



Arbitration CAS 2015/A/4018 Nur Cemre Kaymak v. Azerbaijan Taekwondo Federation (ATF) & World Taekwondo Federation (WTF), award of 10 December 2015

Panel: Mr Luc Argand (Switzerland), President; Prof. Denis Oswald (Switzerland); Mr Boris Vittoz (Switzerland)

Taekwondo

Contract of employment between an athlete and a national federation

Lack of competence of the WTF regarding contractual disputes between a national federation and an athlete

Absence of discrimination of the athlete by the federation

Lack of evidence of any financial amount due to the athlete

CAS lack of jurisdiction regarding issues requiring the formal approval of third parties to the arbitration

- 1. According to the WTF Dispute Resolution Bylaws, a dispute arising between an athlete and a national federation which is clearly and predominantly a contractual dispute between these parties and not a WTF related dispute nor a discrimination case prohibited by the WTF Code of Ethics, cannot be adjudicated by the WTF. The WTF has no rules or regulations as to how a contract should be created or interpreted or how remedies for breach of contract should be determined.**
- 2. Both the WTF Code of Ethics and the Olympic Charter's Fundamental principles of Olympism prohibit discriminations which are intrinsic to an individual. However, where an athlete did not demonstrate that the decisions or lack of decision or action he or she reproaches to a federation constitute intrinsic discriminations related to race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin of the kind prohibited by the WTF Code of Ethics or the Olympic Charter's Fundamental principles of Olympism, no discrimination can be retained.**
- 3. To be granted to an athlete, a financial claim must be justified by the existence of contractual clauses or by evidence brought by the athlete. To be granted, a moral indemnity must be demonstrated by legal grounds.**
- 4. Issues requiring the formal approval of third parties to the arbitration should be decided by the competent entities. Thus, the reduction of a transition period prohibiting an athlete to compete for another national federation than the one he or she originally competed for requires the formal approval of the NOCs involved.**

8. *Obligations of athlete*

- a. *Athlete is obligated to carry out the performances imposed by the contract.*
- b. *To participate in all of the competitions, camp and training, at home and abroad, organis[ed] by the (...) [ATF],*
- c. *To respect the Statues and the provisions of the (...) [WTF] and (...) [ATF],*
- d. *Not to damage the reputation of the (...) [ATF] (...),*
- e. *(...),*
- f. *To give the necessary attention and care in their private life and their health to be able to compete in competitions that the (...) [ATF] will take part in and to be able to present the expected efficiency,*
- g. *(...)*
- h. *If requested by the Medical Board of the (...) [ATF] or the authorized doctor of the federation, to go to health check-ups regularly and let themselves be treated,*
- i. *Except in emergency situations, to never undergo a medical treatment without briefing with the doctor of the (...) [ATF] and to never use substances and drugs in medical or physical treatments that are considered illegal,*
- j. *(...)*
- k. *(...)*

9. *Obligation of Club / Transfer institution*

- a. *To fulfil fina[n]cial obligations specified in the contract,*
- b. *Within the guidelines in the articles concerning health and injuries, to care for the athletes health, to take the necessary precautions in competitions, trainings, camps and voyages and to inform the athletes,*
- c. *To arrange lessons, conferences, courses, tournaments in order to help the athlete improve her sports career when needed and in case of a request of the athlete and the request being approved, to give the necessary requirements and materials to be able to participate in lessons, conferences, courses and tournaments organized inside or outside the country,*
- d. *To obey the regulations and the Statutes of the (...) [WTF], to promote and protect Taekwondo's ethics principles in behalf and in support of its athlete,*
- e. *To provide the athlete the materials and all general requirements for training and competitions,*
- f. *To care for the athletes state of health and injury, provide for the health expenses, not to use illegal considered substances and materials in medical and physical treatments of the athletes and to make her conscious of the matter and inform and warn about the matter,*
- g. *To protect and maintain all rights and benefits of the athlete in case of an incapacity and injury in Trainings and Competitions,*

10. *Special Provisions:*

- a. *(...).*
- b. *(...).*

- c. (...)
 - d. *The contract and terms will be renewed every year and the payment schedule, price and paying principals concerning the next years will be redetermined every year.*
 - e. *Parties, apart from the obligations stated in the contract, are obligated to carry out the obligations given to them by the professional athletes and clubs (to the Transferring Organization) statutes and transferring instructions.*
11. (...) *in case of disagreement, the (...) [WTF] Legal consultancy department will be examined by the National court of Sports and will be resolved by the National Court of Sports and the Administrative Body, and that at the meantime we will comply with the Main Status and the decisions of the court and the administrative body and that we will accept any financial and juristic punishment in case we fail to abide any articles and conditions.*

(...) [13/09/2013]³ (...)."

- 5. At some point during the first semester of 2014, the Athlete and the ATF had a disagreement about whether or not the terms of the Contract had been respected⁴.
- 6. On 2 September 2014, the Athlete filed before the WTF a claim against the ATF for a breach of contract.
- 7. On 8 December 2014, the WTF informed the Athlete that it would not examine the latter's complaint because contractual matters between an athlete and a national federation were not within the jurisdiction of the WTF.
- 8. On 5 January 2015, the Athlete appealed that decision internally before the WTF, invoking the WTF Bylaws on Dispute Resolution and Disciplinary Actions ("WTF Dispute Resolution Bylaws").
- 9. On 17 March 2015, the WTF confirmed its decision not to hear the Athlete's appeal ("the Decision") in the following terms:

"(...) in accordance with the (...) [WTF Dispute Resolution Bylaws], Article 4.1B(iii), the WTF declines to proceed with hearing this dispute, and suggests that the parties seek a more appropriate venue. (...)."

