**Arbitration CAS 2010/A/2289 S.C. Sporting Club S.A. Vaslui v. Marko Ljubinkovic, award of 3 August 2011**

Panel: Mr Lars Hilliger (Denmark), President; Mr Michele Bernasconi (Switzerland); Mr Olivier Carrard (Switzerland)

*Football*
*Termination of the employment contract with just cause by the player*
*Standing to be sued*
*Scope of the appeal*
*Competence of the FIFA DRC to decide on employment-related disputes*
*Res judicata*
*Just cause*
*Compensation for damages*

1. **In order to be respondent to a proceeding before CAS, a party must either be expressly mentioned as a respondent in the statement of appeal or intervene on the basis of the related provisions of the CAS Code, unless otherwise foreseen in any applicable regulation. A party such as FIFA cannot therefore be "forced in" the proceedings after the time limit to file the statement of appeal has elapsed.**

2. **The scope of an appeal is limited to the contractual level of a case involving a club and a player and cannot concern the disciplinary sanctions imposed to the club by FIFA if FIFA has not been mentioned expressly as a party and did not intend to intervene.**

3. **According to article 22 lit. b) of the FIFA Regulations on the Status and Transfer of Players (RSTP), the FIFA Dispute Resolution Chamber (DRC) is the ordinary competent body to decide on employment-related disputes of an international dimension, without prejudice to the right of any player or club to seek redress before a civil court. The only exception is when an independent arbitration tribunal guaranteeing fair proceedings and respecting the principles of equal representation of players and clubs has been clearly established at national level within the framework of the association and/or a collective bargaining agreement (art. 22 lit. b) *in fine*). The reference to various competent "courts of jurisdiction" included in a football national federation's regulations is not clear enough to derogate to the general competence of the FIFA DRC. Furthermore, the first move of a player towards the national federation's body cannot be considered as an approval to submit the case to this jurisdictional body especially when, after having been duly informed of his rights, the player withdrew his request, which became void, and filed a claim before FIFA.**

4. **The principle of *res judicata* aims at avoiding that contradictory decisions be taken. In this respect, if an International Federation's first instance body such as the FIFA DRC**

**has been seized first, it has no reason to suspend the proceedings. On the contrary, in order to avoid the issuance of contradictory decisions, it is the duty of the national federation's body concerned to suspend the proceeding started by a club until the International Federation's first instance body has taken its decision.**

5. **A player who terminated an employment contract due to the breach of its financial contractual obligations by his employer after having addressed several letters to the club in order to solve the matter without receiving any reply, has just cause to terminate the contract.**

6. **Under the applicable national football federation's regulations, unless the contract stipulates otherwise, if the unilateral termination of the contract occurs during the protected period, the party found to be in breach of contract i.e. the club, shall pay to the player a compensation representing the total amount of financial rights that the player is entitled to up to the expiry of the contract, except for the game and objective bonuses. In the absence of an appeal of the player, a CAS panel would go *"ultra petita"* if it adjudicated a higher amount to the player than the one granted by the FIFA DRC on the basis of article 17 FIFA RSTP.**

S.C. Sporting Club S.A. Vaslui ("the Appellant") is a Romanian football club affiliated to the Romanian Football Federation ("the RFF"), a member of FIFA since 1923.

Marko Ljubinkovic ("the Respondent" or "the Player") is a professional Serbian football player. He is currently playing for the Cyprian club Anorthosis Famagusta.

On 18 June 2008, the Player and the Appellant signed an employment contract ("the Contract") starting on 1 July 2008 and ending on 1 July 2011.

According to its article XV, the Contract is governed by Romanian law, whereas article XVI, nr 12.2 provides that *"the parties will do their best to solve in an amiable manner any dispute controversies or misunderstandings that derive from or are related to the present contract. If this is not possible, the litigation will be sent for being solved only to the sporting courts of jurisdiction of FRF or LPF".*

The parties signed a *"financial addendum"* dated 15 June 2008 ("the Addendum"), which specified that the following remuneration would be provided by the Appellant to the Player:

Period 01.07.2008 – 01.07.2009

- EUR 200,000 net to be paid in 13 instalments as follows: the first instalment of EUR 100,000 to be paid on 15 July 2008 and the remaining amount of EUR 100,000 to be paid in 12 monthly instalments of EUR 8,335 each due on the 15th of each month.

Period 01.07.2009 – 01.07.2010

- EUR 250,000 net to be paid in 13 instalments as follows: the first instalment EUR 125,000 to be paid on 15 July [2009] ant the remaining amount of EUR 125,000 to be paid in 12 monthly instalments of EUR 10,415 each due on the 15th of each month.

Period 01.07.2010 – 01.07.2011

- EUR 350,000 net to be paid in 13 instalments as follows: the first instalment of EUR 175,000 to be paid on 15 July 2010 and the remaining amount of EUR 175,000 to be paid in 12 monthly instalments of EUR 14,585 each due on the 15th of each month.

In addition to the amounts above, art. 1 part. V and VI of the addendum provided for the following bonuses:

- *"the contract value"*, in case the Respondent is ranked in the 1st-2nd place (Champion's League),
- 50% of the value of the contract, respectively EUR 100,000, EUR 125,000 and EUR 175,000 if the Respondent is participating in the UEFA Cup or winning the Romanian Cup,
- EUR 3,000 for each victory at home or away,
- EUR 6,000 for victories against the teams *"Dinamo, Rapid, CFR-Cluj, Politehnica Timisoara"*,
- EUR 12,000 for victories against *"Steaua"*.

Art. 1 part. VII of the addendum adds that the bonuses and the premiums are paid *"for taking part in the field at a least 70% of the matches"*. Art. 1 part. VIII of the addendum stipulates that *"placing lower than the 12th place causes a decrease of the contract of 30% for each competition year"*.

The Player received the remuneration due for the season 2008/2009 according to the Contract and the Addendum except for the bonus in relation to the Appellant's qualification to the UEFA Cup, amounting to EUR 100,000.-.

For the season 2009/2010, the Appellant executed various payments in favor of the Player, allegedly, namely:

- EUR 117,749 on 10 September 2009, allegedly instead of EUR 125,000 on 15 July 2009 [difference claimed: EUR 7,251]
- EUR 9,711 on 14 October 2009, allegedly instead of EUR 10,415 for July 2009 [difference claimed: EUR 704]
- EUR 9,310 on 14 October 2009, allegedly instead of EUR 10,415 for August 2009 [difference claimed: EUR 1,105]

The Respondent played his last official match with the Appellant's first squad on 3 October 2009. During this match, the Respondent suffered an injury which caused him to stop playing during 3 months.

On 12 January 2010, the Player was informed by his coach, Mr Marius Lacatus, that he would not join the first team preparation camp in Germany from 14 January until 23 January 2010, although the Player had recovered from his injury and could again play matches with the Appellant's first squad.

The Player was allegedly neither allowed to train with the first team, nor to enter in the locker-room nor to wear the equipment of the first squad. The Player alleges further that he had trainings with two other players and one coach 10 km away from the Appellant's stadium.

On 14 January 2010, the Player sent a letter to the Appellant's President complaining about the fact that he had not been allowed to take part to the training camp of the Appellant's first squad in Germany, that he had to train away from the stadium without medical assistance and in the absence of a physiotherapist. In his letter, the Player made specifically reference to the fact that he and two other players were refused the access to the Appellant's training infrastructures and pointed out that this situation consisted in a violation of the Player's rights and the Appellant's obligations. Eventually, the Player mentioned that he would proceed before the competent sporting authorities, should the situation not be solved.

