Decision of the Dispute Resolution Chamber

passed on 15 July 2021

regarding an employment-related dispute concerning the player Valon Ethemi

COMPOSITION:

Omar Ongaro (Italy), Deputy Chairman
Stéphane Burchkalter (France), Member
MD Abu Nayeem Shohag (Bangladesh), Member

CLAIMANT:

KS Kukesi, Albania
Represented by José Carlos Páez Romero

RESPONDENT 1:

Valon Ethemi, North Macedonia & Albania

RESPONDENT 2:

Istanbulspor, Turkey

I. FACTS OF THE CASE

1. On 31 August 2017, the Albanian club, KS Kukesi (hereinafter: *the Claimant* or *the club*) and the Albanian/North-Macedonian player, Valon Ethemi (hereinafter*: the player* or *the Respondent 1*) signed an employment contract, valid for "3 football seasons" (hereinafter: *the contract*).

2. According to the information available in the Transfer Matching System (TMS), the seasons in Albania ran as follows:

   a. Season 2017/2018: From 01 July 2017 to 30 June 2018;
   b. Season 2018/2019: From 01 July 2018 to 30 June 2019;
   c. Season 2019/2020: From 01 July 2019 to 30 June 2020.

3. According to the contract, the player was entitled to a monthly salary of Albanian Leke (ALL) 40,000.

4. Clause 3, ii) of the contract reads as follows: *"The Player acknowledges and undertakes that he will continue to play with the same terms even in the case of season term extension from AFF and/or qualification of the Club in Europe's cups or Champions League. In these cases the contract's terms are automatically extended. In case where the Player is not present in the Club to participate in Europe's Cups or Champions League, the Player declares that he shall pay the Club up to EUR 100.000 Euros within 30 days from the date of the written or verbal request from the Club and for every day of delay the Player declares that he shall pay a penalty of 0.5% of the total amount. The Player declares that if he does not make the payment, this means that AFF, UEFA and FIFA will not allow the Player to be transferred to other teams, domestic or foreign."*

5. Clause 15 of the contract reads as follows:

   "Article 15 Termination of the Contract by the Player

   i) The player will be considered to have terminated his contract with the club for legitimate reasons by notifying the club in writing 30 (thirty) days in advance if the club;
   a) Will be found guilty of serious an d persistent violation of the terms and conditions of this contract, or;
   b) Fails to pay any remuneration or other payments or bonuses that the Club is required to pay to the Player under this contract for more than 90 (ninety) days from the time the obligations were to be fulfilled.

   ii) If the Club fulfils its obligations within the notice period of 30 (thirty) days, then the Player will not terminate the contract unilaterally for legal reasons otherwise the player decides to pay the Club a compensation in the amount of 100.000 Euros. The player

declares that he agrees that if he does not make the payment within 30 days from the day Kukes Club has made the request in writing or by e mail, personally the player or AFF, this will make a condition for the competent authorities of AFF, UEFA and FIFA not to allow the Player to be active in other domestic or foreign clubs.

iii) For all other cases of termination of the contract not provided in this article, the Player is obliged to notify the Club 60 (sixty) days in advance".

6. Clause 16 (iii) of the contract reads as follows: *"If the player terminates the contract unilaterally before the deadline, he will pay the club a penalty from 200.000 (two hundred thousand) to 500.000 (five hundred thousand) Euros, within 30 (thirty) days. The player admits that for each day of late payment, he will pay to the Club a late interest of 0.5% of the unsettled value. The player declares that he agrees that if he does not pay within 30 days from the date that Kukesi FC has made the request in writing, verbally or electronically to the e-mail address of the player, personally to the player or AFF, this will make a condition for the competent authority of AFF, UEFA and FIFA to not allow the player to be active in other domestic or foreign clubs without first making the payment".*

7. On 11 March 2019, the club issue a directive whereby the player's salary was increased to EUR 1,500 as from January 2019.

8. On 4 March 2020, the player sent a letter to the club whereby he recalled the contents of clause 3 of the contract, and *inter alia* stated that he considered clause 3 item ii) as invalid on account of the fact that such clause neither provided for a specific renewal process nor for a substantial raise in the player's remuneration. The player referred to FIFA and CAS jurisprudence in this regard. Accordingly, the player stated that he did not wish to remain at the club for the season 2019/2020.

