Arbitration CAS 2008/A/1705 Grasshopper v. Alianza Lima, award of 18 June 2009

Panel: Prof. Ulrich Haas (Germany), President; Mr. Michele Bernasconi (Switzerland); Mr. Pedro Tomás Marqués (Spain)

Football
Compensation for training
Non motivated decision as a "decision" subject to appeal to the CAS
Referral to Swiss law in the FIFA Statutes
Hierarchy of norms in the provisions of a Sports federation
Purpose of Article 75 of the Swiss Civil Code
Calculation of the period of the training compensation
Criteria to be considered for the completion of training

1. **A decision subject to appeal to the CAS is a unilateral act, sent to one or more recipients and is intended to produce legal effects. In this respect, a letter sent by FIFA to the parties clearly shows all formal and material characteristics of a "decision" even if it does not address the grounds on which the decision was passed. On a material level it states the outcome of the deliberations. The content of this letter thus represents a "unilateral act" which aims at affecting the legal situation of the addressees – or at least, in the present case and under the concrete circumstances of this case, could be interpreted as aiming at doing so. On a formal level the letter carries the heading "decision", was passed by an organ of FIFA (the DRC) and was signed by the FIFA General Secretary. Furthermore, FIFA's letter contains legal instructions on how to appeal against it, thus bearing all the elements ascribed to a "decision". The fact that the decision is not motivated can, as such, not affect it being a "decision".**

2. **According to the CAS case law, the referral to Swiss Law in Art. 62(2) of the FIFA Statutes does not comprise a comprehensive remission to Swiss law, rather it only states that Swiss law is to apply "additionally". The purpose of Swiss law in such cases is to fill lacunae in the rules and regulations of FIFA. Wherever the latter contain a ruling, Swiss law, which has been declared to apply "additionally", must give way even if the otherwise applicable provision of Swiss law were mandatory.**

3. **In principle, sports federations can freely establish their own provisions. However, there are limits to this autonomy. In particular the relevant organs when creating new rules and regulations are bound by the limits imposed on them by higher ranking norms, in particular the association's statutes. This follows from the principle of legality, also established in CAS jurisprudence, according to which regulations of a lower level may complement and concretize higher ranking provision, but not amend nor contradict or change them.**

4. **The objective of Art. 75 CC lies in enabling all parties concerned to obtain clarity about the binding effect of an association's decision with a reasonable deadline. The short appeal deadline thus serves the interests of legal certainty and security. The term "entitled by law" signifies that this provision cannot be amended by the statutes of an association. The duty to solicit a reasoned decision within 10 days of its notification in order to be able to appeal it before CAS may be seen as affecting the Appellant's access to the courts and legal protection. This limitation is, however, not disproportionate, since the only thing the Appellant has to do in order to preserve his right of appeal is to solicit (in writing) a reasoned decision. In addition, the provision applies to all appellants and, thus, guarantees equal treatment among all (indirect) members of an association.**

5. **Consistent with the case law of CAS, the period to be considered when establishing training compensation owed is the time during which a player was effectively trained by a club. This rules out any time spent by a player at another club on a loan arrangement unless the loaning club can demonstrate that it bore the costs for the player's training during the duration of the loan. When the Respondent makes no claim to be compensated for the loan period, this time cannot be taken into consideration when calculating the training compensation due.**

6. **According to the FIFA Regulations, training compensation is due for training incurred up to the age of 21, unless it is evident that the player already terminated his training period before the age of 21. There are numerous factors that are generally taken into consideration such as the player's value at a club, reflected in the salary a player is paid, in the loan fee that is achieved for his services or in the value of the player's transfer, the player's public notoriety at national and international level, his position at the club if established as a regular or even holding the captaincy, his regular inclusion in the national team etc.**

Neue Grasshopper Fussball AG Zurich ("Grasshopper" or "the Appellant") is a professional football club with its seat in Niederhasli, Switzerland. It is affiliated to the Swiss Football Association (SFV or "the Swiss FA"), a federation in turn affiliated to the Fédération Internationale de Football Association, the world governing body of football (FIFA).

Club Alianza de Lima ("Alianza" or "the Respondent") is a professional football club with its seat in Lima, Peru. It is affiliated to the Federación Peruana de Fútbol (FPF or the "Peruvian FA"), an association in turn affiliated to FIFA.

The Peruvian player D. ("the Player") was registered with the Respondent on 25 July 2000. On 1 November 2002, the Respondent and the Player signed an employment contract valid until 31

December 2006. The Player was born on 21 September 1984. The salary agreed upon by the parties was of USD 250 per month.

The Player regularly performed with the youth national team of Peru and was called up for the national "A" team in August 2003.

The contractual relationship between the Respondent and the Player came to an end upon the expiry of the employment contract, which was not renewed. In January 2007, i.e. before his 23rd birthday, the Player signed an employment contract as a professional with the Appellant and was registered by it.

On 31 July 2008, the FIFA Dispute Resolution Chamber (DRC) rendered a decision on the amount of training compensation payable by the Appellant to the Respondent. The decision outlines the findings of the DRC only, but does not contain any reasons. It was notified to the parties on 17 October 2008. The decision reads – *inter alia* – that:

> *"2. The Respondent, Grasshopper-Club Zürich, must pay the amount of EUR 305,000 to the Claimant, Alianza Lima,* ***within 30 days*** *as from the date of notification of the decision.*
>
> …
>
> *6. According to art. 63 par. 1 of the FIFA Statutes, this decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS* ***directly*** *within 21 days of receipt of notification of the grounds of the decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).*
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> …
>
> *7. Only the findings of the decision are communicated. A request for the grounds of the decision must be sent, in writing, to the FIFA general secretariat within 10 days of receipt of the notification of the findings of the decision. Failure to do so within the stated deadline will result in the decision coming into force. The time limit to lodge an appeal begins upon receipt of the motivated decision".*

By letter dated 7 November 2008, the Appellant, without having filed with FIFA a request for the grounds of the decision, filed its Statement of Appeal with the Court of Arbitration for Sport (CAS) against the decision rendered by the DRC.

On 17 November 2008, the Appellant filed its Appeal Brief with the CAS.

On 19 November 2008, the CAS Court Office informed FIFA of the appeal filed by the Appellant, specifying that the appeal is not directed at FIFA but that pursuant to Art. R54(4) and R41.3 of the Code of Sports-related Arbitration (the "Code"), FIFA can file an application to participate in the arbitration. To this effect, FIFA would have to send its application within the time limit set for the Respondent's answer to the appeal. Alternatively, if FIFA chose not to be involved in the arbitration, it would only receive a copy of the final award, upon its notification to the parties.

By means of a fax dated 3 November 2008, which was only received by the CAS Court Office on 3 December 2008 and which thus probably bears the wrong date, the Respondent approached the CAS Court Office to raise two irregularities of form, which, in its opinion, required immediate attention so as to avert a long and costly arbitration that most likely would be dismissed.

