



Arbitration CAS 2009/A/1880 FC Sion v. Fédération Internationale de Football Association (FIFA) & Al-Ahly Sporting Club & CAS 2009/A/1881 E. v. Fédération Internationale de Football Association (FIFA) & Al-Ahly Sporting Club, award of 1 June 2010

Panel: Prof. Massimo Coccia (Italy), President; Mr Olivier Carrard (Switzerland); Prof. Ulrich Haas (Germany)

Football

Unilateral termination of an employment contract without just cause

Alleged violation of due process rights

Standing to appeal

Link between the release of an ITC and the related claims for a contractual breach

Wrong designation of a party

Extent of the liability according to Art. 17 para. 2 of the RSTP

Primacy of the liquidated damages provisions

Scope of discretion of the adjudicating body when determining the amount of compensation due

Principle of the “positive interest”

Law of the country concerned

Loss of a possible transfer fee

Protected Period

Specificity of sport

Sporting sanction

- 1. The CAS does not act as an administrative court reviewing an act of an administrative authority where, usually, the scope of review is characterised by minimum standards of scrutiny, mostly procedural, and the administrative court may not substitute its own judgement for that of the administrative authority. In contrast, it is the duty of a CAS panel in an appeals arbitration procedure to make its independent determination of whether the Appellant’s and Respondent’s contentions are correct on the merits, not limiting itself to assessing the correctness of the previous procedure and decision. As a consequence, given the complete power granted by the CAS Code to fully review the facts and the law, any defects of the DRC proceedings and any infringements of the Appellants’ procedural rights committed by FIFA bodies or FIFA staff are irrelevant.**
- 2. Only an aggrieved party, having something at stake and thus a concrete interest in challenging a decision adopted by a sports body, may appeal to the CAS against that decision. The “aggrievement requirement” is an essential element to determine the legal interest and the standing of a party to appeal before the CAS a sports body’s decision, because the duty assigned to a panel by the CAS Code rules governing the appeal arbitration procedure is that of solving an actual dispute and not that of delivering an advisory opinion to a party that has not been aggrieved by the appealed decision.**

3. Article 22(a) of the 2008 FIFA Regulations on the Status and Transfer of Players (RSTP) makes clear that the FIFA procedure related to the release of an International Transfer Certificate and the FIFA procedure related to the sanctions or compensation for breach of contract are strictly linked because they essentially deal with the same transfer dispute and, thus, they can be viewed as two sides of the same coin.
4. There is no general procedural principle which precludes the amendment of an initial petition with a view of correcting the wrong designation of a party. If such wrong designation can – according to some cantonal Codes of Civil Procedure – be corrected even after a court judgement has been handed down, there is no reason why as a matter of principle a clarification of the party’s true identity in an internal procedure of an association should not be possible during the course of this procedure. In addition, Article 9 para. 2 of the FIFA Procedural Rules explicitly allows a party – upon invitation by FIFA and thus, a fortiori, also spontaneously – to “redress” an incomplete petition and submit it again if it was originally lacking some of the information or data required under Article 9 para. 1. Finally, FIFA proceedings are not court proceedings, and not even arbitral proceedings. Rather, they are “intra-association proceedings”, based on the private autonomy of the association, which by definition lack the procedural rigour that one can find in true court proceedings. General procedural principles that may apply to court proceedings or arbitral proceedings do not automatically apply to intra-association proceedings, but must be demonstrated in each specific case by the party invoking them. Lacking this demonstration, it would be an excessive formalism to deem that a party to an intra-association dispute settlement procedure might not be allowed to specify the exact name and identity of the defendant as soon as an objection is raised in this respect.
5. According to Article 17 para. 2 RSTP, the pecuniary liability of the new club has a subsidiary character and its extent necessarily depends on the amount of compensation determined to be owed (or not owed) by the player to his former club. If the amount as determined in the FIFA decision was validly challenged by the player, any decision of a CAS Panel with regard to the player’s contractual liability (and, should he be liable, the extent of such liability) will necessarily have repercussions on the new club’s position as joint and several obligor (“*codébiteur solidaire*”).
6. Article 17 paras. 1 and 2 RSTP set forth the principle of the primacy of the contractual obligations concluded by a player and a club. Therefore a panel must preliminarily verify whether there is any provision in the employment contract between the player and the former club that does address the consequences of a unilateral termination of the contract by either of the parties. Such clauses are, from a legal point of view, liquidated damages provisions.
7. When determining the amount of compensation due, the judging authority has a wide

margin of appreciation. Indeed, Article 17 para. 1 RSTP does not require the judging authority to necessarily evaluate and give weight to any and all of the factors listed therein. Depending on the particular circumstances of each case and on the submissions of the parties, any of those factors may be relevant or irrelevant to the final decision, influencing or not the discretionary assessment of the compensation due. Therefore, it is up to each party to stress the factors which it believes could be in its favour in order to discharge its burden of persuasion. In particular, as the CAS Code sets forth an adversarial system of arbitral justice and not an inquisitorial one, a CAS panel has no duty to analyse and give weight to any specific factor listed in Article 17 para. 1 if the parties do not actively substantiate their allegations with evidence and arguments based on such factor.

8. Given that the compensation to be granted derives from a breach or unjustified termination of a valid contract, the calculation of the compensation due is guided by the principle of the so-called “positive interest” or “expectation interest”. Accordingly, a panel will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if no contractual breach had occurred.
9. The law of the country concerned is the law governing the employment relationship between the player and his former club, that is, the law with which the dispute at stake has the closest connection. This will be under ordinary circumstances the law of the country of the club whose employment contract has been breached or terminated. The law of the country concerned may be relevant in favour of the player or in favour of the club, or be utterly irrelevant. It is up to the party which believes that such factor could be in its favour to make sufficient assertions in this regard. If it does not, the judging authority will not take that factor into account in order to assess the amount of compensation. In no way does this mean that the judging authority failed to properly evaluate the matter.
10. It is generally recognised in Swiss employment law that the loss of earnings (*lucrum cessans*) is a possible part of the damages caused through the unjustified termination of an employment agreement. Therefore, the loss of a possible transfer fee can be considered as a compensable damage heading if the usual conditions are met, i.e. in particular if it is proven the necessary logical nexus between the breach or the unjustified termination of the agreement and the lost opportunity to realize a certain profit.
12. In principle, the fact that a breach or unjustified termination of contract occurs during the protected period should be taken into consideration as an aggravating factor when assessing the compensation due. It would otherwise be difficult to understand why this element has expressly been listed as a criterion to take into consideration when assessing such compensation. However, proportionality considerations may lead to

the conclusion that the sporting sanctions provided by Article 17 para. 3 RSTP are sufficient to penalize the player for his unjustified unilateral termination of the contract, and that an additional amount on this count would overcompensate his former club.

13. Article 17 para. 1 RSTP asks the judging body to take into due consideration the “*specificity of sport*”, that is the specific nature and needs of sport, so as to attain a solution which takes into account not only the interests of the player and the club, but also, more broadly, those of the whole football community. Based on this criterion, the judging body should aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interests at stake, the sporting circumstances and the sporting issues inherent to the single case. However, the concept of specificity of sport only serves the purpose of verifying the solution reached otherwise prior to assessing the final amount of compensation. In other words, the specificity of sport is subordinated, as a possible correcting factor, to the other factors. In particular, according to CAS jurisprudence, this criterion is not meant to award additional amounts where the facts and circumstances of the case have been taken already sufficiently into account when calculating a specific damage head. Above all, the element of the specificity of sport may not be misused to compensate the injured party with an amount which would put such party in a better position than the one it would have if the termination had been mutually agreed.
14. According to CAS jurisprudence, a literal interpretation of the said provision yields the duty of the competent body to impose sporting sanctions on a player who has breached his contract during the protected period: “shall” is obviously different from “may”. Consequently, if the intention of the FIFA Transfer Regulations was to give the competent body the discretion to impose a sporting sanction, it would have employed the word “may” and not “shall”.

The Football Club Sion is an amateur football club with registered office in Sion, Switzerland (“FC Sion Association” or the “First Appellant” or, sometimes, the “amateur club” and, when referred to together with E., the “Appellants”), constituted as an association in the sense of Art. 60 *et seq.* of the Swiss Civil Code (CC). FC Sion Association is affiliated with the Swiss Football Association (SFA) as member club no. 8040 and its first team takes part in an amateur championship under the authority of the “Association Valaisanne de Football”, the so-called “Fourth League”, which is the sixth-tier national division in Switzerland.

It is to be noted that, at the same time, “FC Sion” is the name regularly used by a professional football club competing in the Swiss top championship “Super League” and constituted as a limited company (*société anonyme*) under Art. 620 of the Swiss Code of Obligations (CO) with the corporate

name Olympique des Alpes SA, having its registered office in Martigny-Combe, Switzerland (“FC Sion/Olympique des Alpes SA” or, sometimes, the “professional club”). At the beginning of the 2005-2006 season, further to a rule enacted by the Swiss Football League (SFL) obliging all top Swiss clubs to be organized as limited companies, FC Sion/Olympique des Alpes SA became a member of the SFL and of the SFA (as member no. 8700) and took the place of the historical club FC Sion Association, taking over the whole professional sector and the position in the Super League held hitherto by the latter. In the common use by the SFA, the SFL, the media, the fans and the public at large, the professional club FC Sion/Olympique des Alpes SA keeps being referred to simply as FC Sion. Even FC Sion/Olympique des Alpes SA regularly tags itself merely as FC Sion in its own documents, such as in its letterhead, in the letters of its executives to third parties, in its internet site, and the like (see *infra* at 38).

E. (the “Second Appellant” or the “Player” and, when referred to together with FC Sion Association, the “Appellants”) is an Egyptian football player born in 1973. He is a goalkeeper who has successfully experienced on various occasions international club competitions such as the African Champions League, African Super Cup and FIFA Club World Championship. He has been international more than a hundred times with the Egyptian national team, winning three times the African Cup of Nations and taking part in the FIFA World cup qualifiers and in the 2009 FIFA Confederations Cup.

The Fédération Internationale de Football Association (FIFA or the “First Respondent” and, when referred to together with Al-Ahly Sporting Club, the “Respondents”) is the world governing body for the sport of football, having its headquarters in Zurich, Switzerland.

Al-Ahly Sporting Club (“Al-Ahly” or the “Second Respondent” and, when referred to together with FIFA, the “Respondents”) is a professional football club with registered office in Cairo, Egypt. It is affiliated with the Egyptian Football Association (EFA).

On 1 January 2007, the Player and Al-Ahly signed an Egyptian employment contract, effective until the end of the 2009-2010 football season.

On 14 February 2008, a meeting took place in Cairo between, amongst others, the Player, representatives of Al-Ahly and representatives of FC Sion/Olympique des Alpes SA, with a view to negotiating the possible transfer of the Player from Al-Ahly to FC Sion/Olympique des Alpes SA. No document of any kind was signed by the parties at the end of the meeting. According to the position taken before FIFA by the Swiss club and the Player a verbal arrangement on the transfer was reached, whereas Al-Ahly denies such alleged circumstance.

On 15 February 2008, Mr Christian Constantin, signing the letter as President of FC Sion/Olympique des Alpes SA, wrote to Al-Ahly making reference to the previous day’s meeting and informing the Egyptian club that FC Sion/Olympique des Alpes SA had reached an agreement with the Player. Mr Constantin proposed to Al-Ahly’s President to meet in Geneva in order to “*find a friendly settlement between our clubs*”.

On the same day, the Player and FC Sion/Olympique des Alpes SA signed a Swiss employment contract effective until the end of the 2010-2011 football season.

Still on the same day, which was the last date for registering players in Switzerland, FC Sion/Olympique des Alpes SA filed a “Request for Transfer” (“Demande de transfert”) with the SFA for the Player to be registered as a non-amateur player with the first team of FC Sion/Olympique des Alpes SA. The SFA then requested from the EFA the issuance of the International Transfer Certificate (ITC) for the Player in favour of FC Sion/Olympique des Alpes SA.

On 20 February 2008, the Player took part in an Egyptian championship game for Al-Ahly.

On 21 February 2008, the Player travelled to Switzerland in order to undertake the required medical examination.

On 22 February 2008, FC Sion/Olympique des Alpes SA wrote again to Al-Ahly in order to obtain an answer regarding the transfer of the Player.

On the same day, the Player also wrote to Al-Ahly to urge the latter to keep the promise that, allegedly, the Egyptian club had made to let him continue his career with a European club after the Africa Cup of Nations held in January 2008.

On 23 February 2008, the EFA addressed the SFA informing the latter that it refused to issue the ITC. The EFA asserted that the player was contractually bound to its affiliated club Al-Ahly until the end of the season 2009-10 and that it was impossible for an Egyptian club to replace one of its players after 31 January 2008, this being the last day of the applicable registration period.

On 24 February 2008, Al-Ahly replied to the letters of 15 and 22 February from FC Sion/Olympique des Alpes SA and stated that it had never agreed to the transfer of the player during the meeting in Cairo. It further emphasized that the player was under contract until the end of the season 2009-2010 and that it was impossible that it would have agreed to release the player in the middle of the season *“taking into consideration that the player Essam El Haddary [had] already played the first match in the second round of the league in this season 2007-2008”*. It also recalled that the player had already been registered with both the EFA and the African Football Confederation (*Confédération Africaine de Football* – CAF) and that it would be impossible to substitute or replace him since the closing date for the registration was 31 January 2008.

On 25 February 2008, the Player informed Al-Ahly in writing that he was terminating his contract with the Club. He put forward that Al-Ahly had always promised to let him leave the Club in order to play with a European team; therefore, after the tripartite meeting in Cairo he had every reason to believe that he would be able to sign an employment contract with FC Sion/Olympique des Alpes SA.

