Arbitration CAS 2012/A/2836 Eintracht Braunschweig GmbH & Co. KG a.A. v. Olympiacos FC, award of 24 January 2013

Panel: Prof. Luigi Fumagalli (Italy), President; Mr Martin Schimke (Germany); Prof. Petros Mavroidis (Greece)

Football
Transfer agreement
CAS power of review (de novo hearing)
Unjustified damage claim against a club

1. **Under Article R57 of the CAS Code, the CAS panel has the power to *"review the facts and the law"* and issue a new decision that replaces the decision challenged. The CAS panel consequently hears *de novo* the dispute between the parties, and is not limited to the consideration of the submissions filed before the FIFA Single Judge. This implies that, even if a violation of the principle of due process, or of the appellant's right to be heard, occurred in prior proceedings, it may be cured, at least to the extent such violation did not finally impair the appellant's rights, by a full appeal to the CAS. Furthermore, however "appellate" in the name, the "appeals" arbitration has the nature of a first instance jurisdictional review of a decision rendered by an association. Therefore, procedural rules and principles applicable to the relations between a first instance and an appeals body do not apply with respect to the relations between an internal association body and the CAS.**

2. **A club's claim for payment on an alleged liability of another club for damages related to the loss of a player caused by a violation of the principle *"venire contra factum proprium"* is not well founded where the club had lost the player in any event not because of a wrongful behaviour of the other club, but only because of the operation of a clause in the employment agreement with the player, when its team was relegated to a lower division.**

1. BACKGROUND

1.1 The Parties

1. Eintracht Braunschweig GmbH & Co. KG a.A. (hereinafter referred to as "Eintracht" or the "Appellant") is a German football club, with registered office in Braunschweig, Germany. Eintracht is affiliated to the *Deutsche Fußball-Bund* (hereinafter referred to as the "DFB"), which

is the national football association for Germany. The DFB, in turn, is a member of the Fédération Internationale de Football Association (hereinafter referred to as "FIFA"), the world's governing body of football.

2. Olympiacos FC (hereinafter referred to as "Olympiacos" or the "Respondent") is a Greek football club affiliated to the Hellenic Football Federation (hereinafter referred to as the "HFF"), which is also a member of FIFA.

1.2 The Dispute between the Parties

3. The circumstances stated below are a summary of the main relevant facts, as submitted by the parties in their written pleadings or in the evidence given in the course of the proceedings. Additional facts may be set out, where relevant, in connection with the legal discussion which follows.

4. On 25 January / 1 February 2007, Eintracht and Olympiacos signed a contract (hereinafter also referred to as the "Transfer Agreement") providing for the terms and conditions of the transfer of the player L. (hereinafter also referred to as the "Player") to Olympiacos as follows:

> *"1. The football player L. has a contract agreement with the club Eintracht Braunschweig, which will be solved commonly by both parts on the 30.6.2007. The club Eintracht Braunschweig confirms that by ending this agreement, the player will be transferred to the club Olympiacos CFP on the 3.7.2007 and that the club Eintracht Braunschweig will provide the International Transfer Certificate along with all other necessary prerequisites for the participation of the above mentioned player at the club Olympiacos CFP.*
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> *2. The club Olympiacos CFP will pay to the club Eintracht Braunschweig for the transfer of the player L. the net amount of € 500.000 on 3.7.2007, that will be deposited at a First Class Greek Bank. Apart from the above mentioned amount the club Olympiacos CFP has no other financial suspense towards the club Eintracht Braunschweig.*
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> *3. All the above will be in effect only after the Technical Stuff along with the Administration of the club Olympiacos CFP approves the transfer of the player L. to the club Olympiacos CFP by 28.2.2007 the latest".*

5. On or about 25 January / 1 February 2007, the Player and Olympiacos signed a *"Private Agreement"* dated 3 July 2007 (hereinafter also referred to as the "First Private Agreement"), whereby the parties thereto agreed that, *"apart from the official contract that will be registered at the Greek Football Federation"*, the Player would receive the bonuses and benefits therein described.

6. In a letter dated 7 February 2007, however, Olympiacos notified Eintracht of the following:

> *"We would like to inform you that our club is no longer interested in the player L. and that we finally withdraw from any procedures regarding his transfer to our club in July.*
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> *Furthermore, the private agreement dated 1.2.2007 between our club and Eintracht Braunschweig is no longer in effect".*

7. On the same day, 7 February 2007, the agent of the Player, Mr Hendrik Hoppenworth

(hereinafter also referred to as the "Agent"), addressed to Olympiacos a letter as follows (translated from German by the Panel):

"Between the player L. and the club Eintracht Braunschweig a contract of 24.01.2007 exists, which is valid until 30.6.2008. In accordance with an addendum thereto, however, a right has explicitly been given to the player in question to be able to leave the club in advance while the contract is in force against the payment of the transfer fee of Euro 500,000 (five hundred thousand).

In addition, on 25.01.2007 you entered into an agreement with the club Eintracht Braunschweig. Under it, the club Eintracht Braunschweig transfers to you the player L. as of 03.07.2007 against the payment of the transfer fee of Euro 500,000 (five hundred thousand), subject to the approval of the training staff and administration. Since in the meantime a specific player's contract was agreed with the player L. for the period from 03.07.2007 to 30.06.2012, this approval was undoubtedly given.

It follows that there are all the conditions for the transfer on 03.07.2007, which also made the agreement we entered into fully applicable. We assume therefore that your letter of 07.02.2007 is based only on wrong information. Purely as a precaution, we reject any revocation or cancellation, and ask for clarification from your side before 09.02.2007".

8. In a letter of 8 February 2007, Olympiacos answered as follows:

"At the private agreement between Olympiacos CFP and Eintracht Braunschweig dated 1.2.2007, it is clearly stated that necessary prerequisite in order for the transfer agreement to be in effect is the approval of both the coach and the Administration of Olympiacos CFP with due date of answering the 28.2.2007.

The signed documents between our club and the above mentioned player dated 3.7.2007, which you wrongly invoke, can be in effect only if the condition in paragraph 3 of the private agreement between Olympiacos CFP and Eintracht Braunschweig is effective. Additionally, we are not willing to register the transfer documents of the player and we wonder with your insistence to refer to an agreement which we terminated on time, according to the legal right we had and we have already mentioned to you.

