Arbitration CAS 2012/A/2968 Konyaspor Kulübü Dernegi v. Ituano Futebol Clube, award of 23 July 2013

Panel: Prof. Massimo Coccia (Italy), President; Mr Pedro Tomás Marqués (Spain); Mr João Nogueira Da Rocha (Portugal)

Football
Training compensation
Notion of "former club"
Club responsible for paying the compensation
Completion of a player's training period

1. **The purpose of the training compensation rules are to encourage the training of young footballers by awarding financial compensation to clubs that have invested in the education and training of young footballers. In light of such purpose, the term "Former Club" must mean the *bona fide* and substantial former club, and not the club that is merely artificially involved in the transfer of a player without having partaken in any part of his education or training. In other words, "Former Club" means the previous club that actually trained the player and which really invested in the education and training of the Player. As a result, it is clear that a club to which a player has only been transferred for a mere day and with which he has never trained or played any exhibition or competitive matches cannot be considered the *bona fide* and substantial former club.**

2. **The club responsible for paying the training compensation must be the club that reaped the benefit of a player's training. Therefore, the club to which a player has only been transferred for a mere day and with which he has never trained or played any exhibition or competitive matches can also not be considered to have reaped the benefit of the player's training. Consequently, it must be the club for which the player actually played following his transfer that reaped the benefit of the player's education and training.**

3. **The proof to show that a player has completed his training period before the age of 21 is at the burden of the club that is claiming this fact. A player who regularly performs for the club's "A" team could be considered as having accomplished his training period, but a decision on this will have to be taken on a case-by-case basis as only under exceptional circumstances can a player be considered to have completed his training before the age of 21. If the club does not provide any data concerning the number of times the player was actually fielded in the first team, it fails to discharge its burden of proof in this regard.**

I. INTRODUCTION

1. This appeal is brought forth by the Turkish club Konyaspor Kulübü Dernegi against a decision of the FIFA Dispute Resolution Chamber (hereinafter the "DRC"), which held that the Appellant has to pay the Brazilian club Ituano Futebol Clube EUR 250,000 as training compensation in relation to the transfer of the Brazilian player K. (hereinafter the "Player"). The core of the dispute between the Parties concerns whether the Respondent can be deemed as the "Former Club" under the applicable 2005 Regulations for the Status and Transfer of Players (hereinafter the "Transfer Regulations") and, as such, whether it is entitled to receive from the Appellant training compensation in the amount calculated by the DRC.

II. THE PARTIES

2. The Appellant, Konyaspor Kulübü Dernegi (hereinafter also the "Appellant" or "Konyaspor"), is a professional football club established under the laws of Turkey with its headquarters in Konya, Turkey. It is a member of the Turkish Football Federation (TFF), which has been affiliated to FIFA since 1923.

3. The Respondent, Ituano Futebol Clube (hereinafter also the "Respondent" or "Ituano"), is a professional football club established under the laws of Brazil with its registered office in São Paolo, Brazil. It is a member of the Brazilian Football Confederation (CBF), which has also been affiliated to FIFA since 1923.

III. FACTUAL BACKGROUND

4. This section of the award sets out a brief summary of the main relevant facts, as established on the basis of the parties' written submissions, the CAS file and the content of the hearing that took place on 7 June 2013. Additional facts are set out, where material, in other parts of this award.

5. The Player was born in 1983.

6. According to the Player Passport issued by the CBF, he was registered within said Confederation as follows:

a) *as an amateur*:

- 8 July 1999 – 20 December 2001 — Ituano F.C., Itu
- 21 December 2001 – 20 January 2002 — "No record found"

b) *as a professional*:

- 21 January 2002 – 4 August 2002 — Ituano Soc. Civil de Futebol
- 5 August 2002 – 5 November 2002 — loaned to Esporte Clube Santo André
- 6 November 2002 – 11 January 2004 — Ituano Soc. Civil de Futebol
- 12 January 2004 – 31 December 2004 — loaned to Sport Club Internacional
- 1 January 2005 – 5 September 2005 — Ituano Soc. Civil de Futebol

- 6 September 2005 – 31 December 2005 loaned to Joinville Esporte Clube
- 1 January 2006 – 9 August 2006 Ituano Soc. Civil de Futebol
- 9 August 2006 – 10 August 2006 Olaria Atlético Clube

7. The Player had a professional employment contract with the Respondent that was valid from 21 January 2002 until 21 January 2007.

8. According to the Player, on 30 June 2006, while he was still under contract with the Respondent, he left Ituano without informing the club and arrived to Turkey on 1 July 2006, where he remained until December of 2006 when he decided to visit Brazil shortly for the Christmas holidays.

9. On 10 July 2006, Olaria Atlético Clube (hereinafter "Olaria") , which did not at that time have the economic or federative rights of the Player, agreed to transfer the Player to the Appellant in return for a compensation of USD 200,000. The parties to this transfer agreement agreed that said payment would be made after the International Transfer Certificate (hereinafter "ITC") was issued by the CBF to the TFF.

10. After the relevant ITC was requested from the CBF on 11 July 2006, the TFF received an ITC on 18 July 2006 (hereinafter also the "July ITC"). On 4 August 2006, the TFF registered the Player with the Appellant. On the same date, in accordance with the transfer agreement, the Appellant made two separate payments of 100,000 US Dollars each to a numbered account in the Cayman Islands.

11. Although the July ITC was deemed as an authentic document during the FIFA proceedings at the DRC, it has now been revealed the product of a forgery for the following reasons. First, on 30 April 2013, pursuant to Article R44.3 of the Code of sports-related arbitration (the "CAS Code") (applicable by reference of Article R57) and in the interest of discovering the truth, the Panel requested the CBF to provide the CAS with the official ITC that it had in its archives with respect to the Player's move to the TFF. Further to this request, on 7 May 2013, the CBF sent an ITC that was not dated 18 July 2006 but rather 10 August 2006 (hereinafter also the "August ITC"). Second, the July ITC contained several obvious mistakes – namely, (i) the use of an incorrect Player registration number, which according to the Player himself is actually 156.357 and not 375.701, and (ii) the reference to the *"Federação Carioca de Futebol"* which ceased to exist in 1978 when it merged with *"Federação Fluminense de Desportos"* to become *the "Federação de Futebol do Estado do Rio de Janeiro"*. Finally, even the Appellant, based on the above findings, admitted that the July ITC was a forgery, although it explicitly denied having taken part in said forgery or having any knowledge thereof.

