4A_320/2009[1]

Judgment of June 2, 2010

First Civil Law Court

Federal Judge KLETT (Mrs), Presiding

Federal Judge CORBOZ

Federal Judge ROTTENBERG LIATOWITSCH (Mrs)

Federal Judge KOLLY

Federal Judge KISS (Mrs)

Clerk of the Court: LEEMANN

1. X._____

Appellant 1,

2. FC A._____

Appellant 2,

Both represented by Dr. Lucien W. Valloni and Dr. Thilo Pachmann

v.

1. FC B._____

Respondent 1,

Represented by Mr. Philipp J. Dickenmann

2. Fédération Internationale de Football Association (FIFA)

Respondent 2,

Represented by Mr. Christian JENNY

Facts:

A.

[1] Translator's note : Quote as X._____ and FC A._____ *v.* FC B._____ and Fédération Internationale de Football Association (FIFA), 4A_320/2009. The original of the decision is in German. The text is available on the website of the Federal Tribunal www.bger.ch.

A.a X._____ (Appellant 1) is a professional football player, born in 1980. He plays currently for Club C._____ on the basis of a loan agreement between this Club and the Spanish FC A._____ (Appellant 2).

Club B._____ (Respondent 1) is a Ukrainian Football Association. It is a member of the Ukrainian Football Federation which in its turn belongs to the Fédération Internationale de Football Association (FIFA; Respondent 2) based in Zurich.

Appellant 2 is a member of the Spanish Football Federation which also belongs to FIFA.

A.b During the football season 2003-2004 Appellant 1 played for the Italian Club D._____.

On June 20, 2004 Club D._____ undertook to transfer the player to Respondent 1 for an amount of EUR 8 Mio.

On June 26, 2004 Respondent 1 entered into an employment contract with Appellant 1 for the period from July 1st, 2004 until July 1st, 2009. Among other things the contract provided the following:

“"2.2. Transfer of the Football Player to another club or a squad prior to expiration of the contract is supposed only with the consent of the Club and under condition of compensation the Club's expenses on the keeping and training of the Football Player, cost of his rights, search of substitute and other costs in full measure. The size of indemnity is defined under the agreement between clubs. ...
3.3. During validity of the Contract, the Club undertakes:
- to follow the condition of payment to the Football Player according to the present Contract;
...
- in the case the Club receives a transfer offer in amount of 25,000,000 EUR or exceeding the some above the Club undertakes to arrange the transfer within the agreed period.
...
4.1. Labor payment conditions of the Football Player are stipulated by the Parties in Appendix 1 to the present Contract.
...

6.3 Prior to the contract term expiration, it may be terminated only on such bases:
- the agreement of the parties;
- coming a court verdict into force by which the Football Player is sentenced to imprisonment;
- under the initiative of the management of Club".[2]

Addendum 1 to the employment contract provided for the following:

"Club pays to the Player as remuneration the following amounts, including taxes and other obligatory payments: 96,925.00 (ninety six thousand nine hundred twenty five) EUR [monthly]".[3]

A.c On June 1st, 2007 the Italian Club E._____ submitted an offer for the transfer of Appellant 1 for USD 7 Mio. to Respondent 1. Respondent 1 rejected the offer.

A.d On July 2, 2007 Appellant 1 advised Respondent 1 in writing that he was terminating without notice his employment contract according to Art. 17 of the FIFA Regulations on the Status and Transfer of Players[4] (hereafter the FIFA Transfer Regulations). He pointed out especially that his termination had taken place within 15 days after the last game in the season in Ukraine and at the end of the so-called protected period[5].

It is undisputed in this respect that the player terminated the employment contract prematurely and neither for just cause[6] nor for sporting just cause[7].

In a letter of July 5, 2007 Respondent 1 challenged the legitimacy of the termination and reminded Appellant 1 of his duties under the employment contract.

On July 19, 2007 Appellant 1 signed a new contract with Appellant 2 and committed himself for the next three seasons until June 30, 2010 against a monthly salary of EUR 10'000.- (payable fourteen times per year), a sign-on fee[8] of EUR 860'000.- for each season and further undefined game bonuses. Furthermore he undertook to pay EUR 6 Mio. should he terminate his contract prematurely.