All of the other statements and claims are implausible and the only aggravate our relations eliminating any future cooperation between us".

9. The answer sent by the Agent on 8 February 2007 is the following (translated from German by the Panel):

"With reference to your letter of today, we would like to point out that the player's contract with the player L. for the period from 03.07.2007 was agreed without any condition. Specifically, it was not made subject to the additional declarations you had to give in advance to the club Eintracht Braunschweig.

The player therefore assumes, being aware of the mentioned agreement entered into between you and the club Eintracht Braunschweig, that all requirements for a transfer were satisfied, while requirements from you which may still be outstanding in any case would not be relevant.

Your attitude and views cannot be understood in light of your prior behaviour …".

10. On 4 May 2007, the counsel of the Agent addressed to Olympiacos a letter as follows (translated from German by the Panel):

"Olympiacos Football Club has entered into with L. an employment contract, under which he undertook the

obligation to play for the next season 2007/2008.

We inform you in such connection that the Player on the basis of the agreements with the club Eintracht Braunschweig can leave the club at the end of the season 2006/2007, therefore a specific transfer agreement with Eintracht Braunschweig as employer is not necessary. Between the club Eintracht Braunschweig and L. it was explicitly agreed that the player's agreement they entered into on 24.01.2007 was valid only for the first and second division, and not in the event of relegation to the regional division. This last event occurred in the meantime. Should this be relevant, we will obviously provide you, upon request, with a copy of the contract.

In the name and on behalf of L. we offer expressly, purely as a precaution, another time his services for the season 2007/2008.

In the interest of a prompt clarification of the situation, we request a short written declaration … .

In the event no declaration about the duties of L. is … received, we will advise our client to address FIFA for further clarifications. Such step would lead to corresponding further consequences".

11. In a letter of 16 May 2007, then, the Agent's counsel wrote to Olympiacos the following (translated from German by the Panel):

"As our client informed us, you had in the meantime a direct telephone contact with him, and expressed that you seek an amicable solution to the case. However, concrete statements on the point have not been made on your part, contrary to the announcements made so far.

We set for the last time in the name and on behalf of our clients a deadline … for the submission of the written confirmation of the services already requested, to be provided by L..

In the event that even after the expiry of said period we receive no written confirmation from you on the appointment of L. from 2007/2008 season, we are forced, in light of the time that has in the meantime passed, to submit immediately the case to FIFA for final clarification".

12. On 25 June 2007, Olympiacos sent to the Player a letter as follows:

"Our club entered into a transfer agreement with your current club, Eintracht Braunschweig, on 25 January 2007. Clause 3 of the agreement put the enforcement of the same under the condition of the formal approbation of the transfer by the person in charge inside our club by 28 February 2007.

On 7 February 2007 our club informed Eintracht Braunschweig that it was withdrawing from transfer agreement and that thus the latter was of no effect. On the same date, a comprehensive letter was also sent to your agent, Mr. Hoppenworth.

The aforementioned circumstances lead to a situation in which there is no agreement between our club and Eintracht Braunschweig regarding your transfer to our club.

In view of the above, your engagement for our club may only be possible in the event you are released from your contractual commitments towards Eintracht Braunschweig.

In this respect we would like to draw your attention to the fact that our club is not in a position to assist you in this undertaking and that any possible amount that Eintracht Braunschweig may demand for the termination of your employment contract has to be covered directly by you.

At the same time, it is indispensable for our club to receive written confirmation that you commit yourself to the

payment of any and all amounts due in virtue of the termination of your employment relationship with Eintracht Braunschweig, respectively, a declaration of Eintracht Braunschweig that releases our club from any financial liability towards it.

May we also ask you to provide us with a copy of your current employment contract with Eintracht Braunschweig".

13. On 26 June 2007, the counsel of the Agent confirmed to Olympiacos the following (translated from German by the Panel):

"L. is in a position and obviously willing to respect his contractual obligations towards Olympiacos. Our client is looking forward to the start of the training with your club.

L. asks again about the steps taken in respect of other contractually agreed services, particularly regarding the provision of a car and an apartment for him by Olympiacos Football Club. He also requests information about the dates of the beginning of training, flights etc. We refer in that respect to our letter of 08.06.2007 … .

Since no reactions following our letter have occurred, we have – as anticipated in our written communication of 04.05.2007 – submitted in the name and on behalf of our clients the case to FIFA for further clarification. …".

14. On 13 August 2007, the Player and Olympiacos entered into a *"Professional Player's Contract"* under which the Player would render his services to Olympiacos for a period expiring on 30 June 2012 (hereinafter also referred to as the "Employment Contract"). On the same date, the Player and Olympiacos signed also a *"Private Agreement"* (hereinafter referred to as the "Second Private Agreement"), whereby they agreed that, *"apart from the official contract that will be registered at the Greek Football Federation"*, the Player would receive the bonuses and benefits therein described.

15. On 13 August 2007, then, Olympiacos entered into an agreement with the Greek club Ofi FC, providing for the transfer of the Player on a loan basis for a period expiring on 30 August 2008.

16. On 16 August 2007, the HFF requested from the DFB the issuance of the International Transfer Certificate (hereinafter referred to as the "ITC") for the transfer of the Player to Olympiacos.

17. On the same 16 August 2007, Eintracht declared that no contractual relation existed between Eintracht and the Player, as the prior contract had been terminated following the relegation of Eintracht from the German Second Division (*"Der Vertrag wurde auf Grund des Abstieges des BTSV Eintracht von 1895 e.V. aus der 2. Bundesliga aufgelöst"*).

18. On 9 June 2008, Eintracht issued invoice No. 1122 for the amount of EUR 500,000 as *"compensation for the transfer of L."*. Payment reminders were sent by Eintracht on 1 July 2008 and on 18 July 2008.

19. On 3 July 2008, the Player and Olympiacos entered into a new *"Private Agreement"* to terminate the Employment Contract (hereinafter also referred to as the "Termination Agreement"). As a consideration for his agreement to terminate the Employment Contract and waive any rights

thereunder, the Player received the *"total net amount"* of EUR 588,000.

20. On 9 December 2009, Eintracht filed a *"Petition to the Dispute Resolution Chamber"* of FIFA to obtain the claimed payment of EUR 500,000. Such petition was forwarded to HFF by FIFA on 16 December 2009.

