Arbitration CAS 2016/A/4539 Dimitri Torbinskyi v. Football Union of Russia (FUR) & Rubin Kazan FC & CAS 2016/A/4545 Rubin Kazan FC v. Dimitri Torbinskyi & FUR, award of 11 January 2017

Panel: Mr Sofoklis Pilavios (Greece), Sole Arbitrator

Football
Termination of the employment contract
Applicable law
CAS power of review
Obligation to return the amount of compensation received in excess
Applicable interest rate

1. **There is no general rule that Article R58 of the CAS Code prevails over any other choice of law made by the parties. Article 187 of the Swiss Private International Law Act (PILA) allows parties to make any choice of national law they want and Article R58 of the CAS Code cannot override Article 187 of the PILA.**

2. **As repeatedly stated in CAS jurisprudence, by reference to Article R57 par. 1 of the CAS Code, the CAS appeals arbitration procedure entails a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the CAS panel to make an independent determination as to merits.**

3. **Both under the applicable Russian law and under the FUR and FIFA Regulations on the Status and Transfer of Players, a party is obliged to return to the other one the amount of compensation it has received in excess of the legal compensation determined under the FUR and FIFA rules.**

4. **If a CAS panel is unable to determine the applicable interest amount according to the applicable national law, in accordance with Article 16 of the Swiss PILA, which applies by analogy in arbitration proceedings in Switzerland, Swiss law shall apply instead of the applicable specific national law. As a result, the interest rate is to be determined in accordance with article 73(1) of the Swiss Code of Obligations, which stipulates that *"[w]here an obligation involves the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5% per annum"*.**

I. PARTIES

1. Mr Dimitri Torbinskyi (the "Player") is a professional football player of Russian nationality. He currently plays for FC Krasnodar.

2. Rubin Kazan FC ("Rubin Kazan" or the "Club") is a football club, with its seat in Kazan, Russia. Rubin Kazan is affiliated to the Football Union of Russia, which is a member of the Fédération Internationale de Football Association (FIFA).

3. The Football Union of Russia ("FUR") is the governing body of football in the Russian Federation and is a member of FIFA since 1912.

II. FACTUAL BACKGROUND

A. Background Facts

4. Below is a summary of the relevant facts and allegations based on the parties' written submissions. Additional facts and allegations found in the parties' written submissions and evidence may be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 24 July 2013, Rubin Kazan and the Player concluded an employment contract for the engagement of the Player as a professional football player from 24 July 2013 until 31 May 2015 (the "Contract").

6. According to the translation provided by Rubin Kazan, the Contract contained, *inter alia*, the following provisions:

"[…]

4.3 The CLUB has a right to terminate the Contract in its sole discretion on the 31st of May 2014 without any compensation to the PLAYER for such a termination and with no sanctions applied to the CLUB, whereas the CLUB shall inform the PLAYER about the termination by 30th of April 2014 included.

[…]

7.5 If the Contract is terminated by the CLUB without just cause and not in connection with the transfer of the PLAYER (including transfer on loan), the CLUB is entitled to pay the PLAYER compensation in the amount established in Annex 1 to the Contract.

[…]

9.1 Liability of the PARTIES is subject to the legislation of the Russian Federation and the regulations of FIFA, UEFA, RFU and RFPL.

9.2 Labor law is applicable to the PLAYER with consideration of special aspects established in federal laws and other normative acts.

9.3 In case of a disagreement between the Parties it is resolved within the CLUB.

9.4 If not resolved within the CLUB a disagreement between the Parties should be resolved in accordance with the regulations of FIFA, UEFA, RFU and RFPL.

[…]

Annex 1 to the Contract of employment […]

1. The remuneration of the Player for each full contractual year during the course of the contract with the Club is 1 500 000 (one million five hundred thousand) Euro which includes the amount of monthly salary established by the Contract. The Club pays the amount established in this paragraph during the course of the Contract monthly in the amount of:

- 1/12 (one-twelfth) part of 1 500 000 (one million five hundred thousand) Euro minus the sum of actually paid amount of the monthly salary for a given month.

[…]

4. The compensation to the Player from the Club in accordance with paragraph 7.5 of the Contract is set in the amount of the payment that the Club would have paid the Player according to paragraph 1 of this Annex if the Contract was not terminated and the Player would perform all his duties as they are set in the Contract, but this amount cannot exceed 1 500 000 (one million five hundred thousand) Euro, with the exception of the case when the Club terminates the Contract in accordance with the article 4.3 of the Contract.

5. All amounts set in this Annex are net, and have to be paid to the Player by the Club in full after the Club deducts all tax and fiscal payments in accordance with the legislation of Russian Federation, in rubles at the currency rate set by Central Bank of Russian Federation on the date of the actual payment".

7. On 28 April 2014, Rubin Kazan sent a notice informing the Player that it terminated the Contract with effect as of 31 May 2014, without any reference to reasons for the termination other that it was made according to clause 4.3 of the Contract.

8. On 16 June 2014, the Player filed a claim before the Dispute Resolution Chamber of the Football Union of Russia (the "FUR DRC") against Rubin Kazan, requesting compensation for the termination of the Contract

9. On 26 June 2014 the FUR DRC rendered its decision ordering Rubin Kazan to pay EUR 1,500,000 as compensation and imposing a ban on the registration of new players until payment of the abovementioned amount.

10. On 14 July 2014, Rubin Kazan filed an appeal against the decision of the FUR DRC before the Players' Status Committee of the Football Union of Russia (the "FUR PSC").

11. On 23 July 2014, the FUR PSC dismissed the appeal. Rubin Kazan announced an appeal with the Court of Arbitration for Sport ("CAS") and requested the FUR to stay the execution of the FUR DRC decision until its appeal was decided. The FUR did not respond and, as a result, Rubin Kazan paid to the Player the sum of EUR 1,500,000 in rubles on 29 July 2014 at the exchange rate of the Central Bank of Russia of that date.

12. On 29 July 2014, Rubin Kazan filed a statement of appeal with the Court of Arbitration for Sport ("CAS").

13. On 29 July 2015, the CAS rendered its decision in the abovementioned arbitration (CAS 2014/A/3686) between Rubin Kazan, the Player and the FUR. The CAS Panel held that Rubin Kazan could not invoke the termination right provided for under clause 4.3 of the Contract in good faith, as long as there were no indications that Rubin Kazan had any concerns regarding the Player's medical condition at that time. However, taking into account the actual loss incurred by the Player and the earnings he made from his employment with FC Rostov as a result of the termination of the Contract, the CAS Panel found that it was appropriate to reduce the compensation owed to the Player by Rubin Kazan by 15%. On that basis, the CAS partially upheld the appeal of Rubin Kazan and annulled the decision of the FUR PSC awarding to the Player a compensation amount of EUR 1,275,000 net (the "First CAS Decision").

