Arbitration CAS 2012/A/2983 ARIS Football Club v. Márcio Amoroso dos Santos & Fédération Internationale de Football Association (FIFA), award of 22 July 2013

Panel: Mr Lars Hilliger (Denmark), President; Mr José Juan Pinto (Spain); Prof. Ulrich Haas (Germany)

Football
Breach of the employment contract between a player and a club
Submission of a player to FIFA's jurisdiction
Notion of "independent" and "duly constituted" tribunal
Principle of equal representation of players and clubs
Access to justice
Right to be heard

1. **FIFA's jurisdiction cannot be determined by whether a player is still registered as an active player and, therefore, still a part of organised football at the time when a dispute is transferred from the administrative claims handling procedure of FIFA to formal proceedings before another body – or even at the time of dispute resolution. If a player is still a part of organised football at the time when a claim is lodged with FIFA, the player is subject to FIFA's jurisdiction. Therefore, the fact that the player ended his professional career in organised football at a certain time after lodging his claim with FIFA does not automatically exclude the claim from FIFA's jurisdiction, regardless of how far the claim had come in FIFA's internal claims handling procedure at the time the player ended his professional career.**

2. **In order to be recognised as "independent" and "duly constituted", a national arbitration tribunal must, *inter alia*, a) respect the principle of equal representation of players and clubs, b) not provide for financial barriers that fail to ensure the highest possible level of access to justice, and c) respect the principle of the right to be heard.**

3. **The fact that one of the appointed arbitrators serves as "Reporting Justice" does not in itself represent a departure from the principle of equal representation of players and clubs. It is a purely adminsitrative way of distributing the internal workload and has nothing to do with unequal representation. In the same way, no inbalance of the constitution of the arbitral tribunal can be followed from the fact that not all arbitrators sign a decision. This is a pure issue of practicality and is no indication of a violation of equal representation.**

4. **An administrative fee such as a court fee does not bar a person to seek access to justice. Rather, such an adminitrative fee is intended to prevent frivilous claims.**

5. **It as a duty for an independent arbitration tribunal to guarantee the right to be heard**

for all parties to a dispute. However, in the context of art. 22 of the FIFA-RSTP the requirement that the proceedings be fair and equitable must be assessed in the abstract. According to the applicable rules the DRC is not an appeal body designed to assess whether or not in an individual case the right to be heard of a party was violated and, thus, must assume jurisdiction. What is required in this context is, whether or not the procedural rules applicable before the national judicial bodies are such to enable a conduct of the procedure in a fair and equitable way.

1. THE PARTIES

1.1 ARIS Football Club (the "Appellant") is a Greek football club affiliated with the Greek Football Federation ("HFF"), which in turn is affiliated with FIFA.

1.2 Mr. Márcio Amoroso dos Santos (the "First Respondent" or "the Player") is a professional football player holding Brazilian nationality.

1.3 The Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") is the world governing body of Football, whose headquarters are located in Zurich, Switzerland.

2. FACTUAL BACKGROUND

2.1 The elements set out below are a summary of the main relevant facts, as established by the Panel on the basis of the decision rendered by the FIFA Dispute Resolution Chamber (the "DRC") on 1 March 2012 and notified to the Appellant with grounds on 25 October (the "Decision"), the written submissions of the Parties and the exhibits filed, and the pleadings made and evidence adduced at the hearing. Additional facts may be set out, where relevant, in the legal considerations of the present Award. While the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in its Award only to the submissions and evidence it considers necessary to explain its reasoning.

2.2 On 16 January 2008, the Player and the Appellant concluded an employment contract (the "Contract") valid from the date of signature until 30 June 2009. Furthermore, on the same date these two parties also signed an additional contract (the "Private Agreement") referring to the Contract.

2.3 In the Contract the Appellant and the Player indisputably agreed as follows (in extract):

*"**2.2** The employment period of the Player starts on the 16-01-2008 (during the Transfer Period) and ends on the 30/06/2009 (one day before the beginning of the Transfer Period.*

…

4. Obligations of the Club

4.1*. It is hereby stipulated that the monthly fees of the Player which in any case may not be lower than the monthly salary of an unskilled worker set out in the National Collective Bargaining Agreement – are set to the amount of EUR 735, paid to the Player by the Club the latest at the end of each month, twelve months per year.*
Apart from the aforementioned monthly fees, the Club is obligated to pay out to the Player Christmas bonus (the amount thereof being equal to the monthly fees of the Player) and Easter bonus (the amount thereof being equal to the monthly fees of the Player), as well as Holiday benefit (the amount thereof being half of the monthly fees of the Player).
…
4.3 *Other benefits: Use of house and car – One Air ticket for the player and his family per season.*
4.4 *The Player shall receive the total amount of EUR 1,352,969 in 13 installments, as follows:*

1st instalment amount:	*EUR 228,426*	*payable on 18-01-2008*
2nd instalment amount:	*EUR 74,969.53*	*payable on 30-04-2008*
3rd instalment amount:	*EUR 74,969.53*	*payable on 30-05-2008*
4th instalment amount:	*EUR 74,969.53*	*payable on 30-06-2008*
5th instalment amount:	*EUR 74,969.53*	*payable on 30-07-2008*
6th instalment amount:	*EUR 74,969.53*	*payable on 30-08-2008*
7th instalment amount:	*EUR 74,969.53*	*payable on 30-09-2008*
8th instalment amount:	*EUR 74,969.53*	*payable on 30-10-2008*
9th instalment amount:	*EUR 74,969.53*	*payable on 30-11-2008*
10th instalment amount:	*EUR 74,969.53*	*payable on 30-12-2008*
11th instalment amount:	*EUR 149,939.06*	*payable on 30-01-2009*
12th instalment amount:	*EUR 149,939.06*	*payable on 28-02-2009*
13th instalment amount:	*EUR 149,939.06*	*payable on 30-03-2009*

…
4.10 *Payment of taxes is effected pursuant to the requirements of the Hellenic legislation.*
4.11 *In the event of termination of the contract due to fault of the Club, without prejudice to the specific and minimum provisions of par. 2 of Article 17 of the Regulations, it is hereby stipulated that the compensation due to the Player amounts to:*
a) During the protected period: EUR 1,000,000.
…
5. Obligations of the Player
5.1 *The obligations of the Player to the Club are the following*
5.2 *With regard the Club:*
a) Participate in the matches to the best of his abilities when selected to play.
…
d) Comply with and act pursuant to the instructions of those being responsible for the team (to the extent that it is reasonable e.g. stay at the place that serves the purpose of the Club.)
…
j) Notify the Club immediately in the event of illness or accident and not undergo any type of medical therapy without prior knowledge of the team doctor (emergencies excluded).
…
5.5 *In the event of termination of the contract due to fault of the Player, without prejudice to the specific and minimum provisions of par. 3 of Article 17 of the Regulations, it is hereby stipulated that the compensation due to the Club amounts to:*

a) During the protected period: EUR 3,000,000.

…

10. Resolution of disputes

All disputes between the parties are settled by the Committee of the Resolution of Financial Disputes (PEEOD) at first instance, and the Court of Arbitration of the H.F.F. at second instance.

11. Football Rules

11.1 *The football rules are the Statutes, Regulations and Decisions of FIFA, UEFA, H.F.F, and, where applicable, the relevant Professional Association.*

11.2 *The Club and the Player are obligated to comply with the Statutes, Regulations and Decisions of FIFA, UEFA, H.F.F. and the relevant Professional Association (if applicable), which constitute an integral part of this agreement, and that is recognised by the parties by their signatures.*

…".

2.4 According to the Private Agreement, the Player was entitled to receive the net amount of EUR 1,080,000, of which an amount of EUR 180,000 was due after his arrival in Greece and the medical tests; the balance was payable in monthly instalments of EUR 60,000 each until March 2009. Furthermore, the Player was entitled to the following additional bonuses:

- the amount of EUR 100,000 in case of winning the Greek championship;
- the amount of EUR 75,000 in case the Greek club would qualify for the UEFA Champions League;
- the amount of EUR 50,000 in case the Player would score more than ten goals;
- the amount of EUR 50,000 in case the Greek club would qualify for the UEFA Cup.

2.5 Following the final of the Greek Cup of 2008 on 17 May 2008, in which the Player did not play, the Player left Greece and, eventually, went to Brazil.

2.6 By letter dated 18 June 2008 from the Player to the Appellant, the latter was informed that the Player since his arrival in Brazil had *"been under full time intensive physiotherapy lasting more than 7 hours per day … to recovery of my Achilles tendons"*.

