex aequo et bono*. According thereto, Claimant can also claim damages incurred because of a breach of contract by Respondent. As stated above, Respondent's non-payment of the salaries constitutes a breach of contract. Hence, Claimant is entitled to a compensation of any damage resulting from said breach. The Turkish lawyer's fees constitute a damage that is directly related to Respondent's breach of contract. Accordingly, Claimant is entitled to a reimbursement of these fees in the amount of EUR 2,527.

8. Costs

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

62. On 27 August 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"; 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", and 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 8,600.00.

63. Considering that Claimant prevailed with all of her claims, the Arbitrator holds it fair that all of the fees and costs related to this arbitration be borne by Respondent and that Respondent be required to cover its own legal costs as well as all of Claimant's legal costs (i.e. EUR 4,200), which do not seem excessive. Whether or not the amounts have been collected by Claimant's counsel is of no consequence. Not only the actual payment but already the invoice issued by Claimant's counsel constitutes legal expenses incurred that entitle Claimant to a compensation/contribution.

64. Given that Claimant paid both shares of the Advance on Costs in the amount of EUR 4,500 each (in total EUR 9,000), the Arbitrator decides that in application of Article 17.3 of the BAT Rules:

(i) BAT shall reimburse EUR 400 to Claimant, being the difference between the costs advanced by her and the arbitration costs fixed by the BAT President;

(ii) Respondent shall pay EUR 8,600 to Claimant, being the difference between the costs advanced by her and the amount to be reimbursed by the BAT.

(iii) Furthermore, the Arbitrator considers it appropriate to take into account the non-reimbursable handling fee of EUR 2,000 when assessing the expenses incurred by the Claimant in connection with these proceedings. Hence, considering also that the further amount of EUR 4,200 for Claimant's legal fees and expenses is reasonable, the Arbitrator fixes the contribution towards the Claimant's legal fees and expenses at EUR 6,200.

9. AWARD

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

1. **Beşiktaş Jimnastik Kulübü Dernegi is ordered to pay to Ms. Ilona Korstin outstanding salaries and compensation in the amount of EUR 74,527.00.**

2. **Beşiktaş Jimnastik Kulübü Dernegi is ordered to pay to Ms. Ilona Korstin interests of 5% p.a. as of 1 December 2011 on the amount of EUR 20,000.00, as of 1 January 2012 on the amount of EUR 20,000.00 and as of 27 January 2012 on the amount of EUR 32,000.00.**

3. **Beşiktaş Jimnastik Kulübü Dernegi is ordered to provide Ms. Ilona Korstin with tax certificates, in accordance with the employment agreement dated 20 May 2011, for all amounts paid under this award.**

4. **The costs of this arbitration, which were determined by the President of the BAT to be in the amount of EUR 8,600.00 shall be borne by Beşiktaş Jimnastik Kulübü Dernegi. Accordingly, Beşiktaş Jimnastik Kulübü Dernegi shall pay to Ms. Ilona Korstin EUR 8,600.00.**

5. **Beşiktaş Jimnastik Kulübü Dernegi is ordered to pay to Ms. Ilona Korstin the amount of EUR 6,200.00 as a contribution towards her legal fees and expenses. Beşiktaş Jimnastik Kulübü Dernegi shall bear its own fees and expenses.**

6. **Any other or further-reaching requests for relief are dismissed.**

Geneva, seat of the arbitration, 31 August 2012

Ulrich Haas

(Arbitrator)