14. On 11 August 2015, Rubin Kazan sent a notice to the Player requesting him to pay immediately the amount of EUR 225,000 in rubles at the rate of the Central Bank of the Russian Federation on the date of the "actual payment" and warning him that in the event the said amount was not paid it would bring the matter to the FUR Disciplinary Committee. The Player refused to make the abovementioned payment.

15. On 21 October 2015, Rubin Kazan lodged a claim with the FUR DRC requesting from the Player (a) reimbursement of the amount of EUR 225,000 paid in excess, on the grounds of unjust enrichment on the part of the Player, payable according to the exchange rate of the Central Bank of the Russian Federation on the effective date of payment and (b) payment of interest in the amount of 8,5% *p.a.* as of 11 August 2015 and until the date of effective payment.

16. The FUR DRC rendered its decision in the case with ref. nr. 264-15 on 4 December 2015, partially accepting the claim of Rubin Kazan (the "Appealed Decision"). According to the operative part of the Appealed Decision in the translation provided by Rubin Kazan, the FUR

DRC decided *"(…) 2. [a]ccording to the CAS decision on the case CAS 2014/A/3686, to oblige the professional footballer Torbinskiy D.E. to reimburse in favor of FC Rubin the extra paid compensation in the amount of 225 000 euro on the exchange rate fixed by CB of RF on 29 July 2014, within 14 days from the moment when the decision came into effect. 3. [t]o refuse FC Rubin in the satisfaction of the remaining part of its requirements toward the professional footballer Torbinskiy D.E. (…)" (sic).*

17. The grounds of the Appealed Decision were notified to the parties on 18 March 2016 and determined *inter alia* the following (in the translation provided by the Player):

"(…) the Court of Arbitration for Sport established the civil law nature of the compensation for early termination of employment agreed upon by the parties in the employment agreement; based on which the compensation amount was reduced by the CAS.

Considering above, the Chamber does not find any grounds to classify the paid amount as salary or equivalent payment. On the contrary, according to the Chamber, the compensation stipulated by the employment agreement is a strictly civil law matter. Moreover, another classification would create doubts as to the legality of the CAS resolution, which is unacceptable. The Chamber has no right to reassess the CAS findings.

Having established that the contractual compensation for unjustified termination of the employment agreement by the Club is a civil law matter, the Chamber concludes that the compensation amount is neither the salary nor equivalent payment; therefore, the limitations established by art. 137 of the Russian Federation Labor Code and clause 3 art. 1109 of the Russian Federation Civil Code to stipulate that the salary and equivalent payments shall not be subject to reimbursement as unjustified enrichment in this case shall not be applicable.

(…)

Considering that the Football Player obtained from the Club the compensation amount equivalent to EUR 1,500,000, which is EUR 225,000 higher than established by the CAS resolution dated July 29, 2015, the Chamber believes that the specified amount was finally unjustifiably acquired by the Football Player.

(…)

Based on the above, the Chamber concludes that the Club's claim for reimbursement of overpaid compensation on the amount of EUR 225,000 is justified. At the same time the Chamber considers that the reimbursement requirement shall be applicable only to the amount which was overpaid to the Football Player; therefore, payment shall be made in RUB according to the exchange rate established by the Russian Federation Central Bank as of the date when the compensation was paid by the Club, i.e. July 29, 2014.

Additionally, according to the Chamber, the CAS resolution dated July 29, 2015 on case CAS 2014/A/3686 which reduced the amount of compensation earlier determined by the resolutions of the Chamber and the Committee establishes the need for reimbursement of overpaid amount and must be duly fulfilled in the entire scope. Another interpretation, including overly formal approach, will be a serious breach of the cornerstone principles of the entire current system applied for resolution of disputes between the entities in the football sphere".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 7 April 2016, the Player submitted a statement of appeal in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code") to the CAS, challenging the Appealed Decision (the appeal was registered in the CAS roll as case CAS 2016/A/4539). With his statement of appeal, the Player also requested that the appeal be submitted to a Sole Arbitrator in accordance with Article R50 of the Code.

19. On 8 April 2016, Rubin Kazan also submitted a statement of appeal in accordance with Articles R47 and R48 of the Code to the CAS, challenging the Appealed Decision (the appeal was registered in the CAS roll as case CAS 2016/A/4545). It also requested that its appeal be submitted to a Sole Arbitrator in accordance with Article R50 of the Code.

20. By letter of 20 April 2016, and in view of the agreement of Rubin Kazan and the Player, the CAS Court Office informed the parties that the procedures CAS 2016/A/4539 and CAS 2016/A/4545 would be consolidated.

21. On 28 April 2016, the CAS Court Office informed the parties that, in view of the relevant requests of Rubin Kazan and the Player, the consolidated procedures would be submitted to a Sole Arbitrator.

22. On 29 April 2016, the Player filed his appeal brief in the procedure CAS 2016/A/4539 requesting from CAS that:

"1) The appeal (…) is upheld;

2) The decision issued by NDRC on 4 December 2015 is annulled and set aside because the NDRC does not have jurisdiction to award such payment;

or alternatively, if the CAS recognises that NDRC has jurisdiction to consider such disputes

The decision issued by NDRC on 4 December 2015 is annulled and set aside because due to the fact that requested compensation cannot be reimbursed from the Player according to Russian legislation.

3) The Russian Football Union and Football Club "Rubin" shall bear all the costs incurred with the present procedure;

4) The Russian Football Union and Football Club "Rubin" shall pay to the Appellant a contribution towards its legal and other costs, in an amount to be determined at the discretion of the Panel".

23. On 2 May 2016, Rubin Kazan filed its appeal brief in the procedure CAS 2016/A/4545 requesting from CAS that:

"I. The appeal filed by Municipal Autonomous Institution Football Club "Rubin" is upheld;

II. The decision issued by the Dispute Resolution Chamber of the Football Union of Russia in the case ref. 264-15 on 4 December 2015 (Challenged Decision) is annulled in part and replaced;

III. Dmitri Yevgenyevich Torbinskyi is ordered to pay Municipal Autonomous Institution Football Club "Rubin" the amount of EUR 225,000 (two hundred twenty five thousand Euros) in Rubles at the exchange rate Euros/Rubles fixed by the Central Bank of Russia and on the date of such effective payment (and not at the exchange rate on 29 July 2014);

IV. On the amount to be paid by Dmitri Yevgenyevich Torbinskyi under point III. above, interests shall be calculated pursuant to article 395 CC RF starting from 11 August 2015 until the date of effective payment;

V. Dmitri Yevgenyevich Torbinskyi and the Football Union of Russia shall bear all the costs of this arbitration;

VI. Dmitri Yevgenyevich Torbinskyi and the Football Union of Russia shall jointly and severally compensate Municipal Autonomous Institution Football Club "Rubin" for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the Panel".

24. On 27 May 2016, the CAS Court Office informed the parties that Mr Sofoklis P. Pilavios, attorney-at-law in Athens, Greece, had been appointed as Sole Arbitrator to decide the present matters.

