Arbitration CAS 2008/A/1517 Ionikos FC v. C., award of 23 February 2009

Panel: Mr. Christian Duve (Germany), President; Mr. Jean-Philippe Rochat (Switzerland); Mr. Ricardo de Buen Rodríguez (Mexico)

Football
Termination of the contract of employment without just cause
Tacit or indirect choice of law made by the parties
Standing to be sued according to the CAS jurisprudence and to Swiss law
Panel's power to review the jurisdiction of the FIFA DRC
Article 75 Swiss Civil Code
Interpretation of a contract according to the principle of mutual trust
Definition of "just cause"
Requirement to attend training sessions and "just cause" for the termination of the contract

1. **The choice of law made by the parties can be tacit or indirect, by reference to the rules of an arbitral institution. Moreover, there will be a tacit choice made by the parties when they submit themselves to arbitration rules that contain provisions relating to the designation of the applicable law. Where the parties to an arbitration before CAS are – even indirectly – affiliated to FIFA and they made a tacit choice of law when they submitted themselves to arbitration rules that contained provisions relating to the designation of the applicable law, parties are bound by the FIFA Statutes and, the Panel applies, accordingly, the various FIFA Regulations and Swiss law. Moreover, CAS jurisprudence has consistently interpreted FIFA Statutes as to contain a choice of law clause in favour of Swiss law governing the merits of the disputes.**

2. **Neither the FIFA Regulations nor the CAS Code contain any specific rule regarding the standing to be sued; according to the CAS jurisprudence and to Swiss law, the defending party has standing to be sued if it is personally obliged by the 'disputed right' at stake, that is only if it has some stake in the dispute because something is sought against it. In this respect, a Respondent to a CAS procedure has standing to be sued if, in filing a claim to FIFA when there might have been a possibility that another national tribunal was competent to hear the case pursuant to the FIFA Regulations, Respondent could have breached his contractual duties. Accordingly, Appellant is entitled to direct its appeal before CAS at Respondent in order to require him to refuse the FIFA's jurisdiction to rule on the issue of sanction and compensation.**

3. **Article 75 of the Swiss CC has consistently been interpreted by Swiss legal doctrine and jurisprudence to mean that it is the association which has capacity to be sued; nevertheless, Article 75 of the Swiss CC does not apply indiscriminately to every decision made by an association but one has to determine the application of Article 75 Swiss Civil Code on a case-by-case basis. If, for example, there is a dispute between**

two association members (e.g. regarding the payment for the transfer of a football player) and the association decides that a club (member) has to pay the other a certain sum, this is not a decision which can be subject to an appeal within the meaning of Art. 75 Swiss Civil Code. The sports association taking a decision is not doing so in a matter of its own, i.e. in a matter which concerns its relationship to one of its members, rather it is acting as a kind of first decision-making instance, as desired and accepted by the parties.

4. **The sanction for a private agreement annexed to the employment contract stipulating that an employment contract can be unilaterally terminated without just cause is, according to the interpretation of the FIFA Regulations and to Swiss Law, the invalidity of such agreement.**

5. **An employment contract which has been concluded for a fixed term can only be terminated prior to expiry of the term of the contract if there is 'good cause': this is any situation, in the presence of which the party terminated cannot in good faith be expected to continue the employment relationship. In this respect, a grave breach of duty by the employee is good cause. Particular importance is attached to the nature of the obligation. A valid reason for the unilateral termination of the contract has to be admitted when the essential conditions under which the contract was concluded are no longer present, whereas only a breach which is of a certain severity justifies termination of a contract without prior warning.**

6. **A club is in abuse of its rights – and therefore the player may terminate the employment relationship with just cause – if the club requires from the player to attend training sessions in odd times, such as at 7:00 am on January 1st, while the rest of the team is officially on Christmas leave.**

FC Ionikos (Appellant, "Ionikos") is a football club of the Greek second division. It is a member of the Greek Football Federation which is, in turn, member of the Federation International of Football Association (FIFA). FIFA is an association establishment in accordance with article 60 of the Swiss Civil Code and has its seat in Zurich (Switzerland).

C. (Respondent, "the Player") is a professional football player born in Peru on September 23, 1974 who played for Appellant.

The elements set out below are summary of the main relevant facts, as established by the Panel on the basis of the written submission of the Parties, the evidences produced, and the hearing held on December 8, 2008. Additional facts may be set out where relevant in connection with the legal discussion.

In the summer of 2005, Mr. Omar Medina introduced the parties. During the negotiations, he accompanied Respondent as a translator because Respondent does not speak English or Greek.

On August 2, 2005, Appellant's President, Mr. Christos Kanellakis, sent a letter in English to the Player. This letter (the "English Term Sheet"), which was filed by Respondent in the FIFA file, expressed the following:

> *"With this letter, FC IONIKOS, would like to inform you that after the conversation and agreement with Mr. Omar Medina, we propose a contract to you with the following terms:*
>
> *The [duration] of the contract shall be three (3) years, thus 01/08/2005 – 30/06/2006.*
>
> *The wages during the contract period shall be as follows:*
>
> *1st year € # 80,000.00 # (tax free), plus 660.87€ x 14 (monthly salary),*
>
> *2nd year € # 90,000.00 # (tax free), plus 660.87€ x 14 (monthly salary),*
>
> *3rd year € # 90,000.00 # (tax free), plus 660.87€ x 14 (monthly salary).*
>
> *During the contract[ual] period, FC IONIKOS shall provide you an apartment to stay and [airplane] tickets for you and your family (wife and three children).*
>
> ***BONUS (per year):***
>
> *▫ € 10,000.00 if FC IONIKOS goes to UEFA Cup.*
>
> *Moreover, all the above mentioned would be valid, provided that the football player passes through medical examinations and its results are passing and satisfactory".*
>
> [Clarifications made by the Panel]

In August 2005, the parties signed two agreements in Greek, an employment contract (the "Employment Contract") valid until June 30, 2008; and a private agreement (the "Private Agreement") which stipulated the following:

> *"The F.S.A. IONIKOS A.O., during the validity of the contract of collaboration, that is from 17.08.2005 until 30.06.2008, has the right to break the contract without any financial claim from the part of the football player concerning the remaining installments of the contract or any other financial claim of any kind from this contract. The above paragraph will not apply in case of a serious injury of the player or in case he is invited to play with his National Team".*

The Employment Contract indicates as date of conclusion August 17, 2005, however, it is unclear when the parties actually signed this contract.

According to the Employment Contract, Respondent was entitled to:

- A monthly basic salary of EUR 660,87 that would not be less than the monthly salary of an unqualified employee;
- Christmas allowance equivalent to one monthly salary;
- Easter allowance equivalent to half of one monthly salary;

- Vacation allowance equivalent to half of one monthly salary;
- Benefits such as air fares and accommodation;
- Further payment for signing the contract in the amount of EUR 260,000 payable in 9 installments according to the following payment scheme:
- EUR 25,000 paid on 12/12/2005
- EUR 25,000 paid on 10/04/2006
- EUR 30,000 paid on 31/05/2006
- EUR 30,000 paid on 12/12/2006
- EUR 30,000 paid on 10/04/2007
- EUR 30,000 paid on 31/05/2007
- EUR 30,000 paid on 12/12/2007
- EUR 30,000 paid on 10/04/2008
- EUR 30,000 paid on 31/05/2008
- A first year bonus of EUR 10,000 dependent on the condition that Ionikos, during the 2005-2006 season, passed the UEFA games, and of EUR 5,000 if the Player, during the 2005-2006 season, had 22 participations.

Furthermore, the Employment Contract contained the following clause:

> *"Special Term:*
>
> *If the football player does not complete 22 participations in the championship of each year, he will not be paid for the last installment of the corresponding year".*

On December 5, 2006, Appellant summoned Respondent and Mr. Medina to come to the Club's office on December 6, 2006 to pay him the outstanding money owed to him and to terminate his contract. However, the parties did not reach an agreement on that date.

