

**Arbitration CAS 2014/A/3634 FC Rubin Kazan v. Fatih Tekke, award of 11 March 2015**

Panel: Mr Manfred Nan (The Netherlands), Sole Arbitrator

*Football**Contract of employment (outstanding salaries)**Discretion of the CAS Panel to exclude evidence based on Article R57 para. 3 of the CAS Code**Salary determined in an employment contract according to Russian labor law and Russian football regulations*

1. **Article R57 para. 3 of the CAS Code gives the Panel the discretion “to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered”. However, in accordance with the legal doctrine, such provision should be applied with caution, so as not to impinge upon the fundamental principle of de novo review by the CAS, only in those cases where the adducing of pre-existing evidence amounts to abusive or otherwise unacceptable procedural conduct by a party.**
2. **Neither article 57 of the Labor Code of Russia, nor article 7.1 of the FUR Regulations determine that the salary determined in an employment contract must be included in the salary determined in an annex. These provisions merely determine that a basic salary must be set out in the employment contract, but this does not prevent parties from determining that the salary agreed in the employment contract is payable in addition to the amount referred to in an annex. In addition, article 7.4 of the FUR Regulations does not determine that a player’s total remuneration must be established in annexes, rather, it provides that “the basic salary, additional payments and stimulating payments can be established directly in the text of the employment contract or, by parties’ wish, as an annex (additional agreement) to the employment contract”.**

I. PARTIES

1. Municipal Autonomous Institution Football Club Rubin Kazan (hereinafter: the “Appellant” or “the Club”) is a professional football club currently playing in the Russian Football Premier League, which is the highest football league in the Russian Federation. The Club is registered with the Football Union of Russia (hereinafter: the “FUR”), which in turn is a member of the Fédération Internationale de Football Association (hereinafter: the “FIFA”).
2. Mr Fatih Tekke (hereinafter: the “Respondent” or the “Player”) is a professional football player of Turkish nationality.

II. FACTUAL BACKGROUND

A. Background facts

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
4. On 19 February 2010, the Club and the Player entered into an employment contract (hereinafter: the “Employment Contract”) valid for a period of two years, *i.e.* until 19 February 2012. The Employment Contract was signed by both parties in both the Russian and the English language.
5. The Employment Contract contains, *inter alia*, the following relevant terms:

“ARTICLE 6 Remuneration

- 6.1 *The Footballer shall be paid a monthly salary in the amount of money 2 000 (two thousand) US dollars in roubles on a RF Central Bank rate at date of payment.*
- 6.2 *The Club can effect payment of remunerations through premiums, stimulations, pay rise and other similar payments, as well.*

ARTICLE 7 Special conditions

The Special conditions are written in the Appendix 1 which is the part of the present labor agreement.

ARTICLE 10 Final provisions

- 10.8 *In the event of discrepancy between English and Russian version of this contract, English version will prevail”.*

6. The appendix to the Employment Contract (hereinafter: the “Appendix”), also signed by both parties in both the Russian and the English language, determines, *inter alia*, the following:

“Special Conditions for the Contract

- 1) *The salary for the term of the present Contract amounts 2 000 000 (two million) Euros (net) per year¹.*
- 2) *Until 15 March 2010 the Club pays to the Footballer at one time 250 000 (two hundred fifty thousand) Euros. The remaining amount of his salary is divided into 24 equal parts to be paid monthly, starting from 19 February 2010, 156 250 (one hundred fifty six thousand two hundred*

¹ In an uncertified translation provided by the Club it is stated that the Russian version of the Annex provides the following: “The CLUB annually pays to the PLAYER a **cumulative** salary in the amount of 2,000,000 (two million) Euro net”.

fifty) Euros per month, with the exchange rate of the Central bank of Russian Federation on the day of payment.

3) *If following the results of any sport season FC "Rubin" wins the right to play in the official competition of UEFA, the Club pays to the Footballer the bonus in the amount of 100 000 (one hundred thousand) Euro net. The payment is made with the exchange rate of the Central bank of Russian Federation on the day of payment".*

7. On 1 September 2010, the Player was transferred to the Turkish club, Besiktas JK (hereinafter: "Besiktas").

B. Proceedings before the Dispute Resolution Chamber of FIFA

8. On 15 February 2012, since the Player's salaries allegedly remained unpaid, the Player lodged a claim with the Dispute Resolution Chamber of FIFA (hereinafter: the "FIFA DRC") against the Club requesting payment of EUR 277,753.43 net as well as USD 12,666 net, plus interest of 5% *p.a.* corresponding to the outstanding salaries and a bonus. In particular, the Player claimed:

- USD 12,000 corresponding to six monthly salaries from March 2010 until August 2010, plus interest of 5% *p.a.* as from 1 September 2010;
- USD 666 corresponding to the salary due from 19 February until 29 February 2010, plus interest of 5% *p.a.* as from 1 September 2010;
- EUR 177,753.43 net corresponding to the payments due to the Player in accordance with the Appendix;
- EUR 100,000 as bonus since the Club qualified for the UEFA Europa League, plus interest of 5% *p.a.* as from 15 February 2012.