In response hereto, the CAS Court Office announced by letter dated 3 December 2008 to the Respondent that the nature and complexity of the issues raised by the parties called for a decision by the Panel, once constituted. Consequently, the CAS Court Office established that the procedure would continue its course and that the Respondent would be requested to provide its answer within the deadline stipulated.

FIFA sent its response to the CAS Court office on 28 November 2008, communicating that it renounces its right to intervene in the arbitration. FIFA added, however, that in accordance with Art. 15 par. 1 of the FIFA Rules governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (the "DRC Procedural Rules") only the findings of the DRC and not the grounds had been communicated to the parties. According to FIFA:

> *"… the parties were explicitly informed in par. 7 of the said findings that a request for the grounds of the decision had to be sent in writing to the FIFA general secretariat within 10 days of receipt of notification of the findings of the decision. Failure to do so within the stated deadline will result in the decision coming into force".*

FIFA added that:

> *"… the same paragraph of the findings unmistakeably states that the time limit to lodge an appeal before the CAS begins upon receipt of the motivated decision only".*

FIFA concluded its communication by underlining that:

> *"… Grasshopper did not file a request for the grounds of the decision to the FIFA general secretariat at all. This fact was already confirmed by the Appellant. Consequently, the presently challenged decision of the DRC is to be considered as final and binding and the appeal challenging the said decision shall therefore be dismissed by the CAS without entering into its substance. Moreover, we would like to mention that an appeal against a non-motivated decision can per se not be admissible".*

With letter dated 11 December 2008 the CAS Court Office acknowledged receipt of the Respondent's Answer.

With letter dated 19 an 22 December 2008 the CAS Court Office acknowledged that both parties have waived their right for a hearing. In view of the fact that no hearing was to be held in the case at hand the Panel deemed it necessary to have a second round of submissions in order to be sufficiently informed to deliver the award.

On 14 January 2009 the parties were informed by the CAS Court Office of the constitution of the Panel.

By letter dated 5 February 2009 FIFA was invited to lodge with the CAS Court Office a complete copy of its file on the matter.

By letter dated 6 February 2009 the Swiss Football Federation was asked to provide information on the categorisation of the Appellant's A-team in season 2006/2007. By letter dated the same day the FPF was solicited to provide information on the date of birth and the registration dates of the Player.

With letter dated 12 February 2009 FIFA forwarded a copy of the file to CAS.

The second submission of the Appellant was received by the CAS Court Office on 20 February 2009, that of the Respondent on 9 March 2009.

By letter dated 24 April 2009, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure, which was returned duly signed by all of the parties.

In its Appeal Brief dated 17 November 2008 and further submission of 20 February 2009, the Appellant requests the CAS – *inter alia* – to,

(1) *"accept the present appeal against the challenged decision";*

(2) *"set aside the challenged decision";*

(3) *"establish that the compensation decided in the challenged decision for the training of the Player is disproportionate and to reduce it accordingly";*

(4) *"establish that the training of the Player terminated before his 21st birthday";*

(5) *"establish that the training compensation due to the Respondent is limited to the season 2002 only"; and to*

(6) *"accept the proposal of the Appellant and recognise to the Respondent a training compensation in the amount of EUR 60,000".*

In its Answer and further submission dated 9 March 2009, the Respondent requests the Panel*:*

(a) *"To accept the present response to the "Appeal Brief" together will all the exhibits enclosed therein";*

(b) *"to dismiss the appeal of the Appellant and to confirm the original ruling of the DRC"; and to*

(c) *"sentence the Appellant to pay the sum of 305,000 to the Respondent plus interest at 5% from 24th February 2007".*

LAW

CAS Jurisdiction

1. The competence of CAS results from Article R47 of the Code, which stipulates the following:

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

2. The provision contains three pre-requisites (cf. CAS 2004/A/748 no. 83), namely:

   - there must be a "decision" of a federation, association or another sports-related body,
   - the parties must have agreed to the competence of the CAS and
   - the (internal) legal remedies available must have been exhausted prior to appealing to CAS.

A. Decision by a federation

3. CAS formations tend to interpret the term "decision" within the meaning of Art. R47 of the Code broadly (cf. CAS 2008/A/1583 & 1584, no. 5.2.1). The concept of an appealable decision has been defined e.g. in the case law of the CAS as follows:

   "A decision is thus a unilateral act, sent to one or more recipients and is intended to produce legal effects" (CAS 2004/A/659, no. 36; CAS 2004/A/748, no. 89).

   "In principle, for a communication to be a decision, this communication must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties. However, there can also be a decision where the body issues a ruling as to the admissibility or inadmissibility or a request, without addressing the merits of such request" (CAS 2005/A/899, no. 61; CAS 2004/A/748, no. 89).

4. Although FIFA's letter sent to the parties on 31 July 2008 does not address the grounds on which the decision was passed, it clearly shows all formal and material characteristics of a "decision" in the sense of Art. R47 of the Code. On a material level it states the outcome of the deliberations regarding the issue of the training compensation owed for the Player. The content of this letter thus represents a "unilateral act" which aims at affecting the legal situation of the addressees – or at least, in the present case and under the concrete circumstances of this case, could be interpreted as aiming at doing so. On a formal level the letter carries the heading "decision", was passed by an organ of FIFA (the DRC) and was signed by the FIFA General Secretary, who is awarded this competence in Art. 68(3) lit. h of the FIFA Statutes. Furthermore, FIFA's letter of 31 July 2008 contains legal instructions on how to appeal against it, thus bearing all the elements ascribed to a "decision". The fact that

the decision is not motivated can, as such, not affect it being a "decision" (cf. CAS 2004/A/748, no. 91).

B. Consent to arbitrate

5. Art. R47 of the Code provides various possibilities of how the parties can agree to arbitration proceedings before the CAS. Firstly, this can happen by the statutes and regulations of the relevant federation – to which the parties have submitted – containing an arbitration clause. Secondly, however, the parties can also conclude a specific arbitration agreement. In the case at hand the parties have submitted to the FIFA regulations. The FIFA Statutes provide in Art. 62: *"FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players' agents"*. In addition, Art. 63(1) of the FIFA Statutes clarifies that: *"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question"*. Furthermore, by lodging the appeal, participating in these proceedings without reservation and/or by signing the Order of Procedure, the parties have actively acknowledged the competence of CAS to deal with this dispute.

C. Exhaustion of legal remedies

6. Finally, Art. R47 of the Code stipulates that a decision may be appealed to CAS *"insofar as the Appellant has exhausted the legal remedies available to him in accordance with the statutes and regulations of the said sports-related body"*. Decisions of the DRC cannot be appealed before any other internal legal body of FIFA. Furthermore, the obligation to solicit the reasons of the decision cannot be qualified as an "internal remedy" within FIFA in the sense of Art. R47 of the Code. Consequently, as there is no other internal legal remedy, the conditions laid down in Article R47 of the Code are met.

