

Decision of the Dispute Resolution Chamber

passed on 2 August 2023

regarding an employment-related dispute concerning the player Domagoj Pavicic

COMPOSITION:

Clifford J. HENDEL (USA & France), Deputy Chairperson

Andre DOS SANTOS MEGALE (Brazil), Member

Stefano SARTORI (Italy), Member

CLAIMANT:

Domagoj Pavicic, Croacia

Represented by Sami Dinc

RESPONDENT:

Ittifak Holding Konyaspor, Türkiye

I. Facts of the case

- On 1 July 2022, the Croatian player, Domagoj Pavicic (hereinafter: *the player* or *the Claimant*) and the Turkish club, Ittifak Holding Konyaspor (hereinafter: *the club* or *the Respondent*) concluded an employment contract valid as from the date of signature until 31 May 2025 (hereinafter: *the Contract*).
- According to clause 3 of the Contract, the player would be entitled *inter alia* to the following amounts:

| Date | Amount |
|------------------|-------------|
| Season 2022/2023 | |
| 30.06.2022 | EUR 80,000 |
| 31.07.2022 | EUR 80,000 |
| 31.08.2022 | EUR 50,000 |
| 30.09.2022 | EUR 50,000 |
| 31.10.2022 | EUR 50,000 |
| 30.11.2022 | EUR 50,000 |
| 31.12.2022 | EUR 50,000 |
| 31.01.2023 | EUR 50,000 |
| 28.02.2023 | EUR 50,000 |
| 31.03.2023 | EUR 50,000 |
| 30.04.2023 | EUR 50,000 |
| 31.05.2023 | EUR 50,000 |
| Season 2023/2024 | |
| 30.06.2023 | EUR 87,500 |
| 31.07.2023 | EUR 87,500 |
| 31.08.2023 | EUR 55,000 |
| 30.09.2023 | EUR 55,000 |
| 31.10.2023 | EUR 55,000 |
| 30.11.2023 | EUR 55,000 |
| 31.12.2023 | EUR 55,000 |
| 31.01.2024 | EUR 55,000 |
| 28.02.2024 | EUR 55,000 |
| 31.03.2024 | EUR 55,000 |
| 30.04.2024 | EUR 55,000 |
| 31.05.2024 | EUR 45,000 |
| Season 2024/2025 | |
| 30.06.2024 | EUR 105,000 |
| 31.07.2024 | EUR 105,000 |
| 31.08.2024 | EUR 60,000 |
| 30.09.2024 | EUR 60,000 |

| | |
|------------|------------|
| 31.10.2024 | EUR 60,000 |
| 30.11.2024 | EUR 60,000 |
| 31.12.2024 | EUR 60,000 |
| 31.01.2025 | EUR 60,000 |
| 28.02.2025 | EUR 60,000 |
| 31.03.2025 | EUR 60,000 |
| 30.04.2025 | EUR 60,000 |
| 31.05.2025 | EUR 20,000 |

3. Clause 9 of the Contract reads as follows:

"9 – DISPUTES

Any and all disputes arising out or in connection with this Contract shall be dealt with exclusively by the Courts and Enforcement Offices of Konya and shall be resolved in accordance with Turkish Law".

4. On 1 June 2023, the player put the club in default and requested payment of EUR 170,000 within 15 days, corresponding to his remuneration due from February (partial) until May 2023.
5. On 17 June 2023, the player notified the club of the termination of the Contract due to overdue payables.
6. The player informed that he remained unemployed following the termination of the Contract.

II. Proceedings before FIFA

7. On 22 June 2023, the player filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. Position of the player

8. In his claim, the player explained that the club systematically failed to comply with its financial duties and gave cause to the premature termination of the Contract in line with art. 14bis of the FIFA Regulations on the Status and Transfer of Players (RSTP).
9. In light of the above, the player requested to be awarded the following amounts:
- a. EUR 170,000 net as outstanding remuneration plus 5% interest *p.a.* as from the due dates, broken down as follows:
 - EUR 20,000 net plus interest as from 28 February 2023;

