



**Arbitration CAS 2010/A/2069 Galatasaray A.S. v. Aachener TSV Alemannia F.C., award of 16 August 2010**

Panel: Mr. Rui Botica Santos (Portugal), President; Mr. Efraim Barak (Israel); Mr. Goetz Eilers (Germany)

*Football*

*Compensation for training*

*Status of the player*

*Special provision for the EU/EEA*

- 1. According to well established CAS jurisprudence, the wording of a footballer's contract or its headline or even the status under which the player is registered within the federation are irrelevant in determining the status of a player *per se*. Nevertheless, the wording may give an indication or pointer as to the player's status especially in cases where there are no other documents, evidences or witnesses apart from the contract itself to assist a judicial body in determining the real status of the player.**
- 2. The description of a contract as a professional football contract and the stipulation of the player's monthly salary as the minimum salary and as subject to taxes under national law are elements linking the player to a professional status.**
- 3. As Turkey is not a member country of the EU/EAA, a club from the Turkish Football Federation (TFF) cannot benefit from the special provision that specifically relates to training compensation for players who transfer from one association to another inside the territory of the EU/EAA.**

Galatasaray A.S (the "Appellant" or "Galatasaray") is a Turkish professional football club affiliated to the Turkish Football Federation (TFF). The latter is a member of the Fédération Internationale de Football Association (FIFA).

Aachener TSV Alemannia F.C. (the "Respondent" or "Aachen") is a German professional football club affiliated to the German Football Federation, *i.e* the *Deutscher Fußball-Bund* (DFB). The latter is also a member of FIFA.

T. (the "Player") is a football player of Turkish nationality born in 1990.

This appeal was filed by Galatasaray against the decision rendered by the FIFA Dispute Resolution Chamber (the “FIFA DRC”) passed on 17 September 2009 and notified to the Parties on 9 February 2010 (the “FIFA Decision”).

On 10 July 2002, Aachen registered the Player as one of its amateur players. The Player remained registered as an amateur until 27 June 2007.

On 27 June 2007, Aachen wrote a letter to the Player (the “Release Letter”) that Galatasaray alleged to be a declaration releasing the Player. The relevant paragraphs of the Release Letter read as follows:

*“(…) Lieber T.,  
inliegend zu unserer Entlastung und zu Deiner Verfügung senden wir Dir den Spielerpass mit der Nummer «1163778 T., geb. [...] 1990»  
Wir wünschen Dir für die Zukunft viel Gesundheit, weiterhin Erfolg und alles Gute.  
Mit freundlichen Grüßen  
(...)”*

The English translation of this letter reads as follows:

*“(…) Dear T.,  
Enclosed please find for our exoneration and for your disposal the player’s license with the number «1163778 T., born [...] 1990»  
We wish you for the future a lot of health, further success and all the best.  
With kind regards  
(...)”*

On 21 January 2008, an agreement titled “Professional Football Contract” was signed between Galatasaray and the Player (the “Contract”).

The Contract, in its own content, is described as “*a professional football player type contract to be made between clubs recruiting professional football players*”.

Under the Contract, Galatasaray signed the Player for a period of 2 years and 6 months. The Contract was valid from 21 January 2008 and was to expire on 31 May 2010.

In relation to the Player’s fees, Galatasaray agreed to pay the Player the minimum monthly salary.

According to Galatasaray, and undisputed by Aachen, reference to the term minimum monthly salary referred to the minimum amount of money which the average employees in the Republic of Turkey are entitled to be paid under Turkish law. This minimum amount, according to Galatasaray corresponds to Turkish Liras 666 (approximately EUR 315).

Under clause 2 (4) of the Contract, the income and payments to be received by the Player were subject to tax.