12. On 8 August 2006, the Brazilian Common Labour Court in the city of Joinville (hereinafter the "Brazilian Labour Court"), after the Player requested to unilaterally terminate the employment contract it had with Respondent (which was valid until 21 January 2007), granted an *ex parte* interim measure suspending the effects of the contractual relationship with the Respondent on the basis of the Constitutional principle of the right to access work, and authorized the Player to sign a new contract with whatever entity he pleased.

13. Immediately after the provisional measure was instituted, the Player was registered with the Brazilian club Olaria on 9 August 2006 for a one-day period.

14. The very next day, on 10 August 2006, the CBF issued an ITC to the TFF so that the Player could formally join the Appellant.

15. According to the Player, his Agent and the Appellant directly informed him that the purpose of signing with Olaria for only a one-day period was (i) to allow him to pay the indemnity for unilaterally terminating his contract with Ituano in Brazilian Reals instead of Euros; and (ii) to save the Appellant from having to pay training compensation to the Respondent. The Appellant contests the veracity of this testimony.

16. Although the Player claims to have known through word-of-mouth that the Appellant paid USD 200,000 to acquire him, he declared that he did not receive any compensation from that transfer fee.

17. Further, while the Player acknowledged that he did sign an employment agreement with Olaria, he firmly avowed that he never had any contact with Olaria's President or any other member or representative of said organization. Moreover, he never trained with Olaria, never played for Olaria in friendly or official matches, and, in fact, never even went to Olaria's premises located in Rio de Janeiro. All of this was uncontested by the Appellant.

18. On 16 August 2006 the Brazilian Labour Court reconsidered the interim measure taken on 8 August 2006 and decided to revoke its effects immediately until the date of a subsequent hearing, which was scheduled for 21 August 2006. However, at this time the Player had already been registered with Olaria and transferred to the TFF.

19. On 21 August 2006, the procedure before the Brazilian Labour Court was archived due to the absence of the Player at the hearing, and thus no decision over the substance of the matter was taken by said Court.

20. On 11 May 2007, the Respondent filed a claim against the Appellant at the DRC requesting that it be paid training compensation in the amount of EUR 250,685 for the training and formation of the Player. The DRC ruled in favor of the Respondent, holding that the one day registration of the Player at Olaria should be disregarded since the aim of said registration was for the Appellant to circumvent the Transfer Regulations relating to training compensation.

21. The Appellant now challenges this decision, arguing that Olaria, and not the Respondent, should be considered the "Former Club" pursuant to the Transfer Regulations, and that consequently, the Respondent should not be entitled to any training compensation.

IV. RELEVANT FIFA PROVISIONS

22. As already mentioned, the version of the FIFA Transfer Regulations that must be applied to the case at hand is that of 2005. We hereinafter quote the relevant provisions of those Transfer Regulations:

23. *"**Article 20 Training Compensation***

Training Compensation shall be paid to a player's training club(s): (1) when a player signs his first contract as a Professional, and (2) on each transfer of a Professional until the end of the Season of his 23rd birthday. The obligation to pay Training Compensation arises whether the transfer takes place during or at the end of the player's contract. The provisions concerning Training Compensation are set out in annex 4 of these Regulations".

24. *"**Annex 4: Training Compensation***

Article 1 Objective

1. A player's training and education takes place between the ages of 12 and 23. Training Compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21. In the latter case, Training Compensation shall be payable until the end of the Season in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between 12 and the age when it is established that the player actually completed his training".

25. *"**Article 2 Payment of Training Compensation***

Training Compensation is due:

i) when a player is registered for the first time as a Professional; or,

ii) when a Professional is transferred between clubs of two different Associations (whether during or at the end of his contract) before the end of the Season of his 23rd birthday".

26. *"**Article 3 Responsibility to Pay Training Compensation***

1. When a player is registering as a Professional for the first time, the club for which the player is being registered is responsible for paying Training Compensation within 30 days of registration to every club for which the player was registered (in accordance with the players' career history as provided for in the player passport) and that has contributed to his training starting from the Season in which he had his 12th birthday. The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club. In the case of subsequent transfers of the Professional, Training Compensation will only be owed to his Former Club for the time he was effectively trained by that club".

27. *"**Article 5 Calculation of Training Compensation***

1. As a general rule, to calculate the Training Compensation due to a player's Former Club(s), it is necessary to take the costs that would have been incurred by the New Club if it had trained the player itself.

2. Accordingly, the first time a player registers as a Professional, the Training Compensation payable is calculated by taking the training costs of the New Club multiplied by the number of years of training in principle from the Season of the player's 12th birthday to the Season of his 21st birthday. In the case of subsequent transfers, Training Compensation is calculated based on the training costs of the New Club multiplied by the number of years of training with the Former Club".

V. DECISION OF THE FIFA DISPUTE RESOULTION CHAMBER

28. On 1 March 2012, the DRC adopted the decision now in appeal before the CAS.

29. First, on the basis art. 3 para. 1, the DRC examined its jurisdiction to rule upon the dispute and held that in accordance with art. 24 para. 1 and art. 22 lit. d) of the Transfer Regulations, it had competence to decide a case relating to training compensation between two clubs belonging to different associations.

30. Then, taking into consideration that the Player was registered with the Appellant on 4 August 2006, and considering that the Appellant lodged a claim before FIFA on 11 May 2007, the DRC

ruled that the appropriate regulations to govern the substance of the matter had to be the 2005 edition of the Transfer Regulations.