C. Proceedings before CAS

- 10. On 1 April 2015, the Appellant filed a statement of appeal, in French, to CAS against the ATF and the WTF concerning the Decision of 17 March 2015.
- 11. On 14 April 2015, the Appellant filed her appeal brief, in French.
- 12. On 17 April 2015, following the Respondents' objection on the language of the proceedings, requesting that English be chosen instead of French, the President of the CAS Appeals

³ Date only on the original Turkish version of the Contract.

⁴ See the Appellant and the ATF's positions below.

Arbitration Division rendered an order on language deciding that the proceedings should be conducted in English. Accordingly, the Appellant was granted a 10-day deadline to file an English translation of her statement of appeal and of her appeal brief, with all accompanying exhibits translated into English.

13. On 23 April 2015, the Appellant filed, according to the order on language, translations in English of her statement of appeal and appeal brief, together with their accompanying exhibits. She requested the following prayers for relief:

- “1. *Examine Nur Cemre Kaymak’s file;*
2. *Research the violations of the [ATF] for this dispute;*
3. *Payment, for the years 2014, 2015 and 2016, in total 46’800 Euro, of the school fees and housing fees that the [ATF] has to pay according to the contract;*
4. *300 Euro medical treatment costs;*
5. *3’960 Euro fee for the trainer and for the sports complex;*
6. *3’900 Euro fees for participation in tournaments at home and abroad;*
7. *50’000 moral indemnity;*
8. *Deliverance of the Kukkiwon Diploma and the annulment of 3 years that block the Athlete to fight for another federation”.*

14. On 9 May 2015, the ATF filed its answer with CAS and requested in its prayers for relief that the Appellant’s claims be rejected entirely. Furthermore, the ATF requested contribution towards its legal fees corresponding to 50% of its expenses, which amounted to EUR 16’375.- without a hearing, but likely to increase should a hearing be held.

15. On 18 May 2015, the WTF filed its answer with CAS and requested the following in its prayers for relief:

- “(a) *That the Panel finds in favour of the Respondent 2 [WTF].*
- (b) *That the Panel rejects the Appeal, at least as related to Appellant 2 [Respondent 2 or WTF].*
- (c) *That the Panel orders the Appellant to pay all costs related to the arbitration (administrative costs and fees and disbursements of the Arbitrators), at least as related to Appellant 2 [Respondent 2 or WTF].*
- (d) *Any other relief that the Panel deems appropriate. (...)*”.

16. On 25 May 2015, both Respondents indicated that they would prefer for the Panel to issue an award based solely on the parties’ written submissions. The Appellant, on her part, requested a hearing.

17. On 16 June 2015, the CAS Court office informed the parties that the Panel would sit in the following composition:

President: Mr. Luc Argand, Attorney-at-law, Geneva, Switzerland
Arbitrators: Mr. Denis Oswald, Attorney-at-law, Colombier, Switzerland (nominated by the Appellant)

Mr. Boris Vittoz, Attorney-at-law, Lausanne, Switzerland (appointed by the President of the CAS Appeals Arbitration Division *in lieu* of the Respondents)
18. On 1 September 2015, the CAS Court Office, on behalf of the Panel, informed the parties that a hearing would be held on 5 October 2015 at 9.30 am at the CAS Headquarters in Lausanne, Switzerland.
19. On 3 September 2015, an Order of Procedure was issued, which was subsequently accepted and countersigned by all parties.
20. A hearing was held in Lausanne on 5 October 2015. The Panel, the *ad hoc* Clerk Mr. Sylvain Bogensberger, as well as the CAS Managing Counsel & Head of Arbitration Mr. William Sternheimer, were present.
21. The following people attended the hearing:
 - For the Appellant: Ms Esma Irmak Basol, Attorney-at-law and Ms Nur Cemre Kaymak, Athlete
 - For the ATF: Mr Naghi Safarov, ATF Vice-President and Mr Kenneth Schunken, Legal Counsellor
 - For the WTF: Mr Corbin Min, WTF Head of Legal Affairs
22. Each party's counsel made full oral presentations. Both the Athlete and Mr. Safarov intervened during the hearing.
23. No witnesses were heard.
24. At the end of the hearing, the parties did not raise any objection and confirmed their satisfaction with regard to their right to be heard, that they had been treated equally in the arbitral proceedings and that they had had a fair chance to present their position.

