

Decision of the Players' Status Chamber

passed on 23 October 2023

regarding a dispute concerning the transfer of
the player Robert Muric

BY:

Tomas Gonzalez Cueto (Spain)

CLAIMANT:

Hrvatski Nogometni Klub Rijeka, Croatia
Represented by Danijel Beljan

RESPONDENT:

İttifak Holding Konyaspor, Türkiye

I. Facts of the case

1. On 7 August 2020, the Croatian club, Hrvatski Nogometni Klub Rijeka (hereinafter the *Claimant*) and the Turkish club İttifak Holding Konyaspor (hereinafter the *Respondent*) concluded a transfer agreement (hereinafter the *Transfer Agreement*), concerning a permanent transfer of the player Robert Muric (hereinafter *the player*).
2. In Clause 2 (lit. a) of the Transfer Agreement, the Claimant and the Respondent (jointly referred to as the *Parties*) agreed upon, *inter alia*, a payment of EUR 1,000,000 in four equal instalments as follows:
 - EUR 250,000 by 1 July 2022;
 - EUR 250,000 on 31 December 2022;
 - EUR 250,000 on 30 March 2023;
 - EUR 250,000 on 30 June 2023.
3. In the same Clause (lit. d), the Parties agreed on an applicable interest of 10% p.a.:

“In the event of late payment of any amount under this Transfer Agreement, Konyaspor is obliged to pay to HNK Rijeka an interest-On late payment at a rate of 10% per annum from the due date until payment.”
4. On 8 June 2022, the Claimant sent the Respondent an invoice in the amount of EUR 1,000,000, corresponding to the third instalment of EUR 200,000, however, to no avail.
5. The Claimant acknowledged that the Respondent made a payment of the first two instalments of EUR 500,000.
6. On 3 April 2023, 28 April 2023, 9 June 2023, the Claimant sent reminders to the Respondent concerning the payment of the third instalment.
7. As of 31 July 2023, the Claimant sent the Respondent a default notice(s) via e-mails and DHL, requesting the payment of EUR 500,000 and a specific default interest. In its correspondence, the former gave the Respondent a deadline of 10-days to comply with its financial obligations, however, to no avail.

II. Proceedings before FIFA

8. On 30 August 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

9. The requests for relief of the Claimant were the following:

"1. The Claim of the Claimant, HNK Rijeka s.d.d., is accepted.

2. The Respondent, KONYASPOR KULUBU DERNEGI, Turkey, is obliged to pay the Claimant HNK Rijeka s.d.d., Croatia, EUR 500,000.00 (five hundred thousand euros) within 45 days starting from the day of the notice of this decision,

3. The Respondent, KONYASPOR KULUBU DERNEGI, Turkey, is obliged to pay to the Claimant HNK Rijeka s.d.d., Croatia, within 45 days starting from the day of the notice on this decision, the default interest rate in the amount of 10% annually, starting:

- on the amount of EUR 250.000,00 from first April 2023 until the final payment,*
- on the amount of EUR 250.000,00 from first July 2023 until the final payment.*

4. If the sum is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.

5. The Respondent, KONYASPOR KULUBU DERNEGI, Turkey, is obliged to compensate HNK Rijeka for the paid costs of this proceeding of USD 5,000.00."

10. The Claimant based its claim on the legal principle *pacta sunt servanda*.

b. Position of the Respondent

11. The Respondent submitted the following reply: In its reply to the claim, the Respondent argued that the claim *"incorrectly disregard the solidarity contribution arising from the transfer of the Player to the Respondent, and the deduction of 5% from the monies to be paid to the Claimant accordingly."*
12. In view of the above, the Respondent rejected the claim and requested that the costs are payable by the Claimant.

III. Considerations of the Players' Status Chamber

a. Competence and applicable legal framework

13. 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, it took note that the present matter was presented to FIFA on 30 August 2023 and submitted for decision on 23 October 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 Single Judge referred to art. 2 par. 1 of the Procedural Rules and observed that in accordance with art. 23 par. 2 in combination with art. 22 lit. e) of the Regulations on the Status and Transfer of Players (May 2023 edition), the Single Judge is competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Croatian club and a Turkish club.
15. Subsequently, the Single Judge analysed which regulations should be applicable as to the substance of the matter. In this respect, he 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 30 August 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

16. 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 he 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

17. His 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 he will refer only to the facts, arguments and documentary evidence, which he considered pertinent for the assessment of the matter at hand.

i. Main legal discussion and considerations

18. The foregoing having been established, the Single Judge moved to the substance of the matter and took note of the fact that the Parties strongly dispute the payment of certain financial obligations by the Respondent as per the Transfer Agreement, namely EUR 500,000.
19. In this context, the Single Judge acknowledged that his task was to determine, based on the evidence presented by the Parties, whether the claimed amounts had in fact remained unpaid by the Respondent and, if so, whether the latter had a valid justification for not having complied with its financial obligations.
20. The Single Judge continued that the Respondent bore the burden of proving that it indeed complied with the residual financial terms of the contract concluded between the Parties. Nonetheless, the Single Judge noted that no evidence nor reasonable justification was presented by the Respondent for not having complied with the terms of the Transfer Agreement.
21. In view of the foregoing and bearing in mind the basic legal principle of *pacta sunt servanda*, which in essence means that agreements must be respected by the parties in good faith, the Respondent is held liable to pay the Claimant the outstanding amounts deriving from the Transfer Agreement concluded between the Parties, namely EUR 250,000, corresponding to the 3rd instalment of the transfer fee, as well as EUR 250,000, corresponding to the 4th instalment of the transfer fee.

