4A_404/2010[1]

Judgment of April 19, 2011

First Civil Law Court

Federal Judge Klett (Mrs), Presiding
Federal Judge Corboz,
Federal Judge Kiss (Mrs),
Clerk of the Court: Hurni.

Appellant,

A._____,
Represented by Dr Lucien W. Valloni and Dr Thilo Pachmann,

*v.*

Respondents,
1. Trabzonspor Kulübü Dernegi,
Represented by Dr Martin Bernet and Mrs Hannah Boehm,
2. Turkish Football Federation (TFF),
Represented by Dr Antonio Rigozzi,

Facts:

A.

A.a A._____ (the Appellant) is a professional football player presently domiciled in X._____ (UK). He was born a British citizen on October 8, 1979 and additionally he obtained Turkish citizenship on August 17, 2004.

[1] Translator's note: Quote as A._____ *v.* Trabzonspor and TFF, 4A_404/2010. The original of the decision is in German. The text is available on the website of the Federal Tribunal www.bger.ch

Trabzonspor Kulübü Dernegi (Respondent 1), a legal person based in Y._____ (Turkey) is a Turkish football club. It is a member of the Turkish Football Federation (TFF, Respondent 2), a legal person based in Istanbul which belongs to the Fédération Internationale de Football Association (FIFA).

A.b In January 2006 the Appellant and Respondent 1 signed a "standard players employment contract[2]" for a fixed time from January 18, 2006 until June 30, 2009 and a "supplementary employment contract[3]" lasting from January 17, 2006 until June 30, 2008 and an option for Respondent 1 to extend the duration of the contract until June 30, 2009.

On January 4, 2008 the Appellant terminated the employment relationship due to an alleged breach of contractual obligations by Respondent 1.

A.c In a fax of January 11, 2008 the Appellant raised a claim with FIFA against Respondent 1. On February 19, 2008 FIFA confirmed receipt of the fax and informed the Appellant in the name of its Dispute Resolution Chamber that FIFA "cannot intervene in matters between two parties of the same nationality, but has to refer them to the decision-making bodies of the relevant member Association"[4].

A.d On April 8, 2008 the Appellant filed a claim against Respondent 1 with the Dispute Resolution Chamber of Respondent 2.

On December 2, 2008 the Dispute Resolution Chamber rejected the Appellant's claim and ordered him to pay damages to Respondent 1. It also banned him from playing for four months. By way of reasons the Dispute Resolution Chamber stated that the Appellant had illegally terminated the employment contract between him and Respondent 1.

A.e In January 2009 the Appellant appealed that decision to the Arbitration Chamber of Respondent 2.

Shortly afterwards the Appellant and the English football club Z._____ entered into an employment contract on February 15, 2009 lasting until June 30, 2009. On April 14, 2009 the single judge of the Players' Status Committee informed the British football association that the Appellant could be provisionally registered as player for Z._____ with immediate effect.

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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.

On April 16, 2009 the Arbitration Chamber of Respondent 2 set the amount to be paid by the Appellant to Respondent 1 at 129'353.38 Turkish pounds and confirmed the decision of the Dispute Resolution Chamber under appeal. The decision of the Arbitration Chamber was notified to the Appellant on October 21st, 2009.

B.

On November 11, 2009 the Appellant appealed the decision of the Arbitration Chamber of Respondent 2 of April 16, 2009 to the Court of Arbitration for Sport (CAS).

On June 10, 2010 the CAS issued an award holding that the matter was not capable of appeal.

C.

In a Civil law appeal of July 9, 2010 the Appellant submits that the Federal Tribunal should annul the arbitral award of the CAS of June 10, 2010 and find that the CAS has jurisdiction to handle the matter. Alternatively the matter should be sent back to the CAS for a new decision. As to procedure the Appellant submits among other things that a stay of enforcement should be granted and that a hearing should be conducted for oral arguments.

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

The Appellant submitted a reply and a rejoinder to the Federal Tribunal, and Respondent submitted an answer and an additional brief.

On October 19 and 28, 2010 both Respondents applied for security for costs.

D.

A stay of enforcement was granted by presidential decision of September 30, 2010. By presidential decision of November 11, 2010 the Respondents' request for security for costs was granted. The Appellant subsequently deposited the amount requested of CHF 10'000 with the Federal Tribunal. The records of the arbitration proceedings were produced.