D. Position of the Parties

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

- a) The Athlete
26. The Athlete explained that she signed the Employment Contract on 13 September 2013 - drafted by her own father - with the ATF. The latter added a date to her copy of the Contract. The Athlete received a license valid until 31 December 2014 and an Azerbaijani passport valid for 10 years.
27. Article 10d of the Contract provides that the Contract shall be renewed each year by the ATF unless terminated. Since the Contract was never formally terminated by the ATF, it remained valid after September 2013. Specifically, it was not limited to the year 2013 as none of the parties would have signed a contract limited to a 3 month period blocking the Athlete from fighting for another federation for a period of 3 years. Moreover, a date was added on the copy remitted to the Athlete's father Mr. Gursel Kaymak ("Mr. Kaymak").
28. The Athlete claims that, according to the Contract, the ATF was required to pay her annual school and housing fees:
- The 1st year (2013-14), the ATF paid the following amounts: EUR 6'778.- (school fees); EUR 3'000.- (housing fees).
 - The 2nd year however (2014-15), the ATF neither paid for school fees (in the amount of EUR 12'600.-) nor housing fees (in the amount of EUR 3'000.-) on the pretext of failed senior selection in December 2013 (disqualification in the 1st round, while injured).
29. Her affiliation to the ATF prohibits the Athlete to fight for another federation, such as the Turkish federation, or for a club for a period of 3 years. The Athlete's financial claim with respect to school and medical fees is accordingly limited to this 3 year limitation period: [(EUR 12'600.- + EUR 3'000.-) * 3] = EUR 46'800.-.
30. On the pretext of disqualification, the Athlete was not invited to subsequent competitions, camps or training. The Athlete participated in open competitions with "the individual statute" under her Turkish nationality (her Azerbaijani passport was kept by the ATF), and at her own expenses in order to improve her sports career⁵, but the ATF did not consider these victories. While the Athlete received oral authorization to participate in competitions of the category G1, the ATF never provided the 2014 license despite repeated requests. She only received a copy of her licence from the ATF on her Facebook page, following her 17 March 2014 request to the WTF.
31. The ATF is obliged to provide the Athlete with all necessities to help her improve her sports career (article 9c of the Contract), but the ATF never fulfilled these obligations as the Athlete was never invited to any tournament by the ATF except for the 19th ETU European Junior Championships in Portugal held between 23 and 29 September 2013 ("2013 ETU").

⁵ Obtained results: 3rd in the Turkish seniors' championship [2/2014], Champion in the 31st Open Cup Belgium [3/2014], 3rd in the Ukraine Open [10/2014].

32. While the ATF had to care for the Athlete's health and provide for health expenses (article 9b, f & g of the Contract) it did nothing for her "plantarfacialis" injury sustained during the 1 April 2014 trainings. Her convalescence lasted for 1.5 month, and all medical fees were covered by the Athlete herself.
 33. The issue at stake is not limited to a contractual matter. The Athlete also claims to be victim of discrimination, which is banned by the Olympic Charter ("Fundamental principle of Olympism") and by article 5 of the WTF Code of Ethics. Indeed, after 2013, the ATF - which is bound by the provisions of the Olympic Charter (article 1 § 4) did not invite the Appellant to tournaments, training camps such as the U21 camp on 30 June 2014, respectively did not provide training opportunities. Furthermore, the ATF did not care about the Athlete's health and did not respond to any question raised by the Athlete as if she did not have an Azerbaijani licence. As such, she was not given the same opportunities as other ATF athletes.
- b) The WTF
34. The WTF again confirms its decision not to hear the case asserting that it is a contractual matter not of a type that the WTF is properly suited to decide on. In addition, the Contract calls for ultimate appeal to a national court or administrative body. It is however unclear if said appeal should be filed in Turkey or Azerbaijan.
 35. The WTF notes that the Athlete also requested assistance to:
 - (i) Obtaining her Kukkiwon certificate: WTF has no influence over that matter since Kukkiwon is a third party organization.
 - (ii) Obtaining the annulment of the competition rule requiring a 3 year period between representations of different countries. In accordance with article 4, Explanation 1 of the WTF Competition Rules and Interpretations, reduction of the 3 year transition period requires approval of, not only, the WTF but also the 2 NOCs involved. The WTF has never denied its approval for a waiver of the 3 year period but cannot control or predict the actions of the NOCs.
 36. The current dispute is not based on a WTF rule or regulation and is not a discrimination case of the type prohibited by the Olympic Charter or the WTF Code of Ethics. It is mainly a contractual issue between an athlete and a national federation and the WTF has no rules or regulations related to how a contract should be created or interpreted or how remedies for breach of contract should be determined.
 37. The WTF has the authority to decide whether a dispute is outside its competence [articles 4.1(B)(iii) and 4.1(B)(i) of the Dispute Resolution Bylaws], which it decided with its 17 March 2015 Decision.
 38. The dispute resolution clause of the Contract calls for the parties to consult with the WTF to resolve any differences and that any decision of the WTF would be examined by a "national" court or administrative body. There is no direct CAS arbitration clause.

