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EHF Court of Arbitration

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Foreword of the EHF Court of Arbitration Council President

On behalf of the EHF Court of Arbitration Council, I am proud to present the first edition of the ECA Journal. The ECA Journal will aim at gathering awards rendered by the EHF Court of Arbitration, in a summarized and anonymous manner in order to comply with the Rules of Arbitration for the ECA and the inherent need for confidentiality.

The present first edition therefore gathers awards rendered ever since the implementation of the new EHF legal system entered into force following the EHF Congress held in Cologne, Germany in June 2011 (see chart p.3). As of the decision of the EHF Congress, an additional instance has been introduced to the EHF legal system, i.e. the EHF Court of Appeal, acting as a second instance body. With the introduction of this new instance, the number of recourse to arbitration has decreased; however, five cases were brought to the attention of our Court of Arbitration, enabling the Court to deal with issues such as payment of premiums, formal validity of the EHF on-site proceedings, due process, nature of referees' decisions, proportionality of fines etc.

Awards rendered demonstrate that all parties are equals; no treatment of favour depending on the concerned organisation is observable, enabling us to underline the independence of our Court of Arbitration.

Additionally, time being of essence in sport, the ECA has shown its ability to ensure quick proceedings, with an average proceedings length of 67 days from the opening of proceedings to the awards. This length is reduced to 40 days from the nomination of the panel to the award. In the case n°13 20232 1 C ECA, the award was rendered in 10 days, in application of the ECA Express Procedure set forth in the ECA Procedural Rules.

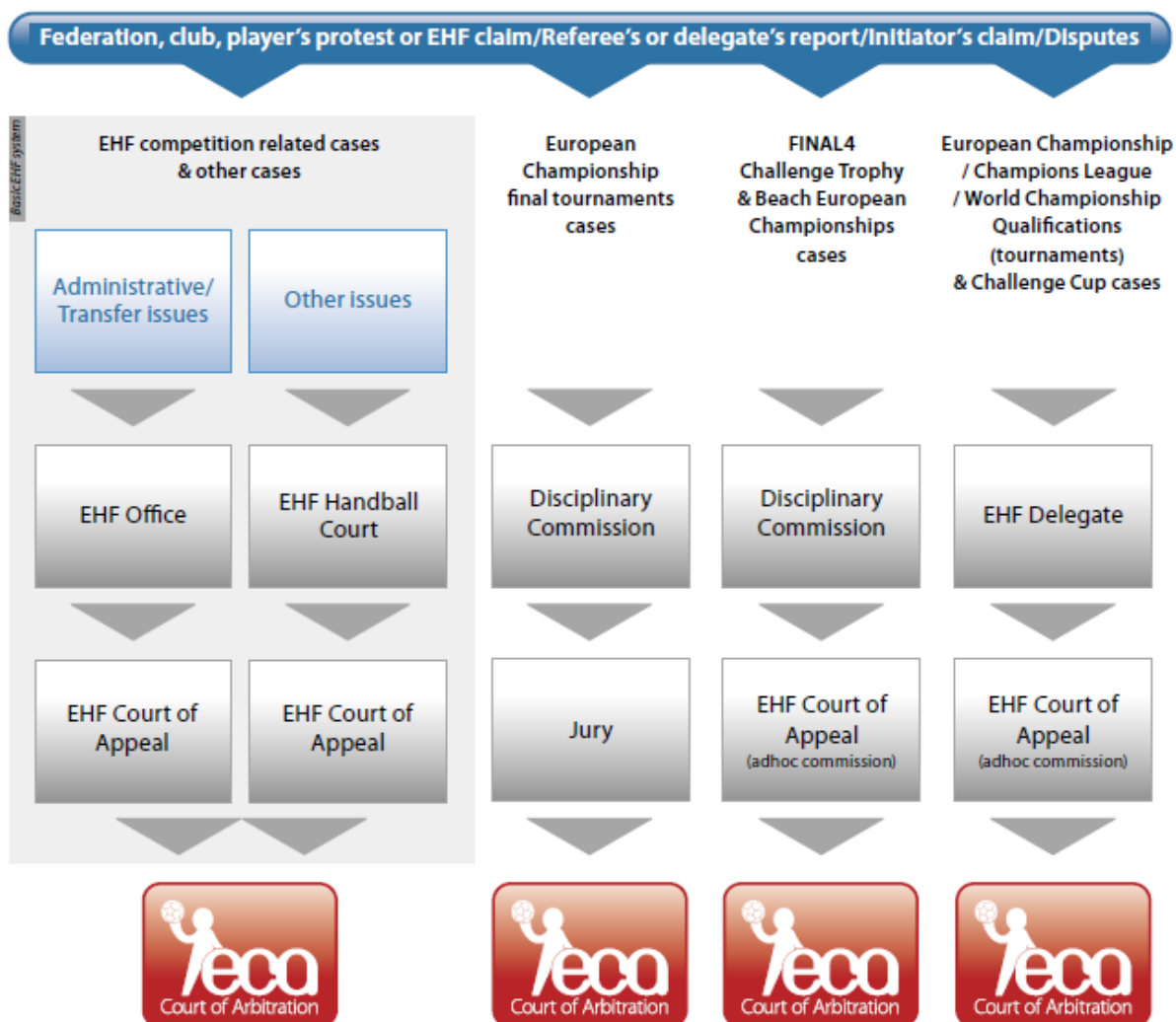
The present ECA Journal is part of a constant willingness to further develop the Court of Arbitration, being aware that the fast development of the sport handball requires a tailor-made legal system able to answer the needs of all handball stakeholders.

We wish and hope to be able to present you further editions of the ECA Journal, which as any new tool, can be further completed and enriched. Consequently, do not hesitate to bring ideas you may have to our attention.

The ECA Council wishes you an agreeable reading and invites you to visit our website by following the present link <http://www.eca-handball.com/> for further information on our Court of Arbitration.

Jörgen Holmqvist
ECA Council President

ECA and the EHF legal system



National cases

Final decisions from internal legal bodies of national handball federations
+ Recognition ECA competence*



Cases in other sport areas

Final decision from sports organisations
Dispute related to sport outside of sports organisations competence
+ Recognition ECA competence*





EHF Court of Arbitration

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**EHF Court of Arbitration
Arbitral Award
(Summarized and anonymous)
Case n° 11 20126 5 1 ECA
7 March 2012**

In the arbitration between

Mrs. X...,
as the Claimant

and

The handball club Y...,
as the Respondent

Panel

Juan de Dios Crespo Perez (Spain)

Andreas Joklik (Austria)

Alan Soric (Croatia)

*Contractual relationship; ECA jurisdiction;
Payment of premiums; Applicability of a
Club's Board Ordinance.*

I. Facts

A. Parties

1. Mrs. X... is a former professional handball player employed by handball club Y.

2. Handball club Y..., women handball club, playing in the first women's handball league of the national handball federation of ... and in the women's champions League organized by the European Handball Federation.

B. Facts

3. In August 2008, the Claimant, Mrs. X... entered into a contract with the

Respondent, the handball club Y..., whereby she was employed by the club as professional handball player from 1 August 2008 to 30 June 2010.

4. On 10 July 2010, the Claimant and the Respondent signed a new employment contract valid as from 1 August 2010 until 30 June 2011.

5. The contractual relationship ended between the Claimant and the Respondent on 30 June 2011 upon expiration of the second employment contract signed on 10 July 2010. Mrs. X... thereafter retired from her professional handball carrier.

6. On 19 August 2011, Mrs. X... wrote to the President of handball club Y... claiming that the club did not fulfil its contractual obligations regarding the payment of premiums for the seasons 2009/2010 and 2010/2011 and requested the club to pay her the amount of €45.700.

7. On 19 September 2011, Mrs. X..., via her legal representative, wrote to the President of handball club Y... and requested to be informed about how and when the club would settle its debt towards the Claimant.

II. Proceedings before the EHF Court of Arbitration

8. On 23 November 2011 the Claimant filed a claim with the EHF Court of Arbitration requesting the initiation of ECA proceedings to solve the dispute between her and the handball club Y... regarding the payment of premiums defined in the employments contracts signed in August 2008 and on 10 July 2010.

A. Appointment of the panel

9. The Claimant and the Respondent nominated an arbitrator in accordance with Articles 1.2 and 1.3 of the *Rules of Arbitration for the ECA – Procedural Rules*.

10. On 21 December 2011, one day after having been informed of the nomination made by the Respondent, the Claimant challenged the ECA arbitrator nominated by the Respondent for lack of independence.

11. After having obtained statements and information from the Claimant, the Respondent and the respective arbitrator on the challenge, the ECA Council decided on such challenge pursuant to article 4.4 of the *Rules of Arbitration for ECA – Procedural Rules*, on 25 January 2012. The challenge was accepted and the Respondent was requested to nominate a new arbitrator.

12. The Respondent nominated a new arbitrator in accordance with Article 1.3 of the *Rules of the ECA – Procedural Rules* and the requirements defined in the decision of the ECA Council on the arbitrator's challenge.

13. The Chairman of the arbitral chamber was nominated in accordance with Article 1.4 of the *Rules of Arbitration for the ECA – Procedural Rules*.

14. On 8 February 2012 the EHF Court of Arbitration informed the Claimant and the Respondents on the final composition of the EHF Court of Arbitration chamber.

15. Thereafter the parties did not raise any objection or challenge as to the composition of the ECA arbitral chamber.

III. Submissions

A. Claimant's submissions

16. Mrs. X... claims that the Respondent owes her €45.700 of premiums for the results achieved during the seasons 2009/2010 and 2010/2011 according to the employment contracts signed with handball club Y... in August 2008 and on 10 July 2010.

17. The Claimant specifies that according to the employment contract signed with the club in August 2008, handball club Y... should have paid her €25.000 of premiums for the season 2009/2010. Moreover according to the employment contract signed with the club on 10 July 2010, handball club Y... should have paid her €28.200 of premiums for the season 2010/2011.

18. However at the date of the filing of the claim, she had only received €7.500 of premiums from handball club Y...; €3.500 paid in November 2010 and €4.000 paid in July 2011.

19. The Claimant agreed to sign a new employment contract for the season 2010/2011 with handball club Y... based on the following offer made by the President of the club: the amount of the monthly salary paid to the player would be decreased in comparison to the one agreed on in the contract signed in August 2008 but the amount of premiums for the sport results achieved would be increased.

20. Moreover before the signing of the second employment agreement on 10 July 2010, the President of handball club Y... promised Mrs. X... to pay the premiums due to the player for the results achieved during the season 2009/2010 in December 2010.

21. In June 2011, the Respondent promised to pay the remaining premiums amounts due to Mrs. X... in August 2011.

22. Finally the Claimant mentions that during the three years she played for handball club Y..., she fulfilled all her contractual obligations diligently and successfully, keeping the reputation and protecting all interests of the club.

23. The Claimant requests the costs of the ECA arbitration proceedings to be fully borne by handball club Y....

B. Respondent's submissions

24. Regarding the Claimant's request of payment of €25.000 premiums for the results achieved during the season 2009/2010, the Respondent does not dispute the legal ground of the claim but requests the deduction of the €7.500 already paid by handball club Y... to Mrs. X... from the requested amount.

25. Moreover the Claimant had an accident on 1 May 2009 with the car owned by handball club Y... which caused significant damages to the car. According to the police report of the accident, the Claimant was the sole responsible of the accident. The damage costs amounting to €9.100 were entirely paid by the Respondent. The Respondent therefore requests, according to Article 4 and 5 of

the employment contract signed in August 2008 and Article 148, §1 and 2 of the Law on Obligations of the concerned country, to set-off this amount from the global amount due to the Claimant.

26. Regarding the Claimant's request of payment of €28.200 premiums for the results achieved during the season 2010/2011, the Respondent claims that the deadline for the fulfillment of the respective obligation is 30 June 2012 and has therefore not expired yet.

27. According to Article 3, paragraph 3 of the employment contract signed on 10 July 2011, the payment conditions of the premiums to the Claimant are defined in the Ordinance on Premiums and Sanctions decided by the Steering Committee of handball club Y.... Article 5 of such Ordinance states that the global amount of the premiums shall not paid later than twelve months after the end of the respective season.

28. Moreover in accordance with Article 3 the aforementioned Ordinance, a commission established by the Ordinance shall estimate the contribution of the player during the season and define the final amount of the premiums to be paid.

29. Handball club Y... therefore requests the claim of Mrs. X... regarding the payment of premiums for the season 2010/2011 to be set aside.

C. Claimant's reply to specific submissions from the Respondent

30. The Claimant states that no due premiums were paid to her for the season 2009/2010. The payments amounting to

€7.500 that she received from handball club Y... were a part of the premiums due to her for the season 2010/2011.

31. Moreover Mrs. X... claims that the use of a vehicle from handball club Y... is not mentioned in the employment contract signed with the club, the EHF Court of Arbitration has no jurisdiction to solve this dispute and to evaluate the damage responsibility. The Claimant therefore requests the claim of the Respondent regarding the liability for the car damages to be set aside.

32. Finally the Claimant questions the validity of the Ordinance referred to by the Respondent.

IV. Factual and Legal Appreciation by the EHF Court of Arbitration

A. Admissibility

33. The claim filed by Mrs. X... is formally admissible, which is undisputed by the Respondent.

B. Jurisdiction of the EHF Court of Arbitration

34. According to Article 1.1 of the *Rules of Arbitration for the ECA – Statutes*:

“The EHF Court of Arbitration shall have competence whenever disputes arise between the EHF and National Federations, between or among National Federations, between National Federations and their clubs on cross-border matters, in the event of disputes relating to the EHF competitions, as well as in disputes between and among

players, player’s agents, the EHF, National Federations, and clubs.”

35. Article 8 of the employment contract signed by the Respondent and the Claimant in August 2008 (“Special contract on mutual rights and obligations”) states:

“In case of dispute or any possible incompliance with the Contract, both parties acknowledge the EHF Commission’s arbitration”

36. Article 8 of the employment contract signed by the Respondent and the Claimant on 10 July 2010 (“Special agreement on regulating mutual rights and obligations”) states:

“In the event of dispute, for resolving possible violations thereof, both Contracting parties accept jurisdiction of the arbitration commission of the EHF.”

37. The EHF Court of Arbitration is the only arbitration commission related to the European Handball Federation, the “EHF”. The other legal bodies of the European Handball Federation are not competent, according to the *EHF Statutes*, to settle contractual disputes between players and clubs at national level.

38. It follows that the Respondent and the Claimant decided to submit any dispute arising out of the aforementioned contracts to the EHF Court of Arbitration.

39. The claim of Mrs. X... being related to the application of the contract provisions regarding the payment of premiums, it follows that the EHF Court of Arbitration has jurisdiction to hear and decide on this case.

40. The jurisdiction of the EHF Court of Arbitration in the present case is undisputed by the parties.

C. Applicable Law

1. On the procedure

41. Pursuant to Article 12(1) of the *Rules of Arbitration for the ECA – Procedural Rules*, the ECA arbitral chamber has complete discretion to determine the procedure as long as the obligatory provisions of the Austrian code of civil procedure and the rules of arbitration set forth herein are complied with.

2. On the merits

42. The relevant stipulations of the contracts and agreements concluded between the Claimant and the Respondent and in particular the employment contracts signed by the parties in August 2008 (“Special contract on mutual rights and obligations”) and on 10 July 2010 (“Special agreement on regulating mutual rights and obligations”) shall prevail to solve the present dispute.

