



The

FIVB TRIBUNAL

herewith issues the following

DECISION

FIVB 2018-02

on the Request for Review of CC154/2017 filed by

Istanbul Buyuksehir Belediyesi Spor Kulübü (“Claimant”)
represented by Mr. Juan de Dios Crespo Pérez, lawyer, Valencia, Spain
and Mr. Sami Dinç, lawyer, Istanbul, Turkey

vs.

Mr. Zoran Gajic (“Respondent”)
represented by Mr. Mehmet Toydemir,
lawyer, Maçka-Istanbul, Turkey

1. The Parties

1. The Claimant is a professional volleyball club with its legal seat in Istanbul, Turkey (hereinafter the “Claimant” or “Club”).
2. The Respondent is a professional volleyball coach from Serbia (hereinafter the “Respondent” or “Coach”).

2. The FIVB Tribunal (FIVB Tribunal Judge)

3. Article 19.1.5 of the FIVB Sports Regulations provides as follows:

“Cases before the FIVB Tribunal shall be heard by the Chairperson, provided that the amount in dispute does not exceed CHF 200’000 (two hundred thousand Swiss Francs). All other cases shall be heard by the Chairperson and two (2) other members of the FIVB Tribunal, appointed by the Chairperson. [...]”

4. Because the amount in dispute in the present case does not exceed CHF 200,000.00, this Request for Review will be heard by the Chairperson as a single judge. Dr. Karsten Hofmann from Germany is the current Chairperson of the FIVB Tribunal and, thus, was appointed as the single judge in the present case (hereinafter the “FIVB Tribunal Judge”).

3. Facts and Proceedings

3.1 Background Facts

5. Prior to the 2017-2018 season, the Club conducted negotiations with the Coach in order to employ him as the head coach for the Club’s team. According to the Coach’s submissions, Mr. Orhan Erdemir (a member of the Club’s Board of Administration with the responsibility for the Club’s volleyball branch) was in Belgrade to personally meet with the Coach for three times. Those submissions have not been disputed by the Club.
6. On 27 April 2017, the Coach and Mr. Erdemir sent emails to each other with the subject “*Zoran GAJIC contract (27.04.2017).doc*” and exchanged drafts of employment contracts. The Coach,

inter alia, asked Mr. Erdemir to put in “1st of June 2017” as the official date of the employment contract even if signed by both parties prior to that date.

7. Finally, the Coach and Mr. Erdemir signed an employment agreement dated 1 June 2017 under which the Coach agreed to coach the Club's team for three seasons (2017-2018 to 2019-2020) and the Club agreed to pay the Coach – among other financial benefits – a total compensation of EUR 460,000.00 net, namely EUR 160,000.00 for the 2017-2018 season and EUR 150,000.00 each for the 2018-2019 and the 2019-2020 season (hereinafter the “Contract”). The term of the Contract was agreed to be 30 August 2017 to 30 May 2020.
8. By document dated 28 April 2017, the Coach and his former club “Azin Telecom Sport” located in Baku, Azerbaijan mutually agreed on the immediate termination of their employment agreement of 7 June 2016 (hereinafter the “Termination Agreement”).
9. By internal email of 23 May 2017, the Club’s Manager Mr. Levent Ozvarnali asked Mr. Erdemir for his confirmation to buy flight tickets for the Coach and his wife. Thereafter, the Coach went together with his wife to Istanbul in order to find an apartment, see the training facilities and the office and to meet with several Club staff.
10. On 22 June 2017, the Coach sent to the Club an email titled “*Start of preparation period*” with regard to his work as head coach of the Club’s team. Moreover, the Coach forwarded a letter of the “Association of Volleyball Coaches of Serbia” dated 21 June 2017, which confirms the Coach’s license.
11. On the same date, Mr. Erdemir called the Coach by phone and explained that the Contract was signed by him because of the absence of the Club’s President and, therefore, the Contract should be invalid. Moreover, Mr. Erdemir explained that the Club’s basketball and volleyball branches would be closed and that he wanted to come to Belgrade together with a translator and speak to the Coach at the beginning of July 2017. According to the Coach’s submissions, Mr. Erdemir did not travel to Belgrade but rather called a friend of the Coach on 11 July 2017 “*in order to find a compromise*”. Some days later the Club’s lawyers requested more time to make a “*compromise offer*” but finally failed to do so. Those submissions have not been disputed by the Club.

