

# Decision of the Players Status Chamber

passed on 24 October 2023

regarding a contractual dispute concerning the match agent Evgeni Marinov

**BY:**

**Louis EVERARD (Netherlands), Single Judge**

**CLAIMANT:**

**Evgeni Marinov, Bulgaria**  
Represented by Georgi Gradev

**RESPONDENT:**

**Jordan Football Federation, JFA - Jordan**  
Represented by Fuad Qaradeh

## I. Facts of the case

1. On 15 January 2023, the Bulgarian Match Agent, Evgeni Marinov (hereinafter: *the Claimant*), and the Jordan Football Federation (hereinafter: *the Respondent*) signed a match agent contract (hereinafter: *the Contract*) for the Respondent's participation in a friendly tournament organized by the Claimant in Alanya, Turkey between 13 and 22 February 2023 (hereinafter: *the Tournament*).
2. Under clause 1.1. of the Contract, the Respondent agreed to participate in the Tournament with its Women's National Team (hereinafter: *the Team*).
3. Under clause 2 of the Contract, the Claimant undertook, inter alia, to arrange "*three matches during the Tournament with FIFA referees (...)*" for the Team on behalf of the Respondent.
4. Under clause 3.2 in conjunction with clause 4.1 of the Contract, the total amount due to the Claimant under the Contract was EUR 27,720 (hereinafter: *the Contract Fee*) payable in two equal instalments:
  - (i) EUR 13,860 payable "*within one week from the signature date*"; and
  - (ii) EUR 13,860 payable "*by no later than February 17, 2023*".
5. Clause 6.1 of the Contract provides the following:

*"This contract cannot be prematurely, unilaterally terminated without just cause before the expiry of its term, save for the following cases:*

  - a) by mutual consent;*
  - b) due to force majeure, as detailed in clause 7 below."*
6. Clause 6.2 of the Contract establishes the following penalty clause (hereinafter: *the Penalty Clause*):

*"In case of premature, unilateral termination of this contract without just cause, the party in breach shall immediately pay compensation to the injured one, amounting to EUR 27,000 (twenty seven thousand Euros). The compensation shall be paid on a net basis, free of any taxation (including any VAT). The Parties explicitly agree that no adjustment shall apply. An interest rate of 15% per year shall apply in case of payment delay. The injured party must issue an invoice. Claims for damages based on other legal grounds (e.g., if the injured party is no longer in a position to fulfil its obligations towards third parties due to the breach) remain reserved."*

7. Clause 7.1 of the Contract provides the following:

*"[Respondent] may terminate this agreement with immediate effect upon notice to the Match Agent if there is an event of force majeure (for example, fire, explosion, earthquake) that prevents the staging of the match".*

8. On 1 February 2023, the first instalment of the Contract Fee (i.e. EUR 13,860) became due and was paid by the Respondent.
9. On 6 February 2023, an earthquake hit the south-eastern part of Turkey (hereinafter: *the Earthquake*).
10. On 7 February 2023, the Claimant inquired with the Turkish Football Federation (hereinafter: *the TFF*) about the consequences of the Earthquake on the Tournament.
11. On the same day, the TFF replied that it will be withdrawing its team from the Tournament but that the Claimant *"(...) can continue with the tournament organization. The referee appointments are made and the details will be sent soon."*
12. On 12 February 2023, the Respondent formally informed the Claimant that the Team will not be participating in the Tournament due to the *"(...) in light of the continuing aftershocks in different cities and the state of emergency and considering the safety of our delegation we regret to inform you that JFA has no choice but to withdraw from participating in the Turkish Women's Cup 2023 - Alanya. Thank you for your kind understanding as this force majeure situation is beyond our control."*

## **II. Proceedings before FIFA**

13. On 20 April 2023, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

### **a. Position of the Claimant**

14. According to the Claimant, the parties signed the Contract, and, therefore the Respondent has standing to be sued. Indeed, the Respondent ratified the Contract when on 1 February 2023 the first instalment of the Contract Fee (i.e. EUR 13,860) became due and was paid by the Respondent paying to the Claimant.
15. According to the Claimant, the Earthquake was not to be considered as a *force majeure* event on the basis of which the Respondent can terminate the Contract with just cause.
16. In view of the Claimant, the Contract can be terminated on the basis of its contractual *force majeure* clause 7.1 where the Respondent *"(...) may terminate this agreement with immediate*