31. After establishing its competence and the applicable rules, the DRC entered into the substance of the matter, beginning with a summary of the general rule of training compensation:

"…as a general rule, training compensation for a player's training and education is, in principle, due when a player is registered as a Professional for the first time and in case of a subsequent transfer of a Professional, Training Compensation will only be owed to his former club for the time he was effectively trained by that club…".

32. Given that the positions of the Parties were diametrically opposed and that the information provided by both national associations was so contradictory, the DRC deemed it necessary to examine the circumstances of the case in order to establish the player's career history and, *a fortiori*, to establish whether the Appellant owed training compensation to the Respondent. In other words, the DRC had to determine whether there was an attempt to circumvent FIFA's training compensation rules. The DRC held as follows:

"In continuation, the Chamber turned its attention to the Claimant's position, according to which the player had, upon his specific request, asked his contract with the Claimant to be terminated by an ordinary Brazilian Labor Court on 8 August 2006 and was registered one day later with Olaria. The Player had, however, allegedly already been training with the Respondent since 24 June 2006, fact that was not contested by the Respondent, and had already signed an employment contract with the latter club on 7 July 2006. The Chamber equally noted that the Claimant provided FIFA with several internet releases from the Respondent's website, which mentioned that the player had been transferred to them at the end of June 2006 and gone to the pre-season camp at the end of July 2007. Once again, the Chamber reiterated that the presence of the player at the Respondent was not contested by the latter club.

[…]

In this regard, the Chamber turned its attention to the argumentation provided by the Respondent regarding the registration of the player with Olaria and noted that the Respondent had remained rather vague, even contradictory, with regard to the fact that the player was supposed to be registered with Olaria for one day, while he was already in Turkey since the end of June 2006, and had even signed an employment contract there one month prior to said registration. In addition, and recalling the general legal principle of the burden of proof contained in art. 12 par. 3 of the Procedural Rules, the DRC noted that the Respondent never tried to demonstrate with convincing documentary evidence that the Player had ever been at the premises of Olaria, not to speak about having participated to training or even played matches for said club.

In view of the foregoing, the DRC was eager to underline the fact that it could not acquire the certainty that the player had indeed played for Olaria. On the contrary, the Chamber was of the opinion that Olaria did not appear to have benefitted from the training efforts invested by the Claimant and that, in reality, the player had always played for the Respondent since his registration already on 4 August 2006, i.e. 5 days prior to his alleged registration for Olaria on 9 August 2006.

In view of the above-mentioned considerations, the Dispute Resolution Chamber was unanimously of the opinion to be in the presence of clear attempt to circumvent the Regulations relating to training compensation.

[…]

Therefore, the Chamber concluded that the registration with Olaria should be disregarded and training compensation is due to the Claimant by the Respondent".

33. As for the calculation of training compensation, the DRC ruled the following:

"Turning its attention to the calculation of training compensation, the Chamber referred to art. 3 par. 1 of Annex 4 to the Regulations, which stipulates that the amount payable is calculated on a pro rata basis according to the period of training that the player spent with the training club, as well as to art. 5 par. 1 and 2 of Annex 4 to the Regulations, which stipulates that as a general rule, it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself and thus it is calculated based on the training costs of the new club multiplied by the number of years of training with the former club.

In continuation, the Chamber took due note that according to the information provided by the TFF, the Respondent was a category 2 club at the time the player was registered for it during the season 2006/2007. Consequently, the Chamber took into account that the indicative training costs for a category 2 club and member of a national association affiliated to the "Union des associations européennes de football" (UEFA) amount to EUR 60,000 (cf. circular nr. 1085 dated 11 April 2007).

Consequently and taking into account all the above-mentioned elements as well as art. 5 par. 3 of Annex 4 to the Regulations, the Dispute Resolution Chamber decided the Claimant was entitled to receive training compensation form the Respondent in an amount of EUR 250,000…".

34. Accordingly, the DRC awarded training compensation to Ituano in the amount of EUR 250,000 to be paid by Konyaspor within 30 days as from 8 October 2012, the date of notification of the DRC decision, and additionally, interest at the rate of 5 percent *p.a.* should the amount above not be paid within the prescribed deadline.

VI. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

35. On 24 October 2012, pursuant to Article R47 of the Code and Article 63 of the FIFA Statutes, the Appellant filed a Statement of Appeal with the CAS to challenge the decision taken by the DRC on 1 March 2012 and notified to the parties on 8 October 2012. Subsequently, on 8 November 2012, the Appellant filed the Appeal Brief.

36. On 1 February 2013, Respondent requested that it be provided with a copy of FIFA's entire file, as the Respondent's previous legal representative had failed to forward it. Given that it would take time for the CAS to provide the Respondent with the aforementioned documentation, it also requested that an extension of the deadline to submit the relevant answer be granted.

37. On 6 February 2013, the CAS Court Office. at the request of the President of the Panel and pursuant to Article R57 of the Code of sports-related arbitration (the "CAS Code"), invited FIFA to provide it with the complete case file produced by FIFA in connection with the dispute at hand. It also informed the Appellant that it had until 8 February 2013 at noon to object to the Respondent's request for an extension.

38. On 8 February 2013, the Appellant stated that it had no objection with respect to the Respondent's request for an extension. Additionally, it also requested to CAS to provide it with a copy of the FIFA file.

39. On 1 March 2013, the CAS enclosed a copy of the complete FIFA file in a letter to the Parties and reminded the Respondent that it would have 20 days from receipt of said letter by DHL, to submit to the CAS an answer in accordance with Article R55.

40. On 19 March 2013, at the request of the Respondent, the CAS attached a copy of the DHL report attesting the date of delivery to the Respondent of the CAS letter of 1 March 2013.