9. On 5 March 2012, the Club submitted a defence at the FIFA DRC rejecting the claim lodged by the Player alleging that the amount of USD 12,666 as stipulated in par. 6.1 of the Employment Contract is incorporated in the total annual amount of EUR 2,000,000 net as mentioned in the Annex. The Club further argued that "*the debts in the amount of*" EUR 177,545.42 are "*unfounded and groundless*" and "*the conditions on which the bonus has to be paid, were not fulfilled*". The Club submits to "*agree to satisfy the claim of the player Fatih Tekke only for the amount of*" EUR 14,686.

10. On 7 February 2014, the FIFA DRC rendered its decision (hereinafter: the "Appealed Decision") with, *inter alia*, the following operative part:

"1. The claim of the [Player] is partially accepted.

- 2. *The [Club] is ordered to pay to the [Player] outstanding remuneration in the amount of EUR 177,753.43 plus 5% interest p.a. as from 1 September 2010 until the date of effective payment, within 30 days as from the notification of this decision;*

3. *The [Club] is ordered to pay to the [Player] outstanding remuneration in the amount of USD 12,666 plus 5% interest p.a. as from 1 September 2010 until the date of effective payment, within 30 days as from the notification of this decision;*

(...)
 5. *Any further claims lodged by the [Player] are rejected.*

(...)
11. On 21 May 2014, the grounds of the Appealed Decision were communicated to the parties determining, *inter alia*, the following:
- The FIFA DRC started its analysis by determining that “in the present case, the [Club] bore the burden of proof regarding the payment of the [Player’s] remuneration.
 - The Chamber first noted that the [Club] was not able to provide any type of documentary evidence of the payments to the [Player] of the salaries and the bonus claimed by him as outstanding. The DRC observed, instead, that the [Club] invokes several arguments in order to justify the non-payment of the [Player’s] remuneration”.
 - Regarding the Club’s argument, according to which the salary of USD 2,000 established in the Employment Contract was already included in the remuneration stipulated in the Appendix, the FIFA DRC observed “*that art. 6 and 7 of the contract do not establish the inclusion of the contractual remuneration in the amount stipulated in the appendix. On the contrary, the Chamber observed that the contract even mentions that “the special conditions [...] in the Appendix [are] part of the present labour agreement”, implying, thus, a relation of complementarity between the contract and the agreement. Therefore, the financial terms of the contract and of the appendix are to be considered as independent and complementary and the [Club’s] position in this respect cannot be upheld*”.
 - In respect of the Club’s argument, as per which the amounts claimed by the Player as outstanding are the result of the conversion of the Player’s remuneration into Russian Roubles, the FIFA DRC considered “*that the [Club] did not provide any documentary evidence in support of the aforementioned argument. In any case, the DRC stated that the difference allegedly caused by the conversion of the [Player’s] salary from US Dollars into Russian Roubles is not able to justify the partial payment of the [Player’s] remuneration by the [Club]. The Chamber further emphasized that, in accordance with the legal principle of pacta sunt servanda, all obligations undertaken by a party in a contract should be, as a rule, duly complied with. In the present case, the Chamber deemed that the [Club] has to pay the [Player] the amounts agreed by the parties as remuneration for his services in the specific amount as stipulated in the contract. Consequently, the DRC concluded that the argument of the [Club] had to be rejected*”.
 - “*The Chamber also noted that the [Club] even acknowledges a debt towards the [Player] in the amount of EUR 14,686 [...]*.”

