



## DECISION

by

### THE FIVB APPEALS PANEL

composed of

<b>Ms. Emba Leung (HKG)</b>	Chair
<b>Mr. Morgan Martin (CAN)</b>	Member ad-hoc
<b>Mr. Thomas Berend (LUX)</b>	Member
<b>Mr. Mounir Ben Slimane (TUN)</b>	Member ad-hoc
<b>Mr. Jorge Granja Cobos (ECU)</b>	Member

in the matter of

**Fenerbahce Spor Kulubu (TUR) vs Heungkuk Life Insurance, Co. Ltd (KOR)**

regarding

the transfer of **Ms. Yeon-Koung Kim (KOR)** from Korea to Turkey

#### A. Background

1. The present appeal and cross appeal lodged by Fenerbahce Spor Kulubu (hereinafter “the Turkish Club”) and Heungkuk Life Insurance, Co. Ltd (hereinafter “the Korean Club”) against the Decision made by the President of FIVB on 6 September 2013 in determining issues arising from whether the Korean Club is the Club of Origin of Ms. Yeon-Koung Kim (hereinafter “the Player”) and the consequential determination therefrom.
2. The background leading to the dispute as found by FIVB President in his Decision is as follows.
3. On 30 June 2012, the personal services contract between the Korean Club and the Player expired.
4. On 1 July 2012, the Player and the Turkish Club concluded a personal services contract “for the period which covers the 2012/2013 and 2013/2014 seasons”.
5. Subsequently, a dispute arose between the Korean Club and the Turkish Club over whether or not the Player was still under a contract with the Korean Club.



6. On 7 September 2012, the Player, the Korean Club, and the Korean Volleyball Association (hereafter “KVA”) signed a document during a press conference (hereinafter the “7 September 2012 Document/Agreement”).
7. On 10 October 2012, after each party had submitted its position to the FIVB, the FIVB President rendered a decision in which he determined that the Korean Club was “the Club of Origin” based on the 7 September 2012 Document (hereinafter the “October 2012 Decision”).
8. On 22 October 2012, the KVA signed an International Transfer Certificate (hereinafter “ITC”) after a meeting with prominent sports entities in Korea allowing the Player to transfer to the Turkish Club from 15 October 2012 through 15 May 2013. No Club of Origin was included on the ITC.
9. On 2 February 2013, the Korean Club sent a letter to the FIVB to inform the FIVB that a condition to issuing the ITC agreed upon at 22 October 2012 meeting, namely that the Turkish Club, the Korean Club and the Player enter into a contract for the transfer of the Player overseas, had not been met.
10. On 1 April 2013, the Turkish Club requested a meeting with the FIVB to discuss the transfer status of the Player. No such meeting took place.
11. On 18 April 2013, the FIVB sent an email with its official response to the Korean Club and the Turkish Club in which it highlighted the October 2012 Decision and stated that any clubs who were interested in the Player should “negotiate the modalities of the player’s transfer for this (2012/2013) and the following (2013/2014) season with the Korean Volleyball Association (KVA) and with Heungkuk (the Korean Club), in accordance with the procedure laid down in the FIVB Sports Regulations. As a result, no further involvement of the FIVB is required at this stage”.
12. No further agreement was signed between the parties regarding the transfer.
13. No further written service agreement was signed between the Korean Club and the Player.
14. Both the Korean Club and the Turkish Club made submissions to the FIVB for determining the issue as to the status of the Player.
15. FIVB President made his decision on 6 September 2013 after deliberation and consultation with the President of the FIVB Legal Commission, to which the parties have lodged their respective appeals.



**B. The Decision made by the President of FIVB on 6 September 2013 (“the Decision”) which is under the appeal and cross appeal by the parties states that :**

16. The Korean Club is the Player’s Club of Origin for the 2013/2014 season.
17. The total amount of the transfer fee for the Player to the Turkish Club for the 2013/2014 season shall not exceed EUR 228,750. The Player’s transfer to the Turkish Club shall not be subject to any other or further restrictions of any kind.
18. After the 2013/2014 season the Player shall be deemed to have no Club of Origin, unless a valid employment contract is signed between the Player and any Korean club in accordance with the FIVB [Sports] Regulations.

**C. Appeal & Cross Appeal**

19. Pursuant to FIVB Disciplinary Regulations Article 20, the Appeals Panel was constituted by 5 members. The appointment of the Appeals Panel was agreed by the parties. The Appeals Panel has considered all of the facts and arguments presented by the parties and only refers in this Award to those facts and arguments relevant to make a final determination.