On December 12, 2006, Appellant summoned Respondent and Mr. Medina to come to the Club's office on December 15, 2006, to submit his written pleading regarding his alleged anti-contractual behavior.

At the meeting of December 15, 2006, Respondent refused to terminate the Employment Contract and wrote a letter to Appellant stating that:

- the Employment Contract had not been translated by the President of Appellant at the time of signature;
- there had never been a Private Agreement signed by him;
- he had been present at the Club's office on December 6, 2006 together with Mr. Medina and no agreement to terminate the Employment Contract had been reached;

- he was owed the following amounts: the salaries of July and November 2006; the Christmas allowance of 2005; the Easter allowance of 2006; the vacation allowance of 2006; and the last installment of EUR 20,000 that was due on December 12, 2006; and
- that the allegations contained in the legal summon were not valid because he had always been having in a best manner and performing on his best sporting skills.

On December 19, 2006, Appellant's board had a meeting on how to proceed concerning the employment relationship with Respondent and decided to take the situation before the Hellenic FF to terminate the Employment Contract based on Respondent's culpability. This decision was then notified to Respondent.

On that same date, Respondent sent two letters to Appellant. Through the first one, the Player requested explanations concerning the reasons why he had not been able to train with the rest of the team since November 29, 2006. With the second one, the Player claimed his salaries of July and November 2006 in the amount of EUR 680 each plus the outstanding installment due since December 12, 2006 in the amount of EUR 20,000. Moreover, he gave the Club until December 24, 2006 to pay these amounts.

On December 27, 2006, Respondent sent a letter to Appellant acknowledging receipt of the Club's legal notification dated December 21, 2006 informing him of the decision made by Appellant's Board to unilaterally terminate the Employment Contract. Moreover, the Player objected to the measure taken by the Club and emphasized three issues: first, that he had not been given any reasons as to why he had not been able to train since November 29, 2006; second, that it was a fundamental right of any worker to object to certain provisions contained in the Employment Contract due to fact that they had been written in a foreign language and had not been translated to him, and that this was not a valid reason for the Club to impose disciplinary measures on him and to unilaterally terminate the Employment Contract; and third, that he had previously requested that all outstanding financial obligations towards him were settled by the Club.

On December 29, 2006, Appellant filed a petition with the authority of the Hellenic FF to terminate the Employment Contract.

On December 31, 2006 from 10:00 to 12:30 and from 18:00 to 20:00, and on January 1, 2007 at 7:00, Respondent attended training sessions.

On January 3, 2007, Respondent sent a letter to Appellant's president complaining about the training sessions mentioned in paragraph 16 and requesting a formal reply from the president or the administration of the Club containing the reason for these training sessions while the rest of the team was officially on leave from December 30, 2006 to January 2, 2007.

On January 4, 2007, Respondent sent another letter to Appellant's president requesting payment of a total outstanding amount of EUR 27,005 within the next five days and expressed that the only competent body to handle the case was the FIFA's DRC. The amount was claimed according to the following concepts:

- Salaries: EUR 680 for July 2006; EUR 89 for September 2006; EUR 69 for October 2006; EUR 769 for November 2006 and EUR 769 for December 2006.
- Installment: EUR 20,000 for the installment due on December 12, 2006.
- Allowances: EUR 320 for Christmas 2005; EUR 320 for Easter 2006; EUR 320 for Summer holidays 2006 and EUR 769 for Christmas 2006.
- Rent: EUR 1,500 for partial payment of the rent from September 2005 to December 2006 and the full payment of EUR 1,400 for the rent of June 2006 and January 2007.

On January 10, 2007, Respondent submitted a claim at FIFA against Appellant for breach of contract along with 12 exhibits. In his claim, Respondent stated that Appellant had imposed disciplinary measures on him and had failed to fulfill its financial obligations deriving from the Employment Contract for more than 3 months or since the beginning of September 2006, and finally had unilaterally terminated the contractual relationship without just cause.

On January 16, 2007, FIFA sent a letter to the Hellenic Football Federation ("Hellenic FF") informing of the Player's claim before FIFA and inviting the Club to provide FIFA with its position on the matter by no later than January 23, 2007, in particular, with regard to the Player's request to be released immediately from the employment contract in question. Additionally, FIFA invited the Hellenic FF to confirm whether a labor dispute between the Club and the Player had been brought before of the deciding bodies of the Hellenic FF and, if so, to inform FIFA of the current statues of the proceedings and to provide the relevant documentation in that regard.

On January 17, 2007, a hearing took place before the First-Grade Committee for the Resolution of Financial Disputes of the Hellenic FF ("First-Grade Committee"). At that hearing, an attorney appeared allegedly on behalf of Respondent contesting the jurisdiction of the First-Grade Committee to hear the case.

On January 23, 2007, Appellant sent a letter to FIFA explaining its position on the matter, letting it know that it was trying to get the documentation filed in Spanish by Respondent translated in order to be able to answer to the Player's allegations and confirming that the dispute had been submitted to the dispute resolution bodies of the Hellenic FF.

On January 24, 2007, FIFA contacted the Hellenic FF to acknowledge receipt of Appellant's correspondence and to reiterate the request for a copy of the entire documentation filed with the dispute resolution bodies of the Hellenic FF.

On January 29, 2007, the First-Grade Committee rejected Appellant's application for the dissolution of the Employment Contract. On that same date, Appellant sent a letter to FIFA asking for more time to translate all the documentation into English and file it with FIFA.

On January 30, 2007, FIFA sent a letter to the parties advising them to consider their labor relationship as terminated and to focus on the financial aspects of the dispute. Additionally, it gave both parties until February 8, 2007 to file allegations along with the supporting documents translated into one of the four official languages of FIFA.

On February 1, 2007, Appellant filed an appeal before the Second-Grade Committee for the Resolution of Financial Disputes of the Hellenic FF ("Second-Grade Committee").

On March 6, 2007, the Second-Grade Committee, after conducting a hearing on that date, decided that the appeal was upheld; the decision of the First-Grade Committee was repealed and the Employment Contract was annulled.

On November 2, 2007, the Dispute Resolution Chamber (DRC) of FIFA decided the following:

> *"The claim of the Claimant, C., is partially accepted.*
>
> *Respondent, Ionikos, must pay the gross amount of EUR 122,640 to the Claimant, C., within 30 days as from the date of notification of this decision.*
>
> *In the event that the above-mentioned total amount is not paid within the stated deadline, an interest rate of 5% per year will apply as of expiry of the aforementioned time limit and the present matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.*
>
> *The Claimant, C., is directed to inform Respondent, Ionikos, 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".*

The DRC arrived to these conclusions based on the following reasoning.

Concerning its own jurisdiction, the DRC ruled it was competent to hear the case in accordance with article 22.b of the 2005 edition of the FIFA Regulations on the Status and Transfer of Players ("FIFA Regulations") as:

> *"even though according to the documentation presented by the Hellenic Football Federation it seems to appear that the relevant national deciding bodies may formally be composed of an equal number of player and club representatives, Respondent was unable to prove that, in fact, the First and Second Grade Committees for the Resolution of Financial Disputes of the Hellenic Football Federation dealing with the present matter had met the minimum procedural standards for independent arbitration tribunals as laid down in art. 22 b) of the 2005 edition of the Regulations for the Status and Transfer of Players and in FIFA Circular 1010".*

Furthermore, the DRC found that there was no arbitration clause in favour of the national arbitration within the Hellenic FF; that Respondent had not entered an appearance before either the First-Grade Committee or the Second-Grade Committee but instead explicitly contested their competence; and that the principle of *res iudicata* invoked by Appellant was not applicable to that situation.