*effect upon notice to the Match Agent if there is an event of force majeure (for example, fire, explosion, earthquake) that prevents the staging of the match”.*

17. However, the Claimant argued that pursuant to established CAS jurisprudence in CAS 2021/A/7816, para. 67 for *force majeure* to exist, there must be an objective (rather than personal) impediment beyond the control of the “*obliged party*” that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible.
18. Further, the Claimant referred that under article 13 paragraph 5 of the Procedural Rules Governing the Football Tribunal (hereinafter: *the Procedural Rules*), a party that asserts a fact must prove it, i.e. any party deriving a right from an alleged fact shall carry the burden of proof.
19. In the view of the Claimant, the Respondent did not prove that the Earthquake in a different region from the Tournament constitutes a *force majeure* event as there was no objective impediment beyond the control of the Respondent that was unforeseeable, that could not be resisted, and that rendered the participation or the staging of the matches impossible or provided an unsafe environment to the Respondent’s Team, i.e. players and staff.
20. In relation to the Tournament and its location not being affected by the Earthquake, the Claimant presented the following facts and evidence:
  - (i) on 7 February 2023, i.e., one day after the Earthquake, the TFF stated that the Claimant “*can continue with the tournament organisation*”;
  - (ii) Adana (the westernmost affected city by the Earthquake) and Alanya, i.e. location of the Tournament, are 300 kilometres apart from each other; and
  - (iii) the Tournament took place in Alanya between 15 and 21 February 2023 with the participation of ten national teams which returned home without any issues.
21. According to the Claimant, the Earthquake did not fulfil the conditions of a *force majeure* event which prevented the staging of the matches at the Tournament or provided an unsafe environment to players and staff, as argued by the Respondent in the Termination Letter. As a consequence, the Respondent should bear the legal consequences as agreed with the Claimant in the Contract via the Penalty Clause.
22. Concerning the interest agreed in the amount of 15% p.a. the Claimant quoted the following articles of the Swiss Code of Obligations (hereinafter: *the CO*), the Contract, Court of Arbitration for Sport (hereinafter: *the CAS*) jurisprudence and a legal article:

- (i) article 104.2 of the CO: *“Where the contract envisages a rate of interest higher than 5%, whether directly or by agreement of a periodic bank commission, such higher rate of interest may also be applied while the debtor remains in default.”;*
  - (ii) article 160.1 of the CO: *“Where a penalty is promised for non-performance or defective performance of a contract, unless otherwise agreed, the creditor may only compel performance or claim the penalty”;*
  - (iii) article 161.1. of the CO: *“(…) the penalty is payable even if the creditor has not suffered any damage”;*
  - (iv) article 163.1 of the CO: *“The parties are free to determine the amount of the contractual penalty”;* and
  - (v) clause 6.2. of the Contract: *“In case of premature, unilateral termination of this contract without just cause, the party in breach shall immediately pay compensation to the injured one, amounting to EUR 27,000 (twenty-seven thousand Euros). The compensation shall be paid on a net basis, free of any taxation (including any VAT). The Parties explicitly agree that no adjustment shall apply. An interest rate of 15% per year shall apply in case of payment delay.”*
  - (vi) in accordance with CAS jurisprudence in CAS 2019/A/6568 and CAS 2014/A/3664, the sole arbitrator stressed that *“(…) nothing prevents an adjudicatory body from awarding both interest and a penalty fee, as is also clearly established in the CAS jurisprudence (see, inter alia, CAS 2014/A/3664.”;* and
  - (vii) the article *“Minimizing the risks of untimely payments by means of instruments of financially punitive and/or compensatory nature”* published in ASSER’s *The International Sports Law Journal 2013*, the author Eugene Krechetov in point 3.2 argues the following: *“The jurisprudence of the Swiss Federal Tribunal states that default interest may apply together with penalties. (…)”*
23. Finally, the Claimant argued that the Respondent had terminated the Contract without just cause on 12 February 2023 and, therefore, the principle of *pacta sunt servanda* has to be protected.
24. The requests for relief of the Claimant, were the following:
- (i) EUR 27,000 as a penalty fee as per the Penalty Clause;
  - (ii) plus interest of 15% *p.a.* as of 12 February 2023.

