Arbitration CAS 2021/A/7808 Kayserispor Kulűbű Derneği v. Go Ahead Eagles Votebal B.V., award of 25 March 2022

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Football
Transfer with sell-on clause
Linkage of the sell-on clause to the transfer agreement

If a sell-on clause is part of a transfer agreement and as such, not expressly linked to the contract of employment, when the contract of employment expires, it does not mean that the sell-on clause falls away.

I. PARTIES

1. Kayserispor Kulűbű Derneği Football Club (the "Appellant") is a professional football club with its registered office in Kayseri, Turkey. The Appellant is a member of the Turkish Football Federation (the "TFF"), which in turn is affiliated with the Fédération Internationale de Football Association ("FIFA").

2. Go Ahead Eagles Votebal B.V. (the "Respondent") is a professional football cub with its registered office in Deventer, The Netherlands. The Respondent is a member of the Dutch Football Federation, i.e. Koninklijke Nederlandse Votebalbond (the "KNVB"), which in turn is affiliated with FIFA.

3. The Appellant and the Respondent shall collectively be referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts and allegations based on the Parties' written submissions as lodged with and during the hearing before the Court of Arbitration for Sport (the "CAS"). Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, he refers in this Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 27 July 2015, Mr Deniz Tűrűç (the "Player") transferred from the Respondent to the Appellant, pursuant to a transfer agreement (the "Transfer Agreement").

6. The transfer fee, pursuant to Clause 2.1 of the Transfer Agreement, was *"[…] an amount of €220,000 (in words: two-hundred-and-twenty-thousand-Euros) net and exclusive of all taxes as a compensation for the premature termination of the employment contract between the Player and GAE and the transfer of the Player from GAE to Kayserispor"* (the "Transfer Fee").

7. The Transfer Fee was payable in three instalments as follows:

   a. EUR 100,000 net and exclusive of all taxes, upon signature and before the transfer is processed on the FIFA Transfer Matching System ("TMS") (the "First Instalment");

   b. EUR 60,000 net and exclusive of all taxes before or on 31 January 2016 (the "Second Instalment"); and

   c. EUR 60,000 net and exclusive of all taxes before or on 31 March 2016 (the "Third Instalment").

8. Clause 2.2 of the Transfer Agreement stated the following (the "Sell-on Clause"):

   "In case of a future transfer of the Player from Kayserispor to a third club (not being GAE), GAE is entitled to 15% (in words: fifteen percent) of the Net indemnification amount regarding this transfer.

   In case of any dispute and/or unclarity according to GAE with regard to the exact amount of compensation to be paid by the third club (not being GAE) to Kayerispor, Kayerispor is obliged to provide GAE per request (i.e. a registered letter) of GAE with a copy of the transfer agreement between Kayerispor and the third club.

   For the avoidance of any doubts or misunderstanding Future transfer in this regard being a transfer on a definitive as well as on a loan basis.

   Net-indemnification in this regard being the indemnification paid by the Player or a third party to be appointed by the Payer to Kayserispor because of the premature termination of the employment contract between Kayserispor and the Player minus the solidarity contribution as mentioned in the FIFA Regulations and/or the regulations of the applicable Football Association.

   If applicable, payment will be made by Kayserispor to GAE within 10 working days as from the moment the above-mentioned condition is fulfilled"

   (the 15% being the "Sell-on Fee").

9. Clause 2.3 of the Transfer Agreement provided that *"in case (any of) the payment(s) mentioned in this Agreement is (are) not paid before the abovementioned dates, an interest rate of 2% per month will be applicable as from the date the amount(s) become due".*

10. On 28 July 2015, the Player signed an employment contract with the Appellant for a duration of three seasons, expiring on 31 May 2018 (the "First Contract").

11. In September 2016, due to the fact that the Appellant failed to pay the Second Instalment and Third Instalment under the Transfer Agreement to the Respondent, the Respondent lodged a claim before the FIFA Players' Status Committee (the "FIFA PSC").

12. On 8 May 2017 the FIFA PSC partially found in favour of the Respondent and directed the Appellant to pay the Respondent the Second Instalment and Third Instalment pursuant to the Transfer Agreement.

13. On or around 10 or 11 August 2017, the Respondent alleges, based on evidence furnished by both Parties, that the Appellant signed a new contract with the Player with effect from 1 June 2018, for a further two seasons, expiring on 31 May 2020 (the "Second Contract").

14. On 31 May 2018, the First Contract expired and on 1 June 2018, the Second Contract took effect.

15. In August 2019, the Player transferred from the Appellant to Fenerbahçe SK ("Fenerbahçe"), pursuant to a transfer agreement dated 2 August 2021 (the "Subsequent Transfer Agreement").