2.7 According to the Player, he was *"currently unable to return to training or to compete"*. The Player further asked for the Appellant's written authorization to stay in Brazil in order to be able to continue his treatments there.

2.8 Together with this letter, the Player forwarded a letter from the Brazilian orthopaedist, Dr. Paulo Paes Pereira, who certified, among other things, that *"according to my clinical examinations, and to medical examinations such as MRI and ultrasound scans, your athlete Marcio Amoroso dos Santos suffers from a classical case of tendinitis and tendinosis with swelling and fluid in the right and left Achilles tendons. The athlete is not currently in the position to immediately resume physical activities as a professional football player"*.

2.9 According to the Appellant, this request from the Player was denied in writing, and the Player was informed that he should return to the Appellant on 1 July 2008 at the latest. In case the Player did not return within this deadline, it would constitute a serious breach of his contractual

obligations, and the Appellant would then proceed with terminating the Contract for breach by the Player.

2.10 On 27 Jun 2008, the counsel of the Player forwarded a letter to the Appellant, in which he once more informed the Appellant of the treatment of the Player´s injury.

2.11 Furthermore, the counsel of the Player wrote as follows: *"… the athlete also has financial difficulties due to the fact that Aris FC has not paid his salaries for the months of April and May, while that of June has to be paid by the 29th, and it is possible that it will not be paid as well like the ones of the previous months. In order for the athlete to return to his activities, he wants to first fully recover from his injury and he requests that Aris FC pays for his airplane tickets, as it is provided for in the contract. He also requests the payment of his wages, past and future, the latter referring to the month of July 2008.*

We hope that soon we shall be contacted by Aris, who shall inform us on his compliance to its contractual obligations (payment of salaries and costs of airfare) and who shall grant the athlete the authorization to continue the treatments for his injury in the Achilles tendons in Brazil".

2.12 According to the Appellant, the Player was instructed to arrive in Greece on 1 July 2008 at the latest, and the Player was asked about his wishes as to the requested airfare.

2.13 However, the Player dit not return to the Appellant, and on 16 July 2008 the Appellant therefore filed a claim against the Player with the First Instance Financial Disputes Resolution Committee ("PEEOD") of HFF, claiming termination of the Contract for breach by the Player due to his gross and repeated instances of breach of the Contract as well as payment of compensation amounting to EUR 1,000,000.00 to the Appellant by the Player.

2.14 On 21 July 2008, the Player, on his side, lodged a complaint with FIFA claiming that the Appellant did not fulfil its contractual obligations. In this respect the Player submitted that the Appellant dit not pay him the three contractual instalments due in April, May and June 2008 in a total amount of EUR 224,908.59. Furthermore, the Appellant allegedly also failed to pay the amount of EUR 50,000.00 as a bonus for the qualification to the UEFA Cup. Finally, the Player stated that the Appellant did not provide him with the agreed air tickets. Based on these circumstances, the Player asked for the termination of the Contract and for payment of the total amount of EUR 1,274,908.59 calculated as follows:

- EUR 1,000,000.00 as compensation for breach of contract (cf. Clause 4.11 of the Contract;
- EUR 224,908.59 corresponding to the instalments for April, May and June 2008;
- EUR 50,000.00 corresponding to the bonus due for the UEFA Cup qualification.

2.15 By decision 965/2008 of September 2008, the PEEOD accepted the termination of the contract as of 21 July 2008 for breach by the Player, but dismissed the claim for compensation. Furthermore, the Player was ordered to pay the court fees incurred by the Appellant of EUR 400.00.

2.16 According to this decision, the PEEOD was comprised of *"the honourary Justice with the Supreme Court Mr Andreas Markakis as President, Mr Konstantinos Antipariotis as Reporting Justice, Mr Joannis Karaminas, Mr Andreas Zaglis and Mr Athnasios Makriniotis as members, and Mrs S Stratigopoulus as Clerk"*.

2.17 The decision also stated that the Player did not attend the beginning of the preparation of the case, nor did he attend the hearing at a later stage, although legally summoned.

2.18 The Appellant lodged an appeal against the PEEOD decision with the Court of Arbitration of the HFF (hereinafter referred to as "HFFAC").

2.19 By letter dated 22 September 2008, the Appellant informed the Player´s Status Committee of FIFA of the PEEOD decision and of the fact that an appeal had already been lodged.

2.20 By letter of 9 March 2009, the FIFA Dispute Resolution Chamber asked the HFF to inform its affiliated club that they should provide their final comments on the position taken by the Player concerned, within the next 10 days.

2.21 On 26 June 2009, the HFFAC issued its decision 28/2009.

2.22 In order to pass the said decision, the HFFAC was composed of the following: *"Demetrios Maxarakis, Chairman, Fragiskos Acgerinos, Reporting Justice, Evangelos Mallios, member and attended by the Clerk Kalliopi Papademetriadis"*.

2.23 According to the minutes, the Player never showed up at the hearing on 2 December 2008, nor was he represented although he *"was legally and promptly summonded to attend at the hearing date…"*.

2.24 The appeal was finally rejected as inadmissible and, thus, the case was not re-examined on its merits in the second instance.

2.25 By letter of 19 August 2011, the FIFA Dispute Resolution Chamber asked the Appellant to forward its last position on the pending case.

2.26 On 4 October 2011, the position of the Appellant was forwarded to FIFA on behalf of the Appellant.

2.27 In case the Second Respondent would consider itself competent, the Appellant lodged a counterclaim against the First Respondent requesting the Second Respondent to decide that the First Respondent had breached the Contract and was liable to pay compensation for this breach. Due to the fact that the First Respondent had retired from organised football, the Appellant claimed a compensation corresponding to the sum, which might have been due and outstanding to the Player until the moment of his breach of contract.

2.28 Against the background of these circumstances, the DRC concluded as follows:

a) Since the Player, by submitting its claim before FIFA, had clearly expressed his objection to the jurisdiction of the Greek national bodies and since the DRC did not find it proven by the Appellant that the Greek national bodies complied with the minimal procedural standards in order to be recognised as an independent arbitration tribunal, the DRC is competent to hear the matter.

b) Based on the above, the legal principle of "res judicata" cannot be applied to the matter at stake.

c) The counterclaim of the Appellant was only lodged more than three years after the event giving rise to the dispute, while the claim of the Player was lodged within one month of the same event. Based on that, the counterclaim was declared time-barred.

d) On the one hand, the Player asserted that the Appellant had breached the contract by not fulfilling its financial obligations. On the other hand, however, the Appellant alleged that the Player had breached the Contract by not returning to the Appellant when asked to do so.

e) According to the documentation on file, it was concluded that the Player had terminated the Contract by not returning to the Appellant.

f) Furthermore, it was concluded that the Appellant breached the Contract to such an extent that the Player suffering the breach was entitled to terminate the contractual relationship unilaterally with immediate effect and claim compensation for the breach.

g) The compensation to the Player should be composed of the following payments

- EUR 230,000.00 which had already fallen due at the time of termination of the Contract;
- EUR 350,000.00 as compensation for the breach of the Contract.

2.29 Based on the above, the DRC decided as follows in the Decision:

"1. The claim of the Claimant / Counter-Respondent, Márcio Amoroso dos Santos, is partially accepted.

2. The Respondent /Counter-Claimant, Aris FC, has to pay to the Claimant / Counter-Respondent, Márcio Amoroso dos Santos, the amount of EUR 580,000 within 30 days as from the date of notification of this decision.

3. Any further requests filed by the Claimant /Counter-Respondent, Márcio Amoroso dos Santos, are rejected.

4. If the aforementioned sum is not paid within the aforementioned deadline, an interest rate of 5% per annum will apply as of expiry of the fixed time limit until the date of effective payment, and the present matter shall be submitted, upon request, to FIFA´s Disciplinary Committee for its consideration and a formal decision.

5. The Claimant / Counter-Respondent, Márcio Amoroso dos Santos, is directed to inform the Respondent / Counter-Claimant, Aris FC, immedialtely and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.

6. The counterclaim of the Respondent / Counter-Claimant Aris FC, is not admissible".

3. SUMMARY OF THE ARBITRAL PROCEEDINGS BEFORE CAS

3.1 On 14 November 2012, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as the "CAS"), challenging the Decision, which had been notified to the Appellant with its grounds on 25 October 2012.

3.2 On 26 November 2012, the Appellant filed its Appeal Brief.

3.3 On 13 December 2012, the First Respondent filed its answer while, on the 19 December 2012, an answer from the Second Respondent was filed.