Reasons:

1.

According to Art. 54 (1) BGG[5] the judgment of the Federal Tribunal is issued in an official language[6], as a rule in that of the decision under appeal. Should that decision have been issued in another language, the Federal Tribunal resorts to the official language used by the parties. The decision under appeal is in English. As that is not an official language and the parties used different languages in front of the Federal Tribunal, the judgment of the Federal Tribunal will be issued according to practice in the language of the appeal.

2.

The matter is ripe for a decision on the basis of the record. Ordering a hearing for oral arguments (Art. 57 BGG) as requested by the Appellant is not advisable. A mandatory public hearing in front of the Federal Tribunal is not required in appeal proceedings against arbitral awards according to Art. 77 BGG as required by law exceptionally, for claims according to Art. 120 (1) (c) BGG or when the Federal Tribunal wants to decide the case itself on the basis of its own finding of facts (Art. 55 BGG and Art. 107 (2) BGG) (see Heimgartner/Wiprächtiger, in: Basler Kommentar, Bundesgerichtsgesetz, 2008, nr 9 to Art. 57 BGG; Jean-Maurice Frésard, in Commentaire de la LTF, 2009, nr 8 ff to Art. 57 BGG). The request for a hearing in front of the Federal Tribunal must therefore be rejected.

3.

In the field of international arbitration a Civil law appeal is possible under the requirements of Art. 190-192 PILA[7] (Art. 77 (1) (a) BGG).

3.1

The seat of the arbitral tribunal is in Lausanne in this case. Both the Appellant and the Respondents had their seat or their domicile outside Switzerland at the relevant time. As the Parties did not rule out in writing the provisions of chapter 12 PILA they are to be applied (Art. 176 (1) and (2) PILA).

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

[6] Translator's note: The official languages of Switzerland are German, French and Italian.

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

3.2

A Civil law appeal within the meaning of Art. 77 (1) BGG is in principle aimed at 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 that provision empowers the Federal Tribunal to decide the matter itself). To the extent that the dispute involves the jurisdiction of the arbitral tribunal, there is however an exception in this respect, as already within the framework of the old public law appeal, namely that the Federal Tribunal may itself find the jurisdiction or the lack of jurisdiction of the arbitral tribunal (BGG 127 III 279 at 1b p. 282; 117 II 94 at 4 p. 95 ff; judgment 4A_240/2009 of December 16, 2009 at 1.2). The Appellant's main submission is therefore to be addressed.

3.3.

A Civil law appeal within the meaning of Art. 77 (1) (a) BGG may only raise the grievances limitatively spelled out in Art. 190 (2) PILA (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 accordingly reviews only the grievances that are brought forward and reasoned in the appeal; this corresponds to the duty to submit reasons contained at Art. 106 (2) BGG for the violation of constitutional law and of cantonal and intercantonal law (BGE 134 III 186 at 5 p. 187 with references). Criticism of an appellate nature is not allowed (BGE 134 III 565 at 3.1 p. 567; 119 II 380 at 3b p. 382).

3.4

The Federal Tribunal bases its decision on the factual findings of the arbitral tribunal (Art. 105 (1) BGG). This Court may neither correct nor supplement the factual findings of the arbitral tribunal, even if they are obviously inaccurate or based on a violation of the law within the meaning of Art. 95 BGG (see Art. 77 (2) BGG ruling out the application of Art. 97 BGG and Art. 105 (2) BGG). However the Federal Tribunal may review the factual findings of the award under appeal when some admissible grievances within the meaning of Art. 190 (2) PILA are brought forward against these factual findings or exceptionally when new evidence is taken into account (BGE 133 III 139 at 5 p. 141; 129 III 727 at 5.2.2 p. 733; all with references). He who seeks an exception from the rule that the Federal Tribunal is bound by the factual findings of the arbitral tribunal and wishes to supplement or correct the facts must show with reference to the record that the corresponding factual allegations were already made in the arbitral proceedings in accordance with the procedural rules (see BGE 115 II 484 at 2a p. 486; 111 II 471 at 1c p. 473; with references).