16. Pursuant to Clause 3 of the Subsequent Transfer Agreement, Fenerbahçe agreed and undertook to pay the Appellant a transfer fee of EUR 2,000,000 in one instalment of EUR 800,000 and three further instalments of EUR 400,000 each, payable on 17 August 2019, 31 October 2019, 31 December 2019 and 31 January 2020.

17. In accordance with Clause 2.2 of the Transfer Agreement, the Respondent repeatedly sent invoices to the Appellant requesting the payment of the Sell-on Fee. According to the Respondent, these invoices were sent twice by courier to the Appellant, which were returned unopened both times.

18. On 3 April 2020, the Respondent lodged another claim before the FIFA PSC claiming payment of the Sell-on Fee, plus 2% interest per month as from the relevant dates in accordance with Clause 2.3 of the Transfer Agreement.

19. On 8 December 2020, the FIFA PSC issued the following decision:

"1. The claim of the Claimant, Go Ahead Eagles, is partially accepted.

2. The Respondent, Kayserispor Kulubu Dernegi, has to pay the Claimant, the following amount:

- *EUR 300,000 plus 5% interest p.a. until the effective date of payment as follows:*
  - *on the amount of EUR 120,000 as from 28 August 2019;*
  - *on the amount of EUR 60,000 as from 11 November 2019;*
  - *on the amount of EUR 60,000 as from 11 January 2020;*

- *on the amount of EUR 60,000 as from 11 February 2020.*

3. Any further claims of the Claimant are rejected.

4. The Respondent is ordered to pay a fine in the amount of CHF 20,000. The fine is to be paid within 30 days of notification of the present decision to FIFA.

[…]

7. In the event that the amount due as mentioned under point 2., plus interest as established above is not paid by the Respondent within 45 days, as from the notification by the Claimant of the relevant bank details to the Respondent, the following consequences shall arise:

1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid and for the maximum duration of three entire and consecutive registration periods. The aforementioned ban mentioned will be lifted immediately and prior to its complete serving, once the due amount is paid. (cf. art. 24bis of the Regulations on the Status and Transfer of Players).

2. In the event that the payable amount as per in this decision is still not paid by the end of the ban of three entire and consecutive registration periods, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee […]

8. The costs of the proceeding in the amount of CHF 5,000 shall be borne by the Respondent (cf. note relating to the payment of procedural costs below). The Claimant is entitled to a reimbursement of the CHF 5,000 paid as advance of costs".

(the "Appealed Decision")

20. On 3 March 2021, FIFA notified the Parties of the grounds of the Appealed Decision.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

21. On 24 March 2021, the Appellant filed its Statement of Appeal with the CAS Court Office in accordance with Article R47 and R48 of the Code of Sports-related Arbitration (the "CAS Code"). In its Statement of Appeal, the Appellant nominated Mr Patrick Stewart as sole arbitrator for the dispute.

22. By way of a letter dated 31 March 2021, the CAS Court Office invited the Respondent to indicate whether it agreed to the appointment of Mr Stewart as sole arbitrator, as suggested by the Appellant.

23. Also, on 31 March 2021, the CAS Court Office addressed a letter to FIFA, notifying them of the Appellant's appeal, and inviting FIFA to file an application to intervene in the proceedings in according to Article R41.3 of the CAS Code

24. On 1 April 2021, the Respondent informed the CAS Court Office that whilst it consented to the appointment of a sole arbitrator, it did not agree to the appointment of Mr Stewart as Sole Arbitrator and requested that the President of the CAS Appeals Division nominate the sole arbitrator in accordance with the CAS Code.

25. On 5 April 2021, the Appellant filed its Appeal Brief in accordance with Article R51 of the CAS Code.

26. On 8 April 2021, the Respondent informed the CAS Court Office that the Appellant's Exhibits to the Statement of Appeal and Appeal Brief were in Turkish, and accordingly requested that those documents be translated to English.

27. Following this, also on 8 April 2021, the Appellant agreed to provide an English translation of the Exhibits, but requested some time to do so. The CAS Court Office thus invited the Appellant to provide the requested translations by 23 April 2021.

28. On 12 April 2021, FIFA informed the CAS Court Office that it renounced its right to intervene in the proceedings.

29. On 26 April 2021, the Appellant submitted an English translation of certain exhibits to its Appeal Brief, as directed by the CAS Court Office.

30. On 29 April 2021, the Respondent noted that certain exhibits of the Appellant were still not translated, which the CAS Court Office then requested the Appellant to provide such translations.