21. In a letter of 9 March 2010 to HFF, FIFA noted that Olympiacos had not filed any answer to Eintracht's petition. As a result, it granted Olympiacos a deadline (expiring on 24 March 2010) to state its position on the claim of Eintracht.

22. On 29 July 2010, FIFA noted in a letter to HFF that the previous correspondence had remained unanswered by Olympiacos, and declared that *"the investigation phase of the present matter is now closed"*.

23. In a letter of 3 August 2010, Olympiacos informed FIFA that:

"… due to very recent changes in the ownership and administration of our Club, we were not in a position to react on your letters and communication.

For this reason, we would like to request an extension to the time limits for providing you with written explanation alongside with the documents that you are requesting. Because as you might understand there are many issues that the new administration of the Club must deal with, we kindly request an extension of the time limit until the second week of September 2010".

24. On 4 August 2010, Eintracht opposed the granting of the extension requested by Olympiacos.

25. On 5 August 2010, FIFA granted the requested extension, inviting Olympiacos to provide its position by no later than 20 August 2010.

26. Thereafter:

i. Olympiacos filed a *"Statement"*, dated 19 August 2010, requesting that Eintracht's petition be dismissed;

ii. on 23 August 2010, FIFA requested Olympiacos to provide translations of the documents written in Greek attached to the Olympiacos' statement in one of the FIFA official languages;

iii. on 23 February 2011, Eintracht stated its position, requesting that Olympiacos' submissions be disregarded and insisting that Olympiacos be ordered to pay the amount of EUR 500,000;

iv. Olympiacos submitted a *"Counter Statement"* dated 2 May 2011.

27. On 21 November 2009, the Single Judge of the FIFA Players' Status Committee (hereinafter referred to as the "Single Judge") issued a decision (hereinafter referred to as the "Decision") on the claim brought by Eintracht, as follows:

"1. The claim of the Claimant, Eintracht Braunschweig, is rejected.

2. The final amount of costs of the proceedings amounts to CHF 6,000 of which CHF 5,000 have already been paid by the Claimant, Eintracht Braunschweig. Consequently the amount of CHF 1,000 is to be paid by the Claimant, Eintracht Braunschweig, within 30 days as from the date of notification of the present decision …".

28. The Decision was notified, in its operative part, on 6 December 2011. On 6 June 2012 the grounds of the Decision were communicated to the parties.

29. In support of the Decision, the Single Judge preliminarily determined the regulations applicable to the procedure and the substance by indicating that FIFA had been contacted by Eintracht on 29 September 2008; then, it considered the contention, submitted by Eintracht, that the statements submitted by the Respondent before FIFA could not be taken into account, since they had been filed after the deadline granted by FIFA had expired and the *"investigation phase"* had been closed. In that respect, the Single Judge found that the Rules Governing the Procedure of the Players' Status Committee and the Dispute Resolution Chamber, edition 2008 (hereinafter also referred to as the "Procedural Rules 2008") were applicable and held the following:

"13. … the Single Judge was of the opinion that … the structural changes and the election of a new Board of Directors only a few days before the Respondent had indeed contacted FIFA, represented sufficient justification for the Respondent to have failed to meet the deadline of 24 March 2010. Therefore, an extension to the initial deadline of 24 March 2010, which was submitted on 3 August 2010, i.e. immediately after the apparent election of the new Board of Directors, was justified.

14. Taking into account all these circumstances, and, in particular, with a view to safeguarding the Respondent's fundamental right to be heard, the Single Judge decided to exceptionally admit the subsequent submissions of the Respondent.

15. In this context, the Single Judge also recalled that, contrary to the suggestion of the Claimant, the FIFA administration was not in a position to pass a formal decision about the closure of the investigation phase of the present proceedings, but that the relevant correspondence of FIFA constituted a purely administrative letter…

17. Consequently, the Single judge decided to take into account all submissions provided by the Respondent".

30. Turning to the merits of the dispute, the Single Judge found that the 2008 edition of the Regulations on the Status and Transfer of Players (hereinafter also referred to as the "RSTP 2008") was applicable and adjudicated as follows:

"18. … the Single Judge sought to establish whether a payment obligation of the Respondent towards the Claimant had arisen from the agreement between the parties. Therefore, the Single Judge particularly studied the contents of clause 1 to 3 of the agreement. …

19. In doing so, the Single Judge considered that, by means of the agreement, two main contractual obligations were stipulated: the transfer of the player and the issuance of the relevant ITC on the one hand, and the payment of a transfer fee in the amount of EUR 500,000 on the other hand. However, the Single Judge also noted that, according to clause 3 of the agreement, clause 1 and 2 would only be in effect if the Respondent had approved the transfer of the player until 28 February 2007.

20. Having established the foregoing, the Single Judge was of the opinion that clause 3 stipulated a condition, upon which the legal effects of clause 1 and 2 were dependent. In other words, the Single Judge deemed that an approval from the Respondent *regarding the transfer of the player was to be given by no later than 28 February 2007, so that clause 1 and 2 would deploy legal effects.*

21. In this context, the Single Judge recalled that the Respondent *stated that it had eventually decided not to approve the transfer of the player. The Single Judge took particular note of a letter dated 7 February 2007 and sent from the* Respondent *to the Claimant, by means of which the* Respondent *stated that "We would like to inform you that our Club is no longer interested in the player (…)". In this respect, the Single Judge also recalled that the authenticity of this letter has never been disputed by either party in the course of the proceedings.*

22. Consequently, the Single Judge deemed it established that the Respondent *had indeed communicated to the Claimant in writing that it wished not to execute the relevant transfer, i.e. that the* Respondent *did not approve of the transfer of the player in question.*

23. In view of this, the Single Judge was of the opinion that, according to the clear wording of clause 3 of the agreement, clause 1 and 2 of the agreement did not come into effect, since the Respondent *did not approve of the transfer, as required by clause 3 of the agreement. Consequently, the Single Judge decided that there was no contractual basis for a payment obligation of the* Respondent *towards the Claimant.*

24. However, the Single Judge was also eager to examine whether there were other facts and/or circumstances in the case at hand which may have, contrary to the aforementioned, lead to a payment obligation of the Respondent.