On the same day, FC Sion/Olympique des Alpes SA sent a fax to Al-Ahly which contained a final offer “*to meet in order to find a friendly solution [...] but no later than Wednesday*”, i.e. within two days, in relation to the transfer of the Player.

On 27 February 2008, FC Sion/Olympique des Alpes SA sent an urgent letter to FIFA invoking the FIFA Regulations on the Status and Transfer of Players (the “FIFA Transfer Regulations”) and requesting the assistance of FIFA for the issuance of the ITC to allow the Player to be registered with the SFA as a player of FC Sion/Olympique des Alpes SA. The Player himself signed the letter at the bottom, explicitly agreeing to its contents and sharing the request submitted to FIFA. In fact, the Player signed the following declaration at the bottom of the FC Sion’s letter to FIFA:

“Signé le 27 février 2008 pour accord, pour valoir exactitude des informations contenues et pour valoir confirmation qu’il est impossible pour le joueur d’envisager un retour au pays. E.”.

On 28 February 2008, FIFA attributed a reference number (08-00194/maj) to the matter and answered to FC Sion/Olympique des Alpes SA, indicating that it needed a request from the SFA with some documentation. On the same day, the SFA, prompted by FC Sion/Olympique des Alpes SA, sent the request for the ITC to FIFA.

On 14 March 2008, FIFA faxed a letter to the SFA asking “*for the sake of good order*” to receive “*a power of attorney authorizing the legal representative of the club FC Sion to act on its behalf in the present matter*”.

On 19 March 2008, the attorney at law Mr Alexandre Zen-Ruffinen wrote to FIFA indicating that “FC Sion” had released a power of attorney in his favour and attached the following power of attorney issued by FC Sion/Olympique des Alpes SA, authorizing him to represent such club before FIFA or any other competent authority in connection with the transfer of the Player:

“Procuration

Le FC Sion/Olympique des Alpes SA confirme avoir donné mandat à Me Alexandre Zen-Ruffinen, avocat à Neuchâtel, pour défendre ses intérêts dans le cadre du dossier relatif au transfert du joueur Essam El Haddary (Egypte). La présente procuration est valable devant toute institution ou autorité, que ce soit la FIFA, l’ASF ou des instances civiles

Martigny, le 19 Mars 2008

*Pour Olympique des Alpes SA
Domenicangelo Massimo, directeur général”.*

On 27 March 2008, the attorney Mr Zen-Ruffinen wrote to FIFA stating the position of his client (“*le FC Sion prend position comme suit sur l’affaire...*”) and insisting that FIFA grant the ITC in order to allow the Player to work and the club to field him.

On 4 April 2008, both FC Sion/Olympique des Alpes SA and the Player, through their attorneys, wrote to FIFA insisting that Al-Ahly’s contentions be ignored and that the ITC be delivered

immediately. The Player's counsel also wrote as follows in order to object to any possible arbitration proceedings: *“les divers [sic] clauses arbitrales ne sont pas opposables à mon client car elles ne remplissent pas les conditions juridiques nécessaires. Aussi sont-elles, formellement, par les présentes, récusées”*.

On 11 April 2008, the Single Judge of the FIFA Players' Status Committee (the “Single Judge”) upheld the request jointly submitted by FC Sion/Olympique des Alpes SA and the Player and granted a provisional ITC, ruling as follows:

“The Swiss Football Association is authorized to provisionally register the player E. with its affiliated club FC Sion with immediate effect”.

In the last paragraph of its decision, just before the above quoted ruling, the Single Judge emphasised the following:

“the present decision is without prejudice and pending the outcome of a contractual labour dispute between the player and the Egyptian club as to the substance of the matter, which would have to be dealt with by the Dispute Resolution Chamber. In particular, the Chamber would have to express itself on the questions if a breach of contract was committed by one or both of the parties, whether with or without just cause as well as on the possible consequences thereof, i.e. financial compensation and/or sporting sanctions”.

On 12 June 2008, Mr Giampaolo Monteneri wrote to FIFA on behalf Al-Ahly, exhibiting a power of attorney in his favour and lodging a claim against the Player and *“the Swiss club FC Sion”* for, respectively, breach of contract and inducement to breach of contract, requesting FIFA to impose sanctions on them and to grant a pecuniary compensation in favour of Al-Ahly.

On 18 June 2008, FIFA wrote to the SFA, FC Sion/Olympique des Alpes SA and the Player (c/o the Swiss club), forwarding a copy of Al-Ahly's claim. FIFA's communication included the same reference number (08-00194/maj) used by FIFA during the proceedings leading to the Single Judge's decision.

On 23 June 2008, Mr Zen-Ruffinen, being the attorney already empowered by FC Sion/Olympique des Alpes SA (see *supra*), wrote to FIFA stating that *“FC Sion”* had forwarded him Al-Ahly's claim and had asked him to defend the club on the basis of the power of attorney already on file with FIFA (see *infra* at 43).

On 25 June 2008, Mr Léonard A. Bender, attorney at law in Martigny (Valais, Suisse), wrote to FIFA and, stating that he had received from Mr Zen-Ruffinen a copy of Al-Ahly's claim, made reference to the power of attorney given to him by the Player and already sent to FIFA on 4 April 2008 in order to receive all correspondence directly: *“J'ai pris connaissance par l'intermédiaire du mandataire du FC Sion de la plainte du Club Al Ahly. A ce propos, je tiens à vous signaler que je vous ai adressé le 4 avril 2008 une procuration du joueur E. Je la joins une nouvelle fois en annexe aux présentes. Aussi, vous voudrez bien me notifier directement toutes écritures et correspondances liées à ce dossier”*.

On 10 July 2008, Mr Zen-Ruffinen requested FIFA to provide a copy of the contract between the Player and Al-Ahly, reminding that this was essential in order to respect the procedural rights of his

client: *“le FC Sion ne peut exercer son droit d’être entendu valablement s’il n’a pas connaissance du contrat supposément violé”*. Mr Zen-Ruffinen also specified that his letter was not to be considered as addressing the merits of the case and that, for reasons that were going to be stated at a later stage *“le FC Sion déclinera toute qualité pour défendre à la présente affaire et juge quoi qu’il en soit la demande irrecevable en ce qu’elle le concerne”*.

On 15 July 2008, both Mr Bender and Mr Zen-Ruffinen, on behalf of their respective clients, filed with FIFA the answers to the claim lodged by Al-Ahly. In particular, Mr Zen-Ruffinen, in addition to the defence on the merits, argued on a preliminary basis that Al-Ahly had made a mistake in designating “FC Sion” as a defendant in the FIFA procedure because “FC Sion” was an amateur club which was not a member of the SFL and, therefore, the claim had to be rejected for *“défaut de légitimation passive”*, i.e. for lack of “standing to be sued”:

“Al Ahly a dirigé sa demande contre le FC Sion.

Le FC Sion est:

- *d’une part, le “nom sportif” donné à une équipe de football professionnel évoluant en Super League (1ère division suisse), sans existence juridique propre et donc ne disposant d’aucune qualité pour défendre, la dite qualité appartenant exclusivement à Olympique des Alpes SA (club n° 8700), pas mis en cause dans la présente procédure ;*
- *d’autre part une association au sens des articles 60ss du Code civil suisse (club n° 8400), membre de l’Association valaisanne de football (AVF), mais non pas de la Swiss Football League (SFL), dont l’équipe la mieux classée en 6ème division suisse et qui ne possède donc pas la légitimation passive dans la présente affaire.*

A titre préalable, c’est donc à tort que Al-Ahly désigne le FC Sion comme partie défenderesse à la présente action. Le défaut de qualité pour défendre entraîne l’irrecevabilité de la demande alors que le défaut de légitimation passive entraîne le rejet au fond de la demande”.

On 26 November 2008, FIFA forwarded the answers to Al-Ahly, which filed its reply on 10 December 2008. In particular, with regard to the issue of standing to be sued, Al Ahly stated as follows in the relevant part:

“FC Sion asserts not having standing to be sued in this matter and that only the limited company Olympique des Alpes SA has. The club that has however requested through the Swiss Football Association the registration of the Player is FC Sion and the club for which the Player is eligible to play is again FC Sion. The assertion that FC Sion has no standing to be sued are [sic] therefore unfounded and to be rejected. In any event, and in order to please the representatives of FC Sion, the present claim is enlarged in order to also comprise beside FC Sion also Olympique des Alpes SA as respondent. The terminology FC Sion used in the claim includes hence also Olympique des Alpes SA”.

On 30 January 2009, Mr Bender submitted a rejoinder on behalf of the Player.

On 5 February 2009, Mr Zen-Ruffinen also filed a rejoinder on behalf of the Swiss club whereby, besides submitting arguments on the merits, he confirmed his position as to the issue of standing to

be sued. In particular, he contested the possibility of Al-Ahly to extend the procedure to a third party arguing that, in accordance with general procedural principles, it is the introductory statement which creates the procedural link between the parties without any possibility of subsequent alterations, so stating in the relevant part:

“Le club demandeur croit pouvoir “étendre” la procédure à Olympique des Alpes SA; il est formellement contesté qu’une partie qui se trompe en désignant l’adverse partie puisse simplement déclarer, en milieu de procédure, qu’il élargit la cause à une entité tierce. Conformément au droit général de procédure, c’est en effet l’ouverture de la procédure qui crée le lien d’instance entre les parties. Olympique des Alpes SA n’est pas partie à la présente procédure”.

In the ensuing weeks, the parties submitted additional documents and exchanged further correspondence with FIFA. On 14 April 2009, FIFA communicated to the parties that the dispute was going to be decided by the Dispute Resolution Chamber (DRC) on the occasion of its meeting of 16 April 2009 and informed the parties of the DRC’s composition for that day.

On 16 April 2009, the DRC rendered a decision (the “Appealed Decision”) stating as follows in the ruling part (*“dispositif”*):

- “1. The claim of the Egyptian club Al Ahly Sporting Club is partially accepted.*
- 2. The Egyptian player E. has to pay the amount of EUR 900,000 to Al Ahly Sporting Club within 30 days of notification of the present decision.*
- 3. The Swiss Club FC Sion is jointly and severally liable for the payment of the aforementioned compensation.*
- 4. Al Ahly Sporting Club is directed to inform the player E. and the club FC Sion directly and immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
- 5. If this amount is not paid within the aforementioned time limit, a 5% interest rate per annum as of the expiry of the said time limit will apply and the matter will be submitted, upon request, to the FIFA Disciplinary Committee for its consideration and decision.*
- 6. A restriction of four months on his eligibility to play in official matches is imposed on the player E. This sanction shall take effect as of the start of the next season of the player’s new club following the notification of the present decision.*
- 7. The club FC Sion shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.*
- 8. Any further request filed by the club Al Ahly Sporting Club is rejected”.*

The reasons on which the DRC based the Appealed Decision were as follows in the most relevant parts:

- It is uncontested that the club for which the Player has been registered with the SFA (upon the latter’s explicit request to be able to register the Player for its affiliated club “FC Sion”) and for which he has been participating in organised football ever since is

the club FC Sion and not the entity Olympique des Alpes SA. Besides, the Player's new employment contract names "the club of the Swiss Football League FC Sion – Olympique des Alpes SA" as his counterparty. Therefore, it must be concluded that the designation of "FC Sion" as the defending club is correct and the argument of the Swiss club in order to avoid its participation in the FIFA proceedings must be rejected.

- Considering that the claim was lodged on 12 June 2008, the 2008 edition of the FIFA Transfer Regulations is applicable to the substance of the case.
- FC Sion has not been able to prove beyond doubt that Al-Ahly verbally agreed during the tripartite meeting of 14 February 2008 to release the Player from its contractual obligations. The only evidence presented by FC Sion essentially consisted of three declarations, issued by the Player himself, an employee of Olympique des Alpes SA and the interpreter Mr Zeaf, who had assisted the Player; therefore, the impartiality of these individuals was at least questionable and could not serve as objective evidence for Al-Ahly's alleged consent to release the Player of its contractual obligations.
- As to the compensation due, the employment contract between Al-Ahly and the Player, signed on 1 January 2007, had been set to expire at the end of the 2009-2010 season. The Player received his salary until and including March 2008, entailing that the total value of his employment agreement with Al-Ahly for the remaining contractual period of two seasons and three months appears to be composed of the proportional amount of EGP 180,000 for the months April 2008 to June 2008 as well as the amount of EGP 720,000 each for the seasons 2008-2009 and 2009-2010, totalling EGP 1,620,000 (approx. CHF 300,000). On the other hand, the remuneration under the terms of the new employment contract with FC Sion was CHF 240,000. Consequently, the remuneration and benefits due to the Player under his new employment contract for the same period of two seasons and three months amounted to CHF 540,000, *i.e.* three times CHF 20,000 (CHF 240,000:12) for the months April to June 2008 and CHF 240,000 for each of the seasons 2008/2009 and 2009/2010.
- Al-Ahly did not provide any information regarding the fees and expenses possibly paid for the acquisition of the Player's services. Likewise, it did not provide any information relating to the costs allegedly incurred for the Player's replacement or any offer it had possibly received for the transfer of the Player. Therefore these criteria could not be taken into account for assessing the applicable amount of compensation.
- With regard to the criterion of the specificity of sport, the sporting damage caused by the Player to Al-Ahly was particularly important in light of the exceptional and outstanding position the Player held with Al-Ahly, as the Club's first goalkeeper, one of the best players on his position of his continent, a member of the Egyptian national team and holder of several awards as well as numerous titles along with Al-Ahly. Moreover, the latter lost the Player before the crucial part of the season 2007/2008 and outside the registration period. The breach of contract also prevented Al-Ahly from counting on one of its key players' services for over two additional seasons and from possibly negotiating his transfer to a third club for a financial profit. As an aggravating

circumstance, it was also held that the Egyptian employment contract had still more than two years to run, i.e. an important share of the entire contract duration of three and a half years.