c) The ATF

39. The ATF has established - as part of its Olympic ambitions - a full time training program offering talented athletes the opportunity to practice Olympic Taekwondo on a day to day basis, under the guidance and leadership of the national coach. On the eve of the 2013 ETU, the ATF received a request from Mr. Kaymak to include his daughter in this training program - which included 163 participants - and decided to add her to the national junior team representing Azerbaijan at the 2013 ETU, because they had no good athlete to represent Azerbaijan in that category. However, the Appellant did not choose to reside in Baku, but in Cyprus in order to continue attending classes at a Medical Faculty there.
40. On 13 September 2013, the Contract drafted and requested by Mr. Kaymak was signed by the ATF and the latter. The date added on Mr Kaymak's copy was added by the ATF upon Mr Kaymak's request because it was needed for money transfer purposes.
41. The Contract specified that the ATF would pay an annual fee to the Appellant of EUR 9'778.- (EUR 6778.- tuition fees for education expenses plus EUR 3000.- housing fees). The Appellant was required to carry out the performances imposed on her by the Contract and to respect the statutes and by-laws of the ATF and WTF. The ATF fulfilled its obligations and it is undisputed that the payment of EUR 9'778.- (first annual fee) was made.
42. The Contract has a one-year term (article 10b), to be renewed every year. With this clause, the ATF made sure that it could review the previous year's performances before engaging in a new contract.
43. At the 2013 ETU, the Athlete did not win any medal. Her results at the National Senior Championships in Azerbaijan at the end of 2013 - important to determine her future career in the senior national team since she would soon turn 18 - were very disappointing (she lost her first contest and was eliminated).
44. The Athlete's disappointing results in the two competitions she participated in in 2013 gave "reasons of doubt" to the head coach of the ATF senior national team and at the end of 2013, it was not decided to include her in the 2014 senior national team. This does not constitute a form of discrimination prohibited by the WTF Code of Ethics or by the Olympic Charter.
45. Early in 2014, it became clear for the ATF that the Appellant had participated in the National Senior Championships in Turkey as a Turkish national, under the flag of a local Turkish club⁶, in breach of article 8c of the Contract to respect the WTF and ATF rules, respectively the Olympic Charter. By signing the Contract, the Appellant explicitly chose to represent Azerbaijan (and to abandon her opportunities to represent Turkey). Her participation in and achievement of gaining a bronze medal at the Turkish National Championship as a Turkish national was a breach of contract. Based on the fact that the Appellant unilaterally decided to represent Turkey, the ATF decided not to spend more energy into her and did not renew the Contract. In addition, the ATF instructed the Azerbaijani government to annul the Athlete's Azerbaijani passport.

⁶ She had both nationalities at that time.

Accordingly, the Contract was not renewed and the ATF did not invite the Appellant to the 2014 National Senior Championships in December 2014.

46. The ATF kept its part of the deal and paid the amount of EUR 9'778.- to the Athlete for the duration of the Contract, i.e. 13 September 2013 to 13 September 2014, plus the plane tickets bought by the Appellant in order to attend the championships in 2013, even though the ATF was not obliged, for the latter, to do so. No evidence has been produced that the medical costs are indeed EUR 300.- and the ATF did not know at that time about the Athlete's alleged health problems. Other claims (such as EUR 3'900.- as participation to tournament) are unfounded, as no further financial obligations were stipulated in the Contract (venue rental, etc.). Finally, the claim for moral indemnity (EUR 50'000.-) is considered outrageous, and should be rejected.

II. IN LAW

A. Jurisdiction & Admissibility of the appeal

47. Article R47 of the Code of Sports-related Arbitration (the "CAS Code") provides the following:
"An appeal against the decision of a federation, association or sports-related body may be filed with CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body. (...)".
48. The Appellant relies on articles 1 and 6 of the WTF Dispute Resolution Bylaws as conferring jurisdiction to the CAS.
49. Notwithstanding the WTF's submission that appeals against its decisions should be submitted to a "national" court or administrative body, it signed the Order of Procedure and expressly agreed at the hearing that if the Appellant and the ATF agreed, CAS could decide on all aspects of the case. The ATF, which also signed the Order of Procedure without any reservation as to the jurisdiction of CAS, also expressly agreed to the same at the hearing.
50. Article R49 of the CAS Code provides the following:
"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. (...)".
51. Article 6.1 (B) of the WTF Dispute Resolution Bylaws provides the following:
"Appeals must be submitted within 20 days of the contested resolution, decision, or action".
52. The statement of appeal was filed on 1 April 2015, i.e. within 20 days of receipt - on 17 March 2015 - of the WTF Decision.
53. Accordingly, the appeal filed by the Appellant is admissible.

B. Scope of the Panel's review

54. With respect to its power of examination, the Panel observes that the present appeal proceedings are governed by the provisions of articles R47 ff of the CAS Code. In particular, article R57 of the CAS Code grants a full power to review the facts and the law.
55. Furthermore, as stated above, the parties confirmed during the hearing - notwithstanding the content of the Decision - that the Panel has full power to render a decision on all claims raised by the parties in their respective prayers.
56. Accordingly, the Panel will review:
- The 17 March 2015 WTF Decision (section D.1 below);
 - The financial claims and other claims made by the Appellant against the ATF (section D.2 below).

C. Applicable Law

57. Article R58 of the CAS Code provides the following:

“The Panel shall 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”.

58. The Panel observes that the valid provisions of the WTF - which include in particular following rules - are applicable:
- WTF Dispute Resolution Bylaws;
 - WTF Statutes;
 - WTF Competitions rules & Interpretation;
 - Olympic Charter since the ATF is the NF recognised by the WTF and by the NOC of the Republic of Azerbaijan for the Olympic sport of Taekwondo.
59. With respect to the applicable law, the Panel notes the following :
- The Contract does not contain any provision with respect to applicable law and none of the parties has indicated which law they wish to apply to the case;
 - The WTF has its legal seat in Lausanne, Switzerland even though it is “chartered in Korea”;
 - The IOC has also its headquarter in Lausanne and therefore both organisations are governed by Swiss law.

60. Accordingly, the Panel holds - in accordance with article R58 of the CAS Code - that the present case shall be decided in accordance with the valid provisions of the WTF or, alternatively, in accordance with Swiss law. This is in line with the fact that the Athlete and the ATF agreed that, even if the Panel is to confirm the Decision, it may decide on the merits of the dispute. Such procedure could be considered as an ordinary arbitration procedure under the CAS Code and article R45 reads that, in the absence of a choice of law in the contract between the parties, Swiss law shall apply.