Mission of the Panel

7. The mission of the Panel follows, in principle, from Art. R57 of the Code, according to which the Panel has full power to review the facts and the law of the case. Furthermore, Art. R57 of the Code provides that the Panel may issue a new decision which replaces the decision challenged or may annul the decision and refer the case back to the previous instance. As the parties have expressly renounced to a hearing, and since it considers itself in position to do so, the Panel decides this dispute based on the written submissions of the parties.

Applicable Law

8. Art 187 of the PIL provides – *inter alia* – that *"the arbitral tribunal shall rule according to the law chosen by the parties or, in the absence of such a choice, according to the law with which the action is most closely connected"*. This provision establishes a regime concerning the applicable law that is specific to arbitration and different from the principles instituted by the general conflict-of-law rules of the PIL. In particular the provisions enables the parties to mandate the arbitrators to settle the dispute in application of provisions of law that do not originate in a particular national law, such as sports regulations or the rules of an international federation (cf. KAUFMANN-KOHLER/RIGOZZI, Arbitrage international, 2006, marg. no. 597, 636 *et seq.*; POUDRET/BESSON, Droit comparé de l'arbitrage international, 2002, marg no. 679; RIGOZZI A., L'arbitrage international en matière de sport, 2005, marg no. 1177 *et seq.*).

9. According to the legal doctrine, the choice of law made by the parties can be tacit (Zürcher Kommentar zum IPRG/HEINI, 2nd ed. 2004, Art 187 marg no. 11; BERGER/KELLERHALS, Internationale und interne Schiedsgerichtsbarkeit in der Schweiz, 2006, marg no. 1269; KAUFMANN-KOHLER/RIGOZZI, Arbitrage International, 2006, marg no. 609) and/or indirect, by reference to the rules of an arbitral institution (RIGOZZI A., L'arbitrage international en matière de sport, 2005, marg no. 1172; KAUFMANN-KOHLER/STUCKI, International Arbitration in Switzerland, 2004, p. 118 *et seq.*). In agreeing to arbitrate the present dispute according to the Code the parties have submitted to the conflict-of-law rules contained therein, in particular to Art R58 of the Code (CAS 2006/A/1061, no. 28 *et seq.*; CAS 2006/A/1141, no. 61; CAS 2007/A/1267, no. 41).

10. Art R58 of the Code provides that 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 issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate.

11. In the present case, the "applicable regulations" are the FIFA rules and regulations, in particular the RSTP and the FIFA Statutes. In addition, i.e. subsidiarily, Swiss law applies to the dispute at hand. This follows from the applicable FIFA Statutes which refer to Swiss law. Art 62(2) of the FIFA Statutes provides:

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

12. The Panel is of the view that the referral to Swiss Law in Art. 62(2) of the FIFA Statutes does not comprise a comprehensive remission to Swiss law, rather it only states that Swiss law is to apply "additionally". The CAS panels have rightly interpreted this in the past to the effect that Swiss law serves only to fill *lacunae* in the rules and regulations of FIFA. Wherever the latter contain a ruling, Swiss law, which has been declared to apply "additionally", must give way even if the otherwise applicable provision of Swiss law were mandatory (CAS 2005/A/983 & 984, no. 92 *et seq.*; CAS 2004/A/791, no. 60).

13. The application of the (rules of) law chosen by the parties has its confines in the *ordre public* (Zürcher Kommentar zum IPRG/HEINI, 2nd edition 2004, Art. 187 marg. no. 18; see also KAUFMANN-KOHLER/RIGOZZI, Arbitrage International, 2006, marg. no. 657). Usually, the term *ordre public* is thereby divested of its purely Swiss character and is understood in the sense of a universal, international or transnational sense (KAUFMANN-KOHLER/RIGOZZI, Arbitrage International, 2006, margin no. 666; Zürcher Kommentar zum IPRG/HEINI, 2nd edition 2004, Art. 187 margin no. 18; cf. also PORTMANN W., Causa Sport 2/2006 pp. 200, 203 and 205). The *ordre public* proviso is meant to prevent a decision conflicting with basic legal or moral principles that apply supranationally. This, in turn, is to be assumed if the application of the rules of law agreed by the parties were to breach fundamental legal principles or were simply incompatible with the system of law and values (TF 8.3.2006, 4P.278/2005 marg. no. 2.2.2; Zürcher Kommentar zum IPRG/HEINI, 2nd edition 2004, Art. 190 margin no. 44; CAS 2006/A/1180, no. 7.4; CAS 2005/A/983&984, no. 70). The mere fact that a provision is considered mandatory according to Swiss Law, thus, does not suffice to qualify it to belong to the (transnational) ordre public.

Timeliness of the appeal

14. According to Art. R49 of the Code the appeal has to be lodged within a certain time limit. The provision makes specific reference as for the time limits to the statutes and regulations of the federation whose decision is being appealed. The FIFA rules contain a deadline to file an appeal in Art. 63(1) of the FIFA Statutes. According to this provision the appeal has to be filed with the CAS within 21 days. Another deadline is contained in Art. 15 of the DRC Procedural Rules. This provision reads as follows:

"1. The Players' Status Committee, the DRC, the single judge and the DRC judge may decide not to communicate the grounds of a decision and instead communicate only the findings of the decision. At the same time, the parties shall be informed that they have ten days from the receipt of the findings of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the decision coming into force.

2. If a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full, written form. The time limit to lodge an appeal begins upon receipt of this motivated decision.

3. It the parties do not request the grounds of a decision. a short explanation of the decision shall be recorded in the case files …".

A. The deadline in Art. 15 of the DRC Rules

15. It is undisputed between the parties that the Appellant has not requested the grounds for the decision by the DRC. Art. 15(1) of the DRC Procedural Rules provides that in such a case the decision is coming into force.

a) The nature of the deadline

16. If the parties agree on deadlines for submitting a dispute to arbitration these deadlines may serve different purposes (cf. KAUFMANN-KOHLER/RIGOZZI, Arbitrage international, 2006, marg. no. 275; SCHWAB/WALTER, Schiedsgerichtsbarkeit, 7th ed, 2005, Chap. 6 marg. no. 6). The parties may have intended to limit the mission of the arbitral tribunal as to time. The time limit under those circumstances is directed to the powers of the arbitral tribunal. Once the time limit has elapsed the arbitral tribunal is no longer competent to decide the matter in dispute. The arbitral tribunal has no jurisdiction with the consequence that the appeal is (no longer) admissible. The time limit may also serve, however, another purpose. It could be directed as to the merits of the case, i.e. at the claim itself. If in such a case the time limit elapses the arbitral tribunal remains competent to decide the dispute. However, the appellant has lost the possibility to avail himself of his specific right with the consequence that the claim has to be dismissed. Whether a time limit serves one or the other purpose may be difficult to answer in a specific case. The decisive criterion is – as PAULSSON has pointed out – whether the objecting party is taking aim at the tribunal or at the claim (PAULSSON J., in Liber amicorum Robert Briner, 2005, p. 616).