3.5

The Appellant disregards these principles in part:

3.5.1 He precedes his legal arguments with a statement of facts on several pages, in which he presents the background of the dispute and the proceedings from his point of view. In there he differs substantially from the factual findings of the Arbitral tribunal or broadens them, yet without claiming any substantial exceptions from the rule that the factual findings are binding. These statements shall therefore not be considered.

3.5.2 The Appellant then requires that in the framework of the appeal as to jurisdiction according to Art. 190 (2) (b) PILA “a possible criticism of appellate nature to the legal reasoning of the award should be comprehensively reviewed as to its legal soundness”. If he wishes to invoke a general exception to the rule that the factual findings are binding according to Art. 105 (1) BGG by doing so, he disregards the fact that the Federal Tribunal is basically bound by the factual findings of the arbitral tribunal also with regard to the review of an appeal as to jurisdiction and that exceptions therefrom are to be raised and reasoned in details by the Appellant. To the extent that without corresponding reasoning he introduces facts which are no to be found in the decision under appeal he may consequently not be heard in this respect. This applies to his factual allegations under the heading “bb) statement as to the proceedings in front of the TFF tribunals” in which the Appellant sets forth the alleged reasons why he appealed to the Arbitration Chamber of Respondent 2 and does so by freely supplementing the factual findings of the arbitral award. The same applies to the arguments under the heading “dd) club and TFF help the player to a second citizenship”. Admittedly the Appellant alleges in this respect that the Arbitral tribunal left some of his submissions unheeded in violation of the right to be heard, yet he merely refers to a previous brief without showing in detail that the corresponding factual allegations had already been made in the arbitration proceedings in accordance with procedural rules.

3.5.3 Since only the grievances limitatively spelled out in Art. 190 (2) PILA may be raised in an appeal against an international arbitral award and not a direct violation of the federal constitution, of the ECHR or of other international treaties (see judgment 4A_43/2010 of July 29, 2010 at 3.6.1; 4A_320/2009 of June 2, 2010 at 1.5.3; 4P.64/2001 of June 11, 2001 at 2d/aa, not published in BGE 127 III 429 ff) the various arguments as to a violation of such provisions are not capable of appeal in principle. Yet the principles arising from the ECHR may be resorted to in order to apply the guarantees of Art. 190 (2) PILA; in view of the strong requirement for reasons (Art. 77 (3) BGG) the appeal itself must show to what extent one of the grounds for appeal contained in the aforesaid provision should apply.

The Appellant does not meet these requirements when he argues a violation of Art. 29a and 30 BV[8] as well as of Art. 13 ECHR under the heading “A. jurisdiction of the CAS” and “B. violation of the right to be heard”, yet without showing at all to what extent the corresponding norms should render effective Art. 190 (2) (b) and (d) PILA. This also applies to the argument that the Federation tribunals of Respondent 2 would not be independent tribunals with reference to a judgment of the Turkish Constitutional Court. The argument shall not be addressed.

4. Relying on Art. 190 (2) (b) PILA, the Appellant argues that the Arbitral tribunal wrongly accepted jurisdiction. Contrary to its holding, the Parties would have submitted to an arbitration clause which provided for jurisdiction of the CAS.

4.1

4.1.1 The Arbitral tribunal examined its jurisdiction on the basis of Art. R47 of the CAS-Code according to which a decision of a sport federation may be appealed to the CAS *insofar as the statutes or regulations of the said body so provide*[9]or when the parties have entered into a *specific arbitration agreement*[10].

In this respect the Arbitral tribunal then referred to the provisions in the employment contract between the Appellant and Respondent 1. § 16 of the supplementary employment contract reads as follows:
"a) Should any dispute occur that is not reasonable[11] resolved by the parties than[12] such disputes will be passed to FIFA for arbitration.
b) The contract shall be governed by the laws of Turkish and reserved under jurisdiction of the Turkish Law Courts."
§ 3 of the "Standard Players Employment Contract" reads as follows:
"The Executive Committee of the Turkish Football Federation and the Arbitration Committee shall have exclusively jurisdiction for the settlement of disputes arising out or in connection with this Contract[13]."

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[8] Translator’s note: BV is the German abbreviation for the Swiss Constitution.

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

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

[11] Translator’s note: *Sic.*

[12] Translator’s note: *Sic.*

[13] Translator’s note: In English in the original text.