43. Should the provisions of those contracts and agreements not be sufficient to solve the legal issues at stake, the law applicable to the contract, i.e. the laws of the country N..., shall apply.

D. Factual and Legal appreciation by the EHF Court of Arbitration

1. Facts

44. The facts of the case are clear. The Claimant and the Respondent concluded

two employment contracts: one in August 2008 valid as from 1 August 2008 until 30 June 2010; one on 10 July 2010 valid as from 1 August 2010 until 30 June 2011.

45. Article 2.2 of the first employment contract entered into by the parties and signed in 2008 states:

“The Club shall be obliged to provide for bonus for each season to the player, for each of the following successes of the Club:

- *The Champions League Placement (if the Club plays in the qualifications)*
5.000€
- *Final Four of Regional League*
5.000€
- *The Winner of the Regional League*
5.000€
- *The Quarter Finals (main group) Champions League*
5.000€
- *The Semi-Finals Champions League*
10.000€
- *The Winner of the Champions League*
10.000€
- *The Finals of the Cup Winners Cup and EHF Cup*
5.000€
- *The Winner of the Cup Winners Cup and EHF Cup*
10.000€

Therefore the maximum possible compensation for the bonus per season (in case of winning the Champions League and Regional League) is 40.000€.”

46. Article 2, paragraph 6 of the second employment contract entered into by the parties and signed on 10 July 2010 states:

“The Player shall have the right to premium for the achieved results namely:

Champions League

Qualifying group passing to the next stage

5.000€

Semi-finals

10.000€

Defeat in the Champions League final

15.000€

Winning the Champions League

25.000€

Winning home game

500€

Draw in away game

500€

Winning away game

1.000€

Regional League

Winning the League

5.000€

Winning home game

100€

Winning away game

200€

Point in away game

100€"

47. Based on the information on the results achieved by handball club Y... provided by the Claimant, verified by the arbitral chamber and not disputed by the Respondent, the aforementioned contractual provisions foresee the following amount of premiums to be paid from the club handball club Y... to the Claimant:

- for the season 2009/2010: € 25.000
- for the season 2010/2011: € 28.100

48. Since 1 August 2010 until to date, the Claimant received premiums in the amount of € 7.500 from the Respondent.

2. Main issues

49. The main issues to be resolved by the arbitral chamber are:

- a. The jurisdiction of the EHF Court of Arbitration to decide on the claim of

the Respondent regarding the car accident;

- b. The amount and the date of payment of the premiums due for the season 2009/2010;
- c. The applicability of the Ordinance on Premiums and Sanctions enacted by the Steering Committee of handball club Y...;
- d. The amount and the date of payment of the premiums due for the season 2010/2011.

- a. **The question of the jurisdiction of the EHF Court of Arbitration to decide on the claim of the Respondent regarding the car accident**

50. The accident of the Claimant with the car of handball club Y... referred to by the Respondent in its memorandum took place on 1 May 2009. This is not disputed by the Claimant.

51. The Respondent argues that the Claimant was solely responsible of the accident and that the costs paid by handball club Y... to repair all damages caused by such accident, amounting to € 9.100, should be offset from the premiums owed by the Respondent to the Claimant for the season 2009/2010.

52. The Claimant replies that the EHF Court of Arbitration is not competent to decide on this issue which should be submitted to the civil court in the country N....

53. The contractual documents submitted by the parties to the ECA arbitral chamber and in particular the employment agreement signed by the Respondent and

the Claimant in August 2008 and applicable at the time of the accident do not refer to the use of a car by the Claimant. Such aspect was not regulated by the contracts signed between the parties.

54. It follows therefrom that the parties did not decide by writing beforehand to submit such kind of dispute to the EHF Court of Arbitration. Moreover any proof of agreement on the settlement of the dispute regarding the car accident of 1 May 2009 by the EHF Court of Arbitration after the incident arose was not brought to the attention of the ECA arbitral chamber.

55. The ECA arbitral chamber notes also that the dispute between the Claimant and the Respondent regarding the liability in the car accident and the payment of the costs resulting from the damages caused is not a dispute related to sport in any aspect.

56. It follows therefrom and from the basic principle that an arbitration court may decide on disputes only if all involved parties agreed on the jurisdiction of the respective arbitration court in this respect, that the EHF Court of Arbitration does not have jurisdiction to decide on the liability regarding the accident of the Claimant with the car of the Respondent on 1 May 2009 or on the responsibility regarding the payment of the related costs.

57. The request of the Respondent to set-off the costs paid by handball club Y... to repair the damages caused by the car accident of 1 May 2009 from the global amount premiums due by the club to the

Claimant for the season 2009/2010 is therefore rejected.

b. The question of the amount and the date of payment of the due premiums for the season 2009/2010

58. The amount of €25.000 claimed by Mrs. X... for the season 2010/2011 as premiums on the basis of the employment contract signed by the parties in August 2008 is not disputed by the Respondent.

59. The aforementioned employment contract does not state when the premiums shall be paid to the player. However according to the fundamental principle of labour law, the payment to be made under an employment contract by the employer to the employee shall be due immediately upon expiration or termination of the respective contract.

60. The amount of premiums contractually agreed by the parties for the season 2009/2010 was therefore due on the date of the expiration of the first employment contract signed between the parties, i.e. on 30 June 2010.

c. The question of the applicability of the Ordinance on Premiums and Sanctions enacted by the Steering Committee of handball club Y...

61. The Respondent claims that the obligation for the club to pay the premiums due to the Claimant for the season 2010/2011 is not due yet as Article 5 of the Ordinance on Premiums and Sanctions enacted by the Steering Committee of handball club Y... on December 16, 2008 and referred to in the employment contract signed by the

Respondent and the Claimant on 10 June 2010 and valid for the season 2010/2011 states:

“The dynamics of the payment of the premiums is defined by the capabilities of the club and the total premium cannot be paid later than 12 months after the end of the season that is ending with a 30.06 next season”.

62. In addition, the Respondent argues that the amount of the premiums to be paid to the Claimant is subject to a decision of the Steering Committee of handball club Y... according to article 3 of the aforementioned Ordinance:

“The maximum bonus of each player is defined in a separate agreement on mutual rights and obligations. Commission Decision (club president, club manager and head of coaching staff) determines the final amount of the premiums at the end of each season for the payment of individual award based on individual effort and participation in achievement of results and quality of competition (regional league whether it is a full capacity or not).”

63. In this respect, the employment contract signed by the Respondent and the Claimant on 10 June 2010 and valid for the season 2010/2011 provides in its article 3:

“[...] If the Club is late with the payment of monthly fee or with execution of any other referred to in Article 2 for more than one month, the Player shall have the right to terminate the Agreement, while the Club will not have the right to claim indemnity.

Payment conditions refer to in previous Articles are defined in the Rulebook on Premiums and Sanctions.”

64. The Claimant questions the validity of this Ordinance and implies that it was not communicated to her or to any other players of the club handball club Y....

65. The ECA arbitral chamber finds that the provisions of the Ordinance on Premiums and Sanctions unilaterally decided by the Steering Committee of handball club Y... on December 16, 2008 are auxiliary to the provisions of the employment contracts concluded between handball club Y... and the players. If an employment contracts between handball club Y... and a player would not foresee the aspects defined in the Ordinance, this document should then be applicable. However in case of discrepancy between the provisions of the Ordinance and of an employment contract, the provisions of the latter, mutually agreed by handball club Y... and the player, shall prevail.

66. Furthermore the provisions of the Ordinance may only be applicable when the player is still a member of the club; i.e. when a contractual relationship exists between the player and handball club Y.... Due to its nature, the Ordinance is not enforceable towards third parties.

d. The question of the amount and the date of payment of the due premiums for the season 2010/2011.

67. The amount of the premiums due by the club to the Claimant for the season 2010/2011 according to the results achieved is expressly defined in the

employment contract signed by handball club Y... and Mrs. X... on 10 July 2010, valid from 1 August 2010 until 30 June 2011.

68. The arbitral chamber finds therefore and as previously herein mentioned that the provisions of the Ordinance in this regard, in particular Article 3 paragraph 2, are not applicable. The Steering Committee of handball club Y... may not decide unilaterally to amend the part of the employment contract regarding the amount of premiums agreed between the parties after expiration of this contract.

69. Mrs. X... claims being entitled to receive €28.200 of premiums from handball club Y... for the results achieved in the season 2010/2011. Based on the information on the results achieved by handball club Y... during the season 2010/2011 provided by the Claimant, verified by the arbitral chamber and not disputed by the Respondent, the arbitral chamber came to the final amount of €28.100 of premiums to be paid by handball club Y... to the Claimant. This reduction of €100 from the request of the Claimant is due to a mere arithmetical error in the calculation made by the Claimant and thus has been corrected by the arbitral chamber with no further legal implication on the validity of the claim itself.

70. Regarding the date of payment of the premiums due by the club to the Claimant for the season 2010/2011, the arbitral chamber finds that the provisions of the Ordinance are not applicable to the Claimant as the employment contract is terminated.

71. According to the fundamental principle of labour law, the payment to be made under an employment contract by the employer to the employee shall be due immediately upon termination of the employment contract.

72. The amount of premiums contractually agreed by the parties for the season 2010/2011 was therefore due on the date of the expiration of the second employment contract signed between the parties, i.e. on 30 June 2011.

3. Final comments

73. The arbitral chamber finds that handball club Y... owes Mrs. X... the following amounts of premiums according to the signed employment contracts:

- for the season 2009/2010 : €25.000
- for the season 2010/2011: €28.100

74. Both the Respondent and the Claimant confirmed that, to date, handball club Y... paid altogether €7.500 to Mrs. X... as premiums for the aforementioned seasons. Such amount shall therefore be offset from the global premiums amount of €53.100 due by the Respondent to the Claimant.

75. The claim of the Respondent regarding the costs paid for the damages caused by the car accident of Mrs. X... on 1 May 2009 is set-aside for lack of jurisdiction as further defined under section 7.2.1 of the present award, shall not be taken into consideration to define the final amount of premiums due by handball club Y... to Mrs. X....

76. The parties did not bring to the attention of the arbitral chamber any document or information which could lead to a further reduction of the amounts.

E. Costs

77. The rules of Arbitration for the *EHF Arbitration Court – Procedural Rules* have in Article 20 the following provisions regarding costs:

“20.1 The arbitral panel shall in the award determine which party shall bear the arbitration costs.

20.2 As a general rule the unsuccessful party shall bear the costs of the arbitral proceedings. The arbitral panel may take into consideration the circumstances of the case, and in particular where each party is partly successful and partly unsuccessful, order each party to bear each own costs or apportion the costs between the parties.

20.3 In any case the decision on costs and the fixation of the amount shall be effected in terms of an award.”

78. Article 21.3 of the *Rules of Arbitration for the EHF Arbitration Court - Procedural Rules* specifies:

“21.3 The costs of the parties shall not be refunded.”

79. Taking into consideration the outcome of the proceedings as well as the conduct, the panel finds it adequate to have the Respondent pay the arbitration proceedings costs amounting to 2.820€ (1.500€ registration fee/800€ arbitrators fees/€520 administrative fees).

80. The arbitration proceedings costs shall be paid by the Respondent to the ECA within two months from the date of the present award.

81. The advance fee (5.000€) will be refunded by the ECA to the Claimant.

82. Otherwise, each party shall bear its own legal costs and all other expenses in connection with this arbitration.

V. Award

On these grounds the EHF Court of Arbitration rules in a unanimous decision:

1. The claims of Mrs. X... are upheld.
2. Handball club Y... shall pay €45.600 (forty-five thousand six hundred Euros) to Mrs. X... as premiums due by the club to the former player for the seasons 2009/2010 and 2010/2011.
3. The due payment shall be made by handball club Y... to Mrs. X... within fourteen (14) days upon notification of the present award. If the payment is not made accordingly, a 4 % interest p.a. shall be added to the payment as from the fifteenth (15th) day following the notification of the present award until complete execution of the payment.
3. The Respondent shall pay the costs of proceedings amounting to €2.820.
4. Each party shall bear its own legal costs and all other expenses in connection with this arbitration.
5. All other prayers for relief are dismissed.



EHF Court of Arbitration

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**EHF Court of Arbitration
Arbitral Award
(Summarized and anonymous)
Case n° 12 20142 3 C ECA
25 May 2012**

In the arbitration between

The Handball Federation of X...,
The player Y...,
as the Claimants
or the Handball Federation / the Player

and

The European Handball Federation
("EHF"),
as the Respondent

Panel
Daniel Olstein (Switzerland)
Andreas Thiel (Germany)
Alan Soric (Croatia)

Direct disqualification; Formal validity of the EHF disciplinary proceedings; EHF right to initiate proceedings; Evaluation of the referees' report; Consequences of the direct disqualification.

I. Facts

1. The Handball Federation of X..., participated in the 2012 Men's EHF European Championship that took place from 15 January 2012 to 29 January 2012. They played in the preliminary round of the competition and qualified for the main round.

2. The Handball Federation of X... played their last match of the main round on 25 January 2012 (hereinafter the "Match").

They lost the Match and did not qualify for the semi-finals.

3. The player Y..., was directly disqualified by the EHF referees during the second-half of the Match at the 57'33 minute.

II. Proceedings

A. Before the EHF Disciplinary Commission (First instance on-site)

4. On 28 January 2012, the Disciplinary Commission of the EHF made the following decision (in relevant parts):

"Decisions made by referees on the playing court are factual decisions and shall be final. The present case is therefore limited to possible further consequences of the direct disqualification of the player Y..., at the minute 57:33 of the Match.

(...) The Disciplinary Commission has carefully examined and evaluated the available report as well as the video of the incident. Based on those elements, the Disciplinary Commission considers the action to be a serious unsportsmanlike act, very dangerous for the opponent player's health.

The Disciplinary Commission finds therefore that such action deserves further sanctions.

Final decision:

"In light of the foregoing and pursuant to Article B.1 of the EHF List of Penalties, the Disciplinary Commission decides to impose 2 matches suspension on the player Y.... The player is therefore not eligible to play

the two next official matches the Handball Federation of X....”

B. Before the Jury (Second instance on-site)

5. The Handball Federation and the Player filed an appeal against the decision of the EHF Disciplinary Commission on 30 January 2012. Proceedings were conducted by the Jury which defined the following questions to be answered:

- Was the disciplinary procedure at first instance regular?
- Is the Jury allowed to decide on the incident according to the IHF and EHF Regulations?
- Should the foul committed by the Player at the 57”33 minute of the Match be further sanctioned?

The following decision (in relevant parts) was made:

(...) The Jury notes that the Handball Federation does not deny the part of the statement of the EHF explaining that all delegation participating in the 2012 EHF Champions League were informed prior to the competition that disciplinary procedures during the tournament would be reduced due to time constraints.

Moreover any individual and any team had the possibility to appeal a decision made at first instance during the tournament which grants each party the right to be heard. In view of the foregoing, the Jury finds that the fundamental principle of fair trial has been respected.

(...) The role of the EHF legal bodies is independent from the one of the referees.