D. Merits

61. The following refers to the substance of the parties' allegations and arguments without listing them exhaustively. In its discussion of the case and its findings on the merits, the Panel has nevertheless examined and taken into account all of the parties' allegations, arguments and evidence on record, whether or not expressly referred to below.

a) WTF 17 March 2015 Decision

62. On 17 March 2015, the WTF confirmed its decision not to hear the Athlete's appeal ("the Decision") in the following terms:

"(...) in accordance with the (...) [WTF Dispute Resolution Bylaws], Article 4.1B(iii), the WTF declines to proceed with hearing this dispute, and suggests that the parties seek a more appropriate venue. (...)"

63. The Athlete considers in her appeal that the WTF should have considered itself competent - because the Athlete and the ATF "belong" to the WTF - in accordance with article 2.4 of the WTF Dispute Resolution Bylaws. Furthermore, the Contract provides that the WTF is competent to resolve this dispute (article 11/2 of the Contract).

64. Article 2 of the WTF Dispute Resolution Bylaws, entitled "*Dispute resolution*", provides the following:

*"2.1 Dispute Resolution: these Bylaws provide for resolution of **WTF-related disputes** among members and related parties or between members or related parties and the WTF.*

2.2 WTF-Related Disputes: WTF-related disputes include but are not limited to disputes that arise related to WTF membership, participation in WTF-Promoted or Sanctioned championships, and that involve the interpretation of the Statutes or other WTF rules, codes, bylaws or regulations.

2.3 Members: WTF members include WTF Continental Unions (...), WTF member National Associations (...) including all levels of membership provided in Article 14 of the Statutes, and the individual members of national delegations to WTF Promoted and Sanctioned events.

2.4 Related Parties: These Bylaws shall apply to all persons who participate or assist in WTF events and activities, and each shall be automatically bound by, and be required to comply with, these Bylaws by virtue of such participation or assistance".

65. The Panel notes that article 2 of the WTF Dispute Resolution Bylaws - as explained by the WTF both in its 18 May 2015 response and during the hearing - defines the type of disputes that are to be resolved in accordance with the WTF Dispute Resolution Bylaws, namely WTF related disputes. Such disputes require and allow the WTF to reach a decision solely in reference to WTF rules and regulations - arising, in particular, between WTF members, such as the ATF, and related parties, such as the Athlete.
66. With respect to the scope of review of a formal complaint received by the WTF, article 4.1(B) of the WTF Dispute Resolution Bylaws, entitled “*Procedure*”, provides the following discretionary alternatives:
- “(…)
- (A) *The WTF shall within a reasonable period determine whether or not to proceed with an investigation related to the complaint. The decision to proceed is solely at the discretion of the WTF. The WTF shall do one of the following:*
- (i) *Decide not to proceed and issue a letter to the Complainant describing why the Complaint is not being acted upon (for instance, because of a lack of factual support or a failure to invoke an appropriate rule or regulation), and if appropriate request additional information in order to reconsider the action; or*
- (ii) *Decide to proceed and give notice to the Complainant and the accused regarding the initiation of an investigation, and the details of the subsequent process, in compliance with article 5.1 (Principles) below.*
- (iii) Decline to proceed and suggest that the parties seek an alternative, more appropriate venue in which to air the dispute.**
- (B) *If the decision is to proceed, then an ad-hoc committee or hearing panel will be formed and/ or notice will be given to the Judicial Committee, Ethic Committee, or any other relevant WTF committee. (...)*”.
67. The Panel notes - as explained by the WTF both in its 18 May 2015 response and during the hearing - that the WTF has indeed the authority to decide when a dispute is outside its competence, since the clear text of article 4.1(B)(iii) of the WTF Dispute Resolution Bylaws provides with such an alternative.
68. The Panel is convinced that the Decision rendered by the WTF not to hear the case in accordance with article 4.1(B)(iii) of the WTF Dispute Resolution Bylaws, was indeed justified for the following reasons:
- a. The complaint made by the Athlete was properly examined by the WTF in order to consider whether or not it should proceed with this case;
- b. The WTF decided that the dispute that arose between the Athlete and the ATF is clearly and predominantly a contractual dispute between these parties and not a WTF related dispute nor a discrimination case prohibited by article 5 of the WTF Code of Ethics (see section D.2.1 below);