The Arbitral tribunal deducted from that that none of the employment contracts contained an arbitration clause which would provide for jurisdiction of the CAS as to an appeal against decisions of the Arbitration Chamber of Respondent 2. Therefore nothing pointed to a specific arbitration agreement between the parties within the meaning of R47 of the CAS-Code. Such an agreement could not be deducted from Articles 62.1, 63.1 and 64.3 of the FIFA Statutes either.

4.1.2 In a second step the Arbitral tribunal examined whether the Statutes or the Rules of Respondent 2 provided for an appeal to the CAS within the meaning of R47 of the CAS-Code. In this respect the Arbitral tribunal referred first to Art. 2.1 of the Statutes of Respondent 2 (TFF Statutes) whereby it is one of the purposes of TFF "to recognize (…) the jurisdiction of the Court of Arbitration for Sport ("CAS") as specified in Articles 59 and 60 of the FIFA Statutes and paragraph 1 of Articles 59 of the UEFA Statutes"[14]. That provision was indeed to be interpreted in the light of Art. 64 of the TFF Statutes which reads as follows:
"CAS shall not, however, hear appeals on (...) decisions passed by the independent and duly constituted Arbitration Committee of the TFF"[15]. Furthermore Article 13f of the TFF Statutes had to be taken into a count, according to which it would be left to a member "*to apply to the Arbitration Committee as a last instance at all disputes of national dimension arising from or related to the application of the TFF statutes or regulations, and not to take any dispute to any other judicial authorities*"[16]. Finally the Arbitral tribunal referred to Turkish laws nr 3813 of November 29, 2007 and 5894 of May 5, 2009 whereby the Turkish law on "foundation and duties of the Turkish Football Federation (TFF)" (football law) was amended. Pursuant to law nr 3813 Art. 14 of the Turkish football law was supplemented as follows:
"The right of appeal to the Court of Arbitration for Sport against the awards of the Arbitration Board with regards to the disputes arising from the transfer, licence, and agreements of the players and agreements of the coaches and managers are reserved"[17].

However, pursuant to law nr 5894 Art. 6, 19 and 20 of the Turkish football law were written as follows:
"Art. 6 (1) The Arbitration Committee is an independent and impartial compulsory arbitration authority which is the top legal committee of TFF under the present Law and is also the legal body of last instance for disputes covered by the TFF Statutes and corresponding regulations.

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

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

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

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

(2) The Arbitration Committee exclusively and finally examines and decides over the decisions taken by any TFF organ or body, which has decision-making power given by the TFF Statutes and corresponding regulations (...).
(4) Any decision taken by the Arbitration Committee shall be final and binding for the relevant parties and no legal action may be taken against these decisions before any other judicial authorities (...).
Art. 19 (1) Law No. 3813 on the Establishment and Duties of the Turkish Football Federation, (...), was repealed (...).

Art. 20 (1) The present Law shall come into force on the date it is published in the Official Gazette"[18].

Based on Article 6 of the Turkish football law as revised as of May 5, 2009 in comparison with Art. 64 of the TFF Statutes, the Arbitral tribunal reached the conclusion that the CAS did not have jurisdiction as to the Appellant's appeal. That the old Art. 14 of the football law contained a reservation in favour of an appeal to the CAS was considered irrelevant by the Arbitral tribunal as that provision was no longer in force at the time of the appeal to the CAS on November 11, 2009.

4.1.3 In a third step the Arbitral tribunal examined whether or not jurisdiction of the CAS could be deducted from Article 14 of the Rules of the Arbitration Chamber of Respondent 2 (TFF-Rules of arbitration). In this respect the Arbitral tribunal referred to the translations of the provision produced by the Parties. According to the Appellant the provision reads as follows:
"Any objection to decisions of the Arbitration Board for disputes arising out of the contracts of Sportsmen, Managers and Coaches which contain a foreign element may be made to the Court of Arbitration for Sport in light of the regulations and directives of FIFA and UEFA"[19].

According to the Respondents the provision reads to the contrary as follows:
"Decisions of the Arbitration Committee shall be final (...)
Appeals may be filed with the Court of Arbitration for Sport in accordance with the regulations and statutes of FIFA and UEFA against the resolutions adopted by the Arbitration Committee with regards to the disputes of international dimension arising from contracts of Players, Coaches and Trainers"[20].