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[2] Translator's note : In English in the original text.
[3] Translator's note : In English in the original text.
[4] Translator's note : In English in the original text.
[5] Translator's note : In English in the original text.
[6] Translator's note : In English in the original text.
[7] Translator's note : In English in the original text.
[8] Translator's note : In English in the original text.

A.e Pursuant to an arrangement of July 17, 2008 Appellant 2 transferred the player temporarily to Club C._____ for the season 2008-2009. The contract contains an option in favor of Club C._____ enabling it to bring about the definitive transfer of the player until May 15, 2009. Should the option be exercised compensation in the amount of EUR 13 to 15 Mio. plus VAT is provided depending on whether or not Club C._____ should reach the UEFA Champions League during the season 2008-2009 and also depending on the level of compensation awarded by the CAS. The conclusion of an employment contract between the Italian Club and Appellant 1 was reserved.

On July 22, 2008 Appellant 1 entered into an employment contract with Club C._____ for the period until June 20, 2011. The fixed salary was set at EUR 895'000.- for the 2008-2009 season and EUR 3'220'900.- for the 2009-2010 and 2010-2011 seasons. Additional variable compensation is anticipated on the details of which the parties have to agree.

A.f On August 12, 2008 Appellant 1 entered into an employment agreement with Appellant 2 for a fixed term until June 30, 2011 as substitute for the arrangement of July 19, 2007. A salary of EUR 10'000.- is provided (payable fourteen times per year), a sign-on fee[9] of EUR 2.18 Mil. for each season and further undefined game bonuses. In case of premature termination of the contract the player undertakes to pay EUR 22.5 Mio., an amount which may be raised by the football club unilaterally up to EUR 35 Mio. provided the player's salary is also increased.

B.

B.a On July 25, 2007 Respondent 1 initiated proceedings against the Appellants in front of the FIFA Dispute Resolution Chamber submitting that they should be jointly ordered to pay EUR 25 Mio. The Appellants submitted that the claim should be rejected and compensation set at EUR 3,2 Mio. In a decision of November 2, 2007 the Dispute Resolution Chamber awarded an amount of EUR 6,8 Mio. to Respondent 1 based on Art. 17 of the FIFA Transfer Regulations with interest at 5 % 30 days after the decision.

It was explained that Respondent 1 was due EUR 2,4 Mio. as "remaining value of the player's employment contract"[10] as Appellant 1 would have been contractually bound for two additional years and his monthly salary was approximately EUR 100'000.-. To the extent that the player had terminated the employment contract two years before the anticipated term it had become

[9] Translator's note: In English in the original text.
[10] Translator's note: In English in the original text.

impossible for Respondent 1 to amortize the compensation and the expenses for the transfer made in 2004 over five years. The transfer amount of EUR 8 Mio. which Respondent 1 paid to the player's previous club was not yet amortized up to two fifths and Respondent 1 had an additional claim of EUR 3.2 Mio. in this respect. Under the heading "specificity of sport"[11] according to Art. 17 (1) of the FIFA Transfer Regulations Respondent 1 was awarded an additional amount of EUR 1,2 Mio. because the player grossly violated the rules of good faith as he terminated the employment contract intentionally without any prior hint and shortly after accepting an increase of his salary.

B.b The Appellants and Respondent 1 appealed the decision of the Dispute Resolution Chamber of November 2, 2007. In an award of May 19, 2009 the Court of Arbitration for Sport (CAS) annulled the decision of November 2, 2007 in part and ordered the Appellants jointly to pay EUR 11'858'934.- with interest at 5 % since July 5, 2007.

C.

In a Civil law appeal of June 18, 2009 the Appellants submit that the Federal Tribunal should annul the CAS award of May 19, 2009. Furthermore it should be held that Appellant 1 owes compensation of EUR 2'363'760.- or alternatively EUR 3'200'000.- to Respondent 1. Thereupon it should be found that Appellant 1 and Appellant 2 are not jointly liable for compensation. Alternatively the matter should be sent back to the CAS for a new decision. Procedurally speaking the Appellants seek a hearing for oral arguments.