The EHF referees have the competence to make decisions having consequences on the respective match; those decisions shall be final in this respect. The EHF legal bodies make decision having consequences outside the frame of the match, subject to exceptions expressly provided in the EHF Legal Regulations.

Nothing in the IHF or EHF regulations prevents the EHF legal bodies to examine a specific incident prior, during or after the match and to decide whether sanctions should be imposed to the persons involved if appropriate according to the EHF regulations, this whether or not the referees already imposed a sanction according to the IHF Rules of the Game and whether or not report from an EHF official was made. Article 33.26 of the EHF EURO Regulations supports this interpretation and the independence of the EHF legal bodies towards the EHF referees’ report and decisions.

The Jury considers therefore that it is allowed according to the applicable regulations to examine and decide on the incident involving the player Y... at the 57”33 minute of the Match.

(...) After review of the documents of the case including the video of the incident, the Jury finds that the opponent no. 3 could not foresee the foul committed by the Player since the Player came from behind after having accelerated. Taking this into consideration as well as the speed of players involved, the foul of the Player was therefore very dangerous for the opponent’s physical integrity. Moreover from where he came from and where he was placed when the body contact took place, the Player had no chance to reach

the ball in the hand of the opponent player. The Jury concludes that the action was directed at the body of the opponent. In view of the foregoing, the Jury confirms the interpretation of the EHF Disciplinary Commission: the foul committed by the Player at the 57"33 minute of the Match was particularly reckless and very dangerous for the physical integrity of the opponent player.

Final decision:

The appeal of the Handball Federation of Y... is rejected.

The decision of the EHF Disciplinary Commission dated January 28, 2012 concerning the player Y... is confirmed.

The player Y... is not eligible to play in the next two (2) official matches of the Handball Federation of X..., at European or International level. (...)

C. Before the EHF Court of Arbitration

6. On 6 April 2012 the Claimants filed a claim with the EHF Court of Arbitration, directed against the EHF. They challenged the decisions of the EHF Disciplinary Commission and of the EHF Jury concerning the player Y... and submitted the following requests for relief:

The Handball Federation applies,

1. To annul the decision of the EHF-Disciplinary Commission dated January 28, 2012, the decision of the Jury, Second Instance, dated March 20, 2012 and included the suspension for 2 matches concerning the player Y....

2. The EHF shall bear the fees and costs of proceedings (Disciplinary Commission and Jury).

3. The Handball Federation and the EHF are welcome to submit statements and documents in German according to Article Nr. 1.5. EHF-Statutes ad Nr. 9 (2) ECA-Procedural rules. Translations if necessary can be made by the ECA-office.

1. Claimants' submissions

a. The formal requirements of the initiation of proceedings

7. The Claimants claim that the formal requirements for the initiation of proceedings were not fulfilled and did not meet the minimum standards of European law.

The EHF referees' decision

8. The Claimants state that, according to the *IHF Rules of the Game* and the EHF referees' decision, the foul committed by the Player should not have led to disciplinary proceedings and further sanction.

9. The Player was disqualified by the EHF referees on the basis of the *IHF Rule of the Game* 8:5 a, which foresee a suspension from the match but no further consequences (e.g report and further sanction). No reference to another *IHF Rule of the Game* as 8:6 a ("a particularly reckless or very dangerous action") or 16:8 § 4 was made by the EHF referees, the EHF delegate or the supervisor. They also did not note in the official match report that a special report would follow.

10. The decisions of the EHF referees on a foul committed during a match are final according to the *IHF Rule of the Game* 17:11 and cannot be changed by the EHF Disciplinary Commission or the Jury; contrary to what they did in the present case by considering the foul committed as an offence according to the *IHF Rules of the Game* 8:6a) and by imposing a penalty according to the *EHF List of Penalties*.

11. According to the *EHF Statutes* and the *IHF Statutes*, the *IHF Rules of the Game*, including rule 17:11, are binding the EHF. The EHF regulations may not override those Rules or not implemented them in the EHF competitions without breaching its Statutes and the *IHF Statutes*.

12. The EHF may require in its regulations that its referees report any incident happening during EHF competitions; however this report shall not be identified with the report to be made according to the *IHF Rules of the Game* 8:6 and 8:10

The EHF referees' report

13. The Claimants state that the EHF referees' report cannot be the basis for the decision of the EHF Disciplinary Commission and of the Jury due to formal and procedural reasons.

14. The report was written three days after the match; the EHF referees were asked later to make a report, which explains that such report was not mentioned in the official match report and that it contains no date, time or place of issue.

15. According to the Claimants, the form of the report: handwritten sentences on a sheet of paper from substitute organiser

does not fulfill the requirements of an official report from an international federation during a European Championship or of a document used as a ground to sanction a professional sportsman.

16. The EHF referees' report was not brought to the attention of the Handball Federation before March 5, 2012.

The nomination of the EHF legal bodies

17. The Claimants claim that the members of the EHF legal bodies were not independent, as members of the EHF commissions, in particular of the EHF Competitions Commission, supervisors and observers.

18. Moreover the Claimants state that the nomination of the panel was not transparent: they did not know who selected the members and who decided on the case.

Due process

19. The Claimants state that the Handball Federation and the Player were not informed about the initiation of proceedings nor of the initiator of proceedings.

The decision of the Jury

20. The Claimants claim that the decision of the Jury is incomplete as it does not argue about the *IHF Rules of the Game* 17:11, even though the appeal mentions this legal ground.

21. Moreover the Claimants find the decision of the Jury inaccurate as it ignores the contradiction between the

content of the EHF referees' report and the grounds and facts mentioned and contains a mistake as to the date of the match during which the Player was directly disqualified: 28 January 2012 instead of 25 January 2012.

22. According to the Claimants, the decision of the Jury may endanger the stability of the law and legal entity as it departs from the principle that regulations from international federations are binding for all federations including in their own field of responsibility.

b. The facts

23. The Claimants claim that the EHF legal bodies reinterpreted the facts regarding the foul committed by the Player, which does not justify two match suspension from the national team competitions.

24. According to the Claimants, the following facts described in the Jury decision are not true: the opponent n°15 was not ready to pass the ball to his team mate on his right, as an opponent was standing there; a breakthrough was not possible as another opponent was waiting in defense.

25. Moreover the Player did not direct his action to the body of the opponent: the Player did not push the opponent from behind but embraced his body in order to try to get the ball out of his hand from the side, as proven by the available video and photos. This was possible as the Player was side by side, at the same level as his opponent. The opponent was therefore physically and mentally prepared to this contact with the Player.

26. The opponent stumbled over the Player's feet, placed on the side at the same level of him, and fell. The jerk of the player's body is due to this contact. The fall is therefore due to this row of unfortunate circumstances and not to a serious unsportsmanlike conduct or reckless behaviour from the Player.

2. EHF's submissions

27. The EHF, as a general remark, informs that it supports in all its aspects the decision of the Jury.

a. The formal requirements of the initiation of proceedings

The EHF referees' decision

28. The EHF replies that the decisions of the EHF Disciplinary Commission and the Jury do not violate the *IHF Rule of the Game* 17:11. Those decisions do not change the EHF referees' decision to sanction the Player with a direct disqualification nor challenge the grounds or the effects of such decision on the Match. The decisions even specify that the EHF referees' decision is final in this respect and that the EHF legal bodies will only decide whether an additional sanction should be imposed on the Player.

29. According to the *EHF Legal Regulations*, the EHF legal bodies may examine any incident which occurred during a competition organized by the EHF, including direct disqualifications, and may decide whether the conduct or foul of the Player deserves further sanctions. The competence to initiate proceedings is with the EHF and not with the EHF referees, as stipulated in the *EHF EURO Regulations*

and in the *EHF Legal Regulations*. This procedure was decided by the EHF Competitions Commission and communicated to the IHF. The *IHF Rules of the Game* do not forbid such a procedure and moreover the EHF is entitled, as continental federations, to define the legal procedure applying within the frame of its competitions.

The EHF referees' report

30. According to the *EHF EURO Regulations*, the EHF referees shall report any incident happening during EHF competition matches, including cases of direct disqualifications, in order for the EHF obtain all necessary information.

31. The EHF and the IHF regulations do not provide any specific requirements regarding the report to be made by the EHF referees. The Handball Federation does not specify what requirements should be met in this respect and where they are mentioned. Moreover this formal argument presented by the Claimants would imply that the Handball Federation considers the EHF referees' report not admissible as evidence whereas the content is used repeatedly in their statement of claim as argument.

32. The EHF referees' report is only an evidentiary document used with other evidences as, for example, the video of the respective match, by the EHF to request the initiation of proceedings against a player or a team officials and by the EHF legal bodies to make a decision on further sanctions.

The nomination of the EHF legal bodies

33. The EHF replies that the members of the Disciplinary Commission and the Jury were independent according to the *EHF Legal Regulations*. Those members were EHF officials present at the venue and appointed by the tournament management in accordance with the *EHF EURO Regulations*. The nomination of the EHF officials were communicated to all federations participating in the 2012 EHF Men's EURO in due time prior to the start of the competition.

Due process

34. According to the EHF, the reference to the initiator of proceedings is irrelevant in this case.

35. The EHF explains that all delegations were informed orally during the heads of delegations conference and during the technical meeting prior to the beginning of the competition that formal steps during disciplinary proceedings would be reduced. The fair trial principle is however guaranteed, according to the EHF, by the possibility of appeal offered to all participants.

36. The Handball Federation was informed about the composition of the Jury in the letter informing the parties of the opening of appeal proceedings. The Claimants did not challenge the nomination made at any time thereafter.

The decision of the Jury

37. As the EHF legal bodies do not decide whether the decision of the EHF referees are correct but only if the conduct of the

Player deserves further sanction, the rule used as basis by the EHF referees to make their decision to disqualify the Player was not analyzed by the EHF legal bodies.

38. Regarding the mistake made in the Jury decision about the date of the Match, the EHF considers it to be a typing mistake and does not challenge this fact.

b. The facts

39. The EHF reiterates that the foul committed by the Player against the opponent n°3 was very dangerous for the opponent's physical integrity as it was committed from behind when the opponent was running with the ball.

40. Such a conduct could not be expected and was very likely to make the opponent's falling down due to the speed of both players. Moreover the Player with this action had no chance to get possession of the ball in a regular way.

41. The consequences of the foul committed by the Player with two players suffering injuries confirm that it was very dangerous and very likely to cause injuries.

III. Factual and Legal Appreciation by the EHF Court of Arbitration

A. Applicable law

1. On the procedure

83. Pursuant to Article 12(1) of the *Rules of Arbitration for the ECA – Procedural Rules*, the ECA arbitral chamber has complete discretion to determine the procedure as long as the obligatory

provisions of the Austrian code of civil procedure and the rules of arbitration set forth herein are complied with.

2. On the merits

42. According to Article 10 in the *Rules of Arbitration for the ECA – Procedural Rules*, the arbitral panel shall pass its decisions in accordance with the Federations international and national regulations and agreements, provided these do not violate general principles of law.

43. Article 1.1 of the *EHF Statutes* states: “the *IHF statutes, regulations and resolutions shall be binding for the EHF and all its members*”. It follows therefore that the *IHF regulations* and in particular the *IHF Rules of the Game* are applicable to the case at stake.

44. Moreover the *EHF Statutes* and the specific competition and legal regulations of the EHF shall be taken into consideration by the ECA chamber and in particular the *EHF EURO Regulations*, the *EHF Legal Regulations* and the *EHF List of Penalties* applicable at the time of the Match.

B. The Panel's review of the parties' submissions

45. The main issues to be resolved by the panel are:

1. The formal validity of the disciplinary proceedings;
2. The EHF right to initiate disciplinary proceedings;
3. The evaluation of the report and the determination of the consequences of the foul.

1. The formal validity of the disciplinary proceedings

46. The Handball Federation claims that several procedural requirements were not fulfilled or were infringed prior and during the disciplinary proceedings conducted by the EHF legal bodies against the Player.

a. The EHF referees' report

47. Regarding the form of the EHF referees' report, the ECA chamber notes, as mentioned by the EHF, that no particular requirement regarding the form of such a report is defined in the EHF regulations or in the IHF regulations. The lack of date, time or place cannot therefore invalidate the report when, as in the present case, the name of the signatories is identifiable and the content is readable. Moreover, no deadline is fixed in the EHF regulations or in the IHF regulations for submitting such a report to the respective federation. The report of the EHF referees should therefore be considered admissible as evidentiary document in the present case.

b. The principle of due process and fair trial

48. The Handball Federation also claims that the principles of fair trial and due process have not been respected because the EHF referees' report was not communicated to them or to the Player at first instance and they were not informed of the initiation of proceedings.

49. The specificity of European handball championships and in particular the fact that a team plays several games with few days interval allows procedural steps to be

restricted in case of disciplinary proceedings. The EHF informed the participating national handball federations accordingly; this is not challenged by the Handball Federation.

50. Moreover the Handball Federation and the Player had the possibility to appeal the decision of first instance, which they did. Before the second instance, all documents of the case were made available to the Claimants which could file comments and/or replies.

51. Regarding this claim, the ECA chamber therefore agrees with the finding of the Jury that a fair trial was offered to the Handball Federation and the Player.

c. The independence of the EHF legal bodies members

52. The Handball Federation further contests the independence of the members nominated at first and second instance to decide on the case as well as the transparency of the proceedings.

53. Regarding this issue, the *EHF Legal Regulations* and the *EHF EURO Regulations* are applicable.

54. Article 45 "Independence" of the *EHF Legal Regulations* states:

"45.1 The legal bodies and their members are independent and not bound by any instructions.

45.2 A member of a legal body shall be deemed prejudiced in any case in which that member's own federation or a club or an official or a player of the member's own federation is involved."

55. The *EHF EURO Regulations* specify:

“33.12 The Disciplinary Commission members may be challenged in accordance with the EHF Legal Regulations”

“33.19 Members of the Jury must not be members of the Disciplinary Commission and may be challenged in accordance with the EHF Legal Regulations.”

56. All persons, members of the EHF Disciplinary Commission and of the Jury, who decided on the case involving the Player, were not “*prejudiced*” according to the aforementioned *EHF Legal Regulations* provision, as their respective national handball federations were not involved in the case. Moreover none of the members of the Disciplinary Commission were nominated to be part of the deciding panel at second instance.

57. The fact that the members of the EHF legal bodies had other functions within the EHF or during the competition may not in itself imply a lack of independence. Evidentiary documents supporting the Claimants’ allegation regarding the lack of independence of the members of the EHF legal bodies in the present case were not brought to the attention of the panel.

58. The ECA chamber finds therefore that the members of the EHF legal bodies were independent according to the requirements defined in the applicable EHF regulations.

d. The nomination of the EHF legal bodies members

59. The formation and composition of the Disciplinary Commission and of the Jury is regulated by the *EHF EURO Regulations* as follows:

“33.11 The Disciplinary Commission consists of three (3) members and two (2) substitute members chosen from the EHF Officials at the venue and nominated by the EHF before the beginning of the EHF EURO.”

“33.18 The Jury consists of three (3) members and two (2) substitute members chosen from the EHF Officials at the venue and nominated by the EHF before the beginning of the EHF EURO.”

60. According to the document at hand, the names of the EHF Officials nominated by the EHF in each venue of the 2012 EHF Men’s European Championship were communicated to the participating national handball federations in a letter of information dated December 19, 2011. This is not challenged by the Claimants.