9. By the end of season 2019/2020, the club qualified for UEFA Europa League qualifying round stage as it finished 2nd in the relevant local league.

10. On 23 July 2020, the player exchanged e-mail with the Albanian Football Association (hereinafter: *the Albanian FA*) and informed that he did not wish to extend the contract beyond the season 2019/2020.

11. On 27 July 2020, the club allegedly paid the player EUR 20,000 as advance payment "*for the season 2021/2021 for UEFA COMPETITION".*

12. On 3 August 2020, the player sent a text message to the club stating as follows: *"Hello guys, Believe me, it is very difficult for me to address you with this letter for these motives, but we all know that divisions in football are something common. I inform you that I have decided to leave Kukes and try myself in a more competitive championship. The desire and enthusiasm to advance in my career are pushing me forward, while this does not diminish the regret that I have to leave this group and that we have functioned as a family. Now that I am leaving, I tell you that it was a pleasure and a privilege to play with you, these three*

years will always remain in my memory. Each of you remain my friends for life. I apologize for any mistake or for any situation when I inadvertently could have hurt anyone! My biggest pledge remains that within the period we were together we did not manage to win the championship, but I wish Kukes to win it many more in the future, starting from the following season. I will always remain a fan of Kukesand each of you wherever you go. I wish you good health, success and titles in the future and I wish you all the best! Respectfully, Valon".

13. On 4 August 2020, the club put the player in default and requested him to resume work by 6 August 2020, to no avail.

14. On 14 August 2020, the club again put the player in default and requested him to resume work by 17 August 2020, to no avail.

15. On 6 January 2021, the player and the Turkish club, Istanbulspor (hereinfater: *Istanbulspor* or *the Respondent 2*), signed an employment agreement valid as from the same date until 31 May 2025, according to which the player is entitled *inter alia* to the following remuneration:
    a. Season 2020/2021: EUR 50,000 net;
    b. Season 2021/2022: EUR 100,000 net;
    c. Season 2022/2023: EUR 110,000 net;
    d. Season 2023/2024: EUR 120,000 net;
    e. Season 2024/2025: EUR 130,000 net.

16. According to TMS, the player was engaged by the Respondent 2 as a free agent. There is no dispute in TMS with regards to the issuance of the player's International Transfer Certificate (ITC).

II. PROCEEDINGS BEFORE FIFA

17. On 17 March 2021, the Claimant filed the claim at hand before FIFA. A brief summary of the position of the parties is detailed in continuation.

a. The claim of the Claimant

18. The Claimant filed the claim at hand against the player and Istanbulspor. It argued that the extension option under the contract had been triggered on account of the fact that the Claimant finished 2nd in the relevant local league and qualified for the Europa League, and thus the contract was extended for one additional season. To this end, the club argued that it paid as advance payment to the player EUR 20,000 on 27 July 2020, in spite of which the player still left the club and signed with Istanbulspor.

19. The Claimant is of the opinion that clause 3 (ii) of the contract is not an unilateral extension option but rather a *"Conditional, Automatic Term Extension (CATE)"* insofar as it *"refers to the Parties' agreement for the automatic extension of the Employment Contract upon the*

occurrence of a condition–i.e. the qualification of [the Claimant] to participate in a UEFA club competition–; and thus regardless of a party's –be it the Club or the Player–option upon expiry of the Initial Term of the Employment Contract". The club further argues that the CATE is not invalid nor one-sided.

20. The club furthermore submitted that a number of players from its squad stayed with the team following the qualification the UEFA Europa League. It further explained that because the early stages of such competition takes place in July each year, it made sense to include in the contract a clause such as 3 (ii).

21. The club moreover submitted that the contract has all the *essentialia negotii* conditions and clause 3 (ii) does not lead to an indefinite duration of the contract. In fact, such clause reflects the true intention of the parties, as follows: *"The automatic renewal of the Employment Contract by one season contingent upon meeting a performance-based target by the first team of FKK, with which the Player was registered. In order words, by signing the Employment Contract, FKK and the Player undertook to extend the term of the Employment Contract by one season upon the achievement of the agreed performance-based target: securing of a place to participate in UEFA club competitions, i.e. in the first qualifying round of either the Champions or the Europa Leagues".*

22. As a consequence, the club seeks the enforcement of clauses 3 (ii) and 16 (iii), as well as the joint liability of the Respondent 2 and the imposition of sporting sanctions.