- *In view of the foregoing, the Chamber concluded that the [Club] was not able to provide any substantial evidence of the payment of the [Player's] remuneration, as per the contract and the appendix, or to provide any reasons to justify the failure in making those payments. Thus, in accordance with the general legal principle of pacta sunt servanda, the [Club] is to be held liable for the payment of outstanding remuneration to the [Player] in the total amounts of EUR 177,753.43 and USD 12,666, corresponding to his salaries for the months from February 2010 until August 2010, plus interest of 5% p.a. on said amounts as from 1 September 2010, as requested by the [Player]”.*
- Finally, the FIFA DRC determined that the Player was not entitled to receive the bonus of EUR 100,000, because *“by the time the Club officially qualified for the UEFA competition, i.e. at the end of the season, [the Player] was indeed no longer employed by the [Club]”.*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 10 June 2014, the Club filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter: the “CAS”) in accordance with Article R47 and R48 of the CAS Code of Sports-related Arbitration (hereinafter: the “CAS Code”). In this submission, the Club requested the CAS Court Office to assign the arbitration to a Sole Arbitrator.
13. On 19 June 2014, the CAS Court Office invited the Player to inform the CAS Court Office, within five days of receipt of this letter by courier, whether he agreed to the appointment of a Sole Arbitrator and that in the absence of an answer it would be for the President of the CAS Appeals Arbitration Division, or his Deputy, to decide.
14. On 20 June 2014, in accordance with Article R51 of the CAS Code, the Club filed its Appeal Brief. This document contained a statement of facts and legal arguments. The Club challenged the Appealed Decision, submitting the following requests for relief:
 1. *FIFA Dispute Resolution Chamber is cancelled.*
 2. *All Player's claims against Rubin are dismissed.*
 3. *All payments due to the Player are considered duly performed by Rubin.*
 4. *The Respondent shall bear all the procedural costs of these proceedings.*
 5. *The Respondent shall compensate Municipal Autonomous Institution “Football Club “Rubin” Kazan the legal costs and other costs incurred in these proceedings, in an amount to be determined at the end of these proceedings in accordance with the Code”.*
15. On 30 June 2014, FIFA informed the CAS Court Office that it renounced its right to request its possible intervention in the present arbitration proceedings.

16. On 3 July 2014, the CAS Court Office informed the parties that since the Player did not provide the CAS Court Office with his view regarding the appointment of a Sole Arbitrator, pursuant to Article R50 of the CAS Code, it would be for the Division President, or his Deputy, to decide on the number of arbitrators.
17. On 7 July 2014 and in accordance with Article R55 of the CAS Code, the Player filed its Answer, in which he submitted to have no objection to the appointment of a Sole Arbitrator, and whereby he requested CAS to decide the following:

“FC Rubin Kazan has to ordered to pay amount of 12.666.USD (net) to the player Fatih Tekke with interest %5 p.a. from 1st September 2010 [sic].

FC Rubin Kazan has to ordered to pay amount of 163.067,43.EUR (net) to the player Fatih Tekke with interest %5 p.a. from 1st September 2010 [sic]”.
18. On 9 July and 15 July 2014 respectively, the Player and the Club informed the CAS Court Office that they did not deem it necessary for a hearing to be held.
19. On 25 July 2014, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the present matter was constituted by:

➤ Mr Manfred Nan, Attorney-at-law in Arnhem, the Netherlands, as Sole Arbitrator
20. On 26 September and 1 October 2014 respectively, the Player and the Club returned duly signed copies of the Order of Procedure with the CAS Court Office. By signing the Order of Procedure, both parties confirmed that their right to be heard has been respected and confirmed their agreement that the Sole Arbitrator may decide the present matter based on the parties respective written submissions.
21. On 27 October 2014, upon request of the Sole Arbitrator and pursuant to Article R57 of the CAS Code, FIFA produced a copy of its file related to the matter.
22. On 5 November 2014, the CAS Court Office, on behalf of the Sole Arbitrator, invited the parties to explain certain matters.
23. On 20 November 2014, the Club filed an additional written submission.
24. On 27 November 2014, the Player filed an additional written submission.
25. Considering the joint request of the parties, the Sole Arbitrator decided, pursuant to Article R57 of the Code, that he did not deem it necessary to hold a hearing and that he was sufficiently well informed to issue a decision on the basis of the parties’ written submissions.

26. The Sole Arbitrator confirms that he carefully studied and took into account all the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarized or referred to in the present award.