61. In this letter, the nomination procedure was specified. The ECA chamber finds that the aforementioned legal provisions and of the letter sent prior to the competition provide enough information on the nomination process and composition of the EHF legal bodies to the potential parties to a disciplinary proceedings prior to the competition to fulfil the principle of transparency in this respect.

62. The members of the EHF Disciplinary Commission and of the Jury in the present case were part of the EHF Officials nominated prior to the competition, whose names were communicated to the participating national handball federations, in accordance with the aforementioned provisions of the *EHF EURO Regulations*.

63. Moreover they were chosen according to the procedure specified in the letter sent to the participating nations, including the Handball Federation. Proof that the procedure was not followed has not been provided to the ECA chamber.

64. The nomination process of the members of the EHF Disciplinary Commission and of the Jury therefore complied with the requirements of the EHF regulations.

e. The Jury's decision

65. The ECA chamber does not consider the various elements mentioned by the Claimants as formal failures of the Jury's decision to be of nature to question the validity of the decision.

66. The decision of the Jury is factually and legally grounded. Even though the decision does not mention the *IHF Rule of the Game* 17:11, the arguments presented by the Handball Federation were answered in the "legal reasoning" part of the decision. Moreover the formal requirements of an EHF legal body decision defined in Article 35 of the *EHF Legal Regulations* were met.

2. The EHF right to initiate disciplinary proceedings

67. The following Articles of the *IHF Rules of the Game* were mentioned by the Parties in their arguments regarding the right for the EHF to initiate disciplinary proceedings and to impose further sanction on the Player.

Rule 17:11: *"Decisions made by the referees on the basis of their observations of facts or their judgments are final. [...]"*

Rule 8:5 a: *"A player who is attacking an opponent in a way that is dangerous to his health is to be disqualified (16:6a). The special danger to the opponent's health follows from the high intensity of the foul or from the fact that the opponent is completely unprepared for the foul and therefore cannot protect himself (see Rule 8:5 Comment). In addition to the criteria of 8:3 and 8:4, the following decision making criteria also apply:*

a) the actual loss of body control while running or jumping, or during a throwing action;"

Rule 8:6 a: *"If the referees find an action to be particularly reckless, particularly dangerous, premeditated or malicious, they must submit a written report after the game, so that the responsible authorities are in a position to take a decision about further measures. Indications and characteristics that could serve as decision-making criteria in addition to those in Rule 8:5 are:*

a) a particularly reckless or particularly dangerous action;"

Rule 16.8: “As noted in rules 8:6 and 8:10, disqualifications in accordance with these rules are to be reported in writing to the responsible authorities for further action. In such cases, the ‘responsible team officials’, and the delegate (see Clarification No. 7), shall be informed immediately after the decision.”

68. Moreover the following articles of the *EHF EURO Regulations* were mentioned:

Article 25:10 “In case of direct disqualification or any major incidents, the referees have to write an additional detailed report and give it to the EHF Championship Office [...]”

Article 33.26: “The carrying out of legal/disciplinary proceedings defined herein is independent of any report obligations”.

69. The regulations enacted by the International Handball Federation, as for example the *IHF Rules of the Game*, supersede according to the *EHF Statutes* and in particular article 1.1, the EHF regulations. The EHF may however create regulations complementing the IHF regulations or regulate fields (competition and legal aspects) not under the competence of the International Handball Federation.

70. In the present case, the EHF referees of the Match noted in their report that they suspended the Player according to article 8:5 of the *IHF Rules of the Game*. According to the *IHF Rules of the Game*, a report from the EHF referees is not compulsory.

71. The EHF regulations foresee however that the EHF referees must send a report, additionally to the match report, to the EHF in each case a direct disqualification is awarded during an EHF European Championship match. Such obligation is not considered by the ECA chamber as contrary to the *IHF Rules of the Game*, which do not forbid such administrative handling.

72. The ECA chamber also considers that Article 33.26 of the *EHF EURO Regulations* is compliant with the IHF regulations and in particular the *IHF Rules of the Game*. Such article gives the EHF the right to initiate legal or disciplinary proceedings whether or not a report was made by the EHF referees. As mentioned by the EHF, the ECA chamber could not find any IHF regulations provision which forbids a national or continental handball federation to initiate proceedings against a player.

73. Moreover the fact to initiate proceedings against a player may not be considered as a violation of the *IHF Rule of the Game* 17:11, which states only that the decisions of the EHF referees are final.

74. The ECA chamber finds therefore that the EHF had the right to initiate proceedings against the player Y... on the basis of the information received, including the EHF referees’ report.

3. The evaluation of the report and the consequences of the foul

75. The ECA chamber finds however that the EHF legal bodies should have taken more into consideration the analyses of the foul by the EHF referees.

76. In the present case, the ECA chamber finds no specific circumstances and/or facts not seen by the EHF referees, which could lead to a re-qualification by the EHF legal bodies of the foul committed by the Player.

77. Furthermore the video of the Match supports the fact-finding of the EHF referees as stated in their report: the foul committed by the Player was a rough and reckless foul against the opponent falling under Article 8:5 of the *IHF Rules of the Game* and deserving a direct disqualification. However, in the unanimous opinion of the ECA chamber, such foul did not present the characteristics of a particularly serious unsportsmanlike conduct or particularly dangerous or reckless action deserving further sanctions, although the ECA chamber is aware of the severe consequences of the incident.

78. The ECA chamber finds therefore that no further sanction should be imposed on the Player.

C. Costs

79. The *Rules of Arbitration for ECA – Procedural Rules* have in Article 20 the following provisions regarding costs:

“20.1 The arbitral panel shall in the award determine which party shall bear the arbitration costs.

20.2 As a general rule the unsuccessful party shall bear the costs of the arbitral proceedings. The arbitral panel may take into consideration the circumstances of the case, and in particular where each party is partly successful and partly

unsuccessful, order each party to bear each own costs or apportion the costs between the parties.

20.3 In any case the decision on costs and the fixation of the amount shall be effected in terms of an award.”

80. Article 21.3 of the *Rules of Arbitration for the ECA - Procedural Rules* specifies:

“21.3 The costs of the parties shall not be refunded.”

81. Taking into consideration the outcome of the proceedings, the panel finds it adequate to have the European Handball Federation pay the arbitration proceedings costs amounting to 2.742€ (1.500€ registration fee/800€ arbitrators fees/442€ administrative fees).

82. The arbitration proceedings costs shall be paid by the European Handball Federation to the ECA within two months from the date of the present award.

83. The advance fee (5.000€) will be fully refunded to the Handball Federation.

84. Otherwise, each party shall bear its own legal costs and all other expenses in connection with this arbitration.

IV. Award

On these grounds the EHF Court of Arbitration rules:

1. The appeal by the Handball Federation and the Player is upheld.

2. The decision made by the Jury, of March 30, 2012 is set aside and no match suspension is imposed on the Player.

3. The European Handball Federation must pay the costs of proceedings amounting to 2.742€.

4. Each party shall bear its own legal costs and all other expenses in connection with this arbitration.

5. All other prayers for relief are dismissed.



EHF Court of Arbitration

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**EHF Court of Arbitration
Arbitral Award
(Summarized and anonymous)
Case n° 12 20218 5 1 ECA
8 March 2013**

In the arbitration between

Mr. X...,
as the Claimant

and

The handball club Y...,
as the Respondent

Panel
Juan de Dios Crespo Perez (Spain)
Marius Devyžis (Lithuania)
Alan Soric (Croatia)

Contractual relationship; Writing of the arbitration agreement; Absence of ECA jurisdiction.

I. Facts

A. Parties

1. Mr. X... is a professional handball player, employed by handball club Y... as from 1 July 2012 until 26 September 2012.

2. Handball club Y... is a men handball club, playing in the first men's handball league of the national handball federation of ... and in the Men's EHF Cup organized by the European Handball Federation.

B. Facts

3. In July 2012, the Claimant, Mr. X... entered into a contract with the Respondent, the handball club Y...,

whereby he was employed by the club as professional handball player from 1 July 2012 to 30 June 2014.

4. On 26 September 2012, the handball club Y... sent a letter to Mr. X... informing him of the unilateral termination of the employment contract signed for the period 1 July 2012 to 30 June 2014. Handball club Y... paid to Mr. X... three (3) months of salary (July, August and September).

5. On October 2012, Mr. X..., via a legal representative, wrote to handball club Y..., claiming that the unilateral termination of the club was unjustified and in violation with the EHF and IHF Rules. Due to this unilateral termination of the employment contract, Mr. X... representative underlined that handball club Y... shall fulfill its obligations pursuant to the employment contract, namely the payment of the due salaries for the contract duration of twenty-four (24) months as the employment contract does not lay down termination clause but only the possibility for handball club Y... to reduce Mr. X...'s salary. Handball club Y... was proposed to pay €100,000 as a friendly settlement.

6. On 6 November 2012, an email reminding the willingness of Mr. X... to find an amicable settlement was sent to handball club Y... and that this e-mail was the last reminder before filing a claim with the EHF Court of Arbitration.

II. Proceedings before the EHF Court of Arbitration

7. On 26 November 2012, the Claimant filed a claim with the EHF Court of Arbitration requesting to solve the dispute

between him and the handball club Y... regarding the unilateral termination of the employment contract, namely the payment of €115.000 as the total amount of due and unpaid salaries for two seasons, and the payment of the costs of the legal representative incurred in connection with the arbitral proceedings as well as the costs of the arbitration as determined at the end of the proceedings.

8. On 4 December 2012, the Claimant and the Respondent were officially informed of the opening of ECA proceedings.

III. Submissions

A. Claimant's submissions

On ECA's jurisdiction

9. Under the Rules of Arbitration for the EHF Court of Arbitration, the ECA shall have competence to solve disputes between players and clubs. Furthermore, the EHF Court of Arbitration is competent to solve the dispute as the Claimant and the Respondent consented to recourse to the arbitration in writing pursuant to Articles 1 and 6 of the employment contract which respectively provide the respect of the statutes and rules of the EHF and the fact that the contract of employment was in accordance with the EHF and IHF rules.

10. The Claimant emphasizes that the national law of the country N... is not in any way preventing the dispute to be solved via recourse to arbitration. Namely, the provisions of the legal codes mentioned by the Respondent do not suggest exclusive or compulsory competence of the national courts of the

concerned country. The Claimant underlines that the option to choose arbitration is a common law approach in all European legal systems, as the choice of the judge is a fundamental right that cannot be denied. Thus, the arbitrability of the dispute is not questionable at all for the Claimant.

11. The Claimant emphasizes that Article 11.2 of the *ECA Procedural Rules* lay down the "competence-competence" principle by entitling the arbitral panel to rule on its own jurisdiction. Furthermore, the Claimant states that Article 11.4 of the *Statutes of the EHF* are directly applicable and provides that all disputes among players, players' agents, the EHF, national federations and clubs may be brought before ECA and that in other disputes, jurisdiction shall rest with ECA if this is in the interest of legal certainty and legal principles as well as the clarification of key issues of a sport-political nature. The Claimant underlines that provisions of the aforementioned article represent the general arbitration agreement, valid among all national federations' members of the EHF, as well as their clubs and players. Moreover, the *Statutes of the EHF* do not lay down any particular arbitration clause to be included in the contracts between players and clubs for the jurisdiction of ECA.

12. Regarding the abovementioned arguments, the Claimant adds that the employment contract was signed with the Respondent being member of the Handball Federation of ..., which is member of the EHF. Therefore, the Respondent is indisputably and automatically subjected to the jurisdiction of the EHF Court of Arbitration as Article

2.2 of the *Statutes of the EHF* obliges members to recognize the Statutes of the EHF as well as decisions reached by its bodies and to pass this obligation on their members and require their members to pass it on in turn. Nevertheless, the Claimant stresses that article 6 of the employment contract refers to the EHF Court of Arbitration jurisdiction by providing that “the employment contract is in accordance with EHF and IHF rules”, which especially includes the *Statutes of the EHF*.

13. The Claimant considers that the abovementioned interpretation of the Statutes is in accordance with the EHF’s consideration of the international dimension of disputes between players and clubs, especially in cases where the maintenance of the contractual stability is at stake. The main reason for the EHF Court of Arbitration establishment was to solve such cases in a simple, fair and quick manner. Such principles would not be enforced by national courts of the concerned country. Furthermore, the legal doctrines as well as the jurisprudence are in favour of “the incorporation by reference”, especially regarding arbitration agreements in the Statutes of International associations.

14. The claimant emphasizes that, in accordance with the *Statutes of the EHF*, Article 41.4 of the *EHF Legal Regulations* provides that disputes and matters outside the competence of the EHF administrative/legal bodies may be brought to the EHF Court of Arbitration upon expressed recognition by the parties concerned of the EHF Court of Arbitration’s competence to settle disputes/matters. Consequently, the

Respondent explicitly expressed competence of the EHF Court of Arbitration as being a member of a national federation member of the EHF and by entering the EHF Competitions.

15. The Claimants adds that Article 12.1 of the *Rules of Arbitration for the ECA – Procedural Rules*, provides that all arbitral proceedings shall be conducted in accordance with the obligatory provisions of Chapter 4 of the Austrian Code of Civil Procedure. Pursuant to the abovementioned article, article 583 “Form of Arbitration Agreement” of the Austrian Code of Civil Procedure provides that the arbitration agreement must be contained either in a written document signed by the parties or in letters, telefax, e-mails or other means of transmitting messages exchanged between the parties, which provide a record of the agreement and that the reference in a contract complying with the form requirements of paragraph 1 to a document containing an arbitration agreement constitutes an arbitration agreement, provided that the reference is such as to make the arbitration agreement part of the contract.

16. In light of the abovementioned article, the Claimant emphasizes that Articles 1 and 6 of the employment contract refer to the Statutes and rules of the EHF which contain the arbitration agreement, as well as the Respondent’s obligation to include the arbitration agreement in their contracts with players. Moreover, the Claimant considers that the EHF rules propose the content of the employment contract and request that the arbitration agreement shall be part of it. Hence, the Claimant considers the case as a non-regulated case in accordance with the

Austrian Code of Civil Procedure; there can be no doubt that the contract constitutes a proper arbitration agreement under Articles 2.2 and 11.4 of *the Statutes of the EHF*.

On the termination of the employment contract

17. The Claimant highlights that the unilateral termination of the employment contract is unlawful and in violation of the EHF and IHF rules as well as in violation of the general principles of Civil law. The Respondent did not have any legal or sport basis to end the contractual relationship. The Claimant adds that the latest Arbitration awards have strictly forbidden unjustified or unexplained termination of employment contracts and confirmed the foregoing legal arguments.

18. The Claimant's willingness was to reach a friendly settlement and therefore proposed to set a lower amount in order to find an agreement with the Respondent. However, the Respondent never replied to the Claimant.

19. Consequently, the Claimant requests the amount of unpaid salaries due pursuant to the employment contract, i.e. €115.000, to be paid by handball club Y... as well as the costs of the legal representatives incurred in carrying out the arbitral proceedings and the costs of the ECA arbitration proceedings.