12. By email dated 16 August 2017, the Coach referred to the phone call on 22 June 2017 and stated that the Contract is valid, the Club's behaviour caused him a lot of "*pecuniary and moral harm*" and that he had no chance to find a "*new job*". If the Club did not confirm to respect the Contract, the Coach would be obliged "*to sue*" the Club.
13. On 15 September 2017, the Coach filed a Complaint with the CEV (Confédération Européenne de Volleyball) against the Club and paid the handling fee of EUR 400.00 to the CEV. He requested the payment of EUR 460,000.00 as outstanding salaries from the Club. In its Reply, the Club requested to find the Contract invalid. After a second round of submissions, the CEV requested the Coach to provide some additional information, which were submitted on 15 February 2018.
14. On 22 February 2018, the CEV issued its decision in the case "Financial Dispute - CC154/2017" and found that the Club shall pay the amount of EUR 100,000.00 as compensation for the breach of the Contract as well as EUR 400.00 as reimbursement of the handling fee (hereinafter the "CEV Decision").

3.2 The Proceedings before the FIVB Tribunal

15. By email dated 13 March 2018, the FIVB Tribunal Secretariat acknowledged receipt of the Club's Request for Review and the applicable handling fee both on 8 March 2018. The FIVB Tribunal Secretariat forwarded the Request for Review to the Coach and invited him to file an answer by no later than 3 April 2018 (hereinafter the "Answer"). In addition, the Coach was invited to submit his response on the Club's request to suspend the effect of the CEV Decision by no later than 19 March 2018 (hereinafter the "Response").
16. By email dated 20 March 2018, the FIVB Tribunal Secretariat acknowledged receipt of the Coach's Response dated 19 March 2018. Moreover, the Parties were informed that the FIVB Tribunal Judge rejected the Club's request to stay the Decision (for reasons see para. 51 below) and that all other procedural orders as stated in the FIVB Tribunal's email of 13 March 2018 remained in full force.
17. By email dated 3 April 2018, the FIVB Tribunal Secretariat acknowledged receipt of the Coach's Answer dated 2 April 2018. Moreover, the Parties were informed that their submissions had been forwarded to the FIVB Tribunal Judge for his review.

18. By email dated 18 May 2018, the FIVB Tribunal Secretariat informed the Parties that, upon his request, the FIVB Tribunal Judge had been provided with the first instance file by the CEV. Furthermore, the Club was invited to comment on the Coach's Answer and to submit certified English translations on specific annexes that were already submitted by the Club in Turkish only. Moreover, it was invited to provide general information on the legal framework under Turkish law regarding both the authority of association board members and the principle of "apparent authority". The Club was requested to submit all information by 8 June 2018.
19. By email dated 13 June 2018, the FIVB Tribunal Secretariat acknowledged receipt of the Club's submission in line with the FIVB Tribunal's procedural order of 18 May 2018 and that the submissions had been forwarded to the FIVB Tribunal Judge for his review.
20. By email dated 3 July 2018, the FIVB Tribunal Secretariat invited the Coach to comment on the Club's submissions dated 8 June 2018 by no later than 18 July 2018 while no additional submissions would be taken into consideration by the FIVB Tribunal.
21. By email dated 17 July 2018, the FIVB Tribunal Secretariat acknowledged receipt of the Coach's submission in line with the FIVB Tribunal's procedural order of 3 July 2018 and that the submissions had been forwarded to the FIVB Tribunal Judge for his review.
22. By email dated 3 August 2018, the FIVB Tribunal Secretariat informed the Parties of the FIVB Tribunal Judge's decision that no further submissions were required in accordance with Article 20.7.1 of the 2018 FIVB Sports Regulations (identical wording as Article 20.6.1 of the 2017 FIVB Sports Regulations). In accordance with Article 20.11.2 of the 2018 FIVB Sports Regulations (identical wording as Article 20.10.2 of the 2017 FIVB Sports Regulations), the FIVB Tribunal Judge requested that the Parties provide a detailed account of their respective costs as well as supporting documentation in relation thereto by no later than 17 August 2018.
23. By emails dated 16 August 2018, both the Coach and the Club submitted their respective statements on costs.