17. There is little CAS jurisprudence on the nature of the deadline to file an appeal. There is a certain tendency, however, to qualify the deadline as a procedural issue. An example for this may be found in CAS 2004/A/674, no. 47:

"The jurisdiction of an arbitral tribunal is an evident procedural prerequisite of the admissibility of a claim (…). It is also widely recognized that an agreement to arbitrate may, like other agreements, be limited in time: i.e. the parties may agree in advance to a certain time period, the elapse of which leads to the lapsing of the agreement to arbitrate (…). The Panel is of the view that after the lapse of the time period provided for in Art. 60 of the FIFA Statutes, and accepted hereby and agreed by the parties, there would be no valid agreement to arbitrate between the parties and the appeal would not be admissible, respectively. In such a case, the CAS would have to decline jurisdiction to rule on the merits of this case and to declare the appeal not admissible".

18. Whether or not the time limit to file an appeal is a procedural issue or an issue of the merits follows from the interpretation of the provision in question. In particular consideration must be given to the intent of the parties. The purpose of Art. 15 of the DRC Procedural Rules is fostering legal stability and certainty. After the elapse of the time limit the decision by the federation should no longer be put in question by anyone entitled to appeal. This purpose, however, is poorly served when interpreting the time limit as a procedural issue. The decision of the federation could not be challenged before the CAS but it could possibly be challenged before another forum, e.g. a state court (cf. RIGOZZI A., L'arbitrage international en matière de sport, 2005, marg. no. 1039). If however, the time limit aims at the claim itself the action would have to be dismissed irrespective of the forum chosen by the appellant to decide the matter in dispute. Thus, the intent of the parties clearly speaks in favour of construing the time limit as an issue of merits. The Panel feels itself comforted in its view by looking on Art. 75 CC which rules on the possibility for a member of a (Swiss) association to appeal against a decision of that association. The provision reads:

"Any member who has not consented to a resolution which infringes the law or the articles of association is entitled by law to challenge such resolution in court within one month from the day on which he became cognizant of such resolution".

19. The purpose of Art. 75 CC is to safeguard the individual's membership rights from unlawful infringements by the association (cf. ATF 108 II 15, 18). With this legislative purpose in mind, Art. 75 CC is interpreted in a broad sense (cf. ATF 118 II 12, 17 *et seq.*; 108 II 15, 18 *et seq.*; Handkommentar zum Schweizer Recht/NIGGLI, 2007, Art. 75 ZGB marg. no. 6 *et seq.*; HEINI/PORTMANN, Das Schweizer Vereinsrecht, Schweizerisches Privatrecht II/5, 2005, marg. no. 278; Basler Kommentar ZGB/HEINI/SCHERRER, 3rd ed. 2006, Art. 75 marg. no. 3 *et seq.*; Berner Kommentar zum schweizerischen Privatrecht/RIEMER, 1990, Art. 75 marg. no. 7 *et seq.*, 17 *et seq.*). In particular, the term "decision" in Art. 75 CC encompasses not only resolutions passed by the assembly of an association but, also, any (final and binding) decision of any other organ of the association, irrespective of the nature of such decision (disciplinary, administrative, etc.) and the composition of said organ (one or several persons).

20. The objective of Art. 75 CC lies in enabling all parties concerned (the association itself, the members and third interested parties) to obtain clarity about the binding effect of an association's decision with a reasonable deadline. The short appeal deadline thus serves the interests of legal certainty and security. In view of this objective it is unanimously held that the time limit in Art. 75 CC is a matter of merits, i.e. that the appellant once the time limit has elapsed forfeits his (member) right to challenge the decision of the association with the consequence that the appeal is admissible but unfounded on the merits (Berner Kommentar zum schweizerischen Privatrecht/RIEMER, 1990, Art. 75 marg. no. 62; FENNERS H., Der Ausschluss der staatlichen Gerichtsbarkeit im organisierten Sport, 2006, marg. no. 353; ATF 85 II 525, 536).

b) Compatibility with Art. 75 CC

21. The wording of Art. 75 CC leaves no doubt as to the mandatory character of this provision. The term *"entitled by law"* signifies that this provision cannot be amended by the statutes of an association (cf. Berner Kommentar zum schweizerischen Privatrecht/RIEMER, 1990, Art. 63 marg. no. 13; NATER H., SpuRt 2006, 139; FENNERS H., Der Ausschluss der staatlichen Gerichtsbarkeit im organisierten Sport, 2006, marg. no. 98, 248; ZEN-RUFFINEN P., Causa Sport 2007, 67, 71). It goes beyond question that at first sight the deadline contained in Art. 15(1) of the DRC Procedural Rules, i.e. to solicit the grounds of the decision with a deadline of 10 days in order to preserve ones right of appeal deviates from Art. 75 CC. However, it does not follow from this that the provision contained in the DRC Procedural Rules are null and void.

22. It has been stated before that Swiss Law only applies subsidiarily to the merits of this case, i.e. if the rules and regulation of FIFA contain lacunae. If, however, a certain issue is dealt with by the rules and regulations of FIFA then Swiss law does not apply. This is – as stated above – even true if the otherwise applicable provision of Swiss law is mandatory. Hence, in the case

at hand it is irrelevant whether or not there is a contradiction between the time limits in the rules and regulations of FIFA and Art. 75 CC since the latter provision is – in the context of arbitrations conducted according to the Code – superseded by the relevant provisions in the statutes and regulations of FIFA (cf. also BERNASCONI/HUBER, SpuRt 2004, 268, 270; NATER H., SpuRt 2006, 139, 143 *et seq*.; RIGOZZI A., L'arbitrage international en matière de sport, 2005, marg. no. 1041).