- Summing it up, the amount of compensation due to Al-Ahly was composed, firstly, of EUR 300,000 *“being the reflection of the remuneration and other benefits due to the player under the previous and the new contract and the value attributed to his services by the both clubs”* and, secondly, by the important sports-related damages caused to Al-Ahly by the Player and the fact that the relevant breach of contract occurred during the protected period with over two contractual seasons left. Emphasising that the sanctioning nature of the provisions contained in Article 17 of the FIFA Transfer Regulations could not be disregarded, a compensation in the total amount of EUR 900,000 was imposed on the Player and, in application of Article 17.2 of the FIFA Transfer Regulations, the Swiss club was deemed jointly and severally liable.
- In addition, pursuant to Article 17.3 of the FIFA Transfer Regulations the Player was sanctioned with a restriction of four months on his eligibility to participate in any official match, with the sanction taking effect from the start of the next season of the Player’s new club following the notification of the Appealed Decision.
- As the Swiss club had concluded a contract with the Player without the consent of his then employing club, it had to be considered to have induced the Player to breach his contract with Al-Ahly without just cause during the protected period. The consequent sanction was the ban from registering any new players, either nationally or internationally, for two registration periods.

On 17 April 2009, both Mr Bender and Mr Zen-Ruffinen wrote on behalf of their clients stating that, to their surprise, the internet site of Al-Ahly had given the news – then spread by the Egyptian media – that the case had been decided in Al-Ahly’s favour, sanctioning their respective clients and imposing them to pay EUR 900,000 as compensation to Al-Ahly. As consequence, they both argued that Al-Ahly had an improper access to some members of the DRC and asked for the recusal of all the members of the DRC.

On 30 April 2009, FIFA wrote to the parties stating that from FIFA’s side no communication regarding the outcome of the matter had been made to any of the parties.

The Appealed Decision was notified to all parties on 29 May 2009.

On 18 June 2009, FC Sion Association filed a Statement of Appeal with the Court of Arbitration for Sport (CAS) against the Appealed Decision (CAS 2009/A/1880 FC Sion v. FIFA & Al-Ahly Sporting Club), together with some exhibits. It submitted the following request for relief (free translation from the original French text):

“As a provisional measure:

1. *To grant an interim stay of the effects of the Appealed Decision.*

2. To decide that the costs and the legal expenses of the provisional measure will follow the decision on the merits.

As to the merits:

3. To quash the decision of 16 April 2009 by the FIFA Dispute Resolution Chamber.

4. To order the Respondents to jointly bear the costs incurred with the present arbitration and to pay to the Appellants an equitable contribution towards their legal fees and expenses”.

On the same day, the Player filed a Statement of Appeal with the CAS against the Appealed Decision (CAS 2009/A/1881 E. v. FIFA & Al-Ahly Sporting Club), together with some exhibits. It submitted the following requests for relief (free translation from the original French text):

“1. The appeal is upheld; as a consequence, the decision of 16 April 2009 by the FIFA DRC is quashed.

2. To order the Respondent to bear the costs incurred with the present arbitration.

3. To order the Respondent to pay to the Appellant an equitable contribution towards its legal fees and expenses”.

The Player also requested an interim stay of the effects of the Appealed Decision and contested the jurisdiction of the CAS. The Player submitted that in his opinion no arbitration clause in favour of FIFA and/or CAS met the necessary legal requirements to be applied to him. The Player specified that, in this context, he was submitting an appeal to the CAS only “pour la sauvegarde de ses droits, de manière, entre autres, à respecter le délai de 21 jours”.

On 29 June 2009, the Player filed a civil law suit with the District Court of Zurich (“Bezirksgericht Zürich”, the “Zurich Court”) against FIFA and Al-Ahly contesting the Appealed Decision and requesting its annulment (“Anfechtung/Feststellung der Ungültigkeit”) on the basis of Article 75 CC.

On 6 July 2009, the Zurich Court dismissed the Player’s application for *ex parte* interim measures (the so-called “superprovisorische Massnahme” or super-provisional measures).

On 7 July 2009, the Deputy President of the Appeals Arbitration Division granted the interim stay of the effects of the Appealed Decision sought by the First Appellant until a decision of the Panel on the merits of the case. On the same day, he also granted the interim stay of the effects of the Appealed Decision sought by the Second Appellant until a decision of the Panel on the merits of the case.

On 10 July 2009, FC Sion Association submitted its Appeal Brief, together with various exhibits, confirming the request for relief sought in its Statement of Appeal.

On the same day, the Player submitted his Appeal Brief, together with a various exhibits, seeking the following requests for relief (free translation from the original French text):

“1. The appeal is upheld.

2. *Principally, the CAS has no jurisdiction to entertain the case.*
3. *Subsidiarily, the appeal is upheld and the case is reverted to FIFA for new proceedings and a new decision.*
4. *More subsidiarily, the appeal is upheld and the FIFA decision of 16 April 2009 is quashed.*
5. *The legal expenses and the costs of the arbitration are borne by the Respondents”.*

On 15 July 2009, the CAS Court Office communicated to the parties that, with the agreement of all parties, the procedure CAS 2009/A/1881 E. v. FIFA & Al-Ahly Sporting Club was going to be consolidated with the parallel procedure CAS 2009/A/1880 FC Sion v. FIFA & Al-Ahly Sporting Club, and the two arbitrations were going to be conducted jointly by a single Panel, maintaining however the difference between the two procedures with regard to the preliminary issues of jurisdiction and *lis pendens* raised by the Player, which were going to be treated separately by the Panel.

On 4 August 2009, FIFA submitted its Answer Brief, together with various exhibits, seeking the following requests for relief:

- “1. [...] we request that the CAS rejects the present appeals and confirm the decision passed by the Dispute Resolution Chamber on 16 April 2009 in its entirety.
2. Furthermore, we request the CAS that it communicates the operative part of its award to the parties prior to the reasons, within a maximum of 30 days after the conclusion of the exchange of the written submissions, or, in case a hearing should be held in the present procedure, within a maximum of five days after the date of such hearing.
3. Finally, we ask that the CAS orders the Appellants to bear all the costs incurred with the present procedure, and to cover all legal expenses of FIFA related to the proceedings at hand”.

On 7 August 2009, Al-Ahly submitted its Answer Brief, together with various exhibits, seeking the following requests for relief:

- “1) to reject both appeals;
- 2) to confirm the challenged decision;
- 3) to condemn the Appellants to the payment in favour of Al Ahly SC of the legal expenses incurred;
- 4) to establish that the costs of the arbitration procedure shall be borne by the Appellants”.

On 21 August 2009, the Panel decided that the parties would be allowed to communicate with CAS, orally as well as in writing, either in French or in English, according to their preference. The Panel also decided that, in light of all the circumstances, the proceedings would be conducted in English and the award(s) would be issued in English.

On 1 September 2009, the CAS Court Office communicated to the parties that, with reference solely to the procedure CAS 2009/A/1881, the Panel had determined to decide on a preliminary

basis the issues related to CAS jurisdiction and to the suspension of the procedure for *lis pendens* and, therefore, it granted the parties leave to file an additional brief on those two issues.

On 18 September 2009, the CAS Court Office communicated to the parties that the Panel, deeming itself to be sufficiently well informed with the parties' written submissions, had determined to adjudicate the preliminary issues of jurisdiction and *lis pendens* without holding a hearing, in accordance with Article R57 of the CAS Code.

By Partial Award on Lis Pendens and Jurisdiction dated 7 October 2009, the Panel dismissed the request of the Second Appellant to stay the arbitration CAS 2009/A/1881 on grounds of *lis pendens*. It also decided that CAS retained jurisdiction to adjudicate on the merits the appeal submitted by the Player against the Appealed Decision.

On 4 November 2009, the Panel ordered the First Appellant to produce a copy of the transfer contract of the Player to the Egyptian club FC Ismaily. It also invited all parties to file the witness statements of any witnesses they intended to call to be heard at the hearing.

On 6 November 2009, the Player lodged an appeal before the Swiss Federal Tribunal (the "Federal Tribunal") against the Partial Award on Lis Pendens and Jurisdiction. The Player also requested an interim stay of the proceedings before the CAS until the Federal Tribunal would reach a decision on the jurisdiction of the CAS.

On the same day, the Panel invited the FC Sion Association to clarify what would be its legal interest and standing to appeal in the arbitration CAS 2009/A/1880 FC Sion v. FIFA & Al-Ahly Sporting Club, should the Panel determine that FC Sion /Olympique des Alpes SA – rather than FC Sion Association – was a party to the FIFA proceedings.

On 13 November 2009, UEFA addressed to the CAS a "*Brief of the Union Européenne de Football Association (UEFA) as amicus curiae*".

By order of 30 November 2009, the President of the First Civil Law Division of the Federal Tribunal dismissed the request for an interim stay of the proceedings before the CAS.

On 2 December 2009, the Panel informed the parties that the Federal Tribunal had dismissed the request for a stay filed by the Player. The Panel also granted an extension of the deadline given to the parties for filing their comments, if any, further to UEFA's *amicus curiae* brief. Furthermore, it reminded the parties that the hearing in both cases was maintained for the 9 December 2009.

On the same day, the Panel issued an order of procedure that was signed by FC Sion Association on 7 December 2009 with the comment "*compte tenu du fait que la formation a annoncé attendre l'arrêt du Tribunal fédéral relatif à sa compétence pour juger du cas de E.*". It was signed by the Player on 2 December 2009 with the comment "*dans le sens de notre fax de ce jour*", i.e. "*avec la réserve que le joueur réitère son déclinatoire de compétence et a pris note que le TAS ne rendra pas sa décision avant que le Tribunal Fédéral n'ait*

statué sur notre recours du 6 novembre 2009”. Al-Ahly and FIFA signed the order of procedure on 3 December 2009 and on 7 December 2009, respectively.

On 3 December 2009, the First Appellant requested that the closing of the proceedings and the pleadings be postponed until the Federal Tribunal reached a decision regarding the *lis pendens* and the jurisdiction of CAS. It also stated that it was not in the position to disclose the transfer contract of the Player to FC Ismaily since this contract had been concluded by FC Sion/Olympique des Alpes SA, with which the Player was registered. Finally, it submitted that its legal interest and standing to appeal were well founded already with regard to the Appealed Decision that ordered the First Appellant to pay the amount of EUR 900,000; it also stated that these questions would be further developed at the hearing.

On the same day, the Second Appellant filed with the CAS as written witness statement the declaration released on 16 April 2008 by Mr Abdel Zeaf before a public notary, in relation to the facts witnessed as an interpreter during the tripartite meeting of 14 February 2008 in Cairo. In his written testimony Mr Zeaf stated that the aforesaid meeting was organised with the aim of negotiating the transfer of the Player to FC Sion, but that the two clubs could not come to an agreement with respect to the amount of the transfer, although the positions of the parties were not very far from each other. He recalled that the representative of the Egyptian club was confident that the parties could make up for the difference, for example by organising a training camp of the Egyptian club in Switzerland at FC Sion’s expenses. Although there was no final settlement between the two clubs, Al-Ahly authorised the Player to immediately sign an employment contract with FC Sion if the latter and the Player could come to an agreement. The reasons were that the registration of the Player in Switzerland had to be requested until the day after the meeting (15 February 2008) and that Al-Ahly had already committed itself to release the Player in case of a transfer to Europe in acknowledgment for the services rendered during the long years spent with the club. Mr Zeaf finally stated that Al-Ahly had agreed that the Player would leave the Club to travel to Switzerland after the championship game of 20 February 2008.

On 4 December 2009, the Panel informed the parties that the hearing of 9 December 2009 would be a full-fledged hearing dedicated to all aspects of the case, including the parties’ final pleadings. It also announced that it would not render its award before receiving the decision of the Federal Tribunal and reserved the possibility to give to the parties to the arbitration CAS 2009/A/1880 FC Sion v. FIFA et Al Ahly Sporting Club the opportunity to file additional written observations should the Federal Tribunal deny the jurisdiction of the CAS. Further, it stated that a final decision on the admissibility of the UEFA *amicus curiae* brief would be communicated to the parties at the outset of the hearing. Finally, taking note of the First Appellant’s comments regarding the contract related to the transfer of the Player to FC Ismaily, the Panel invited the Player to produce a copy of the contract on or before 7 December 2009.

On 7 December 2009, the First Appellant informed the Panel that it expressly reserved its right to ask for a new hearing depending on the decision of the Federal Tribunal. It also produced the witness written statements of Mr Robert Breiter, Legal Secretary of the SFA and of Mr Claudius

Schäfer, Head of Legal Services and Licensing of the SFL. Finally, it objected to the admission of the *amicus curiae* brief submitted by UEFA.

On the same day, counsel for the Second Appellant produced a medical report dated 7 December 2009 certifying that the Player was suffering “*from common cold with acute low back pain and right sciatica*” and that he needed “*medical treatment and bed rest for one week*”; he therefore asked that the hearing be postponed. He also informed the Panel that the Player did not possess a copy of the transfer contract between FC Sion/Olympique des Alpes SA and FC Ismaily, but that this document could be requested from the contracting parties. Finally, he asked the Panel to disregard the *amicus curiae* brief submitted by UEFA on the grounds that UEFA had not sought from CAS the authorisation to file such brief, that UEFA could not be described as “independent” from FIFA and that UEFA was basing its arguments on the false assumption that the Player had breached his employment contract.

