



Arbitration CAS 2010/A/1996 Omer Riza v. Trabzonspor Kulübü Derneği & Turkish Football Federation (TFF), award of 10 June 2010

Panel: Mr Manfred Peter Nan (Netherlands), President; Mr Michael Beloff QC (United Kingdom); Prof. Massimo Coccia (Italy)

Football

CAS competence to rule on its own jurisdiction

Existence of an arbitration clause in favour of the CAS

Right of a player to bring a case to the CAS and statutes of the national federation

General references to FIFA rules and CAS jurisdiction

Dual nationality of a player as an element of international dimension

No proper constitution of the national decision making bodies and CAS jurisdiction

- 1. In a case where parties do not have domicile in Switzerland, the CAS Panel has the authority to decide the issue of its own jurisdiction in accordance with the provisions of the Swiss Private International Law Act and may adjudicate this preliminary issue by means of a partial award.**
- 2. National federations' rules have a contractual character for those affiliated to or registered with them; however, for the CAS to have jurisdiction to rule on the case, they need to provide for an arbitration clause in favour of the CAS. In the latest edition of the FIFA Statutes, it is merely provided that "FIFA recognises" the CAS and, thus, may not be deemed as an arbitration clause in relation to disputes in which FIFA is not involved. Article 62.1 of the 2009 FIFA Statutes does not give *per se* a player the right to appeal before the CAS for a contractual dispute which was decided in first instance by a national federation's body.**
- 3. Article 63.1 of the FIFA Statutes requires national federations to make a provision for arbitration and to confer jurisdiction "*to an independent and duly constituted arbitration tribunal recognised under the rules of the Association or Confederation or to CAS*". This choice left to national federations emphasises that the FIFA statutes do not provide a binding arbitration clause conferring jurisdiction to CAS. Accordingly, there is no right for a player to bring a case to the CAS against his club until the concerned national federation has made a concrete provision for this right in its statutes or regulations.**
- 4. Under certain circumstances general references to FIFA rules are sufficient to warrant their application and in consequence to engage CAS jurisdiction, such as in anti-doping matters, where the clear-cut provisions of paras. 5 and 6 of Article 63 of the FIFA Statutes allow a CAS Panel to retain jurisdiction over a national federation's decision on a doping matter through the express reference made by a national**

federation's statutes to FIFA Statutes.

5. **The dual nationality of a player is clearly inadequate to justify endowing the dispute with a foreign element or again more accurately an international dimension within the meaning of Article 14 of the ATB Regulations.**
6. **A party can certainly question whether the national decision making bodies were properly constituted and independent in the sense of the FIFA Regulations. Nonetheless this possible claim of lack of independence does not result in an automatic assumption of jurisdiction by CAS, because even if the FIFA Statutes or Regulations provide the possibility to appeal to CAS when the national arbitral tribunal is not independent, the provision of such appeal would be in plain contradiction of articles 13f) and 64 of the TFF Statutes.**

Mr Omer Riza ("Appellant" or the "Player") is a professional football player with dual nationality. He was born in England as a British national on 8 November 1979, and gained also the Turkish Republic citizenship by decision of the Council of Ministries dated 17 August 2004.

Trabzonspor Kulübü Derneği ("Trabzonspor" or "First Respondent") is a Turkish football club with seat in Trabzon (Turkey), affiliated to the Turkish Football Federation.

The Turkish Football Federation (TFF or "Second Respondent") is a national football association affiliated to FIFA, with seat in Istanbul (Turkey).

In January 2006, the Player and Trabzonspor signed an employment contract. The file contains an employment contract effective from 17 January 2006 until 30 June 2008 with an option in favour of Trabzonspor to extend the term until 30 June 2009 ("the supplementary contract") and a standard players employment contract effective from 18 January 2006 until 30 June 2009 ("the standard contract").

On 4 January 2008 the Player sent a notice of termination to Trabzonspor alleging just cause based on non-fulfilment by Trabzonspor of its contractual obligations.

By letter dated 19 February 2008 FIFA acknowledged receipt of a fax from the Player dated 11 January 2008 with enclosures in relation with the dispute between the Player and Trabzonspor. In this letter FIFA informed the Player – on behalf of the Dispute Resolution Chamber – that FIFA *"cannot intervene in matters between two parties of the same nationality, but has to refer them to the decision-making bodies of the relevant member Association"*.

On 8 April 2008 the Player lodged a claim with the TFF Dispute Resolution Board against Trabzonspor.