23. FIFA's autonomy to deviate from (mandatory) provisions of Swiss substantive law is limited, however, by the (transnational) ordre public. The question to be raised, therefore, is whether or not the provisions in Art. 15 of the DRC Procedural Rules is in breach with fundamental legal principles. The Panel is of the view that this is not the case. The duty to solicit a reasoned decision within 10 days of its notification in order to be able to appeal it before CAS may be seen as affecting the Appellant's access to the courts and legal protection. The Panel holds, however, that this limitation is not disproportionate. It is true that the time limit of ten days is short. However, little is required from an appellant within this time frame. He doesn't need to file a full brief that outlines his legal position. He is not even required to file specific motions or requests. The only thing he has to do in order to preserve his right of appeal is to solicit (in writing) a reasoned decision. In addition, the provision applies to all appellants and, thus, guarantees equal treatment among all (indirect) members of FIFA. Additionally, the 10 days-deadline of Art. 15(1) of the DRC Procedural Rules does not shorten the deadline which is applicable for filing an appeal, once the grounds of the decision are served to the parties. Indeed, the relevant 21 days-deadline remains untouched by Art. 15(1) of the DRC Procedural Rules. Furthermore, the provision serves a legitimate purpose, i.e. to cope with the heavy caseload of FIFA and contributes to the goal of an efficient administration of justice. Even the European Court of Human Rights has all along allowed the right of access to the courts to be limited *"in the interests of the good administration of justice"* (cf. BRINER/VON SCHLABRENDORFF, in: Liber amicorum Böckstiegel, 2001, p. 89, 91). It does not come as a surprise, therefore, that similar restriction as the one in the DRC Procedural Rules can be found also in relation to the access to state courts. An example of this is sec. 158 of the law governing the organisation of the judiciary of the canton of Zurich, around which Art. 15(1) of the DRC Procedural Rules has evidently been crafted. Sec. 158 of the law governing the organisation of the judiciary of the canton of Zurich reads:

"In decisions of first instance relating to civil matters and the enforcement of monetary judgements the courts may renounce to provide the reasons for the decision and communicate the operative part only to the parties. Instead of advising the parties of the appropriate recourse against the decision the court informs the parties that they may ask for the reasons of the decision within 10 days of the notification, failing which the decision becomes final and binding […] Does a party request the reasons of the decision, the full decision is served with the reasons to the parties in writing. The deadlines for filing any appeal or any action to negate the claim shall start to run with such notification of the full decision with the reasons".

24. To sum up, therefore, the Panel concludes that Art. 15 of the DRC Procedural Rules is neither incompatible with Art. 75 CC nor with the fundamental legal principles belonging to the *ordre public*.

c) Compatibility with the hierarchy norms

25. In principle, sports federations can freely establish their own provisions (cf. ZEN-RUFFINEN, Droit du Sport, 2002, marg. no. 161). However, there are limits to this autonomy. In particular the relevant organs when creating new rules and regulations are bound by the limits imposed on them by higher ranking norms, in particular the association's statutes. This follows from the principle of legality (*"Le principe de la légalité implique l'exigence de la conformité aux statuts des textes réglementaires inférieurs et des décisions des organes sociaux"*, cf. BADDELEY M., L'association sportive face au droit, Les limites de son autonomie, 1994, p. 208). According to this principle regulations of a lower level may complement and concretize higher ranking provision, but not amend nor contradict or change them. This principle is also well established in CAS jurisprudence (cf. CAS 2006/A/1181, no. 8.2.2; CAS 2006/A/1125, no. 6.18; 2004/A/794, no. 10.4.15).

26. In the case at hand the RSTP find their legal basis in Art. 5 of the FIFA Statutes. The latter provides that:

"The Executive Committee shall regulate the status of Players and the provisions for their transfer in special regulations".

27. One aspect arising in the context of the transfers of players is the question of training compensation (Art. 20 RSTP). Hence, the RSTP contains provisions regarding training compensation and regulates questions annexed to it, i.e. which organ within FIFA is competent to deal with the issue in case disputes between clubs should arise (Art. 22 lit. d, 24 RSTP). In Art. 25(7) RSTP reference is made to the DRC Procedural Rules. The provision reads that:

"The detailed procedure for the resolution of disputes arising from the application of these regulations shall be further outlined in the FIFA Procedural Rules".

28. Formally, the DRC Procedural Rules find a sufficient legal basis in the statutes of FIFA. It is debatable, however, whether Art 15 of the DRC Procedural Rules exceeds the autonomy granted to the FIFA Executive Committee according to Art 5 of the FIFA Statutes. At this point, it is necessary to address the argument put forward by the Respondent following which the 10 days-deadline is merely a formality and does not affect the parties right to appeal, given that the 21-days deadline of Art. 63(1) of the FIFA Statutes remains in place. *De facto*, any party failing to request the grounds of a decision within 10 days loses its right to appeal to CAS and, as such, is simply faced with a reduced appeal deadline. However, one may note also that any party asking the grounds of the decision is granted, *de facto*, a longer period of time to decide whether or not to accept the results of the FIFA procedure and the DRC decision. Consequently, the 10-days deadline must be seen and scrutinized in the context of the time limit for appeals to the CAS. The Panel has doubts whether Art. 15 of the DRC Procedural Rules is covered by the legal basis in Art. 5 of the FIFA Statutes because the question of time limits relating to appeals to the CAS are dealt with – exhaustively – in chapter VIII of the FIFA Statutes. In particular the time limit for appeals to CAS is regulated in Art. 62(1) of the FIFA Statutes. The provision reads:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question".

29. No reference is made in chapter VIII of the FIFA Statutes to lower level provisions. No power is granted to specific organs within FIFA to further outline or complement Art. 62(1) of the FIFA Statutes. From this it follows, that changes from the provisions dealing with time limits for appeals to the CAS are in the sole competence of the FIFA Congress (Art. 26(1) of the FIFA Statutes). It is questionable in the case at hand whether Art. 15 of the DRC Procedural Rules materially changes Art. 63(1) of the FIFA Statutes. If that were the case this would amount to a failure to uphold the principle of legality that calls for inferior rules and regulations to be in conformity with the statutes. This would result in Art. 15(1) of the DRC Rules being inapplicable.

30. However, whether or not Art. 15 of the DRC Procedural Rules complies with the hierarchy of norms can be left undecided in the case at hand. Because even if the latter is answered in the affirmative because of the particularities of the case at hand the provision cannot be held against the Appellant. In the present matter, the notice relating to the possibility to appeal the DRC decision to the CAS is confusing. While no. 6 of the DRC decision explicitly states that *"this decision may be appealed against before the … CAS"*, it follows from no. 7 of the DRC decision that no. 6 apparently is only intended to apply if the party has requested the grounds of the decision within a certain deadline. In view of the fact that this constitutes a considerable change from the previous procedural situation and in view of the fact that it is constant CAS jurisprudence that a decision does not need to contain grounds in order to be appealable to CAS, one would have expected from FIFA a notice of information on appeals that is much more transparent and consistent. To sum up, therefore, the Panel holds that under the present circumstances, Art. 15 of the DRC Procedural Rules cannot be held against the Appellant. Furthermore, FIFA may consider (i) to integrate Art. 15(1) of the DRC Rules somehow into the FIFA Statutes in order to prevent any possible or alleged conflicts with the hierarchy of norms and (ii) to issue notices to the parties in such a clear way that no doubt can exist on what action a party is requested and entitled to do upon having been informed on the results of a DRC procedure.