On 8 December 2009, the Panel informed the parties that in order to allow the Player to take part in the hearing in spite of his alleged illness, the Panel was exceptionally authorising him to participate by phone conference. Therefore, it invited counsel for the Player to provide it with his client’s phone number at the outset of the hearing.

At the outset of the hearing, the Panel observed that it had noticed by press reports that the Player had played a football match on the same day as that of the medical certificate and asked the Player’s counsel about his availability to be heard telephonically. However, the Player’s counsel stated that the Player would not be available to be heard by phone conference. Also at the beginning of the hearing, the following procedural questions were addressed by the Panel:

- The Panel decided not to admit the *amicus curiae* brief submitted by the UEFA. It considered that the parties had not unanimously agreed to the filing of the *amicus curiae* brief and that there were no particular circumstances that justified the admission of a document from a third party.
- The Panel also made clear again that the hearing would be a full-fledged hearing dedicated to all aspects of the case, including the parties’ final pleadings. However, it reserved the possibility to grant to the parties to case no. CAS 2009/A/1880 a further round of submissions should the Federal Tribunal deny the jurisdiction of the CAS with regard to case no. CAS 2009/A/1881.
- Finally, the Panel decided that the Al-Ahly’s officer Mr Mohammed Adly Elkeie would not be admitted as a witness because the Second Respondent’s request had not been timely submitted. However, the Panel allowed him to take the floor during the hearing in his capacity as party representative.

During the hearing, testimonies were rendered by Mr Robert Breiter and by Mr Claudius Schäfer, both called as witnesses by the First Appellant, and by Mr Abdel Zeaf, called as witness by the Second Appellant.

After the parties' final arguments, the Panel closed the hearing and announced that its deliberation would be made and the reasoned award would be rendered only after the judgement of the Federal Tribunal on CAS jurisdiction. Upon closure, all the parties but the Second Appellant expressly stated that they did not have any objection in respect to their right to be heard and to be treated equally in these arbitration proceedings. The Second Appellant declined to answer the question of the Panel and did not indicate any specific situation in which his right to be heard or to be treated equally could have been violated by the CAS; he merely stated that the reservations he had about the jurisdiction of the CAS were self-explanatory.

By order of 9 December 2009, the President of the First Civil Law Division of the Federal Tribunal dismissed the request for provisional measures by which the Second Appellant had sought from the Federal Tribunal an order for the CAS to delay its award until the Federal Tribunal rendered its judgement on the jurisdiction of the CAS. The President considered that even if the term "deliberate" was used in the order of procedure, it did not necessarily mean that the Panel would immediately deliver the operative part of its award, thereby giving it immediate enforceable effect. Rather, in view of paragraph 10 of the order of procedure, stating that "[t]he arbitral award together with the grounds thereof will be issued in writing, then served on the parties by the Secretary General of the CAS as quickly as possible", it appeared more likely that CAS would not take advantage of Art. R59 of the CAS Code to issue the operative part of the award before the decision of the Federal Tribunal. The President also stated that even if it happened, the Second Appellant would not lose his rights since he could at that time lodge an appeal with the Federal Tribunal and request an interim stay of the enforcement of the CAS award until the Federal Tribunal's decisions on the jurisdiction of the CAS.

By judgement of 20 January 2010, the Federal Tribunal dismissed the appeal of the Second Appellant and thereby confirmed the jurisdiction of the CAS. The Federal Tribunal considered that the dispute at stake had the necessary international character to fall within the scope of application of Article 22 lit. a of the FIFA Transfer Regulations since the Second Respondent was calling into question the responsibility of the Player as well as of the Swiss Club, and was requesting that financial and sporting sanctions be taken against them by FIFA. Furthermore, the Federal Tribunal stated that the dispute was clearly related to the request of the ITC and that, when requesting the release of such document, the Player had specifically admitted that the FIFA Transfer Regulations were applicable and had submitted himself to the procedure set up by these Regulations to settle the disputes related to the request of an ITC. Therefore, the CAS was right in pointing out that it would be a case of *venire contra factum proprium* if the Player were allowed to request an ITC by invoking the relevant provision of the FIFA Transfer Regulations and then could refuse to participate in the procedure set up by the same provision in order to settle the disputes related to such request. The Federal Tribunal also stated that, in any case, it was not contested that the Player had not objected to the jurisdiction of the DRC when the Second Respondent had brought its claim before it. The Player had even filed an answer before this body on 15 July 2008 without contesting its jurisdiction. To the contrary, the Player had submitted its arguments on the merits of the dispute against the Second Respondent, stated that the DRC had full power of review and requested from the latter to record that the employment contract between Al Ahly and the Player had been terminated by mutual agreement, referring to the procedure of issuance of the ITC. The Federal Tribunal

concluded that, since the Player had submitted himself to the internal jurisdiction of FIFA, he was not in a position to contest the jurisdiction of CAS provided by FIFA rules.

LAW

CAS Jurisdiction

1. Within the context of the procedure CAS 2009/A/1881, the Second Appellant has objected to the CAS jurisdiction to adjudicate the case on the merits and asked for a stay of the arbitral proceedings until the Zurich Court, where he had also started an action on the same matter, decided on its jurisdiction.
2. On 7 October 2009, the Panel issued a Partial Award on Lis Pendens and Jurisdiction (the “Partial Award”) stating the following:
 1. *The request by the Appellant E. to stay the present arbitration TAS 2009/A/1881 E. v. FIFA & Al-Ahly SC on grounds of lis pendens is dismissed.*
 2. *The jurisdictional objection submitted by E. is dismissed.*
 3. *The CAS retains jurisdiction to adjudicate on the merits the appeal submitted by E. against the decision dated 16 April 2009 of the FIFA Dispute Resolution Chamber.*
 4. *The costs connected with the Appellant’s objection related to lis pendens and jurisdiction and with the present partial award shall be determined in the final award”.*
3. The Panel’s findings and reasons for that decision are fully set forth in the Partial Award and they need not be repeated here.
4. As mentioned, the Second Appellant’s challenge against the Partial Award was dismissed by the Federal Tribunal on 20 January 2010.
5. The other parties to both proceedings (CAS 2009/A/1880 FC Sion Association v. FIFA & Al-Ahly Sporting Club and CAS 2009/A/1881 E. v. FIFA & Al-Ahly Sporting Club) have not contested the jurisdiction of CAS, which derives from Article R47 of the Code, Articles 62 and 63 of the FIFA Statutes and Article 24 of the FIFA Transfer Regulations.
6. It follows that the CAS has jurisdiction to decide the present dispute.
7. Under Article R57 of the Code, the Panel has full power to review the facts and the law and may issue a *de novo* decision superseding, entirely or partially, the appealed one.

Applicable law

8. Article R58 of the Code provides the following:

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

9. Article 62.2 of the FIFA Statutes provides the following:

“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.

10. In the present case, the parties have not agreed on the application of any specific national law. To the contrary, in their respective submissions on the merits, the parties referred to FIFA’s regulations and to Swiss law. It follows that the rules and regulations of FIFA shall apply primarily and Swiss law shall apply subsidiarily.

11. Articles 26.1 and 26.2 of the FIFA Transfer Regulations (edition 2008) stipulate the following:

“1. Any case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations.

2. As a general rule, all other cases shall be assessed according to these regulations with the exception of the following:

- a) disputes regarding training compensation;*
- b) disputes regarding the solidarity mechanism;*
- c) labour disputes relating to contracts signed before 1 September 2001.*

Any cases not subject to this general rule shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose”

12. Article 29.2 of the said FIFA Transfer Regulations reads as follows:

“Article 1 paragraph 3 a); article 5 paragraphs 3 and 4; article 17 paragraph 3; article 18bis; article 22 e) and f); Annexe 1 article 1 paragraph 4 d) and e); Annexe 1 article 3 paragraph 2; Annexe 3 article 1 paragraphs 2, 3 and 4 and Annexe 3 article 2 paragraph 2 were supplemented or amended by the FIFA Executive Committee on 29 October 2007. These amendments come into force on 1 January 2008”.

13. The case at hand was submitted to the DRC on 12 June 2008, *i.e.* after 1 January 2008, which is the date when the 2008 version of the FIFA Transfer Regulations came into force. Besides, the contract between the Player and FC Sion/Olympique des Alpes SA, which gave rise to the present dispute, was signed on 15 February 2008.

14. Consequently, the case must be assessed according to the 2008 edition of the FIFA Transfer Regulations.

Timeliness of the Appeal

15. The appeals were filed within the deadline provided by Article 63.1 of the FIFA Statutes and stated in the Appealed Decision of the DRC. Furthermore, they comply with all other requirements of article R48 of the Code.
16. It follows that the appeals were filed within the prescribed deadlines.

Violation by FIFA of the Appellants' due process rights and *de novo* ruling

17. The Appellants claim that FIFA seriously infringed their due process rights, in particular not granting them their full right to be heard, being biased in favour of Al-Ahly and committing a denial of justice by not deciding on the challenge against the members of the DRC. As a consequence, the Appellants contend that the Appealed Decision should be annulled.
18. However, the Panel must point out that there is a long line of CAS awards, even going back many years, which have relied on Art. R57 of the CAS Code (*"The Panel shall have full power to review the facts and the law"*) to firmly establish that the CAS appeals arbitration allows a full *de novo* hearing of a case, with all due process guarantees, which can cure any procedural defects or violations of the right to be heard occurred during a federation's (or other sports body's) internal procedure. Indeed, CAS appeals arbitration proceedings allow the parties ample latitude not only to present written submissions with new evidence, but also to have an oral hearing during which witnesses are examined and cross-examined, evidence is provided and comprehensive pleadings can be made. This is exactly what happened in the present CAS proceedings, where the Appellants were given any opportunity to fully put forward their case and to submit any evidence they wished.
19. For instance, among the many that could be quoted in this connection, in CAS 2003/O/486, the Panel clearly stated:
"In general, complaints of violation of natural justice or the right to a fair hearing may be cured by virtue of the CAS hearing. Even if the initial "hearing" in a given case may have been insufficient, the deficiency may be remedied in CAS proceedings where the case is heard "de novo" (para. 50).
20. As another example, in TAS 2004/A/549, the Panel stated:
"le TAS jouit, sur le fondement des dispositions de l'article 57 du Code de l'arbitrage, d'un plein pouvoir d'examen. Ce pouvoir lui permet d'entendre à nouveau les parties sur l'ensemble des circonstances de faits ainsi que sur les arguments juridiques qu'elles souhaitent soulever et de statuer définitivement sur l'affaire en cause"

ainsi d'ailleurs, que le demande l'appelant en l'espèce. Un tel système, où la Formation examine l'ensemble des griefs de fait et de droit soulevés par les parties permet de considérer comme purgés les vices de procédure ayant éventuellement affecté les instances précédentes. Ce principe a été confirmé par le TAS à de nombreuses reprises” (para. 31).

21. Among the numerous CAS panels that have expressed the same notion, the following examples can also be mentioned: CAS 2006/A/1153 at para. 53; CAS 2008/A/1594 at para. 109; TAS 2008/A/1582 at para. 54; CAS 2008/A/1394 at para. 21; TAS 2009/A/1879 at para. 71.
22. The Panel observes that the CAS does not act as an administrative court reviewing an act of an administrative authority where, usually, the scope of review is characterised by minimum standards of scrutiny, mostly procedural, and the administrative court may not substitute its own judgement for that of the administrative authority. Typically, administrative courts may only control the fairness and correctness of the previous procedure, the way in which the decision was arrived at, the reasons given for the decision, the competence of the body adopting the decision and the like. In contrast, it is the duty of a CAS panel in an appeals arbitration procedure to make its independent determination of whether the Appellant's and Respondent's contentions are correct on the merits, not limiting itself to assessing the correctness of the previous procedure and decision. Accordingly, the Panel deems as not relevant to CAS proceedings the Swiss jurisprudence quoted by the Appellants with reference to appeals against decisions of administrative authorities.
23. As a consequence, given the complete power granted by the CAS Code to fully review the facts and the law, the Panel considers as irrelevant any defects of the DRC proceedings and any infringements of the Appellants' procedural rights committed by FIFA bodies or FIFA staff; accordingly, the Panel proceeds to rule on the case *de novo* superseding the Appealed Decision.

FC Sion Association's standing to appeal

24. The Panel agrees with the Appellants that, as testified at the hearing by Mr Breiter (of the SFA) and Mr Schäfer (of the SFL), FC Sion Association and FC Sion/Olympique des Alpes SA are two formally distinct legal entities. While both entities are commonly known under the identical label of FC Sion, the former is an amateur club (registered with the SFA as member no. 8040) while the latter is a professional club (registered with the SFA as member no. 8700), as explained above.
25. The Panel has also no doubt that the party appealing to the CAS against the Appealed Decision and participating in the present arbitration has been FC Sion Association and not FC Sion/Olympique des Alpes SA. This was made very clear by counsel for the First Appellant both at the hearing and in the written briefs. In particular, the decisive element is

the power of attorney dated 28 August 2009 appointing as attorneys for this arbitration Messrs Zen-Ruffinen and Dreyer, which was clearly released by FC Sion Association, stating *inter alia* as follows:

“FC Sion Association donne mandat, avec faculté de substitution et élection de domicile à son étude, à Me Dominique Dreyer/Me Alexandre Zen-Ruffinen aux fins de le représenter devant le TAS, suite à la décision de la CRL-FIFA dans l’affaire E./Al Ahly Sporting Club. [...]”.