Addressing the merits, the DRC expressed that it was undisputed by the parties that their employment relationship had been terminated on December 29, 2006, at the moment when the Club had submitted a petition for the execution of the termination of the relevant contract at the First-Grade Committee. Subsequently, the DRC considered the wording of the Private Agreement and decided that:

"the agreement in question lacked any objective criteria for the termination of the contractual relationship. In particular, the [DRC] emphasized that the relevant private agreement provided only [Appellant] but not [Respondent] for the right to terminate the contract at any time.

[…]

the termination of the contract on the basis of non-objective criteria would also lead to an unjustified disadvantage of [Respondent] in terms of his financial rights.

[…]

if such an agreement would be accepted, this would create a disproportionate repartition of the rights of the parties to an employment contract, to the strong detriment of [Respondent].

In the light of the above, the members of the [DRC] unanimously concluded that such a potestative clause had to be considered as invalid".

[Clarifications made by the Panel]

In addition, with regard to the unilateral termination of the employment relationship, the DRC found that Appellant did not have just cause to terminate. It reasoned that, *"all reasons invoked by [Appellant] for the unilateral termination of the employment contract, in particular, the unproven allegations of [Respondent's] poor performance and his unprofessional behaviour and his refusal to terminate the contract by mutual agreement cannot be accepted as just cause to terminate the employment contract"*. [Clarifications made by the Panel]

As a result of Appellant's breach of article 14 of the FIFA Regulations through the unilateral termination without just cause, Appellant was liable to pay all outstanding monies due under the Employment Contract until its date of termination.

Consequently, the DRC concluded that Respondent *"was entitled to receive from [Appellant] the salaries for the months of July and November 2006, in the amount of EUR 1,320 each (2x EUR 660), the Christmas allowance 2006 in the amount of EUR 660, the Easter allowance 2006 in the amount of EUR 330, the vacation allowance 2006 in the amount of EUR 330, the share of the instalment of the further payments due on 12 December 2006, in the amount of EUR 20,000 , i.e. overall outstanding remuneration in the amount of 22,640"*. [Clarifications made by the Panel]

Additionally, Respondent was entitled to a compensation based on article 17(1) of the FIFA Regulations based on the remaining value of the employment relationship between the parties and the amount of time that Respondent actually player for Appellant. The DRC ruled that this compensation would amount to EUR 100,000.

On March 4, 2008, the decision of the DRC was served on Appellant by fax.

On March 20, 2008, Appellant filed its appeal of the DRC's decision dated November 2, 2007, before the CAS, requesting the following relief.

*"**In Principle***

a) The Appeal is accepted and upheld.

b) The Dispute Resolution Chamber of FIFA's decision passed in Zurich Switzerland on 2 November 2007, is declared null and void, FIFA is declared to not have jurisdiction over this case.

c) The decision of the Appeals Committee of the HFF (no 48/6-3-2007) is confirmed.

d) C. is to bear all the costs of this arbitration and should be ordered to contribute to Appellant's legal and other costs.

Subsidiary

I. The Appeal is accepted and upheld.

II: FC Ionikos owes no money to C. and is to pay him no money.

III. C. is to bear all the costs of this arbitration and should be ordered to contribute to Appellant's legal and other costs".

On March 26, 2008, the CAS Court Office acknowledged receipt of the statement of appeal and inquired with Appellant, before notification, if C. was the sole Respondent or if he was co-Respondent with FIFA.

On March 27, 2008, Appellant replied that its *"reference to FIFA is due to its capacity as the authority which took the decision. The appeal is against the decision rendered by FIFA. Hence, we do hold that FIFA is to be given the opportunity to state its position in this procedure".*

On March 27, 2008, the CAS Court Office notified the FIFA of the present appeal proceedings and requested a clean copy of the decision issued by the FIFA DRC on November 2, 2007. Moreover, the CAS Court Office served Respondent with the statement of appeal on behalf of Appellant. Moreover, the CAS invited Respondent to appoint an arbitrator.

On April 2, 2008, Respondent acknowledged the receipt of the appeal and requested that the arbitration proceedings be conducted in Spanish.

On April 3, 2008, FIFA sent the CAS Court Office a letter informing that it renounced its right to intervene in the present arbitration proceeding. Moreover, it provided the CAS with a clean copy of the decision taken by the DRC on November 2, 2007.

On April 4, 2008, the CAS noted that Respondent had requested Spanish to be chosen as the language of the present procedure. Therefore, the CAS invited Appellant to indicate to the CAS Court Office its position on the language of the arbitration before April 9, 2008. Moreover, the CAS reminded Respondent that the deadline for the designation of his arbitrator would expire ten days after the receipt of the letter sent by the CAS dated March 27, 2008.

On April 4, 2008, Appellant filed the Appeal Brief with the CAS along with 17 additional exhibits.

On April 8, 2008, Appellant refused to accept Spanish as the language of the arbitrator but said that it could accept French if it did not have to translate all the documents and submissions already sent to the CAS Court Office.

On April 14, 2008, Respondent chose English as the preferred language for the arbitration.

On April 15, 2008, the CAS Court Office noted that the language of the arbitration was English and notified the appeal brief to Respondent.

On April 28, 2008, FIFA sent a fax to the CAS Court Office saying that:

> *"having renounced to intervene in the present matter, by the fact that Appellant had not designated FIFA as a Respondent, any question related to the competence of FIFA's deciding bodies to pass a decision on the substance of the present dispute may not be taken into consideration by the CAS and the specific Panel. From a formal point of view, the relevant aspect does not fall within the discretion of any deciding body anymore. A different interpretation would per se constitute a violation of FIFA's right to be heard.*
>
> *In other words, the respective part of the challenged decision must be considered as having become final and binding in the meantime. Consequently, also a decision of the CAS annulling the challenged decision based on consideration about FIFA's competence would be affected by the formal error of a violation of FIFA's right to be herd, and would therefore, at the least, not be binding on FIFA".*

On May 7, 2008, Respondent filed its answer to the appeal along with 11 exhibits and requesting the following relief.

> *"The appeal shall be DISMISSED and declared GROUNDLESS in all extent.*
>
> *IONIKOS Football Club shall assume the payment of all expenses and court costs of the process of both parties.*
>
> *IONIKOS Football Club shall pay Mr. Juan Pajuelo 5% of interest of the amount ordered to be paid, in concept of the time of delay in complying with the payment".*

On May 7, 2008, the CAS Court Office acknowledged receipt of FIFA's letter dated April 28, 2008, and noted that the issue raised therein would be decided in due time by the Panel.

On May 28, 2008, Appellant addressed two issues. Firstly, it requested to schedule a hearing in this matter because he had asked some witnesses to be heard and secondly it expressed its position on FIFA's letter dated May 7, 2008, regarding the argument relevant to the lack of jurisdiction of FIFA to decide on the matter. In its letter, Appellant mentioned the following:

> *"Contrary to FIFA's claim, we had filed the appeal brief including FIFA in this matter. FIFA is the authority whose decision was attacked by the appeal. It is in this capacity which would allow FIFA to participate in the arbitration. Upon being subsequently contacted by CAS it decided that it would not partake in the arbitration proceedings. This stance cannot exclude the issue of jurisdiction. The fact that FIFA is a party or not in the arbitration in no way renders the underlying issue of its jurisdiction irrelevant.*
>
> *Not only was FIFA given the opportunity to participate in the arbitration, but it could still defend its position regarding its jurisdiction. Hence we cannot accept that this important issue be excluded from the questions posed to the Panel merely due to the fact that FIFA holds that it is no longer a party in the arbitration.*

On July 24, 2008, the CAS Court Office informed the Hellenic FF about the appeal lodged by Appellant in these proceedings against the decision of the DRC dated November 2, 2007.