3.4 By letter of 18 February 2013, the Parties were informed by the CAS Court Office that the Panel had been constituted as follows: Mr. Lars Hilliger, attorney-at-law, Copenhagen, Denmark (President of the Panel), Mr. José J Pinto, attorney-at-law, Barcelona, Spain, (appointed by the Appellant) and Mr. Ulrich Haas, professor, Zurich, Switzerland (appointed by the Respondents).

3.5 By letter of 21 December 2012, the Parties were invited to inform the CAS Court Office by 7 January 2013 whether their preference was for a hearing to be held in this matter or for the Panel to issue an award based on the Parties´ written submissions.

3.6 On 7 January 2013, the Appellant indicated its wish to have a hearing in order for the Panel to decide on the matter.

3.7 By letter of 6 March 2013, the Appellant asked the CAS *"to allow the continuation of the captioned arbitration by submitting the appeal to a Panel composed of a sole arbitration"* in order to reduce costs in connections the procedure.

3.8 On 12 March 2013, the Second Respondent informed the CAS Court Office that it did *"not agree to submit the present matter to a Sole Arbitrator. Indeed, the present appeal pertains, inter alia, to a question of competence of FIFA´s deciding bodies and therefore to fundamental principles of the dispute resolution system established within the framework of organised football which should, in our view, be dealt with by a Panel of three arbitrators".*

3.9 By letter of 13 March 2013 from the CAS Court Office, the CAS noted the the Second Respondent's objection, and the absence of any response from the First Respondent; accordingly, the matter proceeded before the Panel already constituted.

3.10 On 5 June 2013, the CAS Court Office forwarded the Order of Procedure to the Parties, which the Parties signed and returned to CAS.

4. HEARING

4.1 A hearing was held on 19 June 2013 at the Lausanne Palace Hotel in Lausanne. The Panel was assisted by William Sternheimer, Managing Counsel & Head of CAS Arbitration. The Parties did not raise any objection to the constitution of the Panel.

4.2 The following people attended the Hearing and were heard by the Panel:

For the Appellant: Mr. Konstantinos Zemberis (attorney-at-law) and Ms Evmorfia Voutsa (employee of the Appellant – heard as a witness).

For the Second Respondent: Mr. Roy Vermeer (member of Player´s Status Department).

4.3 According to the Order of Procedure, signed by the First Respondent's counsel, Dr. Cesar de Paula Donizetti, the First Respondent was supposed to be represented by Dr. Donizetti at the hearing.

4.4 At the time of the commencement of the hearing, however, it was established that neither the First Respondent himself nor Dr. Cesar de Paula Donizetti was present.

4.5 Given these circumstances, the Panel decided to postpone the commencement of the hearing to enable counsel to attend, and the Panel also tried to locate him by calling him on the number specified in his contact details provided to the CAS Court Office.

4.6 Moreover, the Panel checked whether the counsel had mistakenly turned up at the CAS premises or maybe was present in the hotel where the hearing would take place.

4.7 However, the Panel did not succeed in contacting Dr. Cesar de Paula Donizetti.

4.8 As the First Respondent, through Dr. Cesar de Paula Donizetti, had been duly summoned to attend the hearing and informed of its time and venue, which was confirmed by the counsel's signature of the Order of Procedure, the Panel decided to carry through the hearing,

4.9 It should be noted that, after the hearing, neither the First Respondent nor the First Respondent's counsel contacted the CAS Court Office.

4.10 Duly informed of her obligations to speak the truth and answering questions from the Parties present and from the Panel during the hearing, Ms Evmorfia Voutsa explained as follows (in extract):

- Ms Evmorfia Voutsa worked as an office manager for the Appellant and knew the First Respondent very well during his time with the Appellant.
- The First Respondent was a difficult player to handle, who often had discussions with the coach and other staff of the Appellant.
- When he was informed that he would be a substitute in the Cup Final on 17 May, he simply left the team before the match and did not return to the club for the last 10 days of training and tests before the summer holiday.
- The Appellant tried in many ways to contact the First Respondent, but only succeeded in the middle of June when the Appellant was informed that he was in Brazil, allegedly receiving treatments for an alleged injury.
- The Appellant repeatedly asked him to return since he was never allowed to leave Greece or to start medical treatments without the prior approval of the Appellant.
- The Appellant even bought an air ticket for the First Respondent in order to make it possible for him to return to Greece.
- The Contract was still valid during the First Respondent´s stay in Brazil.
- The Appellant was only slightly late with one payment to the First Respondent when he left.
- The bonus for the qualification to the UEFA CUP was not due until two month after the verification of the qualification.

4.11 The Parties present had an ample opportunity to present their cases, submit their arguments and answer the questions posed by the Panel. After the Parties' final submissions, the Panel closed the hearing and reserved its Final Award. The Panel listened carefully and took into account in its discussion and subsequent deliberations all the evidence and arguments presented by the Parties, also included in their written submissions, even if they have not been summarised in the present Award. Upon closure, the Parties present expressly stated that they did not have any objection in respect of their right to be heard and to be treated equally in these arbitration proceedings.

5. CAS JURISDICTION AND ADMISSIBILITY OF THE APPEAL

5.1 Article R47 of the Code states as follows: *"An appeal against the decision of a federation, association or sports-related body may be filed with the CAS insofar as the statutes or regulations of the said body so provide or as the parties have concluded a specific arbitration agreement and insofar as the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of the said sports-related body".*

5.2 With respect to the Decision, the jurisdiction of the CAS derives from art. 64 par. 5 of the FIFA Disciplinary Code and art. 67 of the FIFA Statutes. In addition, neither the Appellant nor the Respondents objected to the jurisdiction of the CAS, and all Parties confirmed the CAS jurisdiction when signing the Order of Procedure.

5.3 The Decision with its grounds was notified to the Appellant on 25 October 2012, and the Appellant's Statement of Appeal was lodged on 14 November 2012, i.e. within the statutory time limit set forth by the FIFA Statutes, which is not disputed. Furthermore, the Statement of Appeal and the Appeal Brief complied with all the requirements of Articles R48 and R51 of the Code.

5.4 It follows that the CAS has jurisdiction to decide on the present Appeal and that the Appeal is admissible.

5.5 Under Article R57 of the Code, the Panel has full power to review the facts and the law and may issue a *de novo* decision superseding, in whole or in part, the decision appealed against.

6. APPLICABLE LAW

6.1 Art. 66 par. 2 of the FIFA Statutes states as follows: *"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".*

6.2 Article R58 of the Code states as follows: *"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

6.3 The Panel notes that in the present matter the Parties have not agreed on the application of any specific national law. The applicable law in this case will consequently be the regulations of FIFA and, additionally, Swiss law, which is not contested by the Parties

6.4 The present matter concerns a breach of contract committed in 2008, and the matter was submitted to FIFA on 21 July 2008. Therefore, the Panel concluded that the 2008 edition of the Regulations on the Status and Transfer of Player (the FIFA-RSTP) is applicable.

7. THE PARTIES' REQUESTS FOR RELIEF AND POSITIONS

7.1 The following outline of the Parties' requests for reliefs and positions is illustrative only and does not necessarily comprise every contention put forward by the Parties. The Panel, however,

has carefully considered all the submissions and evidence filed by the Parties with the CAS, even if there is no specific reference to those submissions or evidence in the following summary.

7.2 **The Appellant:**

7.2.1 In its Statement of Appeal of 14 November and in its Appeal Brief of 26 November 2012, the Appellant requested the following from the CAS:

1) To set aside the Decision;

2) To rule that the FIFA Dispute Resolution Chamber had no competence to pass a decision in the present dispute;

3) To condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred;

4) To establish that the costs of the arbitration procedure shall be borne by the Respondents.

Subsidiarily, and only in the event that the above is rejected:

5) To set aside the Decision;

6) To establish that there was no breach of contract by the Appellant and no compensation payable to the First Respondent;

7) To establish that the First Respondent has breached the contract and is liable to pay compensation to the Appellant;

8) To condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred;

9) To establish that the costs of the arbitration procedure shall be borne by the Respondents.

Subsidiarily, and only in the event that the above is rejected:

10) To set aside the Decision;

11) To establish that the First Respondent is entitled to receive only the amount that was outstanding at the time of the termination of the contract and that no compensation is payable to the First Respondent and that in any case, if compensation was payable, the amount of such compensation shall be much lower that the awarded one;

12) To condemn the Respondents to the payment in the favour of the Appellant of the legal expenses incurred;

13) To establish that the costs of the arbitration procedure shall be borne by the Respondents.