23. The club's request for relief were the following:

1. *to admit the present claim against Mr. Valon Ethemi and İstanbulspor AS;*
2. *to order Mr. Valon Ethemi to reimburse the EUR 20,000 advanced payment received from Futboll Klub Kukësi SH.A on 27 July 2020;*
3. *to declare the validity of Clauses 3(ii) and 16(iii) of the employment contract between Futboll Klub Kukësi SH.A and Mr. Valon Ethemi dated 31 August 2017;*
4. *to order Mr. Valon Ethemi to pay:*
   4.1.EUR 100,000, as penalty, in accordance with Clause 3 (ii) of the abovementioned employment contract;and
   4.2. EUR 500,000, or if less, no less than EUR 200,000, as penalty, in accordance with Clause 16(iii) of the abovementioned employment contract;
   4.3. 0,5% over the amounts indicated in 4.1 and 4.2 per day of late payment from, respectively, 17 September and 2 November 2020;
5. *to declare that İstanbulspor AS is jointly and severally liable for the payment of any monies that Mr. Valon Ethemi is ordered to pay as a result of Mr. Ethemi's breach of the employment contract between Futboll Klub Kukësi SH.A and Mr. Valon Ethemi dated 31 August 2017; and*
6. *to order Mr. Valon Ethemito abide by the undertakings set out in Clauses 3(ii) and 16(iii) of the abovementioned employment contract and refrain from registering with any club until full settlement of the payments due to Futboll Klub Kukësi SH.A in accordance with Clauses 3(ii) and 16(iii); or, alternatively, impose on Mr. Valon Ethemi sporting sanction for breach of contract during the protected period.*

b. Position of the Respondent 1

24. The player started by contesting the competence of FIFA due to the fact that (a) he is also a citizen of Albania and (ii) was registered as such with the Claimant. Accordingly, he deems that the dispute lacks international dimension and FIFA is not competent to hear the claim.

25. The player firstly outlined that his agent and the club's official exchanged messages in July and August 2020 without ever mentioning the extension of the contract.

26. As to the substance, the player explained that the receipt of advance payment filed by the club was forged. He detailed that the receipt number is 81, while his previous payment had a receipt under number "183".

27. He also pointed out that such receipt is the only one in Euros and not Albanian Lek. He explained that although his salary was raised to EUR 1,500, all payments were always performed in local currency. The player argued that the player was frequently late in payment of his salaries.

28. The player also submitted that had him signed or accepted such payment, the club would have made him sign a confirmation of the extension of the contract or would have referred to it in the communications with his agent.

29. In continuation, the player challenged the validity of clause 3 (ii) of the contract. He submitted that the clause at stake does not mention the term of extension in spite of the club's allegation, but in fact an extension – if so – for the duration of the UEFA competition. He highlighted that if the reasoning of the club was followed, the contract could be extended on an indefinite basis as long as every year the club qualified for any such UEFA competition. The player was also of the opinion that the clause is imbalanced as there is no mention to remuneration of the player and that by the end of any such UEFA competition, most transfer windows would be already closed.

30. In continuation, the player argued that, in line with both under Albanian law and the contract, he manifested his will to cease his obligations towards the club with 60 days advance as per clause 15 (iii) of the contract.

31. Finally, the player argued that the club never registered the contract extension with the Albanian FA, which goes to show that it was not interested in his services.

32. The player additionally challenged the application of sporting sanctions as well as the amounts sought by the club as disproportionate and unreasonable. The player further maintained that the contract was not prematurely terminated so no amounts would be due to the club.

33. The player requested that the claim be deemed inadmissible or, alternatively, rejected.

c. Position of the Respondent 2

34. The Respondent 2 submitted that no termination took place, the contract having expired by its natural term.

35. The Respondent 2 explained that a claim for training compensation was filed by the Claimant against it, in which the Claimant made no mention to the duration of the contract being more than 3 seasons.

36. The Respondent 2 also argued that the Albanian FA did not object the issuance of the player's ITC.

37. Instanbulspor also argued that the amount sought are not compensation for breach of contract and thus art. 17 of the FIFA Regulations on the Status and Transfer of Players does not apply.

