Arbitration CAS 2009/A/1756 FC Metz v. Galatasaray SK, award of 12 October 2009

Panel: Mr Bernard Hanotiau (Belgium), President; Mr Olivier Carrard (Switzerland); Mr Efraim Barak (Israel)

Football
Transfer
Sell-on clause submitted to conditions
Mitigation of the burden of proof
Calculation of the value of a player

1. **If the parties to a transfer contract have signed a sell-on clause which makes the payment of a percentage of any transfer compensation paid by a third party for a player conditional upon the fulfilment of conditions, namely that the player is transferred to a third club and that an amount is paid as transfer compensation, the parties must act in a loyal way and according to the rules of good faith to fulfil said conditions. In case of violation of these requirements, for instance if one party breaches the employment contract it concluded with the player, causing the loss of any transfer expectation, the conditions are deemed to be accomplished anyway, according to art. 156 CO. It follows that the third party is entitled to receive the amount agreed in the sell-on clause.**

2. **When it is very difficult, if not impossible, to bring a strict evidence of the damage, Art. 42 para. 2 CO intends to mitigate the burden of proof. The claiming party is not freed from the obligation of submitting and evidencing the relevant facts but such obligation is limited to the allegation of all the circumstances indicating the existence of a damage. The exception of Art. 42 para. 2 CO applies not only for tort claims, but also for contractual claims. This provision can be applied to the assessment of the value of a player and, in turn, to the assessment of any damage resulting from the absence of the payment of a transfer fee.**

3. **It is not correct to consider that the increase of the value of a player is linear. Based on general experience of the field of professional sport and professional football, the increase of value of a player is most often exponential.**

The Appellant, FC Metz (the "Appellant"), is a football club in the city of Metz, France, and a member of the French Football Federation, which in turn is a member of the Fédération Internationale de Football Association (FIFA). The latter is an association established in accordance with Art. 60 of the Swiss Civil Code and has its seat in Zurich, Switzerland.

Galatasaray SK (the "Respondent") is a Turkish football club with its seat in Istanbul. It is affiliated to the Turkish Football Federation which in turn is a member of FIFA.

In January 2005, the Appellant and the Respondent agreed to transfer the French player F. (the "Player") from the Appellant to the Respondent. The agreement concerning this transfer is dated 31 January 2005. It was drafted in French and provided that the sporting rights on the Player would be assigned to the Respondent until 30 June 2005, without any payment for this period. It was further provided that, on 1st July 2005, the Respondent would acquire definitely the sporting rights on the Player, for an amount of EUR 2.000.000. The contract also provided that in the event of the Player being transferred from the Respondent to another club, at any time in the future, the Respondent would pay to the Appellant an amount corresponding to 20 % on the amount of the transfer compensation exceeding EUR 2.000.000.

This agreement reads, inter alia, as follows:

> *"Article 2:*
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> *FC Metz accepte de céder les droits sportifs du joueur F. jusqu'au 30 juin 2005 sans prétendre aucun paiement pour cette période (sic). Pendant la période de prêt, Galatasaray SK assurera, pour un montant de Euros 2.000.000,- le joueur en cas de perte de licence ou incapacité permanente au profit de FC Metz.*
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> *Article 3:*
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> *Galatasaray SK s'engage au 1er juillet 2005 à acquérir définitivement les droits sportifs du joueur F. pour un montant de Euros 2.000.000,- dont le mode de paiement sera de façon suivante (sic):*
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> *Euros 700.000,- le 20 juillet 2005*
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> *Euros 700.000,- le 15 janvier 2006*
>
> *Euros 600.000,- le 30 juin 2006*
>
> *L'ordre des paiements seront sous garantie bancaire accepter par l'organisme bancaire du FC Metz (sic).*
>
> *Article. 4:*
>
> *Galatasaray SK paiera à FC Metz un pourcentage de 20 % sur le montant surpassant Euros 2.000.000,- sur l'éventuel futur transfert du joueur pour un troisième club".*