41. On 2 April 2013, the CAS acknowledged receipt of the Respondent's answer filed on 25 March 2013, a copy which was enclosed for the Appellant's attention. The CAS also informed the Parties that unless they would later agree or the President of the Panel would so order, the Parties would not be authorized to supplement or amend their requests or their arguments nor to produce new exhibits, nor to specify further evidence on which they intended to rely, after the submission of the appeal brief and of the answer. Finally, the Parties were invited to inform the CAS Court Office by 9 April 2013 whether they preferred a hearing to be held or not.

42. After the Parties completed their written submissions, on 16 April 2013 the Respondent sent a letter to the CAS in which it explained that as a result of the contradictory information that was provided by both the TFF and the CBF regarding the date of issuance of the Player's ITC, it decided to directly request from the CBF the necessary clarification. In response, on 9 April 2013, the CBF confirmed that the Player's ITC was actually issued on 10 August 2006 in favor of the TFF. It annexed to this letter the relevant ITC along with an official declaration made by the CBF. Based on this ITC, the Respondent argued that the July ITC introduced by the Appellant in the Appeal Brief was a forgery, and cited the basic mistakes it found in the document. Further, it requested that the Appellant be condemned to pay an extra compensation for its procedural bad faith.

43. On 17 April 2013, the CAS Court Office advised the parties that the Panel had decided to hold a hearing and suggested the date of 7 June 2013. It invited the parties to confirm their availability for such date by fax on or before 23 April 2013. It also invited the Appellant to submit to the CAS, on or before 10 May 2013, the signed witness statement of A. stating the content of his testimony, and the Respondent, under the same deadline, to submit the signed witness statement of F. and of K., stating the content of their respective testimony as well. Finally, it acknowledged receipt of the Respondent's letter of 16 April 2013 (along with the annexed August ITC) and provided the Appellant until 26 April 2013 to respond.

44. On 18 April 2013, the Appellant informed its availability to attend the hearing on 7 June 2013. On 23 April 2013, the Respondent informed its availability to attend the hearing on said date. On 24 April 2013, the CAS confirmed that the hearing would be held on 7 June 2013 at the CAS headquarters in Lausanne, Switzerland.

45. On 25 April 2013, the Appellant objected to the introduction of the Respondent's arguments contained in the 16 April 2013 letter and of the ITC attached thereto. It requested the CAS to disallow said new claims and evidence raised by the Respondent on the basis that the Parties had already completed the exchange of written submissions.

46. On 30 April 2013, the CAS informed the Parties that said claims and evidence were inadmissible because the date of their receipt did not constitute an exceptional circumstance under Article R56 of the Code. In particular, it noted that while the Respondent did not actually receive the ITC dated 10 August 2006 until 9 April 2013, the Respondent failed to provide any indication

explaining why it could not have obtained it at an earlier stage and filed it together with its answer. However, the Panel also noted that according to Article R44.3 of the Code (applicable by reference of Article R57), it had the right to order at any time the production of additional documents and proceed with any other procedural step. In light of this, and in view of the importance of discovering the truth, especially where a possible forgery and the trust of an official document were at stake, the Panel decided to request from the CBF the ITC that they had in their archives and the TFF to provide an updated Player's Passport.

47. On 10 May 2013, the CAS sent to the Parties (i) the Respondent's letter dated 8 May 2013 in which it provided the signed witness statements of F. and K., along with the English translations thereof, and confirmed their attendance to the hearing; (ii) the letter of the CBF dated 7 May 2013 containing the Player's ITC that was issued to the TFF on 10 August 2006; and (iii) the letter of the TFF dated 9 May 2013, in which it attached the Player's Passport and confirmed that the Player was registered with the Respondent on 4 August 2006.

48. On 10 May 2013, the Appellant confirmed that it would be represented by Ersu Oktay Huduti and H. Can Biçakci and attached a signed copy of the testimony of A., his statement and a copy of his passport.

49. On 23 May 2013, the Respondent enclosed in a letter the original copies of the signed witness statements of both F. and K.

50. On 29 May 2013, the CAS acknowledged receipt of the Order of Procedure signed by the Respondent.

51. On 31 May 2013, the CAS acknowledged receipt of the Order of Procedure signed by the Appellant.

52. On 7 June 2013, the hearing was held as scheduled in the CAS headquarters in Lausanne, Switzerland. The Panel was present, assisted by Mrs Pauline Pellaux, counsel to the CAS. Messrs Ersu Oktay Huduti and H. Can Biçakci were present as counsel for the Appellant, whereas Mr Gonçalo Almeida was present as counsel for the Respondent. F. and K. were in attendance as witnesses, whereas A. was not. At the closure of the hearing, the Parties acknowledged that their right to be heard and to be treated equally had been adequately protected by the Panel.

VII. OVERVIEW OF THE PARTIES' POSITIONS

53. The following is a brief summary of the parties' submissions and do not purport to include every contention put forth by the parties. However, the Panel has thoroughly considered in its discussion and deliberation all of the evidence and arguments submitted by the parties, even if no specific or detailed reference has been made to those arguments in the following outline of their positions and in the ensuing discussion.

VII.1 The Appellant: Konyaspor Kulübü Dernegi

a) Written Submissions

54. In its written submissions, the Appellant first argues that training compensation is only due to Olaria, as it, and not the Respondent, is the "Former Club" under the Regulations.

55. The Appellant points to Article 3.1 of Annex 4 of the Transfer Regulations to demonstrate that training compensation is due only to a "Former Club" when there is a transfer of a professional (*"In the case of subsequent transfers of the Professional, Training Compensation will only be owed to his Former Club for the time he was effectively trained by that club"*).

56. To support its contention that Olaria is the "Former Club", the Appellant asserts that: (1) the Appellant and Olaria signed on 10 July 2006 a transfer agreement for the transfer of the Player; (2) the Player was registered for the Club pursuant to an ITC dated 18 July 2006 which shows that the Player was transferred from Olaria to the Appellant; and (3) the Player was registered with the Appellant on 4 August 2006. With regard to that ITC, it emphasizes that the DRC decision stated the following: *"It is further not contested that the player had been transferred definitively from the CBF to the TFF based on an 'IRTC' dated 18 July 2006, following an ITC request made by the TFF on 11 July 2006"*. However, as previously mentioned, the Appellant later admitted during the hearing that the July ITC had been forged by an unknown party.

