

## **ARBITRAL AWARD**

**(BAT 0704/15)**

by the

**BASKETBALL ARBITRAL TRIBUNAL (BAT)**

**Mr. Stephan Netzle**

in the arbitration proceedings between

**Mr. Mirza Begic**

**- Claimant -**

represented by Mr. Rastko Malisic and Mr. Uros Zigic, attorneys at law,  
Resavska 32, 11000 Belgrade, Serbia

vs.

**Olympiacos SFP BSA**

Peace & Friendship Stadium, Ethnarchou Makariou 1,  
18547 N. Falirou, Piraeus, Greece

**- Respondent -**

represented by Mr. Lampros S. Adamos, attorney at law,  
15, Voukourestiou Str., 10671 Athens, Greece and  
Mr. William McAuliffe, attorney at law, 3-5 rue du Conseil-Général,  
P.O. Box 552, 1211 Geneva 4, Switzerland

## **1. The Parties**

### **1.1. The Claimants**

1. Mr. Mirza Begic (hereinafter the "Player") is a professional basketball player of Slovenian nationality.

### **1.2. The Respondent**

2. Olympiacos SFP BSA (hereinafter the "Club") is a professional basketball club located in Piraeus, Greece.

## **2. The Arbitrator**

3. On 18 June 2015, the President of the Basketball Arbitral Tribunal (hereinafter the "BAT"), Prof. Richard H. McLaren, appointed Dr. Stephan Netzle as arbitrator (hereinafter the "Arbitrator") pursuant to Article 8.1 of the Rules of the Basketball Arbitral Tribunal (hereinafter the "BAT Rules"). Neither of the Parties has raised any objections to the appointment of the Arbitrator or to his declaration of independence.

## **3. Facts and Proceedings**

### **3.1. Summary of the Dispute**

4. On 19 July 2013, the Player and the Club signed a "Contract for the provision of athletic services" (hereinafter "the Initial Player Contract") for the seasons 2013-2014 and 2014-2015. On 1 October 2013, the Player and the Club signed an "Athletic Services Contract" based on a template provided by the Hellenic Basketball Club Association (HEBA) (hereinafter the "HEBA Contract") and an "Addendum to the Contract of Athletic Services" (hereinafter "the Addendum"). In the Initial Player Contract, the salary of the Player was agreed at EUR 700,000.00, net of all taxes, for the 2013-2014 season, payable in 10 equal monthly instalments of EUR 70,000.00 on

the last working day of each month commencing with September and concluding with June (inclusive), and EUR 750,000.00, net of all taxes, for the 2014-2015 season, payable in 10 equal monthly instalments of EUR 75,000.00 according to a similar schedule. The Player was also entitled to bonuses payable if the Club's team would reach certain defined sporting goals. The Addendum provides for much higher payments to the Player, consisting of a gross monthly salary of EUR 860.29 and a gross signing bonus of EUR 1,263,543.16, payable in 10 monthly instalments, for the 2013-2014 season. However, in their submissions, both Parties always referred to EUR 70,000.00 (net) as the monthly salary of the Player in the 2013-2014 season. The salary payments are not subject to the present arbitration.

5. In February 2014, the Club notified the Player that he was relieved from training sessions with the team and that he should continue to train individually according to the instructions and under the supervision of the Club's trainer.
6. Between 19 and 29 April 2014, the Parties discussed the termination of the Player's employment. However, no termination agreement was ever signed by the Parties.
7. On or before 11 June 2014, the Player returned to his home country Slovenia. The actual date of the Player's departure is disputed.
8. By letter of 19 June 2014, the General Manager of the Club notified the Player that he had infringed the Internal Regulations of the Club when he left Greece without the Club's prior permission and invited him to submit written explanations to the Club's General Manager.
9. By letter 25 June 2014, the Club notified the Player of its decision to impose a fine of EUR 35,000.00 for infringement of Article 8.5 of the Internal Regulations of the Club and the relevant terms 4c and 4f of the Addendum, since the Claimant had allegedly unreasonably decided to stop his services to the Club and leave Greece without the Club's permission, as well as a fine of EUR 70,000.00 for infringement of Article 14 of the Internal Regulations and the relevant term 4c of the Addendum. The second fine

was a consequence of the Player's misbehaviour at the Euroleague Game against Galatasaray Liv Hospital Istanbul on 28 November 2013.

10. By letter of 30 June 2014, the Club sent a notice of termination of the HEBA Contract to the Player.
11. By email of 6 August 2014, the Club informed the Player that it had deducted an amount of EUR 105,000.00 from his final salary payment. By email of 16 August 2014, the Player expressed his disagreement and requested the Club to pay the retained amount of EUR 105,000.00 to his account.
12. The Player disputes the legitimacy of the fines imposed by the Club.