**D. Position of the Parties**

**The Korean Club’s Appeal**

20. The Korean Club submitted that the Korean Club is the “Club of Origin” of the Player even after the expiration of the service contract on 30 June 2012 under the local law, Korean League’s (“KOVO”) and KVA’s rules and regulations. The Korean Club further submitted that the determination of whether there is a contract between Korean Club and the Player should be decided in accordance with the local laws and regulations instead of the FIVB Sports Regulations.
21. The Korean Club further submitted that according to the Korean KOVO and KVA regulations, the Player was and still is bound by a contract with the Korean Club until she becomes a free agent. The Player will not have free agent status unless and until she has played for 6 years in the Korean League and subject to 25% participation rule in order to fulfill an annual participation in the Korean League. At the time of entering into the July 2012 Agreement with the Turkish Club, the Player had not gained the free agent status, therefore, she was still bound by a contract with the Korean Club. For that reason, the Korean Club was and always is the Club of Origin of the Player within the meaning of the FIVB Sports Regulations regarding the international transfer.



### **The Turkish Club's Appeal**

22. The Turkish Club also appealed against the Decision of the FIVB. It contended that the Korean Club is not the Club of Origin of the Player.
23. The Turkish Club submitted that once the term of the written service contract expired, there is no more contract existing between the Korean Club and the Player. The Player therefore has no Club of Origin.

### **E. Finding of Facts**

24. It was undisputed that :
  - (a) the term of the written contract between Korean Club and the Player expired on 30 June 2012;
  - (b) there is no further written contract or annual salary contract signed with the Korean Club;
  - (c) the Player signed a new contract with Turkish Club effective from 1 July 2012;
  - (d) the Player, the Korean Club and KVA signed a document in a press conference on 7 September 2012 ("the 7 September 2012 Document/Agreement") whereby the Player acknowledged she shall return to the Korean League after playing overseas. However, there are different interpretations of this document/agreement by the parties and the FIVB.

### **F. Reasons for the Appeals Panel's Decision**

#### **The Applicable Regulations**

25. The relevant provisions of the FIVB Sports Regulations ed. 2012 (hereinafter "the FIVB Sports Regulations") are listed in the Decisions, namely,

*"45.1.2. Rights of the NFs*

*NFs have the right to protect the integrity of their affiliated clubs and determine the procedure for the national transfer of players. They may establish national regulations for the transfer of players to foreign clubs, provided that such rules are supplementary to and not against the provisions of the FIVB Sports Regulations. In the event of discrepancy, the FIVB Sports Regulations shall prevail.*



#### *45.1.3 Rules for international transfers*

*Players and club must abide by the rules of their NFs for national transfers and by the FIVB Sports Regulations for all international transfers.*

*[...]*

*45.3.3 In case there is no legal impediment raised by the Federation of Origin, the Receiving Club negotiates the financial and transfer conditions with the Federation of Origin. If the player is under contract with his current club beyond the scheduled transfer date (hereinafter "Club of Origin"), the Receiving Club shall negotiate the financial and transfer conditions for the transfer of the player also with his Club of Origin. The FIVB (or a Confederation, within its jurisdiction) may limit the amount payable or transfer fees to the Federation and Club of Origin."*

26. The Appeals Panel agree with the conclusion of the FIVB president that since this transfer dispute involves clubs from different national federations and is international in nature, the Regulations apply to the exclusion of any national federation or national league (such as the KVA or KOVO) regulations.
27. As stated in the Note of Article 45 of the FIVB Sports Regulations regarding Transfer of Players, the FIVB remains the ultimate authority as regards the interpretation and application of these Regulations around the world.
28. The Appeals Panel found that there is no service contract in which the Player was obliged to play with the Korean Club at time of contract with Turkish Club on 1 July 2012. Further, at the time of the transfer and the date of the ITC, there was no service contract to that effect between the Player and the Korean Club.
29. The 7 September 2012 Document/Agreement is not a contract of employment. There has been disagreement between the parties as to the interpretation of this Document/Agreement as to contents due to different translations and its legal implication. The FIVB President has made the Decision on the basis and findings that the 7 September 2012 Document/Agreement was "indeed an agreement that defines the relationship between the Player and the Korean Club as one between the player and Club of Origin pursuant to the [FIVB Sports] Regulations." Nevertheless, both the Korean Club and the Turkish Club submitted before the Appeals Panel that the 7 September 2012 Document/Agreement was of declaratory nature, though they have contrasting interpretation as to the contents.