On 2 December 2008 the TFF Dispute Resolution Board rejected the claim lodged by the Player. The TFF Dispute Resolution Board decided that the employment contract signed between the Player and Trabzonspor had been wrongfully terminated by the Player and, as a consequence, the former had to pay financial compensation to Trabzonspor. In addition, a suspension of four months was imposed on the Player.

In January 2009 the Player appealed against the decision of the TFF Dispute Resolution Board to the TFF Arbitration Board.

On 15 February 2009, the Player and the English club Shrewsbury Town FC signed an employment contract valid until 30 June 2009.

On 14 April 2009, the Single Judge of the Player's Status Committee of FIFA decided to authorise the English Football Association to provisionally register the Player with Shrewsbury Town with immediate effect.

By decision dated 16 April 2009 the TFF Arbitration Board affirmed the decision of the Dispute Resolution Board after correcting the amount owed by the Player to Trabzonspor.

The decision of the TFF Arbitration Board was notified to the Player on 21 October 2009.

On 11 November 2009, the Player filed an appeal with the Court of Arbitration for Sport (CAS) against the decision of the TFF Arbitration Board ("the Appealed decision").

On 17 November 2009, the Player submitted his Appeal Brief.

On 18 December 2009, the Player filed his submission on jurisdiction after the parties agreed jointly to the bifurcation of the CAS proceedings in order for CAS to decide as a preliminary matter on jurisdiction.

On 1 February 2010, Trabzonspor filed its submissions on jurisdiction.

On 18 February 2010, the TFF submitted its answer on jurisdiction.

On 12 March 2010, the CAS Court Office informed the parties that the Panel was considering the possibility of deciding as a preliminary issue the question of CAS jurisdiction based on the parties written submissions and, pursuant to Article R57 of the Code of Sports-related Arbitration (the "CAS Code"), asked them whether they wished to have a hearing devoted to this preliminary issue.

On 17 March 2010, the Player communicated to the CAS his preference for a hearing before the Panel reached a decision on the preliminary issue or – in the event that the Panel decided not to hold a hearing – for an opportunity to file a written response to the Respondent's submissions on jurisdiction.

On 17 March 2010, both Respondents communicated to the CAS that they considered that a hearing on the preliminary issue of jurisdiction was not necessary.

On 18 March 2010, the CAS Court Office informed the parties that the Panel had determined to allow the parties to submit further written submissions and new evidence, if so desired, on the jurisdictional issue.

On 19 March 2010, the TFF raised objections to the Panel's procedural decision.

On 23 March 2010, the CAS Court Office informed the parties that the Panel – in order to ensure both the Appellant's full right to be heard and fairness to the Respondent –, considered that the requirements of Article R56 of the CAS Code were met and, accordingly, invited a second exchange of submissions, including with it any item of evidence, on the threshold jurisdictional issue.

On 6 April 2010, before the expiry of the deadline agreed by the parties and confirmed by CAS, the Player asked for an extension of 1 day to file his supplemental submission.

On 7 April 2010, the Player filed his supplemental submissions on jurisdiction.

On 8 April 2010, the CAS Court Office communicated to the parties that the Panel had decided to grant the request for extension filed by the Appellant and, therefore, to accept the Appellant's submission on jurisdiction.

On 8 April 2010, the TFF objected to the admissibility of the Appellant's supplemental submissions and requested that the Panel fix a time limit for the Respondents to comment on the admissibility of the Appellant's reply.

On 12 April 2010, the CAS Court Office informed the parties that the Appellant's application for extension was filed before the expiry of the deadline and that, due to the urgency of the situation and in full compliance with article R32 of the CAS Code, the President of the Panel had decided – after evaluating the reasons for and the length of the requested extension – that the grounds put forward by the Appellant were justified. Furthermore, the Respondent's deadline to answer was also extended by him in order to respect the equality of treatment of the parties. The Panel also denied the TFF's request to address in a separate brief the issue of admissibility of the Appellant's supplemental submissions on jurisdiction.

On 27 April 2010, TFF filed its reply.

On 12 May 2010, Trabzonspor filed its reply after expiration of the set deadline by two weeks without providing the Panel with any justification for this belated reply. The Appellant objected to the admissibility of Trabzonspor's supplemental submissions. As a result and in accordance with Article R56 of the CAS Code, the President of the Panel decided not to take the belated reply into consideration.