57. Second, the Appellant contests the DRC's position that it attempted to circumvent the Regulations to avoid paying training compensation. In support, it argues that *"the training compensation due to Ituano could be calculated for a maximum of two and a half seasons and the amount is almost equivalent to the compensation Konyaspor paid to Olaria. Therefore it is clear that the appellant would not have transferred the Player from Olaria for almost the same amount and would not have risked paying both the training compensation and the transfer fee"*. In other words, the Appellant maintains that, from a logical standpoint, it could not be considered to have acted in bad faith because the only party that could have benefited from said alleged bad faith behavior was Olaria.

58. In the alternative, the Appellant argues that if the Player's Passport is taken into consideration, it evidences that that the Player was registered as a professional on 21 January 2002 and thus, it was at that moment that the Player completed his training. As a result, the amount of training compensation should be reduced accordingly.

59. Finally, the Appellant questioned why the Respondent never requested any training compensation from Olaria.

b) Hearing

60. At the hearing, the Appellant argued that the claim brought forth by the Respondent for training compensation actually originated from a fraud and was thus to be considered a claim based on tort law. As such, it is the Appellant's view that the Respondent had the burden of proving that there existed some negligence or recklessness on the part of the Appellant pursuant to Article 41 of the Swiss Code of Obligations ("CO"), and that failure to satisfy said burden would result in no liability of the Appellant to pay training compensation. In this respect, the Appellant added that the purpose of training compensation is to compensate for the education and training of a Player, not to compensate for damages arising from a fraudulent act allegedly (but actually not) committed by the club acquiring said Player. Thus, since the Respondent had not submitted evidence proving negligence or recklessness on the part of the Appellant in the exchange of written submissions or at the hearing itself, no training compensation should be imposed on the Appellant.

61. Although it admitted that the July ITC was forged, the Appellant made it a point that it took no part in and had no knowledge of said document's falsification. In fact, it is the Appellant's

view that, like the Respondent, it was also a victim of the fraudulent activity. In other words, it paid the two separate installments of USD 100,000 in full belief that, based on Olaria's declarations and the July ITC, the Appellant was legitimately acquiring the Player. Once again, the Appellant supports this argument by alleging that the only party that could have benefitted from the purported fraudulent arrangement was Olaria.

62. Finally, the Appellant found it odd that the Respondent had not chosen to file a legal claim against Olaria to obtain remedies, but rather only filed a claim for training compensation before the DRC against the Appellant.

c) Prayers for Relief

63. The Appellant's prayers for relief, listed in the Appeal Brief (and confirmed at the hearing), read as follows:

"The Appellant requests the Honorable Court to:

- *accept the hereby appeal submitted against the FIFA DRC Decision passed on 1 March 2012 and received with grounds on 8 October 2012,*
- *annul the decision of the FIFA DRC and render a new decision declaring that Konyaspor Kulübü Dernegi is not liable to pay any training compensation to the Respondent.*
- *annul the decision of the FIFA DRC and render a new decision awarding a lower compensation to the Respondent if the above mentioned claim is rejected.*
- *Condemn the Respondent to pay all costs, expenses and fees relating to the legal procedures".*

VII.2 The Respondent: Ituano Futebol Clube

a) Answer

64. In the Answer, the Respondent argues that there was a clear contradiction between the position of the CBF and that of the TFF regarding the date of issuance of the Player's ITC and of his registration with the Appellant. If the Player's Passport issued by the CBF is taken into consideration, the Player's ITC must have been issued in favor of the TFF on 10 August 2006 because it is on that date that the Player was transferred to Konyaspor. However, if the Panel takes into account the July ITC and TFF's correspondence dated 13 September 2009, it seems that the relevant ITC was issued on 18 July 2006.

65. The Respondent asserts that under either scenario, independent of the correct version of the facts and dates of issuance of the relevant ITC, the Appellant is liable to pay training compensation to the Respondent.

66. In this regard, the Respondent maintains that *"if one would rely on the Appellant's position (regarding the date of signature of its employment contract with the player), on TFF's information (…) or on the player's ITC provided by the TFF [dated 18 July 2006] (…), it is undisputable that the player signed an employment contract with the Appellant on 7 July 2006, his ITC was issued on 18 July 2006 and he was finally registered with the latter on 4 August 2006*.

That said and taking into consideration that the player was registered with Olaria on 9 August 2006, i.e. after being registered with the Appellant (4 August 2006), the Appellant was effectively the player's New Club and consequently the one liable to pay training compensation to the Former Club, the Respondent".

67. On the other hand, the Respondent holds that if the Panel takes into account only the Player's Passport, the Appellant would still be liable to pay training compensation to the Respondent, particularly in view of the Player's fraudulent registration with Olaria, which was nothing but a desperate attempt to circumvent the Regulations. In support of its position, the Respondent highlights that the Player: (i) was registered with Olaria for only one day, most probably for a period of less than twenty-four hours; (ii) never participated in any training sessions with Olaria; (iii) never played in any friendly or official matches for Olaria; (iv) never presented himself at the service of Olaria; and (v) was in Turkey since June of 2006.

68. The Respondent is adamant that, in light of the above, the Player's registration with Olaria only occurred "on paper" and any alleged or so-called employment contract between the Player and Olaria did not reflect the will of the Parties. According to the Respondent, the Appellant, by "formally" registering the Player with Olaria, simply attempted to circumvent the Regulations to avoid having to pay training compensation, and this is a clear showing of bad faith.

69. Moreover, it alludes that such a strategy contravenes the basic principles and purpose of training compensation, which is essentially to financially compensate those clubs that have effectively contributed to the development of a player through training and education, i.e. not Olaria who the player never trained with or played for.