IV. SUBMISSIONS OF THE PARTIES

27. The submissions of the Club, in essence, may be summarized as follows:

- The Club submits that the annual amount of EUR 2,000,000 as provided for in clause 1 of the Annex includes the monthly salary of USD 2,000 set in clause 6.1 of the Employment Contract, which is *“in accordance with article 57 of the Labor Code of Russia (...) and additionally article 7.1 of FUR Regulations on the Status and Transfer of the Player”*. The Club argues that *“the annual remuneration is a cumulative, total remuneration of the Player for a calendar year (...) Thus there is no additional 12,666 US Dollars due to the Player by the Club”*.
- The Club stresses that it complied with all its obligations towards the Player. The Club points out that *“the payments are performed in roubles at the rate of the Central bank of Russia at the date of actual payment”*, which is in line with clause 2 of the Annex and *“article 131 of the Labor Code of Russia”*.
- The Club further states that it paid the Player 62,846,505.28 Russian Roubles (hereinafter: the “RUB”), although it only had to pay RUB 55,570,115.28, submitting a *“Club’s report on the payments”*, a certificate of the IntechBank dated 9 June 2014 and a payment confirmation (*“Transmission notification”*) dated 25 September 2012 regarding the payment of EUR 14,686.

28. The submissions of the Player, in essence, may be summarized as follows:

- The Player points out that according to article 6 of the Employment Contract, the Club is obliged to pay USD 12,666 (net) to the Player for outstanding basic monthly salaries, which amount was never paid.
- Further, the Player states that according to the Annex, the Club – in addition to the outstanding salaries according to article 6 of the Employment Contract – is obliged to pay EUR 1,239,580 (net) to the Player for outstanding salaries from 19 February 2010 until 1 September 2010, but only paid EUR 1,061,826.57. The Player submits seven swift messages for money transfers. In addition, the Player states that the Club paid an amount of EUR 14,686 during the FIFA proceedings, which leaves *“the players’ due credit from the club”* to EUR 163,067.43.
- The Player argues that the evidence submitted by the Club before CAS must be excluded pursuant to Article R57 of the CAS Code *“since the club had to submit them during the procedure before FIFA”*.

- Furthermore, the Player points out that the calculation of payments and the new documents submitted by the Club are not only contradictory to “*the clubs’ defense to the FIFA*” but also lack any evidential value.
- The Player concludes that the Club has to pay him USD 12,666 and EUR 163,067.43.

V. ADMISSIBILITY

29. The appeal was filed within the deadline of 21 days set by article 67 (1) FIFA Statutes. The appeal complied with all other requirements of article R48 of the CAS Code, including the payment of the CAS Court Office fees.
30. It follows that the appeal is admissible.

VI. JURISDICTION

31. The jurisdiction of CAS, which is not disputed, derives from article 67 (1) of the FIFA Statutes, as it determines that “[*a*]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question” and article R47 of the CAS Code. The jurisdiction of CAS is not contested by the Player and further confirmed by the Order of Procedure duly signed by the parties.
32. It follows that CAS has jurisdiction to decide on the present dispute.

VII. APPLICABLE LAW

33. Article R58 of the CAS Code reads as follows:

“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, 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”.

34. The Sole Arbitrator notes that article 66 (2) of the FIFA Statutes stipulates the following:
“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.
35. The Club argues that the parties made an express choice of law in the Employment Contract and “therefore CAS should apply the provisions of the employment contract and

documents of the Club, the legislation of Russia, and also football legislation of FUR, UEFA, FIFA and the League”.

36. The Sole Arbitrator observes that article 10 (3) of the Employment Contract determines as follows:

“In case of a dispute that may arise between the Parties, the Club shall settle it. In case the Parties have failed to settle the dispute, the dispute shall be settled by the application of the corresponding regulations passed by FIFA, UEFA, RFU and RFPL”.

37. In view of the above, the Sole Arbitrator is satisfied to primarily apply the various regulations of FIFA and subsidiary the application of Swiss law should the need arise to fill a possible gap in the various regulations of FIFA. However, the Sole Arbitrator takes due note of the relevant regulations of the FUR and Russian law regarding the remuneration of players.

VIII. PRELIMINARY ISSUE

38. The Player argues that the Club relies on new evidence in the present procedure that was not part of the proceedings before FIFA. The Player requests that such new evidence be dismissed on the basis of article R57 of the CAS Code.

39. Article R57 of the CAS Code provides as follows - as relevant:

“The Panel has full power to review the facts and the law. (...)”

The Panel has the discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered (...)”.