25. On 8 June 2016, Rubin Kazan filed its answer in the procedure CAS 2016/A/4539 in accordance with Article R55 para. 1 of the Code requesting the CAS to rule that:

"I. The appeal filed by Dimitri Yevgenyevich Torbinskyi and enrolled in the procedure CAS 2016/A/4539 is dismissed;

II. For the sake of completeness, the decision issued by the Dispute Resolution Chamber of the Football Union of Russia in the case no. 264-15 (the "Challenged Decision") is annulled in part and replaced as requested by Municipal Autonomous Institution Football Club "Rubin" by its Appeal Brief in the consolidated procedure CAS 2016/A/4545;

III. Dimitri Yevgenyevich Torbinskyi shall bear all the costs of this arbitration;

IV. Dimitri Yevgenyevich Torbinskyi shall compensate Municipal Autonomous Institution Football Club "Rubin" for the legal and other costs incurred in connection with this arbitration, in an amount to be determined at the discretion of the Panel".

26. On 8 June 2016, the Player filed his answer in the procedure CAS 2016/A/4545 in accordance with Article R55 para. 1 of the Code requesting the CAS:

"1) To dismiss the appeal of Football Club "Rubin";

2) To order to the Russian Football Union and Football Club "Rubin" to bear all the costs incurred with the present procedure;

3) To order to the Russian Football Federation and Football Club "Rubin" to pay to the Appellant a contribution towards its legal and other costs, in an amount to be determined at the discretion of the CAS".

27. On 9 June 2016, the CAS Court Office invited the parties to inform the CAS whether they prefer a hearing to be held in these matters.

28. On 9 June 2016, the Player informed the CAS Court Office of his request to hold a hearing in these matters and on 15 June 2016, Rubin Kazan informed the CAS Court Office that it did not consider holding a hearing in these matters necessary.

29. On 4 July 2016, the CAS Court Office informed the parties that the Sole Arbitrator has decided to hold a hearing in these matters.

30. On 11 July 2016, the CAS Court Office informed the parties that the hearing will be held in Lausanne on 26 July 2016.

31. On 18 July 2016, the CAS Court Office issued an order of procedure, which was signed and returned to the CAS on 18 July 2016 by the Player (with an amendment regarding the matter of the CAS jurisdiction stating that *"CAS has no competence to consider the appeal filed by the Club in respect of Challenged Decision, as the NDRC was not proper jurisdictional body to resolve this dispute"*), and on 25 July 2016 by Rubin Kazan under condition that the amount in dispute is EUR 225,000 plus interests to be calculated according to article 395 of the Russian Civil Code as of 11 August 2015 and until the date of effective payment. The Football Union of Russia did not sign and return the order of procedure.

32. On 26 July 2016, a hearing was held for these matters in Lausanne, Switzerland. The Player was represented by Mr Yuri Zaitsev and Ms Darina Nikitina, attorneys-at-law in Moscow, Russia. Rubin Kazan was represented by Mr Luca Tettamanti, counsel and Mr Konstantin Ivanov, head of its legal department, whereas Mr Artem Zhuravlev assisted as an interpreter. Prof. Nikita Lyutov, an expert on Russian law summoned by the Player, also appeared at the hearing by skype conference. The Football Union of Russia did not make any written submissions neither did it take part in the hearing.

33. At the end of the hearing, the Player and Rubin Kazan confirmed that they had no objections as to the way the proceedings had been conducted so far and that their right to be heard has been respected.

IV. SUBMISSIONS OF THE PARTIES

34. The following outline of the parties' positions is illustrative only and does not necessarily comprise every submission advanced by the parties. The Sole Arbitrator has nonetheless

carefully considered all the submissions made by the parties, whether or not there is specific reference to them in the following summary.

35. The Player's submissions, in essence, may be summarized as follows:

Appeal of the Player against Rubin Kazan and FUR (CAS 2016/A/4539)

- The subject matter of the dispute at hand is not a dispute on contractual stability. At the heart of the dispute lies the reimbursement of the amount of compensation paid in excess of the amount determined by the CAS in case CAS 2014/A/3686.

- The claim of Rubin Kazan for reimbursement of the amount in dispute (EUR 225,000) was dismissed by the CAS Panel in the abovementioned arbitration.

- The FUR DRC is competent to hear disputes regarding a breach of contractual stability. According to the labour law of the Russian Federation (article 31 of the Labour Code), disputes on reimbursement of damages to the employer are heard exclusively by Russian courts. The FUR DRC has no jurisdiction over a dispute on the reimbursement of overpaid compensation. Hence, the Appealed Decision is null and void.

- The amount of compensation paid by Rubin Kazan is governed by Russian labour and not civil law.

- The provision of article 137(4) of the Russian Labour Code dictates that Rubin Kazan is not entitled to request the return of excessively paid compensation to an employee.

Appeal of Rubin Kazan against the Player and FUR (CAS 2016/A/4545)

- The dispute between the parties concerning the reimbursement of the overpaid sum of compensation is qualified by the Russian Labour Code (articles 382, 391) as an individual labour dispute, being the case of monetary damage made by the employee to the employer, which is under the exclusive jurisdiction of Russian ordinary courts. As such, the CAS has no competence to consider the appeal of Rubin Kazan, as the FUR DRC had not the power to issue the Appealed Decision.

- The CAS award in case CAS 2014/A/3686 did not order the reimbursement of any sum paid in excess of EUR 1,275,000 and in fact dismissed the relevant claim as inadmissible.

- Following the logic of Rubin Kazan, the Player has suffered significant damage as the amount he actually received on 29 July 2014 (RUB 71,219,850 corresponding to EUR 1,500,000 at a rate of EUR 1/RUB 47.47) is far less than the one he would have received from enforcing the CAS award and receiving the payment of EUR 1,275,000 at a later date, after 4 June 2015 (when EUR 1,275,000 would correspond to RUB 75,365,250 at an exchange rate of EUR 1/RUB 59,11 on 4 June 2015).

- The Appealed Decision is wrong to determine that the payment of compensation to the Player is of civil nature. The payment at hand corresponds to terminal wages, which according to article 178 of the Russian Labour Code is an amount payable to the employee at the day of his dismissal.

- It is impossible for the employer to request reimbursement of overpaid wages from the employee as none of the conditions set out under article 137(4) of the Russian Labour Code is met in this matter. Neither do the provisions of the Russian Civil Code on unjustified enrichment provide for any legal basis for the reimbursement of the amount in dispute, as wages and salary payments are exempt from the scope of application of article 1109 of the Russian Civil Code on unjust enrichment.

- The calculation of the amount in dispute in the exchange rate advanced by Rubin Kazan (*i.e.* in the rate of the date of the recovery and not of the date of the initial payment) would result in unjustified enrichment of the club. Therefore, the CAS shall consider the amount of money actually received by the Player on 29 July 2014.