4. The Parties' Submissions

24. The following section provides a brief summary of the Parties' submissions and does not purport to include every contention put forth by the Parties. However, the FIVB Tribunal Judge has thoroughly considered all of the evidence and arguments submitted by the Parties, even if no specific or detailed reference has been made to those arguments in this section.

4.1 The Claimant's Position

4.1.1 The Club's submissions

25. The Contract is invalid and did not enter into force. Thus, the Coach cannot claim any compensation based on breach of the Contract.
26. Mr. Erdemir (member of the Club's Board of Administration) signed the Contract in the section prepared for the Club's President, namely Mr. Bahattin Ulsan. Just being a member of the Club's Board of Administration does not create the power to sign any documents on behalf of the Club. Thus, Mr. Erdemir was not empowered to conclude any agreement with the Coach, and his signature only commits Mr. Erdemir personally, not Mr. Ulsan or the Club. In addition, Mr. Ulsan as the Club's President was not aware of such an agreement with the Coach. Upon becoming aware, the Club's President declared the Contract to be invalid.
27. First of all, Mr. Erdemir informed the President three weeks after the Contract was concluded. The President himself never corresponded with the Coach. Therefore, the Coach should have realized that the person who signed the Contract for the Club was actually not the Club's President. As a basic principle of law, a third party cannot be burdened with obligations under the Contract by a party which entered into that agreement without the respective authorization, especially given that the Coach did not request any confirmation of an existing authorization of such person. As soon as the Club's President became aware of the Contract (June 2017), the Coach was notified about the invalidity of the agreement. The Club itself did not consider the employment with the Coach formalized but rather "*planned to be agreed*". The sporting season in Turkey started only in August 2017, and the Coach was notified of the invalidity of the Contract prior to the start of the season.

28. The Coach failed to provide any evidence on damages actually suffered or that could have been suffered by the lack of validity of the Contract. The FIVB Tribunal shall find the Contract invalid and the Club should not be responsible for any payments thereunder.
29. Furthermore, the FIVB Tribunal should grant a suspensive effect of the decision under appeal, namely the payment of the amounts awarded under the CEV Decision. This stay of execution should safeguard the interests of all parties and keep their equal treatment.
30. Alternatively, the FIVB should limit the amount of compensation to the effective time that the Coach and the Club had considered the Contract valid. Such time period was one month and compensation can only be based on the salary for this month, i.e. the amount of EUR 16,000.00. In any case, in accordance with Article 9.2 of the Contract, compensation cannot exceed the amount of EUR 160,000.00 because the salary agreed up to the end of the 2017-2018 season would be the maximum.

4.1.2 The Club's Request for Relief

31. The Club concluded in its final submission dated 8 June 2018 as follows:

"[...] the Club herein respectfully requests the FIVB Tribunal:

- 1. To uphold the Club's Request for review of the decision of the CEV Legal Chamber dated 22nd of February 2018.*
- 2. To state that the employment contract signed between the Parties is invalid due to the reasons enumerated by the Club in the Request for Review and present submission.*
- 3. To state that as a consequence of such invalidity of the Contract, the Club cannot be held responsible for payment of any amount of compensation out of such contract as the Club has no standing to be sued.*

Alternatively,

- 4. Only in case that the deciding body considers the employment contract signed between the parties to be valid, to reduce the amount of the compensation that could be awarded in favour of the Coach on the basis of 1) the article 9.2. of the Contract, and 2) on the basis of the additional mitigating circumstances, to the amount of EUR 16,000 (Sixteen thousand EURO).*

5. *To fix a sum of EUR 10,000 to be paid by the Claimant to the Club, to help the payment of its legal fees costs.*
6. *To condemn the Coach to the payment of the whole administration costs and the procedure fees.”*

32. In its Request for Review, the Club requested additionally as follows:

“1. To grant the Club the suspensive effect on the compliance with the CEV Legal Chamber decision dated 22nd of February 2018 until the decision on the corresponding Request for Review by the FIVB Tribunal.”