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

“(…)

### **PROFESSIONAL FOOTBALL CONTRACT**

NOTE

*This agreement is issued in contracts between clubs recruiting professional footballers and professional footballers.*

(…)

### **INFORMATION ABOUT THE CONTRACT'S PARTIES**

(…)

*Date: 21 January 2008*

1.- *The club name: GALATASARAY FUTBOL AS*

(…)

### **INFORMATION ABOUT FOOTBALL PLAYER WHO MADE THE CONTRACT**

1.- *Name and surname: T.*

2.- (…)

3.- *Date of birth: [...] 1990*

4.- (…)

9.- *Previous status of the Football Player before this Contract*

*(x) Amateur ( ) professional*

10.- *Previous Club name of the Football Player: ALEMANNIA AACHEN*

### **GENERAL PRINCIPLES OF CONTRACT**

*This professional football player type contract to be made between clubs recruiting professional football players and professional player is arranged in accordance with professional football and transfer statute.*

(…)

### **CONTRACT CONDITIONS**

(…)

#### **FEES**

*A – Monthly Salary: Minimum Salary*

*B – (The fee shall not be less than the minimum salary)*

*C – THE TRANSFER PAYMENTS TO FOOTBALL PLAYERS*

(...)

**2 – Contract Period**

*A – Contract Start Date: 21.01.2008*

*B – Contract expiry Date: 31/05/2010*

(...)

*4. In accordance with this contract, the payments which will be done to the Football player are subjects to the 64<sup>th</sup> article of 193<sup>rd</sup> of Income Tax Law to be deposited to the tax office. Penalties specified in the tax rules shall apply for acting contrary to law.*

(...)

Following the signing of the Contract, the Player participated and played:

- a. 5 games, representing Galatasaray in Turkey’s under 18 youth league (2007 – 2008 season); and
- b. 3 matches in Turkey’s under 19 *Profesyonellige Aday Futbolcular* league (the “PAF League”) (2008 – 2009 season).

According to Galatasaray, as pleaded before the FIFA DRC, both professional and amateur players may play in the under 18 youth league and the PAF League.

On 4 August 2008, Aachen approached the FIFA DRC claiming a training compensation amount of EUR 180,000 from Galatasaray.

Aachen claimed to have trained the Player for the period 10 July 2002 to 27 June 2007 when he was an amateur and that pursuant to art. 20 Chapter VI and annex 4 art. 1 to 5 of the FIFA Regulations on the Status and Transfer of Players (the “FIFA Regulations”), it was entitled to training compensation as follows:

Season	Amount	Club category
2002/2003	EUR 10,000	II
2003/2004	EUR 10,000	II
2004/2005	EUR 10,000	II
2005/2006	EUR 60,000	II
2006/2007	EUR 90,000	I

Galatasaray objected to Aachen’s allegations, pleading that the Player was free to sign with it. The Player’s “freedom” was the result of Aachen’s failure to offer him an employment contract.

In Galatasaray’s views, Aachen had not trained the Player to a level enabling him to sign a professional contract.

Galatasaray also claimed that it had been paying the Player the minimum monthly salary in Turkey, and that the Player could hence not be considered a professional.

It further pleaded that the Player had never trained with its A team or played in its official matches, but that he only played for a total of 90 minutes in 5 matches in the under 18 youth league in the 2007-2008 season and for a total of 79 minutes in 3 matches in the PAF League in the 2008-2009 season.

Despite conceding that both professional and amateur players could play in both the aforementioned competitions, Galatasaray stated that the under 18 youth league was administratively considered a competition for amateurs.

It was Galatasaray's contention that it only signed the Player in order to give him the opportunity to continue his training.

Aachen replied stressing that it only released the Player because he wanted to leave.

Aachen also contended that Galatasaray's assertions that the Player had played a few matches with its youth team was irrelevant, and that the main issue was that the Player had signed a non-amateur contract with Galatasaray for the first time.

On 18 February 2009, FIFA wrote to the TFF, seeking information in relation to Galatasaray's category at the time it registered the Player.

On 19 February 2009, the TFF replied to FIFA, informing it that Galatasaray was a category 2 club at the time it signed the Player.

On 7 May 2009, the TFF further wrote to the FIFA DRC informing it that "(...) *player T. was registered with our club Galatasaray AS SK as professional on 28.01.2008*".

On 17 September 2009, the FIFA DRC issued its decision, partially granting Aachen a portion of the EUR 180,000 claimed. Aachen was awarded EUR 150,000 as training compensation for the Player, to be paid within 30 days of notification of the FIFA Decision.

The findings of the FIFA Decision were as follows:

"(...)