On 22 January 2010, Mr Zoran Rasic, acting on behalf of the Player, sent a fax to the Appellant requesting for the payment of a total amount of EUR 161,135.-, in relation with bonus, instalment and monthly salaries due during the period starting from July 2009 until January 2010. Mr Rasic argued in his fax that the Appellant was in breach of its financial obligations towards the Player and added that the training conditions imposed by the Appellant on the Player constituted a breach of the Appellant's obligations as provided under the FIFA Regulations. The Player's representative claimed, in essence, that the Appellant's behavior, which had not responded to the Player's previous requests, constituted a valid ground for an unilateral termination of the Contract by the Player. Nevertheless, Mr Rasic, requested from the Appellant the payment by 26 January of the amount due to the Player as well as a written confirmation from the Appellant that the Player was allowed to join again the Appellant's first squad or to find another team, should the Appellant decide not to benefit any longer from the Player's services. In conclusion, Mr Rasic stressed that should the Player's request not be met, the latter would take legal action before FIFA without any other warning.

On 26 January 2010, Mr Zoran Rasic sent another fax to the Appellant, his previous fax having remained without response from the Appellant. With this fax, the Player granted an extension until 29 January 2010 for the payment of the remuneration due by the Appelllant and the resolving of the Player's sporting situation. Mr Zoran Rasic stressed that, should the Player's request not be met, legal actions would be taken before FIFA and the Contract would be considered as unilaterally breached without due cause.

On 29 January 2010, a third fax was sent to the Appellant by the Player's representative, Mr Zoran Rasic. It appears from the content of this fax that the Appellant did not reply to the Player's reminders and did not proceed with any payment. In the absence of a reaction from the Appellant to his requests, the Player, making reference to article 14 of the FIFA Regulations on the Status and Transfer of Player ("the FIFA RSTP"), declared that he was terminating the Contract with immediate effect. The Player made the Appellant aware of its responsibility according to according 17 of the FIFA RSTP and declared that his duties towards the Appellant stopped immediately. The Player further requested

from the Appellant its full collaboration as to the formalities to be fulfilled in view of his transfer to another club.

On 2 February 2010, the Player received the Appellant's reply, dated 26 January 2010. In its reply the Appellant asked for a meeting with the Player on 12 February 2010. The Player rejected this request on 9 February 2010, arguing that the Contract had been terminated and stressing that a claim had been sent to FIFA.

On 3 February 2010, the Player had indeed lodged a complaint against the Appellant before FIFA claiming that the Appellant had terminated the Contract without just cause, and, consequently, claimed the following:

- EUR 100,000 as bonus payment for the qualification for the UEFA Cup at the end of the season 2008/2009,
- EUR 7,251 as remaining unpaid amount regarding the first instalment of EUR 125,000 due on 15 July 2009,
- EUR 704 and EUR 1,105 as remaining unpaid amounts regarding the monthly salaries due for the months of July and August 2009,
- EUR 52,075 corresponding to 5 monthly salaries of EUR 10,415 each allegedly unpaid by the Respondent and due for the months of September 2009 until January 2010,
- EUR 402,075 as residual value of the Contract, i.e. according to the Player, composed as follows: EUR 52,075 for the months of February until June 2010 (EUR 10,415 x 5) and EUR 350,000 for the season 2010/2011,
- 5% of interest p.a. as from 29 January 2010,
- the imposition of sporting sanctions.

In parallel to the proceedings before FIFA, the Appellant opened a proceeding before the RFF. The Player was informed of it through various correspondences sent by the Appellant to the Player. The latter replied on 25 February 2010, contesting the competence of the RFF jurisdictional bodies and rejecting the Appellant's allegations according to which the Player would have breached the Contract. The Player notably objected to the Appellant's decision to reduce the Contract's value by 25% for the season 2009/2010 and to suspend the Player for a period of three months, arguing that the decision was groundless, due to the earlier termination of the Contract by the Player.

On 19 February 2010, the Player joined the Russian club of FK Sibir Novosibirsk for a short trial. Apparently, that club decided not to sign a contract with the Player due to the dispute opposing the Respondent with the Appellant.

The Appellant proceeded with the payment to the Player of an amount of EUR 64,600 on 26 February 2010.

On 1 March 2010, the Player wrote to the RFF reaffirming his willingness to have the dispute between the parties settled by FIFA and not by the RFF jurisdictional bodies.

On 15 June 2010 the Dispute Resolution Chamber of the Romanian Professional Football League ("the DRC-PFL") passed a decision and sanctioned the Player with an obligation to pay to the Appellant an amount of EUR 502,458.50 combined with a suspension for a period of 16 rounds.

The Player confirmed to the RFF on 9 March 2010 that he had taken good note of its decision. Yet, the Player declared that it found it groundless and therefore not binding to him, referring for the rest to the competence of FIFA to settle the dispute between the parties. The Player's position was confirmed in a written submission to the RFF dated 6 July 2010, following the communication to the Player of the decision passed on 15 June 2010 by the Dispute Resolution Committee of the Romanian Professional Football League ("the DRC of the RPFL").

The DRC of the RPFL was composed by one president, one vice-president, three members and one secretary. The said deciding body exposed that *"the facts exposed by the appellant [S.C. Sporting Club S.A. Vaslui] is confirmed by the documents lodged on file, the defendant player [Marko Ljubinkovic] did not undertake to defend himself in any way which is interpreted by the committee as adherence to the request. Given the foregoing, the Dispute Resolution Committee will accept the request and for these reasons DECIDES that the contractual relationships ended and compels the player to pay amount of 502,458.5 euros with the title of damages, also deciding to suspend the player for a period of 16 stages. The decision is final. With appeal within five days from the communication date".*

On 13 October 2010, the FIFA Dispute Resolution Chamber ("the DRC" or "the FIFA DRC") took its decision ("the DRC Decision"). The considerations of the DRC Decision can be summarized as follows for the relevant parts:

> *"1. First of all, the Dispute Resolution Chamber (DRC) analysed whether it was competent to deal with the case at hand. In this respect, the Chamber referred to art. 21 par. 1 and 2 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (edition 2008; hereinafter: Procedural Rules). The present matter was submitted to FIFA on 3 February 2010, thus after 1 July 2008. Consequently, the Chamber concluded that the 2008 edition of the Procedural Rules is applicable to the matter at hand.*
>
> *2. With regard to the competence point of the Dispute Resolution Chamber, art. 3 par. 1 of the Procedural Rules states that the Dispute Resolution Chamber shall examine its jurisdiction in the light of art. 22 to 24 of the Regulations on the Status and Transfer of Players (edition 2010). In accordance with art. 24 par. 1 and 2 in combination with art. 22 lit. b) of the aforementioned Regulations, the Dispute Resolution Chamber would, in principle, be competent to deal with the matter at stake, which concerns an employment-related dispute with an international dimension between a Serbian player and a Romanian club. (…)*
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> *6. In this regard, the Chamber emphasized that in accordance with art. 22 b) of the Regulations on the Status and Transfer Players, the DRC is competent to deal with a matter such as the one at hand unless an independent arbitration tribunal, guaranteeing fair proceeding and respecting the principle of equal representation of players and clubs, had been established at national level within the framework of the Association and/or a collective bargaining agreement. With regard to the standards to be imposed on an independent arbitration tribunal guaranteeing fair proceedings, the Chamber referred to FIFA Circular no. 1010 dated 20 December 2005 (hereinafter: the Circular no. 1010) and the principles contained in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations (hereinafter: the FIFA NDRC Regulations) which came into force on 1 January 2008. (…)*

*15. Thus, in light of the documentation provided by the RFF, the members of the Chamber were of the unanimous opinion that the DRC of the RPFL did not fulfil one of the conditionae sine qua non stipulated in art. 22 lit. b) of the Regulations and illustrated in art. 3 par. 1 of the FIFA NDRC Regulations -, being that the national independent arbitration tribunal needs to respect the principle of equal representation between players and clubs. Indeed, the DRC highlighted that, since the DRC of the RPFL was composed of five members as follows: one chairman, one deputy chairman and three members, whose nominations shall be approved by the Executive Committee of the RPFL exclusively, the said arbitration tribunal was not composed of an equal number of players' and clubs' representatives or, in light of the documentation provided, did not appear to be. Furthermore, the said members of the DRC of the RPFL were elected for a one year mandate only. In addition, it shall also be underlined that no players' trade union appears to be involved or to have any influence on the nomination of any members who could possibly act as players' representatives. In that respect, the RDC pointed out that a players' association apparently exists in Romania, since, according to art. 26.5 of the RFF Regulations, the "Association of Amateur and non-amateur Football Players" proposes the appointment of members, who will sit as players' representatives within NDRC of the RFF.*