4.2 The Respondent’s Position

4.2.1 The Coach’s submissions

33. The Contract contains all essential terms and conditions necessary for an agreement and was signed by both parties. It is valid and binding.
34. After signing the Contract, the Club stopped communication with the Coach but he sent an email to the Club on 22 June 2017 requesting information on the start of preparation for the season. Only on that day, Mr. Erdemir called and told the Coach that the Club’s volleyball branch would be closed.
35. Mr. Erdemir was a Board member responsible for the Club’s volleyball branch. In their talks, Mr. Erdemir never mentioned that he did not have the authority to act for the Club. It is usual that a President of a club does not conduct the negotiations personally but to have this done by other persons, e.g. the person responsible for that specific branch. During the negotiations, the Coach always believed that he negotiated and concluded the Contract with the Club itself and not with Mr. Erdemir personally. Mr. Erdemir sent to the Coach the signed Contract bearing the seal of the Club. The Coach could not become aware that the Contract was not signed by the Club’s President himself. Moreover, under Turkish law, the signature amendment “y” (“yerine”) means “on behalf of”, which proves the existing authority of Mr. Erdemir to represent and legally bind the Club.

36. The Coach indicated several times that he was willing to comply with his obligations while the Club refused to fulfil its obligations.
37. In order to sign with the Club, the Coach terminated his previous contract in Azerbaijan (AzinTelecom Sport LLC). However, he had no chance to conclude another employment contract for the 2017/2018 season. The Club shall indemnify the Coach for these damages.

4.2.2 The Coach's Request for Relief

38. The Coach concluded in his final submission dated 17 July 2018 (and nearly identical in his Answer) as follows:

“by this we kindly request from the Honorable Tribunal:

- *to reject Request for Review filed by the Club against CEV Decision reference CC 154/2017,*
- *to oblige the Club to comply with CEV Decision reference CC 154/2017,*
- *to condemn the Club to the payment of all expenses and fees due and to be due because of this financial conflict.”*

39. In his Response on the Club's request to stay the CEV Decision, the Coach requested additionally as follows:

“We respectfully request the FIVB Tribunal,

- *To reject the request of suspension of the effect of the CEV Legal Chamber decision dated 22.02.2018,*
- *In case of suspension by the Honorable Tribunal of the effect of the CEV Legal Chamber decision dated 22.02.2018, to decide that EUR 100,000.00 and other expenses of the Coach is deposited by the Claimant in a blocked bank account with FIVB.”*

5. Jurisdiction

40. The FIVB Tribunal must first examine whether it has jurisdiction to hear the present dispute. In order to do so, it must first look at the relevant provisions of the FIVB Sports Regulations.

41. Article 19.2.1 of the FIVB Sports Regulations reads as follows:

“The FIVB Tribunal is competent to decide financial disputes of an international dimension between clubs, players, FIVB-licensed agents and coaches from within the world of volleyball. The FIVB Tribunal’s jurisdiction extends also to financial disputes of an international dimension between a coach and a National Federation.”

42. Article 19.2.2 of the FIVB Sports Regulations stipulates that the FIVB Tribunal can only resolve disputes:

“19.2.2.1 arising between the natural and legal persons/entities mentioned in Article 19.2.1; and

19.2.2.2 decided previously by the FIVB / a Confederation or referred by the FIVB/a Confederation to the FIVB Tribunal”

43. Article 19.2.3 of the FIVB Sports Regulations grants the FIVB Tribunal the power to rule on its own jurisdiction.

44. Thus, in order for the FIVB Tribunal to have jurisdiction over the dispute, the FIVB Tribunal Judge shall examine whether the conditions of both Articles 19.2.1 and 19.2.2 of the FIVB Sports Regulations are satisfied.

45. The present dispute involves a claim submitted by a club from Turkey against a coach from Serbia concerning compensation. The FIVB Tribunal Judge finds that this dispute clearly qualifies as a financial dispute of an international dimension between a coach and a club in accordance with Articles 19.2.1 and 19.2.2.1 of the FIVB Sports Regulations.

46. Furthermore, the Request for Review at hand is made against the CEV Decision, which was rendered by the CEV Legal Chamber. Therefore, the present Request for Review stems from a decision of a Confederation and the FIVB Tribunal Judge holds that Article 19.2.2.2 of the FIVB Sports Regulations is also satisfied.

47. Based on the above, the conditions of Articles 19.2.1 and 19.2.2 of the FIVB Sports Regulations are satisfied.
48. Additionally, neither party contested the FIVB Tribunal's jurisdiction over the present claim. The Club's Request for Review was filed on 8 March 2018, i.e. within the 14-day period described in Article 18.2 of the FIVB Sports Regulations.
49. Therefore, the FIVB Tribunal has jurisdiction over the present Request for Review pursuant to the Regulations.

