

# Decision of the Players' Status Chamber

passed on 5 December 2023

regarding a contractual dispute concerning  
the player Alejandro Berenguer Remiro

**BY:**

Luis KANONNIKOFF (Paraguay)

**CLAIMANT:**

**Club Atlético Osasuna, Spain**

Represented by Mr Santiago Nebot Rodrigo & Mr Josep F. Vandellos Alamilla

**RESPONDENT:**

**Torino FC, Italy**

Represented by Lombardi Associates

## I. Facts of the case

1. On 17 July 2017, the Spanish club, CA Osasuna (hereinafter: the Claimant or Osasuna) and the Italian club, Torino FC (hereinafter: the Respondent or Torino) concluded an agreement for the permanent transfer of the player, Alejandro Berenguer Remiro (hereinafter: the Player), from the Claimant to the Respondent, according to which the latter undertook, *inter alia*, to pay a transfer fee of EUR 5,500,000 (hereinafter: the Agreement).
2. According to clause 2.4 of the agreement, *"If Torino transfers the Player to Athletic Club de Bilbao in the future, Torino shall pay Osasuna €1 '500'000 (Euro one million five hundred thousand) as penalty, within 60 days of the relevant ITC being released. "*
3. On 10 August 2021, following a Claim from Osasuna and its subsequent proceedings, the Single Judge of the Player's Status Committee (PSC) decided upon the following in the matter 21-00219:  
*"1. The claim of the Claimant, CA Osasuna, is partially accepted.  
2. The Respondent, Torino FC, has to pay to the Claimant the amount of EUR 1,500,000.  
(...)  
4. Any further claims of the Claimant are rejected"*
5. On 28 February 2023, the Court of Arbitration for Sport (CAS) confirmed the decision of the PSC.
6. On 28 March 2023, the Respondent paid the principal amount due as per the decision of the PSC.
7. On 17 April 2023, the Claimant sent a default notice, requesting the payment of statutory interest from 9 September 2021 (i.e. the date when FIFA communicated the grounds of the FIFA Decision) to 28 March 2023 (i.e. the date when the Respondent paid the principal amount).
8. On 21 April 2023, the Respondent replied by indicating that it will not pay any interests. In particular, the Respondent underlined that, in the decision 21-00219, the Single Judge unambiguously stated the following:  
*"...the Single Judge [of the Players' Status Chamber] decided that, in accordance with the long-standing jurisprudence of the Dispute Resolution Chamber and the Players' Status Committee, no interest is granted for the contractual penalty" (cf. FIFA Decision, par. 40)."*

## II. Proceedings before FIFA

9. On 08 September 2023, Club Atlético Osasuna lodged a claim before the FIFA Football Tribunal for "statutory interest as per article 104 of the Swiss Code of Obligations", which "corresponds to the interests running from the date of the FIFA Decision until the

confirmation of the same decision by CAS.

10. In this respect, the Claimant requested the payment of EUR 116,301.37 net
11. In its reply, Torino challenged FIFA's jurisdiction in the matter, asserting that the claim falls outside the scope of FIFA Regulations on the Status and Transfer of Players.
12. Torino argued that the dispute concerns the applicability of statutory interest under Swiss law to a payment already made, which is beyond FIFA's regulatory scope.
13. The Respondent considered that, if the FIFA Tribunal declares itself competent, the current claim should be declared inadmissible because the issue was already decided in a previous FIFA Decision
14. In his replica, the Claimant expressed its surprise as to the Respondent's jurisdictional challenge, asserting that FIFA has historically adjudicated on interest issues under Swiss law.
15. The Claimant explained that FIFA bodies have consistently awarded interest under Swiss law despite no direct provision in FIFA Regulations.
16. The Claimant argued that no *res iudicata* appears in this matter, since it concerns statutory interest from the late payment confirmed by the FIFA Decision and CAS award.
17. In its duplica, the Respondent insisted in his previous position.
18. The Respondent also pointed out that the Claimant did not address his comments to p. 375 of the Commentary to the Regulations, according to which, *"Besides disputes between clubs relating to training compensation and the solidarity mechanism, FIFA is also competent to hear other disputes arising between clubs affiliated to different member associations. Once again, the international dimension is the key element in determining jurisdiction. The dispute concerned must also fall within the general scope of the Regulations for FIFA to hear it. In practice, this means the dispute must be related to international transfers."*
19. The Respondent argued that the claim at the crux of the present proceedings was already decided by the FIFA Decision.
20. The Respondent considered that there is no reason whatsoever why interest should apply as from the day of notification of the reasoning of the FIFA Decision and the Claimant did not even try to provide an explanation for such arbitrary position.