On 26 May 2010, the CAS Court Office told the parties that the Panel, deeming itself to be sufficiently well informed by the parties' written submissions, had determined to adjudicate the preliminary issue of jurisdiction without holding a hearing, in accordance with Article R57 of the CAS Code.

LAW

CAS Jurisdiction

1. In view of the above, this award is concerned solely with the issue of jurisdiction.
 - A. *Power of the Panel to Decide on Its Own Jurisdiction*
 2. First of all, the Panel observes that this case involves a football player domiciled in the United Kingdom or in Turkey (depending on the time considered) as Appellant, a Turkish club as First Respondent and the TFF as Second Respondent, i.e. three parties that are neither domiciled nor habitually resident in Switzerland. This arbitration procedure is thus clearly governed by Chapter 12 of the Swiss *Loi de Droit International Privé* (LDIP), in accordance with Article 176 thereof (see CAS 2005/A/983 & 984 marg. No. 61, CAS 2006/A/1180 marg. No. 7.1.).
 3. That said, the Panel observes that the jurisdiction of an international arbitral tribunal sitting in Switzerland to decide on its own jurisdiction is regulated by Article 186 LDIP, which article states that “*Le tribunal arbitral statue sur sa propre competence*”.
 4. It follows that this Panel has the authority to decide the issue of its own jurisdiction and, in accordance with para. 3 of Article 186 LDIP, it may adjudicate this preliminary issue by means of a partial award.
 - B. *Findings of the Panel on CAS jurisdiction*
 5. Article R47 of the CAS Code reads as follows:

“An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body.

An appeal may be filed with the CAS against an award rendered by the CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules applicable to the procedure of first instance”.
 6. It is therefore clear that for CAS to have jurisdiction in a matter requires that either the parties have expressly agreed it or that the statutes or regulations of the body issuing the decision provide for an appeal before CAS.
 7. CAS jurisprudence has repeatedly confirmed this position; see with regard to the latter criterion the award on jurisdiction rendered in the case CAS 2005/A/952: “*In order for the CAS*

to have jurisdiction to hear an appeal, the statutes or regulations of the sports-related body from whose decision the appeal is being made, must expressly recognize the CAS as an arbitral Body of appeal” ...

“In the present case, the statutes or regulations of the relevant body – the FAPL – do not contain any reference to a right of appeal to the CAS. In fact, FAPL rule R63 states that the decision of an appeal board shall be final. The CAS therefore has no jurisdiction to hear an appeal from a decision of the FAPLAC, on the basis of the statutes or regulations of the FAPL”.

8. The Panel accordingly has to consider whether either of the two criteria is satisfied in this instance.
 - a) Does a specific arbitration agreement exist for appeal to the CAS?
9. As to the first criterion, the Panel concludes that there was clearly no agreement between the parties to submit the case to the jurisdiction of CAS, not least but not only because Trabzonspor and TFF have expressly challenged such jurisdiction.
10. The Panel notes that the file contains only two documents in which such an agreement might be located: the supplementary employment contract between the Player and Trabzonspor, effective from 17 January 2006 until 30 June 2008 with an option in favour of Trabzonspor to extend the term until 30 June 2009 and the standard players employment contract between the Player and Trabzonspor, effective from 18 January 2006 until 30 June 2009.
11. The Panel draws attention to the following provision in the Supplementary contract:

“Clause 16- Disputes and Remedies

Should any disputes occur that is not reasonable resolved by the parties than such disputes will be passed to FIFA for arbitration.

The contract shall be governed by the laws of Turkish and reserved under jurisdiction of the Turkish Law Courts”.
12. The Panel draws attention to the following provision in the Standard contract:

“3. The Executive Committee of the Turkish Football Federation and the Arbitration Committee shall have exclusively jurisdiction for the settlement of disputes arising out or in connection with this Contract”.
13. The Panel therefore concludes that there is no arbitration clause in favour of CAS in either of the said employment agreements (whichever is valid or effective). As a consequence, the Panel concludes that there is no evidence of any agreement between the parties as to CAS arbitration. The Panel observes that the Appellant has also contended that the TFF Statutes amount to an agreement, within which there is an arbitration clause in favour of CAS. The Panel agrees in principle with the Appellant that national federations’ rules have a contractual character for those affiliated to or registered with them; however, as shown herein below, the Panel is of the opinion that the TFF Statutes do not provide for an arbitration clause in favour of the CAS.

