



**Arbitration CAS 2010/A/2128 C.S. Chimia Brazi v. S.C. C.S. Unirea Urziceni S.A., award of 15 November 2010**

Panel: Mr. Rui Botica Santos (Portugal), President; Mr. Michele Bernasconi (Switzerland); Mr. José María Alonso Puig (Spain)

*Football*

*Transfer*

*Interest due for the late payment of the transfer fee*

*Liquidated damages*

*Violation of public policy*

*Applicable interest rate*

1. It is a general principle of commercial law that interest is chargeable in case of any delay and/or default in paying the principal amount and no express contractual provision is required.
2. Liquidated damage is applicable when a specific sum of money has been expressly stipulated by the parties as the amount of damage to be recovered by any party in result of a breach of contract by the other. Therefore, a clause stating that the late payment of a transfer fee will result in a penalty of 1% per day of delay is rather an agreement between the parties in relation to the applicable interest rate in case of late payment than a liquidated damages clause.
3. Public policy is violated if an arbitral award violates the fundamental legal principles and is therefore incompatible with Swiss law and values. Under Swiss law it is considered usury as per art. 157 of the Swiss Penal Code where a loan is granted with an interest rate of 18% to 20% p.a. or where there is a disproportion of 25% between the value of the obligations of the parties. Further, Swiss law foresees a maximum of 15% p.a. for loans granted to consumers. Therefore, to grant to a creditor a late payment interest rate of 198% undoubtedly violates Swiss fundamental legal principles.
4. Taking into consideration the circumstances of the case, an annual default interest rate of 17 % p.a. is the maximum rate that can be granted without violating Swiss public policy.

C.S. Chimia Brazi (the “Appellant” or “Brazi”) is a Romanian football club affiliated to the Romanian Football Federation (RFF). The latter is a member of the Fédération Internationale de Football Association (FIFA).

S.C. C.S. Unirea Urziceni S.A. (the “Respondent” or “Urziceni”) is a Romanian football club affiliated to the RFF.

This appeal was filed by Brazi against the decision rendered by the RFF Appeal Committee (the “RFF Appeal Committee”) passed on 29 April 2010 and notified to the Parties on 10 May 2010 (the “RFF Appeal Decision”).

On 16 July 2009, Brazi and Urziceni entered into an agreement (the “Transfer Agreement”) for the transfer of the player M. (the “Player”).

Under the Transfer Agreement, Brazi agreed to transfer the Player to Urziceni for the amount of EUR 200,000 plus VAT of 19% which totals to EURO 238,000 (the “Transfer Fee”) to be paid no later than 30 September 2009 (cf. arts 2 and 3.2 (a) of the Transfer Agreement).

The Parties also agreed on Clause 1 of the Annex to the Transfer Agreement that in case Urziceni defaulted in paying the Transfer Fee on the agreed date, a daily interest rate of 1% would accrue from the said amount as a penalty.

The relevant paragraphs of the Transfer Agreement, in its English translation as provided to the Panel, read as follows:

“(…)

***Transfer Agreement***

*Concluded today 16.07.2009 between*

***Art. 2 OBJECT OF THE AGREEMENT***

*The parties mentioned above have agreed on the player’s transfer, meaning from the transferor club to the transferee club, for a defined period (...) starting from 16.07.2009 (...)*

***Art. 3 OBLIGATIONS OF THE PARTIES***

“(…)

*3.2 The transferee club is obliged to:*

*a) pay to the transferor club, the value of 200.000 Euro (two hundred thousand euro) + VAT, as transfer compensation, in one instalment (...) until 30.09.2009 (...).*

“(…)

**ANNEX***Concluded on 16.07.2009**To the Transfer Agreement concluded on 16.07.2009*

(...)

*Regarding the transfer of the football player M., the two parts have agreed on the following clauses:*

*1. The exceeding of the term of the payment for the transfer, in value of 200.000 euro (two hundred thousand euro) + VAT mentioned in the Transfer Agreement, meaning 30.09.2009, means a penalty of 1%/day delayed.*

(...)"