***Decision of the Dispute Resolution Chamber***

- 1. The claim of the Claimant, Aachener TSV Alemannia, is partially accepted.*
- 2. The Respondent, Galatasaray, has to pay the Claimant, Aachener TSV Alemannia, the amount of EUR 150,000, **within 30 days** as from the date of notification of this decision.*
- 3. Any further claims lodged by the Claimant, Aachener TSV Alemannia, are rejected.*

4. *If the aforementioned sum is not paid within the aforementioned deadline, an interest rate of 5% per year will apply as of expiring of the fixed time limit and the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee so that the necessary disciplinary sanctions may be imposed.*
  5. *The costs of the proceeding in the amount of CHF 10,000 are to be paid by the Respondent, Galatasaray, **within 30 days** of notification of the present decision.*
- (...)"

In issuing the said decision, the FIFA DRC considered several issues and ruled upon them as follows:

- a. Galatasaray's assertion that no training compensation was due because the former club did not offer the Player a contract, as required under art. 6 annexe 4 of the FIFA Regulations, was unacceptable. The aforementioned regulation is only applicable to transfers involving the movement of players from one association to another within the EU/EEA territory, and that Galatasaray was not within the EU/EEA territory;
- b. Aachen was under no obligation to offer the Player a contract;
- c. the factors to consider in assessing the status of a player are (i) the fact that the player has a written contract; (ii) the player's remuneration; (iii) the wording of the relevant employment contract; and (iv) the status under which the player has been registered at the association concerned;
- d. the status under which the player has been registered at the association concerned and the wording of the relevant employment contract cannot *per se* constitute decisive factors in evaluating the player's status, and must be analysed in combination with specific circumstances of a particular case;
- e. the Player's status as a professional was evident through the following aspects:
  - i. the fact that the Contract bore the title "*General Principles of Contract*" as well as "*Professional football Player type contract to be made between clubs recruiting professional football player and professional players*".
  - ii. the confirmation received from the TFF that the Player had been registered as a professional;
  - iii. a statement issued by the TFF and enclosed by Galatasaray in its final submissions on 21 January 2008 stating that "(...) *this agreement is used in contract between clubs recruiting professional footballers*"; and
  - iv. the fact that the Contract bore the TFF's stamp and had been deposited at the TFF;
- f. the Player's monthly salary of Turkish Liras 666 exceeded the actual costs and expenses incurred in his football activity. Although the said salary was referred to as a minimum salary, it did not imply that such salary could not be considered as exceeding the actual costs and expenses effectively incurred by the Player in his footballing activity;
- g. the Player's Contract was a professional contract, and he should be considered a professional;
- h. the Player was registered by Galatasaray as a professional for the first time before the season of his 23<sup>rd</sup> birthday and Aachen are thus entitled to receive training compensation;

- i. the Player's training and education under Aachen took place between 10 July 2002 and 27 June 2007 (five entire seasons), which correspond to the Player's 13<sup>th</sup> to 17<sup>th</sup> birthdays;
- j. art. 5 paragraphs 1 and 2 of annexe 4 of the FIFA Regulations requires that costs related to training compensation be calculated in a manner which assumes the costs of the new club if it had trained the Player itself. These costs shall be calculated by the number of years spent by the Player at his previous club as an amateur;
- k. art 5 paragraph 3 of annexe 4 of the FIFA Regulations states that training costs for players aged 12 -15 be based on the training and education costs of category 4 clubs<sup>1</sup>;
- l. since the Player spent his 13<sup>th</sup> – 15<sup>th</sup> birthdays (3 seasons) at Aachen, the training compensation payable during this period totalled to EUR 30,000 (EUR 10,000 x 3);
- m. in relation to the Player's 16<sup>th</sup> and 17<sup>th</sup> birthdays, Galatasaray was to pay EUR 60,000 per season, since it was classified as a category 2 club and was a member of the Union des Associations Européennes de Football (UEFA). Aachen were entitled to a total sum of EURO 120,000 (EUR 60,000 x 2);
- n. the amounts referred to on paragraphs (i) and (m) above totalled to EUR 150,000.

On 1 March 2010, the Appellant filed its Statement of Appeal against the FIFA Decision at the Court of Arbitration for Sport (CAS), pursuant to art. 62 and 63 of the FIFA Statutes.