- b) Do the FIFA Statutes provide an arbitration clause for an appeal to the CAS?
14. The Player has also invoked the FIFA rules – in particular Article 62.1, 63.1 and 64.3 of the FIFA Statutes – in an attempt to establish the jurisdiction of the CAS. The Panel first observes that Article 62.1 of the 2009 edition of the FIFA Statutes (in conjunction with Article 13.1(a) of the FIFA Statutes) merely provides that “*FIFA recognises*” the CAS and, thus, may not be deemed as an arbitration clause in relation to disputes in which FIFA is not involved. In the Panel’s view Article 62.1 of the 2009 FIFA Statutes does not give *per se* a player the right to appeal before the CAS for a contractual dispute which was decided in first instance by a TFF body.
15. Furthermore, the Panel observes that Article 63.1 of the FIFA Statutes could not constitute *per se* a binding arbitration clause by reference in this case. The first three paragraphs of this provision would simply specify the modalities of an appeal to CAS when such a clause exists, whereas its last three paragraphs, related to Anti-doping matters, are clearly not applicable in this case.
16. This interpretation of Article 63.1 of the FIFA Statutes is confirmed by previous CAS case law; in this respect, see particularly CAS 2004/A/676, where the Panel stated that the FIFA rules “[d]o not constitute *per se* a basis for arbitration. Instead, they constitute an instruction to introduce a regulation providing for CAS arbitration” and CAS 2002/O/422, where the Panel held that because the articles of the FIFA Statutes had not yet been amended expressly to recognise the CAS, the FIFA regulations relevant to the case contained no arbitration clause establishing CAS’ jurisdiction (see also CAS 2005/A/952, where the Panel stated that “*FIFA Statutes do not contain any mandatory provision that obliges the Respondent to allow a right of appeal from its decisions. Articles 59-61 of the FIFA Statutes, the FIFA Circular 827 and the FIFA press releases of 12 December 2002 and 19 October 2003, cannot be interpreted as providing for such a mandatory right of appeal from FAPL decisions. Moreover, the CAS jurisprudence suggests that if the FIFA Statutes did compel the Respondent to provide for a right of appeal from its decisions, no right of appeal to the CAS would exist until the Respondent had made provision for this right in its statutes or regulations*”).
17. Indeed, the fact that Article 63.1 of the FIFA Statutes cannot be considered as an arbitration clause *per se* for national disputes is confirmed by Article 64 of the FIFA Statutes, which does not even oblige national federations to insert an arbitration clause conferring jurisdiction on the CAS. Indeed, this article simply requires national federations to make a provision for arbitration and to confer jurisdiction “*to an independent and duly constituted arbitration tribunal recognised under the rules of the Association or Confederation or to CAS*”. This choice left to national federations emphasises that the FIFA statutes do not provide a binding arbitration clause conferring jurisdiction to CAS to address the “*disputes in the [national] Association*” or the “*disputes affecting Leagues, members of Leagues, clubs, members of clubs, Players, Officials and other Association Officials*” (see *e.g.* CAS 2005/A/952, paras. 7.5-7.6). Accordingly, the Panel is of the opinion that Article 64 of the 2009 FIFA Statutes provides no right for a player to bring a case to the CAS against his club until the concerned national federation has made a concrete provision for this right in its statutes or regulations (cf. CAS 2007/A/1440, para. 6.28; CAS 2008/A/1600, para 5.16; CAS 2008/A/1656, para. 4.11).