Respondent 1 submits that the appeal should be rejected to the extent that the matter is capable of appeal. Respondent 2 and the CAS submit that the appeal should be rejected.

The files of the arbitral proceedings were given to the Federal Tribunal. In a brief of December 21, 2009 the Appellants filed a reply to the answer to the appeal and to the comments of the CAS.

On March 18, 2010 they submitted to the Federal Tribunal the judgment in another case of March 16, 2010 between other parties in the European Court of Justice (ECJ). Respondent 1 and Respondent 2 expressed their views in a filing on April 1st, 2010. The Appellants expressed their views again in a filing of April 21st, 2010 and Respondent 1 and Respondent 2 filed their rejoinders with the Federal Tribunal on May 3 and 5, 2010.

[11] Translator's note: In English in the original text.

D.

A stay of enforcement was granted by the Federal Tribunal on September 8, 2009.

Reasons:

1.

A Civil law appeal is allowed against arbitral awards under the requirements of Art. 190-192 PILA[12] (Art. 77 (1) BGG[13])

1.1 The seat of the Arbitral Tribunal is in Lausanne. The Appellants and Respondent 1 had their seat respectively their domicile outside Switzerland at the relevant point in time. As the parties did not exclude in writing the provisions of chapter 12 PILA, they are applicable (Art. 176 (1) and (2) PILA).

1.2 A Civil law appeal within the meaning of Art. 77 (1) BGG may fundamentally seek only the annulment of the decision under appeal (see Art. 77 (2) BGG ruling out the application of Art. 107 (2) BGG to the extent that the latter empowers the Federal Tribunal to decide the matter itself). Similarly to the public law appeal of the previous law, there is an exception when the dispute involves the jurisdiction of the arbitral tribunal (BGE 127 III 279 at 1b p. 282; 117 II 94 at 4 p. 95 f.; Decision 4A_428/2008 of May 31, 2009 at 2.4; 4A_224/2008 of October 10, 2008 at 2.4). Accordingly the Appellants' submissions are inadmissible as they go beyond the annulment of the award under appeal and seek a finding that Appellant 2 owes compensation of EUR 2'363'760.-, alternatively compensation of EUR 3'200'000.- to Respondent 1 and that Appellant 2 is not jointly liable for compensation. To the extent that the Appellants seek a decision on the merits from the Federal Tribunal their submissions are not admissible.

1.3 Only the grievances limitatively listed in Art. 190 (2) PILA are admissible (BGE 134 III 186 at 5 p. 187; 128 III 50 at 1a p. 53; 127 III 279 at 1a p. 282). According to Art. 77 (3) BGG, the Federal Tribunal only examines the grievances that are brought forward and reasoned in the appeal; this corresponds to the duty to reason contained in Art. 106 (2) BGG with regard to violations of fundamental rights and of cantonal and intercantonal law (BGE 134 III 186 at 5 p. 187 with references). Criticism of an appellate nature is not admissible (BGE 119 II 380 at 3b p. 382).

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[12] Translator's note: PILA is the most frequently used English abbreviation for the Federal Statute of December 18, 1987, on Private International Law, RS 291.

[13] Translator's note: BGG is the German abbreviation for the Federal Statute of June 17, 2005 organizing the Federal Tribunal, RS 173 110.

1.4 The Federal Tribunal bases its judgment on the factual findings of the arbitral tribunal (Art.105 (1) BGG). It may not rectify or supplement the factual findings, even when these are obviously inaccurate or result from a violation of the law within the meaning of Art. 95 BGG (see Art. 77 (2) BGG ruling out the application of Art. 105 (2) and of Art. 97 BGG). Yet the Federal Tribunal may review the factual findings of the award under review when some admissible grievances within the meaning of Art. 190 (2) PILA are brought against the factual findings or when new evidence is exceptionally considered (BGE 133 III 139 at 5 p. 141; 129 III 727 at 5.2.2 p. 733 both with references). Whoever claims an exception to the binding character of the factual findings of the lower court for the Federal Tribunal and wishes to rectify or supplement the factual findings on that basis must show with reference to the record that the corresponding factual allegations were already made in the proceedings in the lower court in accordance with procedural rules (BGE 115 II 484 at 2a p. 486; 111 II 471 at 1c p. 473; with references).