*16. Additionally, the DRC turned its attention to the Respondent's allegations, according to which the DRC had previously decided that the Romanian national dispute resolution chamber fulfilled the minimum prerequisites stipulated in art. 22 lit. b) of the Regulations on the Status and Transfer of Players. In this respect, the Chamber recalled that the Respondent did not provide the pertinent decision although available on the website FIFA.com. In virtue of the principle jura novit curia, the Chamber nevertheless decided to analyse the contents of the said decision and came to the unanimous conclusion that the national dispute resolution chamber at stake in the previous decision had not been the DRC of the RPFL, as in the present matter. Indeed, the two Romanian deciding bodies did not have at all the same composition and the one at stake in the previous decision of the DRC, presently invoked by the Respondent, had been based on art. 3 of the "Rules Governing the Organizing and the Functioning of the National Dispute Resolution Chamber" of the RFF – which were not submitted in the present procedure -, which stipulated that the tribunal would be composed of three player representatives proposed by the association of amateur and non-amateur players (AFAN), an association affiliated to FIFpro, as well as three club representatives proposed by the RFF Executive Committee. By contrast, the composition of the DRC of the RPFL, as established above (cf. point no. II.13), is mentioned in art. 26.8 of the RFF Regulations and does not comply with the minimum requirements of art. 22 lit. b) on the Regulations on the Status and Transfer of Players. Furthermore, the Chamber deemed it useful to recall that the following paragraph can be read in the DRC decision advocated by the Respondent: "the Chamber deemed that the Respondent was able to prove that,* ***for the period comprehended between October 2008 and January 2009****, the NDRC met the minimum procedural standards for independent arbitration tribunals as laid down in art. 22 b) of the Regulations, FIFA Circular no. 1010 and also in the FIFA National Dispute Resolution Chamber (NDRC) Standard Regulations which came into force on 1 January 2008".*

*17. In view of the foregoing, the DRC rejected the Respondent's line of argument pertaining to the DRC's previous decision, and came to the conclusion that the DRC of the RPFL, which passed the pertinent decision relating to the present affair did not meet the cumulative prerequisites laid down in art. 22 lit. b) on the Regulations on the Status and Transfer of Players. (…)*

*20. On account of all the foregoing, the DRC summarized that the DRC of the RPFL, which passed the decision at hand, was not constituted in accordance with the fundamental and explicit principle of equal representation of players and clubs, and as a consequence, did not fulfill the minimum procedural standards laid down in art. 22 lit. b) of the Regulations on the Status and Transfer of Players, the FIFA Circular no. 1010 and the NDRC Regulations and, finally, that the Claimant contested its competence. Thus, the DRC*

*unanimously decided that it could not recognise the said decision as well as its effects, since it was passed by a deciding body in lack of jurisdiction. Thus, based on the fact the matter is not affected by the general legal principle of res judicata, the DRC rejected the Respondent's objection and declared itself competent to decide on the matter at hand between a Serbian player and a Romanian club in accordance with art. 22 lit. b) ab initio of the Regulations on the Status and Transfer of Players. For the sake of completeness, the DRC underlined that, in view of the foregoing conclusion, NO. XVI. 17.2 of the Contract cannot be considered and construed as a valid clause of competence.*

*Subsequently, the Chamber analysed which edition of the Regulations on the Status and Transfer of Players should be applicable as to the substance of the matter. In this respect, the Chamber referred, on the one hand, to art. 26 par. 1 and 2 of the Regulations on the Status and Transfer of Players (editions 2010 and 2009) and, on the other hand, to the fact that the present claim was lodged on 3 February 2010 and that the relevant employment contract was signed on 18 June 2008. The Dispute Resolution Chamber concluded that the 2009 version of the Regulations for the Status and Transfer of Players (hereinafter: the Regulations) is applicable to the matter at hand as to the substance. (…)*

*27. (…) before examining the question of the termination of the Contract by the Claimant, the Dispute Resolution Chamber held that, in accordance with the basic legal principle of pacta sunt servanda, the Respondent must fulfill its obligations as per the Contract and the "financial addendum" entered into with the Claimant and, consequently, pay the outstanding remuneration which is due to the latter. (…)*

*30. Based on the foregoing, the members of the Dispute Resolution Chamber determined that the Claimant was to receive the amount of EUR 96,535 as outstanding salaries and bonuses due until January 2010, i.e. the outstanding amounts claimed by the Claimant equalling EUR 161,135 reduced by an amount of EUR 64,600, which the Claimant admitted having received.*

*31. In continuation, the Dispute Resolution Chamber took note that the Claimant requested the payment of all salaries due to him until the contractual end of the Contract, i.e. an amount of EUR 402,075 February 2010 until 1 July 2011. (…)*

*34. (…), the Chamber concluded that, in line with its well-established jurisprudence, by failing to pay the player inter alia five consecutive monthly salaries, the Respondent breached the contract and the "financial addendum" without just cause and the Claimant had a just cause to unilaterally terminate the contractual relationship on 29 January 2010.*

*35. (…) In this respect, the Chamber took note that the Claimant terminated the contract with just cause, due to the breach of contract committed by the Respondent, on 29 January 2010. Therefore, the Chambers concluded that the breach had occurred one year and approximately seven months following the entry into force of the contract, hence, in any case, within the protected period.*

*48. (…) Subsequently, the Chamber referred to the decision passed by the Court of Arbitration for Sport (CAS) in the affair CAS 2008/A/1519 FC Shaktar Donetsk v/ Mr Matuzalem Francelino da Silva & Real Zaragoza SAD & FIFA and CAS 2008/A/1520 Mr Matuzalem Francelino da Silva & Real Zaragoza SAD v/ FC Shaktar Donetsk & FIFA and recalled that "[…] a player has to make reasonable efforts to seek other employment possibilities and, in the event he finds an new club, the damage has to be reduced for the amount the player was able to earn elsewhere.*

*49. On account of the above, in particular in view of the original duration of the Contract, the Claimant's contractual entitlements, his financial claim, the general obligation of the Claimant to mitigate his damages, as well as the behaviour of the Respondent, which, except from the fact that it had paid an amount of EUR 64,600*

*in February 2010, basically limited itself to contest the competence of the DRC and did not deem it appropriate to submit to the Chamber any kind of evidence attesting its allegations as to the substance, decided that not the entire remaining value of the contract, but the amount of EUR 385,000 was to be considered reasonable and justified as compensation for breach of contract. (…)".*

For the above-mentioned reasons, the DRC decided the following:

*"1. The claim of the Claimant, Marko Ljubinkovic, is partially accepted.*

*2. The Respondent, FC Vaslui, has to pay to the Claimant, Marko Ljubinkovic, outstanding remuneration in the amount of EUR 96,535, plus 5% of interest p.a. as from 29 January 2010, within 30 days as from the date of notification of this decision.*

*3. The Respondent, FC Vaslui, has to pay to the Claimant, Marko Ljubinkovic, the amount of EUR 385,000 as compensation for breach of contract within 30 days as from the date of notification of this decision. In the event that this amount of compensation is not paid within the stated time limit, interest at the rate of 5% p.a. will fall due as of expiry of the above-mentioned time limit until the date of effective payment.*

*4. In the event that the above-mentioned amounts due to the Claimant, Marko Ljubinkovic, are not paid by the Respondent, FC Vaslui, within the stated time limits, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and decision.*

*5. Any further request filed by the Claimant is rejected.*

*6. The Respondent, FC Vaslui, shall be banned from registering any new players either nationally or internationally, for the two next entire and consecutive registration periods following the notification of the present decision.*

*7. The Claimant, Marko Ljubinkovic, is directed to inform the Respondent, FC Vaslui, immediately 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".*

The DRC Decision was notified to the Parties on 5 November 2010.

On 24 November 2010, the Appellant filed a statement of appeal with CAS against the DRC Decision and completed it with an appeal brief dated 5 December 2010.