- No interest is payable on the amount in dispute and the relevant request of Rubin Kazan shall be dismissed as the legal basis advanced by the club (article 395 of the Russian Civil Code) does not apply to labour related disputes. Moreover, CAS award 2014/A/3686 did not compel the Player to return the amount of EUR 225,000 and, as a result, there was no legal basis for the club to recover the amount and the Player was under no legal obligation to reimburse it.

36. The submissions of Rubin Kazan, in essence, may be summarized as follows:

Appeal of the Player against Rubin Kazan and FUR (CAS 2016/A/4539)

- The Player knowingly omits that the decision in the case CAS 2014/A/3686 dismissed the request of Rubin Kazan for the reimbursement of the excessively paid compensation on procedural grounds (the internal remedies were not exhausted) and not on the merits.

- The FUR DRC is competent to resolve disputes between FUR members, particularly disputes on contractual stability, including inevitably all relevant matters, such as the issue at stake here. In addition, FUR members are prevented from taking disputes to Russian state courts pursuant to FUR statutes, which was confirmed in para 58 of the decision in CAS 2014/A/3686.

- The Player advances the argument of the alleged impossibility of repayment of overpaid compensation in bad faith, as said argument was never used by the Player in the proceedings before the FUR DRC. Moreover, the Player knowingly changes the core of the dispute as he qualifies the amount in dispute as reimbursement of damages when he attempts to challenge the FUR jurisdiction and as overpaid salary reimbursement in the merits.

- The CAS Panel in case CAS 2014/A/3686 clearly determined that the compensation paid to the Player is of civil nature. In fact, the payment of said compensation is regulated by article 9 of the FUR Regulations on the Status and Transfer of Players in the event of illegal unilateral termination of a contract and, as such, the amount paid is no retirement pay. Therefore, the labour law provisions advanced by the Player are not applicable in this dispute. Further than that, the labour law provisions invoked do not apply as the EUR 1,500,000 compensation is neither salary nor retirement payment, which are the conditions for the application of article 137(4) of the Russian Labour Code.

Appeal of Rubin Kazan against the Player and FUR (CAS 2016/A/4545)

- Rubin Kazan paid to the Player the total amount of compensation for illegal termination on 29 July 2014 and before the CAS issued its award in case CAS 2014/A/3686, *i.e.* EUR 1,500,000, in rubles at the exchange rate of 29 July 2014 (EUR/RUB 1/47,7927), which amounts to RUB 71,219,850.

- The Appealed Decision was wrong to establish that the overpaid amount of EUR 225,000 is to be reimbursed at the exchange rate of 29 July 2014. No legal or factual grounds are advanced by the FUR DRC to support such conclusion. In addition, the significant depreciation suffered by the Russian ruble (exchange rate on 30 April 2016 was EUR/RUB 1/75,21370), would mean that should Rubin Kazan receive now EUR 225,000 paid in rubles in the 29 July 2014 exchange rate, it would suffer a 37% loss on the amount it actually paid to the Player on 29 July 2014.

- Both the CAS Panel in CAS 2014/A/3686 and the FUR DRC determine that the compensation to be paid for the illegal termination of the Contract, and therefore also the consequent reimbursement of the part paid in excess, are of civil nature and, as a result, Russial labour law does not apply.

- Rubin Kazan invokes provisions of the Russian Civil Code as well as other authorities to advance the argument that courts do not have competence to determine the applicable exchange rate when deciding the issue of recovery of monetary amounts. The date and exchange rate in dispute are governed by the relevant legal provisions or by the parties' mutual agreement, if any. If neither of the above is the case, then the courts in accordance with article 317(2) of the Russian Civil Code are to determine that the applicable exchange rate is that of the effective date of payment. As a result, either under annex 1 clause 5 of the Contract, or under article 317(2) of the Russian Civil Code, the Player is to reimburse the amount of EUR 225,000 in the exchange rate applicable on the date of the actual payment, i.e. when the reimbursement is received by Rubin Kazan.

- According to article 395(1) of the Russian Civil Code, interest is payable by the Player on the amount of EUR 225,000 as of 11 August 2015, which is the date when the Player was formally notified of the CAS award in the matter CAS 2014/A/3686 and of its obligation to return the amount paid in excess to Rubin Kazan.

V. JURISDICTION

37. The jurisdiction of CAS, derives from article 47 of the FUR Statutes, which states (in a translation provided by the Player) that *"In accordance with the relevant provisions of the FIFA, UEFA and FUR Statutes, any appeal against final and legally binding decisions of the FIFA, UEFA and FUR shall be heard by the CAS (…)"* and from Article R47 of the CAS Code.

38. In particular, article 53 of the FUR Dispute Resolution Regulations on appeals against FUR decisions provides that decisions of the FUR PSC or decisions of the FUR DRC rendered in the matters set out in article 13(1) lit. b, c, d, f, h of the FUR Regulations can be appealed to the Court of Arbitration for Sport in Lausanne (Switzerland) within 21 calendar days following the receipt of grounds of the decision.

39. In this context, according to the Appealed Decision the FUR DRC is competent to hear the dispute at hand according to article 13(1) lit. c of the FUR Regulations and, as a result, the Appealed Decision is final and can be directly appealed before CAS under article 53 of the FUR Regulations.

40. The jurisdiction of CAS is further confirmed by the order of procedure duly signed by Rubin Kazan.

41. The Player, however, challenges the jurisdiction of CAS to hear the appeal of Rubin Kazan against the Appealed Decision in his answer submitted in case CAS 2016/A/4545 and in the order of procedure signed by the Player on 18 July 2016, where he expressly states that *"CAS has no competence to consider the appeal filed by the Club in respect of Challenged Decision, as the NDRC was not proper jurisdictional body to resolve this dispute"*. In this respect, the Sole Arbitrator notes that the Player's challenge to the CAS jurisdiction to hear the appeal of Rubin Kazan is in sheer contradiction with the fact that the Player himself filed another appeal against the same Appealed Decision in the matter CAS 2016/A/4539, which was consolidated with case CAS 2016/A/4545. In particular, in the statement of appeal submitted by the Player on 7 April 2016, he expressly acknowledges that CAS has jurisdiction to hear his appeal against the Appealed Decision on the basis of the abovementioned provisions of the FUR Regulations and FUR Statutes (pp. 2-3 of the Player's statement of appeal of 7 April 2016). Notwithstanding the above, the Sole Arbitrator notes that the purported lack of competence of the body that rendered the Appealed Decision does not constitute valid reason to challenge the jurisdiction of CAS to hear an appeal, but only reason for the appeal being upheld[1]. According to Article R27 of the CAS Code, CAS jurisdiction is established in cases of appeals against a decision rendered by a federation, association or sports-related body where the

[1] Strangely enough, the Player shares this opinion with the Sole Arbitrator, as it appears from para 38 of its answer of 8 June 2016 in case CAS 2016/A/4545, where he cites the relevant extract from MAVROMATI/REEB, The Code of the Court of Arbitration for Sport. Commentary, Cases and Materials, Kluwer Law 2015, p. 386: *"A decision is further considered as null and void if it was rendered by a body (e.g. the federation's executive committee) which had not the power to issue such decision according to the applicable rules"*.

statutes or regulations of such bodies specifically so provide, a fact which is not disputed by the Player.