B. Respondent's submissions

20. Regarding the Claimant's request to recourse to the EHF court of Arbitration to solve the dispute, the Respondent alleges that the Court of Arbitration has no

jurisdiction in the matter, according to the following legal arguments:

- Pursuant to Article 37, Paragraph 1, Part 1 of the Civil Procedure code of the Republic of N..., cases relating to civil and labour matters shall be referred to the national courts of the concerned country.
- Pursuant to Article 233, Paragraph 2 of the Labour code of the Republic of N..., individual labour disputes, regarding the application of labour legislation, collective contracts and agreements shall be referred to the national courts.
- Pursuant to Article 545 of the Civil Procedure code of the Republic of N..., cases relating to claim of foreign citizens, person without citizenship and foreign legal persons filed against a respondent having a citizenship of the Republic of N..., residence or registration are within the jurisdiction of national courts.

21. Regarding the Claimant's reference to Articles 1 and 6 of the employment contract as constitutive of an arbitration agreement, the Respondent underlines that Article 1, part 2 of the employment contract only refers to the Claimant's duties and cannot therefore be qualified as an agreement of the parties to submit disputes to the ECA jurisdiction. Furthermore, Article 6 of the employment contract is only relevant to determine the procedure regarding the conclusion of contracts.

22. Consequently, the Respondent requests the EHF Court of Arbitration panel to dismiss the Claimant's claim due to the lack of jurisdiction of the EHF Court

of Arbitration in the matter and thus to reject the claim of Mr. X....

IV. In law

A. Admissibility

23. The claim filed by Mr. X... is formally admissible, which is undisputed by the Respondent.

B. Jurisdiction of the EHF Court of Arbitration

24. According to Article 1.1 of the *Rules of Arbitration for the ECA – Statutes*:

“The EHF Court of Arbitration shall have competence whenever disputes arise between the EHF and National Federations, between or among National Federations, between National Federations and their clubs on cross-border matters, in the event of disputes relating to the EHF competitions, as well as in disputes between and among players, player’s agents, the EHF, National Federations, and clubs.”

25. Article 1, paragraph 2 of the employment contract signed by the Respondent and the Claimant for the period from 1 July 2012 to 30 June 2014 states:

“The Player will respect precisely the statutes and the rules of the Handball Club Y..., the National Handball Federation, Europe Handball Federation, and International Handball Federation.”

26. Article 6, paragraph 2 of the same employment contract signed by the Respondent and the Claimant for the

period from 1 July 2012 to 30 June 2014 states:

“the Contract is in accordance with the EHF and IHF rules.”

27. According to Article 11.1 of the *Rules of Arbitration for the ECA – Procedural Rules*:

“A plea that the arbitral panel does not have jurisdiction shall be raised not later than the first pleading in the matter. A party is not precluded from raising such a plea by the fact that it has appointed, or participated in the appointment of an arbitrator. [...]”

28. It follows that the Respondent, within the memorandum in reply to the Claimant’s statement, dated 3 January 2013 raised such a plea that the arbitral panel does not have jurisdiction to rule on the present case.

29. According to Article 11.2 of the *Rules of Arbitration for the ECA – Procedural Rules*:

“The arbitral panel shall rule on its own jurisdiction. The ruling can be made together with the ruling on the case or by separate arbitral award.”

30. It follows that the arbitral panel has competence to rule on its own jurisdiction in the case at hand. However, within the framework of this competence, the arbitral panel shall take into consideration the obligatory provisions of Chapter four of the Austrian Code of Civil Procedure pursuant to Article 12 of the *Rules of Arbitration for the ECA – Procedural Rules* which states:

“All arbitral proceedings shall be conducted in accordance with the obligatory provisions of chapter four of Austrian Code of Civil Procedure and the Rules of Arbitration set forth herein. [...]”

31. In order to rule on its own jurisdiction, the arbitral panel shall therefore define whether in the present case; an arbitration agreement may be considered as concluded between the Claimant and the Respondent within the wording of Articles 1 and 6 of the employment contract.

32. According to § 583 “Form of the Arbitration Agreement”, Second Title “Arbitration Agreement”, Fourth Chapter “Arbitral Proceedings” of the Austrian Code of Civil Procedure:

(1) The arbitration agreement shall be contained either in a written document signed by the parties or in letters, facsimiles, e-mail or other forms of transmission of messages exchanged between the parties which furnish proof of the agreement.

(2) Where a contract fulfilling the requirements as to form of para (1) refers to a document containing an arbitration agreement, this constitutes an arbitration agreement if the reference is such that it incorporates the arbitration agreement into the contract by reference.

(3) a defect as to form of the arbitration agreement is cured in the arbitration proceedings by the making of submissions on the subject in dispute, if an objection to the defect is not raised, at the latest, at the same time as such submissions are made.

33. In light of the foregoing, the arbitral panel finds that the wording of articles 1 and 6 of the employment contract, referred by the Claimant as constituting the arbitration agreement between the Claimant and the Respondent, is unclear and ambiguous. The arbitral panel can therefore not consider the employment agreement as a written document containing an arbitration agreement.

34. Furthermore, the arbitral panel also finds that the wording of the aforementioned articles do not clearly and unambiguously refers to a document containing an arbitration agreement in order to enable the arbitral panel to consider the employment contract as referring to any document containing an arbitration agreement such as incorporating the arbitration agreement in the employment contract by reference.

35. Based on the abovementioned, the arbitral panel comes to the conclusion that it does not have jurisdiction to rule on the case at hand.

C. Costs

36. The *Rules of Arbitration for the EHF Arbitration Court – Procedural Rules* have in Article 20 the following provisions regarding costs:

“The arbitral panel shall in the award determine which party shall bear the arbitration costs.

As a general rule the unsuccessful party shall bear the costs of the arbitral proceedings. The arbitral panel may take into consideration the circumstances of the case, and in particular where each

party is partly successful and partly unsuccessful, order each party to bear each own costs or apportion the costs between the parties.

In any case the decision on costs and the fixation of the amount shall be effected in terms of an award."

37. Article 21.3 of the *Rules of Arbitration for the EHF Arbitration Court - Procedural Rules* specifies:

"The costs of the parties shall not be refunded."

38. Taking into consideration the outcome of the proceedings, the panel finds it adequate to have the Claimant pay the arbitration proceedings costs amounting to €2524 (€1.500 registration fee/€800 arbitrators' fees/€224 administrative fees). The Claimant has already paid these costs.

39. The remaining sum of the advance fee will be refunded by the ECA to the Claimant.

40. Otherwise, each party shall bear its own legal costs and all other expenses in connection with this arbitration.

V. Award

On these grounds the EHF Court of Arbitration does not have jurisdiction to rule on the present case and therefore:

1. The claim of Mr. X... is rejected.
2. The Claimant shall pay the costs of proceedings amounting to €2524.

3. Each party shall bear its own legal costs and all other expenses in connection with this arbitration.



EHF Court of Arbitration

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**EHF Court of Arbitration
Arbitral Award
(Summarized and anonymous)
Case n° 13 20232 1 C ECA
14 March 2013**

In the arbitration between

The handball club X...,
as the Claimant

and

The handball club Y...,
as the Respondent

Panel

Juan de Dios Crespo Perez (Spain)

Marjan Nachevski (Macedonia)

Julien Zylberstein (France)

Match result protest; Violation of the Rules of the Game; Nature of the referees' decision; Necessary adjustments; Third parties involvement.

I. Facts

1. On 9 February 2013, the group phase match of the VELUX EHF Champions League: handball club X vs. handball club Y was hosted by handball club X... (hereinafter the "Match"). The final result of the Match was 23:25 in favor of handball club Y....

2. At the 24"24 min of the Match, the player n°15 of handball club Y... (hereinafter the "Player") was sanctioned by the EHF referees with a two-minute suspension. Despite this suspension, at the 25"45 min, shortly after a team time-out, the Player entered the playing court wearing a red sport bib in order to replace

the goalkeeper and took part in the attack of handball club Y... which ended with a goal in favour of handball club Y....

3. Following the incident and the goal scored, the Match was stopped. The timekeeper informed the referees and the delegate about the incident. After a discussion lasting for approximately two minutes between the timekeeper, the delegate and the referees, the referees decided to allow the goal and to restart the Match with a throw-off. According to Article 18:1 of the *IHF Rules of the Game*, the timekeeper was entitled to stop the Match as he noticed the entry of the Player while he was still serving a two-minute suspension. The delegate did not listen to the timekeeper and informed the referees, who came to the timekeeper's table, to restart the Match.

II. Proceedings

A. Before the EHF Court of Handball

4. On 10 February 2013, handball club X..., via its legal representative, filed a protest with the EHF Court of Handball, requesting the EHF legal body of first instance to register the Match result with the score of 10:0 in favor of handball club X..., or alternatively, to impose a replay of the Match.

5. On 11 February 2013, the EHF Court of Handball officially informed the parties of the opening of legal proceedings.

6. On 15 February 2013, the EHF Court of Handball released its decision in which it is explained that:

"[...] Regarding the violation of the IHF Rules of the Game

Article 5.1 "Rules of the Game", Chapter II "Competition" of the 2012/2013 VELUX EHF Champions League Regulations states:

"VELUX EHF Champions League matches shall be played in accordance with the IHF's Rules of the Game (valid as of 1 July 2010)."

In light of the aforementioned elements, the EHF Court of Handball panel finds that the entry of the Player on the playing court while he was still serving a two-minute suspension constitutes a violation of Article 4:6 of the IHF Rules of the Game.

Regarding the nature of the decision taken to allow the goal and restart the Match

Pursuant to Article 6.3 of the EHF Legal Regulations and of the introduction of Article 1 "Protests and disciplinary procedures", Chapter XIII "Legal matters" of the 2012/2013 VELUX EHF Champions League Regulations, the decisions and actions taken by referees on the playing court, including those based on EHF delegate's recommendations, are factual decisions and shall be final.

Consequently, the EHF Court of Handball finds that the decision taken by the EHF referees to allow the goal scored by handball club Y... even though the Player took part in the attack while he was still serving a two-minute suspension was a factual decision clearly based on the recommendations of the EHF delegate of the match."

And the EHF Court of Handball decided as follows:

"In view of the foregoing, pursuant to Article 6.3 of the EHF Legal Regulations, introduction of Article 1 of the 2012/2013 VELUX EHF Champions League Regulations, and taking into consideration all relevant circumstances of the case, the EHF Court of Handball came to a decision :

➤ The protest filed by handball club X... is rejected.

➤ The final result of the Match is confirmed."

B. Proceedings before the EHF Court of Appeal

7. On 18 February 2013, handball club X..., via its legal representative, lodged an appeal with the EHF Court of Appeal against the first instance decision of the EHF Court of Handball. The Appellant requested the match result to be registered with the score 10:0 in favor of handball club X... and considered that a match replay was no longer an appropriate penalty.

8. On 21 February 2013, the EHF Court of Appeal released its decision in which it is explained that:

"[...] General remarks

Pursuant to article 12.1 of the EHF Legal Regulations, the EHF Court of Appeal shall decide, at its own discretion, within the frame of the EHF Legal Regulations and EHF List of Penalties, after having taken into consideration the objective and subjective elements of the case as well as

the possible mitigating and/or aggravating circumstances, the type and extent of sanctions and measures to be taken.

The EHF Court of Appeal panel has thoroughly examined all documents of the case: the file of the EHF Court of Handball including the protest and the statement of appeal of handball club X... as well as the video of the incident.

Regarding the violation of the IHF Rules of the Game

The EHF Court of Appeal agrees with the EHF Court of Handball to find that the entry of the Player on the playing court while he was still serving a two-minute suspension constitutes a violation of the IHF Rules of the Game.

Regarding the nature of the decision taken by the referees

Pursuant to the introduction of Article 1, Chapter XIII of the 2012/2013 VELUX EHF Champions League Regulations relating to Legal Matters:

"In all matches of the VELUX EHF Champions League, there shall be no valid reasons for protests and protests shall be inadmissible if relating to:

- *Scheduling of and drawing for matches*
- *Nomination of referees and delegates*
- *Referees' decisions on facts in accordance with the Rules of the Game, including those based on EHF delegate's recommendations"*

Pursuant to Article 6.3, first line of the EHF Legal Regulations:

"Decisions and actions taken by referees on the playing court, including those based on EHF delegates' recommendations, are factual decisions and shall be final."

The Appellant argues that, de facto, the EHF delegate took the decision even though EHF delegates do not have the competence to do so. The EHF Court of Appeal disagrees with this interpretation and considers that the EHF delegate only made a wrong recommendation to the EHF referees, a wrong recommendation based on the factual elements he had himself observed during the course of the incident.

The EHF Court of Appeal finds that, in the case at hand, the EHF Official's decisions being right or wrong is not of any relevance since the nature of the decision taken by the EHF referees was factual and based on the EHF delegate's recommendation.

Consequently, the EHF Court of Appeal agrees with the interpretation made by the EHF Court of Handball regarding the nature of the decision taken by the referees to allow the goal scored during the action in which the Player took part while he was still serving a two-minute suspension. Such a decision was based, at the beginning, on the referees' own interpretation of the action, namely the fact that they did not notice the entrance of the Player on the playing court. Following the Match interruption, the referees based their decision on the recommendation of the EHF delegate to restart the Match due to the fact that the

EHF Delegate also did not notice the incident.

Article 6.3 of the EHF Legal Regulations, as well as the introduction of Article 1, Chapter XIII of the 2012/2013 VELUX EHF Champions League Regulations relating to Legal Matters mentioned above shall apply in the present case, the Panel considers the decision of the EHF referees as final since it was a factual decision based on the EHF delegate's recommendation.

Regarding the right to make adjustments

Pursuant to Article 6.3, second line of the EHF Legal Regulations:

"The right to make adjustments that may prove necessary as a result or corrections of the referees' report, or, in the case of obvious error revealed by means of pertinent evidence such as reports by EHF Officials, television footage or video recordings, shall be reserved."

The EHF Court of Appeal is aware of the right provided by the aforementioned Article as, in the case at hand, the error is obvious and revealed by pertinent evidence.

However, the EHF Court of Appeal underlines that the violation was not such as to having had an essential influence on the result of the Match since, on one hand, the aforementioned violation occurred at an early stage of the Match, and, on the other hand, the violation did not have a significant impact on the score at the time of the incident. Both teams still had the possibility to influence the course of the Match.

The EHF Court of Appeal emphasises that, a violation of the rules must have an essential and crucial influence on the final result of a match in order to require the EHF legal bodies to make adjustments such as to impose an annulment, a correction of the match result or a match replay in pursuance of Article 14.1 of the EHF Legal Regulations."

And the EHF Court of Appeal decided as follows:

"[...]

- *The appeal of handball club X... is rejected.*
- *The decision of the EHF Court of Handball n°132023211 dated February 15, 2013 is upheld.*
- *The final result of the Match is confirmed."*

C. Proceedings before the EHF Court of Arbitration

9. On 28 February 2013 the Claimant, via his legal representative, filed a claim with the EHF Court of Arbitration. The Claimant request is as follows:

"[...] The Claimant is filing this Statement of Claim with motion to pass a decision on the basis of Article 14.1 EHF Legal Regulations and to register the match with the score 10:0 for handball club X... in order to avoid any doubts in respect to qualifications for placement in the 1/16 finals of the VELUX EHF Champions League 2012/13."

"[...] Pursuant to Article 12.7 of Rules of Arbitration for the EHF Court of Arbitration the Claimant calls for express procedure and kindly requests the Council to conduct

proceedings without any undue delay and to pass appropriate decision within 3 days and, in case this time limit objectively may not be observed, to pass appropriate decision as soon as possible. [...]"