Together with its statement of Appeal, the Appellant filed a request of suspension of the Decision's execution. In various subsequent correspondences, the Appellant confirmed to CAS that it maintained its request, notably for the reason that it would be subject to the transfer ban decided by FIFA, should the Decision not be stayed by CAS. Indeed, the transfer ban had already been registered in the FIFA Transfer Matching System (TMS). The Appellant added with reference to CAS 2010/A/2112, that FIFA was *"ex officio"* respondent to the proceedings, so that its request for stay on the non monetary part of the Decision, namely the transfer ban, could be granted.

The Respondent informed CAS on 10 December 2010 that he concluded that the Appellant's request for stay should be rejected.

The Appellant's request was rejected by the President of the Appeals Arbitration Division of CAS through an order issued on 16 December 2010.

On 23 December 2010, FIFA confirmed to CAS that it would not request to intervene in the present proceedings. FIFA stressed that the Appellant did not designate FIFA as a respondent within the deadline to file its appeal and that, consequently, FIFA is not a party to the present proceedings. Indeed, the Appellant informed CAS of its intention to involve FIFA on 6 December 2010 only, i.e. once the time limit to file the statement of appeal, namely 26 November 2010, elapsed. According to FIFA, the Appellant could not invoke CAS jurisprudence 2010/A/2112, which refers to an entirely different situation where the RPFL had been called in due time whereas the Appellant had then withdrawn its appeal against RPFL.

On 31 December 2010, the Appellant acknowledged receipt of the copy of FIFA's correspondence and requested from CAS to ask FIFA to submit its file related to the Decision. The Appellant attached to its correspondence some extracts of this file.

The Respondent filed his answer on 6 January 2011.

The Appellant filed an additional submission on 18 January 2011.

Upon invitation from the Panel, FIFA lodged a copy of its file on 21 January 2011.

The Appellant and the Respondent signed before the hearing the order of procedure dated 23 March 2011.

The hearing was held on 11 May 2011.

During the hearing, the Parties confirmed the factual background and legal developments made in their previous written submissions before FIFA and CAS. The Respondent insisted on the timing of the various payments made by the Respondent, arguing that the last payments made were related to amounts due for the season 2008/2009 and not for the season 2009/2010. The Respondent informed the Panel that he had started to play from January 2011 in Cyprus. He had played before for a Serbian club but was only paid a total amount of 1,000 Euros, due to the ban issued by the Romanian Football Federation and mentioned on his ITC, which was preventing him from playing until FIFA issued the Decision. The termination date of his contract with the Appellant, namely 29 January 2010, was also unfortunate as it made it almost impossible for the Player to be registered with a new club before July, since only the Russian and Scandinavian markets were still open at that date. During the hearing, the Appellant confirmed to the Panel that article 17 of the FIFA Regulations on the Status and Transfer of Players is not in contradiction of Romanian law. Yet the Appellant argued that the employment agreement signed between the Parties was subject to Romanian law and only referred to Romanian regulations, whereas the Respondent claimed that, according to the wording of article 16 § 2, all sporting regulations could apply to the agreement, including FIFA's. As the Appellant had drafted the agreement, the principle *"venire contra stipulatorem"* should be opposed to it. Eventually, the Panel stressed to both parties that it was their duty to explain the content of Romanian law, if this law should apply.

In his final pleadings, the Respondent confirmed again that he objected to the new submissions made by the Appellant on 18 January 2011 and that he did not maintain the counterclaim made in his answer.

Both parties confirmed at the end of the hearing that they had no objection as to the way the proceedings were conducted.

Within the deadlines set by the Panel at the end of the hearing, the Respondent produced the agreement currently in force with his new Cyprian club, Anorthosis Famagusta, together with his comments on it and the Appellant provided his own comments on this agreement.

In essence, it appears that the Respondent signed only one agreement with his new club for a period starting from 13 December 2010 and ending on 31 May 2012. The total fixed remuneration provided under the agreement until the 31 May 2011 is of EUR 50,000.-. As of 1st June 2011 and until 31 May 2012, EUR 100,000.-, payable in ten equal installments, shall be due to the Player, which corresponds to EUR 8,333.- per month.

In its last correspondence, the Appellant claims that the Respondent's remuneration with his new club is of EUR 15,000 per month. As supporting evidence, the Appellant provided the Panel with an additional agreement allegedly signed by the Respondent with his new club, no signature and no amount figuring however on that document. The Appellant also submitted an unsigned copy of the contract of employment provided by the Respondent to the Panel. The version provided by the Appellant is however not signed and no amount figures on it, whereas the amendment made in writing at article 17.3 of the signed version is not reflected on the version provided by the Appellant. Eventually, the Appellant provided the Panel with a written statement from the player Trica Eugen, who, allegedly, played from 1 January 2009 until 30 May 2010 with Anorthosis Famagusta. This player claims that the Respondent is earning EUR 18,000 per month and argues further in his statement that Anorthosis Famagusta does not pay salaries lower than EUR 18,000 or 20,000 per month.

On 24 May 2011, the Respondent reserved his rights against the Appellant and Mr Trica Eugen for their slanderous allegations and objected that the Appellant had not discharged its burden of proof.

## LAW

### CAS Jurisdiction and admissibility

1. The Panel took note of the fact that the Appellant disputed CAS jurisdiction in its writing dated 18 January 2011 in reaction to the counterclaim filed by the Respondent with his answer. Disputed is the competence of CAS to decide on the validity of the decision taken by the DRC of the RPFL. The Appellant argued in its writing that the object of its appeal was the Decision

of the FIFA DRC (*"the appeal which makes the object of the cause was executed by our club and aims solely the Decision dated 13.10.2010 pronounced by FIFA's DRC (…)"*) and not the one of the DRC of the RPFL. To the Appellant's view, by raising a claim against the latter, the Respondent raised a counterclaim which is not admissible in appeal proceedings before CAS, as this stems from article R55 of the Code. The Respondent admitted the Appellant's submissions on this issue and withdrew his counterclaim at the hearing, so that the Panel does not have to decide on the validity of the decision taken by the DRC of the RPFL.

2. Considering the above, the Panel finds that the jurisdiction of CAS to decide on the validity of the Decision taken by the FIFA DRC is not disputed. Both Parties further signed the order of procedure where a specific reference is made to the competence of CAS based on article 63 of the FIFA Statutes, i.e. the statutory legal basis for CAS jurisdiction.

3. As to the time limit to lodge an appeal before CAS, article 63 par. 1 of the FIFA Statutes provides that the appeal must be lodged *"within 21 days of notification of the decision in question"*. The DRC Decision was notified to the Appellant by means of a fax dated 5 November 2010 and the Appellant's appeal was lodged on 24 November 2010, therefore within the statutory time limit set forth by the FIFA Statutes, which is undisputed.

4. It follows that the appeal is admissible.

**Applicable law**

5. Art. R58 of the Code provides the following:

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

6. The Panel noted first that both Parties refer in their written proceedings to the FIFA Regulations and that the application of the FIFA Regulations is not directly disputed.

7. Notably, the fact that the Appellant claims that the FIFA DRC was not competent to adjudicate the case, does not mean that it rejects the application of the FIFA Regulations. The Appellant indeed claims that the FIFA DRC was not competent to decide on the present case on the basis of the second part of article 22 lit. b) of the Regulations on the Status and Transfer of Players (RSTP, edition 2010), as, according to the Appellant, the deciding bodies of the RFF or of the PFL were independent arbitration tribunals respecting the principles set out in article 22 lit. b) RSTP, the FIFA Circular n° 1010 of 20 December 2005 and the National Dispute Resolution Chamber (NDRC) Standard Regulations, such as the principle of equal representation of players and clubs and of fair proceedings. By referring clearly to the RSTP issued by FIFA, the Appellant admits that those regulations are applicable to the present case.

8. The Appellant claims further that, as the Romanian competent bodies are to be recognized under the RSTP, the Regulations of the Romanian Football Federation (RFF) and of the Romanian Professional Football League (PFL) should then specifically apply to the proceedings in relation with the dispute between the Parties on the termination of the Contract. It then refers to the clauses of the Contract and alleges that not only the procedural clauses of those Regulations should apply but also the material ones as those were elected as governing law by the Parties. Eventually Romanian civil law should apply.