## b. Position of the Respondent and counterclaim

25. According to the Respondent, the facts and events resulted from the Earthquake left the Respondent with no alternative but to withdraw from the Tournament which decision to withdraw was promptly communicated to the Claimant via its letter dated 12 February 2023 following a unanimous decision by the team members to refuse travel to Turkey.
26. The Respondent therefore rejects Claimant's referral to Clause 6.2. of the Contract and pleads that Clause 6.2. is inapplicable to the current case. Moreover, Respondent asserts that its decision to withdraw from the Tournament was based on force majeure or alternatively due to a just cause. In that sense, the Respondent argued that the principle of contractual stability should be dismissed, since it was ultimately used as a last resort in relation to the Earthquake.
27. In the alternative, if it is deemed the Respondent's withdrawal from the Tournament a unilateral termination of the Contract by the Respondent (*quod non*), then the unilateral termination was due to force majeure or was due to just cause pursuant clauses 7.1. (*force majeure*) or 6.1. (*just cause*) of the Contract. Indeed, the claimant has failed to present any evidence of his allegations that the Contract was prematurely and unilaterally terminated by the Respondent.
28. The Respondent argued that just cause and force majeure are two distinct legal concepts and cannot be read to mean one the same. This is corroborated by CAS precedent which maintains that "*suitable justification does not, in the Panel's view, equate precisely to force majeure. Force majeure is concerned with impossibility of performance; suitable justification contemplates something less than that*" (CAS 2022/A/388 para. 5; CAS 2017/A/5448 para. 65). In light of the above, Respondent's withdrawal was due to force majeure or just cause. In this regard, article 119 of the Swiss Code of Obligations establishes that "*an obligation is deemed extinguished where its performance is made impossible by circumstance not attributable to the obligor [...]*". This is confirmed by the Swiss Federal Tribunal in its decision 2C\_579/2011 and CAS (CAS 2018/A/5537 or CAS 2014/A/3463).
29. In this case force majeure is not confined to the Earthquake of 6 February 2023, rather it is a combination of extraordinary and unforeseeable circumstance, events and conditions which the Respondent could not have resisted and which made it impossible for the Respondent to have its team participate in the Tournament such as: the magnitude of the Earthquake, the fear and panic in the region, the aftershocks, the destruction of buildings, the state of emergency in Turkey, the cancellation of sports events and the reaction of the Turkish sports community to the earthquake including of TFF from the Tournament.
30. Therefore, the reasons that obliged the Respondent to withdraw from the Tournament constitute a just cause as established by CAS that maintains "*the question of whether or not suitable justification can be shown to exist is elementarily one of degree, to be judged objectively by reference to all material circumstances. It does not, however, matter that the formula of*

*"suitable justification" is not used by a team which seeks to rely upon it; what is important is whether the facts established amount to such justification" (CAS 2022/A/388).*

31. In its *counterclaim*, the counterclaimant defends that due to the counterclaimant's justified withdrawal from the Tournament, the counterclaimant did not receive from the match agent any of the services listed in the Contract.
32. Indeed, the counterclaimant stressed that the withdrawal from the Tournament was due to force majeure or due to a just cause; and, therefore, the amount of EUR 13,860 which was paid on 1 February 2023 representing 50% of the total Contract Fee in consideration for the service ought to be returned.
33. In this case, in accordance with article 62 of the CO ("*a*) A person who has enriched himself without just cause at the expense of another is obliged to make restitution. *b*) In particular, restitution is owed for money benefits obtained for no valid reason whatsoever, for a reason that did not transpire or for a reason that subsequently ceased to exist"), Mr Marinov is deemed to have enriched himself without just cause at the expense of the counterclaimant and is obliged to make restitution.
34. In light of the abovementioned, the counterclaimant is entitled to full repayment of EUR 13,860 and any other dues or receivables, including late interest and any other costs or expenses the counterclaimant has incurred in relation to the Contract.

### **c. Response to the counterclaim**

35. In its response to the counterclaim, Mr Marinov defended that the counterclaimant wrongly withdrew from the Contract. Therefore, in any event, the conditions for unjust enrichment are not met. Consequently, the counterclaimant is not entitled to restitution of the amount paid to the claimant under the contract.
36. Moreover, Mr Marinov stressed that the definition of force majeure must be narrowly interpreted because it represents an exception to the fundamental obligation of *pacta sunt servanda* (see CAS 2022/A/9237, CAS 2021/A/8477, 8492). He insisted that there was no evidence of objective impediment, beyond the control of the Respondent (and counterclaimant), that was unforeseeable, that could not be resisted, and that rendered the Team's participation in the Tournament impossible.
37. Concerning the alleged unjust enrichment, it is clear that the team's participation in the Tournament was the cause for paying the Contract Fee per clause 4.1. (a). Consequently, since a cause exists, there is no room to claim that the Claimant has been enriched unjustly.
38. In any event the match agent already performed his side of the Contract by liaising different aspects such as reservation for hotel with the Respondent and the TFF.