1.5 The parties disregarded these principles in part.

1.5.1 The Appellants and Respondent 1 set forth the course of events and that of the proceedings from their point of view and deviate in several respects form the factual findings of the CAS or broaden them without claiming any substantial exceptions from the rule that the factual findings bind this Court. Moreover they bring forward facts and evidence that are new in part. Thus the Appellants submit that Appellant 1 would play with Appellant 2 in the next season and submit to that effect a confirmation from Appellant ‘s 2 CEO dated June 16, 2009. In contrast Respondent 1 describes the factual developments subsequent to the conclusion of the contract between Appellant 1 and Club C._____ of July 17, 2008 from its point of view and claims in particular by reference to newly filed press articles that the agreed upon option for a transfer fee of EUR 13-15 Mio. would have been exercised by Club C._____ and that the player would have been definitively acquired. Moreover the Appellants go beyond the binding factual findings of the award under review in an inadmissible manner when they argue in front of the Federal Tribunal that the economic situation would not allow Appellant 1 to pay the amount imposed. Their submissions shall remain unheeded to that extent.

1.5.2 The Appellants submit the award under review to criticism of an appellate nature in part, thus with the submission that Respondent 1 would not have suffered any damage due to the termination of the contract, that the CAS would have undertaken an inaccurate assessment of the evidence in

connection with the computation of damages or that it would have wrongly interpreted Art. 17 (1) of the FIFA Transfer Regulations. In doing so they disregard the legal requirements for reasons in the framework of an appeal against an arbitral award (see Art. 77 (3) PILA), and also with their denial of Appellant's 2 joint liability.

1.5.3 The Appellants wrongly argue by reference to Art. 6 and 13 ECHR, to Art. 75 ZGB[14] as well as Art. 29a BV[15] that the scope of judicial review by the Federal Tribunal should be expanded. In this respect they overlook that the limited judicial review according to Art. 77 (1) BGG in connection with Art. 190 (2) PILA applies to all proceedings in the field of international arbitration.

Since an appeal against an international arbitral award may be based only on the grounds for appeal limitatively set forth in Art. 190 (2) PILA and not directly on an alleged violation of the Federal Constitution, of the ECHR or of other international treaties (see Decision 4A_612/2009 of February 10, 2010 at 2.4.1; 4P.105/2006 of August 4, 2006 at 7.3; 4P.64/2001 of June 11, 2001 at 2d/aa, not publ. in BGE 127 III 429 ff.), the matter is fundamentally not capable of appeal with regard to the violation, repeatedly argued, of such provisions. Admittedly the principles resulting from the Federal Constitution and from the ECHR may be used as appropriate in the ascertainment of the guarantees available under Art. 190 (2) PILA; yet in view of the strict requirements for reasons (Art. 77 (3) BGG) it must be shown in the appeal to what extent a ground for appeal contained in the statutes is available.

2.
Relying on Art. 6 ECHR the Appellants wrongly claim a violation of the right to a public hearing as that provision is not applicable to arbitral proceedings according to case law properly understood. Contrary to the opinion expressed in the appeal, no right to a public hearing in the arbitral proceedings may be derived from that provision (Judgment 4A_612/2009 of February 10, 2010 at 4.1 with references).

The judicial review of the Federal Tribunal as to an arbitral award is significantly limited by Art. 77 BGG. This case is ripe for a decision on the basis of the record. Ordering a public hearing for arguments (Art. 57 BGG) as requested by the Appellants is not advisable. The request for oral arguments in front of the Federal Tribunal is therefore rejected.

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[14] Translator's note : ZGB is the German abbreviation for the Swiss Civil Code.
[15] Translator's note : BV is the German abbreviation for the Swiss Constitution.