On 15 April 2005, the Appellant and the Respondent signed an addendum to the above mentioned agreement, according to which the Respondent would provide a bank guarantee to the Appellant, by 25 May 2005 at the latest. In exchange of this bank guarantee, the Appellant would reduce its right under any future transfer compensation of the Player from 20 % to 11 % of any amount exceeding EUR 2.000.000. This addendum reads, in pertinent parts, as follows:

"(…) clarify and complete the transfer contract dated 31.01.05, regarding the Player F., as follows:

1. *By 25 May 2005 at the latest, Galatasaray SK will provide FC Metz with a first quality bank guarantee (covering the total amount of the transfer, i.e. Eur 2.000.000,-) acceptable and to be accepted by FC Metz usual bank.*

   The parties acknowledge that the above mentioned time limit is essential for FC Metz.

2. *In counterpart of the good execution of the above mentioned commitment, FC Metz agrees to reduce its right under Art. 4 of the original contract (from 20 %) to 11 %".*

In the period between 1 February 2005 and 13 June 2005, the Player played several matches for the Respondent. On 13 June 2005, the Player sent a letter to the Respondent's president concerning delays in the payment of certain amounts due by the Club of Galatasaray, amongst which salary and contractual premiums. The Player complained that he had received neither his salary nor his contractual premiums for 4 months.

On 14 June 2005, the Player referred the matter of his unpaid incomes to FIFA's Dispute Resolution Chamber (DRC).

On 15 June 2005, the official website of FC X. announced that the Player F. had joined its club and that an employment contract had been signed between FC X. and F.

On 13 May 2006, the DRC issued a decision according to which the Respondent had breached the contract signed with F., without just cause. Therefore, the DRC rejected the Respondent's claims against the Player and FC X., amongst which the Respondent requested that the Player and FC X. be held jointly and severally liable for the payment of a penalty of EUR 10.000.000.

On 4 December 2006, the Respondent appealed against this decision, in front of the Court of Arbitration for Sport (CAS).

An appeal proceeding was held by the CAS (CAS 2006/A/1180), at the end of which an arbitral award has been delivered. This arbitral award dismissed the appeal of the Respondent against the decision issued by the DRC on 13 May 2006 and also dismissed the counterclaim made by the Player against the Respondent. In this arbitral award, the CAS considered that the Player terminated his contract with the Respondent with *"just cause"* according to Art. 337 para. 2 of the Swiss Code of Obligations. With respect to the existence of a *"just cause"*, the Panel considered that the Respondent failed to comply with a major part of its payment obligation (see CAS 2006/A/1180, n. 8.4.2), although having been warned several times about the breach of its payment obligation.

During the above mentioned proceedings in front of the DRC and of CAS, the Respondent based its claim against F. and FC X. on Art. 6.1 of the employment contract signed with F. The first sentence of this Art. 6.1 provides that *"Should professional football player desire to enter into a contract with another club during the period of this contract, he would be able to terminate this contract unilaterally any time only after having paid an amount in sum of Eur 10.000.000,- to club"*. In the CAS arbitration, the Panel considered that this provision could make sense only if the Player terminates the contract without

"just cause" and that only in that case the termination of the contract could be made dependent on the payment of a kind of *"contract penalty"* (see CAS 2006/A/1180, n. 8.7).

In June 2007, the Player F. has been transferred from FC X. to FC Y., for an amount of EUR 25.000.000. This transfer to one of the top European football clubs, which paid an important transfer fee, is based on the performances accomplished by the Player up to June 2007, both with his clubs and with the French National team.

On 12 October 2007, the Appellant lodged a claim with FIFA against the Respondent, requesting the payment of EUR 1.100.000, submitting that it had not been able to claim the sum that would have been due under the sell-on clause provided by art. 4 of the agreement dated 31 January 2005, due to the misconduct of the Respondent against the Player.