25. In this respect, the Single Judge acknowledged the argument brought forward by the Claimant, according to which clause 3 of the agreement could only be invoked if the Respondent *did not approve of the transfer and if the player did not enter into an employment contract. Equally, the Single Judge took note that the Claimant held that it was a contradiction that the* Respondent *entered into an employment contract with the player, but that it at the same time refused to give its approval to the transfer.*

26. In this context, the Single Judge recalled that it was undisputed by the parties that the Respondent *had indeed concluded an employment contract with the player, in spite of its refusal to approve the transfer of the player. The Single Judge acknowledged that such course of action may indeed appear contradictory.*

27. However, after a careful examination of the wording of clause 1 and 3 of the agreement, the Single Judge found no indication that the approval of the transfer by the Respondent *was linked to the question as to whether an employment contract was concluded between the* Respondent *and the player or not.*

28. Furthermore, the Single Judge acknowledged that the Respondent *did indeed provide credible explanations as to why it had eventually concluded an employment contract with the player, in spite of not approving the transfer according to clause 3 of the agreement.*

29. Moreover, the Single Judge underlined that it remained, according to the basic principle of burden of proof …, the burden of the Claimant to prove the existence of a specific factual and legal basis for its claim for the payment of a transfer compensation. In other words, the Single Judge was of the opinion that particularities of the course of action, as described above, could not substitute for a lack of contractual basis for the Claimant's claim.

30. For the sake of completeness, the Single Judge then turned his attention to the argument of the Claimant, according to which the player had not been a free agent when he was eventually transferred to the

Respondent. In this context, the Single Judge recalled that the employment contract between the Claimant and the player stipulated that it would cease to be valid in case of relegation of the Claimant to the 3rd German League. Furthermore, the Single Judge took particular note of a letter dated 16 August 2007 and sent by the Claimant to the German Football League, by means of which the Claimant and the player had been dissolved. Equally, the Single Judge noted that, by means of another letter dated 16 August 2007 and sent from the Claimant to the German Football League, the former had explained that it had no objections to the international clearance of the player.

31. In view of the aforementioned, the Single Judge came to the conclusion that the player had, as confirmed by the evident statements of the Claimant, indeed been a free agent when he was transferred from the Claimant to the Respondent.

32. As a conclusion of all the above, the Single Judge decided that there is no contractual and/or legal basis for an obligation of the Respondent to pay a transfer amount of EUR 500,000 to the Claimant.

33. Consequently, the Single Judge decided that the claim of the Claimant was rejected".

2. THE ARBITRAL PROCEEDINGS

2.1 The CAS Proceedings

31. On 27 June 2012, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter also referred to as the "CAS"), pursuant to the Code of Sports-related Arbitration (hereinafter also referred to as the "Code"), to challenge the Decision. The Statement of Appeal contained, *inter alia*, the appointment of Prof. Martin Schimke as arbitrator and had attached 4 exhibits.

32. On 29 June 2012, copy of the statement of appeal was transmitted by the CAS Court Office to the Respondent.

33. On 9 July 2012, the Appellant filed its appeal brief together with 28 exhibits.

34. On 13 July 2012, the Respondent appointed Prof. Petros C. Mavroidis as arbitrator.

35. On 3 August 2012, the Respondent filed its answer brief with 36 exhibits attached.

36. By communication dated 13 August 2012, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Prof. Martin Schimke and Prof. Petros C. Mavroidis, arbitrators.

37. On 12 November 2012, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (hereinafter referred to as the "Order of Procedure"), which was accepted and countersigned by the parties.

38. A hearing was held in Lausanne on 23 November 2012, on the basis of the notice given to the parties in the letter of the CAS Court Office dated 20 September 2012, following the

postponement, upon the Respondent's request, of prior dates. The Panel was assisted at the hearing by Mr Fabien Cagneux, Counsel to the CAS.

39. The hearing was attended:

i. for Eintracht: by Dr Martin Stopper and Dr Felix Holzhäuser, counsel;

ii. for Olympiacos: by Mr Theodore Giannikos and Mr Juan de Dios Crespo Pérez, counsel.

40. At the hearing, the parties made submissions in support of their respective cases. In addition, upon indication of the Panel, the parties *inter alia* discussed the questions relating to:

i. the identification of the law applicable to the merits of the case, by indicating that the dispute can be solved on the basis of the contracts invoked;

ii. the validity of the provision set in Article 3 of the Transfer Agreement, which was not disputed;

iii. the scope of this Panel's power of review determined by Article R57 of the Code;

iv. the existence and the nature of a legal basis for the payment by Olympiacos of the amount claimed by Eintracht.

41. At the conclusion of the hearing, the parties confirmed that they had no objections in respect of their right to be heard and to be treated equally throughout the arbitration proceedings.

2.2 The Position of the Parties

42. The following outline of the parties' positions is illustrative only and does not necessarily comprise every contention put forward by the parties. It does, nevertheless, include all the main points advanced by the two parties. The Panel, indeed, has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

a. The Position of the Appellant

43. In its statement of appeal, the Appellant requested from the CAS the following relief:

"1. The Decision of the Single Judge of the FIFA Players' Status Committee of the player's will be revoked.

2. The Respondent will pay 500.000.- Euros plus interest to be specified in the Appeal Brief to the Appellant.

3. The Appellant receives a contribution towards its legal fees and other expenses in accordance with Art. 65.3 of the Code".

44. The relief so sought was confirmed in the appeal brief dated 9 July 2012 as follows:

"1. The Decision of the Single Judge of the FIFA Players' Status Committee dated 21st November 2011

will be overruled and replaced.

2. *The Respondent will be ordered to pay 500.000.- Euros to the Appellant.*
3. *The Respondent will be ordered to pay interest on 500.000.- Euros at a rate of 5% per annum, beginning 1st July 2008.*
4. *The Appellant receives a contribution towards its legal fees and other expenses in accordance with Art. 65.3 of the Code".*

45. In other words, the Appellant opposes the Decision, which it asks the Panel to set aside. In support of its requests, the Appellant advances submissions divided in two parts. In the first part (defined as *"Scenario A"*), the Appellant contends that in the course of the proceedings before FIFA the Procedural Rules 2008 were violated, as the Single Judge took his decision on the basis of a presentation of facts submitted by the Respondent after the relevant deadlines had expired: therefore, the Appellant requests an award *"based on the facts and grounds already on file within PSC's given time limits in this case in accordance with its applicable Procedural Rules"*. In a second part (defined as *"Scenario B"*), the Appellant, then, requests an award *"based on the facts given by the parties in this appeal procedure"*.