31. On 5 May 2021, the CAS Court Office notified the Parties that Mr Mark A. Hovell, Solicitor in Manchester, UK had been nominated as Sole Arbitrator to hear the present dispute. The Parties' attention was drawn to a comment made by Mr Hovell on his *"acceptance and statement of independence form"* as well as to the time-limit for the filing of a challenge.

32. In accordance with Article R55 of the CAS Code, the Respondent filed its Answer on 11 May 2021, together with a request for production of English translations of the Subsequent Transfer Agreement and the Second Contract, which was granted by the Sole Arbitrator on 2 July 2021.

33. On 12 May 2021, the Respondent informed the CAS Court Office that it did not wish for a hearing to be conducted in the matter and by way of a letter dated 20 May 2021 the Appellant indicated that it preferred a hearing to be held, preferably in person.

34. On 11 June 2021, the CAS Court Office notified the Parties that in the absence of any challenge against his nomination, Mr Mark A. Hovell, Solicitor in Manchester, United Kingdom, had been confirmed as Sole Arbitrator in the present dispute.

35. On 2 July 2021, the CAS Court Office requested the Appellant to provide the English translations of additional documents not already translated and informed the Parties that the Sole Arbitrator had decided to convene a hearing in the matter.

36. On 12 July 2021, the Appellant submitted further documents which were drafted in Turkish. The Appellant submitted an English translation of these on 2 August 2021 together with the translations that were requested on 2 July 2021.

37. On 2 August 2021, the CAS Court Office informed the Parties that a hearing would be held in-person on Friday 24 September 2021.

38. On 12 August 2021 and in compliance with a request from the Sole Arbitrator, the Respondent submitted its observations on the translated evidence produced by the Appellant.

39. On 23 August 2021, the CAS Court Office communicated the Order of Procedure to the Parties.

40. On 25 August 2021, the Respondent signed and returned a copy of the Order of Procedure to the CAS Court Office.

41. On 13 September 2021, the Appellant signed and returned a copy of the Order of Procedure to the CAS Court Office.

42. On 14 September 2021 and after consultation with the Parties, the CAS Court Office notified the Parties that the hearing would take place on 24 September 2021, however now via Cisco-WebEx, due to travel restrictions relating to Covid-19.

IV. THE HEARING

43. On 24 September 2021 a hearing was held via video conference. The Sole Arbitrator was assisted by Ms Pauline Pellaux, Counsel to the CAS.

44. The Sole Arbitrator was joined at the hearing by:

    i. for the Appellant: Mr Mosturoglu, counsel; and

    ii. for the Respondent: Mr Korbee, counsel and Mr Kroes, General Director.

45. At the hearing, preliminarily, the Parties confirmed that they had no objection to the appointment of the Sole Arbitrator.

46. The Parties made their oral submissions and answered the questions of the Sole Arbitrator. At the conclusion of the hearing the Parties expressly stated that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings.

47. The Sole Arbitrator has carefully taken into account in his subsequent deliberation all the evidence and arguments presented by the Parties, both in their written submissions and at the hearing, even if they have not been summarised in the present Award.

V. THE PARTIES' SUBMISSIONS

48. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has carefully considered all the submissions made by the Parties, even if no explicit reference is made in what immediately follows.

A. The Appellant

49. In its Appeal Brief, the Appellant made the following requests for relief:

> *"1. Set aside the decision awarded by FIFA PSC and annul the compensation awarded to Go Ahead Eagles BV.*
>
> *2. Annul the monetary fine in the amount of CHF 20.000,00 imposed on Kayserispor Kulűbű Derneği by FIFA*
>
> *3. Order FIFA to reimburse procedural costs the amount of CHF 25.000 to Kayserispor Kulűbű Derneği.*
>
> *4. Order Go Ahead Eagles Votebal B.V. to handle all procedural costs, counsel's fee and other relevant fees".*

50. In summary, the Appellant submitted the following arguments in support of its Appeal:

51. When the Player transferred from the Respondent to the Appellant, the Appellant retained the Player's federative rights in exchange for an *"early termination of employment relationship".*

52. Clause 2.2 of the Transfer Agreement contained the Sell-on Clause in favour of the Respondent.

53. Generally, where a buying club wants to acquire the federative rights of a player, it should, in principle, wait until the end of the contract with that player's then current club. If a buying club intends to acquire the federative rights of a player before the conclusion of the player's employment relationship with their current club, the buying club must pay the selling club a transfer fee. A sell-on clause is a part of the compensation that the selling club receives for the early termination of a player's contract that resulted in him transferring to the buying club.