7.2.2 In support of its request for relief, the Appellant submitted as follows:

a) The FIFA DRC was not competent to pass the Decision for two reasons.

b) First of all the First Respondent indisputably retired from organised football by May 2009 and, as a result, he did not fall under the jurisdiction of FIFA anymore at the time of the Decision in 2011.

c) Based on these circumstances, the DRC should have proceeded by closing the file since only active football players can be parties to proceedings before the FIFA legal bodies.

d) However, even in the beginning of the procedure before the DRC, when the First Respondent was still an active football player under the jurisdiction of FIFA, the DRC was not competent to decide on the matter.

e) It is undisputed between the Parties that Clause 10 of the Contract sets out:

"All disputes between the parties are settled by the Committee of the Resolution of Financial Disputes (PEEOD) at first instance, and the Court of Arbitration of the H.F.F. at second instance".

f) Since both the PEEOD and the HFFAC, in their current form, are independent arbitration tribunals guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs, the First Respondent was obliged to file his claim with the said Greek legal bodies and not with FIFA, which had no jurisdiction over the matter.

g) The conclusion by the DRC that the PEEOD and the HFFAC do not comply with the said principles is rejected as untrue and without any real justification.

h) When reading the decision from the PEEOD and the HFFAC, it is evident that the requirements of the FIFA Circular Letter 1010 of 20 December 2005 are met by both legal bodies, which are both independent arbitration tribunals guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs.

i) In fact, the said bodies in their current form totally respect *"a) the principle of parity, since the parties have equal influence over the appointment of the arbitrators, b) the principle of equal representation of players and clubs since they consist of equal numbers of clubs´ and players´ representative, c) the principle of fair hearing since each party has the right to be heard and to present its position together with the pertinent evidences, d) the principle of equal treatment, e) the right of a party to challenge an arbitrator when there is doubt as to his independence and finally, f) the right of its party co comment on the allegations of the other party".*

j) Furthermore, the present dispute already had been submitted to and heard and decided by both the PEEOD and the HFFAC as competent bodies at a national level.

k) The claim by the Appellant was filed with the PEEOD before the First Respondent´s claim was filed with the DRC and the First Respondent had been duly and legally summoned as confirmed in the PEEOD decision.

l) The FIFA DRC was well aware of that fact when issuing the Decision, since the Second Respondent had repeatedly asked the HFF regarding the applicable procedural rules.

m) On the other hand, the Appellant had not received any communication from the Second Respondent with regard to the present dispute for more than 2½ years, from the time when the Appellant informed the Second Respondent of the PEEOD decision and the

appeal to the HFFAC until the summer of 2011 when the Second Respondent asked the Appellant to provide the Second Respondent with its final position on the matter.

n) Thus, the Appellant naturally believed that the Second Respondent had closed the case, as it was obliged to do, since the matter had already been decided by the Greek competent bodies.

o) Given these circumstances, there was a *"res judicata"* situation, and the FIFA DRC was consequently prohibited from dealing with the substance of the matter and even more prohibited from deciding on it.

p) In the event that the Panel would find that the FIFA DRC was competent to decide on the dispute, the Appellant submits that the Decision has to be set aside, also because of the wrong evaluation of the case by the DRC.

q) The Contract was solely breached by the First Respondent.

r) The First Respondent was the one breaching the Contract by abandoning his team and leaving for Brazil without permission or any notice.

s) Furthermore, the First Respondent, who was allegedly injured, submitted to medical examinations and intensive treatment without being examined by the Appellant´s medical staff despite the fact that he was obliged to do so under the Contract.

t) Finally, although asked to do so many times, the First Respondent never returned to the Appellant for the first meeting of the new season.

u) The First Respondent never had any legal valid reason for terminating the Contract for breach by the Appellant as alleged by the First Respondent.

v) The First Respondent submits that the Appellant breached the Contract by not paying him the salaries for April, May and June 2008, which, according to the First Respondent was, a valid reason for terminating the Contract.

w) This submission is denied by the Appellant.

x) On 17 May 2008, when the First Respondent left the team at the Cup Final, the only outstanding amount due to the First Respondent was the salary for April 2008 of EUR 74,969.53 (gross)/EUR 59,075.98 (net), which was due for only two weeks, however.

y) Thus, obviously, at that moment there was no valid reason for the First Respondent to leave the team or to terminate the Contract.

z) At the maximum, in June 2008, during the time when the First Respondent refused to return to Greece to be examined by the Appellant´s medical staff, the outstanding amount due to the First Respondent was two salaries being due for less than two months (the April and May 2008 salaries).

aa) It has to be remembered that the First Respondent had at that time already received, following his request, an advance payment corresponding to the salaries of the first three months, that is EUR 180,000.00 (net)/EUR 228,426.00 (gross).

bb) Thus, the First Respondent has definitely no valid reason to terminate the Contract.

cc) What is even more significant is the fact that the First Respondent actually never put the Appellant in default.

dd) It cannot be disputed that the First Respondent never asked for payment of any amount due and did not put the Appellant in default for any payment why he was anyway not entitled to proceed with the termination of the Contract.

ee) The First Respondent only referred to the outstanding salaries for the first time in his letter of 27 June 2008, that is after all the serious violations of the Contract that he committed, and only after that was he informed that if he would not appear personally in Greece at the first meeting of the team for the new season and to be examined by the Appellant´s medical staff, the Appellant would proceed with the termination of the Contract. On grounds of his breach.

ff) Thus, the unpaid salaries were only used as an excuse in an effort to cover his own serious violations of the Contract.

gg) Even in the letter of 27 June 2008 the First Respondent never set a deadline for the payment, nor did he state or imply that we would terminate the Contract if the salaries were not paid.

hh) Even if the said letter was to be seen as a way of putting the Appellant in default, still this letter was only forwarded to the Appellant a long time after the First Respondent himself seriously breached the Contract.

ii) It is thus obvious that the First Respondent never had any valid reason for terminating the Contract and that the FIFA DRC was wrong when deciding that the First Respondent had just cause, and the Decision consequently has to be set aside.

jj) Also, it has to be mentioned that the First Respondent was not injured when he left for Brazil and that he never documented to the Appellant that he was actually injured during his stay in Brazil.

kk) Notwithstanding the fact that the Appellant had no valid reason for terminating the Contract, the Appellant, for the sake of good order, submits the following with regard to the amount claimed by the First Respondent and the amount awarded to him in the Decision.

ll) Before the FIFA DRC, the First Respondent asked for payment of EUR 1,274,908.59, including EUR 224,908.59 for alleged outstanding salaries, EUR 50,000.00 for the UEFA qualification bonus and finally EUR 1,000,000.00 as compensation for the alleged breach of contract by the Appellant.

mm) First of all, the amount of EUR 224.908.59 is incorrect since the said amount is the gross amount payable according to the Contract while the NET amount would only entitle the First Respondent to receive EUR 177,227.97 for April, May and June 2008.

nn) In addition, the claimed bonus for the qualification to the UEFA CUP was not payable at the time when the First Respondent breached the Contract.

oo) Furthermore, the claimed compensation amounting to EUR 1,000,000.00 should have been rejected, since it was actually the First Respondent who breached the contract and not the Appellant.

pp) Even if the FIFA DRC was of the opinion that it was the Appellant who breached the Contract, the claimed compensation should have been reduced to an appropriate and not disproportionate level.

qq) In any event, the First Respondent should have mitigated his alleged loss, which he never did.

rr) The Appellant submits that the agreement between the First Respondent and his new club, Guarani Football Club, for a monthly salary which was less than 1/15 of the monthly salary he was receiving from the Appellant, does not constitute a proper effort to mitigate his loss.

ss) In case the Panel finds that the Second Respondent was competent to decide on the matter, the Appellant asks the Panel to set aside the Decision and rule that it was the First Respondent that breached the Contract and, therefore, is liable for paying compensation to the Appellant.

tt) It is submitted that this claim for compensation is not inadmissible even if more than two years have elapsed since the event gave rise to the dispute.

uu) The reason for the counterclaim not being filed before was the delay of the Second Respondent in dealing with case.

vv) Furthermore, the procedural rules regarding the two years prescription refer only to procedures before the Second Respondent´s legal bodies and therefore, since no such prescription exists under Swiss law and since CAS is deciding the case ex novo, the Panel can also hear and decide on the request of the Appellant that the First Respondent be found liable for the breach of the Contract without just cause.

ww) However, since the First Respondent has retired from professional football, the Appellant requests the Panel to award to the Appellant as compensation for the breach of the Contract the amount of EUR 310,000.00, corresponding to 50% of the residual value of the Contract at the time of the termination, for breach by the First Respondent.

xx) The Panel is furthermore requested to rule that any outstanding amount payable to the First Respondent from the Contract, shall be equally offset against any awarded compensation payable to the Appellant.