40. Before the amendment of Article R57 of the CAS Code, CAS jurisprudence was clear regarding the interpretation of article R57 of the CAS Code:

“(...) [T]here is a long line of CAS awards, even going back many years, which have relied on article R57 of the CAS Code to firmly establish that the CAS appeals arbitration allows a full de novo hearing of a case, with all due process guarantees, which can cure any procedural defects or violations of the right to be heard occurred during a federation’s (or other sports body’s) internal procedure. Indeed, CAS appeals arbitration proceedings allow the parties ample latitude not only to present written submissions with new evidence, but also to have an oral hearing during which witnesses are examined and cross-examined, evidence is provided and comprehensive pleadings can be made” (CAS 2009/A/1880 & 1881, §18).

41. The question is whether the amendment of Article R57 in the 2013 edition of the CAS Code has any influence on this long line of CAS jurisprudence.

42. The Sole Arbitrator concurs with certain legal scholars who argue the following:

“[T]his new provision should be applied with caution, so as not to impinge upon the fundamental principle of de novo review by the CAS. The amendment may make sense in those cases where the CAS acts as a second instance arbitral tribunal, reviewing an award rendered by another arbitral panel at the end of genuine arbitral proceedings. But in appeals proceedings against decisions rendered by the hearing bodies of the sports-governing organizations, where the curing effect of a full, de novo review by the CAS assumes all its importance, we believe Panels should use the discretion now granted to them by Article R57 only in those cases where the adducing of pre-existing evidence amounts to abusive or otherwise unacceptable procedural conduct by a party” (RIGOZZI/HASLER/QUINN, The 2011, 2012 and 2013 revisions to the Code of Sports-related Arbitration, Jusletter, 3 June 2013, p. 14).

As an example of such abusive conduct, the authors mention the following example:

“A club that files a totally unsubstantiated claim against another club before the FIFA Dispute Resolution Chamber with the obvious intent to put forward its case only once the FIFA decision should be appealed in CAS. In that case, the dispute resolution process provided for by FIFA would be de facto circumvented as the FIFA instance would be put in the difficult situation of having to make a decision based on a poorly substantiated case, with the risk that such decision would then be overturned by CAS simply because all the relevant arguments and evidence have been put forward (only) at that stage” (RIGOZZI/HASLER/QUINN, The 2011, 2012 and 2013 revisions to the Code of Sports-related Arbitration, Jusletter, 3 June 2013, p. 14).

43. The Sole Arbitrator observes that the Club submitted a “Club’s report on the payments”, a certificate of the IntechBank dated 9 June 2014 and a payment confirmation (“Transmission notification”) dated 25 September 2012 regarding the payment of EUR 14,686.
44. It is the Sole Arbitrator’s understanding that the Club – after having received the Appealed Decision – attempted to collect additional evidence to support its position, which evidence is largely in line with the arguments submitted by the Club in the proceedings before the FIFA DRC. As such, the Sole Arbitrator finds that there is no abusive or otherwise unacceptable procedural behaviour of the Club justifying an exclusion of the “new” evidence.
45. The Sole Arbitrator finds that this is not in violation of article 6 (1) of the European Convention on Human Rights, as argued by the Player.
46. Consequently, the Sole Arbitrator sees no reason not to admit the newly submitted evidence to the case file.

IX MERITS

A. The Main Issues

47. In view of the above, the main issues to be resolved by the Sole Arbitrator are:
 - a) Is the salary specified in article 6 of the Employment Contract included in the amount stipulated in the Appendix?

b) Did the Club comply with its financial obligations towards the Player?

a) ***Is the salary specified in article 6 of the Employment Contract included in the amount stipulated in the Appendix?***

48. The Club maintains that the amount of EUR 2,000,000 includes the monthly amount of USD 2,000. It argues that such division is in accordance with article 57 of the Labor Code of Russia and article 7.1 of the FUR Regulations on the Status and Transfer of Players (hereinafter: the “FUR Regulations”). Based on these provisions, the Club argues that it is an essential condition that the Employment Contract includes the conditions of remuneration of the Player. However, in accordance with article 7.4 of the FUR Regulations, the total remuneration of a player may be established in annexes to the employment contract. The Club argues that, as such, in practice, most of the time a small part of remuneration is put in the text of the employment contract to comply with Russian law, and the total cumulative remuneration of the Player is determined in annexes to avoid registration in the League and thus keep the sensitive information regarding the player’s total salary confidential.

49. The Sole Arbitrator observes that article 57 of the Labor Code of Russia determines as follows:

“Must be included in the employment contract:

(...)

conditions of payment for labor (including the size of wage category or monthly salary (basic salary) of the employee, additional payments and stimulating payments); (...).”

50. Article 7 of the FUR Regulations determines the following:

“1. In the employment contract which is concluded by the professional football club with a professional football player, the following must be included:

(...)