54. As such, the sell-on clause is not a form of ownership over the economic rights of the player but a conditional contractual obligation which is dependent upon the existence of an employment relation which follows the agreement between clubs.

55. In the present context, the employment relationship between the Appellant and the Player started on 28 July 2015 and ended on 31 May 2018.

56. Upon this expiry of the employment relationship between the Appellant and Player, all "conditional obligations" towards the Respondent (being the former club) fell away.

57. Further, the Player became a free agent on 31 May 2018, with the Respondent losing any capacity to raise claims pursuant to the Sell-on Clause, which expired concurrently with the First Contract on 31 May 2018.

58. On 1 June 2018, the Player entered into the Second Contract. The Second Contract was entirely separate from, and is not an extension of, the First Contract. Therefore, it constitutes an independent employment relationship.

59. The Single Judge of the FIFA PSC found that the Sell-on Clause extended beyond the duration of the First Contract. However, this is not only a misinterpretation but also a violation of the "Excessive Restriction Rule".

60. Article 27 of the Swiss Code of Obligations (the "SCO") states that:

> *"(1) No person may, wholly or in part, renounce his or her legal capacity to act;*
>
> *(2) No person may surrender his or her freedom or restrict the use of it to a degree which violates the law or public morals"*

61. Article 2.2 of the Transfer Agreement, if interpreted as done by the Single Judge of the FIFA PSC, is excessively restrictive and creates an entitlement which would *"literally last until the end of the player's career"*. This is a clear violation of law and public policy.

62. The Sell-on Clause was applicable only up to 31 May 2018 and cannot be extended beyond this date.

63. The Respondent has also acted in *"monumentaly bad faith"* [sic].

64. The alleged contract between the Appellant and Fenerbahçe is fabricated and constitutes a violation of criminal law – such contract was neither in the Appellant's nor the TFF's records.

65. The fact that the Subsequent Transfer Agreement produced by the Respondent contained the name of an Appellant's personnel named Mr. Faith Çağlan Őcal demonstrates that it was fabricated. The Appellant has never had a director or an employee bearing this name.

66. The second signature on the Respondent's copy of the Subsequent Transfer Agreement was of a certain Mr. Çakmak Uyar. However, his signature on the version submitted by the Respondent differs from the Mr Uyar's signature in reality. This is further proof that the Respondent's copy of the Subsequent Transfer Agreement was counterfeit.

67. This evidence is fabricated and should therefore be inadmissible. Allowing the Respondent to rely on fabricated evidence *"would create disastrous outcomes for the footballing world"*.

B. The Respondent

i. The Answer

68. In its Answer, the Respondent requested the Sole Arbitrator:

> *"To decide that Appellant shall comply with all the terms of the Transfer Agreement and therefore to decide that the Appellant shall pay to the Respondent the Sell-on Fee amounting to* ***EUR 300,000*** *(three hundred thousand Euros) plus 2% interest per month – such in accordance with Article 2.3 of the Transfer Agreement – until the effective date of payment as follows:*
>
> - *on the amount of EUR 120,000 as from 28 August 2019;*
> - *on the amount of EUR 60,000 as from 11 November 2019;*
> - *on the amount of EUR 60,000 as from 11 January 2020;*
> - *on the amount of EUR 60,000 as from 11 February 2020.*
>
> *In case your Panel is of the opinion that the contractual penalty stipulated in Article 2.3 of the Transfer Agreement is disproportionate, Respondent requests your Panel to apply the interest rate of 5% per annum as imposed by the FIFA PSC. In that event, Respondent requests your panel to decide that Appellant shall pay to Respondent the Sell-on Fee amounting to EUR 300,000.- plus 5% interest per annum until the effective date of payment as follows:*
>
> - *on the amount of EUR 120,000 as from 28 August 2019;*
> - *on the amount of EUR 60,000 as from 11 November 2019;*
> - *on the amount of EUR 60,000 as from 11 January 2020;*
> - *on the amount of EUR 60,000 as from 11 February 2020.*
>
> *To decide that the Appellant shall be liable for all costs and expenses incurred by the Respondent in bringing this appeal including costs and expenses of the CAS, such as but not limited to the legal costs".*

69. In summary, the Respondent made following arguments in support of its Answer to the Appellant's Appeal:

70. Preliminarily, the Respondent notes that since the Appellant has not summoned FIFA as a party to the present proceedings, with FIFA having already renounced its right to request its possible intervention, the Respondent can neither request for the annulment of the monetary fine imposed by FIFA upon the Appellant, nor the reimbursement of its legal costs by FIFA in the present proceedings.

a) Transfer Agreement between the Appellant and Fenerbahçe

71. The Appellant's allegation that the Respondent 'fabricated' the Subsequent Transfer Agreement is both reprehensible and unfounded.