46. With respect to *"Scenario A"*, the Appellant submits that its right to obtain a fair trial under the rule of law was violated in two distinct ways.

47. The first violation was, in the Appellant's opinion, committed by FIFA when it decided to accept the submissions provided by the Respondent when all the relevant deadlines, set by FIFA itself, had expired, and even after FIFA had declared the *"investigation phase"* of the proceedings closed. In addition, the justification invoked by Olympiacos in the letter of 3 August 2010, when it requested to be granted the opportunity to file a late submission (*"changes in the ownership and administration"*) could not be accepted, as it did not meet the conditions set by Article 18.12 of the Procedural Rules 2008 for the *"resetting"* of a time limit. In the same way, also the extended deadline, granted upon the Respondent's request, was not respected, since Olympiacos filed, before the expiration of the deadline, the statement of its position only by email (contrary to Article 16(3) of the Procedural Rules 2008), and without all the exhibits translated into one of the FIFA languages.

48. In the Appellant's opinion, such violation cannot be cured by the appeal to the CAS and the exercise of this Panel's power of review under Article R57 of the Code: the CAS proceedings have an appellate nature, and the procedural activities before the first instance body cannot be ignored or considered irrelevant.

49. A second violation, then, was in the Appellant's opinion, committed when FIFA, after receiving some documents in support of the Respondent's statement, lodged past the applicable deadlines, failed to forward them to Eintracht, invoking, in a letter of 14 February 2012, *"confidentiality reasons"*. By so doing, FIFA violated Eintracht's right to be heard, as the Decision was based on documents that the Appellant could not review or comment upon.

50. On the basis of the foregoing, the Appellant requests this Panel to render an award on its claim only on the basis of the presentation of facts and the documents which were in the FIFA file

as of 29 July 2010, when the *"investigation phase"* of the FIFA proceedings was closed.

51. In the Appellant's opinion, such facts and documents show that the Respondent has to pay the amount of EUR 500,000, in accordance with the Transfer Agreement. In that respect, Eintracht maintains that, while the declaration of 7 February 2007 (§ 6 above) could be interpreted as a confirmation of the non-approval of the transfer of the Player (as per its Article 3), the Respondent's application for the ITC constitutes a *"withdrawal"* of the same or, in any case, an approval of the transfer, triggering the obligation for Olympiacos to pay the amount claimed by the Appellant.

52. In any case, the Appellant submits, Olympiacos should not be allowed to gain an advantage because of its contradictory behaviour, taken to the intentional disadvantage of Eintracht. In the Appellant's opinion, a violation of the principle prohibiting a subject from *"venire contra factum proprium"* triggers the *"general claims for damages for the disadvantaged party"*.

53. With respect to *"Scenario B"*, the Appellant submits that the mentioned conclusion (i.e., that Respondent has to pay the amount of EUR 500,000, in accordance with the Transfer Agreement and/or as damages for violation of the prohibition of *"venire contra factum proprium"*) should be reached also if the additional facts and documents lodged by Olympiacos after 29 July 2010 are considered, as they purely give evidence that the Respondent and the Player *"fully acted as legally bound parties"* and that *"the Respondent disposed of the Player's rights, even before the 13th August 2007, when allegedly a new contract was concluded"*.

b. The Position of the Respondent

54. In its answer brief, Olympiacos requested the CAS to:

> *"1. Reject entirely the appeal of the Appellant.*
>
> *2. Accept all and every manifestation, argument, document and proof that the Respondent made and present as valid and true.*
>
> *3. To condemn the Appellant to bear all the administrative costs and arbitrators fees of this Appeal as well as a sum of 25,000 CHF for the legal and other costs of the Respondent.*
>
> *ALTERNATIVELY*
>
> *if … the Decision issued by FIFA's Single Judge of PSC on November 2011 on the said issue is overturned, to not enter in the hearing of the case de novo but to refer the case to FIFA for a new examination"*.

55. In support of its claim to have the appeal dismissed, the Respondent examines *"the facts"* and *"the decision of FIFA's Single Judge of PSC"*, states its *"rebuttal"* of the Claimant's claims, considers *"the substance of the case"* and comes to the conclusion that:

> *"… it is undeniable and undisputed that a fair trial was provided by FIFA's Single Judge of PSC.*
>
> *… it is undeniable [that] the decision of FIFA's Single Judge of PSC was based in careful and though examination of documents presented.*

… [it] is beyond any doubt that all and every right of the Appellant to [be] heard was observed.

… [it] is undisputed that the decision was correct in each and every aspect and justice was served.

… it was clearly proved that the Agreement dated January 25th 2007 between the Appellant and the Respondent never came into force.

… it is undeniable that the Player's employment contract terminated on 30th June 2007 due to the relegation of the Appellant's team.

… it is undeniable that the principals in trial or hearing of law apply to all participants of the trial and not to some of them".

56. In other words, the Respondent makes submissions which, in essence, refer (*a*) to the proceedings before the Single Judge, to confirm that the rules of procedure as well as the right to be heard of both parties was respected in that context, and (*b*) to the merits of the dispute, to underline that the Appellant's claims are without merits and the Single Judge was correct in its Decision.

57. In a first direction, in fact, the Respondent disputes the Appellant's claim (under *"Scenario A"*) that the Decision was *"wrong simply because [the Single Judge] accepted to examine the Respondent position"*. According to the Respondent, in fact, such contention is based on a *"perception of fair trial that the Appellant is claiming in all tones that it failed to enjoy"* having a *"rather twisted form"*: the right to be heard of the Appellant implies that the Respondent is prohibited from *"voicing"* its position.

58. In any case, the Respondent answers the submissions of the Appellant with respect to the conduct of the proceedings before FIFA as follows:

i. the communications sent by FIFA and intended for Olympiacos were sent to the HFF, and the letter of 9 March 2010, setting a deadline for the first time, was not delivered to the Respondent;

ii. the *"investigation phase"* was closed by FIFA not on 24 March 2010, but on 9 August 2010, as by such deadline the HFF was requested to submit some documents: therefore, the Respondent's request to be granted an extension was timely;

iii. the acceptance by the Single Judge of the submissions filed by Olympiacos on 20 August 2010 was consistent with the prescriptions of Article 16 of the Procedural Rules 2008; in fact
   - the extension of the deadline was fully justified, as at that time the Respondent *"was going through a very difficult period having tremendous administrative, economic and sporting crisis"*; and
   - the *"Statement"* before FIFA was filed by Olympiacos within the extended deadline;

iv. in any case, CAS has the power to review *de novo* the facts and the law of the case pursuant to Article R57 of the Code, and to consider the Respondent's position irrespective of any procedural issue relating to the FIFA proceedings.