- EUR 50,000 net plus interest as from 31 March 2023;
 - EUR 50,000 net plus interest as from 30 April 2023; and
 - EUR 50,000 net plus interest as from 31 May 2023.
- b. EUR 1,485,000 net as compensation for breach of contract plus 5% interest *p.a.* as from the date of the termination of the Contract (*i.e.*, 17 June 2023), broken down as follows:
- EUR 715,000 net as the residual value of the Contract for the 2023/2024 season;
 - EUR 770,000 net as the residual value of the Contract for the 2024/2025 season.
- c. EUR 445,500 net as additional compensation in case the player signs a new contract, corresponding to 6 monthly salaries, plus 5% interest *p.a.* as from the date of the termination of the Contract (*i.e.*, 17 June 2023).

b. Position of the club

10. On 12 July 2023, the club filed its reply to the claim of the player. In doing so, it challenged the jurisdiction of the Football Tribunal based on the wording of clause 9 of the Contract.
11. According to the club, such clause 9 constitutes a clear and exclusive jurisdiction clause in favour of the ordinary courts of Konya, Türkiye. Therefore, it concluded that the FIFA Dispute Resolution Chamber (hereinafter: *the DRC* or *the Chamber*) was prevented from entering into the substance of the matter.
12. Alternatively, the club pointed out that the termination took place without just cause and further allegations would be made in this regard, if pertinent.

III. Considerations of the Dispute Resolution Chamber

13. First of all, the DRC analysed whether it was competent to deal with the case at hand. In this respect, it took note that the present matter was presented to FIFA on 22 June 2023 and submitted for decision on 2 August 2023. Taking into account the wording of art. 34 of the March 2023 edition of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
14. Subsequently, the Chamber referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 1 in combination with art. 22 par. 1 lit. b) of the FIFA RSTP (May 2023 edition), the DRC would be in principle competent to deal with the matter

at stake, which concerns an employment-related dispute with an international dimension between a Croatian player and a Turkish club.

15. At this point, the Chamber acknowledged however that the club challenged the competence of the DRC to hear the dispute based on the content of clause 9 of the Contract.
16. With the above in mind, the DRC went on carefully analysing the wording of such clause, which reads as follows, *verbis*: “*Any and all disputes arising out or in connection with this Contract shall be dealt with exclusively by the Courts and Enforcement Offices of Konya and shall be resolved in accordance with Turkish Law*”.
17. In doing so, the Chamber outlined that the parties have unambiguously and exclusively decided that any dispute that would arise from the Contract would be submitted to the courts of Konya, Türkiye.
18. With the above in mind, the Chamber recalled that parties may freely agree to give jurisdiction to a civil court, and that such choice shall prevail. In fact, the DRC, recalling the jurisprudence of the Football Tribunal and the Court of Arbitration for Sport (CAS) in this regard, highlighted that even if the choice of law does not specify which courts are competent (e.g., a generic reference is made to a region/city), FIFA is not competent when the parties have exclusively agreed upon the jurisdiction of a civil court. In addition, the Chamber emphasized that art. 22 *caput* of the FIFA RSTP provides a clear hierarchy in favour of contractual autonomy.
19. Consequently, the Chamber concluded that the Football Tribunal does not have jurisdiction to entertain the matter at hand.
20. Lastly, the DRC referred to art. 25 par. 1 of the Procedural Rules, according to which “*Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent*”. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.
21. Likewise, and for the sake of completeness, the Chamber recalled the contents of art. 25 par. 8 of the Procedural Rules and decided that no procedural compensation should be awarded in these proceedings.

IV. Decision of the Dispute Resolution Chamber

1. The Football Tribunal does not have jurisdiction to hear the claim of the Claimant, Domagoj Pavicic.
2. This decision is rendered without costs.

For the Football Tribunal:



Emilio García Silvero

Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 57 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS) within 21 days of receipt of the notification of this decision.

NOTE RELATED TO THE PUBLICATION:

FIFA may publish this decision. For reasons of confidentiality, FIFA may decide, at the request of a party within five days of the notification of the motivated decision, to publish an anonymised or a redacted version (cf. article 17 of the Procedural Rules Governing the Football Tribunal).

CONTACT INFORMATION

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