9. The FIFA Statutes provide, under article 62 par. 2 of the 2010 edition, which is applicable to the present case, that CAS will apply Swiss law "additionally" to the FIFA Regulations. Considering (i) that the challenged decision was issued by the Dispute Resolution Chamber of FIFA, whose corporate seat is in Zurich, Switzerland, that (ii) the Appellant is a member of the Romanian Football Federation which is a member of FIFA, that (iii) the Respondent is a professional player who was and is registered with clubs which are all members of associations which are all members of FIFA, the Panel shall, as a general rule, decide the whole dispute according to the FIFA Statutes and Regulations and Swiss law.

10. As to the question of the opposability of the RFF and the PFL Regulations with respect, firstly, to the competence of the FIFA DRC to decide on the dispute regarding the validity of the termination of the Contract signed between the Parties and, secondly, to the material consequences on the Parties of such termination, the Panel considers that the Appellant's claim does not as such contradict the overall application of the FIFA Statutes and Regulations but refers to specific points which the Panel will cover further in the award when dealing with those issues. For the same reason, the Panel is satisfied that Swiss law shall apply to the present dispute, unless it should find that the Parties agreed in the Contract on a specific law to govern one or the other aspect of their relationship.

11. The Panel further notes that in accordance with article 26 par.1 and 2 of the Regulations on the Status and Transfer of Players (edition 2010) the previous version of the regulations (i.e. the edition of October 2009; hereinafter "the RSTP or FIFA RSTP") was applicable in the present matter, as the case was brought before FIFA before the entry into force of the 2010 edition of the RSTP.

**Parties to the Appeal and consequences on its scope**

*A. Parties to the Appeal*

12. The Appellant did not designate FIFA as a respondent to the Appeal within the deadline set by the Code and the FIFA Statutes. FIFA further expressly declared that it did not intend to intervene into the proceedings.

13. Based on the foregoing Panel finds that FIFA is not party to the present appeal proceedings.

14. This was pointed out to the Appellant from the outset of the proceedings. With reference to the Appellant's submissions on this point, the Panel notes first that FIFA is a legal entity subject to Swiss civil law and cannot be considered as a "lower administrative authority" within the meaning of article 57 § 1 of the Swiss Federal Act of administrative procedure (*"Loi fédérale sur la procedure administrative"*). In order to be party to a proceeding before CAS, FIFA must either be expressly mentioned as a party in the Statement of Appeal or intervene on the basis of article R41 § 3 of the Code, unless otherwise foreseen in any applicable regulation.

15. The fact that the authority which issued the decision, in the present case FIFA, is not automatically party to an appeal proceeding is reflected notably in article R52.2 of the Code, which provides that *"The CAS shall send a copy of the statement of appeal and appeal brief, for information, to the authority which has issued the decision challenged"*. The use of the terms *"for information"* shows that the issuing authority is not per se party to the proceedings, yet. It must either be called as a party or itself request to intervene in order to, potentially, become a party.

16. The Panel rejects the other submissions made by the Appellant on the basis of CAS 2010/A/2112 and stresses that the facts of the present matter are totally different from those of that CAS case. Indeed, in that jurisprudence, CAS had to decide on the consequences of the withdrawal of a claim against a national federation, namely the Romanian Professional League, when the latter, which had been called as a respondent, wished to participate to the proceedings. Referring to the principles of Swiss civil procedure, CAS mentioned under point 9.7 of the award, that *"a withdrawal against a party is only possible if that party agrees"*. In the present case, FIFA was not called as a respondent and does not wish to participate. On the basis of the applicable rules, it cannot therefore been "forced in" the proceedings after the time limit to file the statement of appeal has elapsed.

*B. Scope of the Appeal*

17. As FIFA is not party to the present proceedings, this impacts the scope of the appeal. Indeed, the Player is the only respondent to the present dispute before CAS and the Panel can only grant the Appellant the requests for relief on which the Player has a standing to be sued, in other words when the Player is personally obliged by the disputed right (see VOGEL/SPÜHLER/GEHRI, Grundriss des Zivilprozessrechts, 8th ed., Bern, p. 206 ad par. 89).

18. Yet, the DRC's Decision, be it in the merits or in the operative part, addresses issues, rights and obligations of different kinds, involving different legal entities.

19. In the merits the DRC finds that the termination of the Contract by the Respondent was legitimate and then draws consequences from this legitimate termination. The DRC draws consequences, first on the contractual level, in other words, with respect to the relationships between the Appellant and the Respondent based on the Contract. It then draws consequences, on the disciplinary level, as to the sanctions to be taken against the Appellant by FIFA. The DRC Decision is therefore of double nature, contractual and disciplinary.

20. The part of the Decision dealing with the "contractual level" of the case deals directly with the contractual dispute between the parties to the Contract and it is therefore appropriate that an appeal is filed by the losing party, in the present case the Appellant S.C. Sporting Club S.A. Vaslui, against the prevailing one, namely the Player Marko Ljubinkovic. The remaining part of the Decision dealing with the "disciplinary level" of the case does, on the contrary, not concern the Player but only the Appellant S.C. Sporting Club S.A. Vaslui and the sanctioning federation, namely FIFA. The Player has no standing to be sued on this part of the Decision.

21. Based on the foregoing, the scope of the present appeal proceedings is limited to the "contractual level" of the case and the requests for relief filed by the Appellant which aim at annulling the disciplinary sanctions passed by FIFA with the Decision shall be rejected for lack of standing to be sued of the Player (see BERNARSCONI/HUBER, Die Anfechtung von Vereinsbeschlüssen: zur Frage der Gültigkeit statutarischer Fristbestimmungen, in: Zeitschrift für Sport und Recht 2004, p. 269, translated into CAS Newsletter n°3, p. 9).

22. As to the question of the competence of the FIFA DRC, the Panel finds that this question remains within the scope of the present appeal proceedings. Indeed, the question whether the FIFA DRC was or not competent to decide on the dispute between the Appellant and the Respondent is relevant to decide on the contractual dispute between the Parties. Should the FIFA DRC not have been competent, then the Respondent should have lost his claim for having filed it before the wrong jurisdictional body. Although the admission of the appeal would be based on procedural grounds, this would nevertheless lead the Appellant to prevail over the Respondent.

23. If, as mentioned above, a decision of an association issued in relation with a pure contractual dispute is annulled and has eventually no effect between the parties to the relevant contract, without the association being part to the proceedings, the competent court, CAS in the present case, must be in a position to consider submissions of the Parties on the competence of the jurisdictional body which issued the decision. This is particularly true if one considers that CAS, under article R57 of the Code, has full power to review the facts and the law. Should an association, in the present case FIFA, wish to avoid a precedent which does not reflect its position on the issue of competence, it should then intervene in the proceedings, as foreseen under article R41.3 of the Code.

24. Based on all the above, the Panel decides that it shall deal with the question of the competence of the FIFA DRC in the present case.

**Merits**

*A. Competence of the FIFA DRC*

25. The Appellant alleges first that the FIFA DRC was not competent to deal with the contractual dispute at stake because the Contract was not a labour contract governed by Romanian

employment law but a contract in relation with the provision of services exclusively governed by the Romanian civil code.