70. In conclusion, the Respondent reasserts that the timing and period of the player's so-called registration with Olaria was part of a fraudulent and reproachable strategy aimed at desperately and unlawfully avoiding the payment of training compensation to the Respondent.

71. Next, the Respondent stresses that the labor proceedings regarding the unilateral termination of the Respondent's contract with the Player did not make a decision over the substance of the matter. In fact, it points out that the Brazilian Labour Court, after it provisionally suspended the effects of the employment contract between the Respondent and the Player on 8 August 2006, and after it reconsidered said decision and revoked it on 16 August 2006, finally archived the labour proceedings without adjudicating the merits on account of the Player's absence at the hearing on 21 August 2006.

72. The Respondent finally rejects the validity and even the authenticity of the contract of 10 July 2006 by which Olaria would have "transferred" the Player to the Appellant, since the Respondent, and not Olaria was then the owner of the Player's sporting/federative and economic rights.

73. With regard to the calculation of training compensation to be paid by the Appellant, the Respondent points to Art. 3, Para. 1 of Annex 4 of the Regulations which reads: *"[…] In the case of subsequent transfers of the Professional, Training Compensation will only be owed to his Former Club for the time he was effectively trained by that club".*

74. Then, it indicates that Art. 5, Para. 1 of Annex 4 of the Regulations states: *"As a general rule, to calculate the Training Compensation due to the player's Former Club(s), it is necessary to take the costs that would have been incurred by the New Club if it had trained the player itself".*

75. Finally, the Respondent cites Para. 2 of this same article which establishes *in fine* that *"In the case of subsequent transfers, Training Compensation is calculated based on training costs of the New Club multiplied by the number of years of training with the Former Club"*.

76. Accordingly, the Respondent asserts that the training compensation due to it must be calculated as such: The Appellant, at the time of the Player's registration, was a football club participating in the 1st Football League of Turkey, it belonged to UEFA Category 2, and therefore had to pay an amount of EUR 60,000 per year as training compensation. Having received 1,523 days of training and education with the Respondent, the total amount due should be of EUR 250,356.16.

77. Pursuant to Art. 3 Par. 2 of Annex 4 of the Regulations, the Respondent also claims that the Appellant should have paid the amount just mentioned no later than 30 days after having registered the Player. Therefore, in addition to EUR 250,354.16, the Appellant has been liable to pay a default interest at a rate of 5% *p.a.* as from 4 September 2006 until the date of its effective payment. Notwithstanding the above, the Respondent is satisfied with the amount decided by the DRC.

b) The Hearing

78. At the hearing, the Respondent laid heavy emphasis on the fact that it considered the July ITC to be forgery, and that the true ITC was actually issued on 10 August 2006. To prove this it highlighted several mistakes in the July ITC, most notably: (i) the wrong player registration number, i.e. 375.701 instead of the correct 156.357 and (ii) that it referenced Olaria as being part of the *"Federação Carioca de Futebol"* a federation that ceased to exist in 1978, as opposed to the correct federation, the *"Federação de Futebol do Estado do Rio de Janeiro"*. Moreover, the Respondent stressed that the CBF, the only official entity responsible to issue the Player's ITC in favor of the TFF in order to be registered by the Appellant, sent to the CAS at the request of the Panel the August ITC.

79. Then, the Respondent emphasized that the Player was only registered with Olaria for one single day, and never actually trained with the club or was even present at Olaria's premises. In its view, the purpose of the one-day registration, especially in light of the fact that the Player was in Turkey continually since 1 July 2006, was to circumvent the Transfer Regulations and avoid paying training compensation. Such a scheme should not be allowed as it would open a "Pandora's box" and undermine the purpose of the Transfer Regulations.

80. Next, the Respondent argued that the Appellant cannot waive its responsibility under the Transfer Regulations to pay training compensation based on the fact that the Appellant might have been a victim of a fraud in which it allegedly took no part or had any knowledge thereof.

81. While the Respondent contested the Appellant's argument that the claim arose from the tort of fraud, in any case, it made it a point to demonstrate that the Appellant was in fact negligent with respect to the acquisition of the Player. For instance, it indicated that the Appellant paid two separate instalments of USD 100,000 as transfer fee compensation into a numbered account without the name of the alleged beneficiary, Olaria. Thus, it is not proven that the payment was actually made to Olaria.

82. With respect to the Appellant's alternative argument concerning the completion of the Player's training upon the signing of his professional contract, the Respondent cited that only under exceptional circumstances is a player considered to have completed his training before the age of 21. In fact, it is very normal for a player to turn professional before the age of 19, but rarely will this indicate that said player has completed his training.

83. Concerning why the Respondent chose not to file a claim against Olaria or the TFF, the Respondent stated that it was not legally obliged to do so and that it was the Appellant's responsibility to act against the party responsible for the fraudulent act.

c) Prayers for Relief

84. The Respondent's prayers for relief, listed in the Answer (and confirmed at the hearing), read as follows:

"In view of all the above factual and legal arguments, the Respondent hereby requests the Panel to:

A. Entirely uphold the formal decision taken by the Dispute Resolution Chamber on 1 March 2012 and served to the Parties on 8 October 2012, condemning the Appellant to pay to it the amount of € 250.000,00 (two hundred and fifty thousand Euros) plus default interest at the rate of 5 % p.a. as from 8 November 2012 until the date of its effective payment.

B. Condemn the Appellant to pay a financial contribution towards the legal and other expenses (e.g. communications, travel expenses and accommodation) incurred by the Respondent, in a minimum amount of CHF 15.000,00 (fifteen thousand Swiss Francs);

C. Condemn the Appellant, as the sole responsible for the present procedure, to bear the entire procedural costs".

VIII. JURISDICTION AND APPLICABLE LAW

VIII.1 Jurisdiction

85. First of all, the Panel observes that the CAS, as an arbitral body seated in Switzerland, is subject to the Swiss Private International Law Act (the "LDIP"). Under Article 186 of the LDIP, an arbitral tribunal shall rule on its own jurisdiction (*"le tribunal arbitral statue sur sa propre compétence"*). Accordingly, the CAS itself must decide whether it is competent to adjudicate the present appeal.