On 1 December 2009, Brazi sent Urziceni the invoice related to the amount of the Transfer Fee but the invoice was not paid.

On 15 January 2010, and in result of the non payment of the Transfer Fee, Brazi filed a claim before the RFF's National Dispute Resolution Chamber (the "RFF Resolution Chamber") asking it to condemn Urziceni to pay the following amounts:

- a) The Transfer Fee; and
- b) The 1% per day delay penalty calculated in accordance with clause 1 of the Annex to the Transfer Agreement.

On 26 February 2010, Urziceni returned the invoice to Brazi and requested it to send another invoice, on grounds that it did not contain the format or elements required under art. 155 of the Romanian Tax Code which would sufficiently enable Brazi to be identified by the Romanian Tax authorities. According to Urziceni, such details included among others, Brazi's registered office, its headquarters and the terms of payment.

Following the absence of these elements, Urziceni could not honour the invoice and consequently comply with its obligations to the Romanian tax authorities by deducting the VAT.

On 9 March 2010, the RFF Resolution Chamber passed its decision (the "RFF Resolution Chamber Decision") and held as follows:

- a) Urziceni was liable to pay the 1% delay penalties stipulated on clause 1 of the Annex to the Transfer Agreement; and
- b) Brazi's claim was partially admitted and Urziceni was ordered (i) to pay Brazi the Transfer Fee and (ii) to pay Brazi the 1% per day delay penalties starting from 1 December 2009 until the effective date of payment.

The relevant paragraphs of the RFF Resolution Chamber Decision read as follows:

“(…)

*The defenses invoked regarding the lack of mentioning the payment time limit on the invoice cannot be taken into consideration, as the payment time limit was established by the Transfer Agreement so the amount indicated in the invoice became due at the issuing date.*

*(…) the non-payment of the transfer amount in the period between the due date stipulated in the Transfer Agreement, respectively 30.09.2009, and the date of the invoice, respectively 01.12.2009, is not attributable to the defendant club, considering the absence of a tax bill under which to make payment.*

(…)

*With respect to the period subsequent to the date of invoice, respectively 01.12.2009, until the date of effective payment of the transfer amount, for this period the respondent club owes the penalties stipulated in the annex of the Transfer Agreement.*

(…)”.

Following its dissatisfaction with the RFF Resolution Chamber Decision, Urziceni filed an appeal before the RFF Appeal Committee. It sought the setting aside of the RFF Resolution Chamber Decision arguing that the invoice was legally defective and lacked several legal requirements, meaning it affected the maturity and subsequent payment of the Transfer Fee.

Urziceni did not dispute that it owed Brazi the Transfer Fee. It however challenged the validity and legality of the 1% per day delay penalty clause under arts. 35.11 and 35.15 the RFF Regulations on the Status and Transfer of Players (the “RFF Regulations”) and claimed that the invoice was not in compliance with art. 155.5 of the Romanian Tax Code.

Brazi disputed Urziceni’s contentions, stating that the invoice was in compliance with the applicable tax laws and that the request for the establishment of a term for paying the transfer fee was not necessary.

On 29 April 2010, the RFF Appeal Committee rendered the RFF Appeal Decision and held as follows:

- a) The invoice was complete and contained elements required under the Romanian Accounting Law No. 82/1991 and the Fiscal Code Law No. 571/2003.
- b) Even assuming that the invoice contained incomplete data and information, this did not affect the existence of the Transfer Fee. It only affected its chargeability.
- c) Given Urziceni’s objections in relation to the manner in which the invoice was drafted, it can be accepted that the Transfer Fee became due on 22 April 2010, the date of explicit expression of the agreement implementing Urziceni’s obligation.
- d) The 1% per day penalty clause totalled to an amount exceeding the Transfer Fee, and this fact could not be ignored no matter how permissive the principle of contractual freedom is.
- e) The 1% per day penalty clause was abusive and the excessive amount was null and void.