59. In a second direction, then, relating to the merits of the case, the Respondent submits that the Single Judge *"came to the right decision"*, since *"the Appellant lacked any substantial reason to request*

payment for a transfer that never actually occurred". Olympiacos more specifically underlines that:

i. the Transfer Agreement was *"obviously and without any doubt conditional"*, as it was subject to an approval by the technical staff and the administration of Olympiacos;

ii. concurrently with the Transfer Agreement, the First Private Agreement was signed upon request of the Agent, who wanted to safeguard the interests of his client with respect to the terms of the employment contract the Player would have to sign upon his transfer;

iii. on 7 February 2007, Olympiacos declared, after examining the amount to be paid and the value and the sporting perspectives of the Player, that it was not interested in his transfer;

iv. Eintracht did not react in any way to such communication;

v. Eintracht was relegated to the lower division at the end of the season 2006/2007: as a result, the Player's employment contract came to a termination and the Player became a free agent;

vi. when the issuance of the ITC was requested, Eintracht confirmed that the Player was free to move because his contract had expired as a consequence of the relegation and not because of the Transfer Agreement;

vii. the Employment Contract represents a *"completely new contract"* and was signed upon insistence of the Agent and only because the new technical director was willing to sign and test a free player. However, the Player was transferred on loan, and one year later the Termination Agreement was signed;

viii. Eintracht claimed the payment of an amount for the transfer of the Player *"one and a half year after the Claimant had been informed for the termination of the transfer agreement and one year after the Claimant released the documents that now claims to be proof of its right to receive the transfer amount"*.

60. In summary, and on such basis, the Appellant's claims have to be dismissed also in this arbitration.

3. LEGAL ANALYSIS

3.1 Jurisdiction

61. The CAS has jurisdiction to decide the present dispute between the parties. The jurisdiction of the CAS, which is not disputed by either party and has been confirmed by the Order of Procedure signed by the parties, is based *in casu* on Article R47 of the Code and on Articles 62 and 63 of the FIFA Statutes in force at the time the Decision was rendered.

62. More specifically, the provisions of the FIFA Statutes that are relevant to that effect in these proceedings are the following:

i. Article 62 [*"Court of Arbitration for Sport (CAS)"*]:

"1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues,

clubs, Players, Officials and licensed match agents and players' agents.

2. The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".

ii.. Article 63 [*"Jurisdiction of CAS"*]:

"1. Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question.

2. Recourse may only be made to CAS after all other internal channels have been exhausted.

3. CAS, however, does not deal with appeals arising from:

(a) violations of the Laws of the Game;

(b) suspensions of up to four matches or up to three months (with the exception of doping decisions);

(c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.

4. The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect. […]*".*

3.2 Appeal proceedings

63. As these proceedings involve an appeal against a decision in a dispute relating to a contract, issued by a federation (FIFA), whose statutes provide for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a non-disciplinary case, in the meaning and for the purposes of the Code.

3.3 Admissibility

64. The statement of appeal was filed within the deadline set in the FIFA Statutes and the Decision. No further recourse against the Decision is available within the structure of FIFA. Accordingly, the appeal filed by Eintracht is admissible.

3.4 Scope of the Panel's review

65. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance. The extent to which such power can be exercised in this case has however been discussed by the parties in their submissions. The point will therefore be considered below (§§ 75-78).

3.5 Applicable law

66. Pursuant to Article R58 of the Code, the Panel is required to decide the dispute

"according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

67. In the present case, the question is which "rules of law", if any, were chosen by the parties: i.e., whether the parties choose the application of a given State law and the role in such context of the "applicable regulations" for the purposes of Article R58 of the Code.

68. In this respect, the parties agree that the FIFA rules and regulations apply primarily. No indication, on the other hand, was given with respect to the identification of any State law applying subsidiarily: the parties submitted at the hearing that the dispute can be solved on the basis of the contracts' interpretation and/or general principles only.

69. As a result, the Panel finds that this dispute has to be determined on the basis of the FIFA regulations and of the terms of the relevant contracts. Swiss law, being the law of the seat of FIFA, which rendered the challenged Decision, applies subsidiarily pursuant to Article R58 of the Code. The Panel, however, notes that it was not directed by the parties to the application of any provision of Swiss law.

70. With respect to the identification of the relevant rules, and chiefly of the regulations governing the procedure, the Single Judge mentioned in the Decision that the matter had been submitted to FIFA by Eintracht on 29 September 2008. At the hearing, indeed, the parties agreed that a petition to FIFA was filed only on 9 December 2009. Such element, however, does not have any impact on the identification of the relevant edition of the procedural rules, as in December 2009 the Procedural Rules 2008 were still in force (they have been repealed only very recently by the regulations approved on 27 September 2012). At the same time, the application of the RSTP 2008 or of the regulations on the status and transfer of player subsequently entered into force does not make any difference for the disposition of the dispute, as their substantive provisions, if and when relevant in this case, did not change over the time.

71. The provisions contained in the Procedural Rules 2008 which are relevant in this case include the following:

"Article 5 General procedural principles

2. All persons involved in legal application and adjudication processes shall act in good faith. […]

8. Subject to any provisions to the contrary, all parties in the proceedings shall be granted the right to be heard, the right to present evidence, the right for evidence leading to a decision to be inspected, the right to access files and the right to a motivated decision. […]

Article 16 Time limits

1. Procedural acts must be conducted within the time limit prescribed by the rules or by the decision-making body.

2. A time limit is deemed to have been observed if the act is completed before midnight on the final day of the set period.

3. Written petitions and payments must arrive at the designated place or have been paid at a recognised

branch of a bank or posted at a recognised post office no later than the final day of the set period. Petitions submitted by e-mail shall have no legal effect, in contrast to petitions submitted by fax.