18. As a result, all Appellant's submissions based on FIFA Statutes fail.
- c) Do the statutes or regulations of the TFF provide for an appeal to the CAS?
19. As to the second criterion, the Panel concludes that equally clearly no statutes or regulations of the TFF provide for an appeal before the CAS in respect of the Decision complained of.
20. Firstly, the Panel emphasises that, for the purposes of ruling on its own jurisdiction, according to article R47 of the CAS Code, the Panel has – in principle – only taken into account the TFF regulations, as the appeal is only directed against a decision of the TFF and not against any decision of FIFA (and we have seen above that the applicable FIFA rules only provide for CAS jurisdiction in the latter case). In this respect the Panel notes that the Player – on 11 November 2009 – filed an appeal with the CAS against the decision of the TFF Arbitration Board. Although the Player filed a petition with FIFA on 22 January 2008, FIFA declined jurisdiction by letter dated 19 February 2008. Indeed, it was as a result of that rejection that the Player filed his claim against the TFF decision making bodies.
21. Only if first FIFA had been a party and second it was a FIFA decision declining to decide on the matter which was the subject matter of the challenge, would the Panel have needed to take into consideration FIFA Statutes and regulations for the purpose of its ruling on jurisdiction.
22. However, as already has been clarified by the Panel in paragraphs 14-18, such is not the case before the Panel which has been provided with no convincing or indeed sustainable argument that the right to appeal to CAS as envisaged by the FIFA Statutes (cf. article 62, 63 and 64 of the FIFA Statutes) should be applied in this matter.
23. In this respect, the Panel observes that article 2.1 of the TFF Statutes determines that one of the TFF objectives is *“to recognise (...) the jurisdiction of the Court of Arbitration for Sport (“CAS”) as specified in Articles 59 and 60 of the FIFA Statutes and paragraph 1 of Article 59 of the UEFA Statutes”*.
24. The Panel observes further that the referred provision shall be interpreted and considered in conjunction with and in the context of the other provisions of the TFF Statutes, importantly with article 64 of the TFF Statutes, which article states that *“CAS shall not, however, hear appeals on (...) decisions passed by the independent and duly constituted Arbitration Committee of the TFF”*. The Panel refers also to article 13f) of the TFF Statutes, which states a members' obligation as being *“to apply to the Arbitration Committee as a last instance at all disputes of national dimension arising from or related to the application of the TFF statutes or regulations, and not to take any dispute to any other judicial authorities”*.
25. In elaboration, the Panel notes that the submissions made by the parties are (also) based on implementation of Turkish law, namely law number 3813, amending the “Law on establishment and duties of the Turkish Football Federation”, enacted on 29 November 2007 and law number 5894, amending the abovementioned law as from 5 May 2009.

26. The Panel underlines that Turkey has this specific law relating to football entitled “Law on Establishment and Duties of Turkish Football Federation” (“the Football Law”).
27. The relevant findings of the Panel on the particular implementation of the Turkey laws, as well as their amendments, are the following:

By the Football Law 3813, accepted on 29 November 2007, the following wording was added to article 14: *“The right of appeal to the Court of Arbitration for Sport against the awards of the Arbitration Board with regards to the disputes arising from the transfer, licence, and agreements of the players and agreements of the coaches and managers are reserved”*.

By the Football Law 5894, accepted on 5 May 2009, article 6, 19 and 20 read as follows:

“ARTICLE 6 – (1) The Arbitration Committee is an independent and impartial compulsory arbitration authority which is the top legal committee of TFF under the present Law and is also the legal body of last instance for disputes covered by the TFF Statutes and corresponding regulations.

(2) The Arbitration Committee exclusively and finally examines and decides over the decisions taken by any TFF organ or body, which has decision-making power given by the TFF Statutes and corresponding regulations (...)

(4) Any decision taken by the Arbitration Committee shall be final and binding for the relevant parties and no legal action may be taken against these decisions before any other judicial authorities (...).

ARTICLE 19 – (1) Law No. 3813 on the Establishment and Duties of the Turkish Football Federation, (...), was repealed (...).

ARTICLE 20 – (1) The present Law shall come into force on the date it is published in the Official Gazette”.

28. The Panel notes that the Player does not contest that Law number 5894 came into force on 5 May 2009. As the appeal to CAS was lodged on 11 November 2009, Law number 5894, especially article 6 of this Football Law, was already in force. It follows that according to article 64 of the TFF Statutes, in conjunction with article 6 of the Turkish Football Law, CAS has no jurisdiction.
29. It should be noted here that the TFF Statutes contain on one hand a general reference calling for the recognition of CAS jurisdiction, and it is on such basis that they, for instance, oblige the members to *“recognize the jurisdiction of the Court of Arbitration for Sport (CAS) in Lausanne (Switzerland) for any international dispute and as specified in the relevant provisions of FIFA and UEFA Statutes”* ([emphasis added], see article 13e) of the TFF Statutes). But on the other hand, the same statutes also foresee the express and specific exclusion of CAS jurisdiction on decisions of at least national dimension passed by the TFF Arbitration Board (see CAS 2009/A/1984).
30. The Panel acknowledges that certain CAS case law (*i.e.* CAS 2007/A/1370 & 1376, as mentioned by the Player) and even the Swiss Federal Tribunal has established that under certain circumstances general references to FIFA rules are sufficient to warrant their application and in consequence to engage CAS jurisdiction. But based on the evidence