### **3.2. The Proceedings before the BAT**

13. On 21 May 2015, the Player filed a Request for Arbitration in accordance with the BAT Rules. A non-reimbursable handling fee of EUR 3,000.00 was received in the BAT bank account on 20 May 2015.
14. By Procedural Order of 25 June 2015, the BAT Secretariat confirmed receipt of the Request for Arbitration and informed the Parties about the appointment of the Arbitrator. Furthermore, a time limit was fixed for the Club to file its Answer in accordance with Article 11.2 of the BAT Rules by no later than 16 July 2015. The BAT Secretariat also requested that the Parties pay the following amounts as Advance on Costs by no later than 6 July 2015:

*"Claimant (Mr Mirza Begic)  
Respondent (Olympiacos BC)*

*EUR 6,500  
EUR 6,500"*

15. On 28 July 2015, the Respondent filed its Answer.
16. By Procedural Order of 28 August 2015, the BAT Secretariat acknowledged receipt of the full amount of the Advance on Costs equally paid by both Parties. The Parties were

invited to a second round of written submissions. The Player filed his reply to the Answer on 25 August 2015 whereas the Club's rejoinder was received on 14 September 2015.

17. On 15 September 2015, the Arbitrator closed the submissions period and invited the Parties to submit detailed statements of their respective accounts of costs which were provided on 24 September 2015.

18. Neither Party commented on the accounts of costs of the other Party.

#### **4. The Positions of the Parties**

##### **4.1. The Player's Position**

19. The Player submits the following in substance:

- a) The relevant contract is the HEBA Contract. By email of 29 April 2014, the Club proposed terminating the HEBA Contract. No termination agreement was ever signed by the Parties. The HEBA Contract was however terminated by Respondent's Notice of Termination of 30 June 2014.
- b) By letter dated 25 June 2014, the Club sent a letter to the Player which included a decision to impose a fine of EUR 35,000.00 because the Player had not attended a training session and left Greece without the Club's permission, and a fine of EUR 70,000.00 because of the incident which took place during a Euroleague game of the Club's team against Galatasaray Liv Hospital Istanbul on 28 November 2013. With regard to the fine of EUR 35,000.00, the Player argues that the Club had decided to engage another player for the Player's position and relieved the Player from training sessions with the rest of the team. In addition, the Club started pressuring the Player and his Agent to accept an early termination of the Agreement, which the Player however refused to sign.

- c) When the season 2013/2014 was over and no training sessions of the Club's team were held, the Player decided to leave Greece and return to his home country Slovenia where he continued to train regularly. If the Club had really needed the Player, it could have had called him on his mobile phone at any time. It is therefore completely unreasonable and in bad faith that the Club is insisting on a fine for not attending training sessions and for leaving Greece at the end of the season even though the Player had not been of any use for the Club since February 2014.
- d) With regard to the fine of EUR 70,000.00, the Player submits that there was indeed an incident during the game against Galatasaray Liv Hospital Istanbul on 28 November 2013. A fine was imposed on the Player by the Euroleague Disciplinary Judge in the amount of EUR 15,000.00. The Club filed an appeal stating that such fine was ungrounded and unreasonably high. The Euroleague Appeals Panel then reduced the fine to EUR 10,001.00. It is therefore completely unreasonable by the Club to impose a fine on the Player in the amount of EUR 70,000.00 now, seven months after the incident and also several months after the final decision of the Euroleague Disciplinary Judge.
- e) It is also striking that in its draft termination agreement of 29 April 2014, the Club proposed to terminate the contractual relationship with the Player without the deduction of any fines. Only when the Player did not accept this proposal, the Club imposed the fines of EUR 105,000.00 which it had never announced before.
- f) In case the Club's right to fine the Player would be acknowledged, the amounts of the fines must be reduced since they are unreasonably high and unfair. The fine of EUR 35,000.00 corresponds to 50% of the Player's total monthly wages which is, according to the Club's Internal Regulations, the maximum amount that can be requested. If at all, the Players behaviour does not justify imposing the maximum possible fine. There is also a



striking discrepancy between the Club's fine for the incident during the Euroleague game against Galatasaray Liv Hospital Istanbul of EUR 10,001.00 and the EUR 70,000.00 fine for the same incident which the Club has imposed on the Player.