- c. Indeed, the financial claims made by the Appellant in the present procedure are all intrinsically related to the Contract and exclusively concern its interpretation and application;
 - d. The WTF has no rules or regulations as to how a contract should be created or interpreted or how remedies for breach of contract should be determined;
 - e. Indeed, a contractual dispute raises many contract law questions such as whether a valid contract existed between the contractual parties, what were the terms of this contract, were these terms breached and if so, what should the proper remedy for the breach of contract be. This cannot be solved by the WTF rules and bylaws;
 - f. The WTF is not the proper venue to proceed with the interpretation of national contract law, as it does not have the necessary expertise for this type of dispute resolution.
69. Accordingly, the Panel decides to confirm the 17 March 2015 Decision.
70. Finally, for the avoidance of any doubt, the Panel expressly notes that the Contract does not give express competence to the WTF to solve this dispute. Indeed, article 11/2 of the Contract provides the following:
- “We, who have prepared and signed this contract together, hereby declare and undertake that we have read the entire written and printed parts of the contract, are informed of all the terms of the Instruction of the (...) [WTF], that we will full carry out all the obligations given to us by the Instructions, will comply with the terms and conditions of the contract and Instructions of the (...) [WTF] and that we agree all the instructions that will take effect and that any changes will be made after being consulted with both sides, after the termination of the contract, **that in case of disagreement, the (...) [WTF] Legal consultancy department will be examined by the National Court of Sports and will be resolved by the National Court of Sports and the Administrative Body**, and that at the meantime we will comply with the Main Status and the decisions of the court and the administrative body and that we will accept any financial and juristic punishment in case we fail to abide any articles and conditions”⁷.*
71. In other words, in accordance with the Contract, the Athlete should have submitted the issue to the competent court in Azerbaijan.
- b) Appellant’s claims against the ATF
 - ba) Discrimination
72. The Athlete claims to be a victim of discrimination by the ATF, which is prohibited by the WTF Code of Ethics and by the Olympic Charter (“Fundamental principles of Olympism”), because the ATF did not, after the end of 2013, in particular:
- Select her in the Senior national team;

⁷ English translation for the original Labor law contract provided in the Turkish language.

- Invite her to tournaments, training camps such as the U21 camp on 30 June 2014, respectively did not provide her with training opportunities and as such, did not provide equal opportunities to all athletes;
 - Care about her health;
 - Respond to any question or queries raised by her, as if she did not have an Azerbaijani licence.
73. With respect to discrimination, the following clauses need to be considered:
- Article 5 of the WTF Code of Ethics entitled “*Ban on Discrimination*” provides the following:
“WTF officials and individual athletes, team officials, and other concerned individuals shall not act in a discriminatory manner, especially with regard to ethnicity, race, culture, political opinion, marital status, religion, gender, language, or other grounds. Decisions and actions are to be taken in the best interest of athletes with an emphasis on applying equal opportunity for participation”.
 - The Olympic Charter’s Fundamental principles of Olympism n°4 and n°6 provide the following:
“(…) 4. The practice of sport is a human right. Every individual must have the possibility of practicing sport, without discrimination of any kind and the Olympic Spirit, which requires mutual understanding with a spirit of friendship, solidarity and fair play. (...)
6. The enjoyment of the rights and freedoms set forth in this Olympic Charter shall be secured without discrimination of any kind, such as race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin, property, birth or other status. (...)
74. Both article 5 of the WTF Code of Ethics and the Olympic Charter’s Fundamental principles of Olympism prohibit discriminations which are intrinsic to an individual.
75. The Panel notes that the Athlete did not demonstrate that the decisions or lack of decision or action she reproaches to the ATF constitute intrinsic discriminations related to race, colour, sex, sexual orientation, language, religion, political or other opinion, national or social origin of the kind prohibited by article 5 of the WTF Code of Ethics or the Olympic Charter’s Fundamental principles of Olympism n°4 and n°6. In particular she did not demonstrate:
- (i) that her non selection by the ATF to the senior national team was not a consequence of bad results at the 2013 ETU and the 2013 National Senior Championships;
 - (ii) that her non-invitation to training camps and tournaments was not a consequence of the above-mentioned bad results added to the fact that the Athlete had competed in ‘open tournaments’ under her Turkish nationality;
 - (iii) that her potential lack of medical support by the ATF and the ATF’s general absence of response to queries or questions did not result from her own lack of action.

76. Accordingly, the Panel decides that the ATF did not commit any discrimination against the Athlete prohibited by article 5 of the WTF Code of Ethics and the Olympic Charter's Fundamental principles of Olympism during the contractual period.
77. As such, discrimination will not be analysed further with respect to the Athlete's financial claims discussed below.

bb) Financial claims

78. The financial claims made by the Appellant against the ATF - which are split into five specific amounts - will be discussed separately hereafter:

- EUR 46'800.- as school fees and housing fees for the years 2014, 2015 and 2016, in accordance with the Contract:

While the Appellant claims that the Contract was a "permanent contract", the ATF objects and sustains that the Contract was limited to a one year term (i.e. from 13 September 2013 to 12 September 2014), to be renewed each year, in accordance with article 10d of the Contract, which provides the following:

"The contract and terms will be renewed every year and the payment schedule, price and paying principles concerning the next year will be redetermined every year".

Accordingly, the Panel needs to answer the following two questions to decide whether the ATF should pay school and housing fees to the Athlete up and until 2016:

- What was the Contract's initial duration?
- Was the Contract renewed at the end of its initial duration?

In the present case, both questions are interrelated and must be answered simultaneously.