7.3 **The First Respondent:**

7.3.1 In its Answer of 13 December 2012, the First Respondent requested the following from the CAS:

1) To reject the Appellant's appeal against the Decision and confirm the Decision in its entirety.

7.3.2 In support of its request for relief, the First Respondent submitted as follows:

a) The Second Respondent was the only competent body to appreciate the claim brought before it by the First Respondent.

b) The HFF does not fulfill the minimum requirements to be considered an independent arbitration tribunal.

c) Moreover, the HFF did not proceed correctly regarding the summoning of the First Respondent according to the FIFA rules.

d) Furthermore, the First Respondent never breached the Contract.

e) The Appellant never denied that it did not pay the outstanding salaries to the First Respondent, which clearly constitutes a breach of the Contract, the natural consequence hereof being the termination of the Contract.

f) The Appellant was brought in default by the First Respondent´s letter of 27 June 2008, but nevertheless did not pay the outstanding amount.

g) Thus, the Decision is correct and should not be subject to modification.

7.4 The Second Respondent:

7.4.1 In its Answer of 19 December 2012, the Second Respondent presented the following requests for relief:

1) To reject the Appellant's appeal against the Decision and confirm the Decision in its entirety.

2) To order the Appellant to cover all the costs incurred with the present procedure.

3) To order the Appellant to bear all legal expenses of the Second Respondent related to the procedure at hand.

7.4.2 In support of its requests for relief, the Second Respondent submitted as follows:

a) The Decision is fully justified and must be upheld by the CAS.

b) The DRC of the Second Respondent forms part of a private dispute resolution system of a Swiss association, i.e. FIFA, founded in accordance with art 60 ff. of the Swiss Civil Code (cf. art 1 of the FIFA Statutes).

c) In accordance with art 22 lit.b) in conjunction with art 24 par. 1 of the FIFA-RSTP, the DRC, is, as a general rule, competent to deal with employment-related disputes between a club and a player of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceeding and respecting the principle of equal representation of player and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement.

d) If such an independent arbitration tribunal exists at national level, then an employment-related dispute between a club and a player of an international dimension may be referred

to that national body, provided that the parties have explicitly chosen to submit such dispute to the pertinent body by means of a respective agreement on jurisdiction.

e) Yet, in cases where, despite such choice of forum, one of the parties nevertheless refers a possible dispute to the DRC and the competence of the DRC is contested by the other party, the DRC would have to examine whether the relevant national body is an independent arbitration tribunal guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs.

f) Should this be the case, the DRC would have to decline its jurisdiction and refer the parties to the national body originally chosen by the parties.

g) However, if the relevant requirements are not met by the national body, the DRC would not recognise the jurisdiction of the national body and would consequently accept its own competence to decide on the matter.

h) The Second Respondent submits that according to the general legal principles it is up to the party contesting the jurisdiction of the FIFA body and claiming that the national body meets the relevant prerequisites, in casu the Appellant, to prove the existence of such a body at national level.

i) According to general legal principles in order to guarantee fair proceedings, the procedure of any deciding authority must respect at least the following criteria:

- Principle of parity when constituting the arbitration tribunal;
- Right to an independent and impartial tribunal;
- Principle of a fair hearing;
- Right to contentious proceedings;
- Principle of equal treatment.

j) These principles have been implemented by the Second Respondent by means of various documents in order to provide the Member Associations with the possibility to create their own national dispute chamber.

k) These principles are recalled in FIFA Circular Letter 1010 dated 20 December 2005, which provides clarification concerning the criteria that must be fulfilled for an arbitration tribunal to be qualified as independent and duly constituted under the FIFA Statutes and are included in the Second Respondent´s National Dispute Resolution Chamber Standard Regulations (the NDRC Standard Regulations), which came into force on 1 January 2008.

l) One of the essential principles contained in FIFA Circular Letter 1010 is the principle that the national dispute resolution chamber needs to respect the principle of equal representation of players and clubs. This principle is absolutely essential and indispensable for the proper settlement of employment-related disputes in the world of football as already confirmed by the CAS in CAS 2010/A/2289 and CAS 2008/A/1518.

m) According to the Panel in CAS 2008/A/1518:

"Only if the following conditions are met, can an employment-related dispute of international dimensions be settled by an organ other than the DRC:

a. There is an independent arbitration tribunal at the national level;

b. The jurisdiction if this independent arbitration tribunal derives from a clear reference in the employment contract; and

c. *This independent arbitration tribunal guarantees fair proceedings and respects the principle of equal representation of players and clubs".*

n) These conditions must be met by the national arbitration tribunal not only "on paper" but also in practice, which was not the case in this matter.

o) According to the Appellant, the DRC was not competent to decide on the matter, since the Appellant and the First Respondent in art. 10 of the Contract decided to have any dispute settled *"by the Committee of the Resolution of Financial Disputes (PEEOD) at first instance, and the Court of Arbitration of the HFF at second instance"*. Since these decision-making bodies according to the Appellant in their current form are independent arbitration tribunals guaranteeing fair proceedings and respecting the principle of equal representation of players and club, the First Respondent was obliged to file his claim with the PEEOD.

p) Since the Second Respondent acknowledges the existence of a valid and relevant arbitration clause, the DRC had to examine, based on the documents provided, whether or not the PEEOD and the HFFAC are independent arbitration tribunals guaranteeing fair proceedings and respecting the principle of equal representation of players and club, which is not the case.

q) The Second Respondent refers to art. 41 G.5. of the HFF Statutes and art. 22 of the Regulations on the Status and Transfer of Players of the HFF (hereinafter referred to as the "HFF-RSTP"), which in relation to the composition of the PEEOD stipulate that the PEEOD is composed of five members. Furthermore, the HFF-RSTP state in art. 22 par. 3 that *"the President of the Committee and his substitute, are active higher judiciaries, and in case it is not possible for an active judiciary to participate, then a non-active judiciary is appointed. The other members are appointed, depending the dispute, two by each party"*. The relevant article of the HFF Statutes is slightly different and provides that *"the chairman of the Committee and his substitute are active higher judiciaries. In the event that an active judiciary is not able to participate, then a non-active judiciary is appointed. Two(2) members are appointed from the Board of directors of the Pan-Hellenic Professional Players Association (PSAP) and two (2) from the Board of Directors of the Professional Associations"*.

r) There is no indication whatsoever in both documents on how exactly the relevant active higher judiciaries are appointed, and whether, as required by the NDRC Standard Regulations, the said judiciaries are appointed by consensus of the player and club representatives. Hence, the said provisions are not in compliance with art. 3 of the NDRC Standard Regulations, which, among other things, requires that a chaiman and deputy chairman are chosen by consensus by the player and club representatives.

s) The same issue applies to the composition of the HFFAC. According to art. 41 G.1. of the HFF Statutes, the HFFAC is composed of three members consisting of its President and his substitute, who are to be supreme active judiciaries, and two members, who are appointed *"each by each Party"*. Similarly to the provisions governing the composition of the PEEOD, the provisions governing the composition of the HFFAC do not demonstrate how exactly the President and his substitute are appointed, who they are, from which list they are chosen and whether they are qualified lawyers.

t) On account of this and when examining the relevant rules, it must be concluded that the said decision-making bodies do not respect the principle of equal representation of players and clubs.

u) When reading the relevant decisions of the PEEOD and the HFFAC, it appears that there is even less equal representation than indicated in the pertinent rules and regulations. In the decision from the PEEOD, it is stated that the PEEOD comprised a Chairman, a "Reporting Justice", a Clerk and only three members, i.e. clearly a composition consisting of an unequal representation of clubs and players. The same applies to the composition of the HFFAC, which was composed of a Chairman, a "Reporting Justice", a clerk and only one member when deciding the dispute.

v) Hence, also in practice, the said decision-making bodies definitely do not comply with the minimum procedural standards in order to be recognised as an independent arbitration tribunal as established in art. 22 lit. b) of the FIFA-RSTP as well as in FIFA Circular Letter 1010 and the NDRC Standard Regulations.

w) In relation to procedural costs, according to art 31 of the NDRC Standard Regulation, proceedings before the national dispute resolution chambers are free of charge. This ensures that the relevant parties to a proceeding have the highest possible level of access to justice.