9) conditions of payments for labor (including the size of basic salary, additional payments and stimulating payments);

(...)

4. The size, the course and the conditions of payment of the basic salary, additional payments and stimulating payments by the professional football club to the professional football player [...] are set in accordance with the legislation of Russian Federation and can be established as follows:

- 1) *directly in the text of the employment contract or, by parties' wish, as an annex (additional agreement) to the employment contract, in this case the registration of the mentioned annex (additional agreement) is not obligatory;*
- 2) *with the local normative document of the professional football club (with the exception of basic salary), which the player should acknowledge via signature of [sic] via other means as set by the legislation of Russian Federation”.*

51. The Sole Arbitrator observes that both parties filed separate versions of the Employment Contract and the Appendix. The Club filed a copy of the Employment Contract with the Appendix in Russian and a non-certified English translation thereof. The Player filed a copy of the signed English version of the Employment Contract with the Appendix.
52. The Sole Arbitrator notes that article 7.1 of the Employment Contract provides that the Annex is an integral part of the Employment Contract, and that pursuant to article 10.8 of the Employment Contract, the English version of the Employment Contract shall prevail.
53. As a consequence, the Sole Arbitrator disregards the non-certified English translation of the Russian Employment Contract with Annex filed by the Club, and relies on the copy of the signed English version of the Employment Contract with Annex.
54. Having established the above, the Sole Arbitrator turns his attention to the question whether the amount of EUR 2,000,000 specified in the Appendix already includes the monthly salary of USD 2,000 due to the Player in accordance with article 6 of the Employment Contract.
55. The Sole Arbitrator finds that neither article 57 of the Labor Code of Russia, nor article 7.1 of the FUR Regulations determine that the salary determined in an employment contract must be included in the salary determined in an annex. These provisions merely determine that a basic salary must be set out in the employment contract, but this does not prevent parties from determining that the salary agreed in the employment contract is payable in addition to the amount referred to in an annex.
56. In addition, article 7.4 of the FUR Regulations does not determine that a player's **total** remuneration must be established in annexes, rather, it provides that “[...] *the basic salary, additional payments and stimulating payments [...] can be established [...] directly in the text of the employment contract or, by parties' wish, as an annex (additional agreement) to the employment contract*” (emphasis added).
57. Having established the above, the Sole Arbitrator finds that neither the Employment Contract nor the Annex determine that the salary mentioned in the Employment Contract is included in the salary mentioned in the Annex.
58. More specifically, the Sole Arbitrator concurs with the FIFA DRC that article 6 and 7 of the Employment Contract do not establish that the monthly salary in the amount of USD 2,000 is integrated in the remuneration as set out in the Appendix.

59. The Sole Arbitrator also fully concurs with the reasoning of the FIFA DRC in the Appealed Decision that the reference to “*the special conditions [...] in the Appendix [are] part of the present labour agreement*” in the Employment Contract implies a relation of complementarity between the Employment Contract and the Appendix.
 60. Consequently, the Sole Arbitrator finds that the financial terms of the Employment Contract and the Annex are to be considered separately and that the salary specified in article 6 of the Employment Contract is not included in the amount stipulated in the Appendix.
- b) *Did the Club comply with its financial obligations towards the Player?***
61. The Sole Arbitrator notes that it is undisputed between the parties that the remuneration for the period from 19 February 2010 until 31 August 2010 based on article 6 of the Employment Contract amounts to USD 12,666.
 62. In continuation, the Sole Arbitrator observes that according to the Appendix, the Club was obliged to pay the Player’s salaries in Russian Roubles in an amount equivalent to the contractually determined amount in Euro.
 63. The Sole Arbitrator observes that it remained undisputed that the Player was entitled to EUR 250,000 as a down payment and to EUR 937,500 as salary over the months of March, April, May, June, July and August 2010.
 64. The parties have different views on how much the Player was entitled to in the month of February 2010. Whereas the Club submits that the Player is entitled to only EUR 41,118, the Player finds to be entitled to EUR 52,080.
 65. The Sole Arbitrator finds that, since the Player was entitled to a salary of EUR 156,250 per month, because the Player was registered with the Club on 19 February 2010 and because the month of February 2010 contained 28 days, the Player is entitled to salary in the amount of EUR 55,803.57 (EUR 156,250 / 28 * 10) over this month. However, in view of the fact that the Player only claims to be entitled to EUR 52,080, the Sole Arbitrator will take this amount into account, as deciding otherwise would constitute a ruling *ultra petita*.
 66. It remained undisputed between the parties that the Club transferred several amounts to the Player in the relevant period as bonus payments, but that these amounts are not relevant for the assessment of whether the Player’s salaries were paid in full.
 67. As such, pursuant to the Annex, the Player was entitled to receive an amount of EUR 1,239,580 and, pursuant to the Employment Contract, the Player was entitled to an amount of USD 12,666 from the Club.
 68. Turning his attention to the parties’ conflicting positions regarding the amounts paid by the Club to the Player, the Sole Arbitrator carefully studied the documentary evidence