submitted, the Panel is satisfied that the present case differs from such other cases in which such jurisdiction by reference was accepted. This is in particular because this is not an anti-doping matter, where the clear-cut provisions of paras. 5 and 6 of Article 63 of the FIFA Statutes (stating that FIFA and WADA, respectively, are “*entitled to appeal to CAS against any internally final and binding doping-related decision passed by the Confederations, Members or Leagues*”) allow a CAS Panel to retain jurisdiction over a national federation’s decision on a doping matter through the express reference made by a national federation’s statutes to FIFA Statutes (see CAS 2007/A/1370 & 1376). Here, as said, the invoked FIFA rules merely “recognise” the CAS and they are not sufficient in themselves for a CAS panel to retain jurisdiction over decisions issued by organizations other than FIFA (such as, in particular, national federations; see CAS 2008/O/1694). Moreover, decisively, the TFF Statutes and the Turkish Football Law expressly exclude any appeal against national arbitral tribunals’ decisions, *i.e.* against such a decision like the Appealed Decision which is the object of the present case. The particular trumps the general. Therefore the argument of the Player that he has an express right of appeal to the CAS under the TFF Statutes must be rejected.

d) Does the CAS have jurisdiction based on Article 14 of the TFF Arbitral Tribunal Board Regulations (TFF ATB Regulations)?

31. However, the Panel notes that the Player also submits that CAS enjoys jurisdiction over the present dispute by reliance on the wording of Article 14 of the TFF ATB Regulations, which states:

“Any objection to decisions of the Arbitration Board for disputes arising out of the contracts of Sportsmen, Managers and Coaches which contain a foreign element may be made to the Court of Arbitration for Sport in light of the regulations and directives of FIFA and UEFA”.

32. The Player argues that the present dispute contains a foreign element and therefore the jurisdiction of CAS is given.

33. The Respondents challenge the jurisdiction of CAS on the basis that on the contrary the underlying dispute has no international dimension. They emphasise that the correct translation of Article 14 of the ATB Regulations includes the term “international dimension”, and not “foreign element”. The TFF submits that the clear intention of Article 14 of the ATB Regulations is to comply with the provisions of FIFA (Article 22 of the FIFA Regulations) and reads as follows:

“Decisions of the Arbitration Committee shall be final (...)

Appeals may be filed with the Court of Arbitration for Sport in accordance with the regulations and statutes of FIFA and UEFA against the resolutions adopted by the Arbitration Committee with regards to the disputes of international dimension arising from contracts of Players, Coaches and Trainers”.

34. Thus the next issue for the Panel to resolve is whether CAS has jurisdiction based on article 14 of the ATB Regulations.

35. The Panel notes that Article 14 of the ATB Regulations governs the dispute, not the contract. It follows that the submission of the Player that clause 16 of the Supplementary contract demonstrates that a foreign element exists is not to the point. To answer the question whether the dispute between the Player and Trabzonspor is of an international nature, the Panel must consider the dispute itself.
36. The Panel observes that the dispute is based on the notice of termination dated 4 January 2008 sent by the Player to Trabzonspor. The Player alleged just cause based on the non-fulfilment of the contractual obligations by Trabzonspor. In its supplementary submissions the Player continues to assert that the dispute with Trabzonspor is based on persistent late payments of his salary. The inevitable consequence of this line of reasoning is that the dispute has nothing to do with the fact that the Player wished a transfer from Trabzonspor to a club outside Turkey, so falling within the scope of application of the FIFA Regulations on the Status and Transfer of Players, in the version entered into force on 1 January 2008 (“FIFA Transfer Regulations”), whose Articles 1, para. 1, and 9, para. 1, read in relevant part:
- “These regulations lay down global and binding rules concerning the status of players, their eligibility to participate in organised football, and their transfer between clubs belonging to different associations”* (emphasis added);
- “Players registered at one association may only be registered at a new association once the latter has received an International Transfer Certificate (hereinafter: ITC)”*.
37. Had the Player wished to transfer from Trabzonspor to another Turkish club, he would not have needed an ITC and the authority to deal with the matter would have rested solely with the Turkish Football Association, as acknowledged by Article 1, para. 2, of the FIFA Transfer Regulations:
- “The transfer of players between clubs belonging to the same association is governed by specific regulations issued by the association concerned”*.
38. Nevertheless, the Player argues that a foreign element exists and that the dispute is related to an ITC because he signed an employment contract with the English club Shrewsbury Town on 15 February 2009, at about the time of the Player’s appeal to the Arbitration Board. However, Shrewsbury Town came onto the scene more than thirteen months after the Player’s notice of termination. Therefore the Panel concludes that no foreign club was involved in relation to the dispute itself and equally that the dispute has no relationship whatsoever with an ITC request and/or a claim in relation to such a request. This conclusion accords with Article 22 a) of the FIFA Regulations for the Status and Transfer of Players and paragraph 4a) of its Commentary on this Article.
39. The Panel also must take into account the application of the definition of “international dimension” within Article 22 b) of the FIFA Regulations for the Status and Transfer of Players, as published in its official Commentary on Article 22, paragraph 4b) of the Regulations for the Status and Transfer of Players, which states that *“The international dimension is represented by the fact that the player concerned is a foreigner in the country concerned”*.