72. It is undisputed that the Player was transferred from the Appellant to Fenerbahçe in August 2019. In fact, the Respondent obtained a copy of the Subsequent Transfer Agreement from the Player himself, which is consistent with the English translated version in the Respondent's possession.

73. Further, the Appellant's website shows that Mr. Faith Çağlan Őcal was apparently on the Board of Directors of the Appellant. He even served as 'General Secretary', 'Accommodations Manager' at least during the years 2016-2020. The Appellant's website further demonstrates that at the time the Subsequent Transfer Agreement was signed, Mr Faith Çağlan Őcal was apparently 'General Secretary' of the Appellant.

74. Further, Mr Mehmet Çakmak Uyar – the second signatory to the Subsequent Transfer Agreement – was a director of the Appellant. Therefore, at least one of Mr Őcal and Mr Uyar was entitled to represent the Appellant.

75. This was also evident through the Appellant's social media communication (from the Appellant's verified Facebook account), dated 24 July 2019, 18 April 2018, 2 October 2018 and 7 September 2017, which expressly referred to Mr Faith Çağlan Őcal as the Appellant's general secretary or as a member of its board.

76. As such, Mr Faith Çağlan Őcal was clearly a board member and the Appellant's assertion that they *"never had a director or an employee named Faith Çağlan Őcal"* is clearly false and unfounded.

77. Notably, the Appellant did not raise any arguments relating to Mr Faith Çağlan Őcal's status (or lack thereof) as a director in the previous instance proceedings before the FIFA PSC. If he was never employed by the Appellant, it is remarkable that such an argument was not raised during the FIFA proceedings.

b) The Player was not a free agent on 31 May 2018

78. It is irrelevant whether a player transfers onward to a third club under his first contract or an extended contract for the purposes of triggering a sell-on clause.

79. The Appellant attached a document called *Sőleşme* to its Statement of Appeal. Whilst this document was initially in Turkish (and not translated), it was evident that it related to the 2018/19 and 2019/20 seasons. However, it was signed on 10 August 2017 – a whole season before it was effective.

80. This demonstrates that the Appellant was once again clearly acting contrary to the truth by claiming that the document (in other words, the Second Contract) was signed by the Player

on 1 June 2018. As such, the Player's contract with the Appellant was already extended in 2017 and the Player was not a free agent on 31 May 2018.

81. In fact, on 15 July 2017, the Appellant even posted a photo of the Player on its official, verified Twitter account, announcing that: *"We have extended the contract with Deniz Tűrűç"*. This announcement was also published on the Appellant's website.

c) Expiry of the first contract between the Appellant and the Player

82. Whilst the Respondent has clearly proved above that the Second Contract was extended in August 2017, prior to the expiry of the First Contract; even if the Player signed the Second Contract with the Appellant one day after expiry of the First Contract, the Respondent is still entitled to the Sell-on Fee.

83. The wording of the Sell-on-Clause clearly states that, *"in case of a future transfer of the Player from Kayserispor to a third club (not being GAE)",* the Respondent is entitled to receive a 15% of the future transfer amount. Thus, when the Player transferred from the Appellant to Fenerbahçe, this condition was fulfilled. Therefore, the question of whether the Player was transferred under the First Contract or Second Contract is irrelevant.

84. Further, if the Appellant had wanted the Sell-on Clause to apply only during the First Contract, it could have, and should have stated so. However, in the absence of any express clarification as to when the Sell-on Clause applies, and in accordance with the principle of *pacta sunt servanda*, the Respondent is entitled to receive the Sell-on Fee.

85. The Respondent agrees with the findings of the Single Judge of the FIFA PSC, who stated that:

"the Single Judge observed that the sell-on fee is dependent on the following transfer agreement concluded with the third club only. Thus, he concluded that the player's employment relationship with the Respondent has no influence on the Claimant's entitlement to the sell-on fee, and decided that the Respondent's argument in this respect must be rejected".