#### **4.2. The Player's Request for Relief**

20. The Request for Arbitration of 21 May 2015 contains the following Request for Relief:

*"In line with all presented above, the Claimant requests that the Respondent pay to the Claimant an amount of **EUR 105.000,00** plus interest on such amount from 1 July 2014 until the day of payment.*

*Furthermore, the Claimant requests that the cost of this arbitration until issuance of the Award which will be determined by the President of the BAT, is borne by the Respondent. Accordingly, the Respondent shall pay that amount to the Claimant. Finally, the Claimant requests an amount of **EUR 9.500,00** as compensation for his legal fees and expenses. (sic.)"*

#### **4.3. The Club's Position**

21. The Club submits the following in substance:

- a) It all started with the incident during the Euroleague game between Olympiacos and Galatasaray Liv Hospital Istanbul of 28 November 2013 in which the Player was involved. The Club was not only fined by the Euroleague Disciplinary Judge because of the Player's acts but it was also condemned to play a match behind closed doors which resulted in an immediate financial damage of up to EUR 240,000.00.
- b) Following the decision of the Euroleague Disciplinary Judge, the Club and the Player agreed to start negotiating an early termination of their contractual relationship. On 19 April 2014, the Player attempted terminating the employment based on Article 9 of the Initial Player Contract which was however rejected by the Club. Subsequently, the Parties exchanged

proposals for a settlement of the contractual relationship. However no such settlement was eventually signed.

- c) The Player was however no longer part of the plans of then Coach Mr Bartzokas, and the Club decided that the Player should stop training with the rest of the team. Instead, he was asked to start personal training sessions under instruction and supervision of the trainer Mr Gantzoulis.
- d) On 30 May 2014, in the midst of the Greek play-off finals, the Player stopped attending the Club's facilities. On 31 May and 4 June 2014, the Club's team played the last two games of the Greek play-off finals against Panathinaikos BC and lost the Greek Championship. It turned out, that the Player had already left Greece without prior permission of the Club.
- e) On 19 June 2014, the Club notified the Player that he had violated the Internal Regulations by stopping training sessions and leaving Greece without the Club's prior permission. The Player was invited to submit his written explanations until the following day.
- f) On 25 June 2014, the Club notified the Player that it had taken a decision to impose two fines, namely EUR 35,000.00 because the Player had unreasonably decided to stop his personal training and leave Greece without the Club's permission, and EUR 70,000.00 because of his unprofessional and violent behaviour during the game against Galatasaray Liv Hospital Istanbul of 28 November 2013.
- g) On 30 June 2014, the Club sent a notice of to the Player based on Art. 7.1 of the Addendum which entitles the Club to unilaterally terminate the HEBA Contract by written notice and a payment of EUR 100 by no later than 1 July 2014.
- h) With respect to the fine of EUR 35,000.00, the Club argues that the Player left the Club and Greece before the end of the 2013-2014 basketball



season without the Club's permission while the other players continued to train until the end of June 2014.

- i) Article 8.5 of the Internal Regulations is clear: *"The Player has to follow the directions given by the medical staff of the Club concerning food, medical and physical therapies"* which he did not. A fine in the amount of 50% of his monthly salary must be considered as a rather mild sanction, especially during an important period of the basketball season.
- j) With respect to the EUR 70,000.00 fine, the Club argues that it cannot be disputed, and was actually confirmed by the Euroleague Appeals Panel that the Player was guilty of violent conduct during that Euroleague game. The penalty imposed by the Club does not depend on the penalty imposed by the Euroleague but rather takes the significant damage of the Club that was caused by the Player's behaviour into account. Not only was the Club sanctioned by the Euroleague with fines of EUR 24,000.00 but it was also obliged to play the next home game behind closed doors, without spectators, which resulted in an immediate financial damage of up to EUR 240,000.00. It is therefore only fair and just to impose a fine of EUR 70,000.00 to the Player.
- k) The fine was not imposed earlier but only seven months after the Euroleague game against Galatasaray Liv Hospital Istanbul because the Club did not want to disturb the team during the still ongoing season. It must be noted that a similar penalty was also imposed on another player, and the Player was not singled-out.