3.

The Appellants argue that the CAS violated the right to be heard (Art. 190 (2) (d) PILA) in connection with applicable law.

3.1 They argue that by submitting their contract to the FIFA Transfer Regulations the Parties indirectly determined that the national law at the seat of the two contractual partners would have to be taken into account to assess compensation. Thus the CAS should have taken into account Ukrainian law and Swiss law only subsidiarily. The Appellants always assumed that the CAS would take into account Ukrainian law based on the FIFA Transfer Regulations. Yet the CAS would not have applied the rules of law to which the transfer regulation agreed upon by the Parties refers, which would constitute a violation of the principle *pacta sunt servanda* and of Art. 187 PILA in connection with Art. 16 PILA. If the tribunal applies "fully new (because self-created) rules of law not to be expected by the parties in any way", according to the Appellants, then they should at least be granted the right to be heard. According to the Appellants the application of Ukrainian law would have led to another result as the latter did not contain an obligation to compensate the previous club when the player terminates a contract before entering into a contract with a new club.

THE CAS would not have applied the rules of law agreed upon but arbitrarily created some rules of its own "specific to sport" as to compensation payments. No opportunity to take a position as to such "illegal and surprising application of law" would have been given to the Appellants.

3.2 The Appellants' submissions do not demonstrate any violation of the right to be heard (Art. 190 (2) (d) PILA). They criticize the application of the law by the CAS, yet without explaining to what extent it would have been made impossible for them to present their point of view with regard to applicable law in the arbitral proceedings. There is no discernible surprising application of law as to which the Appellants should have been specifically heard; to the contrary, the parties obviously had to take into account the application of Art. 17 of the FIFA Transfer Regulations as already the FIFA Dispute Regulation Chamber based its decision on that provision. It is just as inaccurate to claim that the Appellants would not have had an opportunity to take a position as to the issue of applicable law. According to the award under review the Appellants did not express their views in the arbitral proceedings with regard to the extent to which Ukrainian law could be applicable and have an influence on the computation of the compensation due. There can be no claim of a violation of the right to be heard. Moreover the Appellants overlook that the violation of Art. 16 or Art. 187

PILA is not among the grounds for appeal according to Art. 190 (2) PILA. Moreover the CAS did not violate the rule of contractual observance when it assumed that "the law of the country concerned"[16] was to be taken into account to compute the compensation according to Art. 17 of the FIFA Transfer Regulations whilst pointing out at the same time that the criterion could not be taken into account for lack of corresponding submissions by the Parties.

To the extent that the Appellants also claim a violation of public policy (Art. 190 (2) (e) PILA) in this respect, they disregard the legal requirements for reasons (see Art. 77 (3) PILA). Apart from this the claim that some mandatory provisions of foreign law would have been circumvented would come to naught also because the Appellants made no corresponding submissions in the arbitral proceedings but to the contrary renounced any arguments based on Ukrainian law.

The grievance raised in front of the Federal Tribunal for the first time that the CAS would not have reviewed the issue of arbitrability is incomprehensible; according to Ukrainian law the state courts would have mandatory jurisdiction to adjudicate labor disputes; the Appellants themselves appealed the decision of the FIFA Dispute Resolution Chamber to the CAS. Under such circumstances it is not admissible to claim that the matter would not be arbitrable (see Judgment 4A_370/2007 of February 21, 2008 at 5.2.2).

4.
In various respects the Appellants argue a violation against public policy (Art. 190 (2) (e) PILA).

4.1 The substantive judicial review of an international arbitral award by the Federal Tribunal is limited to the issue as to whether the award is consistent with public policy or not (BGE 121 III 331 at 3a p. 333). The substantive adjudication of a claim violates public policy only when it disregards some fundamental legal principles and hence becomes plainly inconsistent with the essential and widely recognized value order which according to prevailing concepts in Switzerland should be the basis of any legal order. Among such principles is contractual observance (*pacta sunt servanda*), the prohibition of abuse of rights, the principle of good faith, the prohibition of expropriation without compensation, the prohibition of discrimination and the protection of incapables. The award under appeal is to be annulled only when its result and not only its reasons contradicts public policy (BGE 132 III 389 at 2.2 p. 392 ff. with references).