- f) The 1% per day penalty clause was inefficient and/or disproportionate as it did not balance between the damage and the repair which was requested.
- g) Not only was the penalty clause illegal but the same was also inequitable, immoral and in conflict with art. 7 (h) of the RFF Statutes under which the RFF aims at safeguarding football activities from abuse.
- h) The appeal is partially upheld and (i) the RFF Resolution Chamber Decision obliging Urziceni to pay Brazi the 1% per day penalty delay arrears is set aside; and (ii) Urziceni is ordered to pay Brazi the Transfer Fee.

Part of the RFF Appeal Decision read as follows:

“(…)

*Regarding the fact that the invoice would not contain elements to be considered supporting document, is found that such elements exist. Even in the hypothesis that the supporting document would contain data and informations incomplete compared with the accounting law no. 82/1991 and the Fiscal Code, (Law no. 571/2003), this situation would engage a possible liability of the person who prepared (...) and registered in accounting does not affect the existence of the debt in the amount of 200,000 euros undisputed but only its chargeability.*

*(...) over the objections targeting real irregularities, concerning how the invoice was drawn, (issuing of the invoice with high delay, the absentee of a payment term, the lack of the recipient address, thus with infringement of Art. 151 para. 1 and 5 of the Fiscal Code) can be accept that the debt became due on 22.04.2010, the date of explicit expression of the agreement implementing the obligation by the recurrent club, UNIREA URZICENI, recorded in the conclusion from the meeting of that day, which is part integral to the present decision and which marks the moment when the debt became exigible.*

“(…)

*Making abstraction of the lack of a method of calculation or of a invoice for penalties it is observed, that these, calculated until the date of this decision overcome the quantum of the transfer allowance (300,000 Euro) and no matter how permissive should be the principle of contractual freedom, there are limits that can't be ignored.*

*The penalty clause, (1% for each day of delay), having an excessive amount is null and void. Results from the those above mentioned an obvious disproportion of the value compared to the amount actually owed. The contract can not be transformed by abusive clauses into a speculating instrument of one part by the other.*

*(...) the clause by which were stipulated excessive penalties is inefficient because there should be a balance between the damage and the repair which was requested; the penal clause should not lead to a disproportion between the caused damage and the repair which was requested, this being a compensation of the damages – interests, which will be supported by the creditor from the non-execution of the main obligation.*

*It is true that a committee with jurisdictional attributions can not reduce a penal clause but this restriction concerns the penal clause set under the law and not an abusive clause.*

*(...). The rule of the penal clause irreducible can not be understood that would apply also to a clause by which would be infringed the requirements of the equity and bona fides, of the balance between the prestations of the parties and by which would reach at the enriching unduly, of one part in the detriment of the another.*

*The issue under discussion should be explored in a threefold hypostasis, (the illicit clause; abusive disproportion between the prestation and a possible law abuse), which do not contradict each other. Another approach of the problem is not only illegal but also deeply inequitable, so immoral, and would conflict with the provisions of art. 7 letter b) of the Statute of the (...) RFF to protect the football activity from any abuses.*

*Therefore the appeal will be upheld will be changed in part (...) in the sense that (...) will be removed (reject) the request through which is obliging S.C F.C “UNIREA URZICENI” to pay penalties on arrears of 1% per day delay.*

*Will be maintained the decision issued by NDRC through which is obliging S.C F.C “UNIREA URZICENI” to pay the transfer allowance in the amount of 200,000 euros plus VAT (...).*

*(...)”.*

On 16 June 2010, following the issuance of the RFF Appeal Decision, Urziceni claims to have paid the Transfer Fee into Brazi’s account but did not pay any interest.

On 27 May 2010, the Appellant filed its Statement of Appeal against the RFF Appeal Decision at the Court of Arbitration for Sport (CAS) pursuant to art. R47 of the Code of Sports-related Arbitration (the “CAS Code”) and art. 56 and 57 of the RFF Regulations.