26. This said, given the doubts arisen in the Panel’s mind from the undisputed fact that the club that hired the Player and obtained from FIFA the provisional ITC was FC Sion/Olympique des Alpes SA and not FC Sion Association (see *supra*), the Panel must ascertain on a preliminary basis whether FC Sion Association has any legal interest and standing to appeal the decision adopted by the DRC on 16 April 2009 (see the Appealed Decision’s ruling *supra*).
27. In order to solve such issue, the Panel must necessarily determine whether FC Sion Association was a party to the FIFA proceedings and whether the Appealed Decision (holding *inter alia* that “FC Sion is jointly and severally liable [with the Player] for the payment of the aforementioned compensation” and that “FC Sion shall be banned from registering any new players, either nationally or internationally, for the two next entire and consecutive registration periods”) was in fact directed against FC Sion Association.
28. Indeed, if the Panel were to find that FC Sion Association was not a party to the FIFA proceedings or that, even if it were a party, FC Sion Association was not affected at all by the ruling (“*dispositif*”) of the Appealed Decision, FC Sion Association would not have a cause of action or legal interest (“*intérêt à agir*”) to act against the Appealed Decision and to ask (as FC Sion Association did) to quash it. Accordingly, the First Appellant would have no standing to appeal on the basis of the well-known general procedural principle that if there is no legal interest there is no standing (“*pas d’intérêt, pas d’action*”). In such a case, the appeal filed by FC Sion Association would have to be declared inadmissible.
 - A. *The “aggrievement requirement”*
29. The Panel is in fact of the view that only an aggrieved party, having something at stake and thus a concrete interest in challenging a decision adopted by a sports body, may appeal to the CAS against that decision. In this connection, the Panel notes that in the CAS award 2006/A/1189, the French Football Federation was declared not to have any procedural standing in the case because it had “*nothing at stake*” in the dispute (para. 6.5 of the award). The same principle was applied in CAS 2007/A/1329-1330 (paras. 27-31 of the award). Similarly, in CAS 2006/A/1206 the panel stated that a party has no standing if it “*is not directly affected by the decision appealed from*” (para. 31 of the award).
30. The Panel is of the opinion that the above described “aggrievement requirement” is an essential element to determine the legal interest and the standing of a party to appeal before

the CAS a sports body's decision, because the duty assigned to a panel by the CAS Code rules governing the appeal arbitration procedure is that of solving an actual dispute and not that of delivering an advisory opinion to a party that has not been aggrieved by the appealed decision (in fact, the "consultation proceedings", yielding CAS advisory opinions, are governed by different provisions of the CAS Code).

B. *The First Appellant's twofold assumption*

31. Mindful of the importance of this preliminary matter for the position of the First Appellant, on 6 November 2010, and then again on 13 and 19 November 2010, the Panel drew the parties' attention on the issue of the exact identity of the parties to the FIFA proceedings and specifically requested FC Sion Association to clarify the following:

"What would be its legal interest and standing to appeal in this CAS arbitration, should the Panel determine that FC Sion/Olympique des Alpes SA (and not FC Sion Association) was a party to the FIFA proceedings".

32. In its letter dated 3 December 2009 FC Sion Association answered as follows:

"Quant à l'intérêt juridique et à la qualité pour agir du FC Sion Association dans la présente procédure, c'est une question sur laquelle portera l'administration des preuves et qui fera l'objet des plaidoiries. A ce stade, je rappelle que la décision de la FIFA condamnant au paiement de € 900'000.- est dirigée contre l'appelante, ce qui fonde déjà son intérêt juridique et sa qualité pour faire appel".

33. At the hearing (as well as in its other written submissions), the First Appellant argued that FC Sion Association was in fact the only party that Al-Ahly had called as defendant in the FIFA proceedings because the professional club only uses FC Sion as a "sporting name" which has no legal personality (and thus no legal capacity to be summoned in court as such), and that the legal interest of FC Sion Association was self-explanatory in view of the sanctions imposed on it by FIFA. In the First Appellant's view, on the one hand, the Appealed Decision may not produce any effect against FC Sion/Olympique des Alpes SA since this professional club was not correctly summoned by Al-Ahly in the FIFA proceedings and, on the other hand, the Appealed Decision must be set aside by the CAS because it wrongly inflicts sanctions on an amateur club (FC Sion Association) which did not have standing to be sued by Al-Ahly in the FIFA proceedings.

34. With regard to this legal interest and standing issue, the Panel observes that, in essence, the entire case of FC Sion Association rests on the following twofold assumption:

- [i] that Al-Ahly, in naming as defendant *"the Swiss club FC Sion"* in its petition to FIFA dated 13 June 2008, wrongly directed the claim against the amateur club and not against the professional club, and
- [ii] that the subsequent Al-Ahly's communication dated 10 December 2008 clarifying that the *"the terminology FC Sion used in the claim includes hence also Olympique des Alpes SA"* could

not validly specify that the claim was directed against FC Sion/Olympique des Alpes SA because this should have been done at the start of the FIFA proceedings and could not be done once these proceedings had been initiated.

35. However, the Panel does not share the First Appellant's view with regard to both facets of the above assumption.

C. *The addressee of Al-Ahly's petition to FIFA*

36. As to the first facet of the assumption (*supra* at 34 [i]), the First Appellant submits that Al-Ahly's imprecise designation of the defendant in its petition to FIFA – the lack of specific reference to the corporate name “Olympique des Alpes SA” – is an unjustifiable and fatal error that inevitably and irremediably brought into the FIFA case the amateur club and left out the professional club. In the Panel's opinion, the First Appellant's argument is captious and misplaced for several reasons, expounded hereinafter.
37. First of all, the Panel finds that a *bona fide* reading of Al-Ahly's petition to FIFA leads inevitably to reckon that Al-Ahly actually meant to name as defendant the professional club and not the amateur club. Indeed, the Egyptian club states in its petition that the claim is brought against the player E. for breach of contract and against “the Swiss club FC Sion for inducement of contractual breach” because on “15 February 2008 the Player and FC Sion signed an employment contract valid until 30 June 2011 without the knowledge or the permission of Al Ahli” and making reference to the fact that the Single Judge had “provisionally authorized the registration of the Player for FC Sion”. As the club that hired the Player and that obtained the provisional ITC was undoubtedly FC Sion/Olympique des Alpes SA, and not FC Sion Association, there could be no misunderstanding that, by making reference to FC Sion, Al-Ahly summoned in the case the professional club and not the amateur club (given that the latter had nothing to do with the transfer of E.).
38. Second, the Panel finds that a considerable confusion on their exact legal identity and proper designation has been generated by the two Swiss clubs themselves because, on the basis of the evidence on file, the Panel has ascertained:
- [a] that there is a substantial connection between the two legally distinct entities (the professional club and the amateur club), as exemplified *inter alia* by the following coincidences:
- same address: (...),
 - same telephone number: (...),
 - same fax number: (...),
 - same internet site and domain name: “fc-sion.ch”,
 - same logo: the white and red shield with two stars on the left, a large “S” on the right and the inscription “FC Sion” on top,

- same top officers: Mr Christian Constantin and Mr Domenicangelo Massimo;
 - [b] that the professional club, in its own documents, correspondence and internet site, recurrently identifies itself merely as “FC Sion” without further qualifications and often acts without clearly representing to third parties who is who and which is which or the exact designation of the legal entity with whom the third parties are dealing;
 - [c] that not only the general public and the media but also competent Swiss football authorities, such as SFA officers (even on formal occasions, such as communications to FIFA), routinely use the plain name FC Sion when they in fact make reference to the professional club FC Sion/Olympique des Alpes SA.
39. Third, the Panel notes that in the FIFA procedure leading to the release of the provisional ITC the plain name “FC Sion” was constantly used in the correspondence sent by all concerned parties, including FC Sion/Olympique des Alpes SA and its legal counsel (as FIFA accurately pointed out with abundant exemplification in its Answer Brief of 4 August 2009). As a matter of course, when the Single Judge authorised the SFA to provisionally register the Player with its “*affiliated club FC Sion*” (see *supra*), no party – especially not FC Sion/Olympique des Alpes SA, who benefitted from the decision – had any difficulty to understand that the Player was authorised to play for the professional club FC Sion/Olympique des Alpes SA. Logically, in writing its petition to FIFA claiming sanctions and compensation for the loss of the Player, Al-Ahly labelled the Swiss club with the same name that up to that moment had been used by everybody involved in the FIFA proceedings.
40. Fourth, the Panel notes – in line with the decision of the Federal Tribunal dated 20 January 2010 (4A_548/2009 at para 4.2.2, see *supra*) – that under FIFA rules there is a close link between the release of an ITC and the related claims for a contractual breach. Under Article 22(a) of the FIFA Transfer Regulations, FIFA is competent to hear “*disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract*”. In the Panel’s opinion, this provision makes clear that the FIFA procedure related to the release of an ITC and the FIFA procedure related to the sanctions or compensation for breach of contract are strictly linked because they essentially deal with the same transfer dispute and, thus, they can be viewed as two sides of the same coin (as the Panel already stated in its Partial Award dated 7 October 2009, at para. 79).
41. In this respect, the Panel observes that the Single Judge, in his decision granting the provisional ITC, clearly warned the Player and FC Sion/Olympique des Alpes SA that there could have been a second stage of the proceedings with regard to the breach of contract “*as well as on the possible consequences thereof, i.e. financial compensation and/or sporting sanctions*” (see *supra*). In addition, significantly, FIFA has attributed the same reference number (08-00194/maj) both to the procedure related to the ITC and to the procedure related to the contractual breach and the consequences thereof, thus confirming that it considered them as two stages of the same case. Accordingly, it was logical to assume that, throughout the entire FIFA

proceedings, the parties would keep being named in the same way. Given that the professional club FC Sion/Olympique des Alpes SA had been constantly tagged merely as “FC Sion” during the first stage of the FIFA proceedings, it is unreasonable and contrary to the prohibition of *venire contra factum proprium* to argue that Al-Ahly, in naming as defendant “FC Sion” for the second stage of the same proceedings, meant to summon into the case – out of the blue – the amateur club FC Sion Association rather than the professional club FC Sion/Olympique des Alpes SA.

42. Fifth, the Panel finds that, contrary to Mr Zen-Ruffinen’s assertion in his submission to FIFA dated 5 February 2009 that FC Sion/Olympique des Alpes had not been notified of Al-Ahly’s petition and had not been put in a position to defend itself (“*Olympique des Alpes SA n’est pas partie à la présente procédure. Elle n’a ni reçu de courrier de la FIFA ni eu l’occasion de répondre à la demande de Al-Ahly et ne saurait devenir partie à la procédure sans le savoir et sans avoir l’occasion de se déterminer*”), FIFA correctly communicated the petition on 18 June 2008 to the fax number indicated in the letterhead and in the official internet site of the professional club FC Sion/Olympique des Alpes and, above all, already used by FC Sion/Olympique des Alpes SA itself in order to request FIFA to grant the provisional ITC.
43. What’s more, the Panel finds in the letter dated 23 June 2008 from Mr Zen-Ruffinen to FIFA the decisive evidence that the party duly summoned in the FIFA procedure that yielded the Appealed Decision was in fact FC Sion/Olympique des Alpes SA and not FC Sion Association. In that letter, in order to inform FIFA – in compliance with art. 6.2 of the FIFA Procedural Rules (“*Parties may appoint a representative. A written power of attorney is to be requested from such representatives*”) – that he had been empowered to represent “FC Sion” with regard to Al-Ahly’s claim, Mr Zen-Ruffinen expressly stated that FC Sion had transmitted the petition to him and that a power of attorney was already in FIFA’s file:
“Le FC Sion m’a transmis votre fax du 18 juin 2008 et m’a chargé de défendre ses intérêts dans ce litige (une procuration figure déjà à votre dossier)” (emphasis added).
44. In this letter, Mr Zen-Ruffinen made reference to and availed himself of the power of attorney previously filed with FIFA in relation to the request for the Player’s ITC, i.e. the already quoted “*procuration*” dated 19 March 2008 and signed by Mr Domenicangelo Massimo, expressly acting on behalf of FC Sion/Olympique des Alpes SA in his capacity as Director-General (“*Le FC Sion/Olympique des Alpes SA confirme avoir donné mandat à Me Alexandre Zen-Ruffinen, avocat à Neuchâtel, pour défendre ses intérêts dans le cadre du dossier relatif au transfert du joueur Essam El Haddary*”; see the full text of the power of attorney *supra*).
45. This means that the same power of attorney, indisputably issued by FC Sion/Olympique des Alpes SA, was used for both stages of the FIFA proceedings and that no power of attorney issued by FC Sion Association was ever filed with FIFA. As a consequence, the Panel must conclude that the club tagged as “FC Sion” which on 18 June 2008 transmitted the Al-Ahly’s petition to its lawyer Mr Zen-Ruffinen (“*FC Sion m’a transmis votre fax du 18 juin 2008*”) and

which, thus, took part in the FIFA proceedings leading to the Appealed Decision was no one else but the professional club FC Sion/Olympique des Alpes SA.

46. Accordingly, the Panel holds that the mere indication by Al-Ahly of “the Swiss club FC Sion” as the defendant club was wholly justifiable and perfectly understandable by any reasonable person looking at it in good faith, and it reached the intended objective of putting on notice the professional club FC Sion/Olympique des Alpes SA that it had to defend itself before the competent FIFA body because of the previously obtained transfer and hire of E. The first facet of the First Appellant’s assumption is thus groundless.