On 11 March 2010, the Appellant filed its "Appeal Brief" wherein it states the facts and legal arguments on which the appeal is based, together with some documents and evidences upon which it intended to rely.

On 8 April 2010, the Respondent filed its Answer to the Appeal Brief, highlighting the facts and its legal submissions on the matter. No documents in support of its defence were enclosed.

On 5 July 2010, a hearing was held at the CAS in Lausanne, Switzerland.

At the opening of the hearing, Aachen raised an issue related to the admissibility of the appeal, stating that it was filed outside the 21 days fixed under art. 63.1 of the FIFA Statutes. This issue will be dealt with below.

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

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<sup>1</sup> In accordance with FIFA circular nr. 1085 of 11 April 2007, the training and education costs applicable to category 4 clubs was EURO 10,000 per season.

## LAW

### Jurisdiction of the CAS

1. The jurisdiction of CAS, which is not disputed, derives from arts 62 and 63 of the FIFA Statutes and art. R47 of the Code of Sports-related Arbitration (the “CAS Code”).
2. The Parties confirmed the jurisdiction of CAS by signing the Order of Procedure.
3. It follows that the CAS has jurisdiction to decide this dispute. The mission of the Panel follows art. R57 of the CAS Code, according to which a Panel has full power to review the facts and the law of the case. Furthermore, the same article provides that a Panel may issue a new decision which replaces the decision challenges, set the decision aside or refer the case back to the previous instance.

### Admissibility

4. The Respondent raised an issue in relation to the admissibility of the appeal, for the first time, at the outset of the hearing.
5. It was Aachen’s assertion that the 21 days deadline established under art. 63.1 of the FIFA Statutes cannot be suspended or interrupted by the mechanism set forth under art. 15<sup>2</sup> of the FIFA Rules Governing the Procedures of the Players’ Status Committee and Dispute Resolution Chamber, because the FIFA Statutes cannot be amended by an inferior regulation.
6. Note is taken of the fact that the findings of the FIFA Decision were taken on 17 September 2009 and communicated to the Parties on 14 October 2009 with a statement at the end that:

“(…)

**Note relating to the findings of the decision** (art. 15 and 18 of the Rules Governing the Procedures of the Player’s Status Committee and Dispute Resolution Chamber):

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<sup>2</sup> Art. 15 of the FIFA Rules Governing the Procedures of the Players’ Status Committee and Dispute Resolution Chamber reads:

*“1. The Players’ Status Committee, the DRC, the single judge and the DRC judge may decide not to communicate the grounds of a decision and instead communicate only the findings of the decision. At the same time, the parties shall be informed that they have ten days from receipt of the findings of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the decision coming into force.*

*2. If a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full, written form. The time limit to lodge an appeal begins upon receipt of this motivated decision.*

*3. If the parties do not request the grounds of a decision, a short explanation of the decision shall be recorded in the case files.*

*4. All decisions that lead to sporting sanctions may only be communicated with grounds”.*

*A request for the grounds of the decision must be sent (...) **within 10 days** of receipt of notification of the findings of the decision. Failure to do so within the stated deadline will result in the decision coming into force. (...)*”.

7. The Panel underlines and decides the following:
  - i. that the findings of the FIFA Decision communicated to the Parties on 14 October 2009 was done in accordance with art. 15 of the FIFA Rules Governing the Procedures of the Players’ Status Committee and Dispute Resolution Chamber;
  - ii. that under art. 15.2 of the FIFA Rules Governing the Procedures of the Players’ Status Committee and Dispute Resolution Chamber “[i]f a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full, written form. The time limit to lodge an appeal begins upon receipt of this motivated decision”;
  - iii. that in accordance with art. 15.2 of the FIFA Rules Governing the Procedures of the Players’ Status Committee and Dispute Resolution Chamber, the time limit to file an appeal under art. 63.1 of the FIFA Statutes starts running from the date when the “*motivated decision*” is received;
  - iv. that the “*motivated decision*” was communicated to the Appellant on 9 February 2010 and the appeal filed on 1 March 2010. Therefore, the Appellant filed the appeal within the 21-day deadline set forth under art. 63.1 of the FIFA Statutes, which means that it was filed on time;
  - v. that once a request asking for the grounds of the decision is sent to FIFA within the due period of 10 days, the decision does not become the final decision in the meaning of art. 63.1 of the FIFA Statutes until the moment in which the “*motivated decision*” is served to the parties, and
  - vi. that despite raising the abovementioned issue at the hearing, the Respondent had already accepted the admissibility of the appeal by signing the Order of Procedure.
8. The appeal was filed within the deadline provided by the FIFA Statutes and stated in the FIFA Decision. It complied with all the other requirements of art. R48 of the CAS Code.
9. It follows that the appeal is admissible.