86. Further, if the Appellant's view was to be followed, i.e. by applying a sell-on clause only to a player's first contract with a club, such approach would undoubtedly lead to circumvention of sell-on clauses. For example, a new club of a player may end the employment contract (by mutual consent) and directly enter into a new contract with the player, in order to circumvent the application of a sell-on clause. A sell-on clause would then be useless and circumvention thereof would lead to unwanted consequences.

d) Appellant's evidence

87. It is questionable as to why the Appellant only submitted the last page of its version of the Subsequent Transfer Agreement. Notably, even the FIFA PSC mentioned in the Appealed Decision that the Appellant had refused to forward to the document it claimed was the original one.

ii. Respondent's Further Submissions

88. The Respondent reiterated its requests for relief submitted in the Answer as follows:

> *"On the accounts of the above, the Respondent persists in its position that it is entitled to receive the sell-on fee in the amount of* ***EUR 300,000.-*** *(three hundred thousand Euros) from the Appellant plus 2% interest per month until the effective date of payment, as specified in par. 54 of the Respondent's Statement of Defence dated 11 May 2021. Therefore, and in order to avoid any recurrence, all of the (other) requests as mentioned in par. 54 until 56 of the Statement of Defence remain the same".*

89. On 12 August 2021, the Respondent filed further observations on the translated evidence filed by the Appellant. In summary, the Respondent submitted the following:

a) The Second Contract

90. It appears that the untranslated version stated that the Player would sign the Second Contract within 30 days. The stamp on that version of the Second Contract indicates the date of 7 August 2017.

91. The version of the Second Contract translated to English confirms that the Respondent's earlier submission that the Player was not a free agent on 31 May 2018.

92. Clause 10 of the translated version of the Second Contract expressly provides that it was *"executed on this date of 10.08.2017 after being thoroughly read and understood by the parties hereto, in the original copy and shall come into force as of its signing".*

93. Further, page 13 of the translated version of the Second Contract makes a reference to the document being signed and entered into force on *"10.08.2017".*

94. Therefore, whilst the Second Contract commenced on 1 June 2018, the translated version of the Second Contract is proof that the Appellant was clearly acting contrary to the truth by claiming that it was signed on 1 June 2018.

b) The Subsequent Transfer Agreement

95. Both parties submitted an English translation of the Subsequent Transfer Agreement. The content of these was identical, save for the fact that the Respondent's version is signed by Mr. Çakmak Uyar and Mr. Faith Çağlan Őcal, whilst according to the Appellant's version, the signatories are Mr. Çakmak Uyar and Mr Ismail Çől.

96. However, this fully confirms that the Player was transferred from the Appellant to Fenerbahçe, and the Appellant received a transfer fee for this.

97. Thus, the Respondent is entitled to receive the 15% Sell-on Fee, pursuant to the Sell-on Clause in the Transfer Agreement.

VI. JURISDICTION OF THE CAS

98. Article R47 of the CAS Code provides as follows:

> *"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*
>
> *An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned".*

99. Pursuant to Article 57 of the FIFA Statutes, FIFA recognises the jurisdiction of the CAS to *"resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents".*

100. Further pursuant to Article 58(2) of the FIFA Statutes, *"Recourse may only be made to CAS after all other internal channels have been exhausted*".

101. It is not disputed that these proceedings involve an appeal against a decision rendered by the Single Judge of the FIFA PSC, which further provided for a right of appeal to the CAS.

102. Furthermore, the jurisdiction of the CAS was not disputed by the Parties who further confirmed this by both signing the Order of Procedure.

103. It follows that the CAS has jurisdiction to hear this dispute.

VII. ADMISSIBILITY

104. The grounds of the Appealed Decision were notified to the parties on 3 March 2021. The Statement of Appeal was filed on 24 March 2021.

105. The Statement of Appeal also complied with the requirements of Articles R47, R48 and R64.1 of the CAS Code, including the payment of the CAS Court Office fee.

106. The Appeal Brief was filed on 5 April 2021, in accordance with deadlines extensions granted to the Appellant pursuant to R32.2 of the CAS Code.

107. It therefore follows that this appeal is admissible.

VIII. APPLICABLE LAW

108. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the*

federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

109. Pursuant to Article 57(2) of the FIFA Statutes:

"[t]he 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".

110. The Sole Arbitrator notes that neither Party has made any submissions on the law applicable to the merits of this dispute.

111. The Sole Arbitrator further notes that according to Clause 4 of the Transfer Agreement:

"This Agreement is governed by and construed in accordance with the FIFA Regulations, known to parties, and Dutch law. Any dispute arising out of this Agreement shall be submitted to the jurisdiction of the competent body of FIFA or directly for settlement to the Court of Arbitration for Sport (hereinafter referred to as: "CAS") in Lausanne (Switzerland) in accordance with the arbitration rules of CAS. The arbitration or CAS panel shall consist of three members and the language of arbitration shall be English. The decision of the CAS is binding and not open to appeal".

112. Therefore, on an application of relevant provisions of the CAS Code and the FIFA Statutes, Swiss law should apply to the extent that the FIFA Regulations on the Status and Transfer of Players (the "RSTP") are applicable to the dispute at hand.