10. On 4 March 2013, the ECA Council took the decision to handle the proceedings in compliance with Article 12.7 of the *Rules of Arbitration for the ECA - Procedural Rules*. The procedural steps were defined in the decision of the ECA Council as follows:

"[...]"

- *The Respondent shall appoint its arbitrator within 1 day upon receipt of the request.*
- *The two arbitrators appointed shall select the chairman of the arbitral panel by mutual agreement within 1 day.*
- *The arbitrators shall confirm whether they accept their mandate as arbitrator within 1 day upon receipt of the request.*
- *The Respondent shall provide its memorandum in reply to the Claimant's statement of claim on March 8, 2013 at the latest.*
- *The ECA award shall be communicated to the parties on March 14, 2013 at the latest.*
- *Without prejudice to the foregoing, the arbitral panel remains competent to set timeline within the frame of the discussion/investigation phase."*

11. On the same day, the Claimant and the Respondent were officially informed of the opening of ECA proceedings as well as of the decision of the ECA Council to implement express proceedings pursuant

to Article 12.7 of the *Rules of Arbitration for the ECA - Procedural Rules*.

12. On 5 March 2013, the Respondent informed the EHF Court of Arbitration that they will not nominate an arbitrator and that they will not provide any further statement as they will stick to their previous ones.

13. On 7 March 2013, the ECA Council decided to inform the parties having an interest in the present case about the opening of the legal proceedings. The European Handball Federation, the handball clubs composing the rest of the concerned competition group, as well as the Claimant and the Respondent were informed accordingly.

III. Claimant's submissions

14. The facts are not disputed by the Claimant.

15. The Claimant adds that the decision taken by the EHF referees to allow the goal and to restart the match is a factual decision *sensu stricto*, it still was and remains a wrong decision that allowed for a clear violation of rules and, consequently, influenced the final result. Taking into consideration that the Match was stopped and that the officials had enough time and sufficient communication skills to consult it may not be considered a factual decision taken during the course of the play (like for instance a charging foul) which is necessarily imperfect taking into consideration speed movement and possible obstructions of visibility.

16. Furthermore, even though decisions passed by the referees on their personal observation are final pursuant to the IHF Rules of the Game, the decision of the referees in the present case was not based on their personal observation but rather based on instructions of the delegate. The referees consequently failed to pass a decision on the basis of their personal observation and instead *de facto* allowed the delegate to pass a wrong decision. The Claimant states that it should be noted that delegates have the responsibility to warn against possibility that a referees' decision is not in accordance with rules but does not have the authority to pass decision, which the delegate in this case *de facto* did.

17. The Claimant accordingly considers that the decision constitutes a clear and major violation of material rules that should have been prevented and, failing that, properly sanctioned.

18. The Claimant considers that the violation occurred in the 24th minute of the Match and allowed handball club Y... to gain substantial advantage at a relatively early stage of the Match that they were able to maintain until the end of the Match. The final score was 23:25 in favor of handball club Y... with one of the 25 goals of handball club Y... being clearly irregular and should have been disallowed.

19. In light of the foregoing, the Claimant states that it is clear that the violation of rules and failure to properly sanction it did influence the final score of the Match.

20. The result of the VELUX EHF Champions League which is the best and most elite club competition in the world should be a result of sporting achievement and not of violations of rules.

21. Due to this violation and its influence on the final result of the decisive match, the Claimant sustained damages exceeding 500,000€ in loss of revenue.

22. The Claimant request is as follows:

"[...] The Claimant is filing this Statement of Claim with motion to pass a decision on the basis of Article 14.1 EHF Legal Regulations and to register the match with the score 10:0 for handball club X... in order to avoid any doubts in respect to qualifications for placement in the 1/16 finals of the Velux EHF Champions League 2012/13."

IV. Factual and Legal Appreciation by the EHF Court of Arbitration

A. Applicable law

1. On the procedure

23. Article 10 of the *Rules of Arbitration for the ECA – Procedural Rules* provides as follows:

"The arbitral panel shall pass its decisions in accordance with the Federation's international and national regulations agreements, provided these do not violate general principles of law."

24. The applicable regulations in the present ECA proceedings are therefore all regulations of the European Handball

Federation, including its Statutes, in force at the time the incident occurred.

2. On the merits

25. Pursuant to Article 12.1 of the *Rules of Arbitration for the ECA – Procedural Rules*:

“All arbitral proceedings shall be conducted in accordance with the obligatory provisions of chapter four of Austrian Code of Civil Procedure and the Rules of Arbitration set forth herein. For the rest the arbitral panel shall have complete discretion to determine the procedure. In all non-regulated cases the Austrian Code of Civil Procedure Sec. 577 ff shall apply subsidiarily.”

B. Main issues

26. The main issues to be resolved by the arbitral chamber are:

1. The violation of Article 4:6 of the *IHF Rules of the Game*;
2. The nature of the referees’ decision;
3. The nature and extent of the adjustments considered as necessary by the Arbitral panel regarding the incident.

1. The violation of Article 4:6 of the *IHF Rules of the Game*

27. According to Article 4:6 of the *IHF Rules of the Game*, second and third lines, if a player enters the court while serving a two-minute suspension, he shall be given an additional two minute suspension. This suspension shall begin immediately, so the team must be further reduced on the court during the overlap between the first

and the second suspension. The game shall be restarted with a free-throw for the opponent as lay down in the aforementioned article as well as in Article 13:1a) of the *IHF Rules of the Game*.

28. Consequently, in the case at stake, the referees should have given an additional two-minute suspension to the player n°15 of handball club Y..., refused the goal scored by handball club Y... and restarted the Match with a free-throw for handball club X.... The handball club Y... should therefore have had five players on the playing court.

29. The ECA arbitral Chamber therefore found that the *IHF Rules of the Game* were breached twice, as the player did not have the right to enter the playing court while serving a two-minute suspension and the referees should have given an additional two-minute suspension in application of the abovementioned article.

30. The arbitral chamber emphasizes that both the negligence of the Respondent and the EHF Officials led to this violation. Such negligence should not occur within the frame of a top European Competition like the VELUX EHF Champions League.

2. The nature of the referees’ decision

31. Article 1, Chapter XII of the *2012/2013 VELUX EHF Champions League Regulations* relating to Legal Matters states as follows:

“In all matches of the VELUX EHF Champions League, there shall be no valid reasons for protests and protests shall be inadmissible if relating to:

- *Scheduling of and drawing for matches*
- *Nomination of referees and delegates*
- *Referees' decisions on facts in accordance with the Rules of the Game, including those based on EHF delegate's recommendations"*

32. Article 6.3, first line of the *EHF Legal Regulations* states as follows:

"Decisions and actions taken by referees on the playing court, including those based on EHF delegates' recommendations, are factual decisions and shall be final."

33. The Arbitral chamber agrees with the position of the EHF Court of Appeal. The decision of the referees not to apply Article 4:6 of the *IHF Rules of the Game* was a factual decision based on the delegate's recommendation. Indeed, both the referees and the delegate took the wrong decision based on the elements which occurred during the course of the Match and did not lead them to notice the obvious error that took place.

34. The aforementioned article therefore applies accordingly in order to define the decision taken by the referees on the playing court, based on the delegate's recommendation, as a factual decision that shall be final.

35. However, pursuant to Article 6.3, second line of the *EHF Legal Regulations* the right for the Arbitral chamber to make adjustments that may prove necessary as a result of corrections of the referees' report or, in the case of obvious error revealed by means of pertinent evidence such as reports by EHF Officials, television

footage or video recordings, shall be reserved.

36. The Arbitral chamber considers, in light of the foregoing, that in the present case, the conditions lay down in the aforementioned article are met to enable the panel to use such a reserved right. Indeed, the obvious nature of the error has already been alleged by the panel, based on evidence such as EHF Officials' report or video of the Match.

37. The question for the panel is then to know which adjustment should be implemented.

3. The nature and extent of the adjustments considered as necessary by the Arbitral panel regarding the incident

38. First of all, the panel emphasizes that a replay of the Match was the most proportionate adjustment in the present case. However, the panel does not decide to impose such a solution due to the fact that the factual circumstances do not reasonably allow the panel to do so since the next VELUX EHF Champions League matches will be played on 16 March 2013 as the overall balance of the whole competition would be called into question.

39. Secondly, the panel does not consider the registration of the Match result with 10:0 in favour of handball club X... as a proportionate adjustment. Indeed, should the violation be obvious and require adjustments, the impact of the violation on the normal course of the Match, regarding the moment at which it occurred and the score at the time, is not

such as requiring a result correction. There is no clear evidence enabling the panel to establish with certainty that the outcome of the Match would have been different if the violation had not occurred.

40. Finally, in order to compensate the loss of opportunity for the Claimant to qualify for the Last 16 phase of the 2012/2013 VELUX EHF Champions League, the panel considers that the proportionate adjustment is to impose a warning on both handball club Y... and the European Handball Federation as well as to further sanction them to compensate the financial damage suffered by the Claimant, in pursuance of Articles 14.1 and 12.4 of the *EHF Legal Regulations*.

41. To set the amount which shall be paid to the Claimant, the panel decides to take into consideration article 1.3.1 "guaranteed disbursements", Chapter XII "Finances" of the *2012/2013 VELUX EHF Champions League Regulations*.

42. Consequently, regarding the guaranteed disbursements to participating clubs in the Group phase, respectively to the Group Third, and the fix basis granted for teams qualifying for the Last 16 phase, the panel decides to compensate the financial damage of the Claimant with an amount of €30,000 (thirty thousand Euros). The payment of this financial damage shall be distributed between the Respondent and the European Handball Federation as follows:

- €25,000 (twenty-five thousand Euros) shall be paid by the Respondent to handball club X...

- €5,000 (five thousand Euros) shall be paid by the European Handball Federation to handball club X...

43. Regarding the responsibility of the EHF in the present case, the Arbitral Chamber considers that, even though the EHF was not directly a party in the proceedings at stake, they however had interests as stated by the ECA Council in the letter dated 7 March 2013 and is responsible of the referees' appointment. The panel therefore deems that the EHF shall be held responsible for the negligence of the EHF Officials.

C. Costs

44. The rules of Arbitration for the *EHF Arbitration Court – Procedural Rules* have in Article 20 the following provisions regarding costs:

"20.1 The arbitral panel shall in the award determine which party shall bear the arbitration costs.

20.2 As a general rule the unsuccessful party shall bear the costs of the arbitral proceedings. The arbitral panel may take into consideration the circumstances of the case, and in particular where each party is partly successful and partly unsuccessful, order each party to bear each own costs or apportion the costs between the parties.

20.3 In any case the decision on costs and the fixation of the amount shall be effected in terms of an award."

45. Article 21.3 of the *Rules of Arbitration for the EHF Arbitration Court - Procedural Rules* specifies:

“The costs of the parties shall not be refunded.”

46. Taking into consideration the outcome of the proceedings, the panel finds it adequate to have the Respondent pay three quarters of the costs of the arbitration proceedings and the Claimant one quarter. The arbitration proceedings costs amount to €2556 (€1.500 registration fee/€800 arbitrators fees/€256 administrative fees).

47. The Respondent shall therefore pay €1917.

48. The Claimant shall therefore pay €639. The Claimant already paid these costs. The remaining sum of the advance fee will be refunded by the ECA to the Claimant.

49. Otherwise, each party shall bear its own legal costs and all other expenses in connection with this arbitration.

V. Award

On these grounds the EHF Court of Arbitration rules in a unanimous decision:

1. The decision of the EHF Court of Appeal dated 21 February 2013 is partially confirmed.

2. The claim of handball club X... is partially upheld.

3. The result of the match: handball club X... vs. handball club Y... is confirmed.

4. A warning is imposed on the handball club Y... and the club shall pay €25,000 as

financial damage to handball club X... on May 14, 2013 at the latest.

5. A warning is imposed on the European Handball Federation and the Federation shall pay €5,000 as financial damage to handball club X... on May 14, 2013 at the latest.

6. The Parties shall pay the costs of proceedings amounting to €2556, respectively €639 for the Claimant and €1917 for the Respondent, on May 14, 2013 at the latest.

7. Each party shall bear its own legal costs and all other expenses in connection with this arbitration.



EHF Court of Arbitration

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**EHF Court of Arbitration
Arbitral Award
(Summarized and anonymous)
Case n° 12 20217 1 C ECA
7 August 2014**

In the arbitration between

The Handball Federation of X...,
as the "Claimant"

And

The European Handball Federation
("EHF"),
as the "Respondent-Co-Claimant"

Hereinafter referred to jointly as the
"Claimants" or as the "Parties"

Panel

Juan de Dios Crespo Perez (Spain)
Andreas Thiel (Germany)
Julien Zylberstein (France)

*Withdrawal from EURO organisation; Due
process; proportionality of the fine;
Justification of damage compensation.*

Introduction

The present Award is rendered following two appeals lodged by the Handball Federation of X... and the EHF against decision n°12 20217 1 2 CoA of the EHF Court of Appeal dated 28th March 2014.

I. Facts

1. In September 2008, the EHF Congress granted the Handball Federation of X... the right to organise the EHF 2012 Women's European Championship scheduled to be held in December 2012 (the "2012 Women's EURO").

2. On 3 June 2012 (verbally) and 4 June 2012 (in writing) – i.e. two days before the draw of the final tournament –, the Handball Federation of X... informed the EHF of its withdrawal from the organisation of the 2012 Women's EURO (the "Withdrawal"). The Handball Federation of X... provided as main justification its lack of financial means. The EHF subsequently designated a substitute organiser to take over the organisation of the 2012 Women's EURO.

II. Proceedings

A. Before the EHF Court of Handball

3. On 27 November 2012, the EHF requested the EHF Court of Handball to initiate legal proceedings against the Handball Federation of X..., which the former did on 28 November 2012. In substance, the EHF claimed that the Withdrawal of the Handball Federation of X... constituted a serious breach of the *EHF Statutes* and applicable regulations and requested damage compensation to be paid by the Handball Federation of X....

4. On 21 August 2013, the EHF Court of Handball rendered its decision which found that the Handball Federation of X... had breached Articles 10.1 of the *EHF Statutes* as well as Articles 4.5, 4.6 and 4.7 of the *EHF EURO Regulations*. Accordingly, the EHF Court of Handball imposed on the Handball Federation of X... the following disciplinary measures:

- A fine amounting to €300.000 (three hundred thousand Euros) for the Withdrawal, in accordance with D.5 of the *EHF List of Penalties*.

- A three-year suspension from organising EHF national team competitions (i.e. until 31 December 2016), in accordance with Article 12.3 and Article 14 of the *EHF Legal Regulations*.
- The reimbursement to the EHF of €250.000 (two hundred and fifty thousand Euros) amounting to the additional costs and expenses resulting from the Withdrawal, in accordance with Article 12.4 of the *EHF Legal Regulations*.

B. Proceedings before the EHF Court of Appeal

5. On 23 August 2013, the Handball Federation of X... filed an appeal with the EHF Court of Appeal against the decision of the EHF Court of Handball and requested a three-month period to submit written observations.

6. On 3 September 2013, appeal proceedings were opened by the EHF Court of Appeal. the Handball Federation of X... was given until 31 October 2013 to submit its written observations.