### **Applicable Law**

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

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

11. Art. 62.2 of the FIFA Statutes states:

*“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”.*

12. Regarding the issue at stake, the Panel is of the opinion that the Parties have not expressly indicated the law applicable to this dispute. The Panel is however comforted by the fact that, in their respective submissions, the Parties refer to FIFA’s regulations. As a result, subject to the primacy of applicable FIFA’s regulations, Swiss Law shall apply complementarily.

13. The Panel notes that the case in hand was submitted before the FIFA DRC on 4 August 2008, which was after 1 January 2008, the date when the amendments to the FIFA Regulations (edition 2008) came into force. Note is also taken of the fact that the Player registered for Galatasaray on 28 January 2008. Pursuant to art. 26 paragraphs 1 and 2 of the FIFA Regulations 2008, the relevant FIFA regulation governing this appeal shall be the FIFA Regulations (2008 edition).

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

14. The Panel now proceeds to analyse the following issues in order to decide the merits of the case:

- a. Is the contractual relationship established between Galatasaray and the Player considered amateur or professional?
- b. Assuming that the contractual relationship was established on a professional basis is Aachen still entitled to training compensation? In relation to this question, the Panel shall analyse and decide: (i) whether Aachen indeed refused to offer the Player a professional contract; and, assuming that the answer is affirmative (ii) whether annexe 4 art. 6.3 of the FIFA Regulations is a discriminatory rule against Galatasaray, since it does not apply to non EU/EEA countries.
- c. What is the correct calculation of the training compensation and what is the amount that Aachen will be entitled to receive as training compensation in case the contractual relationship established between Galatasaray and the Player is professional and the discrimination issue raised by Galatasaray is considered irrelevant?

*A) The nature of the contractual relationship established between Galatasaray and the Player: professional or amateur?*

15. Galatasaray refutes that the Player was a professional and asks the Panel not to look at the wordings of the Contract but rather at the Player’s salary.

16. Galatasaray stresses that the Player was paid the minimum salary for Turkish employees. It submits that this amount is hardly enough to cover the Player's living expenses (accommodation, travelling, meals, etc) in a city such as Istanbul.
17. Galatasaray also ask the Panel to take into account the Release Letter, which it says made the Player free to sign for a new club without the obligation to pay training compensation. According to Galatasaray, all it wanted was to give the Player an opportunity to continue his training.
18. The Panel concurs with the well established CAS jurisprudence that the wording of a footballer's contract or its headline or even the status under which the Player is registered within the federation are irrelevant in determining the status of a player *per se*.  
*“As established through CAS jurisprudence, the only relevant criterion is whether the player is paid more than the expenses he effectively incurred in return for his football activity. In CAS 2006/A/1177 (no 7.4.5), the CAS ruled that «The only relevant criterion according to this provision is thus one of remuneration. In the Panels' view, the receipt by the player of any remuneration other than for the actual expenses incurred during the course of their participation in or for any activity connected with association football is what alone distinguishes an amateur from a non-amateur player» ... although the aforementioned Award used the terms “amateur” and “non-amateur” taken from the 2001 RSTP, the principle of the two categories of football players remains the same in the 2005 RSTP”*  
(CAS 2008/A/1781; see also CAS 2006/A/1177, CAS 2007/A/1207 and CAS 2009/A/1739).
19. Nevertheless, and despite the above mentioned remarks, the Panel is of the view that the wording in a footballer's contract may give an indication or pointer as to the player's status especially in cases where there are no other documents, evidences or witnesses apart from the contract itself to assist a judicial body in determining the real status of the player.
20. On a *prima facie* basis, the wording of the Contract reveals that it was the Parties' intention to sign a professional contract. This understanding is basically supported by the following expressions:
  - i. Title of the Contract: “*Professional Football Contract*”;
  - ii. Whereas: “*This agreement is used in contracts between clubs recruiting professional footballer and professional footballers*”;
  - iii. Section related to the General Principles of Contract: “*This professional football player type contract to be made between clubs recruiting professional football players and professional player is arranged in accordance with professional football and transfer statute. (...)*”;
  - iv. Remuneration: “*Monthly Salary: Minimum Salary*”;
  - v. Term: “*(...) Contract Start Date: 21.01.2008*” / “*Contract Expiry Date: 31.05.2010*”<sup>3</sup>;