D. *Admissibility of Al-Ahly’s subsequent clarification*

47. As to the second facet of the First Appellant’s twofold assumption (*supra* at 34 [ii]), the First Appellant submits that, in any event, the imprecise designation of the defendant was a fatal procedural error which could not be remedied by the subsequent clarification by Al-Ahly that “*the terminology FC Sion used in the claim includes hence also Olympique des Alpes SA*” because of a general procedural principle which precludes any such amendment to the initial petition (“*Conformément au droit général de procédure, c’est en effet l’ouverture de la procédure qui crée le lien d’instance entre les parties*”; see *supra*). The Panel finds this argument to be also captious and misplaced for the following reasons.
48. First of all, the First Appellant does not explain from which legal principles it derives its view. The Panel notes that a wrong denomination of a party can – according to some cantonal Codes of Civil Procedure – be corrected even after a court judgement has been handed down (see GULDENER, *Zivilprozessrecht*, 3. ed., 1979, p. 124; see also VOGEL/SPÜHLER, *Grundriss des Zivilprozessrechts*, 8th ed., 2006, § 13 no. 103; STAEHLIN/SUTTER, *Zivilprozessrecht*, 1992, § 21 no. 115 *et seq.*). The Panel fails to understand, therefore, why as a matter of principle a clarification of the party’s true identity in an internal procedure of an association should not be possible during the course of this procedure. In this connection, the Panel notes that Al-Ahly clarified that it meant to sue FC Sion/Olympique des Alpes SA on the first occasion where it could reply to the defendant’s objection that the wrong entity (i.e. the amateur club) had been named as defendant. In the Panel’s view, Al-Ahly did not extend the procedure to a third party, but simply specified that by saying “FC Sion” it meant to name as defendant the same entity (i.e. the professional club) that had hired the Player a few months before.
49. Second, the FIFA Procedural Rules do not preclude a party from specifying the exact name of the defendant at a later stage or even from extending the procedure to a third party during the course of the proceedings. Quite the reverse, Article 9.2 of the FIFA Procedural Rules explicitly allows a party – upon invitation by FIFA and thus, *a fortiori*, also spontaneously – to “*redress*” an incomplete petition and submit it again if it was originally lacking some of the information or data required under Article 9.1.

50. Third, the Panel observes that FIFA proceedings are not court proceedings, and not even arbitral proceedings. Rather, they are “intra-association proceedings”, based on the private autonomy of the association, which by definition lack the procedural rigour that one can find in true court proceedings. In the Panel’s view, general procedural principles that may apply to court proceedings or arbitral proceedings do not automatically apply to intra-association proceedings. Their possible application to intra-association proceedings must be demonstrated in each specific case by the party invoking them. Lacking this demonstration, it would be an excessive formalism to deem that a party to an intra-association dispute settlement procedure might not be allowed to specify the exact name and identity of the defendant as soon as an objection is raised in this respect.
 51. Therefore, the Panel holds that, even if Al-Ahly’s indication of “the Swiss club FC Sion” as the defendant club could be deemed as imprecise, its subsequent clarification that its claim was unmistakably directed against the professional club FC Sion/Olympique des Alpes SA cured any such imprecision. The second facet of the First Appellant’s assumption is thus groundless as well.
- E. *FC Sion Association’s lack of legal interest and standing to appeal*
52. Given that the First Appellant’s twofold assumption is unfounded, the Panel must necessarily dismiss the First Appellant’s submission that Al-Ahly’s complaint should have been rejected by FIFA because it had summoned in the proceedings a party (the amateur club FC Sion Association) which did not have standing to be sued.
 53. The Panel remarks that, while FC Sion Association is correct in asserting that it did not have standing to be sued by Al-Ahly in front of the DRC, it is incorrect in assuming and contending that it was actually sued by Al-Ahly and summoned to participate in the FIFA proceedings. All communications sent to FIFA by Mr Zen-Ruffinen during the FIFA proceedings – contrary to his allegations – were in fact sent on behalf of FC Sion/Olympique des Alpes SA and not on behalf of FC Sion Association because, as previously emphasised, the required power of attorney was undeniably released by the former and not by the latter club (see *supra* at 43-45).
 54. On the basis of the above elements, the Panel is persuaded that the Swiss “club” which actually took part in the FIFA proceedings, and against which the Appealed Decision directed its ruling, has been the professional club FC Sion/Olympique des Alpes SA. The Panel thus holds that, contrary to the allegations set forth by its counsel, FC Sion Association was never a party to the FIFA proceedings and, anyway, it was never affected by the Appealed Decision.
 55. The Panel finds that this is what was meant by the DRC when it stated the following in the Appealed Decision (at the end of para. 4):

“the Dispute Resolution Chamber lent emphasis to the fact that the player’s new employment contract names “the club of the Swiss Football League: FC Sion – Olympique des Alpes SA” [...] as his counterparty. On account of these circumstances, the members of the Chamber concluded that the designation of “FC Sion” as the defending club in the present matter is correct and that the respective argumentation of the Swiss club in order to avoid its participation in the present proceedings must be rejected”.

56. In the Panel’s opinion it is irrelevant that, a few lines before the above quotation, the DRC stated that the club for which the Player *“has been registered [...] and for which he has been participating in organised football ever since is the club FC Sion and not the entity Olympique des Alpes SA”*. The Panel is of the view that this DRC’s dictum, albeit confusing, must be necessarily read in light of the above quoted conclusion of the reasoning (at the end of the same para. 4 of the Appealed Decision) as directed at solving the issue of the *“designation”* used by Al-Ahly to identify the defendant club. The Panel has no hesitation in finding that the DRC meant to consider as party to its proceedings, and as addressee of its ruling, the professional club and not the amateur club. In any event, as already observed, a CAS panel does not act as an administrative court controlling the reasoning of the challenged decision, but it determines any disputed issue *de novo* (see *supra* at 22). Accordingly, the wording used by the DRC in a dictum of its ruling is clearly irrelevant. What matters is the above finding by this Panel that FC Sion Association was not summoned by Al-Ahly in the FIFA proceedings, was not a party to the FIFA proceedings, and was not affected by the Appealed Decision.
57. In this regard, incidentally, the Panel notes that if the SFA or the SFL gave a different interpretation of the Appealed Decision their understanding was clearly erroneous, and it is a matter for those sports bodies (which are not parties to this arbitration and are not under the jurisdiction of this Panel) to spontaneously revise that interpretation.
58. In conclusion, as the Panel has found that FC Sion Association was not a party to the FIFA proceedings and that it was not affected by the ruling of the Appealed Decisions, the Panel finds that FC Sion Association does not meet the above illustrated aggrievement requirement (see *supra* at 28-30). As a result, the Panel holds that the First Appellant FC Sion Association lacks legal interest and, thus, standing to appeal, with the consequence that the Panel may not entertain the First Appellant’s appeal. Accordingly, as its appeal is inadmissible, the Panel must disregard the First Appellant’s submissions on the merits of the case and decline to adjudicate its related motions.

F. *Legal consequences for FC Sion/Olympique des Alpes SA*

59. A necessary consequence of this Panel's holding is that FC Sion/Olympique des Alpes SA was a party to the FIFA proceedings and was clearly affected by the Appealed Decision. It would have had, therefore, an obvious legal interest and standing to bring an appeal against the Appealed Decision. However, insofar as FC Sion/Olympique des Alpes SA has not appealed the Appealed Decision in the context of this case and is not a party to the present arbitration (as made abundantly clear by the First Appellant), the Panel may not issue a decision vis-à-vis FC Sion/Olympique des Alpes SA.
60. Incidentally, the Panel remarks that, as a further consequence, item 3 and item 7 of the Appealed Decision's ruling (which affect only FC Sion/Olympique des Alpes SA), i.e. the ban from registering any new players for the two registration periods (which was provisionally lifted further to a CAS Order dated 7 July 2009, an Order which has become ineffective with the notification of the present award) and the joint and several liability imposed (see *supra*), might be considered by this time as binding insofar as they have not been appealed by FC Sion/Olympique des Alpes SA within the provided deadline. The consequences for failing to meet the prescribed deadline for appeal would seem to be that FC Sion/Olympique des Alpes SA is estopped from invoking any procedural or material flaws of the Appealed Decision. FC Sion/Olympique des Alpes SA – in other terms – might be deemed to have waived the right to claim that the FIFA decision is contrary to the statutes and regulations or other applicable principles of law (cf. HEINI/SCHERRER, Basler Kommentar, 3rd ed. 2006, Art. 75 ZGB no. 22; RIEMER, Berner Kommentar, 1990, Art. 75 ZGB no 62).
61. However, the Panel notes that, even though FC Sion/Olympique des Alpes SA might be estopped from challenging the Appealed Decision, the applicable rules and regulations may provide that – under certain conditions – the content of said decision is altered because of new facts and circumstances. In the Panel's view, this is true with respect to the *amount* of the pecuniary liability imposed on FC Sion/Olympique des Alpes SA because of the Player's contractual breach vis-à-vis Al-Ahly. Indeed, it is the Panel's understanding that, according to the applicable regulations (Art. 17.2 of the FIFA Transfer Regulations), the pecuniary liability of the professional club has a subsidiary character and its extent necessarily depends on the amount of compensation determined to be owed (or not owed) by the Player to Al-Ahly. As this amount was determined by item 2 of the Appealed Decision's ruling (see *supra*), and item 2 was validly challenged by the Player, any decision of this Panel with regard to this issue, i.e. any decision concerning the Player's contractual liability (and, should he be liable, the extent of such liability) will necessarily have repercussions on FC Sion/Olympique des Alpes SA's position as joint and several obligor ("*codébiteur solidaire*"). The Panel's view is backed also by previous CAS jurisprudence (see paras. 54-58 of the award rendered in the joined cases TAS 2009/A/1960 and TAS 2009/A/1961). In other terms, even not being a party to the present arbitration, FC Sion/Olympique des Alpes SA might end up indirectly benefitting of the arbitral award.

62. However, since FC Sion/Olympique des Alpes SA is not a party to these proceedings, the aforementioned possible consequences of this Panel's decision are expressed herein only as *obiter dicta* and cannot be part of the *dispositif* of the present award.

E.'s contractual breach and consequences thereof

A. Absence of a mutual termination agreement

63. With regard to the merits, the first question that must be addressed by the Panel is whether the employment relationship between the Player and Al-Ahly was terminated by mutual agreement or whether the Player breached his employment contract with Al-Ahly in order to play for FC Sion/Olympique des Alpes SA.
64. The Player submits that the Second Respondent released the Player when it gave him the authorisation to sign an employment contract with FC Sion/Olympique des Alpes SA; therefore, the employment contract with Al-Ahly was terminated by mutual agreement. According to the Player, the lack of agreement between the two clubs on the amount of the transfer fee is not relevant for the question of the termination of the contract.
65. The Panel does not share the opinion of the Player. In order to find for the Player on this count, the Player should have presented much more persuasive evidence that Al-Ahly had expressly agreed to terminate the contract with the Player even without having any assurance of receiving some consideration in exchange for the Player's transfer to Switzerland. Indeed, it is common experience in the football world that transfer agreements need necessarily the full consent of the three parties involved, i.e. the two clubs and the footballer. Very strong evidence – possibly written evidence – is needed to demonstrate such consent, given that the loss of a player (let alone an important player) always creates difficulties to the club losing him.
66. Even the deposition of Mr Zeaf (the only witness of the tripartite meeting of 14 February 2008 in Cairo on which the Player relies) is not so clear-cut to persuade the Panel that Al-Ahly truly waived, for free, any contractual right over the Player. On the contrary, the Panel finds that the deposition of Mr Zeaf lends some credence to Al-Ahly's contention that an agreement on the amount of financial compensation for the release of the Player was one of the *essentialia negotii* of the transfer deal.
67. Mr Zeaf attested indeed that the two clubs had come close to an agreement on the amount of the transfer fee but had never in fact agreed on such amount. He also stated that, although Al-Ahly had allowed the Player and the Swiss club to negotiate between themselves with a view to agreeing on an employment contract, the Egyptian club had always been clear that, afterwards, a negotiation was needed between the two clubs with regard to the amount of the transfer fee. According to Mr Zeaf's testimony at the hearing, Mr Elkeic, who was the

representative of Al-Ahly during the tripartite meeting, stated: *“puisque le temps presse, mettez-vous d’abord d’accord avec le joueur, et nous, entre clubs, on va trouver une solution, puisque malgré tout on n’est pas loin, on va faire un geste, vous vous faites un geste et on trouve une solution”*. Mr Zeaf testified that the Player and FC Sion/Olympique des Alpes SA went in another room to separately negotiate the terms of a possible employment agreement and that, when they came back after reaching such agreement, the Player had another talk with a representative of Al-Ahly (Mr Zeaf did not specify his name), whose words were: *“Ecoute, tu ne pars pas maintenant, d’abord il faut que l’on trouve une solution entre les deux clubs, et tu fais avec nous un match comme un match d’adieu [...]”*. Finally, Mr Zeaf explained that Mr Elkeie had told the Player that *“vu les douze années que vous avez passées au Club, vu les 29 titres que vous avez gagnés avec nous, c’est pas aujourd’hui qu’on va vous embêter pour partir, il n’y a pas de problème, mais le chiffre de USD 400,000, c’est très peu pour un joueur de votre valeur, même un jeune joueur que j’irais chercher en Egypte coûte beaucoup plus cher que ces USD 400,000. Il faut qu’ils [le FC Sion/Olympique des Alpes SA] nous donnent un peu plus et on va trouver un chemin d’entente, pas de problème”*.