### III. Considerations of the Players' Status Chamber

#### a. Competence and applicable legal framework

1. First of all, the Single Judge of the Players' Status Chamber (hereinafter also referred to as *PSC or the Judge*) 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 8 September 2023 and submitted for decision on 5 December 2023. Taking into account the wording of art. 34 of the May 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.
2. Subsequently, the Single Judge 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 lit. g) of the Regulations on the Status and Transfer of Players October 2022 edition), the Dispute Resolution Chamber is competent to deal with the matter at stake, which concerns a contractual dispute between a Spanish club and an Italian club.
3. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, it confirmed that, in accordance with art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (May 2023 edition), and considering that the present claim was lodged on 8 September 2023, the May 2023 edition of said regulations (hereinafter: *the Regulations*) is applicable to the matter at hand as to the substance.

#### b. Burden of proof

4. The Single Judge recalled the basic principle of burden of proof, as stipulated in art. 13 par. 5 of the Procedural Rules, according to which a party claiming a right on the basis of an alleged fact shall carry the respective burden of proof. Likewise, the Single Judge stressed the wording of art. 13 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties, including without limitation the evidence generated by or within the Transfer Matching System (TMS).

#### c. Admissibility

5. The Judge noted that competence of FIFA is disputed, insofar the Respondent considered the matter to be *res iudicata* and that it falls outside of the scope of the FIFA Regulations.

6. In this respect, the Judge recalled that the matter at stake concerns a previous decision of the PSC, which was confirmed by the Court of Arbitration for Sport (CAS). Most importantly, the Judge noted that, in the previous matter, the PSC awarded an amount without interest and clearly established that *"Any further claims of the Claimant are rejected"*.
7. In other words, the Judge considered that the previous PSC decision unequivocally awarded a specific amount without including any provision for interest.
8. The Judge observed, however, that the Claimant is now requesting *"statutory interests"* that would run *"running from the date of the FIFA Decision until the confirmation of the same decision by CAS"*.
9. However, the Judge observed that previous decision of the PSC did not award any form of interest that should accrue if the payment is paid with delay. Accordingly, the Judge referred to the principle of *res judicata*, which implies that a matter adjudicated by a competent court should not be relitigated. Thus, the Judge determined that absence of interest in the prior PSC decision establishes a finality that the Claimant seeks to challenge without valid grounds.
10. In fact, the Judge considered that the Claimant's current request for *"statutory interests"* contradicts its earlier acceptance of the previous PSC decision, which explicitly omitted any interest. In the view of the Judge, this stance can be construed as an indicative of bad faith.
11. From the perspective of the Judge, upholding the finality of decisions is essential to maintaining the credibility of the dispute resolution mechanism. Thus, in the absence of such specific award, there is no legal basis for the payment of the so-called *"statutory interest"*.
12. Moreover, the Judge rejected the Claimant's argument according to which Article 104 of the Swiss Code of Obligations (SCO) allegedly supports the request for statutory interest lacks, particularly since, in any case the previous PSC did not include such interest in its prior decision.
13. In sum, the Judge established that the Claimant's current request for *"statutory interests,"* cannot be awarded, and considered that constitutes an attempt to create a new entitlement that contradicts the established finality and *res judicata* principle of the previous decision.
14. Consequently, the Judge concluded that the Claimant's request is legally unfounded and inadmissible.

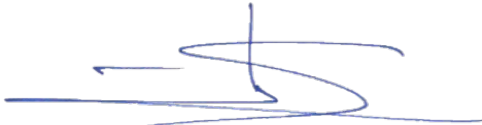
#### **d. Costs**

15. Finally, the Single Judge referred to art. 25 par. 1 and 2 of the Procedural Rules, according to which in disputes between clubs, costs in the maximum amount of USD 25,000 are levied. As per art. 25 par. 5 of the Procedural Rules, the Single Judge will decide the amount that each party is due to pay, in consideration of the parties' degree of success and their conduct during the procedure, as well as any advance of costs paid.
16. Taking into account that the claim of the Claimant is inadmissible, the Single Judge concluded that the Claimant shall bear the entire costs of the current proceedings before FIFA. According to Annexe A of the Procedural Rules, the costs of the proceedings are to be levied on the basis of the amount in dispute. Consequently, the Single Judge concluded that the maximum amount of costs of the proceedings corresponds to USD 15,000.
17. In light of the above, the Single Judge determined the costs of the current proceedings to the amount of CHF 15,000 and concluded that said amount has to be paid by the Claimant in order to cover the costs of the present proceedings. The Single Judge observed that the Claimant paid CHF 3,000 as an advance of costs.

#### **IV. Decision of the Players Status Chamber**

1. The claim of the Claimant, Club Atlético Osasuna, is inadmissible.
2. The final costs of the proceedings in the amount of USD 15,000 are to be paid by the Claimant to FIFA. Given that USD 3,000 were already paid at the beginning of the procedure, only the amount of USD 12,000 remains due (cf. note relating to the payment of the procedural costs below).

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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