On 2 September 2008, the Single Judge of the Players' Status Committee issued a decision, in English, on the claim presented by the Appellant, stating as follows in relevant parts (the "Decision"):

> *"(…)*
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> *9. (…) The Single Judge also pointed out that the Respondent lost an opportunity too in this matter, since he did not receive any transfer compensation, after the Player left the Respondent as a free agent. The Single Judge equally insisted on the fact that, if the Player had been transferred for a transfer compensation below EUR 2.000.000,-, or if the Player had been transferred at the end of his employment contract, the Claimant would as well have not received any compensatory payment from the Respondent.*
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> *10. Moreover, the Single Judge pointed out that the Claimant did not loose anything in this matter, since he had gambled on an hypothetical gain, that is a gain based on the fulfilment of a condition. The Single Judge also insisted that it is in the nature of a sell on clause that the parties have to assume a financial risk.*
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> *11. Finally, the Single Judge deemed that it is the responsibility of the Respondent to pay the consequences of his breach of contract towards the Player, but that this illegal behaviour has absolutely no consequence on the transfer contract signed with the Claimant, since the two contracts are absolutely independent from each other.*
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> *12. As a consequence, the Single Judge decided that the demand concerning compensatory payment based on the information "sell on clause" can not be granted.*
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> *13. In view of the above, having thus underlined the various aspects of the present claim, the Single Judge concluded that the Claimants' claim is rejected".*

Based on the above mentioned reasons, the Single Judge decided the following:

> *"1. The claim of the Claimant, club FC Metz, is rejected.*
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> *2. The costs of the proceedings in the amount of CHF 2.500,- are to be paid by the Claimant, club FC Metz, within thirty days of notification of the present decision to the following bank account (…)".*

By fax dated 28 November 2008, the Players' Status Committee served the decision to the parties.

By letter dated 17 December 2008, the Appellant filed its Statement of Appeal against the decision rendered by the Single Judge of the Players' Status Committee. In the same letter, the Appellant also

filed its Appeal Brief, together with a bundle of exhibits. The Statement of Appeal and the Appeal Brief were drafted in French.

In its letter dated 17 December 2008, the Appellant requests the CAS to overturn the decision of the Single Judge of the Players' Status Committee dated 2 September 2008 and to order the Respondent to pay to the Appellant an amount of EUR 1.100.000, as compensation.

On 16 March 2009, the Respondent filed its Answer.

On 29 April 2009, the Appellant filed in a short document entitled *"Complementary Brief"*.

By letter dated 6 May 2009, the CAS Court Office reminded the parties that, pursuant to Art. R56 of the Code of Sports-related Arbitration (the "Code"), unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement their arguments, nor to produce new exhibits, nor to specify further evidence on which they intend to rely after the submission of the Appeal Brief and of the Answer. The CAS Court Office informed the parties that accordingly, any issue as to the admissibility of the additional observations filed by the Appellant on 29 April 2009 shall be decided by the Panel.

Upon request of the Panel, the Respondent produced a copy of the Award rendered in the case CAS 2006/A/1180.

A hearing was held in Lausanne, at the premises of the CAS, on 21 August 2009. At the conclusion of the hearing, the parties, after making submissions in support of their respective requests for relief, raised no objections regarding their right to be heard and to be treated equally in the arbitration proceedings.

LAW

CAS Jurisdiction

1. Art. R27 of the Code provides that the Code applies whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of a contract containing an arbitration clause, or be the subject of a later arbitration agreement. *In casu* the jurisdiction of CAS is based on Art. 62 *et seq.* of FIFA Statutes 2008 and is confirmed by the signature of the order of procedure dated 1 July 2009 whereby the parties have expressly declared the CAS to be competent to resolve the dispute. Moreover, in their correspondence with the CAS, the parties have at no time challenged the CAS general jurisdiction.

2. The mission of the Panel follows from Art. R57 of the Code, according to which the Panel has full power to review the facts and the law of the case. Furthermore, Art. R57 of the Code provides that the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance.