6. Discussion

6.1 Applicable Law

50. Under the heading "Law Applicable to the Merits", Article 20.9 of the 2018 FIVB Sports Regulations (identical wording as Article 20.8 of the 2017 FIVB Sports Regulations) reads as follows:

"Unless otherwise agreed by the parties, the Tribunal shall apply general considerations of justice and fairness without reference to any particular national or international law (ex aequo et bono)."

51. Neither of the Parties has contested the applicability of *ex aequo et bono* to the present dispute. In substance, it is generally considered that an arbitrator/judge deciding *ex aequo et bono* receives "a mandate to give a decision based exclusively on equity, without regard to legal rules. Instead of applying general and abstract rules, he/she must stick to the circumstances of the case" (POUDRET/BESSON, Comparative Law of International Arbitration, London 2007, No. 717, pp. 625-626).
52. The Club provided some documents referring in a very general way to Turkish law, and it was invited by the FIVB Tribunal Judge to provide information and comments on the legal framework under Turkish law regarding both the authority of associations' board members (e.g. an act provision stipulating the competences of associations' board members to represent the association) and the principle of "apparent authority" as defined in the CEV Decision (in particular, para. 4.3 lit. h et seq. of the CEV Decision). While the FIVB Tribunal Judge finds in rare

instances that he may need to consult local law on preliminary issues, the FIVB Tribunal Judge merely requested this information in order to ensure that the Turkish law principles of authority and “apparent authority” comport with general principles of justice and fairness (i.e. the essence of *ex aequo et bono*) deliberations, which is the case in the present dispute. This notwithstanding, the applicable law in the present case is *ex aequo et bono* in accordance with Article 20.8 of the FIVB Sports Regulations.

53. In light of the foregoing matters, the FIVB Tribunal Judge decides as follows:

6.2 Request for stay

54. In its Request for Review, the Club requested to suspend the effect of the decision under appeal. Upon review of the Parties’ respective submissions, namely the Club's Request for Review dated 8 March 2018 and the Coach's Response dated 19 March 2018, the FIVB Tribunal Judge rejected the Club’s request to stay the CEV Decision for the following reasons:

- a) First of all, the FIVB Tribunal Judge had taken note that the FIVB did not have the ability to provide an escrow account for the payment of a security.
- b) According to the last bullet point of the CEV Decision of 22 February 2018, in principle, a Request for Review shall not have suspensive effect, thus, a stay of execution shall apply only under exceptional circumstances. Whether such exceptional circumstances existed in the case at hand had to be considered under the application of three specific criteria, i.e. "irreparable harm, "likelihood of success on the merits" and whether the interests of one party outweigh those of the other party.
- c) The FIVB Tribunal Judge had taken the above criteria, which have to be met collectively, into consideration for his decision on the Club’s request to stay. In the end, the Club, at minimum, failed to prove its irreparable harm if the decision under appeal was not suspended. The Club failed to demonstrate that it was actually hindered in negotiating and agreeing contracts with new players, and, thus, that any non-approval of transfers of players as mentioned in the CEV Decision was, in fact, an issue causing it harm. It also failed to demonstrate any other (possible) sanctions imposed by the CEV or extended by the FIVB would cause it irreparable harm. This all is even more true in view of the Club’s

announcement to the Coach to close the volleyball branch and the Club's failure to provide any submission regarding re-opening of the volleyball branch. Moreover, the Club did not prove that a (re-)payment from the Coach to the Club in the event of a respective decision rendered by the FIVB Tribunal overturning the CEV Decision was impossible or, at least, difficult.

6.3 Findings

55. In the essence, the Club requests the FIVB Tribunal to annul the CEV Decision, holding that the Club is not liable to pay anything to the Coach, while the Coach requests the FIVB Tribunal to uphold the CEV Decision in its entirety in order to being paid the amount of EUR 100,000.00 as compensation. Therefore, the FIVB Tribunal Judge has to decide on the Coach's right for compensation within the range of EUR 0.00 to EUR 100,000.00.
56. The FIVB Tribunal Judge reviews the CEV Decision by considering the Parties' submissions and the evidence before him. The FIVB Tribunal Judge will examine whether the Parties are bound by the agreements stipulated under the Contract and, if yes, what the respective consequences are.