B. The deadline in Art. 63(1) of the FIFA Statutes

31. The final obstacle to the timeliness of the present appeal lies in the argument presented by the Respondent whereby the Appellant failed to meet the 21-days deadline of Art. 63(1) of the FIFA Statutes when filing the appeal.

32. The findings of the decision passed by the Dispute Resolution Chamber on 31 July 2008 were served on the Appellant on 17 October 2008. The Appellant filed its appeal on 7 November 2008.

33. According to the Respondent, the Appellant did not meet the appeal deadline given that this deadline commences with notification of the findings and not on the day after. The Respondent bases this argument on Art. 63 of the FIFA Statutes and Art. R49 of the Code which, according to the Respondent, are the special rules that supersede the application of the general rule contained in Art. R32 of the Code.

34. The Panel does not follow this reasoning. In doing so it finds itself in line with CAS jurisprudence (CAS 2006/A/1176, no. 7.2; CAS 2008/A/1583 & 1584, no. 7; CAS 2007/A/1364, no 6.1 *et seq.*; CAS 2006/A/1153, no. 41). Art. R32 of the Code is indeed a general provision which, as per Art. R27 of the Code, applies to both the ordinary and the appeal arbitration proceedings. As such, Art. R32 serves to provide clarity to the respective provisions of both proceedings. Consequently, and in accordance with Art. R32 of the Code, the deadline for appeal commences on the day following the notification of a decision.

35. The same can be said about the deadline contained in the FIFA Statutes. Art. 63 of the FIFA Statutes does not contain a provision as to how to compute the time limit. However, Art. 62(2) provides that Swiss law shall apply "additionally". The Panel notes that under Swiss law, deadlines fixed per days start to run from the day following the receipt of a decision, with the day of receipt not included (CAS 2007/A/1364, no 6.1 *et seq.*; CAS 2006/A/1153, no. 41). In addition the interpretation given by the Panel is in line with the computation of other time limits provided for in the FIFA regulations. Indeed, Art. 16(7) of the DRC Procedural Rules stipulates that: *"... The day on which a time limit is set and the day on which the payment initiating the time limit is made shall not be counted when calculating the time limit"*.

36. In the case at hand, the decision of the DRC was notified to the Appellant on 17 October 2008. Hence, the deadline of 21 days expired on 7 November 2008 at 24:00 o'clock with the consequence that the Appellant, with its letter of 7 November 2008, filed its appeal in time. To summarise therefore, the Panel accepts that the Appellant filed the appeal in a timely manner because the additional restrictions imposed by Art. 15 of the DRC Rules cannot be held against him.

As to the training compensation

A. The applicable legal instruments

37. The applicable provisions in respect of the training compensation can be found in the RSTP. The latter provide:

"Art. 20 Training compensation

Training compensation shall be paid to a player's training club(s): (1) when a player signs his first contract as a professional and (2) each time a professional is transferred until the end of the season of his 23rd birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player's contract. The provisions concerning training compensation are set out in Annexe 4 of these regulations".

<u>"Annex 4</u>

Art. 1 Objective

1. *A player's training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21. In the latter case, training compensation shall be payable until the end of the season in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between the age of 12 and the age when it is established that the player actually completed his training.*
2. *The obligation to pay training compensation is without prejudice to any obligation to pay compensation for breach of contract.*

Art. 2 Payment of training compensation

1. *Training compensation is due when:*
   - *i) a player is registered for the first time as a professional;*
   or
   - *ii) a professional is transferred between clubs of two different associations (whether during or at the end of his contract) before the end of the season of his 23rd birthday.*
2. *Training compensation is not due if:*
   - *i) the former club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs);*
   or
   - *ii) the player is transferred to a category 4 club;*
   or
   - *iii) a professional reacquires amateur status on being transferred.*

Art. 3 Responsibility to pay training compensation

1. *On registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the players' career history as provided in the player passport) and that has contributed to his training starting from the season of his 12th birthday. The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club. In the case of subsequent transfers of the professional, training compensation will only be owed to his former club for the time he was effectively trained by that club.*
2. *In both of the above cases, the deadline for payment of training compensation is 30 days following the registration of the professional with the new association.*
3. *If a link between the professional and any of the clubs that trained him cannot be established, or if those clubs do not make themselves known within 18 months of the player's first registration as a professional, the training compensation shall be paid to the association(s) of the country (or countries) where the professional was trained. This compensation shall be reserved for youth football development programmes at the association(s) in question.*

Art. 4 Training costs

1. *In order to calculate the compensation due for training and education costs, associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio of players who need to be trained to produce one professional player.*

2. *The training costs, which are established on a confederation basis for each category of club, as well as the categorisation of clubs for each association, are published on the FIFA website (www.FIFA.com). They are updated at the end of every calendar year.*

Art. 5 Calculation of training compensation

1. *As a general rule, to calculate the training compensation due to a player's former club(s), it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself.*

2. *Accordingly, the first time a player registers as a professional, the training compensation payable is calculated by taking the training costs of the new club multiplied by the number of years of training, in principle from the season of the player's 12th birthday to the season of his 21st birthday. In the case of subsequent transfers, training compensation is calculated based on the training costs of the new club multiplied by the number of years of training with the former club.*

3. *To ensure that training compensation for very young players is not set at unreasonably high levels, the training costs for players for the seasons between their 12th and 15th birthdays (i.e. four seasons) shall be based on the training and education costs of category 4 clubs.*

4. *The Dispute Resolution Chamber may review disputes concerning the amount of training compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review.*

Art. 6 Special provisions for the EU/EEA

1. *For players moving from one association to another inside the territory of the EU/EEA, the amount of training compensation payable shall be established based on the following:*
   a) *If the player moves from a lower to a higher category club, the calculation shall be based on the average training costs of the two clubs;*
   b) *If the player moves from a higher to a lower category, the calculation shall be based on the training costs of the lower category club.*

2. *Inside the EU/EEA, the final season of training may occur before the season of the player's 21st birthday if it is established that the player completed his training before that time.*

3. *If the former club does not offer the player a contract, no training compensation is payable unless the former club can justify that it is entitled to such compensation. The former club must offer the player a contract in writing via registered post at least 60 days before the expiry of his current contract. Such an offer shall furthermore be at least of an equivalent value to the current contract. This provision is without prejudice to the right to training compensation of the player's previous club(s)".*

38. Further guidance in matters dealing with training compensation is given by the FIFA circular letter no. 826. FIFA has issued a number of circular letters that serve to clarify the implementation of the FIFA rules and regulations. Although these circular letters are not regulations in a strict legal sense, they reflect the understanding of FIFA and the general practice of its members. The Panel therefore considers the circular letters as relevant for the interpretation of the FIFA regulations (cf. CAS 2004/A/560, no. 7.3.1; CAS 2003/O/527, p. 10). The FIFA circular letter no. 826 dated 31 October 2002 provides as follows:

"Accordingly, pursuant to Art. 45 of the Regulations for the Status and Transfer of Players, the FIFA Players Committee, as endorsed by the Executive Committee, has concluded that it is necessary to help the various participants with the calculation of training compensation amounts by (i) establishing indicative amounts per confederation, which are subject to review by the Dispute Resolution Chamber in individual cases, and (ii) postponing the application of certain principles relating to transfer compensation until the review of the entire regulations governing the status and transfer of players at the end of the 2003/2004 season.