68. In brief, even the words of Mr Zeaf cannot lead the Panel to find, on the balance of probability, that Al-Ahly expressed its assent to the transfer prior to agreeing on the transfer fee. Considering that Al-Ahly would have lost all its bargaining chips vis-à-vis the Swiss club if it had authorized the Player to freely rescind his employment contract, the Panel – judging by a standard of reasonableness – finds that the attitude expressed by Al-Ahly at the Cairo meeting meant that that a potential release of the Player from its contractual obligations was linked to an agreement on the financial compensation, which could allow Al-Ahly to hire another goalkeeper. It is true that the Swiss club may possibly have been comforted by the cooperative attitude of Al-Ahly during the tripartite meeting that the latter would eventually allow the Player to transfer to Switzerland. However, the Panel is not persuaded by the available evidence that a definite meeting of the minds of all three parties was reached in Cairo, to the effect that the Player was allowed to terminate the contract with Al-Ahly before the financial aspects of the transfer were settled between the two clubs.
69. In particular, the Player was not able to invoke any persuasive written evidence supporting his position. Quite the opposite, it seems to the Panel that the correspondence exchanged between the two clubs on 15, 22 and 26 February 2008 (see *supra*) lends support to its view that the transfer deal was not perfected and that Al-Ahly by no means had agreed to let the Player go unconditionally.
70. It seems to the Panel that the available oral and written evidence shows that any possible assent given by Al-Ahly to the transfer was, anyhow, subject to the condition of an agreement on the transfer fee. In other terms, the Panel is of the opinion that, even assuming in the Player’s favour that Al-Ahly did promise the Player to let him go, such promise was conditional upon the payment by FC Sion/Olympique des Alpes SA of an acceptable compensation. The non-occurrence of the condition had the effect that the Player was not liberated from his contractual obligations vis-à-vis Al-Ahly.

71. In view of the above the Panel finds that, on the balance of probability, the Player did not satisfy his burden of proving that the employment contract with Al-Ahly was terminated by mutual agreement in the sense of Article 13 of the FIFA Transfer Regulations. Therefore, as the Panel does not see any convincing evidence that the contract was terminated by the Player for “just cause” or “sporting just cause” (Articles 14 and 15 of the FIFA Transfer Regulations), the Player must be deemed to have unilaterally terminated his employment contract with the Second Respondent without just cause. The financial and disciplinary consequences of such breach are set out in Article 17 of the FIFA Transfer Regulations.

B. *Compensation for the breach*

72. Article 17.1 of the FIFA Transfer Regulations sets the principles and the method of calculation of the compensation due by a player or a club because of a breach or unjustified unilateral termination of a football employment contract.

a) Absence of a liquidated damages clause

73. First of all, the Panel observes that Article 17.1 of the FIFA Transfer Regulations sets forth the principle of the primacy of the contractual obligations concluded by a player and a club: “[...] unless otherwise provided for in the contract [...]”. The same principle is reiterated in Article 17.2. Therefore the Panel must preliminarily verify whether there is any provision in the employment contract between the Player and the Second Respondent that does address the consequences of a unilateral termination of the contract by either of the parties. Such kinds of clauses are, from a legal point of view, liquidated damages provisions (see, among others, CAS 2007/A/1358, at para. 87; CAS 2008/A/1519-1520, at para. 68).

74. In this regard, the Panel notes that the employment contract between the Player and Al-Ahly does not include any provision setting forth the amount of compensation to be paid in case of breach or unilateral termination. Accordingly, the compensation due by the Player must be calculated in accordance with the criteria set forth by Article 17.1 of the FIFA Transfer Regulations.

b) The criteria set forth by Article 17.1 of the FIFA Transfer Regulations

75. According to art. 17.1 of the FIFA Transfer Regulations, if the parties have not agreed a specific amount of liquidated damages, the compensation for a unilateral breach and a premature termination shall be calculated with due consideration for:

- the “*law of the country concerned*”,
- the “*specificity of sport*”,
- and “*any other objective criteria*”, including in particular:

- the “*remuneration and other benefits due to the player under the existing contract and/or the new contract*”,
- the “*time remaining on the existing contract up to a maximum of five years*”,
- the “*fees and expenses paid or incurred by the former club (amortised over the term of the contract)*”,
- and “*whether the contractual breach falls within a protected period*”.

76. The Panel notes that Article 17.1 of the FIFA Transfer Regulations is an attempt by FIFA to give some directions on how to calculate the damage suffered. Accordingly, the calculation of the compensation due under art. 17 FIFA Transfer Regulations “*shall be diligent and there is no power for the judging authority to set the amount due in a fully arbitrary way*” (CAS 2008/A/1519-1520, at para. 89).
77. However, the Panel wishes to emphasize that, when determining the amount of compensation due, the judging authority has a wide margin of appreciation (“*a considerable scope of discretion*” according to CAS 2008/A/1519-1520, at para. 87). In particular, the Panel is of the view that each of the factors listed in Article 17.1 is relevant, but that any of them may be decisive on the facts of a particular case.
78. Indeed, Article 17.1 does not require the judging authority – be it the DRC or the CAS – to necessarily evaluate and give weight to any and all of the factors listed therein. Depending on the particular circumstances of each case and on the submissions of the parties, any of those factors may be relevant or irrelevant to the final decision, influencing or not the discretionary assessment of the compensation due. Therefore, it is up to each party to stress the factors which it believes could be in its favour in order to discharge its burden of persuasion. In particular, as the CAS Code sets forth an adversarial system of arbitral justice and not an inquisitorial one, a CAS panel has no duty to analyse and give weight to any specific factor listed in Article 17.1 if the parties do not actively substantiate their allegations with evidence and arguments based on such factor.
79. Therefore, in line with other CAS panels, in its analysis of the relevant criteria the Panel does not feel bound to give weight to all of the listed criteria or to follow exactly the order by which those criteria are set forth by Article 17.1 of the FIFA Transfer Regulations.
80. The Panel also remarks that, given that the compensation to be granted derives from a breach or unjustified termination of a valid contract, it will be guided in calculating the compensation due by the principle of the so-called “positive interest” or “expectation interest”; accordingly, the Panel will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if no contractual breach had occurred (see CAS 2008/A/1519-1520, at para. 86; CAS 2006/A/1061, at para. 40; see also the decisions of the Swiss Federal Tribunal ATF 97 II 151, ATF 99 II 312; in the legal literature, see STREIFF/VON KAENEL, *Arbeitsvertrag*, Art. 337b no. 4 and Art. 337d no. 4; STAEHELIN, *Zürcher Kommentar*, Art. 337b no. 7 and Art. 337d no. 7; WYLER, *Droit du travail*, 2nd ed., p. 522).

c) The law of the country concerned

81. Article 17.1 of the FIFA Transfer Regulations requires the judging body to take into consideration the “*law of the country concerned*”.
82. The law of the country concerned is the law governing the employment relationship between the player and his former club, that is the law with which the dispute at stake has the closest connection. This will be under ordinary circumstances the law of the country of the club whose employment contract has been breached or terminated (cf. CAS 2008/A/1519-1520, at para. 144; CAS 2007/A/1298-1299-1300, at para. 89). The Commentary to the FIFA Transfer Regulations published by FIFA (the “FIFA Commentary”) confirms that the provision is referring to the law of the country “*where the club is domiciled*” (cf. FIFA Commentary, fn 74). In the present case, the law concerned is thus Egyptian law. As a consequence, the Panel finds that the Player’s arguments based on Swiss employment law (such as the employer’s obligations to take action within thirty days or to disclose immediately the request for damages) are not pertinent to the case at stake.
83. The Player submits that the compensation of EUR 900,000 has been established by the DRC in violation of Article 17.1 of the FIFA Transfer Regulations, since neither the former club nor the DRC have addressed the question of the law in the country concerned although it is the first criterion mentioned. The Player contends that his appeal must be upheld for the sole reason that Al-Ahly, in its petition before the DRC, did not make any argument in this regard. In light of the Panel’s opinion expressed above (at 77-79), this Player’s submission is not correct.
84. Accordingly, the Panel notes that the law of the country concerned may be relevant in favour of the player or in favour of the club, or be utterly irrelevant. It is up to the party which believes that such factor could be in its favour to make sufficient assertions in this regard. If it does not, the judging authority will not take that factor into account in order to assess the amount of compensation. In no way does this mean that the judging authority failed to properly evaluate the matter.
85. This said, the Panel finds that none of the parties have made any submissions or produced any evidence to the effect that Egyptian law could have an impact on the calculation of the compensation due. Therefore, the Panel finds that this criterion is not relevant for the determination of the compensation due to Al-Ahly.

d) Other objective criteria

86. Article 17.1 of the FIFA Transfer Regulations allows the Panel to take into consideration “*any other objective criteria*”, not limiting its evaluation to those which are expressly specified. Indeed, as this FIFA provision uses the meaningful language “*include, in particular*”, the Panel is of the opinion (comforted by unanimous CAS jurisprudence) that the list of objective criteria set out therein (“*remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club [...] and whether the contractual breach falls within a protected period*”) is illustrative and not exclusive. The Panel feels thus unrestrained in resorting, if needed in light of the specific circumstances of this case, to other objective criteria.

aa) Player’s remuneration

87. Taking into consideration the Player’s remuneration under the former contract, it is undisputed that the Player’s contract with Al-Ahly provided a total remuneration of EGP 720,000 for each of the seasons 2007-2008, 2008-2009 and 2009-2010. As the Player was indisputably paid until March 2008, the Panel finds that the remaining value of the Player’s contract is the amount corresponding to his remuneration for two seasons and three months, i.e. EGP 1,620,000 (at that time, i.e. on 15 February 2008, equivalent to approximately USD 292,000).

88. With regard to the Player’s remuneration under his new contract, it is not contested that, according to Annex 3 of the employment contract with FC Sion/Olympique des Alpes SA of 15 February 2008, the annual remuneration amounted to CHF 240,000. Consequently, the amount corresponding to the remuneration due to the Player under his new employment contract for the same period of two seasons and three months is CHF 540,000 (at that time, i.e. on 15 February 2008, equivalent to approximately USD 488,500). This amount reflects the value that FC Sion/Olympique des Alpes SA gave to the services of the Player and, thus, the amount that Al-Ahly would have to spend on the football employment market in order to hire a player of analogous value.

89. In this connection, the Panel finds the Player’s argument based on the fact that, in principle, the cost of life is higher in Switzerland than in Egypt to be misplaced, because the football players’ transfer market is wholly transnational and because no specific evidence (e.g. housing invoices) has been provided that the Player’s actual living expenses in Switzerland were higher than his actual living expenses in Egypt.

bb) Fees and expenses paid or incurred by the former club

90. Within the other objective criteria, Article 17.1 of the FIFA Transfer Regulations provides for the criterion relating to the non-amortised part of the fees and expenses possibly paid by the former club for the acquisition of a player's services.
91. However, as Al-Ahly itself stated in its Answer Brief, the Player had joined the Club in 1996 already. Therefore, given that Al-Ahly provided no evidence to the contrary, the Panel assumes that Al-Ahly did not pay any fees or incur in any expenses when it obtained the services of the Player with the employment contract effective from 1 January 2007 until the end of the 2009-2010 season.

cc) Loss of the Player's services and replacement value

92. It has been debated over various CAS awards whether it is possible to consider, as part of the damage to be compensated by the player, the claim of his former club for the opportunity to receive a transfer fee that has gone lost because of the premature termination of the employment contract. This possibility was admitted in the case TAS 2005/A/902-903, at para. 136, rejected in the case CAS 2007/A/1298-1299-1300, at para. 141 ff., and left open in the case CAS 2007/A/1358, at para. 97.
93. In the oft-quoted CAS 2008/A/1519-1520 case, the CAS panel found as generally recognised in Swiss employment law that the loss of earnings (*lucrum cessans*) is a possible part of the damages caused through the unjustified termination of an employment agreement. The award, therefore, recognised that the loss of a possible transfer fee can be considered as a compensable damage heading if the usual conditions are met, i.e. in particular if it is proven the necessary logical nexus between the breach or the unjustified termination of the agreement and the lost opportunity to realize a certain profit (CAS 2008/A/1519-1520, at paras. 116-117).
94. The Panel notes that in the present case, differently from other CAS cases, there is evidence of what the club itself where the Player wanted to transfer to, i.e. FC Sion/Olympique des Alpes SA, was willing to pay as transfer fee. In this case, therefore, Al-Ahly had an evident opportunity to obtain a certain fee by trading the services of the Player to the Swiss club but this opportunity was frustrated by no other cause than the unjustified departure of the Player.
95. In this regard, it is common ground among the parties that the aim of the tripartite meeting of 14 February 2008 in Cairo was to conduct negotiations in view of the transfer of the Player to FC Sion/Olympique des Alpes SA. Although Al-Ahly in its Answer Brief claimed that at that time no serious or binding financial offer was made by FC Sion/Olympique des Alpes SA, it nevertheless acknowledged in the course of the hearing of 9 December 2009 that the Swiss club had offered USD 400,000 during the Cairo meeting. This amount corresponds to the one

reported by the witness Mr Zeaf during the hearing of 9 December 2009. In the Panel's view, this correspondence lends credibility also to the other amounts reported by Mr Zeaf.