ii. Consequences

22. 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 amounts claimed as outstanding under the Transfer Agreement, in total EUR 500,000, as detailed above.
23. In addition, taking into consideration the Claimant's request and Clause 2 (lit.d) of the Transfer Agreement, the latter decided to award the Claimant interest at the rate of 10% p.a. on the outstanding amounts as follows:
 - 10% interest p.a. over the amount EUR 250,000 of as from 1 April 2023 until the date of effective payment;
 - 10% interest p.a. over the amount EUR 250,000 of as from 1 July 2023 until the date of effective payment.

iii. Art. 12bis of the Regulations

24. In continuation, the Single Judge referred to art. 12bis par. 2 of the Regulations, which stipulates that any club found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with art. 12bis par. 4 of the Regulations.
25. To this end, the Single Judge confirmed that the Claimant put the Respondent in default of payment of the amounts sought, which had fallen due more than 30 days before, and granted the club a 10-day deadline to cure such breach of contract.
26. Accordingly, the Single Judge confirmed that the Respondent had delayed a due payment without a *prima facie* contractual basis. It followed that the criteria enshrined in art. 12bis of the Regulations was met in the case at hand.
27. The Single Judge further established that by virtue of art. 12bis par. 4 of the Regulations he has competence to impose sanctions on the club. On account of the above and bearing in mind that this is the first offense by the Respondent within the last two years, the Single Judge decided to impose a warning on the Respondent in accordance with art. 12bis par. 4 lit. a) of the Regulations.
28. In this connection, the Single Judge highlighted that a repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty in accordance with art. 12bis par. 6 of the Regulations.

iv. Compliance with monetary decisions

29. Finally, taking into account the applicable Regulations, the Single Judge referred to art. 8 par. 1 and 2 of Annexe 2 of the Regulations, which stipulate that, with its decision, the pertinent FIFA deciding body shall also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.
30. In this regard, the Single Judge highlighted that, against clubs, the consequence of the failure to pay the relevant amounts in due time shall consist of a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods.
31. 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 45 days of notification of the decision, failing which, at the request of the Claimant, a ban from registering any new players, either nationally or internationally, for the maximum duration

of three entire and consecutive registration periods shall become immediately effective on the Respondent in accordance with art. 8 par. 2, 4, and 7 of Annexe 2 of the Regulations.

32. 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.
33. The Single Judge recalled that the above-mentioned ban will be lifted immediately and prior to its complete serving upon payment of the due amounts, in accordance with art. 8 par. 8 of Annexe 2 of the Regulations.

d. Costs

34. 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.
35. Taking into account that the claim of the Claimant has been fully accepted, the Single Judge concluded that the Respondent shall bear the 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 25,000.
36. In light of the above, the Single Judge determined the costs of the current proceedings to the amount of USD 25,000 and concluded that said amount has to be paid by the Respondent in order to cover the costs of the present proceedings.

IV. Decision of the Players' Status Chamber

1. The claim of the Claimant, Hrvatski Nogometni Klub Rijeka, is accepted.
2. The Respondent, İttifak Holding Konyaspor, must pay to the Claimant the following amount(s):
 - **EUR 500,000 as outstanding remuneration** plus interest *p.a.* as follows:
 - 10% interest *p.a.* over the amount EUR 250,000 of as from 1 April 2023 until the date of effective payment;
 - 10% interest *p.a.* over the amount EUR 250,000 of as from 1 July 2023 until the date of effective payment.
3. A warning is imposed on the Respondent.
4. Full payment (including all applicable interest) shall be made to the bank account indicated in the **enclosed** Bank Account Registration Form.
5. Pursuant to art. 24 of the Regulations on the Status and Transfer of Players, if full payment (including all applicable interest) is not made **within 45 days** of notification of this decision, the following **consequences** shall apply:
 1. The Respondent shall be banned from registering any new players, either nationally or internationally, up until the due amount is paid. The maximum duration of the ban shall be of up to three entire and consecutive registration periods.
 2. The present matter shall be submitted, upon request, to the FIFA Disciplinary Committee in the event that full payment (including all applicable interest) is still not made by the end of the three entire and consecutive registration periods.
6. The consequences **shall only be enforced at the request of the Claimant** in accordance with art. 24 par. 7 and 8 and art. 25 of the Regulations on the Status and Transfer of Players.
7. The final costs of the proceedings in the amount of USD 25,000 are to be paid by the Respondent to FIFA. FIFA will reimburse to the Claimant the advance of costs paid at the start of the present proceedings (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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