26. The Panel rejects this first submission as it finds that:

- Articles 13 to 17 of the FIFA RSTP contain principles which apply to all contracts signed by clubs with professional players, aiming at having a certain player playing for a certain club, irrespective of their qualification under national law. Those principles must be taken into consideration in the national associations' regulations as provided under article 3 lit. b) of the FIFA RSTP. One of those principles is the right to terminate contracts where there is a just cause. Another one is that compensation is due by the party in breach.
- As the FIFA RSTP do not refer to the specific qualification of a contract under any national law, the use of the terms *"employment-related disputes"* under article 22 of the FIFA RSTP must be interpreted as disputes with respect to a contract which, as mentioned above, aims at setting the conditions for a player to play for a certain club, i.e. a contract which undoubtedly has the characteristics of an employment agreement other than for instance an agreement between a player and one of his sponsors.
- There is no doubt that the rights and obligations provided under the Contract qualify this agreement as an employment-related agreement. The Contract provides for salary payments, bonuses and the Player commits to work exclusively for the Appellant. There is no element within the extracts of Romanian law quoted by the Appellant, which could lead to the conclusion that any dispute under the Contract is not to be considered as an "employment-related" dispute as defined under article 22 lit. b) of the FIFA RSTP. Should the distinction made under Romanian law be as absolute as argued by the Appellant, which has not been demonstrated by Appellant and which the Panel doubts, this could nevertheless not lead to the exclusion of the Contract from the scope of the FIFA RSTP, as such rules clearly deal with issues relating to such kind of contractual relationships between clubs and players.

27. The Appellant further claims that the FIFA DRC could not pass its Decision for the reason that the DRC of the RPFL had already taken its decision four months before. The Appellant argues that the Decision breaches the principle of *"res judicata"*.

28. This submission must also be rejected. The principle of *"res judicata"* aims at avoiding that contradictory decisions be taken. In the present case, the proceedings before FIFA DRC were already pending when the Appellant opened in Romania the proceedings before the DRC of the RPFL. The DRC of the RPFL was aware of the FIFA proceedings through the Player's submissions, where the Player mentioned that he did not recognize the competence of the DRC of the RPFL and considered that FIFA was competent in the present dispute. The Panel finds that in order to avoid the issuance of contradictory decisions, it would have been the DRC of the RPFL's duty to suspend the proceeding started by the Appellant until the FIFA DRC had taken the Decision. The FIFA DRC, which had been seized first, had no reason to suspend the proceedings.

29. The Panel then comes to the two main submissions related to the issue of the FIFA DRC's competence in the present matter, namely the submission on the existence of an independent arbitration tribunal and the submission on the jurisdiction clause provided in the Contract.

30. The Panel notes first that, according to article 22 lit. b) FIFA RSTP, the FIFA DRC is the ordinary competent body to decide on employment-related disputes of an international dimension, without prejudice to the right of any player or club to seek redress before a civil court (article 22 par. 1 FIFA RSTP).

31. The only exception provided to this general competence of the FIFA DRC is the case when *"an independent arbitration tribunal guaranteeing fair proceedings and respecting the principles of equal representation of players and clubs has been established at national level within the framework of the association and/or a collective bargaining agreement"* (art. 22 lit. b) FIFA RSTP, *in fine*).

32. According to the FIFA Commentary on the 2005 edition of RSTP, which has not lost relevance with respect to article 22 lit. b) FIFA RSTP as the article has not been amended since then, *"the international dimension [of a dispute] is represented by the fact that the player concerned is a foreigner in the country concerned. In these cases, there is no need for an ITC request. The jurisdiction of FIFA is automatically established. (…). However, if the association where both the player and the club are registered has established an arbitration tribunal composed of members chosen in equal number by players and clubs with an independent chairman, this tribunal is competent to decide on such disputes. These national arbitration tribunals may also be provided for within the framework of a collective bargaining agreement"*. The footnote n°101 of the FIFA Commentary 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 submitting potential disputes related to their employment relationship to this body"*.

33. The Panel noted further that, as rightly mentioned by the FIFA DRC, the principle of equal representation of players and clubs is a fundamental principle of article 22 of the FIFA RSTP. This condition for the recognition of a national arbitration tribunal is not only provided under article 22 lit. b) of the FIFA RSTP but also in the FIFA Circular n°1010 communicated to all national federations as well as in article 3 par. 1 of the NDRC Regulations, which reads as follows: *"The NDRC shall be composed of the following members, who shall serve a four-year renewable mandate: a) a chairman and a deputy chairman chosen by consensus by the player and club representatives (…); b) between three and ten player representatives who are elected or appointed either on proposal of the players' associations affiliated to FIFpro, or, where no such associations exist, on the basis of a selection process agreed by FIFA and FIFpro; c) between three and ten club representatives (…)".. The Panel refers back to the FIFA Circular n° 1010, which states the following: "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 arbitrator and the two appointed arbitrators appoint the chairman of the arbitration tribunal (…). Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over compilation of the arbitrator list"*.

34. The Panel then carefully reviewed the regulations of the RFF and of the PFL, either provided by the Appellant or produced with the FIFA file. It noted that it appears, contrary to what the

Appellant seems to argue that the DRC of the RPFL is not a first instance body subordinated to the NDRC of the RFF, but the exclusively competent body to solve disputes involving clubs and players belonging to the First League National Championship as this is the case here (see article 26 par. 8 of the RFF Regulations). According to article 26 par. 8 of the RFF Regulations, the DRC of the RPFL and its appeal body are composed of *"five members, two of them acting as chairman and deputy chairman, respectively. The nominal composition of the NDRC of the PFL [recte: the DRC of the RPFL] and the PFL Review Commission [namely, the appeal body] is approved by the PFL Executive Committee, for a one-year mandate"*.

35. At this stage, the Panel notes that the clear wording of article 26 nr. 8 of the RFF Regulations does not indicate that the NDRC of the RFF has any competence on employment-related disputes of international dimension, as this is argued by the Appellant without further evidence. Further, it is obviously not up to the Parties to decide which body between the NDRC of the RFF and the DRC of the RPFL will decide on their dispute. The fact that the NDRC of the RFF might meet the criteria set under article 22 lit. b) in fine of the FIFA RSTP, which the Appellant claims without bringing forward any evidence, is therefore irrelevant as, based on the documentation produced by the Parties to the Panel, the NDRC of the RFF is not competent in the present case. It is in fact reflected in the decision of the DRC of the RPFL which does not refer in one way or the other to the NDRC of the RFF, even as appeal body. The Appellant's submissions with respect to the composition of the NDRC of the RFF and the alleged choice of jurisdiction made by the Parties between the two national dispute resolution bodies must thus be rejected.

36. Coming back to the composition of the DRC of the RPFL, the Panel joins the FIFA DRC in the conclusion that the DRC of the RPFL does not meet the criteria set under article 22 lit. b) of the FIFA RSTP, since it consists of five members whose nomination is exclusively approved by the Executive Committee of the PFL. Furthermore, the members are elected for one year only.

37. The Panel stresses that not even before CAS, the Appellant tried to demonstrate that the DRC of the RPFL, on which decision, the Appellant relies, meets the above detailed criteria. As the Appellant did not discharge its burden of proof, and in light of the documentation provided, the Panel finds that the evidence shows that the DRC of the RPFL cannot be considered being an independent arbitration tribunal within the meaning of article lit. b) of the FIFA RSTP.

38. The Appellant claims however that FIFA had admitted the contrary in a previous decision. The Panel carefully reviewed the decision mentioned by the Appellant, notably before the FIFA DRC. It noted that not only the decision referred to another jurisdiction body, namely the NDRC of the RFF and not the DRC of the RPFL, but even more importantly, that said decision was issued with reference to a specific period, namely between October 2008 and January 2009, a period which had already ended when the Appellant started its proceedings before the DRC of the RPFL. Here again, the Appellant's submissions must be rejected.

39. Eventually, the Panel considered the submissions made by the Appellant as to the alleged jurisdiction clause in favor of the DRC of the RPFL provided under article 17.2 of the Contract.

The Panel notes first that according to the FIFA Commentary on article 22 lit. b) in fine of the FIFA RSTP, a "clear reference" must be made in favor of the arbitration tribunal. Article 17.2 of the Contract reads as follows in its relevant part: *"the litigation will be solved only to the sporting courts of jurisdiction of RFF or PFL"*.

40. The Panel then stresses that the RFF and PFL Regulations, notably the Romanian Regulations on the Status and Transfer of Players ("the RRSTP") provide for various competent "courts of jurisdiction", not only the DRC of the RPFL (see for instance article 25 of the RRSTP). Reference is further made to CAS (see article 26.1 lit. c of the RRSTP with reference to the Statutes of the RFF) and to the FIFA RSTP (see Preamble and article 36 of the RRSTP).