42. As such, the Player's challenge against the jurisdiction of CAS to hear the appeal filed by Rubin Kazan must fail.

43. It follows that CAS has jurisdiction to decide on the present dispute.

VI. ADMISSIBILITY

44. Both appeals were filed within the 21-day time limit set by article 53 of the FUR Dispute Resolution Regulations on appeals against FUR decisions. The appeals complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fees.

45. It follows that both appeals are admissible.

VII. APPLICABLE LAW

46. Article R58 of the Code provides as follows:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

47. In line with the findings of the CAS Panel in case CAS 2014/A/3686, which was decided between the same parties dealing with a dispute arising from the same Contract, the Sole Arbitrator notes that the Contract includes a number of provisions which directly make reference to the rules and regulations and national laws which the parties deem as applicable to the present dispute.

48. In this respect, the preamble of the Contract states that *"the present Contract is governed by the legislation of Russian Federation, rights and obligations of the Parties are regulated by the labour legislation and other laws and regulations of Russian Federation which contain labour law norms, by collective contracts, agreements and other local normative acts adopted by the CLUB, subject to regulations of FIFA, UEFA and Russian Football Union"*. Furthermore, clause 9 of the Contract provides that *"9.1. Liability of the PARTIES is subject to the legislation of the Russian Federation and the regulations of FIFA, UEFA, FUR and RFPL. 9.2. Labour law is applicable to the PLAYER with consideration of special aspects established in federal laws and other normative acts. 9.3. In case of a disagreement between the Parties it is resolved within the CLUB. 9.4. If not resolved within the CLUB a disagreement between the Parties should be resolved in accordance with the regulations of FIFA, UEFA, FUR and RFPL. (…) 9.7. Issues not*

provided for in the Contract are subject to the legislation of the Russian Federation and the regulations of the CLUB, FIFA, UEFA, FUR, RFPL".

49. The Sole Arbitrator concurs with the findings of the CAS Panel in the aforementioned case that there is no general rule that Article R58 of the CAS Code prevails over any other choice of law made by the parties. Article 187 of the PILA allows parties to make any choice of national law they want and Article R58 of the CAS Code cannot override Article 187 of the PILA.

50. Taking into account the provisions of the Contract cited above, the Sole Arbitrator finds that the clear reference to the legislation of the Russian Federation in all but one of the above provisions as well as in the preamble constitutes a clear choice of Russian law on behalf of the parties to govern the merits of the dispute. Clause 9.4, which does not mention any national law, should be interpreted to refer to procedural questions only and not to the merits of a dispute arising from the Contract (in light of its wording *"resolved in accordance with the regulations of FIFA, UEFA, FUR and RFPL"*), considering also that it would be very unlikely for clause 9.4 to be intended to cover the merits of the dispute, in open contradiction to the clear references to the contrary included in the preamble and, to some extent, to clauses 9.1 and 9.7.

51. As a result, the Sole Arbitrator is content to confirm the position of the CAS Panel in case CAS 2014/A/3686, namely that Russian law is applicable together with FIFA and FUR regulations. As to the matter of the priority of one set of rules/laws over the other, the Sole Arbitrator shall leave this matter open because, as it will be clear from the discussion on the merits of the case, there is no contradiction or conflict between the applicable sets of rules/laws, which are relevant for the resolution of this dispute, as to the determination of the merits of these matters regarding the substantive legality of the Appealed Decision.

VIII. MERITS

52. According to Article R57 par. 1 of the Code, the Sole Arbitrator has *"full power to review the facts and the law"*. As repeatedly stated in CAS jurisprudence, by reference to this provision the CAS appeals arbitration procedure entails a *de novo* review of the merits of the case, and is not confined merely to deciding whether the ruling appealed was correct or not. Accordingly, it is the function of the Sole Arbitrator to make an independent determination as to merits (see CAS 2007/A/1394).

53. The Sole Arbitrator notes that the following matters are in principle disputed between the parties: (a) the jurisdiction of the FUR DRC to issue the Appealed Decision, (b) whether the Player is under the obligation to return the amount of EUR 225,000 to Rubin Kazan and, if yes, (c) what the applicable exchange rate is and (d) if interest is to be imposed on the amount due.

A. Jurisdiction of the FUR DRC to issue the Appealed Decision

54. The Player states that the subject matter of the dispute at hand is not related to the maintenance of contractual stability within the football family, but concerns the return to Rubin Kazan of the amount of compensation received in excess from him. Therefore, and in light of article 13(1) lit. c of the FUR Regulations (*"(…) disputes: (…) c. on the breach of the conditions of players' employment contracts (…)"*), a provision which constitutes an exhaustive list of matters falling in the jurisdiction of the FUR bodies, the Player argues that the FUR DRC has no competence to hear the statement of claim of Rubin Kazan of 21 October 2015.

55. On the contrary, the Player argues that the Russian state courts are competent to entertain and decide the claim of Rubin Kazan that lies on the basis of this arbitration. In this respect, the Player invokes article 381 of the Russian Labour Code[2].

56. The Sole Arbitrator finds that the Player's arguments must be dismissed for several reasons.

57. On the one hand, the Sole Arbitrator notes that the FUR DRC that entertained the Player's initial claim of 16 June 2014 and decided that Rubin Kazan terminated the Contract without just cause awarding the Player a compensation of EUR 1,500,000 for the unjust termination, is the same body that issued the Appealed Decision ordering the return of the amount of EUR 225,000 paid in excess by Rubin Kazan to the Player, after the first FUR DRC (and eventually the final FUR PSC) decision was partially annulled by the CAS in case CAS 2014/A/3686. Quite tellingly, the subject matter of both disputes is the enforcement of the compensation payable and/or the recovery of the compensation paid in excess, respectively, by Rubin Kazan to the Player under the relevant provisions of the Contract.

58. On the other hand, the Sole Arbitrator finds that the Player did not provide enough evidence and arguments to establish his position with respect to the competence of the Russian state courts to entertain and decide the claim of Rubin Kazan against the Player for the recovery of the amount paid in excess, particularly in view of the FUR Regulations that expressly prohibit recourse to Russian state courts to all FUR members. The Player did not dispute the existence of said prohibition, neither did he provide any reasons as to how Rubin Kazan would be able to make its way around it and bring the matter before the Russian state courts, should the claim in dispute indeed fall within their competence.