4. *Petitions and payments submitted in time to the incorrect FIFA office are deemed to have been submitted within the time limit. Onward transmission to the correct office shall be effected ex officio.*
5. *Proof of compliance with the time limit is to be provided by the sender.*
6. *If these rules do not specify the consequences of non-compliance with a time limit, they shall be determined by the Players' Status Committee or the DRC. Warnings may not go further than necessary for the due process of the proceedings.*
7. *The day on which a time limit is set and the day on which the payment initiating the time limit is made shall not be counted when calculating the time limit.*
8. *All time limits shall be suspended in the period from 20 December up to and including 5 January and for a period of five days before and five days after an Ordinary or an Extraordinary Congress. During the FIFA World Cup™ (finals) time limits shall be suspended if so decided, ex officio or on application by a party, by the decision-making body.*
9. *If the final day of the time limit is an official holiday or a non-working day in the country where the party submitting or receiving a document is domiciled or resident, the time limit shall expire at the end of the next working day.*
10. *Regulatory time limits may not be extended. Time limits set by the Players' Status Committee and the DRC may be extended, paying due consideration to the principle of expeditious execution of proceedings, if a substantiated request is submitted before the time limit expires.*
11. *Time limits that are to be set by the Players' Status Committee and the DRC should normally run for no less than ten and no more than twenty days. In urgent cases, time limits may be reduced to 24 hours.*
12. *Should a party or representative be unable to observe a time limit through no fault of its own, the time limit may be reset on substantiated request, although only if the request is made within three days of the hindrance ceasing to exist.*
13. *The time limit for lodging an appeal shall always begin on receipt of the full version of the decision".*

3.6 The merits of the dispute

72. The dispute between the parties submitted to this Panel refers to the claim brought by Eintracht against Olympiacos for the payment of EUR 500,000 in connection with the transfer of the Player. The Decision which denied such claim is challenged before the CAS under two perspectives: first, because the Single Judge accepted to take into account the Respondent's late submissions, as well as some documents that Eintracht was not allowed to comment upon; second, because it did not order Olympiacos to pay the amount claimed by Eintracht.

73. As a result of the foregoing, there are two main issues that need to be addressed in this arbitration. The first relates to procedure, and consists in the examination of the proceedings before the Single Judge, in order to verify whether any violation of the applicable provisions, or of parties' right to be heard, was committed and to determine the consequences to be drawn therefrom. The second refers to the substance of the dispute, and involves an assessment of the merits of the Appellant's claim for payment.

74. As mentioned (§§ 47 and 49 above), according to the Appellant, the proceedings before the Single Judge were conducted in violation of the applicable provisions and of the Eintracht's right to be heard, since:

    i. FIFA decided to admit, on the basis of unacceptable justifications, the submissions filed by Olympiacos when all the relevant deadlines, set by FIFA, had expired, and even after the *"investigation phase"* of the proceedings had been closed;

    ii. the Decision was adopted on the basis of documents that the Appellant could not review or comment upon, since, due to alleged *"confidentiality reasons"*, they were not forwarded to Eintracht.

75. Contrary to the Appellant's opinion, the Panel finds a solution to such question in Article R57 of the Code. Under this provision, in fact, the CAS Panel has the power to *"review the facts and the law*" and issue a new decision that replaces the decision challenged: such power was indeed declared by the Swiss Federal Tribunal (in a judgment of 3 January 2011, *Valverde*, 4A_386/2010, at § 5.3.4) to be consistent with the mission of arbitral jurisdiction exercised by the CAS. Under this provision, the Panel's scope of review is basically unrestricted. Indeed, in the exercise of its power to review the facts and the law, the Panel can even request the production of further evidence. In other words, the Panel not only has the power to establish whether the decision of a disciplinary body being challenged was lawful or not, but also to issue an independent decision on the basis of a direct examination of the dispute (CAS 2004/A/607; CAS 2004/A/633; CAS 2005/A/1001; CAS 2006/A/1153).

76. This Panel consequently hears *de novo* the dispute between Eintracht and Olympiacos, and is not limited to the consideration of the submissions filed before the Single Judge: this Panel can consider all new arguments produced before it. This implies that, even if a violation of the principle of due process, or of the Appellant's right to be heard, occurred in prior proceedings, it may be cured, at least to the extent such violation did not finally impair the Appellant's rights, by this full appeal to the CAS (CAS 94/129; CAS 98/211; CAS 2000/A/274; CAS 2000/A/281; CAS 2000/A/317; CAS 2002/A/378). In fact, the virtue of a system which allows for a full rehearing before an arbitration panel is that issues relating to the fairness of the hearing before the federation body *"fade to the periphery"* (CAS 98/211, citing Swiss doctrine and case law).

77. As a result, this Panel could find it unnecessary to verify whether the Appellant's right to be heard before the Single Judge was affected by the fact that some documents were not forwarded to Eintracht for consideration or by the fact that Olympiacos could state its position even past the applicable deadlines, on the basis of a decision so allowing: the evaluation of this Panel is in fact based on the documents filed in these arbitration proceedings (which the parties could examine and comment), where all of the Appellant's fundamental rights have been duly respected, and refers to the parties' submissions before this Panel. In other words, even if any of the Appellant's rights had been infringed upon by the Single Judge, the *de novo* proceedings before the CAS would be deemed to have cured any such infringements. And this Panel would be in a position to consider the Respondent's case, even if strict compliance with internal procedural rules would have prevented the internal body from taking them into account.

78. Contrary to such conclusion, it is not possible to refer, along the lines suggested by the

Appellant, to the fact that these are "appeals" proceedings under the Code, and that the procedural activities before the first instance body cannot be ignored or considered irrelevant. The Panel, indeed, notes that such submission would contradict the very existence and purpose of Article R57 of the Code, which applies primarily to "appeals" proceedings, and underlines that, however "appellate" in the name, the "appeals" arbitration has the nature of a first instance jurisdictional review of a decision rendered by an association (see RIGOZZI A., *L'arbitrage international en matière de sport*, Bâle, 2005, p. 552). Therefore, procedural rules and principles applicable to the relations between a first instance and an appeals body do not apply with respect to the relations between an internal association body and the CAS.