x) According to art. 58 of the Procedural Rues of the Dispute Resolution Committees, as well as of the last part of the decisions rendered by the PEEOD and the HFFAC, it appears that procedural costs are charged in proceedings before the said bodies, which is clearly contrary to the NDRC Standard Regulations.

y) In the decisions of the PEEOD and the HFFAC, it is mentioned that *"it is required by the time the proceedings begin, to submit a voucher the amount of which is set out by the respective association"*. Finally, the PEEOD ordered that the *"defendant player to pay out the court fees suffered by the claimant club to the amount of four hundred Euro"*.

z) Thus, the rules and regulations governing the proceedings of the said decision-making bodies create a barrier in order for players and clubs to access justice which is contrary to art. 31 of the NDRC Standard Regulations.

aa) Before the DRC the Appellant asserted that the First Respondent was duly summoned to the proceedings relating to the claim lodged against him with the PEEOD and the HFFAC.

bb) However, the Appellant never submitted any documentary evidence to establish this.

cc) The only "so-called" evidence submitted by the Appellant in this respect consists of a reference to the decision of the said bodies. In the relevant part, the decision rendered by the PEEOD reads as follows: *"Therefore, the judicial recourse as to the part that is deemed legal, must be further examined as to its merits in the absence of the defendant who did not attend at the entry of the case form the docket, since – as established by the Service Report Nr. 4186/21.7.2008 of the Process Server with the Court of First Instance of Thessaloniki Mr. Memetrios Gotzias and the summons of the Clerk of this here Committee attached to Prot. Nr. 19549/30.07.2008 document of the HFF he was served a copy of the claim heard and was promptly summoned to attend during the hearing hereof".*

dd) During the proceedings before the DRC, the First Respondent continuously and firmly denied having been summoned to the proceedings.

ee) It should be noted in that connection that the address of the First Respondent, as mentioned in the decision of PEEOD, was the First Respondent's address in Greece. It follows from the Procedural Rules of the Disputes Resolution Committee that the complaint must contain, inter alia, the name, surname and address of each party. As explained by the Appellant, in mid-May 2008 the Appellant already knew that the First Respondent had gone to Brazil and therefore was not present at his Greek address. This means that the Appellant stated the Greek address in bad faith when filing its claim against the First Respondent, which must be presumed to have resulted in an attempt to summon the First Respondent at this address, notwithstanding that the Appellant was aware that he would not be present here.

ff) In view of the foregoing, and since there is no conclusive evidence to the contrary, it should be assumed that the First Respondent was never duly notified of the proceedings before the PEEOD and the HFFAC. Consequently, the relevant procedure violated fundamental procedural rules and, thus, the pertinent decisions cannot be taken into account.

gg) Based on that, the Second Respondent submits that the evidence provided by the Appellant is by far not conclusive to meet its respective burden of proof that the First Respondent was indeed duly notified of the proceedings initiated against him in Greece in order to have his procedural rights respected, in particular the right to be heard and the right to object to the competence of the decision-making body, which are vital rights for any counterparty in any proceedings that are being conducted.

hh) The Appellant states that the DRC was not competent to decide on the claim of the First Respondent, since it asserts that the Second Respondent has violated the principle of res judicata as the dispute had already been decided by the PEEOD and the HFFAC.

ii) However, the question of res judicata is in the present matter evidently directly connected to the question whether the national dispute resolution chambers have competence to decide on the matter.

jj) As already submitted, this is not the case since the PEEOD and the HFFAC are not independent arbitration tribunals guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs.

kk) Consequently, the DRC rightfully did not feel bound by the pertinent decisions rendered by these decision-making bodies since they were not considered to be valid final

judgments, and the DRC therefore decided, perfectly legally, that it was competent to deal with the matter and issued a new decision as to the substance of the relevant dispute.

ll) The Appellant has further submitted that the DRC was not competent to decide on the claim submitted by the First Respondent since the First Respondent retired from organised football as early as in May 2009, and – according the the Appellant – he is consequently no longer subject to the regulations and jurisdiction of the Second Respondent.

mm) This argument is rejected by the Second Respondent.

nn) In cases where a player lodges a claim with the Second Respondent, the triggering moment in determining whether or not the player still falls under FIFA jurisdiction is the date on which the claim is lodged. Otherwise, the player would be entirely dependent on the pace at which the FIFA administration deals with the relevant claim, which obviously cannot work to the detriment of the player.

oo) The Appellant has furthermore submitted that the DRC wrongly dismissed the Appellant´s counterclaim on the ground that more than two years had elapsed since the event giving rise to the dispute as the reason for this was the delay caused by the Second Respondent in dealing with the claim.

pp) Since the Second Respondent allegedly had not sent any correspondence to the Appellant regarding the matter for almost three years, i.e. since the Appellant had notified the Second Respondent that a decision on the same dispute had been made by the PEEOD and the HFFAC, the Appellant believed, as it asserts, that the case was closed.

qq) The Second Respondent categorically rejects these arguments.

rr) According to art. 25 par. 5 of the FIFA-RSTP, the decision-making bodies of the Second Respondent shall not hear any dispute if more than two years have elapsed since the event giving rise to the dispute, and the application of this time limit shall be examined ex officio in each individual case.

ss) The Appellant only lodged its counterclaim with the Second Respondent on 5 October 2011, although it was already informed about the claim lodged by the First Respondent on 28 July 2008.

tt) The Second Respondent and the Appellant exchanged several letters during 2008, 2009 and 2011, which is why there was no reason for the Appellant to believe that the case was no longer pending.

uu) Furthermore, and as the Appellant is aware, it corresponds to the constant practice of the Second Respondent to inform the parties of a case whenever a procedure is closed.

vv) The Appellant had ample time at its disposal to lodge its counterclaim within the two-year deadline, but decided not to do so.

ww) Therefore, the DRC rightly declared the counterclaim to be barred by the statute of limitation in application of art. 25 par. 5 of the FIFA-RSTP.

xx) Furthermore, and for the sake of good order, the counterclaim would in any case lack any justification.

yy) With regard to the Decision of the DRC dated 1 March 2012, the Second Respondent fully endorses it.

zz) The DRC acted in accordance with both the long-standing jurisprudence of the CAS and with fundamental principles of Swiss Labour Law.

aaa) The Appellant never contested not having paid the First Respondent, and the Appellant was put in default by the First Respondent's letter of 27 June 2008.

bbb) Hence, the DRC was perfectly right in concluding that the Appellant was liable to pay to the First Respondent the outstanding remuneration as well as compensation for breach of contract.

8. DISCUSSION ON THE MERITS

8.1 Initially, the Panel notes that it is not disputed between the Parties that on 16 January 2008 the Appellant and the First Respondent concluded the Contract in which they agreed as follows:

"10. Resolution of disputes

All disputes between the parties are settled by the Committee of the Resolution of Financial Disputes (PEEOD) at first instance, and the Court of Arbitration of the H.F.F. at second instance".

8.2 Furthermore, it is undisputed between the Parties that because the First Respondent left the Appellant and went to Brazil in May 2008, this caused an employment-related dispute concerning a possible breach of contract, the termination of the Contract and, if applicable, a resulting right to compensation as a result hereof.

8.3 The Parties disagree whether the Player was actually still under the jurisdition of the Second Respondent at the time of the Decision since from May 2009 he was no longer a part of organised football. However, in the affirmative, the Parties agree that the FIFA-RSTP is applicable to the specific conflict, one of the effects of which is that the following provision of the FIFA-RSTP must be applied:

"Article 22 Competence of FIFA

Without prejudice to the right of any player or club to seek redress before a civil court for employment related disputes, FIFA is competent to hear;

a) …

b) *employment-related disputes between a club and a player of 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 with the framework of the association and/or a collective bargaining agreement;*

c) …

Article 24 Dispute Resolution Chamber (DRC)

1) The DRC shall adjudicate on any of the cases described under article 22 a), b) and e) with the exception of disputed concerning the issue of an ITC.

2) …".

8.4 Footnote number 101 of the FIFA Commentary on the 2005 edition of the FIFA-RSTP, which has not lost relevance with respect to art. 22 of the FIFA-RSTP as this article has not been amended since, provides further that:

"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 submiting potential disputes related to their employment relationship to this body".