113. Procedural issues that are not governed by the RSTP should be subject to Swiss law, with FIFA being a Swiss association, however, any substantive issues arising out of the Transfer Agreement that cannot be solved by reference to the FIFA regulations, shall be subject to Dutch law.

114. However, as can be seen from the reasoning below, the Sole Arbitrator had no need to be concerned with the Dutch law in the case at hand.

IX. MERITS OF THE APPEAL

A. The Main Issues

115. The Sole Arbitrator notes that the following issues need determining:

a. ***Should the Subsequent Transfer Agreement be considered by the Sole Arbitrator?***

116. The applicability of the Sell-on Clause triggered by the transfer of the Player from the Appellant to Fenerbahçe pursuant to the Subsequent Transfer Agreement is, in essence, the issue at the heart of this matter. However, the Appellant disputes the authenticity of the Subsequent Transfer Agreement. As such, the Sole Arbitrator must first decide whether the Subsequent Transfer Agreement can be relied upon at all.

117. The Appellant argued that the signatories on the Respondent's version of the Subsequent Transfer Agreement did not correspond with its own version, which it submitted was the correct version to refer to.

118. The Sole Arbitrator notes that the Appellant's version of the Subsequent Transfer Agreement was identical to the Respondent's in all other material respects. Therefore, notwithstanding the disputed identity of the signatories to the Subsequent Transfer Agreement, the Sole Arbitrator notes that the Appellant does not deny the existence of the Subsequent Transfer Agreement altogether.

119. In fact, the version of the Subsequent Transfer Agreement put into evidence by the Appellant verified that that the Player transferred to Fenerbahçe on 2 August 2019 for a total fee of EUR 2,000,000 (two million Euros) payable in one instalment of EUR 800,000 (eight hundred thousand Euros) and three subsequent instalments of EUR 400,000 (four hundred thousand Euros) each.

120. As such, it was irrelevant which version of the Subsequent Transfer Agreement ought to have been considered for the purposes of the dispute at hand as the relevant information was identical across both versions. Whilst the Sole Arbitrator did not necessarily need to consider the version submitted by the Respondent, there was no reason why he should not have considered the version of the Subsequent Transfer Agreement that the Appellant itself put on the CAS file in its entirety. As such, the dispute regarding the signatories can remain moot, the Sole Arbitrator relies on the Appellant's version of this document.

b. Would the Sell-on Clause automatically terminate with the expiry of the First Contract?

121. The Appellant's position is that the Sell-on Clause was necessarily linked to the First Contract and that upon the expiry of the First Contract, all "conditional obligations" towards the Respondent (such as the Sell-on Clause) fell away.

122. The Sole Arbitrator notes that the Sell-on Clause was part of the Transfer Agreement and as such, not expressly linked to the First Contract. Therefore, merely because the First Contract expired, it did not mean that the Sell-on Clause fell away.

123. Had the Parties intended this to happen, they could have easily worded the Sell-on Clause in a manner that reflected such intention.

124. However, in the absence of any language to the contrary, the Sell-on Clause would be triggered when the Player transferred from the Appellant to another club for a fee, which in this case, was to Fenerbahçe.

125. This was clear from the wording of the Sell-on Clause which stated that:

"In case of a future transfer of the Player from Kayserispor to a third club (not being GAE), GAE is entitled to 15% (in words: fifteen percent) of the Net indemnification amount regarding this transfer. […]".

126. During the hearing, the Parties acknowledged that had the Player transferred from the Appellant to another club as a free agent upon the expiry of the First Contract, but returned to the Appellant thereafter, only to subsequently transfer to Fenerbahçe for a fee, the Sell-on Clause would have not been applicable to the subsequent transfer to Fenerbahçe. This is because the Sell-on Clause would only have applied if the first subsequent transfer from the Appellant was for a fee.

127. However, as this was not the situation in the case at hand, the Sole Arbitrator finds that the Sell-on Clause did not automatically terminate when the First Contract expired; rather it survived the First Contract.

c. Was there a gap between the First and Second Contracts that would have terminated the Sell-on Clause?

128. The Appellant argues that the Player was a free agent when the First Contract expired on 31 May 2018, and before the Second Contract was entered into on 1 June 2018. However, the Respondent highlights that the Second Contract was actually signed in August 2017, some nine months prior to 1 June 2018, which was merely its 'effective date'. As such, the Respondent argued that there was no gap between the Contracts or in the employment relationship between the Appellant and the Player.