59. Consequently, the Sole Arbitrator considers that the FUR DRC had jurisdiction to issue the Appealed Decision.

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[2] Said provision stipulates that *"An individual labour dispute is an unresolved disagreement between an employer and worker on issues of the application of the labour legislation and other legal regulatory acts containing labour law norms, collective negotiations and other agreements, local normative acts, or labour contracts (including those relating to establishing or changing specific conditions of labour), on which a petition is made to the individual labour dispute review body. The following shall be considered individual labour disputes: a dispute between an employer and person who previously had labour relations with that employer, or a person who wishes to enter into a labour contract with the employer, in the event the employer declines to enter into such a contract".*

B. Is the Player obliged to return the amount of EUR 225,000 to Rubin Kazan, as compensation paid in excess?

60. The Player argues that the monetary claim of Rubin Kazan before the FUR DRC and its subsequent appeal are devoid of legal reasoning and are based solely on a free interpretation of the CAS award in case CAS 2014/A/3686. The position of the Player is that the abovementioned CAS award did not conclude that the amount in excess of the final amount of compensation determined (EUR 225,000) should be reimbursed by the Player to Rubin Kazan.

61. The Player further submits that neither the labour legislation of the Russian Federation nor the FUR Regulation provide for any valid legal basis for Rubin Kazan to recover the amount paid in excess to the Player. In particular, the Player argues that since there is a lacuna in the FUR Regulations as to the reimbursement of overpaid compensation, it should be filled by the relevant Russian labour law provisions. In this respect, the Player invokes article 178 of the Russian Labour Code, which provides in its relevant section (in a free translation provided by the Player) that *"[a] labour contract or a collective contract may stipulate other instances of the payment of severance allowances and establish higher amounts of severance allowances, except as provided in the present Code"* and article 137(4) of the Russian Labour Code, which states (in a free translation provided by the Player) that *"[a] wage overpaid to an employee (including during the improper application of the labour legislation and other normative legal acts containing labour law norms) may not be recovered from him, with the exception of instances: (…) – of an accounting error; - if an authority for the review of individual labour disputes recognizes the employee's fault in the non-fulfillment of labour norms (the third part of Article 155 of the present Code) or a stoppage (the third part of Article 157 of the present Code); (…) – if the wage was overpaid to the employee in connection with his illegal actions established by a court"* (emphasis added by the Sole Arbitrator).

62. Lastly, the Player's position is that the matter at hand is governed by the labour legislation and that the civil law provisions advanced by Rubin Kazan do not apply. However, the Player submits that even under the Russian Civil Code, Rubin Kazan has no valid legal grounds to request reimbursement of the amount paid in excess, as article 1109 of the Russian Civil Code on unjust enrichment that is not subject to return provides that (in a free translation provided by the Player) *"[t]he following property shall not be subject to return as unjust enrichment: 1. (…) 3. wages and salaries and payment equated therewith, pensions, benefits, scholarships, the redress of injury inflicted on human life or health, alimony and other pecuniary sums given to an individual as means of subsistence in the absence of dishonesty on his part and of calculation error"* (emphasis added by the Sole Arbitrator).

63. On the contrary, the position of Rubin Kazan is that the legal basis of the compensation awarded to the Player is article 9(2) of the FUR Regulations on the Status and Transfer of Players, which governs cases of termination of contracts without just cause before the expiry of their term and provides – similarly to Article 17(1) of the FIFA Regulations on the Status and Transfer of Players – that *"the footballer has right to receive compensation for such termination in the amount fixed by the employment contract. In case the amount of compensation is not fixed by the employment*

contract, it is fixed by the Dispute Resolution Chamber (…). The Dispute Resolution Chamber in this case considers the next criteria: (…)".

64. Further than that, Rubin Kazan argues that the authorities, legal provisions and case-law invoked by the Player do not apply in the matter at hand as they do not take into consideration the specificity of professional football and its particularities in relation to a "normal" employment-related dispute. Moreover, Rubin Kazan argues that the dispute is of a civil and not labour law nature, as it was correctly determined by the award in case CAS 2014/A/3686 and confirmed in the Appealed Decision. Therefore, and considering additionally that the payment of EUR 1,500,000 is not salary or retirement payment or dismissal wages or terminal wages or severance pay, as submitted by the Player at various points of his submissions, article 137(4) of the Russian Labour Code invoked by the Player cannot apply in this matter.

65. In light of the relevant submissions of the parties and the content of the award in case CAS 2014/A/3686, it is undisputed that the CAS Panel in the aforementioned arbitration did not admit the claim of Rubin Kazan for the recovery of the amount of compensation paid in excess on the grounds of it being inadmissible (due to the fact that the internal remedies were not exhausted) and before judging on the merits. As a result, that CAS award does not provide any conclusions as to the merits of the question whether Rubin Kazan is entitled to the recovery of the amount in dispute.

66. Secondly, as to the much debated question of whether the dispute at hand is of civil or labour law nature, which is disputed between the parties, the Sole Arbitrator does not need to decide whether this is a case of civil or labour law under the Russian legislation. Rubin Kazan and the Player have both submitted that Russian law supports their respective positions as to the validity or invalidity of the claim for the recovery of EUR 225,000 from the Player. The Sole Arbitrator has carefully reviewed the parties' submissions, case-law of Russian state courts and the expert reports filed on Russian law and finds the following:

(a) The provisions of the Russian labour law submitted by the Player do not prohibit a valid claim on the part of Rubin Kazan for the recovery of the amount in dispute. The amount of EUR 225,000 requested by Rubin Kazan is in fact part of the compensation it paid to the Player for the illegal termination of the Contract, in accordance with the FUR PSC decision of 23 July 2014. Hence, it constitutes no "overpaid wages" in the wording of article 137(4) of the Russian Labour Code invoked by the Player and, as a result, the recovery prohibition provided in that article does not apply in the amount requested by the Club. In this respect, the Sole Arbitrator is content to confirm the identical view expressed by the FUR DRC in the Appealed Decision.

(b) The same conclusion holds true in the case of article 1109 of the Russian Civil Code governing unjust enrichment categories not being subject to return. The Player submits that said article prevents Rubin Kazan from recovering the amount in dispute. However, the clear wording of the provision (referring to *"wages and salaries and payment equated therewith"*) does not leave much room for the interpretation advanced by the Player.

(c) Likewise, the provision on unjust enrichment invoked by Rubin Kazan (article 1102 of the Russian Civil Code[3]), allows its claim for restitution since after the CAS award in case 2014/A/3686 the Player has no valid legal reason for the retention of the enrichment, *i.e.* the amount in dispute of EUR 225,000.

67. On account of the above, the Sole Arbitrator finds that Rubin Kazan has a valid claim against the Player for the restitution of the amount paid in excess of the compensation of EUR 1,275,000 determined by the CAS in its award in case 2014/A/3686, which is now final and binding, *i.e.* of EUR 225,000. This is the position under both Russian labour and civil law. Consequently, the Sole Arbitrator finds that he does not need to decide whether this is a case of civil or labour law under the Russian legislation.