On 10 June 2010, the Appellant filed its “Appeal Brief” wherein it states the facts and legal arguments on which the appeal is based, together with some documents and evidences upon which it intended to rely.

On 24 June 2010, the Respondent filed its Answer to the Appeal Brief, highlighting the facts and its legal submissions on the matter. It requested a hearing and also annexed several documents in support of its defence.

On 5 August 2010, the Order of Procedure was sent to the Parties and was signed by them.

On 3 September 2010, a hearing was held at the CAS in Lausanne, Switzerland. The Panel was assisted at the hearing by Mr. Lucas Ferrer, CAS Counsel. No witnesses were called by either party.

During the hearing all the Parties presented their respective cases and arguments before the Panel. Since the Parties were not prepared to comment on the possible application of art. 190 of the Swiss Federal Code on Private International Law (the “PIL”) on public policy related to limitation of the principle of Parties’ autonomy to determine interest rates in commercial relations, the Panel granted them 2 weeks to file supplementary submissions on this issue. In the meantime, the Panel also invited the Parties to explore possibilities of arriving at an amicable settlement.

At the close of the hearing, the Panel asked the Parties to state whether they had any objections in relation to how the hearing had been conducted, specifically in relation to whether their right to be heard and the equal treatment of the Parties had been respected. Both Parties confirmed having no objection in relation to the manner in which the hearing was held, and also confirmed that their right to be heard had been granted and well respected.

On 18 and 20 September 2010, the Parties reverted with their respective submissions in relation to Swiss and/or Romanian public policy law on interest rates and penalty clauses. They also informed the Panel of their inability to arrive at an amicable agreement.

## LAW

### Jurisdiction of the CAS

1. Under clause 5.2 of the Transfer Agreement, the Parties agreed that “[t]he litigations that arise from, or are related to the hereby transfer agreement, will be exclusively solved by the Jurisdictional Courts, as established by the RFF Statutes”.
2. Art. 56.1 (b) of the RFF Regulations states that “[t]he decisions of the first instance bodies may be appealed against with: (...) the Court of Arbitration for Sport in Lausanne, as the highest international instance, if the decision was passed by the RFF Review Commission”.
3. In addition, art. 56.3 of the RFF Regulations provides that “[t]he decisions passed by the RFF Review Commission may be appealed with the Court of Arbitration for Sport in Lausanne”.
4. It follows that the CAS has jurisdiction to decide this dispute, which is additionally derives from art. 57.3<sup>1</sup> of the RFF Regulations and art. R47 of the CAS Code. This was further confirmed by the Parties in signing the Order of Procedure.
5. The mission of the Panel follows art. R57 of the CAS Code, according to which a Panel has full power to review the facts and the law of the case. Furthermore, the same article provides that a Panel may issue a new decision which replaces the decision challenges, set the decision aside or refer the case back to the previous instance.

### Law Applicable

6. Art.R58 of the CAS Code provides the following:

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

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<sup>1</sup> “The Court of Arbitration for Sport in Lausanne, is competent to solve any dispute involving FIFA, UEFA, regional confederations, national federations, leagues, clubs, players, officials, players’ agents, licensed match agents, unless the FIFA/UEFA/RFF Statutes provide otherwise”.

7. The appealed decision was issued by the RFF, a federation domiciled in the Republic of Romania and established under Romanian laws. It therefore follows that Romanian law shall be applied in adjudicating the subject matter related to the RFF Appeal Decision. The application of Romanian law has further been invoked by the Parties in their pleadings and confirmed in their signed Orders of Procedure.
8. In addition to Romanian law, art. R27 of the CAS Code provides as follows:  
*“These Procedural Rules apply whenever the parties have agreed to refer a sports-related dispute to the CAS. Such disputes may arise out of an arbitration clause inserted in a contract or regulations (...) or involve an appeal against a decision rendered by a federation, association or sports-related body where the statutes or regulations of such bodies (...) provides for an appeal to the CAS (...)”.*
9. Consequently, the provisions of the CAS Code shall be referred to for any procedural matters related to these proceedings. The Panel may also refer to other rules of law, the application of which it deems appropriate.