6.3.1 The validity and binding effect of the Contract

57. In line with the CEV Decision, the FIVB Tribunal Judge finds that the Contract includes all the essential elements necessary to consider it a valid and binding agreement of employment. Such elements are: name of the parties, their main rights and obligations, the duration of their relationship and the remuneration the employee is entitled to in exchange for his services to the employer.
58. The Contract names the Coach and the Club "*represented by Bahattin ULUSAN-President*". On the one hand, it is undisputed between the Parties that the Contract was not signed by Mr. Ulsan but rather by Mr. Erdemir (a member of the Club's Board of Administration who is responsible for the Club's volleyball branch). On the other hand, it remains unclear whether Mr. Erdemir was formally entitled to conclude employment agreements on behalf of the Club. The Coach submitted that the abbreviation "y" symbolizes the acting of a person "on behalf of"

someone else. The last page of the Contract does actually contain a mark as part of the signature in the Club's section which could be interpreted as a "y".

59. However, at least according to the principle of apparent authority, the Club is bound by the Contract because of the circumstances and the (non-)behaviour of the persons officially acting on behalf of the Club, particularly its President Mr. Ulsan and its Manager Mr. Ozvarnali. Therefore, the FIVB Tribunal Judge does not need to decide whether Mr. Erdemir was officially authorized to sign the Contract on behalf of the Club. Additionally, whether Mr. Erdemir is liable for recourse to the Club, is not part of the present proceeding.
60. The Club authorized Mr. Erdemir to conduct negotiations with the Coach in order for the Club to employ him as the head coach. In spring 2017, Mr. Erdemir travelled to Belgrade to personally meet with the Coach. Mr. Erdemir exchanged emails regarding an employment agreement with the Coach, specifically by sending emails to each other with the subject "*Zoran GAJIC contract (27.04.2017).doc*" on 27 April 2017. During this communication, the Coach, *inter alia*, asked Mr. Erdemir to put in "*1st of June 2017*" as the official date of the employment contract even if signed by both parties prior to that date.
61. This is exactly what happened: The Contract is dated 1 June 2017 but was obviously signed already prior to that date. In this context, the FIVB Tribunal Judge takes into consideration the Coach's termination of his former employment agreement with an Azerbaijani club on 28 April 2017. Along with the communication one day prior, this is strong evidence that Mr. Erdemir and the Coach were in agreement on the content of the Contract by late April 2017.
62. In addition, the Coach did not have any reason to doubt that the Club had not agreed on the terms of the Contract until 22 June 2017. Only on that date, Mr. Erdemir informed the Coach that he was not authorized by the Club to sign any employment agreements. Until that date, the circumstances and the Club's behaviour showed the Club's will to comply with the terms of the Contract:
 - The Contract bears the official seal of the Club.
 - The barely legible signature in the Club's section does neither show that it belongs to Mr. Erdemir nor that it does not belong to Mr. Ulsan.

- In May 2017, the Coach and his wife were invited by the Club to come to Istanbul – and did in fact fly – in order to find an apartment and see the training facilities as well as the Club’s office.
- On the Club’s side, both Mr. Erdemir and the Club’s Manager, Mr. Ozvarnali, were involved with sending that invitation (internal email of 23 May 2017), and, during his stay in Istanbul, the Coach met with several Club staff.

63. Even after the Club’s President and/or further high-level staff had become aware of the signed Contract, they did not personally contact the Coach to clarify the situation but still authorized Mr. Erdemir to engage in further discussions about the contractual relationship with the Coach. On 22 June 2017, Mr. Erdemir informed the Coach that he intended to come to Belgrade at the beginning of July 2017 in order to discuss the situation. Mr. Erdemir did not travel to Belgrade but rather called a friend of the Coach on 11 July 2017 *“in order to find a compromise”*. Only several days later, i.e. about two and a half months after the signing of the Contract in late April 2017, did the Club’s lawyers take over the case. They repeated the Club’s will to make a *“compromise offer”* but, thereafter, remained silent. Again, it was the Coach, who tried to clarify the situation by email dated 16 August 2017.