III. CONSIDERATIONS OF THE DISPUTE RESOLUTION CHAMBER

a. Competence and applicable legal framework

38. First of all, the Dispute Resolution Chamber (hereinafter also referred to as *Chamber* or *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 17 March 2021 and submitted for decision on 15 July 2021. Taking into account the wording of art. 21 of the January 2021 edition of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereinafter: *the Procedural Rules*), the aforementioned edition of the Procedural Rules is applicable to the matter at hand.

39. The Chamber recalled the basic principle of burden of proof, as stipulated in art. 12 par. 3 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 DRC stressed the wording of art. 12 par. 4 of the Procedural Rules, pursuant to which it may consider evidence not filed by the parties.

40. In this respect, the Chamber also recalled that in accordance with art. 6 par. 3 of Annexe 3 of the Regulations, FIFA's judicial bodies may use, within the scope of proceedings pertaining to the application of the Regulations, any documentation or evidence generated or contained in TMS.

41. Subsequently, the members of the Chamber referred to art. 3 par. 1 of the Procedural Rules and observed that in accordance with art. 24 par. 1 in combination with art. 22 lit. a) and b) of the Regulations on the Status and Transfer of Players (edition February 2021) (hereinafter: *Regulations*), the Dispute Resolution Chamber would in principle be competent to deal with the matter at stake, which concerns an employment-related dispute with an

international dimension between an Albanian/North-Macedonian player and an Albanian club, with the involvement of a Turkish club.

42. However, the DRC took due note that the player challenged the competence of FIFA on the grounds that he holds Albanian citizenship. The DRC thus proceeded to examine the issue of admissibility, while recalling the contents of art. 22 lit. a) and b) of the Regulations.

43. In accordance with art. 22 lit. b) in conjunction with art. 24 of the Regulations, FIFA is competent to deal with employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level.

44. The wording of the article in question clearly implies that the first condition that needs compulsorily to be fulfilled in order for FIFA to be competent to hear an employment-related dispute between a club and a player is that said dispute has an "international dimension". This means that FIFA is only competent to hear an employment-related dispute between of such kind when the parties have different nationalities.

45. The jurisprudence of both the DRC shows that in cases where a player has dual citizenship, the case lacks international dimension. In particular, in the case of players, the registration of a player is a determining factor when assessing if the international dimension is present, due to the fact that clubs may enjoy benefits in registering a player with a certain nationality, *inter alia*, given to regulations on limitations of home-grown players/foreign quota.

46. Bearing in mind the foregoing, the Chamber observed that in accordance with the contract, the player is North-Macedonian. However, the Chamber took due note of the player passport issued by the Albanian FA, a copy of which was brought to the file by the player, and was also available for the Chamber's perusal in TMS, according to which the player was born in Albania and holds Albanian citizenship. What is more, the Chamber observed that in accordance with such document, the player was registered on a permanent basis with the Claimant as a professional as from 31 August 2017.

47. Given the above constellation, the DRC was comfortable to establish the player was registered as an Albanian citizen with the club, and in this respect the claim lacks international dimension.

48. Notwithstanding the above, the Chamber did not fail to notice the issue of the involvement of the Respondent 2, of Turkish nationality, in these proceedings, which in principle could trigger the application of art. 22 lit. a) of the Regulations (insofar as the application of lit. b of the cited provision has been set aside by the DRC).

49. In this respect, the DRC clarified that article art. 22 lit. a) somewhat extends FIFA jurisdiction to determine that disputes between players and club regarding maintenance of contractual stability always fall within FIFA competence where they involve a request for an ITC (and its correspondent claim by an interested party in relation to that ITC request). In other words,

under the scope of the cited provision, it is the issuance of the ITC and the fact that the new club is affiliated to a different member association creates the international dimension.

50. Whenever a player moves between two clubs affiliated to different member associations, such as in the present case, the player's *registration* needs also to be transferred between the two associations concerned. A player's registration is certified by means of the ITC, without which a player may not be registered by its new club via the relevant member association.

51. According to the Annexe 3, art. 8.2 par. 7 in combination with Annexe 3, art. 8.2 par. 4 lit. b) of the Regulations, there is only one valid reason to refuse to issue an ITC: when there is a contractual dispute between the former club and the player.