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<sup>3</sup> The term of the Contract shows that the contractual relation was established for a period exceeding the minimum length of a contract required for professionals and clubs, which has been established under art. 18.2 of the FIFA Regulations as being “(...) from its effective date until the end of the season (...)”.

- vi. Tax: “(...) *the payments which will be done to the Football Player are subject to (...) Income Tax Law (...)*”.
21. Although the nature of a contract is not determined by its wording, it is also a fact that the Contract does not contain any element that could evidence the amateur nature claimed by Galatasaray.
22. The first impression is that in fact the Player signed a professional contract with Galatasaray. This impression is further corroborated by the TFF’s confirmation to FIFA, in its letter dated 7 May 2009, informing it that “(...) *player (...) was registered with (...) club Galatasaray AS SK as professional on 28.01.2008*”.
23. Galatasaray could easily have rebutted the evidences contained in the Contract as well as the TFF’s confirmation, and support its stance that it signed the Player on an amateur contract.
24. Under FIFA Regulations, the concept in determining the nature of an amateur / professional contract is based on one only decisive element which is the payment received by the player during the performance of such contract.
25. In the case at stake, and also addressing Galatasaray’s assertions that EUR 315 is insufficient to cater for a player’s travelling expenses in a city like Istanbul, the Panel highlights that Galatasaray has not adduced any evidence:
- i. in relation to monthly payments made to the Player;
  - ii. substantiating that such payments were strictly related to reimbursement of his expenses and footballing activities;
  - iii. substantiating the average standard of living, such as costs of products, services, and travelling expenses incurred by a regular Turkish employee who is paid the minimum monthly salary; and/or
  - iv. substantiating a breakdown of the monthly costs and expenses incurred by the Player.
26. Galatasaray could do this either by adducing evidence such as receipts or pay slips showing payments given to the Player as a refund for the expenses such as travelling, lodging or medical he incurred in his footballing activity.
27. Galatasaray failed to demonstrate to the Panel that the “minimum monthly salary” established under Turkish law was meant to cover the Player’s football-related expenses or that it did not exceed his monthly expenses.
28. Therefore, and in light of the above, the Panel finds that Galatasaray has failed to discharge its burden of satisfactorily proving that it signed the Player on an amateur contract or adducing evidence linking the Player’s salary to the reimbursement of expenses incurred in his footballing activities.

29. In the Panel's view, the description of the Contract as a professional football contract and the stipulation of the Player's monthly salary as the minimum salary are therefore elements linking the Player as a professional.
  30. A further indication of the fact that the Player's "minimum monthly salary" was not aimed in covering his expenses is the fact the Player's receivables were subject to the payment of tax under Turkish law (clause 2 section 4 of the Contract). This means that the payment received was considered as an income.
  31. The Panel is hence convinced that in accordance with the above considerations, Galatasaray signed the Player on a professional football contract, and that the Player, while being registered with Galatasaray was a professional Player. The fact that the Player only played several amateur league matches is irrelevant since it has been proved that in Turkey players registered as Professionals can play also in the leagues in which the player played.
- B. *Whether Galatasaray is obliged to pay Aachen training compensation*
32. Art. 20 of the FIFA Commentary sets out the objective of training compensation as to "encourage the training of young players and create stronger solidarity among clubs by awarding financial compensation to clubs that have invested in training young players". Annexe 4 art.3 of the FIFA Commentary also highlights that training compensation is aimed at benefiting clubs which have contributed towards the training of a young player.
  33. With the aforementioned objective in mind, the Panel proceeds to analyse whether Aachen is entitled to training compensation bearing in mind FIFA Regulations and the issue of discrimination raised by Galatasaray.
  34. In accordance with art. 2 annexe 4 of the FIFA Regulations, "[t]raining compensation is due when (i) a player is registered for the first time as a professional (...)".<sup>4</sup>
  35. The Panel has already established above that Galatasaray signed the Player on a professional football contract and that he was an amateur at the time he was registered with Galatasaray. It is also not in dispute that the Player was an amateur at Aachen during the periods 10 July 2002 to 27 June 2007.
  36. Galatasaray however asserts that no training compensation is due to Aachen because of the Release Letter. It relies on art. 6.3 annexe 4 of the FIFA Regulations, which states that "[i]f the former club does not offer the player a contract, no training compensation is payable unless the former club can justify that it is entitled to such compensation".
  37. The Panel notes that this provision is special and specifically relates to training compensation for players who transfer from one association to another inside the territory of the EU/EAA