96. Indeed, Mr Zeaf testified at the hearing of 9 December 2009 that Al-Ahly had asked for USD 800,000 during the negotiations with FC Sion/Olympique des Alpes SA. This amount was not contested by Al-Ahly's representatives during the hearing. Mr Zeaf also testified that Mr Constantin had confided him during the negotiations that he was ready and willing to raise the offer of FC Sion/Olympique des Alpes SA up to USD 600,000 but that, for tactical reasons, he was waiting to put forward this proposal. As none of the parties presented any other amount in their written submissions, the latter amount of USD 600,000 can therefore be taken as the amount that FC Sion/Olympique des Alpes SA was ready to pay as compensation for the transfer of the Player.
97. In short, it appears to the Panel that, as a consequence of the early termination of the Player's employment contract, Al-Ahly was deprived of the opportunity to obtain a transfer fee of USD 600,000.
98. In this respect, it is worth noting that, according to the evidence on file (some uncontested press releases), on 20 July 2009 – one and a half season after the facts giving rise to the dispute – the Player was transferred from FC Sion/Olympique des Alpes SA to the Egyptian club FC Ismaily for a transfer fee of USD 600,000. In the Panel's view, such amount confirms the reliability of the above figure of USD 600,000 as the transfer fee that FC Sion/Olympique des Alpes SA was ready to pay for the release of the Player.
99. In other terms, the Panel finds that the amount of USD 600,000 is the amount that Al-Ahly would have to spend on the transfer fees market in order to obtain a player of analogous value from another club.
100. As a result, with a view to basically putting the injured party Al-Ahly in the same position as it had before the Player's contractual breach, Al-Ahly would have to spend on the market, in order to acquire the services of a player of analogous value, the following figures: (i) the pecuniary amount needed to hire the services of such a player; (ii) the pecuniary amount needed to obtain the release of such a player from his current club.
101. Therefore, in order to obtain the market value of the services of an analogous player Al-Ahly would have to spend: (i) USD 488,500 (see *supra* at 88) and (ii) USD 600,000, for a total cost of USD 1,088,500.
102. In this connection, the Panel notes that in the case CAS 2008/A/1519-1520, at paras. 123-124, the panel deducted the remuneration that the former club saved because of its premature departure. The same applies to this case, as Al-Ahly saved approximately USD 292,000 for the remaining Player's remuneration (see *supra* at 87). Accordingly, the amount of USD 292,000

(see *supra* at 80) must be deducted from USD 1,088,500, yielding a total amount of USD 796,500.

103. In the Panel's opinion, an amount of compensation of USD 796,500 would allow Al-Ahly to go on the market and replace the Player with a player of analogous value.

dd) Time remaining on the existing contract

104. The "*time remaining on the existing contract up to a maximum of five years*" is a factor whose rationale is to be found in the circumstance that a club or a player should be able to rely on the stability of the employment relationship – the club in terms of technical continuity of the team's roster and the player in terms of steadiness and serenity of his football career and personal life –, all the more so if the contract still has a substantial duration before its natural termination.

105. In the present case, the Panel observes that the Player and the Second Respondent had signed an employment contract with a duration of three and half years (1 January 2007 until the end of the season 2009/2010). The Player terminated this contract on 15 February 2008 when signing the employment contract with FC Sion, *i.e.* with more than two thirds of the contract still pending. However, the Panel assumes that this factor was duly taken into account by Al-Ahly when it assessed the amount of USD 800,000 that it wished to obtain in order to release the Player. As a consequence, the Panel does not deem that this factor should have an impact in correcting such amount.

ee) Occurrence of the contractual breach within the protected period

106. Another factor which could be taken into consideration is whether the breach or unjustified termination occurred during the so-called "*protected period*". The FIFA Transfer Regulations define it as "*a period of three entire Seasons or three years, whichever comes first, following the entry into force of a contract, if such contract was concluded prior to the 28th birthday of the Professional, or to a period of two entire Seasons or two years, whichever comes first, following the entry into force of a contract, if such contract was concluded after the 28th birthday of the Professional*" (FIFA Transfer Regulations, Definitions, no. 7).

107. In the present case, the Player's unjustified unilateral termination occurred indisputably within the protected period. In principle, the Panel is of the view that the fact that a breach or unjustified termination of contract occurs during the protected period should be taken into consideration as an aggravating factor when assessing the compensation due. It would otherwise be difficult to understand why this element has expressly been listed as a criterion to take into consideration when assessing such compensation.

108. However, taking into account the specific circumstances of the case – in particular the Player’s advanced sporting age (currently 37 years old) and inevitably declining career – the Panel is of the opinion, for proportionality considerations, that the sporting sanctions provided by Article 17.3 are sufficient to penalize the Player for his unjustified unilateral termination of the contract, and that an additional amount on this count would overcompensate his former Egyptian club.
- e) The specificity of sport
109. Article 17.1 of the FIFA Transfer Regulations also asks the judging body to take into due consideration the “*specificity of sport*”, that is the specific nature and needs of sport, so as to attain a solution which takes into account not only the interests of the player and the club, but also, more broadly, those of the whole football community (CAS 2008/A/1644, at para. 139; CAS 2008/A/1568, at paras. 6.46-6.47; CAS 2008/A/1519-1520, at paras. 153-154; CAS 2007/A/1358, at paras. 104-105). Based on this criterion, the judging body should therefore assess the amount of compensation payable by a party keeping duly in mind that the dispute is taking place in the somehow special world of sport. In other words, the judging body should aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interests at stake, the sporting circumstances and the sporting issues inherent to the single case (CAS 2008/A/1519-1520, at para. 155).
110. Taking into account the specific circumstances and the course of the events, a CAS panel might consider as guidance that, under certain national laws, a judging authority is allowed to grant a certain “special indemnity” in the event of an unjustified termination. The specific circumstances of a sports case might therefore lead a panel to either increase or decrease the amount of awarded compensation because of the specificity of sport (CAS 2008/A/1519-1520, at para. 156; CAS 2008/A/1644, at para. 139).
111. However, in the Panel’s view, the concept of specificity of sport only serves the purpose of verifying the solution reached otherwise prior to assessing the final amount of compensation. In other words, the specificity of sport is subordinated, as a possible correcting factor, to the other factors. In particular, according to CAS jurisprudence, this criterion “*is not meant to award additional amounts where the facts and circumstances of the case have been taken already sufficiently into account when calculating a specific damage head. Furthermore, the element of the specificity of sport may not be misused to undermine the purpose of art. 17 para. 1, i.e. to determine the amount necessary to put the injured party in the position that the same party would have had if the contract was performed properly*” (CAS 2008/A/1519-1520, at para. 156).
112. Having recalled these principles, on the basis of the evidence available in this case, the Panel does not find that the specific circumstances and the course of the events in the present case may lead to increase or reduce the amount of compensation due to the Second Respondent.

113. In particular, the Panel does not deem the fact that the Player was the first goalkeeper of Al-Ahly and has been one of the most successful goalkeepers ever in his continent as an element which should increase or decrease the amount of compensation assessed on the basis of the other factors. Indeed, the Panel does not consider the eminent status of the Player and the number of titles won with Al Ahly as a factor that is only to be counted against the Player, because Al Ahly has also very much benefitted from the services of such an outstanding player. In this respect, CAS jurisprudence has recognised that the important personal investment and contribution of a player in the performances of his club must be taken into account as an element that is favourable to him (TAS 2005/A/902-903, at para. 147). This is especially true in this particular case, as the Player has been rendering outstanding services to his club for twelve years (since 1996, see *supra* at 91), playing more than five hundred matches for Al-Ahly and contributing substantially to many important victories.
114. In this regard, the Panel underlines that, according to the evidence given by Mr Zeaf, a representative of Al-Ahly had told the Player that, precisely because of the outstanding longevity and achievements with his club, Al-Ahly would not object to a transfer to FC Sion/Olympique des Alpes SA as long as the financial aspects of the transfer were settled (“*vu les douze années que vous avez passées au Club, vu les 29 titres que vous avez gagnés avec nous, c’est pas aujourd’hui qu’on va vous embêter pour partir [etc.]*”; see *supra* at 67).
115. Therefore, the Panel is of the opinion that the Player’s eminent status as a goalkeeper should not be used to increase or decrease the amount of compensation owed to Al-Ahly. The same goes, in the Panel’s view, for the other elements that have been mentioned by the DRC or the parties in connection with the “specificity of sport” factor. There are some elements that seem to be detrimental to the Player and others that seem to play in favour of the Player or against the Second Respondent. In particular, the Panel does not share Al-Ahly’s view that a goalkeeper is harder than the other players to replace as no evidence was provided to support this assertion (which, in the Panel’s view, is even counter-intuitive and would thus need particularly persuasive evidence).
116. Above all, the Panel is of the view, in line with the *Matuszalem* jurisprudence (see *supra* at 111), that the factor of the specificity of sport may not be misused to compensate the injured party with an amount which would put such party in a better position than the one it would have if the termination had been mutually agreed. As a consequence, the Panel sees no reason to increase or decrease – because of the specificity of sport – the compensation that the injured party itself was ready to accept as suitable transfer fee at the moment of the Player’s transfer to Switzerland.
- f) The amount of compensation awarded to Al-Ahly
117. In conclusion, the Panel finds that the decisive element in this case is the fact that there is persuasive evidence that Al-Ahly might be able to go on the players’ market and replace the

Player with a player of equivalent value for the same period of contractual time by spending USD 796,500. Therefore, in line with the “positive interest” or “expectation interest” notions, this amount would basically put Al-Ahly in the same position that it would have had if the Swiss club had paid the transfer fee it was ready and willing to pay and the Player’s contract had been terminated by mutual consent.

118. Therefore, the Panel holds that the amount of compensation owed by the Player to Al-Ahly must be of USD 796,500. In this respect, the Panel’s decision supersedes item 2 of the Appealed Decision’s ruling, which had granted to Al-Ahly the amount of EUR 900,000 (see *supra*).
119. In addition, in order to put Al-Ahly even closer to the same position that it would have had if the Player had not breached his contract, the Panel is of the opinion that item 5 of the Appealed Decision’s ruling – granting a 5% interest rate per annum as of the expiry of the time limit of 30 days after the notification of the Appealed Decision (see *supra*) – must be upheld *mutatis mutandis*, i.e. granting a new time limit of 30 days after the notification of the present award. The Panel notes that this is in line with recent CAS decisions (see e.g. TAS 2009/A/1895, at paras. 86-87).
120. The Panel is indeed of the view that it may grant such interest because Al-Ahly did ask in its motions “to confirm the challenged decision”; therefore, the Panel may partially uphold this motion and confirm, *mutatis mutandis*, the said item 5 of the Appealed Decision’s ruling.
121. As a result, the Panel holds that the Player must pay to Al-Ahly USD 796,500 plus a 5% interest rate per annum as of 30 days after the notification of the present award until the date of effective payment.

C. *The sporting sanction*

122. In accordance with Article 17.3 of the FIFA Transfer Regulations, the DRC decided that the Player had to be sanctioned with a restriction of four months on his eligibility to participate in any official football match.
123. According to CAS jurisprudence, a literal interpretation of the said provision yields the duty of the competent body to impose sporting sanctions on a player who has breached his contract during the protected period: “shall” is obviously different from “may”. Consequently, if the intention of the FIFA Transfer Regulations was to give the competent body the discretion to impose a sporting sanction, it would have employed the word “may” and not “shall”. FIFA and CAS jurisprudence on this particular article 17.3 may be considered not fully consistent, mainly since the decisions are often rendered on a case by case basis. The consistent line however is that if the wording of a provision is clear, one needs clear and

strong arguments to deviate from it. (CAS 2008/A/1568, at paras. 6.57-6.59; CAS 2007/A/1429 & 1442, at para. 6.23).

124. In the present case, the Panel cannot not find any strong arguments which would justify not imposing the sanctions as laid down in article 17.3 of the FIFA Transfer Regulations. As already said, E. is a player of great experience on the international scene. Although he may have believed in good faith that his former club would allow his transfer for free, the letter of 24 February 2008 from Al-Ahly to FC Sion/Olympique des Alpes SA made clear that this would not be the case. The Player, therefore, should have been aware that, by staying with the Swiss club, he risked to be sanctioned under the FIFA rules that he was supposed to know (in fact, he declared to know them when he signed the Swiss employment contract on 15 February 2008, as already found by this Panel at para. 95 of the Partial Award dated 7 October 2009; see *supra*). Moreover, the Player himself sent a termination letter to Al-Ahly on 25 February 2008 (see *supra*).
125. In view of the above, the Panel must confirm the findings of the DRC in regard of the sporting sanctions imposed on the Player, as stated in item 6 of the Appealed decision's ruling (see *supra*). The Player shall therefore be imposed a restriction of four months on his eligibility to participate in any official football match.
126. The Panel notes that the Appealed Decision determined that this sporting sanction was to take effect as of the start of the following season of the Player's new club (see item 6 of the Appealed decision's ruling, *supra*). As on 7 July 2009 – before any official match of the new season – the Deputy President of the CAS Appeals Arbitration Division issued an Order granting a stay of the implementation of the Appealed Decision, the Panel observes that the Player never started to serve his suspension. Therefore, the sanction of four months of ineligibility to play in official matches must be confirmed in its entirety, taking effect – *mutatis mutandis* – as of the start of the next season of the Player's current club following the notification of the present award.

Conclusion

127. To sum up, therefore, the Panel finds that the appeal lodged by FC Sion Association is inadmissible because it lacks legal interest and standing to appeal. The appeal of E., on the contrary, is admissible. However, on its merits, the appeal is only partially upheld. The amount of compensation owed by E. to Al-Ahly for the breach of contract is reduced by this Panel to USD 796,500 and related interest of 5% per annum. At the same time, the sporting sanction imposed by the Appealed Decision on the Player is confirmed. All other or further requests and prayers for relief submitted by the parties are rejected.

The Court of Arbitration for Sport rules:

1. FC Sion Association has no legal interest and standing to appeal against the decision issued on 16 April 2009 by the FIFA Dispute Resolution Chamber; its appeal filed on 18 June 2009 (CAS 2009/A/1880) is thus inadmissible.
 2. The appeal filed by the player E. on 18 June 2009 (CAS 2009/A/1881) against the decision of the FIFA Dispute Resolution Chamber dated 16 April 2009 is partially upheld.
 3. The decision of the FIFA Dispute Resolution Chamber dated 16 April 2009 is partially superseded in the sense that E. is ordered to pay to Al-Ahly Sporting Club an amount of USD 796,500, plus interest of 5% p.a. as of 30 days after the notification of the present award until the date of effective payment.
 4. E. is declared ineligible to play in official matches for four months; this sanction shall take effect as of the start of the 2010-2011 season of the club with which E. is going to be registered.
- (...)
8. All other requests or motions submitted by the parties are dismissed.