39. As a result, there was no unjust enrichment based on Swiss law and the Players Status Chamber had to dismiss the counterclaim insofar as it was admissible.

### III. Considerations of the Players Status Chamber

#### a. Competence and applicable legal framework

40. First of all, the Single Judge of the Players Status Chamber (hereinafter also referred to as *the Single Judge*) analysed whether he was competent to deal with the case at hand. In this respect, he took note that the present matter was presented to FIFA on 20 April 2023. Taking into account the wording of art. 31 of the March 2023 edition of the Procedural Rules, the aforementioned edition of the Procedural Rules is applicable to the matter at hand.
41. Subsequently, Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 22 par. 1 of the Match Agents Regulations (2003 edition) (hereinafter: *the Regulations*), the Players Status Chamber is competent to deal with the matter at stake, which concerns a contractual dispute with an international dimension between a Bulgarian match agent and a member association from Jordan.
42. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he confirmed that the Regulations are applicable as to the substance.

#### b. Burden of proof

43. 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. Merits of the dispute

44. Its competence and the applicable regulations having been established, the Single Judge entered into the merits of the dispute. In this respect, the Single Judge started by acknowledging all the above-mentioned facts as well as the arguments and the documentation on file. However, the Single Judge emphasised that in the following considerations it will refer only to the facts, arguments and documentary evidence, which it considered pertinent for the assessment of the matter at hand.



### i. Main legal discussion and considerations

45. The foregoing having been established, the Single Judge moved to the substance of the matter, and took note of the fact that the Claimant disputes that a *force majeure* event took place while the Respondent insists on a *force majeure* event providing just cause to terminate the Contract.
46. In this context, the Single Judge acknowledged that his task was to first establish whether the Contract is valid pursuant to the requirements in the Regulations and to establish whether or not the Earthquake was a *force majeure* event in the context of the Tournament.
47. First, in consideration of the Contract, the Single Judge noted that it was signed and stamped by both parties, i.e. the Claimant and the Respondent.
48. Second, the Single Judge recalled the provisions of article 18 paragraph 1 of the Regulations which regulate the mandatory parts of a contract concerning match agent services (hereinafter also referred to as *Mandatory Provisions*):
- (i) *"expenses for travel, board and basic living costs of the contractual parties"*;
  - (ii) *"the total net indemnification (after deduction of all charges, levies or taxes) due to the contractual parties"*;
  - (iii) *"the conditions that shall apply if a match is (or matches are) cancelled in the case of force majeure"*;
  - (iv) *"the conditions that shall apply if a player who was due to have been fielded under the terms of the contract does not appear in the team (including reasons of force majeure)"*; and
  - (v) *"the fact that the parties concerned shall be aware of these regulations and undertake to observe the provisions therein"*.
49. Further, the Single Judge recalled that par. 2 of art. 18 of the Regulations states very clearly the following: *"Contracts that do not include one or more of the above provisions shall be null and void."*
50. Therefore, the Single Judge turned to identifying the relevant Mandatory Clauses in the Contract and established that all of them are present in the Contract except the clause containing the compensation conditions for a specific player's non-appearance. However, the Single Judge concluded that such clause is not required as the parties to the Contract did not require any specific players to appear in the Tournament so the validity of the

Contract cannot depend on a Mandatory Clause which is not applicable to all contracts as per the Regulations, as it can be seen from the contractual intent of the parties.