#### **4.4. The Club's Request for Relief**

22. The Club requests the following:

*"IV PRAYERS FOR RELIEF"*

*Based on the foregoing developments, the Respondent respectfully requests the sole arbitrator to issue an award:*

- *Rejecting Mirza Begic's prayers for relief in the Request for Arbitration dated 21 May 2015.*
- *Solidarily condemning Mirza Begic to pay all arbitration costs in accordance with Article 17 of the BAT Arbitration Rules.*
- *Solidarily condemning Mirza Begic to pay Olympiacos a contribution towards its legal fees and other expenses incurred in connection with the proceedings of EUR 9,500.*
- *Award any other remedy the Arbitrator deems fair and equitable under the circumstances when deciding ex aequo et bono."*

## **5. Jurisdiction**

23. Pursuant to Article 2.1 of the BAT Rules, "[t]he seat of the BAT and of each arbitral proceeding before the Arbitrator shall be Geneva, Switzerland". Hence, this BAT arbitration is governed by Chapter 12 of the Swiss Act on Private International Law (PILA).
24. The jurisdiction of the BAT presupposes the arbitrability of the dispute and the existence of a valid arbitration agreement between the Parties.
25. The Arbitrator finds that the dispute referred to him is of a financial nature and is thus arbitrable within the meaning of Article 177(1) PILA.
26. The Player refers to the arbitration clause in Article 8.3 of the Initial Player Contract which reads as follows:

*"This Agreement shall be governed by the laws of Greece and shall be interpreted and enforced in accordance with the Laws of Greece, the provisions of HEBA and the provisions of FIBA.*

*The parties agree as competent authorities for the resolution of any dispute that might arise between the Club and the Player from the interpretation or application of this present agreement, including financial disputes, the following authorities:*

*a. The sports, judicial and arbitral instruments of the Greek Basketball*

*Association and HEBA according to Greek legislation and Greek regulations ("TOK / ESAKE").*

*b. The Basketball Arbitral Tribunal (BAT) in Geneva, Switzerland in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International law, irrespective of the parties' domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono. In such case, Awards of the BAT can be appealed to the Court of Arbitration of Sports (CAS), Lausanne, Switzerland.*

*The said authorities will be equally and alternatively competent for the resolution of any dispute that might arise between the parties, whereas it will be at the absolute discretion of the claimant which of the two jurisdictions will be seized. A specific dispute can only be submitted to one of the said authorities.*

*Any other jurisdiction, including US Courts is expressly excluded."*

27. However, on 1 October 2013, the Parties signed the HEBA Contract and the Addendum which corresponds to a great extent to the Initial Player Contract. Art. 11.2 of the Initial Player Contract" of 1 October 2013 states:

*"The parties acknowledge, state and commit themselves to the fact that their relationship is regulated solely by the provisions hereof, and any prior written or oral agreement shall be void."*

28. Likewise, Art. 11 of the Addendum stipulates:

*11.1 This Contract, including any exhibits hereto, contains the entire agreement between the Parties and supersedes all prior communications, whether oral or written, by either party. Any change has to be made in writing, dated and duly signed by both Parties.*

*11.2 Any other written or oral agreement between the Parties shall be invalid, ineffective and unenforceable."*

29. Based on the chronology of the signing of the contracts and the wording of Art. 11.2 of the HEBA Contract and Art. 11 of the Addendum, the Arbitrator finds that the HEBA Contract including the Addendum replaced the Initial Player Contract by way of novation and must therefore be considered as the relevant agreement between the parties.

30. The HEBA Contract contains the following provisions:

*“6.3 According to the applicable legislation, the sports, jurisdictional and arbitral bodies of HEBA and HBF (Hellenic Basketball Federation) shall be the competent bodies for the termination or cassation of the terms hereof.*

*6.4 Exclusively and only for the financial disputes that may arise out of the terms hereof between the Company and the Basketball Player, the following bodies shall be exclusively competent to their resolution:*

- a) the Courts of the City of see addendum*
- or*
- b) the relevant committees for the resolution of financial disputes.”*

31. Finally, the Addendum contains also the following provision:

**“8. GOVERNING LAW – JURISDICTION**

*“This Agreement shall be governed by the laws of Greece and shall be interpreted and enforced in accordance with the Laws of Greece, the provisions of HEBA/GREEK FEDERATION and the provisions of FIBA.*

*a) Exclusively and only for the financial disputes that may arise out of the terms thereof between the Club and the Player, shall be competent for their resolution the bodies of HEBA, the relevant committees for the resolution the bodies of HEBA, the relevant committees for the resolution of financial disputes or the bodies of FIBA (BAT), as described below:*

*Any dispute arising from or relied to the present contract shall be submitted to the FIBA Arbitral Tribunal (BAT) in Geneva, Switzerland and shall be resolved in accordance with the BAT Arbitration Rules by a single arbitrator appointed by the BAT President. The seat of the arbitration shall be Geneva, Switzerland. The arbitration shall be governed by Chapter 12 of the Swiss Act on Private International Law (PIL), irrespective of the parties’ domicile. The language of the arbitration shall be English. The arbitrator shall decide the dispute ex aequo et bono. In such case, Awards of the BAT can be appealed to the Court of Arbitration of Sports (CAS), Lausanne, Switzerland.*