68. The validity of the claim of Rubin Kazan for the restitution of EUR 225,000 from the Player holds even more true under the FUR and FIFA Regulations, which are also applicable together with Russian law, in accordance with the relevant provisions of the Contract as set out in detail in the section of this award on the applicable law. Article 9(2) of the FUR Regulations on the Status and Transfer of Players stipulates that in the event of illegal termination of a contract, compensation is payable in the amount fixed by the employment contract or, in the absence of a relevant provision, by the FUR DRC. Similarly, Article 17 of the FIFA Regulations on the Status and Transfer of Players (2016 version) provides that the party in breach shall pay compensation which is calculated with due consideration for several objective criteria as set out in detail in that provision. It is undisputed that the maintenance of contractual stability between professionals and clubs in football has been one of the main principles of FIFA and is set out in the relevant provisions of the FIFA Regulations on the Status and Transfer of Players since 2001. It is also common ground that all the members of the football family ought to respect the decisions of the competent judicial bodies and act accordingly. In the matter at hand, the definitive amount of compensation owed to the Player by Rubin Kazan due to illegal termination of the Contract was determined by the CAS Panel in the award in case 2014/A/3686, which is now final and binding. In that award, the CAS Panel partially upheld the appeal by Rubin Kazan and reduced the amount of compensation initially awarded by the FUR DRC and PSC by EUR 225,000. In this context, the Sole Arbitrator finds that, as a matter of principle, all final and binding decisions of judicial bodies within the football family are to be respected by the parties. This conclusion is especially true with respect to CAS decisions, particularly under the light of Article 68(1) of the FIFA Statutes (version 2015), which stipulates that *"[t]he Confederations, Members and Leagues shall agree to recognise CAS as an independent judicial authority and to ensure that their members, affiliated Players and Officials comply with the decisions passed by CAS"*.

69. Notwithstanding the fact that the CAS award in case 2014/A/3686 did not admit the claim of Rubin Kazan for restitution of the amount of the compensation paid in excess, because

[3] Rubin Kazan provided the following free translation of the provision: *"1. The person who without grounds set by the law, other legal acts or transaction has acquired or saved property (acquirer) on the account of another person (the victim), shall return the latter unjustly acquired or saved property (unjust enrichment) […]"*.

before filing the request Rubin Kazan had not exhausted the internal remedies available to it, both the CAS award in case 2014/A/3686 and the Appealed Decision which is based to that award – in essence – oblige the Player to return to Rubin Kazan the amount he received in excess of the legal compensation determined under the FUR and FIFA rules.

70. As a result, the Sole Arbitrator finds that, both under Russian law, civil or labour, and under the FUR and FIFA Regulations, the Player is obliged to return the amount of compensation paid in excess of EUR 1,275,000, *i.e.* the amount of EUR 225,000, to Rubin Kazan.

C. What is the applicable exchange rate?

71. In dispute between the parties is also the determination of the date of the exchange rate EUR/RUB to be used to calculate in rubles the amount of EUR 225,000 payable to Rubin Kazan by the Player.

72. The reason behind the parties' disagreement is the strong depreciation of the Russian ruble after 2014, which has led the Player and Rubin Kazan to argue that applying the exchange rate of 29 July 2014 (which is the date when the payment of EUR 1,500,000 was made to the Player) or the rate of the date when the amount of EUR 225,000 is to be returned to Rubin Kazan, respectively, places an excessive burden on the one party over the other rendering the one party richer at the expense of the other.

73. For instance, Rubin Kazan argues that the Appealed Decision was wrong to establish that the amount of EUR 225,000 is to be reimbursed at the exchange rate EUR/RUB of 29 July 2014 that being the date of the initial payment of the full compensation amount of EUR 1,500,000 to the Player, as no legal or factual grounds are advanced by the FUR DRC to support such conclusion and, in addition, the significant depreciation suffered by the Russian ruble after 2014 would mean that should Rubin Kazan receive toady the amount of EUR 225,000 paid in rubles in the 29 July 2014 exchange rate, it would suffer a 37% loss on the amount it actually paid to the Player on 29 July 2014[4].

74. However, the Sole Arbitrator finds that the solution to this question does not lie in the unjust enrichment principle.

75. The Sole Arbitrator notes that the relevant provision of annex 1 clause 5 of the Contract, which is invoked by Rubin Kazan, states that *"[a]ll amounts set in this Annex are net, and have to be paid to the Player by the Club in full after the Club deducts all tax and fiscal payments in accordance with the legislation of Russian Federation, in rubles at the currency rate set by Central Bank of Russian Federation on the date of the actual payment"* (emphasis added by the Sole Arbitrator).

76. The Sole Arbitrator also takes into account that the CAS award in case 2014/A/3686 which partially annulled the FUR PSC decision determining the amount of compensation payable to

[4] The calculation is made by Rubin Kazan based on the exchange rate of 30 April 2016.

the Player by Rubin Kazan in the amount of EUR 1,275,000, is now final and binding. The Sole Arbitrator specifically notes para 97 of the aforementioned decision, which states that *"the compensation owed (…) resulting in an amount of EUR 1,275,000 net, [is] payable in roubles at the rate established by the Central Bank of the Russian Federation on the payment date, as provided in clause 5 of Annex 1"*.

77. Finally, the Sole Arbitrator refers to article 443 of the Russian Civil Procedure Code, which provides (in a free translation provided by Rubin Kazan) that the execution of a court decision can be overturned in the event of a new consideration of the case by the court and a refusal of the claim, in full or in part. In that case, *"the respondent must be reimbursed all that was paid in favour of a claimant according to the cancelled decision of a court"*. The Player did not contest the application of that provision.

78. In view of the above, the Sole Arbitrator is not prepared to accept the request of Rubin Kazan to establish that the overpaid amount of EUR 225,000 is to be recovered by the Player at the EUR/RUB exchange rate of the date when the restitution payment is effectively made by the Player to Rubin Kazan. The payment of EUR 225,000 is no payment under the Contract, but, on the contrary, constitutes a restitution payment which is governed not by the Contract but by the provisions of Russian civil law on unjust enrichment, by article 443 of the Russian Civil Procedure Code and by the relevant provisions on contractual stability of the FUR and FIFA Regulations.

79. The Sole Arbitrator is content that this solution is also in line with the wording of clause 5 to annex 1 of the Contract. The said provision explicitly governs only the "amounts set in this Annex" which are "to be paid to the Player by the Club". The amount in dispute is neither an amount set in annex 1 (which is captioned "Compensatory and incentive payments agreed by the parties of employment contract" and effectively governs the Player's salary and other payments), nor it refers to an amount that is payable to the Player by Rubin Kazan. For the same reasons, the Sole Arbitrator deems that article 317(2) of the Russian Civil Code advanced by Rubin Kazan (providing that *"it may be stipulated in a monetary obligation that it shall be paid in rubles in the amount equivalent to a specific amount in foreign currency or in artificial monetary units (…). In this case the amount to be paid in rubles is determined according to the official rate of the relevant currency or artificial monetary units on the day of payment, unless another rate or other date of its determination are established by law or by agreement of the parties"*) is not relevant and does not apply to the matter of the exchange rate which shall determine the restitution payment.