51. In light of the abovementioned, the Single Judge found that the Claimant and Respondent concluded the Contract on 15 January 2023 which is fully compliant with the Regulations.
52. Next, the Single Judge turned to the consideration of the Earthquake and it potentially being considered as a *force majeure* event in the context of the Tournament and the Contract and noted that the Respondent paid the 1<sup>st</sup> instalment of the Contract Fee to the Claimant as per the Contract even before the alleged *force majeure* event took place.
53. The Single Judge observed that both parties do not dispute the fact that the Respondent did not participate in the Tournament which still took place in Alanya between 15 and 21 February 2023 with the participation of ten national teams which returned home without any issues after the Tournament had concluded. Taking into account the geographical distance of the Tournament from the area affected by the Earthquake and evidence presented by the Claimant, the Single Judge found that the *force majeure* alleged by the Respondent in its Termination Letter does not exist and therefore neither the just cause to terminate the Contract.
54. Indeed, the Single Judge recalled that according to CAS jurisprudence, for force majeure to exist, there must be an objective (rather than personal) impediment beyond the control of the "*obliged party*" that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible. Further, the Single Judge noted there were no obstacles for the Respondent to independently contact the TFF for any reassurances concerning the safety of the Team before proceeding with the Termination Letter.
55. Consequently, the Single Judge reached a position that the Claimant and the Respondent entered into a Contract for the Tournament. The Claimant already performed his side of the Contract by liaising different aspects such as reservation for hotel with the Respondent and the TFF. Indeed, the Respondent paid the 1<sup>st</sup> instalment of the Contract Fee and terminated the Contract without just cause. Therefore, the Single Judge concluded that there was not unjust enrichment. This follows from the clear evidence on file where the Respondent clearly manifested its will to cancel its participation in the Tournament.

## ii. Consequences

56. Having stated the above, the Single Judge turned his attention to the question of the consequences of such unjustified breach of contract committed by the Respondent.
57. Subsequently, in accordance with clause 6.2. of the Contract, the Respondent is liable to pay compensation to the Claimant for breach of the Contract, in terms of the penalty fee as per the Penalty Clause established in the said Contract.

58. Having noted the above, the Single Judge concluded that the amount of compensation for the breach of Contract needs to be calculated and, in doing so, the amount of compensation shall be calculated, as provided for in the Contract at the basis of the dispute, or, where absent of such disposition, in line with the jurisprudence and practice of the Players Status Chamber.
59. In addition, the Single Judge recalled that the Contract contains a Penalty Clause by which the contractual parties have agreed on a penalty fee in advance for the termination of the Contract without just cause in the amount of EUR 27,000 and 15% interest p.a.
60. As a consequence, and in accordance with the general legal principle of *pacta sunt servanda*, the Single Judge decided that the Respondent is liable to pay to the Claimant the amount which was set as the penalty fee in the Contract as the compensation for the breach of the said contract, i.e. EUR 27,000.
61. In addition, taking into consideration the Claimant's request for the interest rate of 15% p.a. to be awarded as from 12 February 2023 on EUR 27,000, the Single Judge decided to reject the Claimant's request and award interest at the same rate but calculated as from the date of the submission of the claim, i.e. 20 April 2023, until the date of effective payment.

### iii. Compliance with monetary decisions

62. Therefore, bearing in mind the above, the Single Judge decided that the Respondent must pay the full amount due (including all applicable interest) to the Claimant within 30 days of notification of the decision, failing which, at the request of the Claimant, the present matter shall be submitted to the FIFA Disciplinary Committee.
63. The Respondent shall make full payment (including all applicable interest) to the bank account provided by the Claimant in the Bank Account Registration Form, which is attached to the present decision.

### d. Costs

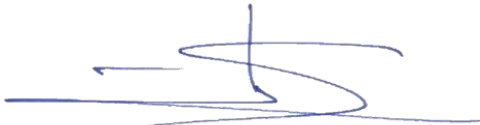
64. The Single Judge referred to art. 25 par. 1 of the Procedural Rules, according to which "*Procedures are free of charge where at least one of the parties is a player, coach, football agent, or match agent*". Accordingly, the Single Judge decided that no procedural costs were to be imposed on the parties.
65. Likewise, and for the sake of completeness, the Single Judge recalled the contents of art. 25 par. 8 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.

66. Lastly, the Single Judge concluded his deliberations by rejecting any other requests for relief made by any of the parties.

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

1. The Football Tribunal has jurisdiction to hear the claim of the Claimant, Evgeni Marinov.
2. The claim of the Claimant, Evgeni Marinov, is partially accepted.
3. The Respondent, Jordan Football Federation, must pay to the Claimant the following amount(s) **EUR 27,000 as compensation for breach of contract without just cause** plus 15% interest *p.a.* as from 20 April 2023 until the date of effective payment
4. Any further claims of the Claimant or the Respondent are rejected.
5. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
6. In the event that the amount due, plus interest as established above, is not paid by the Respondent within 30 days, as from the notification of this decision, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee.
7. This decision is rendered without costs.

For the Football Tribunal:



**Emilio García Silvero**  
Chief Legal & Compliance Officer

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**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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