(i) Indicative amounts

Until a more definitive calculation system is put into place, FIFA has established the following indicative amounts on the basis of information received for all national associations on a confederation basis, also keeping in mind the many requests from interested parties for simplicity:

(…) Europe:

1. Category: EURO 90,000

2. Category: EURO 60,000

3. Category: EURO 30,000

4. Category: EURO 10,000

(…) South America:

1. Category: USD 50,000

2. Category: USD 30,000

3. Category: USD 10,000

4. Category: USD 2,000

These amounts will be used when applying the provisions contained in Chapter VII of the FIFA Regulations for the Status and Transfer of Players (hereafter "Basic Regulations"), as well as Chapter III of the Regulations governing the Application of the Regulations for the Status and Transfer of Players (hereafter "Application Regulations"), together with circular letters nos. 769 and 799, subject to the simplifications outlined below.

(…)

Simplified Calculation Principles

To begin with, the rule remains that training compensation will be payable to all clubs that have trained a player between the age of 12 and 21 once the player acquires non-amateur status (i.e., by signing a non-amateur contract with the club for which he has been playing as an amateur, or by signing a non-amateur

contract with another club to which he transfers). This is in accordance with Art. 5.2 (b) of the Application Regulations.

However, the principles concerning subsequent transfers will be simplified until the review of the revised regulations at the end of the 2003/2004 season has been completed. Until then, for any subsequent transfer up to the age of 23, including transfers from clubs belonging to the third and fourth categories as referred to in art. 5.2 (c) of the Application Regulations, training compensation will only be owed to the previous club of the player for the time he was effectively trained by that club.

(…)

It is recalled that, pursuant to Art. 7.3 of the Application Regulations, as a general principle compensation for training is based on the costs of the country in which the new club is located. However, within the EU/EEA area, compensation for training is based on the costs of the country in which the training club was located, subject to the principles set out in Art. 7.4 of the Application Regulations.

The actual compensation fee is calculated by multiplying the amount corresponding to the category of the relevant training club by the number of years of training from 12 to 21. It will be recalled that, pursuant to Art. 7.2 the amounts due for the training of players aged 12 to 15 will always be based on the training and education costs established for Category 4".

Duty to pay training compensation and method of calculation

39. Between the parties it is uncontested that the Appellant has to pay training compensation. Nor is the method of calculation described in the RSTP and the circular letter no. 826 being contested by the parties. There is, however, disagreement over the amount of time that the Player spent with the Respondent and the parameters that should apply to the calculation. The Player was first registered with the Respondent on 25 July 2000. This follows from the evidence submitted by the PFP and from the FIFA file. The Appellant has drawn attention to the time that the Player spent away on a loan to another club and also argues that the Player completed his training before reaching the age of 21. Furthermore, the Appellant maintains that the outcome of the calculation in accordance with the RSTP and the circular letter no. 826 results in an amount that it considers clearly disproportionate and that, in consequence, this amount needs to be adjusted as per Art. 5 of Annex 4 of the RSTP.

Loan

40. The Player, who was first registered with the Respondent on 25 July 2000, was on loan to the club Bella Esperanza from 17 August 2001 until 31 December 2001 (four months and 15 days). Consistent with the case law of CAS (cf. CAS 20004/A/560, no 7.4.13; CAS 2004/A/594, no 7.2 *et seq.*) the period to be considered when establishing training compensation owed is the time during which a player was effectively trained by a club. This rules out any time spent by a player at another club on a loan arrangement unless the loaning club can demonstrate that it bore the costs for the player's training during the duration of the loan. As the Respondent has made no claim to be compensated for the loan period, this time will not be taken into consideration when calculating the training compensation due.

Completion of training

41. The Appellant maintains that the Player completed his training before reaching the age of 21. According to Art. 1(1) of Annex 4 of the RSTP, training compensation is due for training incurred up to the age of 21, unless it is evident that the player already terminated his training period before the age of 21. The Appellant supports this assertion by claiming that the Player became a regular of the Respondent's 'A' team in 2003 and that the Player was recurrently summoned to play for the Peruvian senior national team.

42. The burden of proof to demonstrate that the formation of the Player actually ended in 2003 lies with the Appellant (cf. FIFA circular letter no. 801; CAS 2006/A/1029, p. 20). The Panel will admit the printouts presented by the Appellant obtained from the Internet, given that the Respondent did not invalidate these pieces of evidence with its own records (or those of the FPF).

43. However, even though regular performance for a club's 'A' team can trigger the end of a player's training, this does not necessarily constitute the only and decisive factor for the completion of a player's training. There are further factors that are generally taken into consideration such as the player's value at a club, reflected in the salary a player is paid, in the loan fee that is achieved for his services or in the value of the player's transfer, the player's public notoriety at national and international level, his position at the club if established as a regular or even holding the captaincy, his regular inclusion in the national team and so forth (cf. CAS 2006/A/1029, p. 20 *et seq.*).

44. The Panel is not satisfied that the Appellant has overall proven the Player to be of such a talent that his training was indeed concluded before he reached the age of 21. The Panel considers the evidence put forward by the Appellant as being insufficient to establish such a level of aptitude to set aside the general norm applicable to the calculation of training compensation, this being the duration from the age of 12 to the players' 21 birthday.

Categorisation of the Appellant and calculation of training compensation

45. It is undisputed that the Appellant is a first division club in Switzerland, belonging to the category 2 under the terms of the FIFA circular letter no. 1142. Likewise, the Respondent belongs to a first division club in Peru, i.e. belonging to category 3 (cf. FIFA circular letter no. 1142).

46. According to the FIFA circular letter no. 826 and the updated figures contained in the more recent circular letter no. 1142, compensation for category 2 in Europe amounts to EUR 60,000. According to Art. 5(1) Annex 4 of the RSTP in order to calculate the training compensation it is necessary to take the costs that would have been incurred by the new club

if it had formed the player itself. Hence, the compensation has to be calculated on the basis of EUR 60,000.