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<sup>4</sup> Similar provision enshrined under art. 20 of the FIFA Regulations.

and therefore, like with the FIFA DRC, the Panel points out that Galatasaray is not a member country within the territory of the EU/EAA and it cannot benefit from this provision.

38. Indeed, failure by the old club to offer the player a contract was seen as an important factor in CAS 2006/A/1072, wherein it was stated that “[w]hat is in the opinion of the Sole Arbitrator very important, is the fact that the Respondent did not offer the Player a new contract and that as a result the Player and also the Appellant were entirely free to enter into a contract between the two of them”. However, this factor is of no relevance in this case due to the fact that Galatasaray is not a member country within the territory of the EU/EAA.
39. In addition to this, and even assuming that Galatasaray was inside the territory of the EU/EAA, it has failed to prove that Aachen did not offer the Player a contract.
40. To the contrary, the Panel notes that Aachen has established that it released the Player because he wanted to leave. There is no evidence that Aachen forcibly wanted the Player out of its team, and the parties seem to have ended their contractual relationship at the Player’s initiative.
41. The Panel also turns its attention to Galatasaray’s assertion that art. 6 annexe 4 of the FIFA Regulations is discriminatory and amounts to double standards on the part of FIFA by excluding Turkish clubs on grounds that they are not EU/EAA members, despite being UEFA members.
42. The Panel remarks that since Galatasaray has not proved that Aachen did not offer the Player a contract, there is no need to consider whether this FIFA Regulation is discriminatory.
43. In addition, the Panel shares the view stated in CAS 2006/A/1072 which found it unnecessary “(...) to deal with the Appellant’s argument that no distinction should be made in the rules between EU and non-EU countries” and held that “[s]uch an issue can only be dealt with by the relevant FIFA bodies having jurisdiction to adopt [and/or amend] rules”.
44. The Panel is of the view that:
  - i. the issue related to the discrimination of the above mentioned regulation is outside the scope of Galatasaray’s claim before FIFA and, consequently outside the scope of the current appeal; and
  - ii. the challenge of the FIFA regulations can only be made by a FIFA member *i.e.* “an association that has been admitted into membership of FIFA by the Congress”<sup>5</sup>.
45. In light of the abovementioned considerations, Galatasaray’s assertions that the FIFA Regulations are discriminatory cannot be assessed by the CAS in the framework of this particular case.

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<sup>5</sup> Definition no. 9 of the FIFA Statutes.

46. It follows from the above analysis that Galatasaray signed the Player on a professional contract for the first time in his career and he was registered for the first time as professional with the TFF, and it must pay Aachen compensation for having trained the Player as an amateur.

C. *How much is Aachen entitled to receive as training compensation?*

47. Moving to the calculation, the Panel notes that Aachen had requested the amount of EURO 180,000 before the FIFA DRC as training compensation.

48. The Panel also notes that Aachen has not appealed against the FIFA Decision claiming an amount higher than the one awarded to it by FIFA (EUR 150,000).

49. Following the absence of an appeal from Aachen against the FIFA Decision and considering the dismissal of Galatasaray's appeal, the Panel shall then uphold the FIFA Decision.