41. In any event, the wording of article 17.2 cannot be construed as a full waiver of the Player of the FIFA jurisdiction. The interpretation of article 17.2 can further only be restrictive, firstly on the basis of the principle that an unclear provision must be interpreted *"contra stipulatorem"* and, secondly, for the reason that it was found that the DRC of the RPFL did not meet the conditions of art. 22 of the FIFA RSTP.

42. The Panel thus came to the conclusion that no provision in the Contract could be interpreted as an exclusion of the competence of the FIFA DRC as provided under article 22 lit. b) of the FIFA RSTP.

43. The Panel stresses that it does not consider the first move of the Player towards the DRC of the RPFL as an approval to submit the case to this jurisdictional body. The proof is that, after having been duly informed of his rights, the Player withdrew his request, which became void, and filed a claim before FIFA. The case opened by the Player before the DRC of the RPFL was eventually closed.

44. The Panel found also of importance the fact that the decision of the DRC of the RPFL did not meet the minimum criteria that one can expect from the decision of an arbitration court. As already mentioned by the FIFA DRC in its Decision, the DRC of the RPFL's decision simply refers to the Appellant's allegations. The absence of any legal grounds for the decision cannot be justified, as the DRC of the RPFL did, by the simple fact that the Player did not proceed before this chamber. This is particularly the case when one considers that the Player repeatedly wrote to the DRC of the RPFL and specifically mentioned that he did not recognize its competence to settle the dispute. The Player even mentioned that he had brought the case before FIFA. The fact that the DRC of the RPFL justifies its decision by stating that *"the defendant player did not defend himself in any which is interpreted by the committee as adherence to the request"* is a sign of the partiality of the decision.

45. Based on all the above, the Panel concludes that the FIFA DRC was competent to decide on the dispute between the Parties.

*B. Termination for just cause and compensation*

46. Having established that the FIFA DRC was competent to issue its Decision, the Panel turns now to the substantive part of the dispute, namely the issue of the termination of the Contract and the consequences of such termination with respect to rights and obligations of the Parties.

47. The Contract signed by the Appellant and the Respondent was valid from 1 July 2008 until 1 July 2011. The parties had signed a "financial addendum" dated 15 June 2008, according to which the Respondent was entitled to receive a remuneration of EUR 200,000 for the season 2008/2009, EUR 250,000 for the season 2009/2010 and EUR 350,000 for the season 2010/2011. According to the "financial addendum", the Respondent was also entitled to several bonuses, among which a bonus equal to 50% of the contract value for the respective season in case the Respondent qualified for the Europa League (cf. art. 1 part. IV).

48. The Respondent received the salaries due for the season 2008/2009 except for a bonus of EUR 100,000 due on 11 June 2009 since the Respondent was qualified for the Europa League at the end of the season 2008/2009. This was not disputed by the Appellant. As to the season 2009/2010, the Respondent alleged that the salaries due for the months of September 2009 until January 2010 had not been paid until he had terminated the Contract. The Respondent alleged with supporting evidence provided by both Parties that he had received an amount of EUR 117,749 instead of EUR 125,000 regarding the first instalment due for the 2009/2010 season and that EUR 704 and EUR 1,105 were still due regarding the salaries for the months of July and August 2009 respectively.

49. The Panel notes that the Respondent had sent several letters to the Appellant, where it appears that disagreements of financial or sporting related nature were opposing the Parties. In those letters, the Respondent showed his willingness to find amicable solutions within a reasonable period. The Appellant did not produce any evidence showing that he tried to solve the Parties' dispute before the Respondent terminated the Contract.

50. After several unsuccessful warnings, the Respondent terminated the Contract for just cause on 29 January 2010 and left the country.

51. To the Panel's view, the evidence produced supports the Respondent's position and proves the existence of a just cause for the termination of the Contract.

52. This being considered, the Panel studied carefully the arguments of the Appellant. The Appellant claims that the Respondent did not fulfill his contractual obligations prior to the termination of Contract and that he abandoned his job without valid reasons. It further argues that only the competent bodies of the RFF or the PFL could allow the Respondent to terminate the Contract. This unjustified termination caused a prejudice to the Appellant as the Respondent was an important player in the Appellant's first squad, which had to be completely reorganized.

53. Notwithstanding the full power of the Panel to review the facts and the law, it is a general principle of procedure that any party claiming a right on the basis of an alleged fact shall carry the burden of proof. Yet, the Appellant did not submit any satisfactory evidence in support of the fact that the Respondent would have not fulfilled his contractual obligations and consequently would have breached the Contract. The Appellant did not submit any document nor any explanation attesting that it had paid the outstanding salaries and bonuses claimed by the Respondent. On the contrary, the documents provided by the Parties before CAS confirm the allegations of the Respondent, namely that the payments which took place after July 2009 did not cover the salaries from September 2009 but 50% of bonuses due in relation with matches won, the 1st instalment due for the season 2009/2010 and part of the salaries of July and August 2009.

54. The allegations of the Appellant, according to which all the payments made since July 2009 covered most of its financial obligations towards the Player for the season 2009/2010 are therefore contradicted by the evidence submitted to the Panel.

55. Moreover, the Panel notes again that several letters had been addressed by the Respondent to the Appellant in order to solve the matter. Despite the fact that the Appellant was not facing its financial obligations towards the Player, the Appellant did not even bother sending him a written reply in order to explain the situation and the reasons why the Player should not be allowed to terminate the Contract, which the Respondent had warned the Appellant he would do, should no solution be found within the time limit set by the Player (and extended several times).

56. Based on the foregoing, the Panel is satisfied that several amounts were outstanding at the time when the Respondent terminated the Contract; the Appellant did indeed not meet its obligation to comply with the financial terms of the Contract and the "financial addendum" until the end of January 2010, without justified cause.

57. Based on the above, the Panel decides that the Respondent must receive an amount of EUR 96,535 as outstanding salaries and bonuses due until January 2010, i.e. the outstanding amounts claimed by the Claimant before the FIFA DRC and before CAS equaling to EUR 161,135 reduced by an amount of EUR 64,600, which was paid on 26 February by the Appellant.

58. Besides the amounts due until the end of January 2010, the Respondent requested before the FIFA DRC the payment of all salaries due to him until the end of the Contract, i.e. an amount of EUR 402,075 corresponding to the period of February 2010 until 1 July 2011.

59. As mentioned above the salaries of September 2009 until January 2010, in other words five consecutive monthly salaries, were due to the Respondent at the moment of the termination of the Contract.

60. Further, the Appellant argues that the right to terminate the Contract should be determined on the basis of Romanian law, including the RFF or PFL regulations.

61. The Panel notes first that according to article 16.1 of the Contract, the latter is governed by Romanian law. Based on article 17 of the FIFA RSTP and on CAS consistent jurisprudence (see notably CAS 2008/A/1589), this election of law is valid.

62. The Panel then took good note that the Respondent did confirm at the hearing that article 17 of the FIFA RSTP, which lays down the criteria under which the compensation should be determined in favor of the party which is not in fault, was compatible with Romanian law.

63. Based on the foregoing, the Panel interpreted article 16.3 of the Contract, which reads as follows:

*"16.3 The contractual responsibility, the way damages and penalties are prescribed are settled by the civil law, the sporting statute and regulations as well as by the annexes of the present contract".*

64. The Panel finds that this clause of the Contract does not exclude the FIFA Regulations, notably the FIFA RSTP. The Panel notes that the FIFA RSTP set up regulations on the contractual stability whose principles have to be respected at national level as long as those principles are in line with national law (see Commentary of the FIFA RSTP ad article par. 2 and 3). Yet, the Appellant confirmed that article 17 of the FIFA RSTP did not contravene to Romanian law.

65. Therefore, the Panel is of the view that as to the material aspects of the dispute, the Romanian RSTP should apply, with due consideration of the FIFA RSTP, notably article 17 RSTP, should the Romanian RSTP not provide sufficient indications on the way the compensation should be calculated.