7. On 28 March 2014, the EHF Court of Appeal rendered its decision, the operative part of which reads as follows:

"[...]

- *The appeal of the Handball Federation of X... is partially accepted.*
- *The Appellant shall pay a fine of €250.000 (two hundred fifty thousand Euros) for withdrawal from the organisation of the 2012 Women's European Championship, after the right to organise the 2012 Women's European Championship was officially*

granted by the EHF Congress in September 2008.

- *The Handball Federation of X... shall reimburse the additional costs and expenses amounting to €87 972.40 (eighty-seven thousand nine hundred seventy-two Euros and forty cents)."*

C. Proceedings before the EHF Court of Arbitration

8. On 17 and 18 April 2014 respectively, the Handball Federation of X... and the EHF filed separate statements of claim with the EHF Court of Arbitration.

9. On 23 April 2014, proceedings before the EHF Court of Arbitration were opened and both parties were informed that their case would be heard jointly.

1. Appointment of the Panel

10. The Parties nominated their respective arbitrators in accordance with Article 1.1 and Article 1.3 of the *Rules of Arbitration for the ECA – Procedural Rules* within the set-deadline.

11. On 5 May 2014, the EHF challenged the nomination of the arbitrator appointed by the Handball Federation of X... for alleged lack of impartiality and independence, in accordance with Article 4 of the *Rules for Arbitration for the ECA – Procedural Rules*.

12. On 6 May 2014, the nomination of the Chairman of the Panel was suspended by the ECA Council.

13. On 20 May 2014, the ECA Council dismissed the challenge of the EHF, in accordance with Article 4.4 of the *Rules of*

Arbitration for the ECA – Procedural Rules. The nomination of the arbitrator appointed by the Handball Federation of X... was therefore confirmed. The nomination of the Chairman of the Panel subsequently resumed, pursuant to Article 1.5 of the *Rules of Arbitration for the ECA – Procedural Rules*.

14. On 22 May 2014, the EHF Court of Arbitration informed the Parties on the Panel composition.

15. Thereafter, the Parties did not raise any objection or challenge as to the composition of the Panel.

III. Submissions

A. Handball Federation of X...’s submissions

16. On 17 April 2014 and 16 May 2014, the Handball Federation of X... sent a statement of claim and a memorandum in reply to the EHF’s statement of claim. The submissions may be summarised as follows:

1. Handball Federation of X...’s statement of claim dated 17 April 2014

17. The Handball Federation of X... does not dispute the facts, as established by the EHF Court of Appeal. However, the observations contain the following arguments:

a. Due process

18. The Handball Federation of X... contends that the principle of due process had been violated before the EHF Court of

Handball. The findings of the EHF Court of Appeal would be, in this regard, wrong. The Handball Federation of X... reiterates that several letters and statements of defense were requested from the EHF with a view to present all relevant documents in connection to the amounts claimed by the EHF. The Handball Federation of X... alleges that the Parties were not treated fairly and equally since the EHF had in its possession the requested documents for more than seven (7) months. However, it is only after repeated requests that such documents were effectively communicated. The Handball Federation of X... also alleges that it had a short period of time to respond. This would constitute a serious violation of the principles of fair play and equal treatment.

19. In addition, the Handball Federation of X... argues that the EHF Executive Committee had knowledge of the EHF Court of Appeal decision before such decision had been communicated to the Handball Federation of X.... This questions the independence of the EHF legal bodies, in contradiction with Article 22.1 of the *EHF Legal Regulations*.

b. Suspension from organising EHF national team competitions

20. The Handball Federation of X... accepts the suspension from organising any EHF national team competition until 31 December 2016.

c. Amount of the fine

21. The Handball Federation of X... argues that all relevant and changed circumstances which led to render

impossible the organisation of the 2012 Women's EURO were not taken into consideration by the EHF Court of Appeal while determining the amount of the fine. The Handball Federation of X... underlines that although Article D.5 of the *EHF List of Penalties* provides for a wide range of amount to be determined by the competent EHF legal body, it does not preclude the latter to substantiate its decision. In any event, the Handball Federation of X... considers the fine imposed by the EHF Court of Appeal as disproportionate for the following reasons:

- The Handball Federation of X... contends it cannot be held sole responsible for the course of events pertaining to the Withdrawal since the requirements imposed by the EHF became stricter after X was granted the right to organise the event.
- The combination of stricter requirements together with the general, economic situation made it difficult to obtain sufficient sponsorship income.
- The Handball Federation of X...'s financial situation was such that it had to choose between two "evils", i.e. continuing with the organisation of the 2012 Women's EURO and running the risk to bring the Handball Federation of X... into bankruptcy, on the one hand, or withdrawing from the organisation of the event and running the risk to be sanctioned by the EHF. In addition, the Handball Federation of X... alleges that the decision to bid for the organisation of the event was made by the previous board of directors.

- The Handball Federation of X... contests having been negligent in the preparation of the 2012 Women's EURO and underlines that although it has a professional secretariat, handball is practiced at a semi-professional/amateur level in the Netherlands.
- The EHF did not offer any form of financial support when the difficulties arose. Instead, the EHF invited other countries to take over the organisation. The Handball Federation of X... would have expected the EHF to enter into discussions with the Handball Federation of X... with a view to find appropriate solutions and thus help the event to be organised in the Netherlands, as initially planned.

d. Amount of the damage compensation

22. The Handball Federation of X... stresses that the documents provided by the EHF failed to establish with sufficient accuracy the damage compensation granted by the EHF Court of Appeal (i.e. €87 972.40). For the following reasons:

- Investment in preparatory activities: Out of a total amount of €30.000 (thirty thousand Euros) only two amounts, i.e. €2.156,41 (two thousand one hundred fifty-six Euros and forty one cents) and €156 (one hundred fifty-six Euros) are properly justified.
- Investment in personnel and preparatory costs: No justification was provided to the Handball Federation of X... out of a total amount of €60.000 (sixty thousand Euros).

- Additional activities: These activities did not take place. In any event, the Handball Federation of X... questions that these costs should be reimbursed to the EHF, rather than to the substitute organiser. Thus, no justification was provided to the Handball Federation of X... out of a total amount of €10.000 (ten thousand Euros).
- Promotional activities: the Handball Federation of X... never received specifications for this claim, thus no justification was provided to X out of a total amount of €45.000 (forty-five thousand Euros).
- New announcement: the Handball Federation of X... questions the proportionality of such costs, i.e. €15.000 (fifteen thousand Euros).
- Additional costs: No justification was provided to the Handball Federation of X... out of a total amount of €120.000 (One hundred and twenty thousand Euros). Besides, the substitute organiser voluntarily applied to take over the organisation of the 2012 Women's EURO. Having just organised the 2012 Men's EURO in January, the substitute organiser already had the necessary means to organise the 2012 Women's EURO.

e. Conclusions

23. To conclude, the Handball Federation of X... requests the EHF Court of Arbitration to set aside the decision of the EHF Court of Appeal dated 28 March 2014 and:

"a. To order the EHF to make all documents on which its financial claim is based available to the Handball Federation

of X... and subsequently to give the Handball Federation of X... the opportunity to respond to this claim, either verbally or in writing;

b. To set the fine to be imposed on the NHV, in a new judgement based on reasonableness and fairness taking into account the circumstances put forward by the Handball Federation of X..., to an amount not exceeding €25,000.--, disallowing the claim for damages, or at least to allow this claim up to the amount mentioned in the notice of appeal dated 29 October 2013;

[...]

Ordering the EHF to pay the costs of these arbitration proceedings."

2. Handball Federation of X...'s memorandum in reply dated 16 May 2014

a. Amount of the fine

24. The Handball Federation of X... reiterates that the fine imposed by the EHF Court of Appeal is disproportionate.

b. Amount of the damage compensation

25. The Handball Federation of X... contests that the amount requested by the EHF is based on "simply factual costs". The EHF overlooks that the Handball Federation of X... had already been working intensively on the organisation of the event, causing damage on the Claimant higher than the requested amount. Additionally, the amount claimed by the EHF does not take into account the fact that the substitute organiser took over the organisation of the 2012 Women's EURO. This should have

significantly decreased such costs since the substitute organiser had organised the 2012 Men's EURO few months before. The Handball Federation of X... can only be responsible for the costs which are directly connected to the Withdrawal and further refers to its position set-forth in Paragraph 24 of this Award.

B. EHF's submissions

26. The EHF sent a statement of claim and a memorandum in reply to the Handball Federation of X...'s statement of claim on 18 April 2014 and 16 May 2014 respectively. The submissions may be summarised as follows:

1. EHF's statement of claim dated 18 April 2014

a. Amount of the fine

27. The EHF argues that the amount of the fine imposed on the Handball Federation of X... is too low. The fine should be situated in the maximum range foreseen in Article D.5 of the *EHF List of Penalties* for the following reasons:

- The EHF EURO Events constitute the most prestigious EHF competitions and attract utmost attention throughout the entire world of sport.
- The Withdrawal has affected the most important competition in the world of women's handball. Both the economic and non-economic consequences of the Withdrawal were significant.
- The Withdrawal is due to severe negligence from the Handball Federation of X... which did not establish a proper organisation structure and did not take care of the

overall situation before presenting its bid.

- The range of the fine should be consistent with the range and importance of the concerned competition and its dimension in the sport of handball. A medium range fine (such as the one imposed by the EHF Court of Appeal) does not constitute a sufficient deterrent.

b. Amount of the damage compensation

28. The EHF requests the EHF Court of Arbitration to review the amount of the damage compensation. The Withdrawal led to major economic and non-economic damages for the EHF. As an example, investments into promotional activities or event material could not be transferred to the new organiser and had therefore to be purchased again. Although the EHF Court of Appeal emphasised the significant economic and sports consequences caused by the Withdrawal, this was not properly taken into account when determining the amount of the damage compensation.

c. Suspension from organising EHF national team competitions

29. The EHF does not challenge the suspension of the Handball Federation of X... from organising national team competitions until 31 December 2016.

d. Conclusions

30. To conclude, the EHF requests the EHF Court of Arbitration (i) to increase the fine imposed on the Handball Federation of X...; and (ii) to review the damage

compensation claim of the EHF in its entirety and award a total amount of €370.000.

2. EHF's memorandum dated 16 May 2014

a. Due process

31. The EHF underlines that the Handball Federation of X... is an active component of the EHF structures and is duly represented in EHF technical and legal bodies. The EHF denies that it refused to accept the Handball Federation of X...’s requests to extend deadlines. The decisions of both the EHF Court of Handball and the EHF Court of Appeal suffice to demonstrate the absence of violation of the principle of due process.

32. With regard to the Handball Federation of X... argument stressing that the EHF Executive Committee had been made aware of the decision of the EHF Court of Appeal before such decision was notified to the Parties, the EHF emphasises that the minutes of the EHF Executive Committee dated 26 March 2014 were communicated to all EHF Member Federations, including the Handball Federation of X.... The minutes clearly show that only information on the likely timeframe of publication of the decision were reported.

b. Amount of the fine

33. With regard to the Handball Federation of X... arguments stressing that the amount of the fine was “hardly” justified by the EHF Court of Appeal, the EHF simply refers to Paragraph 9 to Paragraph 28 of the EHF Court of Appeal’s

decision which are fully dedicated to such justification.

c. Amount of the damage compensation

34. With regard to the amount of the damage compensation claim, the EHF stresses that all relevant material evidence were provided during the proceedings before the EHF Court of Handball.

C. Communication between the Handball Federation of X... and the ECA Council on the principle of due process

35. On 16 May 2014, the Handball Federation of X... sent a letter to the President of the ECA Council in which it questioned the implementation of the due process in the context of the current proceedings, with regard in particular to the procedure relating to the composition of the Panel.

36. On 19 May 2014, the President of the ECA Council replied to the Handball Federation of X... that the latter had been informed at every stage of the procedure relating to the composition of the Panel and that all documents received by the ECA Council were communicated to the Parties.

IV. Factual and Legal Appreciation by the EHF Court of Arbitration

A. Applicable Rules and Regulations

37. The case concerns the responsibility of the Handball Federation of X... following its Withdrawal from organising the Women’s EURO 2012.

38. The *EHF Statutes* and the *EHF EURO Regulations* set forth the obligation for a Member Federation to organise any EHF competitions for which they have been granted the right to do so.

39. Article 10.1 of the *EHF Statutes* provides as follows:

“Members elected as organisers of any EHF competitions have the obligation to organise, prepare and stage such competitions in accordance with the EHF Statutes and Regulations. They commit to act accordingly towards all other Members. Any failure to comply with such obligation and commitment may be sanctioned according to the applicable EHF Legal Regulations.”

40. According to Articles 4.5 to 4.7 of the *EHF EURO Regulations*:

“4.5 The fulfilment of the criteria established by the EHF Executive Committee and/or defined in the corresponding EHF EURO application documents—including (without limitation) the relevant Bidding Manual—is required for an application by a Member Federation to be tabled at the EHF Congress.

4.6 The allocation of an EHF EURO to a Member Federation is decided by the EHF Congress pursuant to article 3.1.8.19 of the Statutes of the EHF. The EHF Congress has the right to delegate this matter to the EHF Executive Committee.

4.7 The EHF Member Federation(s) nominated as Host Federation(s) of the EHF EURO by the EHF Congress, is entrusted by the EHF Congress with the

organisation and staging of the EHF EURO in cooperation with the EHF.”

41. Under Article 6.1 and 6.2 of the *EHF Legal Regulations*:

“6.1. Infringements of Regulations including those of an administrative nature, unsportsmanlike conduct, facts that may bring the sport of handball and the EHF into disrepute as well as violent behaviour in and around playing halls are subject to sanction.

6.2. Disputes between handball/EHF related entities and/or individuals, issues relating to international handball competitions in Europe and/or EHF activities as well as issues relating to international players’ transfers between EHF member federations and associated federations shall be decided upon according to the present regulations, any other applicable Regulations and the general principles of law.”

42. Article 22.3 and Article 22.5 of the *EHF Legal Regulations* provide that:

“22.3. The Court of Handball is responsible as first instance for disciplinary adjudication within the framework of the legal system of the EHF and its member/associated federations, i.e. for punishing violations of Regulations including those of an administrative nature not under the jurisdiction of the Administrative Bodies according to article 21, for settling disputes between handball/EHF related entities and/or individuals, and for deciding upon any other issues relating to international handball competitions in Europe and/or EHF activities, except those under the

jurisdiction of the Administrative Bodies according to Article 21.

22.5. The Court of Appeal is responsible, as second instance, for disciplinary adjudication within the framework of the legal system of the EHF and its member/associated federations, i.e. for punishing violations of Regulations including those of an administrative nature, for deciding upon issues relating to international player transfers between EHF member federations and associated federations as well as upon any other issues relating to international handball competitions in Europe and/or EHF activities, and for settling disputes between handball/EHF related entities and/or individuals."

43. Article 12.1 and Article 12.4 of the EHF Legal Regulations read as follows:

"12.1. Except in the case of administrative sanctions (cases listed in the Catalogue of Administrative Sanctions) for which the administrative/legal bodies are bound by the penalties defined in the Catalogue of Administrative Sanctions, the administrative/legal bodies shall determine the type and extent of the penalties and measures to be imposed considering all the objective and subjective elements of the case as well as all mitigating and aggravating circumstances, within the frame provided in Articles 13, 14, 15 and, when relevant, in the List of Penalties. If a party is not found guilty, the proceedings shall be dismissed.