*The said authorities will be equally and alternatively competent for the resolution of any dispute that might arise between the parties, whereas it will be at the absolute discretion of the claimant which of the two jurisdictions will be seized. A specific dispute can only be submitted to one of the said authorities.*

*Any other jurisdiction, including US Courts is expressly excluded.”*

32. When it comes to inconsistencies between the HEBA Contract and the Addendum which were signed on the same date, the Arbitrator finds that the individually negotiated terms of the Addendum must prevail against the general terms of the HEBA Contract according to the principle “lex specialis derogat legi generali”. On the other

hand, there is no evidence of fundamental error or deception which would invalidate the later agreement. Thus, the Arbitrator relies on the Addendum and the arbitration clause contained therein, which also seems to be referenced to in the HEBA Contract through the mention “*see addendum*” in clause 6.4 thereof.

33. The relevant Arbitration Clause mentions not only the BAT but also “*the sports, judicial and arbitrated instruments of the Greek Basketball Association and HEBA according to Greek legislation and Greek regulations*”. However, it explicitly gives the claimant a choice between the dispute resolution bodies of HEBA and the BAT. The Player chose to submit his Request for Arbitration to the BAT. In its Answer, the Respondent explicitly confirmed that the jurisdiction of the BAT was not disputed.
34. The Player Contract is in written form and thus the arbitration agreement fulfils the formal requirements of Article 178(1) PILA. The Arbitrator also considers that there is no indication in the file which could cast doubt on the validity of the arbitration agreement under Swiss law (referred to by Article 178(2) PILA). In particular, the wording “[a]ny unresolved dispute arising from or relied to the present contract”(sic) in clause 8 of the Addendum covers the present dispute. In addition, neither party objected to the jurisdiction of BAT.
35. For the above reasons, the Arbitrator finds that he has jurisdiction to adjudicate the Claimant’s claim.

## **6. Applicable Law – ex aequo et bono**

36. With respect to the law governing the merits of the dispute, Article 187(1) PILA provides that the arbitral tribunal must decide the case according to the rules of law chosen by the Parties or, in the absence of a choice, according to the rules of law with which the case has the closest connection. Article 187(2) PILA adds that the Parties may authorize the Arbitrators to decide “*en équité*” instead of choosing the application of rules of law. Article 187(2) PILA is generally translated into English as follows:

*“the Parties may authorize the arbitral tribunal to decide ex aequo et bono”.*



37. Under the heading "Applicable Law", Article 15.1 of the BAT Rules reads as follows:

*"Unless the Parties have agreed otherwise the Arbitrator shall decide the dispute ex aequo et bono, applying general considerations of justice and fairness without reference to any particular national or international law."*

38. In the arbitration agreement in clause 8 of the Addendum, the Parties have explicitly directed and empowered the Arbitrator to decide this dispute *ex aequo et bono* without reference to any other law. Consequently, the Arbitrator will decide the issues submitted to him *ex aequo et bono*.

39. The concept of *équité* (or *ex aequo et bono*) used in Article 187(2) PILA originates from Article 31(3) of the Concordat intercantonal sur l'arbitrage of 1969<sup>1</sup> (Concordat),<sup>2</sup> under which Swiss courts have held that "arbitrage en *équité*" is fundamentally different from "arbitrage en droit":

*"When deciding ex aequo et bono, the arbitrators pursue a conception of justice which is not inspired by the rules of law which are in force and which might even be contrary to those rules."*<sup>3</sup>

40. In substance, it is generally considered that the arbitrator deciding *ex aequo et bono* receives

*"the mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he must stick to the circumstances of the case at hand".*<sup>4</sup>

41. In light of the foregoing matters, the Arbitrator makes the following findings.

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<sup>1</sup> That is the Swiss statute that governed international and domestic arbitration before the enactment of the PILA (governing international arbitration) and, most recently, the Swiss Code of Civil Procedure (governing domestic).

<sup>2</sup> KARRER, in: Basel commentary to the PILA, 3<sup>rd</sup> ed., Basel 2013, Art. 187 PILA N 290.

<sup>3</sup> JdT (Journal des Tribunaux), III. Droit cantonal, 3/1981, p. 93 (free translation).

<sup>4</sup> POUDRET/BESSON, Comparative Law of International Arbitration, London 2007, N 717, pp. 625-626.



## **7. Findings**

### **7.1. The issue of this case**

42. The only issue disputed between the Parties is whether the Club was entitled to deduct EUR 105,000.00 from the Player's salaries. The deducted amount consists of two fines imposed on 25 June 2014, one in the amount of EUR 70,000.00, because of the Player's violent behaviour during the Euroleague game against Galatasaray Liv Hospital Istanbul on 28 November 2013, and one in the amount of EUR 35,000.00 because of the Player's absence from training and departure from Greece during the term of the contractual relationship without the Club's permission.