Amount due according to the applicable rules

47. The Player was registered with the Respondent from 25 July 2000 to 31 December 2006. The period relevant to the calculation of training compensation commences with the registration of the Player at Alianza and not with the actual employment of the Player. The Player turned 21 years old on 21 September 2005. Therefore, and in accordance with Art. 5 of Annex 4 of the RSTP, the full season of 2005 (*i.e.* until 31 December 2006) will count to determine the training compensation due. During this period of time, the Player spent four months and 15 days on loan at the club Bella Esperanza, this being from 17 August 2001 until 31 December 2001. In total, therefore, the Player was trained with the Respondent for 5 years and 24 days. Since a part of a month has to be calculated as a whole month the total training period amounts to five years and one month. The amount due according to the applicable regulation is, therefore, 300,000 (= 5 x 60,000) + 5,000 (= 1/12 x 60,000), *i.e.* EUR 305,000.

Proportionality of the compensation

48. The Appellant questions the validity of the calculation principles set forth in the RSTP as well as in the FIFA circular letter no. 826, as it considers that the effective costs of the training and education of the Player were lower than the amount calculated by the FIFA Dispute Resolution Chamber. The Appellant contends that the indicative amount of EUR 60,000 per year of training applied in the calculation is too high and does not represent the true costs for training a player in a country like Peru. According to the Appellant, the indicative amount should be no higher than USD 10,000 per year. In particular, the Appellant argues that the value of the overall employment contract established between the Player and the Respondent, with a monthly salary of USD 250, is evidence of the inferior costs relating to football in Peru. What is more, if the Player had breached his employment contract at the start of its validity, the compensation due to the Respondent would be considerably inferior to the calculation of training compensation, thus highlighting the disproportion in this calculation.

49. As expressed in the FIFA circular letter no. 769, the *"new regulations create a detailed system for the payment of training compensation. This system is designed to encourage more and better training of young football players, and to create solidarity among clubs, by awarding financial compensation to clubs which have invested in training young players"*.

50. The Panel considers that the system of calculation put in place bears the objective to ensure that training compensation correspond to the amounts that the clubs would have had to spend in order to train young players themselves. This is based on the concept of solidarity and reflects the idea that geographic locations of clubs should not place them at a disadvantage. Equally, a club from a more developed country should not be encouraged to seek the best players from less advantaged countries only to benefit from generally lower costs

of living and training. Instead, to uphold the principle of solidarity, the clubs employing players training in less advantaged countries should pay the same amount in training compensation as they would have had if they were engaging a player from a developed country.

51. Furthermore, the Panel refers to the following passage of the FIFA circular letter no. 826:

"Any party that objects to the result of a calculation based on the rules on training compensation is entitled to refer the matter to the Dispute Resolution Chamber. The Chamber will then review whether the training compensation fee calculated on the basis of the indicative amounts and the principles of the revised regulations, as simplified below, is clearly disproportionate to the case under review in accordance with Art. 42.1.b.(iv) of the Basic Regulations, while taking into account the indicative nature of these amounts. Whenever particular circumstances are given, the Dispute Resolution Chamber can adjust the amounts for the training compensation so as to reflect the specific situation of a case. For this task the Dispute Resolution Chamber can ask for all documents and/or information it deems necessary, such as invoices, training centres budgets, etc".

52. It follows that the club objecting to a training compensation calculated on the basis of the indicative amounts mentioned within the FIFA circular letter no. 826 is entitled to prove that such compensation is disproportionate on the basis of concrete evidentiary documents, such as invoices, costs of training centres, budgets, and the like. The party shall thus prove such disproportion, failing which the indicative amount would apply (cf. CAS 2004/A/560 marg. no. 7.6.2).

53. The Panel finds that the Appellant has not produced sufficient evidence that the amount calculated according to the applicable provisions is "clearly disproportionate". In particular the argument put forward that the Respondent did not offer a new contract to the Player has been disputed by the Respondent. Consequently, the indicative amounts established by FIFA and set down in the FIFA circular letter nos. 826 and 1142 shall apply.

Other objections of the Appellant

54. The Appellant has furthermore objected that the amount payable to the Respondent as training compensation is too high and represents a hidden transfer fee as well as a hindrance imposed on the free movement of young players whose contracts have come to an end.

55. According to the Appellant, the training compensation is at a level where it no longer is an incentive for clubs train young players but rather a reintroduction of the former transfer system through the back door. This has the effect of being a restraint of trade for young players seeking a new employment when their contracts have come to an end. The system thus supports clubs no longer interested in retaining professional players, of whom they already benefited whilst they were paying them a low salary. In addition, the system is discriminatory given that all Peruvian players transferring from one Peruvian club to another can do so freely, without there being a payment obligation, whereas a Peruvian player wishing to go abroad is severely hindered by the burden of training compensation. In essence, this affects the players right to employment and their free choice of employer.

56. The system of training compensation put in place by FIFA is aimed at ensuring that the transfers of young players within football goes hand in hand with a distribution of funds to the clubs that have invested in young players. FIFA monitors the international transfers and, consequently, it has a standardised procedure in place that may well differ from the national approach within a national football association. This fact by itself does not result in an unlawful discrimination of players. The system put in place by FIFA will always have to balance the interests of individual players actually transferring abroad with those of the clubs training young players. The free movement of players has, therefore, to be balanced with the interest of football in general and the interest of the clubs. In the case at hand the Panel does not find sufficient evidence that the Player was prevented to offer his services abroad or that Swiss clubs experienced a memorable restraint of trade. Ultimately it must be noted that by encouraging the training of young players, it should be the same youngsters who will gain from this system, as the efforts of the training clubs will continue. Therefore, and although the Panel is – to some extent – sympathetic to the objections of the Appellant, it must reject them due to the fact that these have already been considered by FIFA when designing the applicable transfer system.

Conclusion

57. The Panel concludes that the calculation of the training compensation by the DRC is correct and, therefore, the appeal filed by Grasshopper must be dismissed.

Counterclaim

58. In its Answer the Respondent requests interests on the training compensation in the rate of 5% from 24 February 2007. This deviates from the conclusions in the DRC decision. The latter stipulates:

"In the event that the above-mentioned amount is not paid within the stated deadline (30 days from notification of this decision), an interest rate of 5% per year will apply as of expiry of the aforementioned time limit …".

59. In order to achieve a modification of the DRC decision the Respondent would have to lodge an appeal against it in form of counterclaim. It is not quite clear whether or not the Respondent intends to do so, since its primary request to CAS is *"to dismiss the appeal of the Appellant and to confirm the original ruling of the DRC"*. This primary request is in clear contradiction with the request for (additional) interests. How this contradiction is to be solved can be left unanswered here, since in order to request an amendment of the DRC decision the Respondent would have to file its (counter-)appeal within the time limit set for in Art. 63(1) of the FIFA Statutes, *i.e.* within 21 days. This is, however, not the case. Therefore, the counterclaim has to be rejected.

The Court of Arbitration for Sport rules:

1. The appeal filed by Neue Grasshopper Fussball AG on 7 November 2008 against the decision issued on 31 July 2008 by the FIFA Dispute Resolution Chamber is dismissed and such decision is confirmed.

2. The counterclaim by the Respondent is rejected.

(…)