Without expressing a view as to which of the two translations is pertinent the Arbitral tribunal then examined whether or not the dispute between the Appellant and Respondent 1 contained a foreign

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

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

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

element or an international dimension. In this respect it held that the dispute related to the notice of termination which the Appellant notified to Respondent 1 on January 4, 2008. The Appellant claimed termination for cause as Respondent 1 was in breach of its contractual obligations to the extent that it would not pay the outstanding salary. The Arbitral tribunal deducted from that that the dispute had nothing to do with the Appellant's intent to move to a foreign club and therefore did not fall within the scope of the FIFA Regulations on the Status and Transfer of Players. Yet the Appellant argued the presence of a foreign element as on February 15, 2009 he had concluded a contract with the British club Z_____ and also required a so called International Certificate of Transfer in addition. However the Appellant introduced that element only 13 months after the notice of termination to Respondent 1. The Arbitral tribunal therefore concluded that no foreign club was involved in the dispute between the Appellant and Respondent 1 and that in particular the dispute was not connected with the issuance of an International Certificate of Transfer.

The Arbitral tribunal furthermore referred to the definition of "international dimension" according to Art. 22 (b) of the FIFA Regulations on the Status and Transfer of Players, which according to the official commentary reads as follows:
"The international dimension is represented by the fact that the player concerned is a foreigner in the country concerned"[21].

The Arbitral tribunal then examined whether or not the Appellant was to be considered as a foreigner in Turkey. In this respect it stated that the Appellant came to Turkey from England at the age of 23 as a British citizen and was registered with the Turkish club Q_____. On August 17, 2004, at the age of 24, the Appellant obtained Turkish citizenship. In January 2006, at the age of 26, the Appellant finally moved to Respondent 1 and was registered there as a Turkish player from January 2006 until January 2008.

With that background the Appellant could not be considered as a foreigner in Turkey, especially as the Appellant had definitely made use of the advantages of Turkish citizenship. Thus in a letter of April 12, 2005 he had asked the president of Respondent 2 to be admitted to the Turkish national team and pointed out in this respect that heretofore he had never played for an English team. In two further letters of April 26 and May 16, 2005 he repeated his desire to play with the national Turkish team. It even appears from an official document that on September 9, 2006 the Appellant would have played for Turkey against Germany at the occasion of the "Future Cups". The Arbitral tribunal concluded from this

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

that the Appellant could no longer pretend to be a foreign player in Turkey. Against this background his second nationality as a British citizen, the citizenship of his family, his family life in England and the fact that he had played most of his career in England was incidental and irrelevant as to the issue of a possible international dimension. The dispute between the Appellant and Respondent 1 presented no international element at all which is why the CAS did not have jurisdiction even on the basis of Art. 14 of the TFF Arbitration Rules.

4.2

4.2.1 The Federal Tribunal exercises free judicial review as to the jurisdictional appeal according to Art. 190 (2) (b) PILA including the preliminary material issues from which the issue of jurisdiction depends. As opposed to the foregoing, even in the framework of a jurisdictional appeal it reviews the factual findings of the award under appeal only when some admissible grievances within the meaning of Art. 190 (2) PILA are brought against these factual findings or exceptionally when new evidence is taken into account (BGE 134 III 565 at 3.1 p. 567; 133 III 139 at 5 p. 141; 129 III 727 at 5.2.2 p. 733).

4.2.2 Art. 178 PILA applies to the formal requirements of the arbitration clause and determines the law applicable to its material validity, namely with regard to its coming into being, its scope and its expiry. Yet the provision says nothing as to the substantial requirements and the necessary contents of an arbitration clause. In accordance with the traditional understanding of private law arbitration, it is to be understood as an agreement by which two or more determined or determinable parties agree to submit one or several existing or future determined disputes bindingly to an arbitral tribunal and to the exclusion of the original state jurisdiction according to a legal order immediately or indirectly determined. An additional requirement of an arbitration agreement is its clarity and certainty as to private jurisdiction, namely that the arbitral tribunal called upon to decide must be either clearly determined or in any event determinable (BGE130 III 66 at 3.1 with references).