To that respect, the Panel notes the following:

- The Contract was worded by the Athlete's father and therefore any ambiguity or lack of clarity has to be interpreted "*contra proferentem*", against the draft person, in that case against the Athlete;
- Article 10d of the Contract clearly indicates that the Contract is concluded for an initial period of 1 year and that its contractual terms not only need to be "*renewed*" each year by the ATF (i.e.: a decision needed to be taken on the Contract's continuation) but also to be "*redetermined*" (i.e. a decision needed to be taken on the Contract's contractual terms, which were to be reviewed) to remain valid;
- It was not demonstrated by the Appellant that the dates added on Mr Kaymak's copy of the Contract for the sole purpose of money transfer brought any change to Article 10d of the Contract or the Contract's duration in general. In addition, said copy of the Contract was never produced to the file (be it within the deadline

set out by article R56 of the CAS Code or after the expiration of said deadline) and must accordingly be disregarded by the Panel;

- In the context of the Athlete's transition from junior to senior division during this first contractual year, it made perfect sense - as explained during the hearing by the ATF - that the latter reserved itself the opportunity to review the Athlete's previous year's performances before engaging in a new contract;
- It had been clear to all parties since September 2013 - namely the beginning of the contractual relationship - that the Athlete's results until the end of that year were very important to determine her future career in the senior national team (since she would turn 18 on 23 July 2014), such selection being not automatic;
- The Athlete's results at the 2013 ETU in Portugal - where she did not win a medal - and at the 2013 National Senior Championships in Azerbaijan - where she lost her first contest and was subsequently eliminated, gave reasons to doubt her capacities to the head coach of the senior national team with respect to her selection in the senior national team;
- The 2013 National Senior Championships in Azerbaijan aimed at selecting the best Taekwondo athletes for the senior national team. Indeed, in a widely implemented practice within the ATF and other national Taekwondo federations around the world, the head coach of the senior national team normally selects medallists of the National Senior Championships and prosperous athletes to the senior national team;
- The explanation provided by the Athlete for her bad results at the 2013 National Senior Championships in Azerbaijan (injury and tiredness) were not considered as convincing and were not taken into consideration by the ATF when reaching a decision on her non-selection to the senior national team. Indeed, as explained by the ATF, the Athlete did not provide any sort of evidence prior to the event concerning any potential health problems (proof of injury or medical explanation for excessive tiredness);
- The Athlete did compete in open tournaments under her Turkish nationality while under contract with the ATF. The Panel however notes that it is unclear whether such participation received the prior approval of the ATF;
- The Contract was neither reviewed nor renewed by the ATF by September 2013 the latest and the Athlete could not prove otherwise.

For all these reasons, the Panel is convinced that the Contract was only concluded for an initial period of 1 year - namely from 13 September 2013 to 12 September 2014 - and that it needed to be renewed by the ATF to remain valid for another year (and so on). Yet, it was not renewed after its initial duration.

Since the amounts due in accordance with the Contract for housing and school fees for the year 2013-2014 (EUR 6'778.- + EUR 3'000.-) were rightfully paid by the ATF - which is admitted by the Athlete herself - no further amount is due to the Athlete in that respect.

Accordingly, the Panel dismisses all financial claims made by the Athlete for housing and school fees for any period subsequent to 12 September 2014.

For the sake of completeness, the Panel notes that the amount claimed by the Athlete for housing and school fees of EUR 46'800.- for a period of 3 years, i.e. EUR 15'600.- (EUR 12'600.- + EUR 3'000.-) per year, is under any circumstances not consistent with the amounts mentioned in the Contract for a single year (EUR 6778.- + EUR 3000.- = EUR 9778.-). However, this issue does not need to be discussed further since financial claims related to housing and school fees for any period subsequent to 12 September 2014 were dismissed entirely.

- EUR 300.- as medical treatment costs:

Article 9f) of the Contract provides the following with respect to the Athlete's health:

"f) To care for the Athletes state of health and injury, provide for the health expenses, not to use illegal considered substances and materials in medical and physical treatments of the athletes and to make her conscious of the matter and inform and warn about the matter".

The Panel notes that no evidence was provided in due course to the ATF demonstrating that the Athlete did, indeed, incur medical costs in the amount of EUR 300.-.

Besides, it is unclear to the Panel whether these costs are related to the alleged injury sustained during the 2013 National Senior Championships, to the injury sustained during training on 1 April 2014 ("*plantarfacialis*" injury) or to any other medical problem.

Accordingly, the Panel dismisses all financial claims made by the Athlete for medical treatment costs presumably incurred between 13 September 2013 and 12 September 2014.

- EUR 3'960.- as trainer and sports complex fee:

The amount claimed by the Athlete is detailed as follows in a letter dated 13 August 2014 and signed by Mr. Halil Ozduran, which was produced by the Appellant:

- Fees for sports hall and material: 12 months * EUR 165.- = EUR 1'980.-
- Trainer costs: EUR 165. - * 12 months = EUR 1'980.-.

Articles 9c and 9e of the Contract provides the following with respect to the Athlete's training:

"c) To arrange lessons, conferences, courses, tournaments in order to help the athlete improve her sports career when needed and in case of a request of the athlete and the request being approved, to give the necessary requirements and materials to participate in lessons, conferences, courses and tournaments organized inside or outside the country. (...)

e) To provide the athlete the materials and all general requirements for training and competitions".

The ATF explained both in its 18 May 2015 response and during the hearing that the Athlete was, from the beginning of the Contract and onwards, welcome:

- to attend the full time ATF training program in Azerbaijan;
- to visit the ATF's training venues in Azerbaijan.

The fact that the Athlete decided to remain in Cyprus to pursue her medical studies at the University of the Middle East does not imply that the ATF should indemnify her for training costs in Cyprus or elsewhere outside of Azerbaijan.

The Panel notes indeed that it was the Athlete's very own choice to do so and no clause in the Contract expressly specifies that specific training costs outside of Azerbaijan should be indemnified.