Admissibility of the Appeal and admissibility of the unsolicited Complementary Brief

3. The statement of appeal filed by the Appellant was lodged within the deadline provided by Art. 63 of the FIFA Statutes 2008, namely 21 days from notification of the decision. It further complies with the requirements of Art. R48 of the Code.

4. According to Art. R 56 of the Code, the parties shall not be authorized to supplement their arguments, after the submission of the Appeal Brief and of the Answer, unless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances. In the present case, the Appellant has filed a Complementary Brief after the submission of the Appeal Brief and of the Answer. There has been no agreement between the parties to authorize the filing of this Complementary Brief. The President of the Panel did not order a second exchange of briefs, after the filing of the Answer. Consequently, the Complementary Brief of the Appellant dated 29 April 2009 is not admissible and its content will not be taken into account by the Panel. However, the Panel notes that the legal arguments contained in this brief have been manifestly presented during the hearing by the Appellant's Counsel, so that the lack of admissibility of this Complementary Brief has no consequence on the outset of the decision.

Applicable Law

5. Art. R58 of the Code provides that 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.

6. Art. 62 par. 2 of the FIFA Statues 2008, which are in force since 1 August 2008, provides for the application of the various regulations of FIFA and, additionally, Swiss law. The same was provided for under Art. 60 par. 2 of the FIFA Statutes in force before 1 August 2008. In the present matter, the parties have not chosen the application of any particular law. Furthermore, both parties confirmed during the hearing that they considered that Swiss law is applicable to the present dispute and were referred, by the Panel, to certain provisions of Swiss law, as will be mentioned hereunder. Therefore, the rules and regulations of FIFA apply primarily and Swiss law applies complementarily.

As to the Merits

7. The main issues to be resolved by the Panel are:

   A. Is the existence of a claim of the Appellant against the Respondent conditional upon the fulfilment of one or several conditions?

   B. Has the Respondent prevented the fulfilment of a condition in bad faith?

   C. If any, what is the amount to be paid to the Appellant as compensation for the breach of the Respondent's obligations?

A. Is the existence of a claim of the Appellant against the Respondent conditional upon the fulfilment of one or several conditions?

8. The Appellant relies on a claim based on Art. 4 of the agreement signed between the parties on 31 January 2005. As stated here above, this provision provides that the Respondent shall pay to the Appellant a percentage of the amount in excess of EUR 2.000.000 of any transfer compensation paid by a third club for the Player.

9. As emphasized by the Respondent, when signing the agreement dated 31 January 2005, the claim of the Appellant based on Art. 4 of this agreement was conditional upon the fulfilment of the two following elements:

   - transfer of a player to a third club against payment of a transfer compensation;
   - payment by this third club of a transfer compensation in excess of EUR 2.000.000.

10. Chapter two of title four of the first part of the Swiss Code of Obligations (CO) contains provisions regarding the obligations which are submitted to conditions. It results form these provisions that Swiss law distinguishes between a condition precedent, which is defined at Art. 151 CO, and a condition subsequent, which is defined at Art. 154 CO. With respect to a condition precedent, Art. 151 para. 1 CO reads as follows:

    "A contract which is dependent upon the occurrence of an uncertain fact in order to be binding is deemed to be conditional" [English translation of the official text of the Swiss Code of Obligations by the Swiss-American Chamber of Commerce, Zurich, 2005].

11. The Panel is clearly of the opinion that the obligation provided by Art. 4 of the agreement dated 31 January 2005 is to be construed as conditional according to Art. 151 CO. When entered into, this obligation was dependent upon the occurrence of a future and uncertain fact, namely the transfer of the Player to a third club for an amount in excess of EUR 2.000.000.

12. Consequently, the Panel considers that the case at hand is to be analysed in the light of the provisions of the Swiss Code of Obligations dealing with the conditional obligations.