[16] Translator's note : In English in the original text.

4.2 The Appellants disregard in part the concept of public policy and the strict requirements for reasons in support of the corresponding grievances (see BGE 117 II 604 at 3 p. 606). Their appeal brief contains some lengthy general observations from which no properly reasoned grievances can be extracted. Moreover their arguments amount in part to nothing more than criticism of an appellate nature against the decision under appeal, which is not admissible in the appeal proceedings (BGE 119 II 380 at 3b p. 382). The Appellants comment somewhat extensively the Bosman-decision of the European Court of Justice of December 15, 1995 (C-415/93 Union royale belge des sociétés de football association gegen Jean-Marc Bosman, Slg. 1995 page I-04921) as well as the genesis and interpretation of the FIFA Transfer Regulations. Based on this they submit to the Federal Tribunal their view of the admissible termination grounds according to Art. 17 of the FIFA Transfer Regulations as well as the pertinent principles of the assessment of compensation. By doing so they show no violation of public policy (Art. 190 (2) (e) PILA) and neither with the claim that Respondent 1 would have suffered no damage as a consequence of the termination of the contract or that the CAS would have assessed the player's value arbitrarily. Also of an appellate nature is the argument that the CAS would have taken as decisive a transfer amount which would never have been paid as Club C._____ never exercised the option, as well as the claim that the CAS took into account the "gross transfer fee" as opposed to the "net transfer fee".

Even if the Appellants could be heard as to their submissions of March 18 and April 21, 2010, filed after the term to appeal was expired, their explanations with regard to the judgment of the ECJ of March 16, 2010 C-325/08 Olympique Lyonnais SASP *v.* Oliver Bernard, Newcastle UFC show no ground for appeal based on Art. 190 (2) PILA but again merely inadmissible criticism of the computation of damages by the Arbitral Tribunal. In this respect they claim a violation of "fundamental principles of European Economic Area", yet without demonstrating to what extent the duty to pay damages as a consequence of a player moving from a Ukrainian to a Spanish football club in violation of a contract would constitute an illegitimate limitation of the employee's freedom of movement within the European Union according to Art. 45 of the Consolidated Version of the Treaty on the Functioning of the European Union of December 13, 2007 (OJAEU, Nr. C 115 of May 9, 2008, p. 47 ff.), neither do they show any connection with public policy according to Art. 190 (2) (e) PILA.

Furthermore the Appellants overlook that no violation of public policy can be justified merely by claiming repeatedly that some competition law provisions were violated (BGE 132 III 389 at 3.2 p. 397 f.), and consequently their arguments of the illicit reintroduction of a system of transfer in

breach of competition rules, of the violation of the economic freedom and of further breaches of competition come to naught. Apart from this and contrary to the Appellants' view it is not discernable to what extent the free choice of employment, the free access to gainful activity in the private economy or the employee's freedom of movement would be illegitimately limited when the employee is made to pay damages for wrongly terminating his employment contract.

4.3 With reference to public policy (Art. 190 (2) (e) PILA), the Appellants argue in vain that the award under review would suffer from an irresolvable contradiction as to the assessment of the compensation due. Contrary to the view expressed in the appeal brief, an internal contradiction in the reasons of an award is not a violation of public policy (Decision 4A_612/2009 of February 10, 2010 at 6.2.2; Decision 4A_464/2009 of February 15, 2010 at 5.1).

4.4 The argument of a disproportionate commitment by the player according to Art. 27 ZGB is not convincing.

A breach of that provision does not readily mean a violation of public policy; such a violation is instead conceivable only in case of a blatant and grievous violation of a fundamental right (see Decision 4A_458/2009 of June 10, 2010 at 4.4.3.2; 4P.12/2000 of June 14, 2000 at 5b/aa with references). It must be considered in this respect that a contractual limitation of economic freedom is disproportionate within the meaning of Art. 27 (2) ZGB only when the obligee submits to someone else's arbitrariness, gives up his economic freedom or restricts it in such a way that the foundation of his economic existence is jeopardized (BGE 123 III 337 at 5 p. 345 f. with references).