52. However, the DRC stressed that no such dispute existed in connection with the player's engagement with the Respondent 2. If the Albanian FA had refused to issue the ITC, the Turkish Football Federation (hereinafter: *the Turkish FA)* could have asked FIFA to intervene and allow the player's registration in line with Annexe 3, art. 8.2 par. 7 of the Regulations, and thus the Players' Status Committee (PSC) would have then to decide whether the player could be registered with the Respondent 2 even though was an ongoing contractual dispute between the player and their former club (as per art. 23 par. 4 of the Regulations).

53. The DRC recalled that any such decision by the PSC in cases as the cited one are made without prejudice to a decision the DRC may make in relation to the underlying contractual dispute between the player and their former club as per cf. Annexe 3, art. 8.2 par. 7 of the Regulations.

54. These decisions by the PSC have an international impact, hence the reason for FIFA to have the ability to authorize provisional registrations for a player to register with a new club. This is equally why FIFA competence encompasses employment-related disputes in which the player and the club concerned share the same nationality. If a player wishes to transfer to a club affiliated to another member association (that is, an international transfer) and this leads to a contractual dispute between the player and his (old) club, it would be not coherent for FIFA's decision-making bodies to decide on the registration of a player, and then lack competence to adjudicate on the underlying contractual dispute.

55. At the same time, the issue that arises when the player and the club share the same nationality such as the case at hand, the player's proposed new club (in the present matter, Istanbulspor) falls outside of the jurisdiction of the member association/national court to which the former club belongs. The fact a foreign club is involved in the dispute because it is attempting to register the player provides the international dimension. This is particular important insofar as the potential new club could be held jointly and severally liable for payment of compensation in case a breach of contract without just cause it is found in line with art. 17 par. 4 of the Regulations, as well as the fact that sporting sanctions may be imposed on the new club in case of inducement.

56. The DRC concluded its deliberations confirming that article 22 paragraph 1 (a) requires the contractual dispute between the player and their former club to be linked to an ITC request. Therefore, if an employment dispute with no international dimension arises between a player and a club (*e.g.* if both parties are, for instance, Albanian as in the present matter), and the player only decides to transfer internationally to a club affiliated to a different member association *after* the original dispute arises, the international transfer cannot be cited as the reason for the underlying contractual dispute. Hence, there is no international dimension to the original contractual dispute, and the relevant national authority is competent to deal with it.

57. The DRC was comforted that in the case at hand the player's transfer to Istanbulspor has no connection to the contractual dispute at the basis of the Claimant's claim, insofar as said transfer took place many months after the alleged breach of contract by the player. What is more, the DRC once again highlighted that the issuance of the player's ITC from the Albanian FA to the Turkish FA was unchallenged by the Claimant (or by the Albanian FA on its behalf). It seemed to the Chamber that the Claimant waited until the player had found new (international) employment with the Respondent 2 only then to involve said club in these proceedings, seeking the consequences set forth by art. 17 par. 4 of the Regulations. The DRC could not concur to such approach.

58. Accordingly, the DRC confirmed that the dispute at hand is of a national dimension only, and that the Claimant's claim is inadmissible.

b. Costs

59. The Chamber referred to article 18 par. 2 of the Procedural Rules, according to which *"DRC proceedings relating to disputes between clubs and players in relation to the maintenance of contractual stability as well as international employment related disputes between a club and a player are free of charge"*. Accordingly, the Chamber decided that no procedural costs were to be imposed on the parties.

60. Likewise and for the sake of completeness, the Chamber recalled the contents of art. 18 par. 4 of the Procedural Rules, and decided that no procedural compensation shall be awarded in these proceedings.

61. Lastly, the DRC concluded its deliberations by rejecting any other requests for relief made by any of the parties.

IV. DECISION OF THE DISPUTE RESOLUTION CHAMBER

1. The claim of the Claimant, KS Kukesi, is inadmissible.

2. This decision is rendered without costs.

For the Dispute Resolution Chamber:

Emilio García Silvero
Chief Legal & Compliance Officer

NOTE RELATED TO THE APPEAL PROCEDURE:

According to article 58 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 20 of the Procedural Rules).

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