B. Has the Respondent prevented the fulfilment of a condition in bad faith?

13. Amongst the provisions of Swiss law dealing with the obligations submitted to conditions is Art. 156 CO, which reads as follows:

"A condition is deemed to be fulfilled if its occurrence has been prevented by one party acting in bad faith" [English translation of the official text of the Swiss Code of Obligations by the Swiss-American Chamber of Commerce, Zurich 2005].

14. Art. 156 CO is based on the general principle preventing the abuse of rights (*"Nemo auditur propriam turpitudinem allegans"*). This principle is also expressed in other continental legislations (see Art. 1178 of the French Civil Code, Art. 1359 of the Italian Civil Code, Art. 162 of the German Civil Code). According to Swiss authors, the application of Art. 156 CO is submitted to the five following conditions (see PICHONNAZ P., in: THÉVENOZ/WERRO (eds), *Commentaire romand du Code des obligations*, No. 5 ff ad Art. 156):

- *the existence of a condition;*
- *the occurrence of this condition is prevented (for a condition precedent) or provoked (for a condition subsequent);*
- *a reprehensible behaviour of one of the parties to the contract or of a party entrusted with the benefit of the contract;*
- *the violation of the good faith principle by this party, on purpose or not;*
- *a reasonable link between the behaviour of the preventing party and the non-occurrence of the condition.*

15. During the hearing, the parties have been referred to Art. 156 CO, which content has been read to the counsels by the President of the Panel. The Counsel for the Appellant considered that the conditions of this provision were fulfilled. The Counsel for the Respondent objected that there is evidence that the Respondent has prevented the occurrence of the condition in bad faith, adding that the Respondent would have been more than happy to share the profits of a transfer compensation of the Player with the Appellant.

16. According to the case law of the Swiss Supreme Court, if a condition is agreed and if its occurrence depends, to a certain extent, on the will of one of the parties on which the contract imposes obligations, this party does not have in principle an entire freedom to refuse this occurrence and to be freed, in that way, of its contractual obligations. It shall, on the contrary, act in a loyal way and according to the rules of good faith; in case of violation of these requirements, the condition is deemed to be accomplished, according to Art. 156 CO (Decision of the Swiss Supreme Court dated 20 March 2009, ATF 135 III 295, page 302).

17. In the present case, the Panel is of the opinion that the sell-on clause signed by the Respondent in the agreement dated 31 January 2005 imposed on this Respondent the obligation to make its best efforts in order to preserve the validity of the employment contract with the Player F. As the existence of this employment contract was crucial to the possibility of transferring the Player to a third club, with the obtention of a transfer compensation, it is

obvious that the respect of the good faith principle implied the good performance of the contract with the Player.

18. The Panel has no hesitation to consider that the Respondent did not respect the principle of good faith, causing the termination of the contract by the Player for just cause and, in turn, the loss of any profit expectation on future transfer of the Player. In that respect, the Panel considers that the Respondent has to be held responsible for a characterized breach of the employment contract, namely the non payment or late payment of salaries, premiums or bonuses. One of the core obligations of an employer is to pay its employees. Failing to have respected this basic obligation towards the Player, as stated by the CAS in CAS 2006/A/1180, the Respondent cannot pretend that the condition of bad faith is not met.

19. Furthermore, it makes no difference that the Respondent also had to bear the consequences of its default towards the Player F., losing the benefit of a transfer indemnity. The test of good faith required by Art. 156 CO is, in the opinion of the Panel, limited to the circumstances in which the occurrence of the conditions has been prevented, and does not extend to any consideration about the consequences of this non occurrence for one or the other party. In that respect, it has been considered by the Swiss Supreme Court that there is no need to establish any intention of the preventing party but that it is sufficient that the principle of mutual trust be violated (see ATF 117 II 273, especially page 281).

20. The Panel does consider that the five conditions to the application of Art. 156 CO are met, namely that Art. 4 of the agreement dated 31 January 2005 provides for a condition precedent, that the occurrence of this condition has been prevented by a party to the contract, in a violation of good faith.