### **Admissibility**

10. In accordance with art. R57.4 of the RFF Regulations, “[t]he appeal must be lodged with CAS within 21 days of the serving of the decision”.
11. The RFF Appeal Decision was notified on 10 May 2010 and the Statement of Appeal filed on 27 May 2010. This was within the required 21 days.
12. It therefore follows that the appeal is admissible and no objection to the contrary has been raised by the Respondent.

### **The Merits of the Appeal**

13. The Panel now proceeds to analyse the following issues in order to decide the merits of the case:
  - A. Whether Urziceni had justified grounds for the non payment of the Transfer Fee;
  - B. Whether interest is due from the Transfer Fee and, if so, what is the date from when the interest accrues?
  - C. Depending on the answer above what is the interest rate applicable?

*A. Whether Urziceni had justified grounds for the non payment of the Transfer Fee*

14. The Panel notes that despite having already paid the Transfer Fee on 16 June 2010, Urziceni still justifies its decision for the late payment.
15. The fact that the invoice did not comply with the requirements of art. 155 of the Romanian Tax Code and the impossibility to recover the value added tax were basically the reasons invoked by Urziceni.
16. In assessing whether the late payment was justified, the Panel takes into consideration the general Legal Opinion adduced by Urziceni in supporting its position. Particular note is taken of page two which quotes arts. 146 and 155 of the Romanian Tax Code by stating that:  
*“(...) in order to deduct tax, the taxable person must hold an invoice containing all the information stipulated at art. 155 paragraph 5, which specifies that the invoice contains mandatorily the following information:*
  - a) the order number, based on one of several series, which uniquely identifies the invoice;*
  - b) the invoice issuing date;*
  - c) the denomination/ name, address and registration code (...) of the taxable person who issues the invoice;*
  - d) the denomination/ name, address and registration code (...) of the goods or service buyer, if applicable”.*
17. The Panel underlines that the Legal Opinion produced by Urziceni is a mere general opinion on deduction of tax and not a tax ruling related to the dispute at stake.
18. The Panel’s analysis of the invoice reveals that it contains the following required information:
  - *Name and address of the issuer and of the recipient.*
  - *Fiscal registration code of Brazi and Urziceni.*
  - *Amount and VAT due.*
  - *Issuing date and number of the invoice*
  - *Description of the service rendered (reference to the economic-financial transaction).*
19. The Panel is hence satisfied that the invoice bore sufficient details and information in accordance with Romanian tax laws. This conclusion is also in line with the findings of both the RFF Resolution Chamber Decision and RFF Appeal Decision on this issue.
20. The Panel also notes that notwithstanding Urziceni’s initial reluctant position, the Transfer Fee was paid on 16 June 2010 without Urziceni receiving a new invoice or reporting any complications towards the tax authorities in deducting and/or recovering the VAT.
21. Indeed, no evidence has been adduced establishing the existence of circumstances which prevented Urziceni from paying the invoice and a later change of circumstances which made it possible to pay the said invoice.