79. In any case, the Panel does not find that the alleged violations have occurred. In fact, the Respondent gave a justification for its failure to timely submit a statement of defence, which FIFA accepted; the position of Olympiacos was submitted within the time limit granted, in accordance with 16.3 of the Procedural Rules 2008 (dispatch at the post office); no violation of the Appellant's right to be heard was caused by the fact that the Respondent was allowed to state its case.

80. In light of the above, the Panel is allowed to examine the merits of the dispute, and chiefly the Appellant's claim for payment, on the basis of the documents filed and the submissions lodged in these arbitration proceedings. In such examination, the Panel is not affected by the way the FIFA proceedings were conducted by the Single Judge.

81. The Appellant requests (both in its *"Scenario A"* and in its *"Scenario B"*) that the Respondent be ordered to pay the amount of EUR 500,000, plus interest, on the basis of two grounds:

    i. the Transfer Agreement; or

    ii. a violation of the principle prohibiting a subject from *"venire contra factum proprium"*, triggering the *"general claims for damages for the disadvantaged party"*.

82. In a first perspective, in fact, Eintracht submits that the amount stipulated in Article 1 of the Transfer Agreement became due and payable in light of the behaviour of the Respondent, that, while initially declaring its non approval of the transfer of the Player, subsequently requested the issuance of the ITC and signed the Employment Contract.

83. The Panel does not agree with the Appellant and finds that Eintracht is not entitled to the payment envisaged by Article 2 of the Transfer Agreement.

84. The Panel indeed notes that under the Transfer Agreement the Player would be transferred to Olympiacos by way of termination of the employment agreement the Player had with Eintracht and following the issuance of the ITC (Article 1): the amount stipulated, to be paid by Olympiacos (Article 2), constituted the consideration for the consent by Eintracht to the termination of the employment agreement it had with the Player and to the issuance of the ITC. In that context, then, Article 3 of the Transfer Agreement made the *"effect"* of the agreed transfer subject to the condition of the prior approval to be given by Olympiacos' technical staff and administration before 28 February 2007. As a result, failing such approval within the stipulated deadline, the transfer would not be effected pursuant to the Transfer Agreement.

85. The Panel remarks, then, that the validity of the condition subjecting the effect of the transfer to the approval by Olympiacos has not been disputed by the parties. In addition, the Panel notes that it is common ground between the parties that Olympiacos on 7 February 2007 expressly declared that it did not wish to proceed with the transfer of the Player and that the Transfer Agreement (that had been signed by Olympiacos on 1 February 2007) would not have any effect. At the same time, the Panel notes that Eintracht did not react in any way to the Respondent's declaration of 7 February 2007. Consequently it is conceded that there was no express approval by Olympiacos of the transfer of the Player before 28 February 2007.

86. At the same time, the Panel holds that no approval of the transfer of the Player pursuant to the Transfer Agreement can be found (*a*) in the signature by the Respondent of the First Private Agreement (above), or (*b*) in the signature in the Employment Contract and the Second Private Agreement (above), or (*c*) in the request, through the HFF, of the issuance of the ITC (above). In fact:

a. the First Private Agreement was signed concurrently with the Transfer Agreement, which contained the condition reserving the right of Olympiacos to subsequently approve the transfer, and was intended to secure to Olympiacos also the consent of the Player to his transfer;

b. the Employment Contract and the Second Private Agreement were signed in August 2007 on the basis, not contradicted by the Appellant and confirmed by the evidence supplied by the Respondent, that the Player had become a "free agent", because the employment contract he had with Eintracht had expired (not because Eintracht had released him pursuant to the Transfer Agreement, but) because of the relegation of the Appellant's team to a lower division;

c. the ITC was requested and issued because the Player had signed as a "free agent" the Employment Contract and the Second Private Agreement. Indeed, Eintracht itself declared that the ITC could be issued because no contractual relation existed between Eintracht and the Player, as the prior contract had come to an end following the relegation of Eintracht from the German Second Division (above). In addition, Eintracht did not raise, at the time the ITC was requested, any claim with the Respondent for payments under the Transfer Agreement.

87. In addition to the foregoing, the Panel emphasizes that, due to the termination of the employment agreement it had with the Player, following the relegation of Eintracht's team to a regional football league, Eintracht was, at the time the ITC was requested, no longer in a condition to "transfer" the Player to Olympiacos, as the Player, free of any contractual obligations, could freely move. Therefore, Eintracht cannot claim the payment of the price for a consent that was not (and could not be) the basis of the transfer of the Player to Olympiacos.

88. In summary, the Panel concludes that the request of payment of EUR 500,000 has no contractual basis. Consequently, it cannot be granted.

89. As an alternative argument, however, the Appellant grounds its claim for payment on an alleged liability of the Respondent for damages, caused by a violation of the principle prohibiting

Olympiacos from *"venire contra factum proprium"*: the Respondent, in the Appellant's view, took a contradictory behaviour, on one hand, by declaring that it did not wish to proceed with the transfer of Player and, on the other hand, by applying for the issuance of the ITC.

90. Also in this respect the Panel does not agree with the Appellant. In fact, the Panel does not find that the decision of the Respondent, expressed in February 2007, to withdraw from the procedure of transfer under the Transfer Agreement is contradicted by the decision to sign the Employment Contract and the Second Private Agreement, and then to apply for the ITC, when the Player had become a "free agent", i.e. in a completely different scenario. In addition, the Panel notes that the Player had become a "free agent" for reasons beyond the control of Olympiacos and not caused by the Respondent. In fact, Eintracht "lost" the Player not because of a wrongful behaviour of the Respondent, but only because of the operation of a clause in the employment agreement with the Player, when its team was relegated to a lower division. In summary, the change of attitude of the Respondent does not appear to be wrongful and to have created damages to Eintracht, which had lost the Player in any event.

91. Therefore, the Panel concludes that also the request of payment of EUR 500,000 claimed by the Appellant as damages cannot be granted.

3.7 Conclusion

92. In light of the foregoing, the Panel finds that the appeal brought by the Appellant against the Respondent with respect to the Decision is to be dismissed and the Decision confirmed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Eintracht Braunschweig GmbH & Co. KG a.A. on 27 June 2012 against the decision taken by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (FIFA) on 21 November 2011 is dismissed.

2. The decision taken by the Single Judge of the Players' Status Committee of the Fédération Internationale de Football Association (FIFA) on 21 November 2011 is confirmed.

3. (…).

4. (…).

5. All other prayers for relief are dismissed.