Furthermore, pursuant to article R57 and R44.3 paragraph 2 of the Code of Sports-related Arbitration (the "CAS Code"), the Panel invited the Hellenic FF to provide the CAS Court Office with any documents establishing the conformity of the First-Grade and Second-Grade Committees for the resolution of financial disputes with the FIFA Circular Letter 1010. Moreover, the Panel requested a copy of the relevant provisions of the Statutes of the Hellenic FF where the jurisdiction of both decision-making bodies was defined (i.e. the First-Grade and Second-Grade Committees).

On July 24, 2008, the CAS Court Office invited FIFA to lodge a copy of its file related to these arbitration proceedings.

On July 24, 2008, the CAS Court Office sent a fax to the parties with respect to the different procedural requests formulated by the parties. In particular, the CAS Court Office noted that Appellant had requested the Panel to formally give FIFA a new opportunity to participate in the present arbitration and, on behalf of the Panel, invited Respondent to state whether it would agree to Appellant's request.

On July 31, 2008, Respondent agreed to Appellant's request to ask FIFA to intervene in the present arbitration proceedings.

On August 5, 2008, the CAS Court Office acknowledged receipt of the FIFA file and sent it to the parties.

On August 18, 2008, FIFA was given a new opportunity to participate as a party in the present arbitration proceedings.

On September 3, 2008, the CAS Court Office sent a letter to the Hellenic FF requesting the provision of the documents in force in 2005 and 2006 establishing the conformity of the federation's First-Grade and Second-Grade Committees with FIFA Circular 1010. Furthermore, the CAS Court Office requested a copy of the relevant provisions of the Statutes of the Hellenic FF in force in 2005 and 2006 where the jurisdiction of both decision making bodies was defined.

On September 4, 2008, the CAS Court Office sent a letter to FIFA inviting it to declare whether it would like to intervene in the present arbitration proceedings and also to provide the CAS Court Office with a copy of FIFA Circular letter 1010.

On September 10, 2008, the CAS Court Office invited the parties to express their position on FIFA's request for a copy of the file on or before September 16, 2008. Moreover, it informed the parties that their silence would be considered as an agreement.

On September 12, 2008, the Hellenic FF sent a copy of the 2006 version of its Statutes.

On September 16, 2008, Appellant informed the CAS Court Office that it had no objection to CAS providing the documents requested by FIFA's Counsel.

On September 24, 2008, the CAS Court Office sent FIFA a copy of the appeal brief; the answer; the letter dated May 28, 2008 from Counsel for Appellant to CAS; the letter dated July 24, 2008 from CAS to the parties; and the letter dated July 30, 2008 from Counsel for Respondent to CAS. Moreover, it invited FIFA to declare whether it would like to participate in the present arbitration proceedings within five days from the receipt of that correspondence and was informed that, if FIFA would like to participate, it would then be granted a two weeks deadline to file its written submission.

On September 29, 2008, FIFA informed CAS that it could not participate in the present arbitration as an intervening party within the meaning of article R41.3 of the CAS Code. It mentioned that *"this would place FIFA in the contradictory position of being a party to the arbitration and, at the same time, arguing that because it is not a party, or at least an original party, the jurisdiction of the FIFA's DRC has become final"*. Furthermore, FIFA submitted an amicus curiae brief setting out the reasons why it concluded that the question of the jurisdiction of the FIFA DRC could not be reviewed by CAS in the present case.

On October 8, 2008, the parties were invited to file with CAS their comments, if any, further to FIFA's amicus curiae brief.

On November 27, 2008, Counsel for Appellant returned to the CAS the signed Order of Procedure.

On December 2, 2008, the CAS Court Office informed FIFA that the Amicus Curia Brief dated September 29, 2008 had been deemed admissible by the Panel and that both parties had been invited to comment on it. Additionally, it informed FIFA that the Panel did not consider it necessary to invite FIFA to participate in the hearing on December 8, 2008.

On December 8, 2008, a hearing was held in the present matter in Lausanne.

LAW

Admissibility

1. The appeal is admissible as it was filed within the deadline stipulated in article 61 of the FIFA Statutes. The decision of the DRC was notified to the parties on March 4, 2008, the Appellant, therefore, had under article 61 of the FIFA Statutes until March 25, 2008 to file the appeal statement, which he did on March 20, 2008. The appeal statement and the appeal brief submitted subsequently fulfill the requirements of the CAS Code. Hence, the appeal is admissible.

Jurisdiction

2. The jurisdiction of CAS, which is not disputed, derives from articles 60 and 61 of the FIFA Statutes and article R47 of the CAS Code gives also basis for the jurisdiction of this Court.

3. The scope of the Panel's jurisdiction is defined in article R57 of CAS Code, which provides that *"the Panel shall have full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance"*.

Applicable Law

4. Appellant requested that the Panel applied the FIFA Regulations, the Regulations of the Hellenic FF and Greek law, for two reasons: first, it claims that the parties signed an Employment Contract dated July 25, 2006 which was explicitly subject to various Statutes and regulations of Greek law; and second, Greek law is to be deemed the law most closely connected to this dispute due to the fact that the Employment Contract was concluded and performed in Greece and one of the parties is Greek.

5. In contrast, Respondent denies the applicability of Greek law and argues that even if the Employment Contract mentions Greek law, only the number of the statute was translated to the Player but not its text. Hence, due to the application of the principle of *"in dubio pro operario"*, the there was no choice-of law clause contained in the Employment Contract. Therefore, Respondent submits that, pursuant to article 60(2) of the FIFA Statutes and the CAS Code, the Panel shall apply first and foremost the various FIFA Regulations, and additionally, Swiss Law.

6. In the present case, the Panel concludes that the provisions applicable to this case are the FIFA Regulations in their edition of 2005. The 2005 edition of the FIFA Regulations rather than the 2008, edition is applicable for two reasons: first, the parties signed the Employment Contract in August 2006; and second, their employment relationship was terminated in December 2006 by Appellant's board.

7. Furthermore, the parties in the present case are bound by the FIFA Statutes for two reasons: first, they made a tacit choice of law when they submitted themselves to arbitration rules that contained provisions relating to the designation of the applicable law; and second, all parties are – at least indirectly – affiliated to FIFA. Therefore, this dispute is subject, in particular, to article 60(2) of the FIFA Statutes, which provides that CAS *"shall primarily apply the various regulations of FIFA and, additionally, Swiss law"* (CAS 2006/A/1180, para. 7.9). Hence, due to the indispensable need for the uniform and coherent application worldwide of the rules regulating international football (TAS 2005/A/983-984, para. 24), the Panel rules that Swiss law will be applied for all the questions that are not directly regulated by the FIFA Regulations (cf. CAS 2005/A/871, para. 4.15).

8. The Panel arrives to the above-mentioned conclusions as a result of adopting the following approach.

9. First, in order to determine the applicable law, the Panel examines article R27 of the CAS Code, which states that the provisions of the CAS Code *"apply whenever the parties have agreed to refer a sports-related dispute to the CAS. […]"*.

10. Subsequently, the Panel analyzes article R28 of the CAS Code which determines Lausanne, Switzerland as the seat of the CAS and each Arbitration Panel. Moreover, since neither party had, at the time of concluding the arbitration agreement, its domicile or habitual residency in Switzerland, the provisions contained in Chapter 12 of Switzerland's Federal Code on Private International Law ("PILAct") are applicable to this case (see TAS 2005/A/983-984, para. 17; CAS 2006/A/1024, para. 6.1; and TAS 2006/A/1082-1104, para. 47).