22. As a matter of fact, the Panel notes that Urziceni ignored the invoice and only acted on 26 February 2010, by returning it to Brazi with the justification that it did not comply with Romanian laws. It did so upon realising that legal proceedings had been instituted against it before the RFF Resolution Chamber.
  23. In the Panel's perception the excuse invoked by Urziceni was a purely formal and unfair justification to delay the payment of the Transfer Fee and for this reason the Panel is of the opinion that Urziceni's decision to ignore, return and suspend the payment of the Transfer Fee is ungrounded.
- B. *Whether interest is due from the Transfer Fee, and, if so, what is the date from when interest accrues?*
24. Urziceni states that interest is not due because the Transfer Fee only became due when the RFF Appeal Decision was passed on 22 April 2010. Urziceni states that the payment on 16 June 2010 was within the period granted under the RFF Appeal Decision meaning that no interest penalties for delay are due.
  25. The Panel highlights that the Parties exclusively agreed on clause 1 of the Annex to the Transfer Agreement that in case Urziceni defaulted in paying the transfer fee on the agreed date, a daily interest rate of 1% would accrue from the said amount until Urziceni as a penalty.
  26. Urziceni does not deny the existence of this clause, although it challenges its reasonability.
  27. It is therefore evident from clause 1 of the Annex to the Transfer Agreement that the Parties agreed that interest would be accrue in case of a delay in payment. Notwithstanding this specific contractual stipulation, it is also a general principle of commercial law that interest is chargeable in case of any delay and/or default in paying the principal amount and no express contractual provision is required.
  28. In view of the above, the Panel finds that interest is due from the Transfer Fee.
  29. Although the due date for the payment of the Transfer Fee was 30 September 2009 (clause 1 of the Annex to the Transfer Agreement), the Panel notes that Brazi only claims interest from the date when the invoice was issued, *i.e.* 1 December 2009.
  30. The starting date that the Panel will have in consideration is 1 December 2009 and not the one stipulated on the Transfer Agreement, because (i) this is the date from when Brazi claims interest; and (ii) this date is more favourable to Urziceni's interests.
  31. In light of the conclusions stated in previous section of the merits, the Panel remarks that the RFF Appeal Committee erred in holding that interest was only due with effect from the RFF Appeal Decision.

32. In the Panel's view the interest shall be calculated with effect from 1 December 2009 until 16 June 2010, the date when the Transfer Fee was effectively paid.

C. *What is the interest rate applicable?*

33. The Panel now proceeds to address the issue related to applicable interest rate.

34. Brazi claims that the RFF Appeal Committee erred in cancelling the 1% per day delay interest, because:

- i. in accordance with art. 1066 of the Romanian Civil Code, the 1% per day delay penalty clause represented the anticipated evaluation of damages, which cannot be contested, questioned or reviewed by the court; and
- ii. in accordance with art. 969 and 1073 of the Romanian Civil Code and the judgments rendered by the jurisdictional committees of the RFF Professional Football League, no limits can be imposed on penal clauses applicable to commercial transactions such as the one in hand, which have been mutually agreed between the Parties.

35. The RFF Appeal Committee considered the aforementioned interest rate as being excessive, abusive and disproportionate to the balance between the damage and the repair which was requested, but no specific Romanian law or general provision has been referred to justify that the 1% per day penalty delay clause was abusive and excessive.

36. Urziceni has also not been able to adduce any specific provision substantiating that the 1% per day delay interest rate, or any other excessive interest rate for commercial transactions, was excessive under Romanian law and/or Romanian public policy.

37. Urziceni justifies the validity of clause 1 of the Annex to the Transfer Agreement, saying that this "penalty clause" voluntarily agreed by the Parties represents an anticipated evaluation of the damages, which means a "*liquidated damage clause*".<sup>2</sup>

38. In the Panel's understanding this relevant clause does not represent a "*liquidated damages clause*" but rather an agreement between the Parties in relation to the applicable interest rate in case of late payment.

39. Indeed, based on the wording of the clause and of the submissions of the Parties, the Panel is of the view that the aim of clause 1 of the Annex of the Transfer Agreement was to assure Brazi that in case of late payment a certain interest rate would be applicable.

40. The payment to be determined shall only take into consideration the period of delay which occurred in the payment of the Transfer Fee and not the non payment of the Transfer Fee that occurred on 16 June 2010.

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<sup>2</sup> Liquidated damage is applicable when a specific sum of money has been expressly stipulated by the parties as the amount of damage to be recovered by any party in result of a breach of contract by the other.