129. The Sole Arbitrator agrees with the Respondent on this issue. It is clear from Clause 10 of the Second Contract, which states that it was *"executed on this date of 10.08.2017 after being thoroughly read and understood by the parties hereto, in the original copy and shall come into force as of its signing"* that there was no break in the employment relationship. On this basis, the Sole Arbitrator dismisses the Appellant's reliance on the TFF's reference to the Second Contract as being a 'Sőzleşmesi'or Transfer Agreement, which constitutes an *"autocephalous employment relationship"*.

130. The Sole Arbitrator further notes that the Appellant even publicised the renewal of the Player's contract on its website and on social media in July/August 2017, before the Second Contract took effect. The Sole Arbitrator concludes, based on the sequence of events, that there was no gap between the First Contract and Second Contract. On the contrary, the Second Contract commenced as the First Contract expired, which is reflective of the Appellant's intent to continue its employment relationship with the Player. The Player was not a 'free agent' when the First Contract expired.

131. In any event, the Sole Arbitrator considers that even if there was a gap between the First Contract and the Second Contract, it would have been a matter of a few hours. To rule that the Sell-on Clause fell away upon the expiry of the First Contract, would defeat the purpose of the Sell-on Clause – it was drafted to be triggered when the Player was transferred for a fee to another club, and a mere renewal or extension of the Player's contract with the Appellant did not impact the validity of the Sell-on Clause.

d. What is the result?

132. Notwithstanding the Sole Arbitrator's findings at paragraph 131 above, as the First Contract was immediately followed by the Second Contract without a gap, the Second Contract is effectively a continuation of the Player's employment with the Appellant, which commenced with the First Contract.

133. When the Player eventually transferred to Fenerbahçe in August 2019 (i.e., approximately 10 months before the Second Contract was to expire) for a transfer fee, such transfer triggered the Sell-on Clause.

134. The Sole Arbitrator therefore concludes that the Appellant owes the Respondent the Sell-on Fee of EUR 300,000 (being 15% of the EUR 2,000,000 transfer fee paid by Fenerbahçe).

135. With respect to the payment of interest, the Sole Arbitrator notes that the FIFA PSC, in the Appealed Decision, ordered the Appellant to pay the Sell-on Fee of EUR 300,000 plus interest at 5% per annum until the effective date of payment.

136. The Sole Arbitrator further notes that the Respondent had, in its Answer, requested that the Appellant pay it penal interest of 2% per month on the Sell-on Fee. This was based on Article 2.3 of the Transfer Agreement as set out at paragraph 9 above.

137. As just the Appellant, and not the Respondent, has appealed the Appealed Decision to the CAS, the Sole Arbitrator notes that the Respondent's request for penal interest amounts to a counter-claim, which, as of 1 January 2010 have been inadmissible in appeal arbitration procedures before the CAS (see, for example: *CAS 2020/A/7175, CAS 2020/A/6753, CAS 2020/A/5929 and CAS 2010/A/2098*). However, the Sole Arbitrator notes that the Respondent withdrew its request for penal interest at the rate of 2% per month at the hearing. Therefore, such request is moot. Had the Respondent wished to claim this amount from the Appellant, it ought to have initiated its own appeal against the Appealed Decision.

138. The Sole Arbitrator therefore concludes that the Appellant must pay the Respondent the Sell-on Fee of EUR 300,000 plus interest of 5% p.a. as follows:

- on the amount of EUR 120,000 as from 28 August 2019;
- on the amount of EUR 60,000 as from 11 November 2019;
- on the amount of EUR 60,000 as from 11 January 2020;
- on the amount of EUR 60,000 as from 11 February 2020.

139. Further, the Sole Arbitrator notes that with FIFA having neither been designated as a Respondent in the Statement of Appeal nor having requested its intervention in the present dispute, FIFA is not a party to the present procedure and the Respondent lacks the standing to be sued in relation to the FIFA fine of CHF 20,000 as well as to the reimbursement of its legal costs by FIFA. As such, the Sole Arbitrator neither has the power to annul this FIFA

fine imposed upon the Appellant by FIFA pursuant to the Appealed Decision, nor award a reimbursement of legal costs by FIFA in the present proceedings.

B. Conclusion

140. Based on the foregoing, and after taking into due consideration all the evidence produced and all submissions made, the Sole Arbitrator determines that:

a. The Appellant's appeal is dismissed; and

b. The Appealed Decision is upheld in full.

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

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 24 March 2021 by Kayserispor Kulűbű Derneği against the decision rendered by the FIFA Players' Status Committee dated 8 December 2020, is dismissed.

2. The decision rendered by the FIFA Players' Status Committee dated 8 December 2020 is confirmed.

3. (…).

4. (…).

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