11. Therefore, the Panel examines article 187 of the PILAct, which addresses the issue related to the law applicable to the merits of the case and provides that *"the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such choice, according to the law with which the action is most closely connected. The parties may authorize the arbitral tribunal to rule according to equity"*. The Panel emphasizes at this point that article 187 of the PILAct establishes a regime concerning the applicable law that is specific and different from those instituted by the general conflict-of-law rules of the PILAct in the subject (see RIGOZZI A., *L'arbitrage international en matière du sport*, Bâle 2005, para. 1166 ff.; KAUFMANN-KOHLER/STUCKI, *International Arbitration in Switzerland,* Zurich 2004, pg. 116; TAS 2005/A/983-984, para. 19 and CAS 2006/A/1024, para. 6.3).

12. The Panel underscores that not only the legal doctrine but also the CAS jurisprudence have acknowledged that article 187 PILAct allows arbitrators to settle the disputes in application of provisions of law that do not originate in a particular national law, such as sport regulations or the rules of an international federation (see RIGOZZI A., *op. cit.*, para. 1178; TAS 2005/A/983-984, para. 20 ff.; CAS 2006/A/1024, para. 6.9; and TAS 2006/A/1082-1104, para. 48).

13. According to the CAS jurisprudence and the legal doctrine, the choice of law made by the parties can be tacit or indirect, by reference to the rules of an arbitral institution. (see RIGOZZI A, *op. cit.*, para. 1172; KAUFMANN-KOHLER/STUCKI, *op.cit.*, pg. 118; CAS 2006/A/1024, para. 6.5; and TAS 2006/A/1082-1104, para. 49). Moreover, there will be a tacit choice made by the parties when they submit themselves to arbitration rules that contain provisions relating to the designation of the applicable law (see KAUFMANN-KOHLER/STUCKI, *op.cit.*, pg. 120; TAS 2005/A/983-984, para. 34; CAS 2006/A/1024, para. 6.7; and TAS 2006/A/1082-1104, para. 49).

14. Thirdly, the Panel applies article R58 of the CAS Code, which provides that the CAS settles the disputes 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 that the CAS deems appropriate.

15. Consequently, the Panel analyzes article 13(1)d of the FIFA Statutes, which establishes the obligation for all members of FIFA *"to ensure that their own members comply with the Statutes, regulations, directives and decisions of FIFA bodies"*. Additionally, article 12(d) of the Statutes of the Hellenic FF extends the previously-mentioned obligation to comply with the FIFA Statutes, regulations, directives and decisions to that all members of the Hellenic FF.

16. As a result, since all the parties are – at least indirectly – affiliated to FIFA, and are thus bound by the FIFA Statutes (see RIEMER H.M., *Berner Kommentar ad Art. 60-79 ZGB,* para. 511 and 515; CAS 2004/A/574; TAS 2005/A/983-984, para. 36; CAS 2006/A/1180, para. 7.10), the Panel examines 60(2) of the FIFA Statutes, which states that *"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"*.

17. Lastly, the Panel adheres to CAS jurisprudence stating that *"only if the same terms and conditions apply to everyone who participates in organized sport, are the integrity and equal opportunity of sporting competition guaranteed"*. (CAS 2006/A/1180, para. 7.9). As a result, CAS jurisprudence has consistently interpreted article 60(2) of the FIFA Statutes as to contain a choice of law clause in favour of Swiss law governing the merits of the disputes. For example, the Panel in the case TAS 2004/A/587 ruled that since the FIFA has its seat in Zurich, Swiss law is applicable subsidiarily to the merits of the case (TAS 2004/A/587, para. 8.2). This rule was subsequently supplemented by the Panel in case TAS 2005/A/902-903, which found that since the parties had subjected themselves to the FIFA Statutes and the CAS Code, and since the FIFA has its seat in Zurich, the matter would be settled by application of Swiss law (TAS 2005/A/902-903, para. 16 and 36). More recently, CAS jurisprudence cleared possible doubts and affirmed that *"the reference in article 17(1) of the FIFA Status Regulations to 'the law of the country concerned' does not detract from the fact that according to the clear wording of article 60§2 of the FIFA Statutes, the FIFA intended the interpretation and validity of its regulations and decisions to be governed by a single law corresponding to its law of domicile, i.e. Swiss Law"* (CAS 2007/A/1298-1300, para. 73).

Merits of the Appeal

18. In order to determine whether Respondent is entitled to receive a compensation payment from Appellant for the unilateral termination of the Employment Contract as ordered by the DRC, the Panel must answer the following questions:

    A) Is the Panel competent to review the jurisdiction of the DRC?

    B) Depending on the answer to question A), was the DRC competent to hear the case?

    C) Depending on the answer to question C), was Appellant entitled to terminate the Employment Contract with Respondent? In particular, the Panel shall decide on:

        i. the date of termination of the employment relationship;

        ii. the validity of the Private Agreement; and

        iii. the existence of just cause for Appellant to terminate the Employment Contract

D) Depending on the answer to question c), what are the legal consequences for Appellant's unilateral termination of the Employment Contract?

A. Panel's power to review the jurisdiction of the DRC

19. On September 29, 2008, FIFA filed an Amicus Curiae Brief alleging that the present CAS Panel lacked jurisdiction to review the jurisdiction of the DRC due to the fact that FIFA was not a party to the arbitration. In particular, Counsel for FIFA invoked article 75 of the Swiss Civil Code to support his allegations. These allegations were also made by Respondent during the hearing, who claimed that had no standing to be sued in this regard and therefore asked the Panel to dismiss the appeal. Article 75 of the Swiss CC, under the heading "protection of member's rights", reads: *"every member of an association is entitled by law to apply to the court to avoid any decisions passed by the association without his assent, which are contrary to law or the constitution of the association, provided the application is made within one month from the day on which he became cognizant of such resolution"*.

20. In the present case, the Panel is called to settle a financial dispute between the parties based on the employment relationship existent between the parties. The present matter is clearly not a membership related decision, which might be subject to article 75 of the Swiss CC but a strict contractual dispute. Moreover, both parties and FIFA in its statutes have agreed to the application of article R57 of the CAS Code, which gives the Panel full power to review the matter in dispute. As a result, the Panel holds that C. does have standing to be sued (cf. CAS 2006/A/1192, para. 47) and the present Panel has the power to review the jurisdiction of the DRC.

21. The Panel makes the following considerations to arrive to the previously mentioned holding.

22. First, the Panel examines the issue whether the Player and FIFA have standing to be sued and notes that neither the FIFA Regulations nor the CAS Code contain any specific rule regarding the standing to be sued. Therefore, the Panel studies the definition given to the term "standing to be sued" by the CAS jurisprudence. In the case CAS 2007/A/1329-1330, the Panel ruled that *"(u)nder Swiss law, applicable pursuant to Articles 60.2 of the FIFA Statutes and R58 of the CAS Code, the defending party has standing to be sued (légitimation passive) if it is personally obliged by the 'disputed right' at stake (see CAS 2006/A/1206 […]). In other words, a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it (cf. CAS 2006/A/1189; CAS 2006/A/1192)"* (CAS 2007/A/1329-1330, pg. 5, para 27).

23. Second, the Panel considers whether article 75 of the Swiss CC is applicable to the present case, looks into the interpretation given to article 75 of the Swiss CC, and realizes that this article has consistently been interpreted by Swiss legal doctrine and jurisprudence to mean that it is the association which has capacity to be sued (HEINI/SCHERRER, *"Basler Kommentar"*, 2nd edition, 2002, no 20 ad Art. 75 Swiss Civil Code; RIEMER H.M, *op. cit.*, no 60 ff. ad Art. 75 Swiss Civil Code; cf. BGE 122 III 283).