### **7.2. The fine of EUR 70,000**

43. With regard to the events during the Euroleague game of the Club's team against Galatasaray Liv Hospital Istanbul on 28 November 2013 in Piraeus, Greece, when the Player was involved in a fight with a player of Galatasaray, Mr. Mensah-Bonsu, the Arbitrator relies on the facts set out in the Decision of the Euroleague Disciplinary Judge of 3 December 2013. These facts seem to be undisputed by the Parties:

*"39. With three minutes and eight seconds left in the fourth quarter, while his teammate was shooting his second free throw, Mr Pop Mensah-Bonsu managed to squeeze his way in front of Mr Mirza Begic, who was trying to block him with his upper body. Mr Mensah-Bonsu had to unwrap his arm around Mr Begic's shoulders and to rotate his body in order to pass his opponent. By doing so, Mr Mensah-Bonsu's elbow nearly touched Mr Begic's face. But it did not. It is obvious that it was Mr Mensah-Bonsu's intention to go for the ball and not to hit Mr Begic. At that moment, Mr Begic found himself behind Mr Mensah-Bonsu and hit him with his elbow on the back of the head. There is no doubt that Mr Begic meant to hurt his opponent.*

*40. Immediately, Mr Mensah Bonsu spun around on his heels and threw his fist at Mr Begic's face. Both Mr Begic and Mr Georgios Printezis answered by punching Mr Mensah-Bonsu back. At that moment, players of both teams attempted to separate the fighters.*

*41. Several players tried to hold Mr Mensah-Bonsu back but he released himself free and rushed towards Mr Begic. He gave three punches at him, while, at the same time, Mr Begic threw one fist at him and Mr Printezis, two.*

*42. The litigious confrontation lasted over thirteen seconds, which is quite long, in view of the intensity of the clash between the players involved. However, nobody was reported injured."*

44. That is why the Player was sanctioned by the Euroleague Disciplinary Judge by a temporary disqualification from the Euroleague competition for four games as well as with a fine of EUR 15,000.00 which was later reduced on appeal to EUR 10,001.00. Also the other player of the Club involved in this fight was sanctioned.
45. Sanctions were also imposed on the Club for incidents that occurred during the same game:
- a) At the end of the game, a spectator was able to pass the security staff and kicked one of the visitor players. This incident led to a fine of EUR 10,001.
  - b) By several occasions during the game, laser pointers were aimed into the eyes of players of Galatasaray in an obvious attempt to make them miss one of their free throws. During the interruption of the game following the fight, laser pointers were also directed at Mr Mensah-Bonsu. These incidents led to a fine of EUR 8,000.
  - c) During the game interruption following the fight, firecrackers were thrown from the spectators' seats to the playing area. This was sanctioned by a fine of EUR 6,000.
  - d) During the ten-minutes interruption following the fight, countless objects of different kind and size were thrown onto the playing area. Some objects were thrown at Mr Mensah-Bonsu and other members of the visiting team as they were leaving the playing area after the game. The Disciplinary Judge therefore decided that the next home game of the Club had to be played behind closed doors, without spectators, and imposed an additional fine of EUR 15,000.

46. Undisputedly, the Player was bound by the Club's Internal Regulations. The Club deems Art. 14.1 and 14.1.1 of the Internal Regulations applicable:

*"14.1 Violence has no place in basketball and is thus absolutely prohibited to Athletes and any Club's members regardless during or outside the Club's activities.*

*14.1.1 In case of any violent behavior or other behavior contrary to the sport's spirit, under any circumstances, Athletes (or other Club's members) are subject, at the Club's discretion, to a penalty, including a fine calculated on their total monthly wages, suspension or termination of the contract, according to the seriousness of the infraction and its results (injuries of the parties involved, penalties imposed on the Club etc.)"*

47. The Player was already fined by the Euroleague because of the fight during the game on 28 November 2013, based on the Euroleague Basketball Disciplinary Code. However, this does not prohibit the Club from imposing further sanctions because of the same incident but based on its own Internal Regulations if the respective requirements are met. Whether the Club's additional sanction is legitimate may however be reviewed by the Arbitrator.
48. The Club does not dispute that the fine of EUR 10,001.00 as eventually imposed by the Euroleague Disciplinary Judge upon the Player was actually paid by the Player himself and not by the Club. The entire amount of EUR 70,000.00 therefore constitutes a fine based on Art. 14.1 and 14.1.1 of the Internal Regulations and does not include a reimbursement of a fine advanced by the Club.
49. The Arbitrator considers this fine to be disproportionate, taking the following considerations into account:
- a) Art. 14.1.1 of the Internal Regulations indeed requires a fine to be calculated in view of the monthly wage of the respective player which is understood that the fine shall not be disproportionate. Art. 14.1.1 does however not set a minimum amount.