21. As regards the reasonable link between the behaviour of the preventing party and the non-occurrence of the condition precedent, the Panel considers that the signature of a contract by the Player with FC X., in June 2005, would have led to a transfer, if there had been no possibility for an early termination of the contract by the Player. The Respondent would then have been able to ask for the payment of an amount as transfer compensation. It follows that, according to Art. 156 CO, the conditions precedent that the Player is transferred to a third club, and that an amount is paid as transfer compensation, are deemed to be accomplished.

C. If any, what is the amount to be paid to the Appellant as compensation for the breach of the Respondent's obligations?

22. As exposed here above, it is to be considered that the Player has been transferred from the Respondent to FC X. It remains to consider whether the transfer of F. to FC X. would have led to the payment of a transfer fee in excess of EUR 2.000.000 and what would have been the amount of such a fee.

23. According to Art. 8 of the Swiss Civil Code (CC), in the absence of any other statutory provision to the contrary, the claiming party has the burden of proving the facts submitted in

order to deduct its claim. In the present case, the Appellant, as the claiming party, has to establish the fact that, in June 2005, the transfer of the Player to a third club would have justified the payment of a transfer fee in excess of EUR 2.000.000. The Appellant has also the burden of proof as regards the amount of this transfer fee, from which it deducts a claim for the payment of an amount of 11 % of the sum in excess of EUR 2.000.000.

24. It is however to be emphasised that precise or clear evidence of the value of the Player on the transfer market, in June 2005, is difficult, if not impossible, to obtain. In such circumstances, a Panel applying Swiss law shall refer to Art. 42 para. 2 CO. This provision reads as follows:

"If the exact amount of damages cannot be established, the Judge shall assess them in his discretion, having regard to the ordinary course of events and the measures taken by the damaged party" [English translation of the official text of the Swiss Code of Obligations by the Swiss American Chamber of Commerce, Zurich 2005].

25. Art. 42 para. 2 CO is an exception to the general principle that whoever claims damages must prove the damage, which results from the above mentioned Art. 8 CC and from Art. 42 para. 1 CO. When it is very difficult, if not impossible, to bring a strict evidence of the damage, Art. 42 para. 2 CO intends to mitigate the burden of proof. The claiming party is not freed from the obligation of submitting and evidencing the relevant facts but such obligation is limited to the allegation of all the circumstances indicating the existence of a damage (see WERRO F., in: THÉVENOZ/WERRO (eds), *Commentaire romand du Code des obligations*, No. 29 ad art. 42). According to the case law of the Swiss Supreme Court, the exception of Art. 42 para. 2 CO applies not only for tort claims, but also for contractual claims (see for instance ATF 122 III 61, concerning a dispute based on a construction contract).

26. In the present case, the Panel is of the opinion that Art. 42 para. 2 CO is to be applied and that it has to apply its discretion to the assessment of the value of the Player in June 2005 and, in turn, to the assessment of any damage resulting from the absence of the payment of a transfer fee.

27. The Appellant submits that the Player has been transferred to FC Y., in June 2007, for EUR 25.000.000. The Appellant also submits that the Respondent claimed from F. and FC X. the payment of EUR 10.000.000 for an alleged breach of the employment contract between the Respondent and F., when the Player signed another contract with FC X. in June 2005. For the Appellant, that would indicate that the value of the Player, in June 2005, was not less than EUR 10.000.000, so that the claim resulting from the application of Art. 4 of the agreement dated 31 January 2005 would amount to EUR 1.100.000.

28. First, the Panel notes that the Appellant has miscalculated its claim based on the assumption of the value of the Player could be set at EUR 10.000.000. The claim resulting from Art. 4 of the agreement dated 31 January 2005, as amended in April 2005, provides the payment of 11 % of the amount of a future transfer fee in excess of EUR 2.000.000. If the value of the Player is to be estimated at EUR 10.000.000, the amount in excess of EUR 2.000.000 are EUR 8.000.000, 11 % of which are EUR 880.000.