24. Nevertheless, the Panel indicates at this point that article 75 of the Swiss CC *"does not apply indiscriminately to every decision made by an association (Cf. for example BGE 52 I 72; BGE 118 II 12). Instead, one has to determine in every case whether the appeal against a certain decision by an association falls under Art. 75 Swiss Civil Code, i.e. whether the prerequisites of Art. 75 Swiss Civil Code are met in a specific individual case. If, for example, there is a dispute between two association members (e.g. regarding the payment for the transfer of a football player) and the association decides that a club (member) has to pay the other a certain sum, this is not a decision which can be subject to an appeal within the meaning of Art. 75 Swiss Civil Code. […]* ***A dispute between two football clubs, i.e. two association members, therefore, is not a dispute which can be appealed against under Art. 75 Swiss Civil Code. The sports association taking a decision is not doing so in a matter of its own, i.e. in a matter which concerns its relationship to one of its members, rather it is acting as a kind of first decision-making instance, as desired and accepted by the parties****"* (BERNASCONI/HUBER, *Appeals against a Decision of a (Sport) Association: The Question of the Validity of Time Limits stipulated in the Statutes of an Association*, published in German in the review SpuRt 6/2004, p. 268 ff.) [Emphasis added by the Panel].

25. Subsequently, the Panel abides by the CAS jurisprudence which supports the above-mentioned scholarly interpretation. For example, the Panel in the case CAS 2006/A/1192 was called to settle a dispute between the parties that had originated when the employment contract was breached by the club when it terminated the employment contract with the Player with immediate effect. When analyzing the applicability of article 75 of the Swiss CC, the Panel stated that *"at any rate, the present matter is clearly not a membership related decision, which might be subject to Article 75 CC but a strict contractual dispute. Accordingly, the Panel holds that the athlete does have standing to be sued"* (CAS 2006/A/1192, para. 41-48).

26. As a result, the Panel notes that FIFA in the present case offered a system of resolution of disputes, where FIFA was not a party but a neutral entity that was called to settle a strict contractual dispute between its members in a matter that did not concern FIFA's relationship with to one of its members. Furthermore, this neutral position was not changed by the fact that Appellant had the chance to get the case reviewed by CAS pursuant to FIFA's recognition of the jurisdiction of the CAS in the FIFA Statutes. Nevertheless, the Panel recognizes that the appeal filed before CAS challenging the decision of the DRC could concern FIFA. Therefore, FIFA could have intervened in the CAS arbitration proceedings by making use of article 41.3 of the CAS Code. However, when FIFA was given the opportunity to participate in these proceedings under article 41.3 of the CAS Code, it declined to do so.

27. Finally and with regard to the Player's standing to be sued, the Panel notes that, in filing a claim to FIFA when there might have been a possibility that another national tribunal was competent to hear the case pursuant to the FIFA Regulations, Respondent could have breached his contractual duties. Accordingly, Appellant was entitled to direct its appeal before CAS at Respondent in order to require him to refuse the FIFA's jurisdiction to rule on the issue of sanction and compensation.

B. DRC's competence to hear the case

28. The Panel rules that the DRC was competent to settle the dispute. In order to arrive to this conclusion, the Panel considers: firstly, the relevant provisions of the FIFA Regulations and their interpretation; secondly, the indirect reference to arbitration contained in the Greek Contract and the provisions of the Greek laws 2725/99 and 3479/06; and finally, the particular legal situation that governed football-related matters in Greece at the time when the dispute between the parties arose as well as other evidence presented in this case.

29. Initially, the Panel examines article 22b of the FIFA Regulations, which deals with FIFA's jurisdiction. This article states:

*"**FIFA is competent** for: (…)*

*Employment-related disputes between a club and a player that have an international dimension, **unless an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs has been established at national level** within the framework of the Association and/or a collective bargaining agreement (…)"*

[Emphasis added by the Panel].

30. Furthermore, the Panel looks at the interpretation of article 22b of the FIFA Regulations given by the Commentary, which provides:

"FIFA is competent for: (…)

Employment-related disputes between a club and a player that have an international dimension, unless an independent arbitration tribunal has been established at national level. The international dimension is represented by the fact that the player concerned is a foreigner in the country concerned.

(…)

*if the association where both the player and club are registered has established an arbitration tribunal composed of members chosen in equal number by players and clubs with an independent chairman, this tribunal is competent to decide on such disputes **([Footnote 101]: A clear reference to the competence of the national arbitration tribunal has to be included in the employment contract. In particular, the player needs to be aware at the moment of signing the contract that the parties shall be submitting potential disputes related to their employment relationship to this body.)**"*

[Emphasis added by the Panel].

31. Consequently, the Panel finds that, pursuant to article 22b of the FIFA Regulations, the general rule is that all employment-related disputes between a club and a player that have an international dimension have to be submitted to the DRC. Only if the following conditions are met, can a specific employment-related dispute of international dimensions be settled by an organ other than the DRC:

- there is an independent arbitration tribunal established at the national level;

- the jurisdiction of this independent arbitration tribunal derives from a clear reference in the employment contract; and
- this independent arbitration tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs.

32. Secondly, the Panel considers the indirect reference to arbitration by a national dispute resolution body contained in Article 1 of the Employment Contract, concluded in August 2005. This reference was limited to saying *"In conformity with Law 2725/99,* ***as in effect today****"* [Emphasis added by the Panel].

33. Article 95 of law 2725/99, under the title "Financial dispute resolution committees", provides:

"The financial disputes arising from the contracts between athletes or coaches and sports clubs or sports associations which maintain a department of remunerated athletes are resolved by the Financial Dispute Resolution Committees, unless otherwise explicitly provided for within the contract.

3. The First-Grade Committees are composed by five (5) members as follows:

a) by one Chairman Judge of the Civil or Criminal Court of first instance and by two Judges of the Civil or Criminal Court of first instance acting as members, appointed by lot from a triple number of judges, which is appointed upon decision of the Tripartite Administrative Board of Athens' Court of first instance, according to the procedure set forth in the Organization of Courts and upon request of the relevant sports club or the plenary of the departments of remunerated athletes and, where no such plenary exists, of the athletic federation. One (1) Chairman judge and one (1) judge of a Civil Court of first Instance are appointed by lot following the same procedure. The knowledge and experience in matters relating to sports are particularly taken into account for the assignment of judges.

b) by one member of the executive board of the relevant sports club or the plenary session of the departments of remunerated athletes or, otherwise, by the executive board of the relevant federation, preferably a lawyer, along with his deputy, appointed as appropriate upon a decision taken by the executive board

c) by one representative of the athletes, or, where appropriate, of the coaches, preferably a lawyer, together with his deputy appointed upon a proposal of the players' or coaches' Sports Union.

4. The Second-Grade Committee is composed by five (5) members as follows:

a) a chairman judge from the civil and criminal court of appeal and two judges from the civil and criminal court of appeal as members. The judges are chosen by cast with the provided procedure from their organization chart from a triple number of judges, assigned with the chairman's decision of the three member administrative board, after an application of the sport federation's board of directors, With the same procedure of the regular members it is decided chosen by cast (1) chairman and (1) judges from the civil and criminal court of appeal as deputies. For the assignment it is especially taken into account the knowledge and the experience in sports issues.

b) one of the members of the sports federation with his deputy, preferable lawyer, who are assigned after a decision from their board of directors.

c) one member representative of athletes or on occasion coach, preferable lawyer, with his deputy, assigned after a decision from the board of the professional athletes union or coaches.

(…)"

[Loose translation provided by the Panel].

34. However, the Panel emphasizes that, when the dispute between the parties arose in November 2006, article 29(12) of the law 3479/06 (which was in force since June 2006) had partially derogated law 2725/99 in matters of Greek football. Article 29(12) of the law 3479/06 reads:

"Especially for football issues, all issues relative to the function and organization of football of the Hellenic FF and its members are regulated autonomously by Hellenic FF and its organs according to its statute and its regulations, along with the statute and regulations of the European and International Football federation, even if law 2725/1999 and other sports-related legislation provide otherwise. Issues of financial control for the subsidies that the Hellenic FF receives by the State, judicial review, public order and security remain to the exclusive competence of the State" [Loose translation provided by the Panel].