64. In this context, the FIVB Tribunal Judge fully agrees with the CEV Decision that apparent authority is often illustrated by the title and functions of a person within an organisation and that there is a natural expectation that certain rights and obligations related to representations made by a person with said title or function. Moreover, being a member of an organisation’s Board of Directors is a classic example of such a situation because this body is very often entitled to take decisions on behalf of the organisation. Thus, when exchanging communications with a Board member (in the present case: Mr. Erdemir), a third party (in the present case: the Coach) can expect that he has the authority or ability to make valid decisions and concluding agreements that are binding to the organisation (in the present case: the Club). If the Club established internal limits for individuals acting on behalf of the Club, then the Club should have informed the Coach of those limits during the negotiations. As this was not the case, at least until 22 June 2017, the Coach could rely upon Mr. Erdemir’s authority to conclude the terms of the Contract on behalf of the Club.

65. According to the principle of apparent authority, the Club is bound by the Contract.

6.3.2 The consequences for the Parties

66. Under the Contract, the Coach agreed to coach the Club's team for three seasons (2017-2018 to 2019-2020) and the Club agreed to pay the Coach – among other financial benefits – a total compensation of EUR 460,000.00 net, namely EUR 160,000.00 for the 2017-2018 season and EUR 150,000.00 each for the 2018-2019 and the 2019-2020 season. The term of the Contract was agreed to be 30 August 2017 to 30 May 2020.
67. The Coach terminated his existing contract in order to conclude the abovementioned agreement with the Club and offered his services on several occasions, e.g. by emails dated 22 June and 16 August 2017. However, the Club (Mr. Erdemir) informed the Coach that his services were no longer needed because the volleyball branch was closed, and no team would participate in the Turkish volleyball championships during the 2017-2018 season. Moreover, the Club did not pay any of the salary agreed upon under the Contract. Thus, the Club was in breach of the Contract.
68. In general, the Coach should be placed in the same financial position as if the Contract had been duly executed by the Club. Taking into consideration Articles 9 and 10 of the Contract, the FIVB tribunal Judge follows the CEV Decision and finds that the maximum compensation to be paid to the Coach is EUR 160,000.00, i.e. the salary agreed for the 2017-2018 season.
69. For determination of the exact compensation to be paid to the Coach, his duty to mitigate his damage has to be taken into account. The Coach was informed by Mr. Erdemir on 22 June 2017 but the situation remained unclear in July and August 2017 given Mr. Erdemir's and the Club lawyer's statements that the Club wished to find a "compromise". Thus, during this period of time, the FIVB Tribunal Judge is of the view that the Coach was obliged to look for other employment opportunities but not sign a new employment agreement with another club until the situation with the Club was resolved. However, after the Coach had filed his Complaint with the CEV on 15 September 2017, he was obliged to intensify his search for new employment.
70. On the one hand, the FIVB Tribunal Judge understands the Coach's difficulties in finding a new club for the 2017-2018 season, especially for the first part of that season. On the other hand, the FIVB Tribunal Judge takes note of the Coach's high-level skills, which should help him find a new club shortly after he received clarity related to his employment relationship with the Club, especially considering that seasons around the world start at different time, and that the Coach

failed to provide evidence for any search of new employment for the 2017-2018 season. Thus, the Coach did not fully comply with his duty to mitigate his damage.

71. Taking into consideration all the above and deciding *ex aequo et bono*, the FIVB Tribunal Judge finds that the amount of EUR 100,000.00 as determined in the CEV Decision is reasonable compensation under the circumstances. This is supported by the fact that the Coach's former employment agreement with the Azerbaijani club "Azin Telecom Sport" provided for the amount of EUR 100,000.00 for the 2017-2018 season, which he very like would have earned without his termination triggered by the conclusion of the Contract. Thus, the Club is obliged to pay to the Coach the amount of EUR 100,000.00.
72. Consequently, the CEV Decision is upheld and the Club's Request for Review is dismissed.