- b) The Club must be taken by its own allegation in the proceedings before the Euroleague Disciplinary Judge that even a fine of EUR 15,000.00 was unreasonably high and must be reduced.
- c) The incident did not lead to any injuries of the parties involved.
- d) The Euroleague Disciplinary Judge's order to play the next game behind closed doors was not only a consequence of the Player's violent behaviour but to the greater extent also of various shortcomings of the Club in keeping control over the crowd in the home stadium. The Euroleague Disciplinary Judge also took the disciplinary history of the Club into consideration and was disturbed about the fact that earlier warnings regarding order and security at the Club's home games had not been respected. The loss resulting from the game behind closed doors cannot therefore be attributed to the Player.
- e) When the Decision of the Euroleague Disciplinary Judge was issued, the Club did not immediately initiate disciplinary proceedings against the Player but imposed the fine of EUR 70,000.00 only by decision of 25 June 2014, i.e. half a year later, which supports the Player's submission that, at least during the discussions of an early termination of the employment, the Club did not intend to ask the Player for any penalties. The Arbitrator notes, however, that this cannot be construed as a complete waiver to any penalties under any circumstances, but rather as a ground for reduction.
- f) It took the Club a substantial amount of time between the event that triggered the fine and its decision to eventually impose the fine. The Arbitrator is not convinced about the Club's explanation that it did not want to disturb the team, especially since the Player had already been removed from the team since February 2014. The timing of the sanction rather leads to the conclusion that the fine was at least partially motivated by the Club's

desire to reduce the financial obligations towards the Player in view of the termination of his employment.

- g) There is no indication on record that the Player was ever heard before the Club decided to impose the fine of EUR 70,000.00. While a hearing is not explicitly required in the Internal Regulations, it would have been fair by the Club to hear the Player, especially because of the lapse of time since the game against Galatasaray Liv Hospital Istanbul and also because of the expectations which had been created during the settlement negotiations that the Club did not intend to impose a fine.

50. The Arbitrator, deciding *ex aequo et bono*, finds therefore, that the fine because of the incidents at the game against Galatasaray Liv Hospital Istanbul shall be reduced from EUR 70,000.00 to EUR 25,000.00.

### **7.3. The fine of EUR 35,000.00**

51. The fine of EUR 35,000.00 has been based on Art. 8.5 of the Internal Regulations which provides as follows:

*“8.5 If an Athlete does not follow the directions of the Club’s physician, medical staff, nutritionist or other Club appointed professional (including rehabilitation directions) or acts without such directions or in any way does not comply with the provisions of paragraphs 8.1., 8.3. and 8.4., he is subject to a fine up to 50% of his total monthly wages or to suspension or termination of contract, at the discretion of the Club.”*

52. Undisputedly, the Player was released from the team in February 2014 but remained employed under the HEBA Contract and the Amendment. There is no argument that the Player was not paid the agreed monthly salaries any longer. Accordingly, he was still bound by the Internal Regulations and the instructions by the Club’s officials, especially the coaching staff. In particular, he was obliged to continue to exercise and to be ready to be called to join the team at any time.



53. According to Mr Gantzoulis, on 30 May 2014, *“the Player did not appear in the gym for his personal training without any prior notice.”* There is no complaint that the Player missed a training session already before. There were two games left in the finals of the Greek Basketball Championship to be played on 1 and 4 June 2014. It has not been asserted that the Club had any intention to call the Player to be ready to attend one or both of these games. The Club asserts however, that several attempts were made to reach the Player and his agent by phone. That has been disputed by the Player and the Club has not provided any evidence of such attempts.
54. The Parties dispute whether the Player had already left Greece on or before 30 May 2014 or whether he departed only after 4 June 2014, i.e. the date of the very last game of the Club. The Player admits, that he departed from Greece only on or after 11 June 2014 which was after the end of the 2013-2014 season and before the end of the contractual term (i.e. 30 June 2014). Undisputedly, he did not report to the Club before he left the country and he did not seek the Club’s permission to do so.
55. The Arbitrator finds that the Player indeed violated his duties under the HEBA Contract and the Internal Regulations, namely to follow the instructions of the coach and not to leave the Club before the end of the contractual term without the Club’s permission. The Club was therefore entitled to impose a fine under the Internal Regulations. The Club also invited the Player to a written statement; such opportunity was not used by the latter.
56. However, considering all circumstances, the Arbitrator finds the penalty of EUR 35,000 which is the maximum amount possible under Art. 8.5 of the Internal Regulations, disproportionate. While the Player cannot deny having violated the Internal Regulations, his breach did not create any problems or inconveniences to the Club. In particular, there is no evidence, and it has not even been asserted that the Club had even remotely considered calling the Player to one of the last two games. To the contrary: it was clear to both the Club and the Player that the employment would not be extended to the next season and that the Club would exercise its option to terminate the HEBA Contract according to Art. 7.1 of the Addendum, which it eventually did in