29. Second, the Panel cannot follow the argumentation of the Appellant that the value of the Player would equal the claim made by the Respondent against F. and FC X., for the breach of the employment contract between the above mentioned Player and the Respondent. This claim of the Respondent was based on Art. 6.1 of the employment contract signed between the Respondent and the Player, which provides that the Player is able to terminate his contract unilaterally against the payment of a sum of EUR 10.000.000 to the Respondent. As considered by the Panel in the arbitration case CAS 2006/A/1180, this clause has to be construed as a kind of contract penalty (see CAS/2006/1180, No. 8.7). As a consequence, it is not at all clear and evidenced that the Respondent estimated in the proceedings led against FC X. and F. that the value of the Player, in June 2005, was to be assessed at EUR 10.000.000. Even if it was the case, one could not deem that the Respondent is to be considered as bound by this estimation.

30. In order to assess the value of the Player in June 2005, the Panel is of the opinion that it has to compare the figures of the transfer fees of the Player that have been paid in January 2005 and in June 2007. In January 2005, the Respondent agreed to pay EUR 2.000.000 for the Player. Considering that the transfer agreement also contained a profit sharing clause on a future transfer, the Panel considers that the value of the Player was probably slightly over EUR 2.000.000. In June 2007, FC Y. paid an amount of EUR 25.000.000 for the Player F. If one calculates the average increase of value of the Player between January 2005 and June 2007, this leads to the conclusion that this value increased by slightly less than EUR 23.000.000 in two years and a half, that is to say slightly less than EUR 4.600.000 by semester.

31. However, it is not correct to consider that the increase of the value of a player is linear. Based on its general experience of the field of professional sport and professional football, the Panel considers that the increase of value of a player is most often exponential. As a consequence, the increase of the value of the Player F. was clearly less substantial between January 2005 and June 2005 than during the following semesters, up to the transfer to FC Y. In the present case, this is confirmed by the fact that, even if he performed well with the Respondent, the Player F. did not have an important international activity and exposure between January and June 2005. It is at the end of 2005 and in 2006, especially during the FIFA World Cup of 2006, that the Player acquired a strong international reputation, while playing with the French National Team.

32. Based on the above mentioned considerations, the Panel is of the opinion that the value of the Player F., in June 2005, was over EUR 2.000.000 but under EUR 6.000.000. As a consequence and applying its discretion as regards this aspect of the case, the Panel considers that the value of the Player F., in June 2005, is to be assessed at an amount of EUR 4.000.000.

33. Consequently, it is to be deemed that, in June 2005, the Player would have been transferred to FC X. for an amount of EUR 4.000.000. Applying Art. 4 of the agreement dated 31 January 2005 to these elements of fact leads to the conclusion that the transfer sum in excess of EUR 2.000.000 amounts to EUR 2.000.000. According to the addendum signed between the parties on 15 April 2005, the sum to be paid by the Respondent to the Appellant therefore amounts to 11 % of EUR 2.000.000, that is to say EUR 220.000.

Conclusion

34. Based on the foregoing, and after taking into due consideration all evidence produced and all arguments made, the Panel finds that the Appellant has a valid claim for the payment by the Respondent of an amount of EUR 220.000, in execution of Art. 4 of the agreement signed between the parties on 31 January 2005 and amended on 15 April 2005.

35. The Appeal is therefore partially upheld. Galatasaray SK shall pay to FC Metz an amount of EUR 220.000. As the Appellant did not request the payment of interest in its request for relief, interest will not be awarded.

The Court of Arbitration for Sport rules:

1. The appeal filed on 17 December 2008 by FC Metz against the decision issued on 2 September 2008 by the Single Judge of the FIFA Player's Status Committee is partially upheld.

2. The decision issued on 2 September 2008 by the Single Judge of the FIFA Player's Status Committee is reformed in the sense that Galatasaray SK is ordered to pay to FC Metz EUR 220.000 (two hundred and twenty thousand Euros).

(…)