provided by the Club and the Player and decided to invite the parties to provide additional information in this respect, which was done by both parties.

69. After considering the parties' respective views, the "overview of payments" provided by the Club in the proceedings before the FIFA DRC, a "bank certificate" from a Russian bank, swift messages from the Player and the additional submissions of the parties, the Sole Arbitrator has no doubt that the Club paid the Player his down payment and his salaries over February, March, April, May, June and July 2010. However, although such amounts correspond to the salary due to the Player if the exchange rate of the Central Bank of Russia is applied, the amount received by the Player was less, most likely due to the deduction of the commissions of the bank for the conversion of Russian Rouble to Euro.
70. In this respect, the Sole Arbitrator observes that the amounts received according to the Player align with the swift messages provided by the Player and with the right column in the "overview of payments" provided by the Club in the proceedings before FIFA, which column is headed "*Amount Euro, transferred on account, excluding bank commission for the currency conversion [sic]*".
71. On this basis, the Sole Arbitrator is satisfied that the following amounts were received by the Player:
 - On 5 April 2010, EUR 40,623.03 was paid to the Player as his February 2010 salary, whereas this should have been EUR 52,080.
 - On 9 April 2010, EUR 254,123.48 was paid to the Player as his down payment. The Sole Arbitrator observes that the amount indicated by the Player (EUR 254,123.48) differs from the amount indicated by the Club (EUR 254,452.90). The Sole Arbitrator finds that the swift message provided by the Player is more reliable, particularly in view of the fact that all other swift messages corresponded to the Club's "overview of payments" and only this one slightly deviates. As such, the Club paid the Player more than he was entitled to.
 - On 6 April and 14 May 2010, in total EUR 153,013.41 was paid to the Player as his March 2010 salary, whereas this should have been EUR 156,250.
 - On 6 May and 18 June 2010, in total EUR 153,931.44 was paid to the Player as his April 2010 salary, whereas this should have been EUR 156,250.
 - On 7 June and 21 June 2010, in total EUR 153,646.53 was paid to the Player as his May 2010 salary, whereas this should have been EUR 156,250.
 - On 27 July 2010, EUR 152,867.68 was paid to the Player as his June 2010 salary, whereas this should have been EUR 156,250.
 - On 5 August 2010, EUR 153,621.00 was paid to the Player as his July 2010 salary, whereas this should have been EUR 156,250.

72. On 25 September 2012, during the proceedings before FIFA, EUR 14,686 was paid to the Player, as this was the only amount the Club considered to be overdue in the proceedings before FIFA. The Sole Arbitrator observes that this amount was only transferred during the proceedings before FIFA, this was not (and could not have been) taken into account by the FIFA DRC in the Appealed Decision. The payment itself however remained undisputed by the parties.
73. As such, the Sole Arbitrator concludes that the Player received a total amount of EUR 1,076,512.57 from the Club, *i.e.* EUR 163,067.43 short of what he was entitled to. This is in line with the position of the Player.
74. Turning his attention to the disputed payments, the Sole Arbitrator observes that the Club, with reference to the “bank certificate”, argues that it made four additional payments to the Player, *i.e.* RUB 44,302.15 on 6 September 2010 and RUB 6,099,682 on 8 September 2010 (together allegedly constituting the Player’s August 2010 salary), EUR 5,830.13 on 29 September 2010 and EUR 127,500 on 22 October 2010.
75. The Sole Arbitrator observes that the evidence provided by the Club in respect of the payments is the “bank certificate” and an “additional bank certificate” provided by the Club with its additional submission. However, whereas the first two payments are referred to in the “overview of payments” provided by the Club in the proceedings before FIFA, the latter two are not.
76. The Player maintains not to have received any of these four payments.
77. The Sole Arbitrator finds that the burden of proof lies with the Club in order to convince the Sole Arbitrator that these payments were indeed made to the Player.
78. The Sole Arbitrator finds it important that the Club’s arguments in the proceedings before CAS deviate from the position of the Club in the proceedings before FIFA. Whereas the Club in the proceedings before FIFA maintained that it had a debt to the Player of EUR 14,685.57, now the Club argues that it paid the Player in fact much more salary than he was entitled to. The Sole Arbitrator does not find this credible.
79. In view of the fact that the Sole Arbitrator considered above that the Club consistently transferred the Player his salary in the amount of EUR 156,250, but because the commission of the conversion from Russian Rouble to Euro was apparently charged on the Player, the Player consequently received too little salary, because the payment of RUB 6,143,984.15 corresponds to an amount of EUR 156,250 at the exchange rate of the Central Bank of Russia on that day (39,3215), which is consistent with an amount of EUR 156,250, because the manner of payment (*i.e.* first a small payment of around RUB 60,000 followed by a large payment of around RUB 6,000,000) is consistent with the way the Club previously paid the Player his salaries, because these amounts are reflected in the “bank certificate” and because the Club already mentioned this payment in the “overview of payments” presented in the proceedings before FIFA, the Sole Arbitrator is convinced that the Club indeed paid the Player an amount of EUR 153,838 as his August 2010 salaries.