86. Second, the Parties are members of two national federations that are members of FIFA, and are thus indirect members of FIFA; as such, they are contractually bound by the FIFA regulations to which they have voluntarily adhered.

87. With this in mind, the Panel notes that the jurisdiction of the CAS in the matter at hand, which is not contested by the Parties, derives from Article R47 of the CAS Code, and Articles 62 and 63 of the FIFA Statutes.

88. Article R47 of the CAS Code so reads:

89. *"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".*

90. Article 63 of the FIFA Statutes reads as follows:

91. *"Appeals against final decisions passed by FIFA's legal bodies… shall be lodged with the CAS within 21 days of notification of the decision in question".*

92. It follows that the CAS has proper jurisdiction to hear this case.

VIII.2 Applicable Law

93. Article R58 of the CAS Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

94. Article 62(2) of the FIFA Statutes so reads: *"the CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

95. Accordingly, the Panel will decide the dispute pursuant to the various regulations of FIFA and, additionally, Swiss Law.

IX. MERITS

a) Which is the true ITC – the July or August ITC?

96. The Panel has been presented with two ITCs with different dates. The Panel finds that the August ITC is authentic, while the July ITC is a forged document. As pointed out by the Respondent, the July ITC contains glaring mistakes which clearly prove that a forgery occurred.

97. Most notably, the July ITC uses a registration number that does not pertain to the Player. A Player's registration number is a unique number that does not change throughout the career of the Player. Thus, had the July ITC been an authentic document, it would have used the Player's correct registration number, 156.357 (which was confirmed in their testimony by F. and the Player himself) instead of the incorrect number of 375.701.

98. Second, the July ITC states that Olaria is part of the *"Federação Carioca de Futebol"* which actually ceased to exist in 1978. Had the July ITC been an authentic document, it would have read *"Federação de Futebol do Estado do Rio de Janeiro"*, which was founded in 1978 and which manages all of the official tournaments within the state of Rio de Janeiro.

99. In addition to said mistakes, the Panel finds it of paramount significance that when it requested the CBF, pursuant to Art. R44.3 of the Code, to send the CAS the official ITC that it had in its archives with respect to the transfer of the Player, said national federation sent the CAS the ITC issued on 10 August 2006, and not the one dated 18 July 2006.

100. Finally, in the hearing the Appellant admitted that, based on the evidence presented, it also considered the July ITC to be fraudulent, although it clearly stated that it did not take part in nor had any knowledge of the forgery.

b) Does the claim arise out of tort liability or a contractual obligation?

101. The Appellant argues that the claim raised by the Respondent for training compensation arises from tort law. Specifically, it argues that the claim derives from a fraud and thus implies a possible extra-contractual liability which, according to Article 41 CO, places on the Respondent the burden of proving that the Appellant was negligent or partook in wilful misconduct.

102. However, the Panel finds that the Appellant's argument is misguided as the duty to compensate arises from a contractual relationship between the Parties. Indeed, both Parties, as members of their respective national federations (TFF and CBF), are also indirect members of FIFA and have accepted by reference the Transfer Regulations and the provisions regarding training compensation contained therein (see Federal Tribunal, judgment 4A_460/2008 of 9 January 2009). In any event, the Appellant – at the very least – consented to said provisions when it decided to use the Transfer Regulations, in which they are found, to request an ITC to register the Player (see Federal Tribunal, judgment 4A_548/2009 of 20 January 2010).

103. The Panel thus holds that the Transfer Regulations, having the character of private association rules, bind the Parties as a contractual document in force between them, with the consequence that Ituano's claim arises out of a contractual obligation.

c) Is the Respondent the "Former Club" pursuant to the Transfer Regulations?

104. According to Article 3.1 of Annex 4 of the Transfer Regulations, when there is a subsequent transfer of a professional player, only the "Former Club" is entitled to receive training compensation for the time he was effectively trained by that club. Thus, in order to determine whether the Respondent is owed training compensation, the Panel must determine whether under the Transfer Regulations the Respondent constitutes a "Former Club".

105. Before making such an assessment, the Panel first observes that the CAS has previously held in CAS 2009/A/1757 that the purpose of the training compensation rules are to encourage the training of young footballers by awarding financial compensation to clubs that have invested in the education and training of young footballers.

106. Indeed, in that case, the CAS panel held that *"the rationale for the provisions in the FIFA Regulations regarding training compensation is that clubs should be encouraged to train players and those clubs that carry out the training process successfully should be rewarded for their training efforts. By the same token, those other clubs which enjoy the fruits of that training process should be obliged to pay something in compensation for the training efforts engaged in by others"* (CAS 2009/A/1757 at para. 13).

107. Therefore, it is imperative that the formal requirements of the rules on training compensation and, particularly relevant in this case, the notion of "Former Club", be interpreted in a way that gives the intended meaning and effect to said provisions. In light of the object and purpose of the training compensation rules contained in the Transfer Regulations, the Panel thus holds that the term "Former Club" must mean the *bona fide* and substantial former club, and not the club that is merely artificially involved in the transfer of a player without having partaken in any part

of his education or training. In other words, "Former Club" means the previous club that actually trained the player and which really invested in the education and training of the Player.