40. By reference to this Commentary, the Panel must assess whether the Player can be considered a foreigner in Turkey at the time when the dispute arose. The Panel notes the following relevant features of the Player's history:
- In July 2003, the Player (a British national), at the age of 23, transferred from England to Turkey and registered with the Turkish club Denizlispor;
 - 17 August 2004, the Player, at the age of 24, gained Turkish citizenship;
 - In January 2006, the Player, at the age of 26, transferred from Denizlispor to the Turkish club Trabzonspor;
 - From January 2006 till January 2008 the Player was registered with Trabzonspor as a Turkish player.
41. In the Panel's view, the Player cannot be considered a foreigner in Turkey. The Player obviously went to Turkey in 2003 to play as a professional football player in Turkey. He settled there and gained the Turkish citizenship. The file contains documents that confirm that he not only gained the Turkish citizenship, but also took full advantage of his Turkish nationality. In support of their view the Panel refers to the following documents:
- letter dated 12 April 2005, signed by the Player, which reads as follows: *"Presidency of Turkish Football Association – to be submitted to FIFA General Secretariat – While I am an English citizen, since the roots of my family is from Turkey. I have made an application to Turkish Government and I gained also Turkish Republic citizenship by the decision of the Council of Ministries dated 17.08.2004 with number 2004/7794. Until today, I have never taken place and never played for any United Kingdom National Teams. Please find below the necessary information regarding my identification. I ask your approval for my taking place in Turkish National Team (...)"*;
 - letter dated 26 April 2005 to FIFA, signed by the Player, which reads as follows: *"Although I was born in England, my family is from Turkey. We always spoke Turkish at home, followed Turkish National Team, Turkish clubs and life in Turkey from TV. Since my childhood, I was dreaming to take place in Turkish National Team. Because I gained Turkish nationality and Turkish citizenship, I really wish to take place in Turkish National Team when the head coach needs me and I ask your approval for this matter (...)"*;
 - letter dated 16 May 2005, not signed by the Player, but whose authenticity is not contested by the Player in his submissions, which reads as follows: *"To the Attention of Presidency of Turkish Football Federation (...). Currently, I am a professional football player of Denizlispor Club. Since I am eligible for being assigned in the Turkish National Football Team, I am willing to play under Turkish status within the Turkish Professional 1st Super League starting from 2005-2006 football season. I kindly submit for the action to grant the necessary permission"*.
 - Matchform (*"Rapport de l'arbitre Union des associations européennes de football"*) indicating that the Player started as a player with number 11 for Turkey in the Future Cup match on 9 September 2005 against Germany.
42. The Panel observes that the documents quoted above clearly establish that the Player is not a Turkish football player by accident. The Panel considers that the Player must have been well aware that by gaining the Turkish nationality and using the Turkish nationality as a football player (also) in his favour he could not consider himself a foreigner anymore. The argument

of the Player referred to above that this is a case of an English football player who went to Turkey for a few years is unrealistic and indeed implausible.

43. Accordingly, in the Panel's opinion, the arguments of the Player referring to his other nationality, the nationalities of his family, his family life in England the fact that he played the majority of his football career in England and his current whereabouts are collateral and do not engage the real issue i.e. the existence or not of an international dimension.
44. As said above, this arbitration procedure is governed by the Swiss Federal Code on the Private International Law. In this case the Player has a dual nationality. He was born in England as a British national on 8 November 1979 and gained the Turkish Republic citizenship by decision of the Turkish Council of Ministries dated 17 August 2004.
45. To decide whether there is a foreign element or more accurately an international dimension as mentioned in Article 14 of the ATB Regulations the Panel also takes into account the wording of Article 23 of the LDIP, which reads as follows:

“IV. Multiple Citizenship

 - 1 If a person is a citizen of one or more States in addition to Switzerland, Swiss citizenship shall be determinative for purposes of jurisdiction based on citizenship.*
 - 2 If a person is a citizen of several States, the citizenship of the State with which the person is most closely connected shall be determinative for purposes of the applicable law unless this Code provides otherwise.*
 - 3 If the recognition of a foreign decision in Switzerland depends upon the citizenship of a person, it is sufficient to consider one of his citizenships”.*
46. This provision reflects the principle of law that for purposes of the applicable law decisive is with which country a person has the closest connection.
47. The Panel finds that, in relation to the dispute at stake, the Player definitely has the closest connection with Turkey. At the moment the Player and Trabzonspor signed an employment contract in January 2006, the Player had already been settled as a professional football player in Turkey for 3 years, had already gained the Turkish citizenship for nearly one and a half year, was playing under Turkish status within the Turkish Professional 1st Super League as from the 2005-2006 season and had already played a 'B' international match for Turkey. In the Panel's view the nature of the dispute between him and the Respondent club is not in any sense international.
48. The TFF is correct in pointing out that the only relevant international element that could come into play is that the Player is not only a Turkish citizen but also a British national. However, the Panel is of the opinion that this dual nationality is – in the light of the above – clearly inadequate to justify endowing the dispute with a foreign element or again more accurately an international dimension within the meaning of Article 14 of the ATB Regulations. The Panel does not perceive any uncertainty or ambiguity as to the meaning of “foreign element” or “international dimension” in Article 14 of the ATB Regulations and

concludes that the dispute between the Player and Trabzonspor does not contain a foreign element or international dimension.

49. In the Panel's opinion, the argument of the Player that FIFA violated its own rules by rejecting the petition of the Player on 19 February 2008 has no relevance whatsoever, because the Player did not refer this "rejection case" to CAS, but decided to lodge his claim at the TFF Dispute Resolution Board, thus seemingly indicating that he accepted the "rejection decision" by FIFA. The Panel observes that the Player appealed at CAS against the decision of the Arbitration Board, notified to him on 21 October 2009. There is no support for the Player to be found in CAS 2007/A/1251, because the Appellant in that case filed a Statement of Appeal with CAS (within 14 days after FIFA had denied competence to deal with the matter), invoking a denial of right, in the light of the refusal by FIFA to adjudicate its claim. As said, in the present matter, the Player decided not to submit the case to CAS – within the time limit prescribed by the FIFA Statutes and the CAS Code –, invoking a denial of right, but to appeal the case to the TFF Dispute Resolution Board.
50. The Panel considers that a party can certainly question whether the TFF decision making bodies were properly constituted and independent in the sense of the FIFA Regulations, for instance by arguing that (i) there is no player's union in Turkey that is recognised by or affiliated to FIFPRO and (ii) that the TFF dispute resolution system does not respect the principle of equal representation of players. Nonetheless this possible claim of lack of independence does not result, in the Panel's opinion, in an automatic assumption of jurisdiction by CAS, because even if the FIFA Statutes or Regulations provides the possibility to appeal to CAS when the national arbitral tribunal is not independent, the provision of such appeal would be in plain contradiction of articles 13f) and 64 of the TFF Statutes. The conflict which has arisen in Turkey is in short between a player with the Turkish nationality and a Turkish club. Therefore the Panel, without prejudice to measures that a member of TFF could request and maybe obtain, or that FIFA could take, in relation with an alleged lack of independence of a TFF body, it does not follow from the criticism properly made by reference to this criterion against such body that CAS shall in default assume jurisdiction in such a case (see CAS 2009/A/1984).
51. In summary, based on the above mentioned arguments and taking into account that the conditions of Article R47 of the CAS Code are not satisfied, the Panel considers without hesitation that the Court of Arbitration for Sport has no jurisdiction to deal with this case. There is a general principle of law, expressed by the maxim "*cuius commoda, eius et incommoda*" (meaning that the one who seeks and obtains a benefit must also accept the possible burdens which flow from that benefit) which has, already been applied by CAS panels (see partial award TAS 2009/A/1881). By reason of that principle a party cannot blow hot and cold, be Turkish for one purpose and then English for another. Accordingly, all prayers for substantive relief are rejected.

The Court of Arbitration for Sport rules:

1. CAS has no jurisdiction to decide the present dispute between Mr Omer Riza as Appellant and Trabzonspor Kulübü Derneği and the Turkish Football Federation as Respondents.
2. The arbitration procedure CAS 2009/A/1996 Mr Omer Riza v. Trabzonspor Kulübü Derneği and the Turkish Football Federation shall be removed from the CAS roll.

(...)