Besides, the Appellant did not specify whether the EUR 3'960.- were related to the 2013-14 year or to any subsequent period.

Accordingly, the Panel decides to dismiss all financial claims made by the Athlete for training costs incurred by her.

- EUR 3'900.- for the participation in tournaments at home and abroad:

The Athlete claims EUR 3'900.- for the participation in tournaments at home and abroad, without giving further details concerning these alleged expenses.

The ATF reminded both in its brief and during the hearing that it had no legal obligation to cover the Athlete's travel and accommodation expenses to participate in events in Azerbaijan and abroad, but that nonetheless it paid for the Appellant's and her brother's airline ticket and accommodation costs to participate in the National Senior Championships in Baku in December 2013.

The Panel notes that the Contract does not contain any specific clause obliging the ATF to indemnify the Athlete for participation in tournaments at home and abroad.

Besides, the alleged costs are not supported by evidence.

Accordingly, the Panel decides to dismiss all financial claims made by the Athlete for alleged costs related to participation in tournaments at home and abroad.

- EUR 50'000.- as moral indemnity:

The Appellant claims EUR 50'000.- as moral indemnity without providing any grounds for such claim.

The Panel reaches the conclusion:

- that the Contract was only concluded for a single one year period;
- that the ATF did not breach the Contract and fulfilled all of its financial obligations during that single year;
- that the Athlete did not prove that any discrimination of a kind prohibited by the Olympic Charter or the WTF Code of Ethics was committed against her by the ATF.

Besides, the Athlete does not detail the facts and legal grounds that could theoretically justify a moral indemnity in her favour in this particular case, respectively how the amount of EUR 50'000.- was calculated.

Accordingly, the Panel holds that there is no legal ground to justify a moral indemnity in this case and decides to dismiss all related financial claims made by the Athlete.

bc) Annulment of the “3 years period”

79. The Athlete seeks the annulment of the “3 year period” prohibiting her to compete for another national federation than the ATF.

80. Bye-law to Rule 41 of the Olympic Charter provides the following:

“1. A competitor who is a national of two or more countries at the same time may represent either one of them, as he may elect. However, after having represented one country in the Olympic Games, in continental or regional games or in world or regional championships recognised by the relevant IF [International Federation], he may not represent another country unless he meets the conditions set forth in paragraph 2 below that apply to persons who have changed their nationality or acquired a new nationality.

2. A competitor who has represented one country in the Olympic Games, in continental or regional games or in world or regional championships recognised by the relevant IF, and who has changed his nationality or acquired a new nationality, may participate in the Olympic Games to represent his new country provided that at least three years have passed since the competitor last represented his former country. This period may be reduced or even cancelled, with the agreement of the NOCs and IF concerned, by the IOC Executive Board, which takes into account the circumstances of each case.

3. (...).”

81. Article 4, explanation #1 of the WTF Competitions Rules and Interpretation entitled “holder of the nationality of the participating team” provides the following:

*“When a contestant is a representative of a national team, his/her nationality is decided by citizenship of the country he/she is representing before submission of the application to participate. Verification of citizenship is done by inspection of the passport. A competitor who is a national of two or more countries at the same time may represent either one of them, as he may elect. **However, after having represented one country in the Olympic Games, in Qualification Tournaments for Olympic Games, in continental or regional games or in world or regional championships Promoted or recognized by the WTF, he may not represent another country unless at least three (3) years have passed since the competitor last represented his former country. This period may be reduced or even cancelled, with the agreement of the NOCs and the WTF. The WTF may take disciplinary actions at any time against the athlete and his member national association that violates this article including but not limited to deprivation of the achievements. In case of an athlete aged 16 or less, this article shall not be applied unless there is an appeal from any of the two countries. In case of dispute, the WTF shall make evaluation and make a final decision. After the decision, no further appeal shall be acceptable.”***

82. The Athlete’s last participation for the ATF as an Azerbaijani national was at the National Senior Championships in Baku in December 2013.

83. In accordance with § 2 Bye-law to Rule 41 of the Olympic Charter and/or Article 4, explanation #1 of the WTF Competitions Rules and Interpretation, the 3 year period runs in the Appellant's case for another year, until December 2016.
84. With respect to the reduction of the three year transition period, the Panel notes that such reduction requires - as explained by the WTF - the formal approval of entities - such as both NOCs involved - which are third parties to these proceedings.
85. Accordingly, the Decision shall be upheld in this respect and the Appellant is invited to consult with the appropriate entities on that issue.

bd) Deliverance of the Kukkiwon Diploma

86. The Athlete seeks the deliverance of the Kukkiwon diploma.
87. Kukkiwon is a third party organisation - which is not party to this arbitration - that conducts standardized "Dan promotion tests" and issues black belt certificates to Taekwondo practitioners through member national associations of the WTF.
88. The WTF explained that it has no influence over the Kukkiwon diploma.
89. The Panel agrees with the WTF in this respect and, accordingly, the Decision shall be upheld and the Appellant invited to consult with the appropriate entities on that issue.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Nur Cemre Kaymak against the decision issued on 17 March 2015 by the World Taekwondo Federation is dismissed.
2. The decision issued on 17 March 2015 by the World Taekwondo Federation is confirmed.
3. All financial claims raised by Nur Cemre Kaymak against the Azerbaijan Taekwondo Federation are dismissed.
4. (...)
5. (...)
6. All other claims are dismissed.