4.3

4.3.1 The Appellant argues at first in his appeal that the Parties would have “joined” the “arbitration clause” of Art. 14 of the Turkish football law as in force until May 5, 2009 and did so at the introduction of the proceedings against Respondent 1 in front of the Arbitration Chamber of Respondent 2. The Appellant would have assumed that an appeal to the CAS was available to him against the decision of this Arbitration Chamber. Whilst Art. 14 of the Football law would no longer have been in force at the time of the appeal to the CAS, a subsequent amendment to the arbitration clause would require the approval of both Parties, which was not given here. It would also correspond to the intent of the Parties that the arbitration clause still valid at the time the arbitration request was filed should be applicable.

The CAS would therefore have had jurisdiction on the basis of Art. 14 of the Turkish Football law "and the arbitration clause contained therein together with to the Regulations in force at the time".

The grievance is unfounded. As the Respondents rightly point out, Art. 14 of the Turkish Football law as amended by law nr 3813 of November 29, 2007 merely contains a reservation in favour of a "right of appeal" to the CAS (The right of appeal to the Court of Arbitration for Sport ... are [sic!] reserved"[22]). That provision, abrogated in the meantime, merely left the possibility open that the Turkish Football Federation could adopt a corresponding right of appeal in its Statutes but, contrary to the Appellant's views, it does not represent an arbitration clause on which the Parties could have referred or "joined" by mutually consented reference. The jurisdiction of the CAS as appeal body against decisions of the Arbitration Chamber of Respondent 2 is not to be based on that.

4.3.2 The Appellant then argues with reference to judgment 4A_548/2009 of January 20, 2009[23] that the mere request of an International Transfer Certificate from FIFA would create "jurisdiction of the CAS for the contractual dispute in connection with that".

The case quoted dealt with a player who wanted to leave his club to play for another federation. In the ensuing dispute as to the termination of the employment contract the federations involved and the player turned to the Dispute Resolution Chamber of FIFA. Consequently the player had to face the provision of Art. 24 (2) of the FIFA Regulations on the Status and Transfer of Players, which provide for an appeal to the CAS against the decision of the FIFA Dispute Resolution Chamber (judgment 4A_548/2009 of January 20, 2009 at 3.2.1; 4.2.1; 4.2.2; 4.2.3). In the case at hand, to the difference of the aforesaid case, the dispute involves according to the factual findings of the Arbitral tribunal exclusively the termination of the employment relationship for an alleged breach of contractual obligations by Respondent 1. According to the Arbitral tribunal the dispute has nothing to do with the Appellant's transfer to another club. Moreover the decision under appeal was not issued by the FIFA Dispute Resolution Chamber but by the Arbitration Chamber of Respondent 2. There is no justification for jurisdiction of the CAS as appeal body against decisions of the Respondent's Arbitration Chamber on the basis of Art. 24 (2) of the FIFA Regulations on the Status and Transfer of Players, which provide for an appeal to the CAS only against decisions of the FIFA Dispute Resolution Chamber.

4.3.3

4.3.3.1 The Appellant furthermore argues that contrary to the views of the Arbitral tribunal, the dispute at hand shows quite a "foreign element" or an "international dimension" within the meaning of Art. 14 of the

[22] Translator's note: In English in the original text.
[23] Translator's note: An English translation is available at www.praetor.ch. The decision is dated January 20, 2010.

Rules of Arbitration of Respondent 2 (TFF-Rules of Arbitration). This element and this dimension would result firstly from the fact that he is not only a citizen of Turkey but also of the United Kingdom. As such he would be a national in the British football market and not fall within the quotas for foreigners there. Furthermore an international dimension would result from the fact that the supplementary employment contract was drafted in English and contained "an international arbitration clause (FIFA Arbitration)". Moreover the roots and the centre of the interests of the Appellant and his family would be in England; after the termination of the Contract the Appellant and his family would have gone back to England and looked for a new employer there. Finally the international dimension also results from the fact that the Appellant was imposed a four months ban by Respondent 2. Whilst the latter was subsequently lifted by the Arbitration Chamber of Respondent 2, this would give the case an international dimension because due to the ban it would have become more difficult for the Appellant to find a new employer on the worldwide market for football players.

4.3.3.2 Art. 14 of the TFF Rules of Arbitration, whether on the basis of the Appellant's translation or that of the Respondents' (above at 4.1.3) must be interpreted in the light of the FIFA Regulations, namely Article 22 of the FIFA Regulations on the Status and Transfer of Players. This is specifically acknowledged by the Appellant in his appeal to the Federal Tribunal. The decisive criterion for the interpretation of Art. 14 of the TFF-Rules of Arbitration is accordingly the aforesaid FIFA norm.