12.4. The EHF legal body may decide to impose on an individual, club and/or a federation sanctioned with any kind of penalties (including administrative

sanctions) or measures to compensate, the additional costs and expenses and financial damages (including damages and/or fines paid to third parties) suffered by the EHF, by an individual and/or by a participating club/member federation/associated federation as a result of the offences committed by the individual, club and/member federation or associated federation."

44. Article 14 of the EHF Legal Regulations states:

14.1. The EHF administrative/legal bodies may impose the following penalties/measures on member federations/associated federations and clubs:

- *warning;*
- *administrative/organisational measures;*
- *fines (including administrative fines);*
- *deduction of some or all points scored in the competitions concerned; forfeiture;*
- *suspension from participation in international handball competitions and/or EHF activities for a number of matches or a specific period of time;*
- *exclusion from participation in future international handball competitions and/or EHF activities for a number of matches or a specific period of time;*
- *cancellation of matches;*
- *annulment/correction of the match result;*
- *match replay;*
- *ban on the venue;*
- *ban on spectators;*
- *withdrawal of a title or award;*
- *supervision of matches.*

14.2. A fine shall not be less than 100€ and shall not be more than 500.000€.

14.3. The penalties and measures named above may be imposed individually or cumulatively.”

45. Article D.5 of the *EHF List of Penalties* states the following:

“Withdrawal from the organisation of an EHF national team competition after official granting of rights: Fine from 15.000€ to 500.000€.”

46. Article 11 of the *Rules of Arbitration for the ECA – Procedural Rules* provides as follows:

“The arbitral panel shall pass its decisions in accordance with the Federation’s international and national regulations and agreements, provided these do not violate general principles of law.”

47. Pursuant to Article 13.1 of the *Rules of Arbitration for the ECA – Procedural Rules*:

“All arbitral proceedings shall be conducted in accordance with the obligatory provisions of chapter four of Austrian Code of Civil Procedure and the Rules of Arbitration set forth herein. For the rest the arbitral panel shall have complete discretion to determine the procedure. In all non-regulated cases the Austrian Code of Civil Procedure Sec. 577 ff shall apply subsidiarily.”

B. Review of the facts and the parties’ submissions

1. Facts

48. The facts of the case are not disputed by the Parties.

2. Main issues

49. For the sake of clarity, it is hereby emphasised that the suspension of the Handball Federation of X... from organising any EHF national team competition until 31 December 2016 is not challenged by any of the Parties.

50. The main issues to be resolved by the arbitral chamber (the “Panel”) are:

- a. The alleged violation of the principle of due process;
- b. The proportionality of the fine imposed on the Handball Federation of X...;
- c. The justification of the amount of damage compensation granted to the EHF by the EHF Court of Appeal in its decision dated 28th March 2014.

a. The alleged violation of the principle of due process

51. With regard to the argument related to the refusal by the EHF Court of Handball to extend the deadlines to provide its submissions in reply to the EHF claim, the Panel notes that an extension was granted to the Handball Federation of X... on 28 June 2013 upon request made on 26 June 2013. The deadline was of similar length as the one granted by the EHF Court of Handball to the EHF on 16 May 2013.

52. With regard to the alleged awareness of the EHF Executive Committee of the outcome of the EHF Court of Appeal decision before its notification to the Parties, the Panel determines that there were only discussions pertaining to the likely timeframe of on-going proceedings as shown in the minutes of the EHF Executive Committee dated 26 March 2014. This does not question in any way the independence and impartiality of the EHF legal bodies. The assertion of the Handball Federation of X... is therefore wrong.

53. With regard to the alleged violation of the principle of due process throughout the proceedings, the Panel finds that no shortcomings in the application of this principle can be established. All documents regarding the nomination procedure of the Panel were brought to the attention of both parties. Article 15 of the *Rules of Arbitration for the ECA – Procedural Rules* was therefore properly enforced.

54. The Panel notes that in order to establish a violation of the principle of due process, the procedure should have had arbitrary, unreasonable or discriminatory measures towards one of the parties. The Panel has not seen such development in the proceedings before the EHF Court of Appeal. It is clear that the Parties have been given the same opportunities to express their views and opinions at every stage of the proceedings in present the case.

b. The proportionality of the fine imposed on the Handball Federation of X...

55. In order to assess whether the fine imposed on the Handball Federation of X... by the EHF Court of Appeal is proportionate, the Panel will look through the obligation of X to organise the Women's EURO 2012, the dimension of the event concerned, the nature and extent of the negligence as well as the overall responsibility of the Handball Federation of X....

Obligation of the Handball Federation of X to organise the Women's EURO 2012

56. The Panel agrees with the EHF Court of Appeal on the applicability of Article 10.1 of the *EHF Statutes* as well as Chapter II ("Competition Basics") of the *EHF Euro Regulations*, specifically Articles 4.5 to 4.7 apply in the present case, which is not disputed by the Parties.

57. Accordingly, it cannot be disputed that by withdrawing from the organisation of the Women's EURO 2012, the Handball Federation of X... failed to its obligation to organise such competition.

58. Disciplinary measures in case of a withdrawal from the organisation of an EHF national team competition after having been granted such right are set forth in Article D.5 of the *EHF List of Penalties*, which establish a fine ranging from €15.000 (fifteen thousand Euros) to €500.000 (five hundred thousand Euros). Within this range, the EHF legal bodies have flexibility to impose a sanction which properly meets the seriousness of the relevant violation.

The dimension of the EHF national team competition in the present matter

59. The Panel agrees with the view taken by the EHF Court of Appeal where it stated that:

“10. The Women’s EHF EURO is the most prestigious national team competition in women’s handball, and, together with Men’s EURO and the EHF Champions League, one of the top competitions organised by the EHF. The organisation of such an event is therefore considered as major importance from both the economic and sport standpoint.

11. A National Federation withdrawing from the organisation of an EHF EURO after the official granting of the organisation right causes serious difficulties and problems to the EHF and to the respective stakeholders leading to an endangering of the sport of handball from both an economic and a sports perspective. Indeed, the EHF, the National Federations and their respective partners engage expenses and enter into contracts to prepare and take part in an international top class event. The sustainability of EURO events, and consequently of handball as a product lays on the credibility of the competition based on the quality of the organisation. Furthermore, the development of handball and its future are jeopardised by such a withdrawal as it may undermine a fair and balanced competition for every participant, in particular regarding the fact that the Women’s National team of Netherlands did not take part in the Qualification Phase which changed the organisation and composition of the aforementioned phase. Economic and

sports consequences are intrinsically linked and endangering the one directly leads to an influence on the other.”

60. The prestigious dimension of the EHF Women’s EURO is clearly and undisputedly established in the present case. The Panel consequently confirms the finding of the EHF Court of Appeal: a late withdrawal does endanger the very existence and sustainability of the concerned competition and, more importantly, of national team handball.

The nature and extent of the negligence of the Handball Federation of X...

61. The submission of an application to organise the most prestigious competition in women’s handball requires a careful and precise *a priori* assessment of all the potential risks and challenges, including financial risks and challenges. The fact that the Handball Federation of X... could only expect limited income should therefore have been taken into full consideration before it submitted its bid.

62. The Panel stresses in this respect that whilst it is true that the bid can be attributed to the previous board of directors of the Handball Federation of X..., it must be borne in mind that a club or a member association cannot avoid liability for its obligations by changing its management team. The Panel concurs with the EHF Court of Appeal in this respect.

63. The Panel notes that the Handball Federation of X... reiterated its full commitment to organise the Women’s EURO 2012 at a meeting with the EHF that took place on 22 May 2012, i.e.

approximately fourteen (14) days before the Withdrawal. This cannot be regarded as demonstrating the Handball Federation of X... willingness to undertake its best effort to maintain the organisation of the Women's EURO 2012. The Handball Federation of X... should have informed the EHF in a timely manner.

64. In light of the aforementioned elements, the Panel determines that the Handball Federation of X... acted negligently.

The nature and extent of the responsibility of the Handball Federation of X...

65. As seen above, the Panel emphasizes that X cannot avoid liability for its behaviour in the present case. The Handball Federation of X... is sole responsible for the Withdrawal. However, the Panel finds that mitigating circumstances must be taken into consideration. Indeed, the fact that the Withdrawal did not result in the cancellation of Women's EURO 2012 and the fact that stricter requirements were imposed during the operational organisation of the event are regarded as mitigating factors.

Amount of the fine

66. Having due regard to the facts and circumstances of the present case, the Panel regards the €250.000 (two hundred fifty thousand Euros) fine imposed on the Handball Federation of X... as proportionate. Such amount is sufficient to prevent similar violations in the future.

c. Justification of the damage compensation granted

Findings of the EHF Court of Appeal

67. The EHF Court of Appeal decided that the Handball Federation of X... shall reimburse the additional costs and expenses amounting to €87 972.40 (eighty-seven thousand nine hundred seventy-two Euros and forty cents) to the EHF as a consequence of the Withdrawal. This amount corresponds to the part of the EHF claim for damage compensation dated 15 May 2013 which were found to be duly justified.

68. Accordingly, the EHF Court of Appeal found that the following enclosures and related amounts were duly justified:

- Enclosures A to G from the section "Investment in preparatory actions" (i.e. €31179.71).
- Enclosure I from the section "Cancellation of additional activities" (i.e. €11500.00).
- Enclosure J regarding the costs for the production of CI material relating to the qualification from the section "Cancellation of additional activities" (i.e. €9256.00).
- Enclosure K regarding the preparation bids from the section "New announcement and awarding procedures" (i.e. €1036,69) were grounded.

69. Additionally, the EHF Court of Appeal decided that the Handball Federation of X... shall be partly liable for the EHF investment in personnel since the Withdrawal led to an increased workload in order to ensure the proper organisation

of the Women's EURO at the scheduled dates. Based on enclosure H from the section "Investment in personnel and preparatory costs" as well as enclosure K regarding personnel costs for bidding procedures from section "New announcement and awarding procedures" from the EHF damage compensation claim, an amount of €35.000 (thirty-five thousand Euros) was added to compensate the investment in personnel of the EHF.

Findings of the Panel

70. The Panel finds that the expenses from the following enclosures of the section "Investment in preparatory actions" should have been incurred regardless of the Withdrawal:

- Enclosures B and C relating to the qualification draw event held in April 2011 (i.e. €100 and €9.305,15).
- Enclosures D and G relating to the production of event flags, roll-ups and bibs (i.e. €8.956, €6.959,40).

71. Consequently, the Panel finds that a total amount of €13,819.50 (thirteen thousand eight hundred nineteen Euros and fifty cents) is objectively justified and cannot be disputed. Such amount includes:

- Costs for the production of event banners (enclosure A) amounting to €2.156,41 (two thousand one hundred fifty-six Euros and forty-one cents).
- New production of the event trophy (enclosure F) amounting to €1.370,40 (one thousand three hundred seventy Euros and forty cents).

- Costs for the production of the CI material relating to the qualification (Enclosure J) amounting to €9.256,00 (nine thousand two hundred fifty-six Euros)
- Costs for the preparation bids following the new announcement (Enclosure K) amounting to €1.036,69 (one thousand thirty-six Euros and sixty-nine cents).

72. Regarding the investment in personnel, for which the EHF Court of Appeal granted an amount of €35.000 (thirty-five thousand Euros), the Panel determines that the amount is not based on objective material evidence enabling to establish that the Withdrawal led to a significant increase of the normal workload of the EHF personnel. Consequently, the Panel decides that such amount must not be included in the damage compensation to be paid by the Handball Federation of X....

73. Finally, the Panel finds that, contrary to the findings of the EHF Court of Appeal, the decrease in ticketing income (enclosure H) should have been taken into consideration while defining the amount of damage compensation. Indeed, the EHF income significantly decreased (i.e. by ten times) between the Women's EURO 2010 and the Women's EURO 2012. Consequently the EHF income went from approximately €250.000 (two hundred and fifty thousand Euros) to €20.000 (twenty thousand Euros). Although the Panel is aware of the multiplicity of factors which may lead to differences in ticketing income between two Women's EURO, such a significant difference clearly demonstrates that the Withdrawal caused such a substantial loss. Thus, an amount of €26,180.50 (twenty six thousand one

hundred eighty Euros and fifty cents) is deemed to be a fair compensation for such loss.

74. In light of the foregoing, the Handball Federation of X... shall consequently reimburse the additional costs and expenses amounting to €40,000 (forty thousand Euros), amount which include:

- Costs for the production of event banners (i.e. €2.156,41).
- New production of the event trophy (i.e. €1.370,40).
- Costs for the production of CI material relating to the qualification (i.e. €9.256,00).
- Costs for the preparation bids following the new announcement (i.e. €1.036,69).
- Compensation for the loss of ticketing income (i.e. €26,180.50).

3. Costs

75. Article 21 of the *Rules of Arbitration for the ECA – Procedural Rules* provides the following:

“21.1 The arbitral panel shall in the award determine which party shall bear the arbitration costs.

21.2 As a general rule the unsuccessful party shall bear the costs of the arbitral proceedings. The arbitral panel may take into consideration the circumstances of the case, and in particular where each party is partly successful and partly unsuccessful, order each party to bear each own costs or apportion the costs between the parties.

[...]

21.4 In any case the decision on costs and the fixation of the amount shall be effected in terms of an award.”

76. Article 22.3 of the *Rules of Arbitration for the ECA - Procedural Rules* specifies:

“22.3 The costs of the parties shall not be refunded.”

77. The arbitration proceedings costs amount to €4294 (€3.000 registration fee/€800 arbitrators fees/€494 administrative fees). Taking into consideration the outcome of the proceedings, the Panel finds it appropriate to have such costs of the arbitration proceedings split into two equal parts.

78. The Handball Federation of X... shall pay €2147 (two thousand and one hundred forty seven Euros). The Handball Federation of X... already paid these costs. The remaining sum of the advance fee will be refunded by the ECA to the Claimant.

79. The EHF shall pay €2147 (two thousand and one hundred forty seven Euros). The Respondent-Co-Claimant already paid these costs. The remaining sum of the advance fee will be refunded by the ECA to the EHF.

80. Otherwise, each party shall bear its own legal costs and all other expenses in connection with this arbitration.

V. Award

On these grounds, the EHF Court of Arbitration rules in a unanimous decision:

1. The decision of the EHF Court of Appeal dated 28 March 2014 is partially confirmed.
2. The claim of the Handball Federation of X... is partially upheld.
3. The claim of the EHF is partially upheld.
4. A fine of €250.000 (two hundred fifty thousand Euros) is imposed on the Handball Federation of X....
5. Additional costs and expenses amounting to €40,000 (forty thousand Euros) shall be paid by the Handball Federation of X... to the EHF.
6. The Handball Federation of X... is suspended from organising any EHF national team competition until 31 December 2016.
7. The Parties shall pay the costs of proceedings amounting to €4294 (four thousand and two hundred ninety-four Euros), respectively €2147 (two thousand and one hundred forty seven Euros) for X and €2147 (two thousand and one hundred forty seven Euros) for the EHF.
8. Each party shall bear its own legal costs and all other expenses in connection with this arbitration.