6.4 Costs

73. In the Decision, the CEV ordered the Club to reimburse the first instance handling fee in the amount of EUR 400.00 and dismissed the Club's claim with regard to legal costs. No decision was made on reimbursement of legal cost regarding the Coach. Given that the CEV Decision is upheld, the FIVB Tribunal Judge fully confirms the first instance finding regarding the reimbursement of the full CEV handling fee and the finding on the Club's legal costs.
74. With regard to the present proceedings, Article 20.11.2 of the 2018 Regulations (identical wording as Article 20.10.2 of the 2017 Regulations) allows the prevailing party to be granted a contribution towards legal fees and expenses (including the applicable handling fee). However, legal fees must be reasonable and are limited to fees related to the proceedings before the FIVB Tribunal. When determining the contribution, the FIVB Tribunal Judge must take into account the outcome of the proceedings as well as the conduct and financial resources of the Parties.
75. The Club paid a handling fee of CHF 3,000.00 and submitted a pro forma invoice for legal fees and expenses in the total amount of EUR 3,025.00 (including VAT). The Coach submitted a document dated 14 June 2017, by which he accepted to pay to his counsel "*10% of the amount that will be allocated in the last resort by the competent authority*". Thus, the Coach's legal fees to be paid by him to his legal counsel may be EUR 10,000.00 for both instances, namely the first instance before the CEV and the second instance before the FIVB Tribunal. However, the Coach

did not provide any proof for actual payment of legal fees.

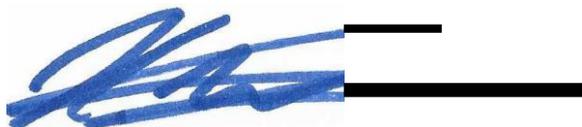
76. Given that the Club's Request for Review was dismissed, the FIVB Tribunal Judge finds that the Club has to bear its own legal costs (including the handling fee) while the Coach is entitled to a contribution towards his reasonable legal fees and expenses related to the present proceeding before the FIVB Tribunal. In accordance with Article 20.11.2 of the 2018 Regulations (identical wording as Article 20.10.2 of the 2017 Regulations), the FIVB Tribunal Judge determines the reasonable amount related to the second instance proceeding before the FIVB Tribunal to be EUR 2,000.00. On the one hand, the FIVB Tribunal Judge has taken into account that the Coach's counsel actually provided services within the time limits set by the FIVB Tribunal. On the other hand, the Coach failed to provide a detailed account of his respective costs as requested in the procedural order of 3 August 2018 as well as information on the applicability of VAT. The FIVB Tribunal Judge has also taken into account that the agreement with his counsel refers to both proceedings, namely before the CEV and the FIVB Tribunal, and that the Coach's first instance claim for EUR 460,000.00 was partially dismissed and the amount of EUR 100.000,00 awarded only. Thus, any far-reaching elements of the Coach's Request for Relief (*"all expenses and fees due and to be due because of this financial conflict"*) are dismissed.
77. Consequently, the Club shall pay to the Coach the additional amount of EUR 2,000.00.

DECISION

For the reasons set forth above, the FIVB Tribunal Judge decides as follows:

1. **The Request for Review filed by Istanbul Buyuksehir Belediyesi Spor Kulübu is dismissed.**
2. **The decision rendered by the CEV in CC154/2017 dated 22 February 2018 is confirmed.**
3. **Istanbul Buyuksehir Belediyesi Spor Kulübu shall pay the amount of EUR 2,000.00 to Mr. Zoran Gajic as a compensation towards his reasonable legal fees and expenses. In addition, Istanbul Buyuksehir Belediyesi Spor Kulübu shall bear its own legal fees and expenses including the applicable handling fee.**
4. **Any other requests for relief are dismissed.**

Lausanne, seat of the proceedings, 20 December 2018



Dr. Karsten Hofmann
FIVB Tribunal Chairperson

NOTICE OF APPEALS

An appeal may be filed against this decision exclusively before the Court of Arbitration for Sport (CAS), in accordance with

- a) Article 20.12 of the 2018 FIVB Tribunal Regulations (identical wording as Article 20.11 of the 2017 FIVB Tribunal Regulations) which provides as follows:

“Decisions of the FIVB Tribunal can only be appealed to the Court of Arbitration for Sport (CAS), Lausanne, Switzerland and any such appeal must be lodged with CAS within twenty-one (21) days from the receipt of the decision. The CAS shall decide the appeal ex aequo et bono and in accordance with the Code of Sports-related Arbitration, in particular the Special Provisions Applicable to the Appeal Arbitration Procedure.”

- b) The CAS Code of Sport-related Arbitration, which is available under www.tas-cas.org.

The address and contact details of the CAS are the following:

Court of Arbitration for Sport
Avenue de Beaumont 2
1012 Lausanne, Switzerland
Tel: +41 21 613 50 00
Fax: +41 21 613 50 01
email: info@tas-cas.org

In the event of an appeal, this decision shall remain in effect while under appeal unless the CAS orders otherwise.