80. In addition, the argument of Rubin Kazan that should it receive today by the Player the amount of EUR 225,000 paid in rubles in the 29 July 2014 exchange rate, it would suffer a 37% loss on the amount it actually paid to the Player on 29 July 2014, must also fail. In view of the fact that the relevant payment on 29 July 2014 to the Player was not made in euros but in rubles, that the restitution payment to be made by the Player shall also be made in rubles on the same exchange rate of 29 July 2014, and that rubles is the currency of the Russian Federation where Rubin Kazan is domiciled, Rubin Kazan would suffer no loss at all.

81. As a result, the Sole Arbitrator is content to confirm the Appealed Decision in that the Player is obliged to reimburse to Rubin Kazan EUR 225,000 on the exchange rate fixed by the Central Bank of the Russian Federation on 29 July 2014.

D. Is interest to be imposed on the requested amount?

82. Rubin Kazan argues that the Appealed Decision erred in rejecting its request to impose interest of 8.5% *p.a.* on the requested amount as of 11 August 2015, which is the date of the formal notice sent to the Player to reimburse Rubin Kazan with the amount of compensation paid in excess. In this respect, article 395 of the Russian Civil Code (in a free translation provided by Rubin Kazan) provides that *"for the use of the other person's money as a result of its illegal retention, of the avoidance of its return or of another kind of delay in its payment, or as a result of its ungroundless receipt or saving at the expense of the other person, the interest on the total amount of these means shall be due. The interest rate shall be defined by the average banking rates on personal deposits within the relevant time periods which existed at the place of the creditor's residence, and if the creditor is a legal entity – at the place of its location, and were published by the Bank of Russia. These rules shall be applied, unless the other interest rate has been fixed by the law or by the agreement"*.

83. The Sole Arbitrator has concluded that the Player had no valid legal grounds to retain the amount of compensation it received by Rubin Kazan in excess of EUR 1,275,000, after the CAS decision in case 2014/A/3686 became final and binding and, in any event, after he was put on notice by Rubin Kazan on 11 August 2015, as requested by Rubin Kazan in its relevant prayer for relief. In this respect, the Sole Arbitrator finds that the Player's arguments are not successful in contesting the claim of Rubin Kazan for interest to be imposed on the requested amount. Article 1109 of the Russian Civil Code on unjust enrichment that is not subject to return is namely not applicable in these matters, as set out in detail in the relevant section of this award. In addition, the Sole Arbitrator finds that the case-law and arguments submitted by the Player do not contest the application of article 395 of the Russian Civil Code. Lastly, the amount of interest claimed by Rubin Kazan at 8.5% *p.a.* or the date after which it shall accrue are not disputed by the Player.

84. However, the Sole Arbitrator has carefully reviewed the written submissions of Rubin Kazan and its position advanced during the hearing and - even though Rubin Kazan considers that Russian law is the applicable law that governs the merits of the dispute and particularly the matter of *"the amount and starting date of the interests to be added by the Player when making such reimbursement to Rubin"* (paragraphs 24 and 26 of Rubin Kazan's appeal brief in case 2016/A/4545) and it has made detailed submissions on what the position of Russian law is on the question of the interest amount (paragraphs 62-76 of the appeal brief) - he does not find himself in a position to determine what is the applicable interest amount to monetary claims according to article 395 of the Russian Civil Code. Rubin Kazan provides namely no evidence (relevant documents or other information) as to the definition of the applicable interest rate at the amount of 8.5% and/or the publication of such rate by the Central Bank

of the Russian Federation, in accordance with the relevant provision of article 395 of the Russian Civil Code.

85. As a result, since the Sole Arbitrator, in spite of the detailed submission of Rubin Kazan to that regard, is unable to determine the applicable interest amount according to Russian law, the Sole Arbitrator finds that in accordance with Article 16 of the Swiss PILA, which applies by analogy in arbitration proceedings in Switzerland[5], Swiss law shall apply instead of the applicable specific national law. In this respect, Article 16 of the Swiss PILA stipulates the following:

"Article 16. Establishing foreign law.

1. The contents of the foreign law shall be established by the authority on its own motion. For this purpose, the cooperation of the parties may be requested. In matters involving an economic interest, the task of establishing foreign law may be assigned to the parties.

2. Swiss law applies if the contents of the foreign law cannot be established".

86. As a result, the Sole Arbitrator shall establish the interest rate to be imposed on the requested amount by applying Swiss law[6] and in particular article 73(1) of the Swiss Code of Obligations, which stipulates that *"[w]here an obligation involves the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5% per annum".*

87. In light of the above, the Sole Arbitrator considers that interest of 5% *p.a.* shall accrue on the amount of EUR 225,000 as of 11 August 2015.

88. Any further claims or requests for relief are dismissed.

[5] See to that regard KARRER, in: *HONSELL et al*, IPRG Kommentar, 3rd edition, Article 187, p. 1943. See also *ad hoc* MAVROMATI/REEB, The Code of the Court of Arbitration for Sport. Commentary, Cases and Materials, Kluwer Law 2015, p. 546, 547 with further references to relevant CAS case-law: cases CAS 2011/A/2321, CAS 2009/A/1958, CAS 2008/A/1477 & 1567.

[6] The Sole Arbitrator notes that according to SFT case-law the application by analogy of article 16 of the Swiss PILA and, consequently, the application of Swiss law when an arbitrator is unable to determine the content of a specific national law or when none of the parties has invoked an applicable provision of such law, does not violate public order (SFT 4P.242/2003, section 7.3; SFT 4A 446/2013, section 6.2.2.3).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Dimitri Torbinskyi on 7 April 2016 against the decision issued on 4 December 2015 by the Dispute Resolution Chamber of the Football Union of Russia is dismissed.

2. The appeal filed by Rubin Kazan FC on 8 April 2016 against the decision issued on 4 December 2015 by the Dispute Resolution Chamber of the Football Union of Russia is partially upheld.

3. The decision issued on 4 December 2015 by the Dispute Resolution Chamber of the Football Union of Russia is partially annulled to the extent that it rejected the prayer for relief of Rubin Kazan to impose interest on the requested amount and interest at a rate of 5% p.a. as of 11 August 2015 is to be imposed on the amount of EUR 225'000 which is payable to Rubin Kazan FC by Dimitri Torbinskyi in rubles at the exchange rate of the Central Bank of the Russian Federation of 29 July 2014.

(…)

7. All other motions or prayers for relief are dismissed.