80. The Sole Arbitrator does not agree with the Player that the evidence adduced by the Club cannot be taken into account because the Player did not sign these documents and because they were issued unilaterally, as the Sole Arbitrator finds it quite normal that evidence regarding payments made is issued unilaterally. In fact, not all evidence was issued unilaterally as the “bank certificate” was presented by a third party.
81. In addition, the Sole Arbitrator does not find it particularly important that the “bank certificate” was issued by the bank only on 9 June 2014. The Sole Arbitrator finds that certain weight has to be adduced to a certificate issued by a bank. Particularly considering the fact that the Player neither advanced any arguments in respect of the authenticity of the “bank certificate”, nor did it appear to the Sole Arbitrator that this certificate was produced fraudulently. As such, based on this evidence, the Sole Arbitrator finds that the Club succeeded to discharge its burden of proof as to the payment of the Player’s August 2010 salary.
82. The Sole Arbitrator is however not convinced that the payments of 29 September 2010 (EUR 5,830.13) and 22 October 2010 (EUR 127,500) were made to the Player as salary. Crucially, the Sole Arbitrator finds that the Club did not establish that the amounts of EUR 5,830.13 and EUR 127,500 were paid as salary and not as bonus. Moreover, these amounts substantially differ from other salary payments that were previously made by the Club to the Player.
83. It remained undisputed between the parties that bonus payments do not form part of the Player’s salary, which is corroborated by the fact that several bonus payments had been made by the Club to the Player, but that neither the Club, nor the Player included these amounts in their respective calculation of the outstanding salary.
84. As such, the Sole Arbitrator concludes that an amount of EUR 9,229.43 and an amount of USD 12,666 is outstanding (*i.e.* EUR 163,067.43 – EUR 153,838).
85. In conclusion, the Sole Arbitrator considers that the Club did not fully comply with its financial obligations towards the Player and, in accordance with the general legal principle of *pacta sunt servanda*, the Club is liable for the payment of the outstanding remuneration to the Player in the amounts of USD 12,666 and EUR 9,229.43.

B. Conclusion

86. Based on the foregoing, and after having taken into due consideration both the regulations applicable and all the evidence produced and all arguments submitted, the Sole Arbitrator finds that:
- a) the salary specified in article 6 of the Employment Contract is not included in the amount stipulated in the Appendix.

- b) the Club did not fully comply with its payment obligations and is liable for the payment of outstanding remuneration to the Player in the amounts of USD 12,666 and EUR 9,229.43.

87. Any other prayers or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 10 June 2014 by Municipal Autonomous Institution Football Club Rubin Kazan against the decision issued on 7 February 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially upheld.
2. The decision issued on 7 February 2014 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is set aside.
3. Municipal Autonomous Institution Football Club Rubin Kazan is ordered to pay to Mr Fatih Tekke the amount of USD 12,666 (twelve thousand six hundred and sixty six United States Dollars), with 5% interest p.a. as of 1 September 2010.
4. Municipal Autonomous Institution Football Club Rubin Kazan is ordered to pay to Mr Fatih Tekke the amount of EUR 9,229.43 (nine thousand two hundred twenty-nine Euro and forty-three cent), with 5% interest p.a. as of 1 September 2010.

(...)

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