Art. 22 (b) of the FIFA Regulations on the Status and Transfer of Players determines the jurisdiction of FIFA for *employment-related disputes between a club and a player that have any international dimension*[24]. According to the FIFA official commentary an "international dimension" within the meaning of that provision is given when the player concerned is a foreigner in the country concerned (Commentary on the Regulations for the Status and Transfer of Players). Accordingly an international dimension or a foreign element within the meaning of Art. 14 of the TFF Rules of Arbitration interpreted in the light of the FIFA Regulations is given only when the claimant is a player who must be considered as a foreigner in the country of the Respondent football federation. According to an interpretation consistent with the FIFA Rules of Art. 14 of the TFF Rules of Arbitration, none of the other elements relied upon by the Appellant is relevant to give the dispute a foreign connection, namely the fact that the Appellant lives in England, his second citizenship, the language in which the supplementary employment contract was drafted or the ban effective on the transfer market worldwide. The Appellant cannot challenge that finding by reference to nr 4b of the Commentary on the Regulations for the Status and Transfer of Players as the developments there do not refer to Art. 22 (b) of the FIFA Regulations but to Art. 22 (a). That provision regulates disputes between a player and a federation as to a *claim from*

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

*an interested party in relation to such ITS Request, in particular regarding its issuance*[25]*.* As mentioned above (above at 4.4.2) the dispute between the Parties does not involve a claim in connection with the issuance of a certificate of transfer but exclusively the alleged breach of contractual provisions by Respondent 1. The Appellant rightly does not claim that the employment dispute between the Parties would have originated from the fact that FIFA was requested to issue a certificate of transfer. His argument that the Arbitral tribunal itself would have assumed an international dimension of the facts by "applying" Art. 23 PILA is equally off the mark. The Arbitral tribunal merely pointed out in the reasons as an *obiter dictum* how the Swiss rules of conflicts of law in Art. 23 PILA preempt the issue of multiple citizenships, yet the aforesaid provision was not applied, let alone resorted to in order to determine the issue at hand.

Accordingly an *international dimension* or a *foreign element* within the meaning of Art. 14 of the TFF Rules of Arbitration would only have been realized if the Appellant were to be considered as a foreigner in a dispute with a Turkish football club. The Appellant rightly does not attempt to dispute seriously that he is a Turkish citizen, who played in the Turkish federations as a citizen and even played for the Turkish national team. In its letter of February 19, 2008 FIFA too pointed out that Respondent 1 and the Appellant had the same nationality and referred the Parties accordingly to the decision making bodies of the Turkish Football Federation. The Appellant raised no objection in this respect. The Arbitral tribunal was accordingly right to deny jurisdiction on the basis of Art. 14 of the TFF Rules of Arbitration interpreted according to FIFA.

5.

The Appellant further argues that the Arbitral tribunal violated the right to be heard within the meaning of Art. 190 (2) (d) PILA as it breached the duty to set forth its reasons several times and denied the request for oral pleadings. The argument is unfounded because according to case law of the Federal Tribunal the principle of the right to be heard within the meaning of Art. 190 (2) (d) PILA does not encompass the requirement the arbitral tribunal give reasons or a right to oral arguments in front of the arbitral tribunal (BGE 134 III 186 at 6 p. 187 ff with references and BGE 117 II 346 at 1b/aa p. 348; judgment 4A_220/2007 of September 21st, 2007 at 8.1).

6.

The Appeal must accordingly be rejected to the extent that the matter is capable of appeal. In such an outcome the Appellant has to pay the costs and compensate the other parties (Art. 66 (1) and Art. 68 (2)

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

BGG). As both Respondents submitted briefs and were represented by different lawyers, they are each entitled to costs. They will be taken from the deposit made by the Appellant for security for costs.

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 4'000 shall be borne by the Appellant.

3.
The Appellant shall pay CHF 5'000 to each Respondent for the federal judicial proceedings. That amount will be paid from the deposit made with the Court.

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

Lausanne, April 19, 2011

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

The Presiding Judge: The Clerk:

Klett (Mrs) Hurni