There is no such contractual limitation in the case at hand. Appellant 1 entered into the employment of Respondent 1 for a high salary for five years. As rightly pointed out in the answer to the appeal, such a commitment for several years is not illegitimate from the point of view of the protection of personality. Neither is a disproportionate commitment to be found because Appellant 1 has to answer for the damage arising from his breach of contract, as such a sanction corresponds to the recognized principles of contract liability.

4.5 The argument is also unfounded that the CAS would have violated public policy by awarding so called punitive damages which had nothing to do with appropriate compensation for the victim. Contrary to what the Appellants claim, nothing in the award under review suggests that the CAS would have engaged into doubling the damages. In particular it did not compensate for a "fictitious

performance" of the player during the remaining two years of the contractual term and additionally adjudicated the transfer fee as argued in the appeal. Instead the CAS took into account the transfer amount in assessing the value of the services lost. The grievance comes to naught on that basis alone.

Also unfounded is the grievance that contrary to holding of the award under review Art. 337 (c) (3) OR[17] would not have been pertinent but Art. 337 (d) OR; the additional compensation of EUR 600'000.-, corresponding to the salary for six months, which the CAS awarded to Respondent 1 because Appellant 1 left his employment merely a few weeks before the beginning of the qualifying games of the UEFA Champions League would not be given under Swiss law and is accordingly illicit. This does not show a violation of public policy any better than the submission that according to Art. 130 of the Ukraine Employment Law the employee would be responsible to the employer only for the damages that the employer would suffer as a consequence of illicit acts.

The argument that the compensation in the award would not correspond to the effective damages that Respondent 1 would allegedly have suffered and would be disproportionate or that its assessment would be contradictory is yet again appellate criticism by the Appellants of the assessment of damages by the CAS. The same applies to the argument that the CAS would have disregarded various fundamental principles of the law of damages. In their arguments the Appellants seek a substantive review of the arbitral award under appeal, whilst showing no violation of any fundamental legal principle belonging to public policy (Art. 190 (2) (e) PILA).

4.6 Also unfounded is the Appellants' argument that the way in which the CAS determined the compensation would lead to unequal treatment of employee and employer; this would violate parity as to termination, an important guiding principle of Swiss employment law, respectively the termination right friendly to the employee provided by Ukrainian Employment Law. Apart from the fact that illicit unequal treatment of the parties as to the possibilities of termination is not discernable, the Appellants do not demonstrate to what extent the principle of parity as to termination should be part of public policy.

4.7 Since the award of damages in the arbitral proceedings at hand as a consequence of the undisputed violation of an employment contract was at issue and not the sanction of a federation or

[17] Translator's note : OR is the German abbreviation for the Swiss Code of Obligations.

other sanctions, as the Appellants claim, their arguments under the heading "*Nulla Poena sine Lege*" need not be addressed any further.

5.
The appeal proves to be unfounded and is to be rejected to the extent that the matter is capable of appeal. In view of the outcome of the proceedings the Appellants shall jointly compensate the other party and pay the costs of the proceedings (Art. 66 (1) and (5) as well as Art. 68 (2) and (4) BGG).

Therefore, the Federal Tribunal pronounces:

1. The appeal is rejected to the extent that the matter is capable of appeal.

2. The judicial costs set at CHF 35'000.- shall be paid by the Appellants severally and divided by half among them.

3. The Appellants shall pay severally and half each internally an amount of CHF 40'000.- to Respondent 1 and Respondent 2 for the federal judicial proceedings.

4. This judgment shall be notified in writing to the parties and to the Court of Arbitration for Sport (CAS).

Lausanne, June 2, 2010

In the name of the First Civil Law Court of the Swiss Federal Tribunal

The Presiding Judge:	The Clerk:
KLETT (Mrs)	LEEMANN