8.5 It is undisputed between the Parties that art. 10 of the Contract contains such a *"clear reference"*.

8.6 Subject to the proviso set out in para. 7.3 above, the Parties also agree that the contents of FIFA Circular Letter 1010 of 20 December 2005 from the Second Respondent should be applied, reading as follows (in extract):

"FIFA has consequently addressed these queries and determined that the terms "independent" and "duly constituted" in accordance with art 60, par. 3(c) of the FIFA Stautes require that an arbitration tribunal meet the minimum (international) procedural standard as laid down in several laws and rules of procedure for arbitration tribunals, This ***minimum procedural standard*** *comprises the following conditions and principles:*

- ***Principle of parity when constituting the arbitration tribunal***

The parties must have equal influence over the appointment of arbitrators. This means for example that every party shall have the right to appoint an arbitration and the two appointed arbitrators appoint the chairman of the arbitration tribunal. The parties concerned may also agree to appoint jointly one single arbitrator. Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrator list.

- ***Right to an independent and impartial tribunal***

To observe this right, arbitrators (or the arbitration tribunal) must be rejected if there is any legitimate doubt about their independence. The option to reject an arbitrator also requires that the ensuing rejection and replacement procedure be regulated by agreement, rules of arbitration or state rules of procedure.

- ***Principle of a fair hearing***

Each party must be granted the right to speak on all facts essential to the ruling, represent its legal points of view, file relevant motions to take evidence and participate in the proceedings. Every party has the right to be represented by a lawyer or other expert.

- ***Right to contentious proceedings***

Each party must be entitled to examine and comment on the allegations files by the other party and attempt to rebut and disprove them with its own allegations and evidence.

- ***Principle of equal treatment***

The arbitration tribunal must ensure that the parties are treated equally, Equal treatment requires that identical issues are always dealt with in the same way vis-á-vis the parties".

8.7 The Parties therefore fundamentally agree that a clear agreement has been concluded between the Appellant and the First Respondent, according to which *"All disputes between the parties are settled by the Committee of the Resolution of Financial Disputes (PEEOD) at first instance, and the Court of Arbitration of the H.F.F. at second instance".*

8.8 Moreover, the Parties fundamentally agree that the Second Respondent was competent to hear and decide the employment-related dispute between the Appellant and the First Respondent only in so far as the First Respondent was still subject to the jurisdiction of the Second Respondent, notwithstanding that the First Respondent has no longer been a part of organised football since May 2009 on account of his retirement, and provided that the PEEOD and the HFFAC could not rightly be considered to be *"independent arbitration tribunals guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs".*

8.9 Thus, the main issues to be resolved by the Panel are:

a) Was the FIFA Dispute Resolution Chamber competent and entitled to hear and decide on the First Respondent´s claim against the Appellant?

b) In the event that a) is answered in the negative, what is the consequence hereof?

c) In the event that a) is answered in the affirmative, who did in fact terminate the Contract and was such termination with just cause?

d) What are the legal consequences of the answer to c) for the quantum of any compensation that may be awarded to the other party to the Contract?

e) In the event that a) is answered in the affirmative, is the Appellant then entitled to have its counterclaim against the First Respondent heard and decided on?

a) Was the FIFA Dispute Resolution Chamber competent and entitled to hear and decide on the First Respondent´s claim against the Appellant?

8.10 The Appellant generally asserts that the Second Respondent was not competent to hear and decide on the First Respondent´s claim as the First Respondent, due to his retirement from organised football in May 2009, was under no circumstances subject to the Second Respondent´s jurisdiction any longer.

8.11 This argument is rejected by the Respondents as the Second Respondent submits that where a player lodges a claim with the Second Respondent, the triggering moment in determining whether or not the player still falls under FIFA´s jurisdiction is the date on which the claim is lodged. Otherwise, the player would be entirely dependent on the pace at which the FIFA administration deals with the relevant claim, which obviously cannot work to the detriment of the player.

8.12 The Panel notes initially that neither the FIFA Statutes nor the FIFA-RSTP contain provisions about the time that will be used for determining whether a player is still subject to the Second Respondent´s jurisdiction in case the player ends his career.

8.13 One of the purposes of establishing the Second Respondent´s dispute resolution system, however, is to ensure uniform consideration of disputes in the world of football to the benefit of all members of the football family.

8.14 To ensure the fulfilment of this objective, among other purposes, the Panel is of the opinion that the Second Respondent´s jurisdiction cannot be determined by whether a player is still registered as an active player and, therefore, still a part of organised football at the time when a dispute is transferred from the administrative claims handling procedure of the Second Respondent to formal proceedings before another body – or even at the time of dispute resolution.

8.15 Accordingly, if a player is still a part of organised football at the time when a claim is lodged with the Second Respondent, the player is subject to the Second Respondent´s jurisdiction, naturally provided that all other requirements for jurisdiction have also been met. Having said this, the Panel does not take any decision on the question, whether or not a player needs to be a part of the organised football family at the time when the claim is lodged or whether it suffices for the FIFA dispute resolution mechanism to apply that the player was part of the organised football family at the time the contract was executed or the claim has arisen.

8.16 As the First Respondent was indisputably a part of organised football as an active player in June 2008 when the claim against the Appellant was lodged with the Second Respondent, the Panel concludes that the fact that the Player ended his professional career in organised football in May 2009 does not automatically exclude the claim from the jurisdiction of the Second Respondent, regardless of how far the claim had come in the Second Respondent´s internal claims handling procedure in May 2009. The Claim filed by the First Respondent therefore falls within the subject-matter jurisdiction of the FIFA DRC.

8.17 The Appellant subsequently submits that the Second Respondent was under no circumstances competent to deal with the First Respondent´s claim on the ground that the Appellant and the First Respondent had entered into an express agreement stipulating that *"All disputes between the parties are settled by the Committee of the Resolution of Financial Disputes (PEEOD) at first instance, and the Court of Arbitration of the H.F.F. at second instance"*.

8.18 Against the background of this agreement, the Appellant submitted that the First Respondent was supposed to have filed his claim with PEEOD, and the Second Respondent should therefore have refused to deal with the claim.

8.19 The Second Respondent, which recognises the agreement referred to, denies the allegation that it has no jurisdiction to consider the claim lodged by the First Respondent, and submits with reference to the above-mentioned rules that the PEEOD and the HFFAC cannot be deemed

to be *"independent arbitration tribunals guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs"*.

8.20 In support of this view, the Second Respondent mentions in particular that the PEEOD and the HFFAC a) do not respect the principle of equal representation of players and clubs, b) by charging payment for conducting proceedings fail to ensure the relevant parties the highest possible level of access to justice, and c) have not specifically respected the right to be heard as the First Respondent has not been summoned in an adequate and satisfactory manner.

8.21 The Panel initially notes that, as rightly mentioned by the Second Respondent, the principle of equal representation of players and clubs is a fundamental principle of art. 22 of the FIFA-RSTP and also according to FIFA Circular Letter 1010 communicated to all national federations.

8.22 This principle implies, among other effects, that the parties to a case must have equal influence over the appointment of arbitrators.

8.23 Even so, this principle does not imply that the parties will in all circumstances be entitled to appoint all arbitrators when just one party does not exert more or different influence on the appointment of arbitrators compared to the other party.

8.24 The Panel is aware that art. 3 of the NDRC Standard Regulations provides that the chairman and the deputy chairman shall be *"… chosen by consensus by the player and club representative from a list of at least five persons drawn up by the association´s executive committee"*.

8.25 However, the NDRC Standard Regulations solely contain recommendations prepared by the Second Respondent, which are therefore not legally binding on the national associations, and the Second Respondent, when presented directly with this question during the hearing, confirmed its agreement with the view held here.

8.26 After having carefully reviewed the HFF Statutes and the HFF-RSTP, both of which regulate the composition of the HFFAC and the PEEOD, respectively, the Panel concludes that both sets of rules contain principles which, if complied with, respect the principle of equal representation of players and clubs.

8.27 The Panel notes, for instance, that both sets of rules lay down how the ordinary arbitrators are appointed equally either by the parties themselves or by the Board of Directors of the Pan-Hellenic Professional Players Association and the Board of Directors of the Professional Associations, respectively.

8.28 Furthermore, the Panel notes, which was also confirmed during the hearing, that the chairman is in both cases appointed independently of the parties and on an objective basis.

8.29 The Panel also notes that it does not in itself represent a departure from the principle of equal representation that one of the appointed arbitrators serves as "Reporting Justice". The term

"Reporting Justice" [or better "Reporting Judge"] only indicates that the respective judicial body (that was composed of several members) proceeded to distribute its internal workload in a particular way. In fact, it is common practice among judges sitting on a bench to appoint one of its members to prepare the deliberation and the decision. No additional decision-making powers follow from this kind of organisation of internal workload. All judges sitting on the bench have the same voting power when it comes to decide the case. To conclude, therefore, the Panel holds that this common practice to be found in most jurisdictions does not upset the balance of influence on the case that is held by the appointed arbitrators.