35. Following the prescription of article 29(12) of law 3479/06, the Hellenic FF amended its Statutes. Hence, on August 18, 2006, the dispute resolution system set forth in article 95 of law 2725/99 was replaced *ipso facto* by a new one which provided for a different composition of the First-Grade Committee.

36. Therefore, from the evidence presented in this case, the Panel makes the following findings:

- the Employment Contract was written in Greek, a language which Respondent does not speak or understand;
- this Employment Contract contained an unclear reference to arbitration, as it referred only to the number of a law but did not transcribe its contents; and
- this unclear reference was made to a dispute resolution system that was not the one that issued the decision in this case (as the dispute resolution system changed between the time the contract was signed and the dispute arose).

C. Legality of Appellant's termination of the employment relationship with Respondent

37. To begin section C., the Panel will address in subsection a) the issue concerning the date of termination of the employment relationship.

38. Subsequently in subsection b), the Panel will decide on the validity of the Private Agreement.

39. Finally in subsection c), the Panel will address the issue whether Appellant was entitled to unilaterally terminate the employment relationship with Respondent. In other words, whether Appellant had just cause to terminate the employment relationship with Respondent.

a) Date of termination of the employment relationship

40. Related to the date of termination of the employment relationship, the Panel notices three relevant events: first, that Appellant's board decided to terminate the employment relationship with Respondent on December 19, 2006; second, that on December 27, 2006, Respondent acknowledged receipt of Appellant's legal notification dated December 21, 2006 informing him of the decision of Appellant's board to terminate the employment relationship; and third, that Appellant filed its petition before the First-Grade Committee to terminate the employment relationship with Respondent on the December 29, 2006.

41. As a result, the Panel decides to uphold the position taken by the DRC and rules that the employment relationship was terminated on December 29, 2006.

b) Validity of the Private Agreement

42. Appellant submits that the Private Agreement clearly stipulated that the Player had agreed to allow the termination of the contract by Appellant without any financial compensation as a result.

43. For the purpose of examining the validity of the Private Agreement, the Panel examines article 13 and 14 of the FIFA Regulations.

44. On one hand, article 13 of the FIFA Regulations defends the principle of contractual stability by expressly stating that a contract between a player and a club can only be terminated on due date or by mutual agreement. Article 13 of the FIFA Regulations provides that *"a contract between a Professional and a club may only be terminated on expiry of the term of the contract or by mutual agreement"*.

45. On the other hand, the principle of contractual stability is not an absolute one as article 14 of the FIFA Regulations allows both clubs and players to terminate the employment contract for a just cause. Article 14 of the FIFA Regulations provides: *"(a) contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) in the case of just cause"*.

46. In this regard, the Panel studies Commentary, which affirms that *"the Regulations aim to ensure that in the event of a club and a player choosing to enter into a contractual relationship, this contract will be honoured by both parties. A contract between a player and a club may therefore only be terminated on expiry of the contract or by mutual agreement. Unilateral termination of contract without just cause, especially during the so-called protected period, is to be vehemently discouraged"* (Commentary on the Regulations for the Status and Transfer of Players, pg. 38).

47. However, the FIFA Regulations do not establish what the consequences are for an agreement that stipulates that an employment contract can be unilaterally terminated without just cause,

like the Private Agreement does. Therefore, the Panel looks into the relevant provisions of the applicable law to the interpretation of the FIFA Regulations, Swiss law.

48. Article 19 of the Swiss Code of Obligations ("Swiss CO") affirms the parties' freedom to contract by providing:

"Within the limits of the law the contents of a contract are at the discretion of the parties.

Contracts containing arrangements differing from the legal provisions are only valid in cases where the law lays down no invariable rule, or if the differences do not offend against public policy, good morals or individual rights".

49. Moreover, Article 20 of the Swiss CO adds: *"contracts containing provisions which are impossible, illegal or contra bonos mores are invalid […]".*

50. After interpreting the aforementioned provisions applicable to the interpretation of the FIFA Regulations, the Panel finds that the sanction for contracts that are against the FIFA Regulations is the invalidity of such agreements.

51. Furthermore, the FIFA Regulations specifically provide that an employment contract can be terminated only *"on expiry of the term of the contract or by mutual agreement"* (article 13 of the FIFA Regulations) or "*by either party without consequences of any kind […] in the case of just cause"* (article 14 of the FIFA Regulations). Since the Private Agreement allows for the unilateral termination of the employment contract without just cause, the Panel concludes that the Private Agreement is indeed contrary to the FIFA Regulations, and as such, it is invalid.

c) Existence of "just cause" for Appellant to terminate the Employment Contract

52. In the alternative that the Panel rules that the Private Agreement was not valid, Appellant argues that the fact that Respondent accused Appellant's president of forgery provided sufficient grounds to terminate the Employment Contract due to the fact that the underlying trust between both parties had completely disappeared.

53. Therefore, since the Private Agreement is invalid, the Panel must now determine whether Appellant could otherwise validly terminate the Employment Contract with Respondent. In other words, whether Appellant had just cause to unilaterally terminate the Employment Contract.

54. At this point, the Panel indicates that the FIFA Regulations do not define what constitutes *"just cause"*. Therefore, abiding by ample CAS jurisprudence, the Panel examines the relevant provisions of Swiss law, applicable to the interpretation of the FIFA Regulations, and the interpretation given to them by CAS jurisprudence.

55. For example, in the case CAS 2006/A/1062, the Panel stated that since *"the FIFA Regulations do not define when there is such "just cause". One must therefore fall back on Swiss law. Pursuant to this, an employment contract which has been concluded for a fixed term can only be terminated prior to expiry of the*

term of the contract if there is 'good cause' (see also ATF 110 I 167). In this regard Art. 337(2) of the Code of Obligations (referred to as "CO") states - in loose translation: 'Particularly any circumstance, the presence of which means that the party terminated cannot in good faith be expected to continue the employment relationship, is deemed to be good cause'. The courts have consistently held that a grave breach of duty by the employee is good cause (ATF 121 III 467; ATF 117 II 72)" (CAS 2006/A/1062, para. 13).

56. Additionally, CAS jurisprudence has affirmed that *"according to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case (…). Particular importance is thereby attached to the nature of the obligation. The Swiss Supreme Court has ruled that the existence of a valid reason has to be admitted when the essential conditions, of an objective or personal nature, under which the contract was concluded are no longer present (…). In other words, it may be deemed as a case of application of the* clausula rebus sic stantibus. *According to Swiss law, only a breach which is of a certain severity justifies termination of a contract without prior warning (…). In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit to expect a continuation of the employment relationship between the parties such as serious breach of confidence (…). Pursuant to the jurisprudence of the Swiss Federal Supreme Court, the early termination for valid reasons shall be however restrictively admitted"* (CAS 2006/A/1180, para. 8.4).

57. As a result, the Panel rules that Appellant violated the principle of contractual stability contained in article 13 of the FIFA Regulations in three ways: first, by prematurely terminating the employment relationship with Respondent without just cause on December 29, 2006; second, by failing to fulfill its financial obligations towards Respondent; and third, by abusing its rights to ask Respondent to participate at odd training sessions. The Panel bases its conclusion on the following findings.

58. First, concerning the legality of Appellant's unilateral termination, the Panel finds that the evidence produced by the parties (in particular the witness' testimonies provided at the hearing) established that, by the time of the decision to terminate the employment relationship made by Appellant's Board on December 19, 2006, even if Respondent accused Ionikos' President of forgery, this accusation could not be severe enough to justify the termination of the employment relationship, especially since Respondent was not given a previous warning of the ultimate consequences of his actions if they were to be repeated. Additionally, the evidence produced at the hearing indicates as highly likely that the Player was unilaterally terminated by the Club because it wanted to employ another foreign player and, due to the foreign-players' quota' restriction, could not do so without dismissing one of its current foreign players.