time. The Arbitrator, deciding *ex aequo et bono*, therefore reduces the penalty due for non-attendance of a training and leaving the country from EUR 35,000.00 to EUR 15,000.00.

#### **7.4. Summary**

57. The two fines imposed by the Club on the Player shall be reduced from EUR 105,000.00 to EUR 40,000.00 and the Club shall be obliged to pay the difference of EUR 65,000.00 to the Player.

#### **8. Interest**

58. The Player is requesting interest on the awarded amount from 1 July 2014 until the day of payment. The Initial Player Contract, the HEBA Contract and the Addendum do not stipulate the obligation to pay interest on overdue amounts. According to standing BAT jurisprudence, default interest can be awarded even if the underlying agreement does not explicitly provide for an obligation to pay interest. This is a generally accepted principle which is embodied in most legal systems. However, it is also generally accepted that the obligee has to request payment of interest from the obligor if not agreed in the underlying agreement in advance. The Player did not indicate a specific interest rate. According to BAT jurisprudence, a default rate of 5% is deemed appropriate.
59. It appears from the case file that the Player never requested the Club to pay any interest. From the documents on record, the Player requested payment of interest only in its Request for Arbitration. The Arbitrator, deciding *ex aequo et bono*, finds therefore that the starting date for the calculation of the default interest shall be the day of receipt of the Request for Arbitration by the BAT Secretariat which is 21 May 2015.

#### **9. Costs**

60. Article 17 of the BAT Rules provides that the final amount of the costs of the arbitration shall be determined by the BAT President and that the award shall determine which

party shall bear the arbitration costs and in what proportion; and, as a general rule, shall grant the prevailing party a contribution towards its reasonable legal fees and expenses incurred in connection with the proceedings.

61. On 29 November 2015 – considering that pursuant to Article 17.2 of the BAT Rules “the BAT President shall determine the final amount of the costs of the arbitration which shall include the administrative and other costs of BAT and the fees and costs of the BAT President and the Arbitrator”, and that “[t]he fees of the Arbitrator shall be calculated on the basis of time spent at a rate to be determined by the BAT President from time to time”, taking into account all the circumstances of the case, including the time spent by the Arbitrator, the complexity of the case and the procedural questions raised – the BAT President determined the arbitration costs in the present matter to be EUR 8,930.00. The Arbitrator holds it fair that 65% of the fees and costs of this arbitration shall be borne by the Club and 35% by the Player.
62. Given that the Advance on Costs of EUR 13,000.00 was equally paid by both Parties, the balance of the Advance on Costs, in the amount of EUR 4,070.00 will be reimbursed to the Parties by the BAT as follows:
- Respondent: EUR 695.50; and
- Claimant: EUR 3,374.50.
63. The Player has submitted an account of costs of 6,500.00 (plus the non-reimbursable handling fee of EUR 3,000.00). The Club has provided an account of costs of EUR 10,000.00. Considering the amount in dispute and in view of the above analysis regarding arbitration costs, the Arbitrator considers it adequate that the Club shall contribute an amount of EUR 3,000.00 towards the Player’s legal fees and other expenses (Article 17.3. of the BAT Rules). The Club shall bear its own legal fees and other expenses.

## **10. AWARD**

For the reasons set forth above, the Arbitrator decides as follows:

- 1. Olympiacos SFP BSA is ordered to pay to Mr. Mirza Begic the net amount of EUR 65,000.00, plus interest at the rate of 5% on this amount since 21 May 2015.**
- 2. The costs of this arbitration until the present Award shall be borne 35% by Mr. Mirza Begic and 65% by Olympiacos SFP BSA.**
- 3. Olympiacos SFP BSA is ordered to pay to Mr. Mirza Begic the amount of EUR 3,000.00 as a contribution to his legal fees and expenses.**
- 4. Any other or further-reaching claims for relief are dismissed.**

Geneva, seat of the arbitration, 4 December 2015

Stephan Netzle  
(Arbitrator)