8.30 The Panel agrees with the Second Respondent, however, that it is not sufficient that the principle of equal representation appears from the relevant sets of rules if these are not complied with during the actual proceedings before the legal body concerned.

8.31 After having reviewed the decisions from the PEEOD and the HFFAC, respectively, the Panel does not find, however, that the principle of equal representation has been departed from in these specific cases.

8.32 According to the Panel no inbalance of the constitution of the arbitral tribunal can be followed from the fact that not all arbitrators have signed the decisions concerned. It is, e.g., common practice at CAS that the award that is notified via fax to the parties contains only the signature of the chairman of the Panel. This is a pure issue of practicality and is no indication of a violation of equal representation. Furthermore, the latter cannot be followed either from the fact that one of the arbitrators sitting on the bench was chosen to be the "Reporting Justice" in the case. This is – again – a purely adminsitrative way of distributing the internal workload and has nothing to do with unequal representation.

8.33 The Panel thus does not find that the Second Respondent, with reference to this principle, could rightly conclude that the PEEOD and the HFFAC do not constitute *"independent arbitration tribunals guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs"*.

8.34 With respect to the argument that only such national arbitral tribunal can be recognized as competent dispute resolution bodies by FIFA that do not provide for financial barriers for the access to justice, the Panel notes that most judicial bodies provide for some kind of court fee. It is to be noted that even the procedure before the DRC is not free of charge. While art. 18 par. 2 of the regulations applicable to the proceedings before the DRC provides that proceedings before it are free of charge, art. 17 of the same regulations provide that an advance of costs must be paid by the party submitting the claim. The advance of costs varies between CHF 1.000 and CHF 5.000 depending on the value in dispute. Art. 17 par. 6 of the above-mentioned FIFA regulations further states that *"the advance of costs paid … shall be duly considered in the decision regarding costs in accordance with art. 18"*. This is exactly what happened in the case at hand. The administrative fee that the Appellant had to deposit at the outset of the proceedings before the judicial organs of the HFF was *"duly considered"* in the decision of the PEEOD. It is the view held by this Panel that these kinds of administrative fees do not bar a person to seek access to justice. Rather, these adminitrative fees are intended to prevent frivilous claims. In light of the above and also taking into account the importance of access to justice the Panel

finds that a fee in the amount of EUR 400.00 – as was charged in the case at hand before the PEEOD – is compatible with the FIFA-RSTP and does not prevent the judicial instances of the HFF to be recognised as true arbitral tribunals within the meaning of art. 22 FIFA-RSTP.

8.35 The Panel thus does not find that the Second Respondent, with reference to the requirement of the First Respondent to reimburse to the Appellant the small (adminsitrative) fee paid by it in advance, could rightly conclude that the PEEOD and the HFFAC do not constitute *"independent arbitration tribunals guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs"*.

8.36 Lastly, the Second Respondent has alleged that the fundamental principle of the right to be heard has not been respected on the ground that the First Respondent has not been summoned in an adequate and satisfactory manner, and the requirement of fair proceedings has therefore not been met.

8.37 The Panel initially notes that, as rightly mentioned by the Second Respondent, the principle of the right to be heard represents an essential part of fair proceedings, and moreover, in compliance with for instance CAS 2008/A/1518, the Panel regards it as a duty for an independent arbitration tribunal to guarantee this right for all parties to a dispute. However, the Panel also notes that in the context of art. 22 of the FIFA-RSTP the requirement that the proceedings be fair and equitable must be assessed in the abstract. According to the applicable rules the DRC is not an appeal body designed to assess whether or not in an individual case the right to be heard of a party was violated and, thus, must assume jurisdiction. The rules on jurisdiction must be forseeable for both parties. Whether a certain judicial body is competent or not to decide the dispute must be ascertainable for the parties before the claim is lodged and cannot depend on instances that arise during the course of the proceedings. Thus, what is required in the context of art. 22 of the FIFA-RSTP is, whether or not the procedural rules applicable before the Helenic judicial bodies are such to enable a conduct of the procedure in a fair and equitable way. In the view of the Panel nothing in the applicable rules indicates the contrary. In particular the Panel notes that both the Statutes of the HFF (Statutes Implementation Regulations) and the Procedural Rules of the Disputes Resolution Committees provide that all parties must be summoned and given an opportunity to be heard during proceedings instituted before the HFFAC and the PEEOD, respectively. In particular, the Procedural Rules of the Disputes Resolution Committees describe the measures to be taken in the event that a party is not present at the designated home address. Thus, the Panel finds that also this prerequisite for a recognition of the judicial bodies of the Helenic Federation accoring to art. 22 of the FIFA-RSTP is fulfilled.

8.38 In the case at hand both Respondents do not submit that the rules of procedure applicable before the Greek judicial instance do not guarantee a fair and equitable process. Instead, what they claim is that in this individual case the rules of procedure, in particular the right to be heard, was violated because the First Respondent was not correctly summoned. The Respondents cannot be heard with this submission. Whether or not it complies with the right to be heard that the judicial correspondence from the PEEOD and the HFFAC were notified to the residence of the First Respondent in Greece can be left open here. In any event, once the First

Respondent had taken notice of the decision he could have appealed the decision to CAS on the grounds that it violated his right to be heard. Instead, the First Respondent has chosen not to appeal the decision before the CAS. If this, however, is the case, this Panel is prevented from looking into this matter, because whether or not the Greek decisions violated the First Respondent's right to be heard is not part of the matter in dispute here. It is only the Decision of FIFA that forms the matter in dispute before this Panel. Therefore, the Panel will not examine the question of notification being immaterial for the questions at stake before it.

8.39 The Panel thus does not find either that the Second Respondent, with reference to the alleged absence of a valid summons and the resulting failure to provide an opportunity to be heard during the proceedings, could rightly conclude that the PEEOD and the HFFAC do not constitute *"independent arbitration tribunals guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs"*.

8.40 Against this background, the Panel refers to the fact that the Parties, as already mentioned under para 7.7 above, fundamentally agree that the Second Respondent was competent to hear and decide the employment-related dispute between the Appellant and the First Respondent only in so far as the First Respondent was still subject to the jurisdiction of the Second Respondent, and provided that the PEEOD and the HFFAC could not rightly be considered to be *"independent arbitration tribunals guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs"*.

8.41 Notwithstanding that the Panel finds that the First Respondent and the claim lodged against the Appellant as set out in para 7.15 above, was *prima facie* subject to subject-matter jurisdiction of the DRC, the Panel concludes, given these circumstances, that the Second Respondent had no objective basis for concluding that the PEEOD and the HFFAC did not meet the requirements to be *"independent arbitration tribunals guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs"*.

8.42 Against this background, the Panel concludes that the FIFA Dispute Resolution Chamber was not competent and entitled to hear and decide on the First Respondent´s claim against the Appellant.

b) In the event that a) is answered in the negative, what is the consequence hereof?

8.43 As the Panel thus finds that the FIFA DRC was not competent to hear and decide on the First Respondent´s claim against the Appellant, the Decision has been rendered by a legal body that did not have the jurisdiction to do so, and the Decision must consequently be regarded as null and void.

8.44 In these circumstances, the Panel finds no grounds for considering the issues dealt with in para 7.8 c), d) and e).

8.45 It is important for the Panel to emphasise, however, that the Panel in this Award has not decided whether the First Respondent still has a claim against the Appellant, for instance for payment of salaries for the period April, May and June 2008, as well as a claim for payment of a bonus for the qualification to the UEFA CUP. Moreover, the Panel has not decided in this Award whether any such claim would be time-barred.

9. CONCLUSION

9.1 Based on the foregoing and after taking into consideration all evidence produced and all arguments made, the Panel finds that the FIFA DRC was not competent to hear and decide on the claim raised by the First Respondent against the Appellant on the ground that such a claim should rightly have been filed with the PEEOD as the body of first instance.

9.2 The Appeal is therefore upheld and the Decision of the FIFA Dispute Resolution Chamber on 1 May 2012 is annulled.

ON THESE GROUNDS

The Court of Arbitration for Sport hereby rules:

1. The Appeal filed on 14 November 2012 by ARIS Football Club against Mr Márcio Amoroso dos Santos and FIFA regarding the decision pronounced by the FIFA Dispute Resolution Chamber on 1 March 2012 is upheld.

2. The decision of the FIFA Dispute Resolution Chamber dated 1 March 2012 is annulled.

(…)

5. All further and other requests for relief are dismissed.