66. The Panel notes that the Romanian RSTP provides for specific regulations on the contractual stability. The Panel finds in particular that under those regulations, the Respondent had the right to terminate the contract with cause if outstanding amounts are due *"for a period longer than 60 days"* (article 18 nr. 10 lit. a) second paragraph first sentence RRSTP). The Panel notes that the Appellant could not benefit from the relief provided under article 18 nr. 10 lit. a) second paragraph second sentence RRSTP as the Player had not received on 29 January 2010 at least 75% of the outstanding contractual rights for the season in question (the Player had received EUR 151,415 on 29 January 2010 out of an outstanding amount due at that time of EUR 203,905, i.e. 74.25%).

67. Moreover, the Panel deems the "relief clause" set by the RRSTP as void, considering the specific jurisdiction clause provided under article 22 lit. b) of the FIFA RSTP. For all the reasons already described above, when it comes to employment-related disputes of an international dimension, the RRSTP cannot validly submit the dispute to another jurisdictional body than the FIFA DRC or an arbitration tribunal, so that no relief can be granted by the RFF committee in this kind of dispute.

68. The Player did thus validly terminate unilaterally the contract for just cause on 29 January 2010 in accordance with article 18 nr. 10 lit. a) second paragraph first sentence RRSTP and article 14 of the FIFA RSTP. On the other side, the Appellant breached the Contract without just cause.

69. The Panel then refers to article 18 nr. 8 of the RRSTP and finds that, as stipulated under item 7. of the "Definitions" section of the FIFA RSTP, the RRSTP provide, inter alia, that the protected period shall last *"for three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional"*. In this respect, the Panel took note that the Respondent terminated the contract with just cause, due to the breach of contract committed by the Appellant, on 29 January 2010. Therefore, the breach had occurred one year and approximately seven months following the entry into force of the contract, hence, in any case, within a protected period, as provided under the RRSTP and the FIFA RSTP.

70. Having stated the above, the Panel assessed the consequences of the breach committed by the Appellant. The Panel established first that, in accordance with art. 18 nr. 9.1 of the RRSTP, *"unless the contract stipulates otherwise, if the unilateral termination of the contract occurs during the protected period, the party found to be in breach of contract shall be sanctioned as follows: (…) b) the club: (…) the club shall pay the player a compensation representing the total amount of financial rights that the player is entitled to up to the expiry of the contract, except for the game and objective bonuses"*.

71. Contrary to the findings of the FIFA DRC, the Panel is of the opinion that the compensation to be paid by the Appellant to the Respondent is not directly based on article 17 of the FIFA RSTP but only indirectly, as article 18 nr. 9.1 reflects that article in the Romanian RSTP, as required under article 3 lit. b) of the FIFA RSTP.

72. The Respondent having confirmed that article 17 FIFA RSTP was in line with Romanian law, the Panel concludes that article 18 nr. 9.1 of the RRSTP should obviously also be in line with it.

73. Contrary to article 17 FIFA RSTP, it appears that article 18 nr. 9.1 RRSTP does not provide for any degree of discretion to the deciding body when calculating the relevant compensation. The rule for a breach by the club is the payment of a compensation *"representing the total amount of financial rights that the player is entitled to up to the expiry of the contract, except for the game and objective bonuses"*.

74. This reflects the objective of the measures provided by the regulations on the Status and Transfer of Players, in particular the one on compensation for breach of contract without just cause, to serve as deterrent discouraging the early termination of employment contracts by either contractual party. As mentioned by the FIFA DRC in its Decision, the lack of a firm response by the competent deciding authorities would represent an inappropriate example towards all the football stakeholders.

75. Having stated the above, considering that (1) it had acknowledged that the FIFA DRC was competent to decide on the dispute, that (2) the Respondent had terminated the Contract with just cause and that (3) the Appellant was in breach without just cause, the Panel controlled the calculation of the compensation made by the FIFA DRC in relation with article 18 nr. 8 of the RRSTP.

76. The Panel found that the application of article 18 nr. 9.1 RRSTP could only lead to an amount at least equal to the one calculated by the FIFA DRC on the basis of article 17 FIFA RSTP. Indeed, article 18 nr. 9.1 RRSTP does not provide for any reduction of the compensation that would not be foreseen by article 17 FIFA RSTP.

77. In application of the relevant provision, the Panel first noted that the Parties had not beforehand agreed upon an amount of compensation for breach of contract. As a consequence, the Panel determined that the prejudice suffered by the Respondent had to be assessed on the basis of article 18 nr. 9.1 RRSTP, with due consideration of the prohibition to go *"ultra petita"*, namely, in the present case, in lack of an appeal by the Respondent against the DRC Decision, to allocate an amount higher than the one decided by the FIFA DRC.

78. Before the FIFA DRC, the Respondent claimed the payment of the salaries due from February 2010 until 1 July 2011, in other words, the remaining value of the contract as compensation for the breach of contract. In this regard, the members of the FIFA DRC had acknowledged in their Decision that the Respondent had been rendering, or at least offered to render, his services to the Appellant for approximately one complete season and six months – from July 2008 until January 2010 -, and that the Contract still had approximately seventeen months to run at the moment of its termination. Furthermore, the members of the FIFA DRC noted that, at the time of the DRC Decision, the Serbian club, FK Sloboda Point Sevojno, offered to the Respondent to sign an employment contract valid for one season until 31 July 2011 but that this contract had a 20 times inferior value in comparison to the Contract. The Player had apparently never signed this contract with FK Sloboda Point.

79. Subsequently, the FIFA DRC referred to decisions passed by the Court of Arbitration for Sport (CAS) in the affair CAS 2008/A/1519 & 1520 and recalled that *"[…] a player has to make reasonable efforts to seek other employment possibilities and, in the event he finds an new club, the damage has to be reduced for the amount the player was able to earn elsewhere"*.

80. On account of the above, the FIFA DRC decided that *"in view of the original duration of the Contract, the Claimant's contractual entitlements, his financial claim, the general obligation of the Claimant to mitigate his damages, as well as the behaviour of the Respondent, which, except from the fact that it had paid an amount of EUR 64,600 in February 2010, basically limited itself to contest the competence of the DRC and did not deem it appropriate to submit to the Chamber any kind of evidence attesting its allegations as to the substance, decided that not the entire remaining value of the contract, but the amount of EUR 385,000 was to be considered reasonable and justified as compensation for breach of contract"*.

81. The FIFA DRC decided to reduce the compensation due to the Respondent. Based on the clear wording of article 18 nr. 9.1, it is unclear for the Panel why such reduction was granted. Nevertheless, in the absence of an appeal of the Respondent, the Panel would go *"ultra petita"* if it adjudicated a higher amount to the Respondent than the one granted by the FIFA DRC. On the other side, the Panel finds that in the particular case, considering article 18 nr. 9.1 of the RRSTP, the amount received by the Respondent from January 1st 2011 until 1st July 2011 shall not be taken into consideration and not lead to any further reduction of the amount calculated

by the FIFA DRC despite the fact that the latter did obviously not take into consideration this amount in its Decision. The contract with the Cyprian club was indeed signed after the Decision had been passed.

82. As a consequence, the Panel upholds the Decision issued by the FIFA DRC and concludes that the Appellant has to pay the total amount of EUR 481,535 to the Respondent, consisting of EUR 96,535, plus 5% of interest as from 29 January 2010, concerning outstanding salaries and bonuses, and EUR 385,000 as compensation for breach of contract.

83. Referring to the statements made above, the Panel shall not consider the further consequences of the breach of contract in question as the disciplinary part of the DRC Decision is beyond the scope of the present appeal proceedings.

84. Based on the foregoing the statement of appeal must be dismissed and the DRC Decision must be upheld. All other prayers for relief are rejected.

**The Court of Arbitration for Sport rules:**

1. S.C. Sporting Club S.A. Vaslui's appeal against the decision dated 13 October 2010 of the FIFA Dispute Resolution Chamber is dismissed and the decision of the FIFA Dispute Resolution Chamber is upheld.

(…)

4. All other motions or prayers for relief are dismissed.