41. Based on the submissions made by the Parties, the Panel is not satisfied that under Romanian law it is, in circumstances like the present case, fully irrelevant whether a certain interest rate is excessive or not. The Panel agrees with Urziceni and the RFF Appeal Committee in assessing the agreed 1% per day interest rate as being from a factual point of view excessive. The existing inflation rate in Romania or the depreciation of the Romanian currency (the “Lei”) does not justify such high interest rate.
42. Such point of view is justified by the following considerations: If the stipulated 1% day interest rate would be applicable, the interest due from the Transfer Fee for the period between 1 December 2009 until 16 June 2010 (198 days) would amount to EUR 471,240 (198 days x 2,380 [1% of EUR 238,000]), *i.e.* equivalent to 198%. Such an interest rate of 198% p.a. can, from a factual point of view, without no doubts only be defined as excessive.
43. As mentioned above, the Panel is not satisfied that such an interest rate can be considered reasonable and equitable under a Romanian law perspective and that, as claimed by Brazi, such interest rate would be fully enforceable under Romanian Law.
44. In any event, taking into consideration all the abovementioned, and since CAS is an arbitral body with its seat in Switzerland, the Panel is of the view that an arbitral tribunal cannot grant a late payment interest rate of 198% p.a. if doing so would violate the Swiss public policy (the “ordre public”).
45. The Panel hence respectfully disagrees with Brazi’s assertion that the Swiss public policy is irrelevant here. Compliance with Swiss public policy has specifically been safeguarded under art. 190 (e) of the PIL, which states that an award can be attacked if it is “(...) *incompatible with Swiss public policy*”. Indeed, even there when foreign law is applicable to the merits, the fundamental principles of law recognised in Switzerland must be respected<sup>3</sup>.
46. Public policy is violated if an arbitral award violates the fundamental legal principles and is therefore incompatible with Swiss law and values<sup>4</sup>. The Panel has no doubts that to grant to a creditor a late payment interest rate of 198% would violate Swiss fundamental legal principles – and probably not only Swiss principles.
47. The Panel observes that under Swiss Law it is considered usury as per art. 157 of the Swiss Penal Code where a loan is granted with an interest rate of 18% to 20% p.a. or where there is a disproportion of 25% between the value of the obligations of the Parties<sup>5</sup>. Further, Swiss law foresees a maximum of 15% p.a. for loans granted to consumers<sup>6</sup>.
48. Based on the above, and taking in consideration the circumstances of the case and in particular on the commercial nature of the contract and the value of the obligations of the

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<sup>3</sup> Cf. ATF 120 II 167 *et seq.*

<sup>4</sup> Cf. ATF 117 II 606 *et seq.* and Decision of the Swiss Tribunal Federal 4A\_490/2009, in ASA Bull. 3/2010, p. 511 *et seq.*

<sup>5</sup> Cf. ATF 92 IV 132 *et seq.*; see also Decision of the Swiss Tribunal Federal in SJZ 1963, 340.

<sup>6</sup> See art. 14 of the Swiss Statute on Consumers Credits (“Loi fédérale sur le crédit à la consommation”).

Parties, the Panel deems in this case an annual default interest rate of 17 % p.a. as being the maximum rate that can be granted without violating Swiss public policy.

49. In light of the above, the Panel sets aside the RFF Appeal Committee's Decision that no default interest is due and rules that Urziceni must pay Brazi interest over the Transfer Fee from 1 December 2009 until 16 June 2010 at an annual default interest rate of 17%.

**The Court of Arbitration for Sport rules:**

1. The appeal filed by C.S. Chimia Brazi against the decision rendered by the Romanian Football Federation Appeal Committee dated 29 April 2010 is partially upheld.
2. The Romanian Football Federation Appeal Committee decision dated 29 April 2010 is partially set aside in the following terms:
  - 2.1 S.C. C.S. Unirea Urziceni is ordered to pay C.S. Chimia Brazi an annual default interest rate of 17% in relation to the late payment of EUR 238,000.00.
  - 2.2 The abovementioned default interest rate shall be calculated with effect from 1 December 2009 until 16 June 2010.

(...)

5. All other and further claims or prayers for relief are dismissed.