59. Secondly, with regard to the outstanding payments, the Panel rules that Appellant has failed to particularly argue before this Panel that all the due payments until the termination of the contract had been accomplished. On the contrary, Appellant filed only partial proof of payment of the amounts owed to Respondent. Hence, this Panel agrees with the holding of the DRC and rules that Appellant was, at the time of termination, in breach of the employment contract due to non fulfillment of its financial obligations.

60. Finally, in connection with the training sessions that Respondent had to attend on December 31, 2006 from 10:00 to 12:30 and from 18:00 to 20:00, and on January 1, 2007 at 7:00, the Panel understands that Appellant was still entitled to require Respondent to participate in training session until its petition pending with the Hellenic FF authorities for the termination of the employment relationship with Respondent was resolved. However, the Panel finds that making Respondent attend training sessions at such odd times constitutes an abuse of its rights. Consequently, Respondent was entitled to terminate the employment relationship with just cause.

D. Legal consequences of termination without just cause of the employment relationship between the parties

a) Amount of compensation owed to Respondent for the unilateral termination of the employment relationship

61. In the present case, the DRC considered the rest value of the Employment Contract as well as the fact that the Player had been playing with Appellant during approximately half of the originally agreed contract period. Therefore, it established that it was adequate to award the Player a compensation for the breach of contract in the amount of EUR 100,000.

62. The Panel has to decide whether the amount of compensation as calculated by the DRC is reasonable and fair according to the conditions provided for under article 17(1) of the FIFA Regulations, which establishes the consequences of terminating the employment contract without just cause, i.e.: the disciplinary sanctions for Players that breach their contract during the protected period, and the monetary compensation owed to the injured party regardless of the time when the breach occurred.

63. Article 17(1) of the FIFA Regulations provides that:

"The following provisions apply if a contract is terminated without just cause: In all cases, the party in breach shall pay compensation. Subject to the provisions of Art. 20 and annex 4 in relation to Training Compensation, and unless otherwise provided in the contract, compensation for breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, 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 he contractual breach falls within a Protected Period. Entitlement to compensation cannot be assigned to a third party. If a Professional is required to pay compensation, the Professional and his New Club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties. In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period (…)".

64. With the purpose of interpreting article 17 of the FIFA Regulations, the Panel resorts to Swiss law, which under article 97 of the Swiss CO requires that the injured party receives an integral reparation of his damages by stating that:

"The debtor who fails to perform his obligation or does not fulfill it properly is liable for damages, unless he proves that there is no fault on his part. […]"

65. CAS jurisprudence agrees that *"in principle the harmed party should be restored to the position in which the same party would have been had the contract been properly fulfilled"* (CAS 2005/A/801, para 66; CAS 2006/A/1061, para. 15; and CAS 2006/A/1062, para. 22). In particular, it declared that:

"According to Swiss legal doctrine, the injured party is entitled to an integral reparation of its damages pursuant to the general principles set forth in article 97 of the Swiss CO. Thus, the damages taken into account are not only those that may have caused the act or the omission that justify the termination but also the positive interest. The positive damages of the employee are the salaries and other material income that he would have had if the contract would have been performed until its natural expiration. (…) (ENGEL P., Contrats de droit Suisse, Staempli Editions SA Berne (2000), pg. 499, section 2.1.2)" (CAS 2007/A/1447, para. 91).

66. Additionally, article 337c (1) of the Swiss CO is also relevant in this case as it addresses the consequences of unjustified employment termination. Article 337c (1) of the Swiss CO provides:

"If the employer dismissed the employee without notice in the absence of a valid reason, the latter shall have a claim for compensation of what he would have earned if the employment relationship had been terminated by observing the notice period or until the expiration of the fixed agreement period".

67. The Panel underscores the importance of article 337c (1) of the Swiss CO that can be evidenced by the fact that, by application of article 362(1) of the Swiss CO, the parties cannot deviate from its provisions to the detriment of the employee. If the parties were to do so, such detrimental stipulations or provisions would be considered void under article 362(2) of the Swiss CO.

68. Under Swiss law, therefore, the Player would be entitled to claim payment of the entire amount he could have expected, and compensation for the damages he would have avoided, if the employment relationship had been implemented up to its natural maturity. As a result, the compensation should be calculated taking into consideration all the amounts due to the Player until June 30, 2008. In other words, he would have received his monthly salary of EUR 700 from January 2007 to June 2008 (which would amount to EUR 11,900); an Easter allowance in 2007 and an Easter allowance in 2008 (which would amount to EUR 700); an vacation allowance in 2007 and an vacation allowance in 2008 (which would amount to EUR 700); a Christmas allowance in 2007 of EUR 700; the two remaining installments for the second year of employment amounting to EUR 60,000; and the three installments of the third year of employment amounting to EUR 90,000. In other words, Respondent would be entitled to receive a total of EUR 164,000 under article 337c(1) of the Swiss CO.

69. As it can be seen from the calculations, Respondent would be entitled to a larger amount under Swiss law than the one awarded by the DRC. However, since Respondent asked the Panel to reject the Appeal filed by Appellant and to confirm the decision of the DRC, the Panel cannot rule *ultra petita* and will have to abide by the figures awarded by the DRC (see TAS 2007/A/1233-1234, para 66).

b) The outstanding amounts owed to Respondent for the period September 2006 to December 2006

70. In addition to the compensation for the unilateral breach, by application of the principle of integral reparation crystallized in article 97 of the Swiss CO, Respondent is entitled to receive the outstanding payments that Appellant owes to him for the period May 2006 to December 2006.

71. The Panel at this point makes emphasis on the fact that the DRC order Appellant to pay Respondent EUR 22,640 as outstanding monies. However, the Panel takes note that, in contrast to what happened during the proceedings before the DRC, Appellant filed before this Panel proof of payment for certain amounts that the DRC considered as unpaid to the Player.

72. In this regard, the Panel notes that the following amounts were due until the date of termination of the Employment Contract:

- EUR 80,000 in payments of installments;
- EUR 10,200 in rental payments;
- EUR 11,092.35 in payment of salaries; and
- EUR 2,021.74 in payment of allowances.

73. Moreover, the Panel takes notice that Appellant filed sufficient proof of payment of the following amounts:

- EUR 72,120 in payments of installments;
- EUR 8,400 in rental payments;
- EUR 9,031.48 in payment of salaries; and
- EUR 0 in payment of allowances.

74. Consequently, the Panel rules based on the principle of integral reparation that the amount of monies for which Appellant is liable is reduced to a gross amount of EUR 13,762.61, amount which consists of:

- EUR 7,880 in payment of installments;
- EUR 1,800 in rental payments;
- EUR 2,060.87 in payment of salaries; and
- EUR 2,021.74 in payment of allowances.

The Court of Arbitration for Sport rules:

1. The appeal filed by Ionikos FC against the decision issued on November 2, 2007, by the Dispute Resolution Chamber of FIFA is partially accepted.

2. The Decision issued on November 2, 2007, by the Dispute Resolution Chamber of FIFA is partially confirmed.

3. Ionikos FC is to pay C. the total gross amount of EUR 113,762.61, with interest accruing on such amount at the annual rate of 5% (five percent) as from April 4, 2008. This amount is composed as follows:

   a) EUR 100,000 as compensation for the unilateral termination of the employment contract between the parties; plus

   b) EUR 13,762.61 for outstanding amounts owed by Ionikos FC to C. from the period May 2006 to December 2006.

(…)

7. All other prayers for relief are dismissed.