30. The Korean Club contended that the Player had acknowledged the existing right of the Korean Club being the Club of Origin and that the Korean Club's consent is a requirement for her transfer abroad. The Korean Club contended that its status of the Club of Origin has already existed under a valid contract before the entering into the 7 September 2012 Document/Agreement. This is on the basis that the Player is subject to the KVA/KOVO 6 year requirement notwithstanding that the term of the written service agreement or annual salary contract expired on 30 June 2012.
31. On the other hand, the Turkish Club submitted that the 7 September 2012 Document/Agreement would not bind the Player to the Korean Club. The Turkish Club further submitted that the Player herself disagreed with the interpretation of the Korean Club and that she agreed that the Korean Club is the former Club of Origin only. The Turkish Club is not a party to the 7 September 2012 Document/Agreement. It is unsafe to conclude that this document constituted a contract whereby the Korean Club would become a Club of Origin. It is hard to believe the Player would, without the consent of the Turkish Club, enter into a new agreement with the Korean Club, which would otherwise prejudice her position in the international transfer. At most, the 7 September 2012 can be regarded as a compromise agreement between the Player, the Korean Club and KVA. It should not be regarded as a contract to turn the Korean Club into the Club of Origin of the Player for the purpose of the Article 45.3.3 of the FIVB Sports Regulation.
32. Other than the legal advice and positioning letters from KVA, no primary documentary evidence was presented nor filed with the written submission of the Korean Club evidencing the KVA /KOVO Regulations that it relies upon to apply the 6 year requirement.
33. The Korean Club submitted that :
  - (a) In 2005, the KVA and KOVO Regulations applied a 5-year requirement, i.e., the Player is required to played in the Korean league for 5 years before she could become a free agent.
  - (b) In 2007, the KVA and KOVO Regulations were revised to apply a 6-year requirement.
  - (c) In 2010 the KVA and KOVO Regulations were revised to apply a 25% minimum of games played in the League per year to satisfy a year of eligibility.
34. No evidence was before the Appeals Panel that these three pertinent revisions were discussed with or presented to the Player when she signed her annual salary contract with the Korean Club in 2005 and subsequently when entering into the annual service contract.



35. Accepting the Korean Club's position may result in a Federation amending its Regulations to effectively retain the rights of a Player for an indefinite period of time.
36. Assuming the Player is subject to the Korean League and KVA Regulations at all times, whether or not she has actual knowledge and whether those Regulations are incorporated into her previous contracts with the Korean Club, this does not necessarily mean the term of the contract shall be automatically prolonged or extended to 5 or 6 years, which entitles the Korean Club's right in negotiating with the Turkish Club for the transfer of the Player. There shall be a meeting of the minds of the Player and the Korean Club before a contract, whether by renewal or extension, can be concluded.
37. For example, the Player cannot be forced to enter into a service contract to play if she decides not to play volleyball with a particular club.
38. Therefore, even if the 6-year rules applies to the Player, it is the KVA and not the Korean Club that would have the right to enforce it against the Player. According to the FIVB Sports Regulations, KVA, being the Federation of Origin, still has the right to negotiate for the transfer fee.
39. The Appeals Panel decides that the Player has no Club of Origin after 30 June 2012 and the FIVB President's Decision that "The Korean Club is the Player's Club of Origin for the 2013/2014 season." shall not be upheld.
40. The Appeals Panel decides that for the 2013/2014 season, the Player has no Club of Origin.

#### **Transfer Fee payable to KVA instead of the Korean Club**

41. Given that the Player has no Club of Origin, no transfer fee shall be payable from the Turkish Club to the Korean Club for 2013/2014.
42. Nevertheless, as to the Decision that :  
*"The total amount of the transfer fees of Player to the Turkish Club **for the 2013/2014 season** shall not exceed EUR 228,750. The Player's transfer to the Turkish Club shall not be subject to any other or further restrictions of any kind."*
43. For avoidance of doubt, as underlined in the FIVB President's Decision, subject to the payment of the transfer fee and the Player's duty to join her national team for FIVB and AVC competitions – as provided for in the FIVB Sports Regulations – the Player's transfer to the Turkish Club may not be

subject to or further restrictions of any kind (e.g. the signature by the Player of a new contract with the Korean Club).

44. The Appeal Panel sees no reason for which to modify this determination of the FIVB President. Accordingly, this ruling shall be valid and continue to apply to KVA only.
45. Consequently, the Appeal Panel hereby makes an order that the Transfer Fee currently held in escrow in FIVB account should continue to be held in escrow until the KVA and the Turkish Club agree on the Transfer Fee to be paid. If no agreement can be reached, the maximum fee imposed shall be paid.
46. After 2013/2014, the Appeals Panel agrees that the FIVB President's Decision should be upheld:  
  

*“After the 2013/2014 season the Player shall be deemed to have no Club of Origin, unless a valid employment contract is signed between the Player and any Korean club in accordance with the FIVB Regulations.”*
47. However, Transfer Procedure under the relevant FIVB Sports Regulations at the time of the transfer shall apply.
48. All other or further-reaching requests made by the parties are herewith rejected.

**G. Right of Appeal**

49. Pursuant to FIVB Disciplinary Regulations Article 23, a further appeal can be lodged with the Court of Arbitration for Sports regarding this decision within 21 days after receipt of this decision.



Ms. Emba LEUNG, Chair

Lausanne, 30 January 2014