50. Although the calculation of the amount of training compensation is not an issue in this appeal, the Panel takes this opportunity to confirm the FIFA DRC's calculations and the amount of the training compensation of EUR 150,000.

51. In accordance with art. 5.1 and 2 of annexe 4 of the FIFA Regulations, in calculating training compensation "*(...) it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself*". This amount is calculated by taking the training costs of the new club multiplied by the number of years of training<sup>6</sup>.

52. Aachen trained the Player for a period of 5 years, 10 July 2002 to 27 June 2007, corresponding to the Player's 13<sup>th</sup> to 17<sup>th</sup> birthdays.

53. In accordance with art. 5.3 annexe 4 of the FIFA Regulations, "*(...) the training costs for players for the seasons between their 12<sup>th</sup> and 15<sup>th</sup> birthdays (...) shall be based on the training and education costs of category 4 clubs*".

54. Under FIFA circular nr. 1085 of 11 April 2007, which was the circular applicable at the time Galatasaray signed the Player, the training and education costs applicable to category 4 clubs was EURO 10,000 per season. The said circular provides in part as follows:

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<sup>6</sup> Art. 5 (2) annexe 4 of the FIFA Regulations.

***“Training Costs and Categorisation of clubs for the year 2007***

(...)

<b>Confederation</b>	<b>Category I</b>	<b>Category II</b>	<b>Category III</b>	<b>Category IV</b>
AFC		USD 40,000	USD 10,000	USD 2,000
CAF		USD 30,000	USD 10,000	USD 2,000
CONCACAF		USD 40,000	USD 10,000	USD 2,000
CONMEBOL	USD 50,000	USD 30,000	USD 10,000	USD 2,000
OFC		USD 30,000	USD 10,000	USD 2,000
UEFA	EUR 90,000	EUR 60,000	EUR 30,000	EUR 10,000

55. Since the Player was an amateur at Aachen, during his 13<sup>th</sup>, 14<sup>th</sup> and 15<sup>th</sup> birthday, it follows that the amount of training compensation due to Aachen during these 3 seasons is EUR 30,000. (*i.e* EUR 10,000 x 3).
56. In relation to the training costs due during the Player’s 16<sup>th</sup> and 17<sup>th</sup> birthday, the Panel notes that Galatasaray has been classified by FIFA as a category II club within UEFA.
57. It hence follows in accordance with FIFA circular nr. 1085 of 11 April 2007 as read together with art. 5. 1 and 2 of annexe 4 of the FIFA Regulations that the amount of training compensation due to Aachen for training the Player during his 16<sup>th</sup> and 17<sup>th</sup> birthday is EUR 120,000 (*i.e* EUR 60,000 x 2).

*D. Conclusion*

58. In view of all the above, the Panel finds that the FIFA Dispute Resolution Chamber decision dated 17 September 2009 must be upheld in full and the appeal filed by Galatasaray be dismissed in its entirety.
59. Galatasaray is therefore ordered to pay Aachen a total amount of EUR 150,000 as training compensation. Since the FIFA Decision was notified on 9 February 2009 and the payment was to be made within 30 days from the said date, interest from the said amount shall accrue at an annual rate of 5% with effect from 30 days upon the date of notification of the FIFA Decision.

60. In addition to the aforementioned amount, Galatasaray shall pay Aachen the CHF 5,000.00 costs ordered by the FIFA Decision.
61. Any other requests submitted by the Parties to the Panel are accordingly dismissed.

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

1. The appeal filed by Galatasaray A.S. against the FIFA Dispute Resolution Chamber decision dated 17 September 2009 is dismissed in full.
  2. The FIFA Dispute Resolution Chamber decision dated 17 September 2009 is upheld in full and Galatasaray A.S. shall pay Aachener TSV Alemannia F.C. the following amounts:
    - 2.1 EUR 150,000.00 (one hundred and fifty thousand Euros);
    - 2.2 interest accruing from the said amount at the annual rate of 5% (five percent) counting 30 days from the date of notification of the FIFA Dispute Resolution Chamber decision dated 17 September 2009; and
    - 2.3 CHF 5,000.00 (five thousand Swiss Francs) costs ordered by the FIFA Dispute Resolution Chamber decision dated 17 September 2009.
- (...)
5. All other and further claims or prayers for relief are dismissed.