108. In keeping with the above, after having carefully reviewed both parties' contentions and in view of the relevant part of Article 3.1 of Annex 4 of the FIFA Transfer Regulations (*"In the case of subsequent transfers of the Professional, Training Compensation will only be owed to his Former Club for the time he was effectively trained by that club"*), the Panel considers that Olaria cannot be deemed the *bona fide* and substantial "Former Club". In the present case, it appears that it is the Respondent that invested considerable training efforts during the key formative years of the Player's training and education from the age of 16 to 21, while Olaria did not expend any training efforts at all. In fact, according to the exchange of written submissions and the findings at the hearing, the Player was never even present at the grounds of Olaria. As the Player testified, he merely signed a contract with Olaria – without having any contact with that club's President, coaches or other representatives – as a tactical move so that he could pay the indemnity for unilaterally terminating his contract with the Respondent in Brazilian Reals instead of Euros. Moreover, as was admitted by the Player and not contested by the Appellant, he did not train with Olaria at all, or play in any exhibition or competitive matches for that club. Instead, the Player was educated and trained at the expense of the Respondent for practically his entire career before the age of 21 (with the exception of a few loan spells) before being transferred to Olaria "on paper" for a period of a mere one day and immediately thereafter being turned over to the Appellant. As a result, it is clear that Olaria was only artificially involved in the transfer of the Player and cannot be considered the *bona fide* and substantial former club. On the other hand, since the Respondent was the last club to have really carried out the training of the Player, it must be deemed the "Former Club" under the Regulations, and therefore, it is entitled to receive training compensation.

109. With respect to which party is liable to pay the training compensation due, the panel in CAS 2009/A/1757 held that the club responsible for paying the training compensation must be the club that reaped the benefit of a player's training: *"Since it is Inter that has benefitted from the training effort invested by MTK, it is also Inter that should be obliged to pay any sum of training compensation determined by the Panel. In this respect, Pieta Hotspurs does not appear to have benefitted from the training efforts… [since] the player was only registered with that club for 9 days and never even played a competitive match in Malta"* (CAS 2009/A/1757 at para. 25).

110. In this regard, the Panel finds that since the Player was only registered for one day and never trained or played any exhibition or competitive matches with Olaria, the latter did not reap the benefit of the Player's training. Consequently, coherently with CAS jurisprudence, it must be the Appellant, for which the Player actually played following his exit from Brazil, that reaped the benefit of the Player's education and training with the Respondent. As a result, it is the Appellant that is responsible for paying the training compensation due to the Respondent, regardless of whether the Appellant was involved in the artificial one-day transit through Olaria.

d) Did the Player complete his training when he signed his first professional contract?

111. With regard to the Appellant's argument concerning a possible reduction of the training compensation because the player had allegedly completed his training on 21 January 2002 (upon signing his first professional contract with the Respondent), CAS jurisprudence has held that a

player that regularly plays in the "A" team of a club is deemed as having completed his training. For instance, in CAS 2003/O/527, the panel reasoned that:

"L. signed his first non-amateur contract with the Respondent on 1 October 1996. During season 1996-1997, he played five times with the Respondent's "A" team. During season 1997-1998, he was engaged more regularly and played 15 times with the "A" team. At that time, he already spent many years with the Respondent's club and was noticed for his good technical skills and speed. L. can therefore be considered as having completed his training period before the beginning of season 1997-1998, in view of the scale, the characteristics and the level of game the Respondent's club at that time" (see also CAS 2006/A/1029).

112. Thus, in principle, it is possible that the Player might have completed his training at some point during his professional stints with the Respondent. However, according to FIFA Circular Letter no. 801 dated 28 March 2002, the burden of proof is on the Appellant to show that the Player had completed his training period before the age of 21:

"The Committee was asked to determine what triggers the end of a player's training and/or education. It maintained that it is a question of proof, which is at the burden of the club that is claiming this fact. A player who regularly performs for the club's "A" team could be considered as having accomplished his training period. The decision on this will have to be taken on a case-by-case basis".

113. Nevertheless, the Appellant has simply alleged, without further clarification or support, that according to the Player's Passport, *"the Player was registered as a professional on 21 January 2002 and therefore it is evident that he has terminated his training on such date"*; while, on the other hand, the Respondent has correctly stated that only under exceptional circumstances is a player considered to have completed his training before the age of 21. The Appellant has not provided any data concerning the number of times the Player was actually fielded in the Respondent's first team. The Panel finds, therefore, that the Appellant has failed to discharge its burden of proof in this regard; as a consequence, the Respondent is entitled to training compensation for the training and education of the player occurring during the seasons when he completed his 16th, 17th, 18th, 19th, 20th and 21st birthdays, amounting to a total of 1,523 (one thousand five hundred and twenty three) days.

e) What is the amount of training compensation due to the Respondent?

114. The Panel holds that the sum of training compensation was correctly calculated by the DRC.

115. As maintained by the DRC, the Appellant must pay to the Respondent training compensation based on the standard FIFA multiples. According to Art. 5 paras. 1 and 2 of Annex 4 of the Transfer Regulations, when calculating training compensation, it is necessary to take into account the costs that would have been incurred had the new club trained the player itself. Thus, the final calculation is made by multiplying the training costs per year found in FIFA Circular nr. 1085 dated 11 April 2007 with the number of years of training the player had with the former club.

116. Since the Appellant is an affiliate of UEFA and thus classified as a Category 2 club pursuant to FIFA Circular nr. 1085 dated 11 April 2007, it must pay 60,000 Euros per year that the Player trained with the Respondent. Having been trained and educated by the Respondent for 6 months of the 1999 season, the full 2000 and 2001 season, eight months of the 2002 season,

and the full 2003 season (i.e. 1,523 days), the total amount of training compensation due is of EUR 250,000.

117. The Panel also holds that, as the DRC correctly decided, the Appellant must pay a yearly interest of 5% on the said compensation as from 7 November 2012 (i.e., 30 days after 8 October 2012, the date of notification of the DRC's Decision) until the day of actual settlement.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed by Konyaspor Kulübü Dernegi against the decision adopted on 1 March 2012 by the FIFA Dispute Resolution Chamber is dismissed.

2. The decision adopted on 1 March 2012 by the FIFA Dispute Resolution Chamber is confirmed.

3. (…).

4. (…).

5. All other or further requests or motions submitted by the parties are dismissed.