Arbitration CAS 2009/A/1897 PAS Giannina 1966 Football Club v. Derek Décamps, award of 23 November 2010

Panel: Mr Bard Racin Meltvedt (Norway), President; Mr Rui Botica-Santos (Portugal); Mr Jean-Jacques Bertrand (France)

Football
Unilateral termination of the employment contract
Admissibility of the appeal
Validity of a contract
Just cause for termination
Period of time that must have elapsed before the failure to pay the salary constitutes a just cause for termination
Warning
Compensation for termination without just cause

1. **There is no provision in the CAS Code making the admissibility of an appeal conditional upon the appellant's involvement in the previous instance.**

2. **The basic legal principle *pacta sunt servanda* should never be easily disregarded. Indeed, a party's right to invoke a formal requirement and unilaterally declare a contract as void is acceptable to the extent it is not exercised in violation of the principle of *bona fide*.**

3. **Early termination for valid reasons must be restrictively admitted. The only relevant criterion is whether the breach of obligation is such that it causes the confidence, which the one party has in future performance in accordance with the contract, to be lost. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, the employee must have given a warning, *i.e.* the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract.**

4. **Only a few weeks delay in paying less than two full salaries is not, both time-wise and amount-wise, a serious violation that can *per se* constitute a just cause for termination of the contract.**

5. **The requirement of a warning is not met if the threatened consequence (the termination of the contract) is exercised by a party before the end of the deadline for payment that this same party has unilaterally set to the other one.**

6. **According to Article 17 of the FIFA Regulations on the Status and Transfer of Players,**

compensation shall be paid *"in all cases"* by *"the party in breach"*. However, exceptional circumstances such as the delayed salary payments by the party seeking compensation (although not delayed enough to justify the termination by the other party) and the absence for said party of any damage either from a financial perspective or from a sporting perspective may lead to reject the claim for compensation as unfounded.

PAS Giannina 1966 Football Club ("the Club" or "the Appellant") is a football club with its registered offices in Ioannina, Greece and is, through its regional clubs' association, a member of the Hellenic Football Federation (HFF). The HFF is a member of FIFA; the latter is the world governing body for the sport of football and is registered in Zurich, Switzerland.

Derek Décamps ("the Player" or "the Respondent") is a French football player born on 2 May 1985.

On 17 August 2006 the Club and the Player signed an employment contract drafted in Greek covering the 2006-2007 season and expiring on 30 June 2007 ("the First Contract").

Under the First Contract the Player agreed to receive in return for his services a monthly salary of EUR 1,700 gross (EUR 1,530 net) payable on the last day of each month, a furnished apartment and a bonus of EUR 6,345 in the event that the Club was promoted to the first division of Greek football.

Further, clause 8 of the First Contract provided the following:

> *"8. Any amendment of the terms of the contract can be made at any time within the contractual term and is proven only by written agreement bearing a certain date which is submitted in six copies – otherwise it is penalized as invalid – within ten (10) days from its execution to the Hellenic Football League (EPAE) and enters into force after the relevant legal procedure, as provided by the Regulations of Professional Football Players (KEP), is complied with.*
>
> *Private agreements that have not been submitted to the EPAE in accordance with the law and that determine the relationship between football players and Football Sociétés Anonymes (PAE)/Clubs in a different way than the present contract, do not enter into force, nor can be taken into consideration for the resolution of their disputes and are regarded as legally nonexistent and invalid"*
>
> *(translation by the Panel).*

On 30 January 2007 the Parties signed a new employment contract, this time drafted in English, entitled "private agreement" ("the Second Contract"). The relevant parts of the Second Contract read as follows:

> *"1. The second part, Derek Decamps, who is a professional football player agrees to play for the first part, F.C. GIANNINA for a period of 3,5 years, until 30-06-2010.*
>
> *2. The first part, the football club FC GIANNINA is obligated to pay to the second part, Derek Decamps in the following ways:*

- *For the first six (6) months as a monthly (6x) salary 3.000,00 € net plus 10.000,00 € if he plays eight games from 5 January 2007 until the end of the season (30 June 2007).*
- *For the next twelve (12) months, from 1 July 2007 until 30 June 2008, as a monthly (12x) salary 3.500,00 € and if he plays more than fifteen (15) games he will take extra bonus 10.000,00 €, if the team plays at second division. If the team plays in First Division as a monthly (12x) salary 3.500,00 € and if he plays more than fifteen (15) games he will take extra bonus 20.000,00 €. The player will take and the monthly wage, 640,00 € net, even if the team plays at first or second division.*
- *For the next twelve (12) months, from 1 July 2008 until 30 June 2009, as a monthly (12x) salary 4.000,00 € and if he plays more than fifteen (15) games he will take extra bonus 10.000,00 €, if the team plays at second division. If the team plays in First Division as a monthly (12x) salary 4.000,00 € and if he plays more than fifteen (15) games he will take extra bonus 20.000,00 €. The player will take and the monthly wage, 640,00 € net, even if the team plays at first or second division.*
- *For the next twelve (12) months, from 1 July 2009 until 30 June 2010, as a monthly (12x) salary 5.000,00 € and if he plays more than fifteen (15) games he will take extra bonus 20.000,00 €, if the team plays at First division. If the team plays in second Division the player is available for free transfer. The player will take and the monthly wage, 640,00 € net.*
- *The player receives premiums, which are negotiated before the start of the season between the team and the club.*

3. The first part is obligated also to provide to the second part a furnished apartment with two (2) rooms.

4. The player will take extra bonus 5.000,00 € for the season 2006/2007 or 2007/2008 or 2008/2009 If the team stays at first division or if the team promoted at the first division.

5. The team must give to the player two (2) plane tickets per year for the player. […]

7. The player has to take only the money from this contract.

All three parties agreed and signed this private agreement […]".

The Second Contract was neither registered with, nor ratified by, the Hellenic Football League ("the EPAE") or the HFF.

As from February 2007 the Club started paying the Player a monthly salary of EUR 3,000 as provided for in the Second Contract. The Player participated in eighteen out of twenty-six matches in the period between January and June 2007.

At the end of the 2006-2007 season and after a short period of holidays, on Monday 9 July 2007 the Player returned to Ioannina and joined the Club's pre-season training camp. The Club had hired a new head coach, Mr. Chatzaras.

On 12 July 2007 the stock majority owner of the Club, Mr. Kougias, made the following statement in the press with respect to the Player:

"There is a certain view of Mr. Chatzaras for Decamps. He is a very good footballer and in age of 21 where it is certain that he wants to play as primary choice. And with Mr. Anastopoulos and Mr. Papakostas he got

many participations, we will discuss it and if he wants he can remain as a second choice we will keep him, otherwise we will look at alternative solutions. Above all we want a happy locker room".

As of Monday 16 July 2007 the Club organised its training session in sporting facilities situated in the city of Naoussa, Greece.

The following day the Player sent a letter to the Club, which *inter alia* reads:

"Kindly send me an official statement the reason of;(sic) the coach does not want to include me in the list of the squad of PAS Giannina which left for preparation to Naoussa on Monday 16th July 2007.

On Monday morning, I nevertheless went to the bus departure and Mr. Giannis Vella gave me his authorisation to join the group on the bus and leave for Naoussa.

Upon my arrival at the camp, the above mentioned coach informed me that he did not want me on the team and that I would have to leave the team.

In the view (sic) of the above I am asking you, no later than 19th July 2007 to officially reply […], the reason to the above.

I hope you will understand my situation and will do your best to regulate it on the above stated deadline".

By letter of the same day entitled "Extrajudicial invitation with protest", the Club advised the Player of the following:

"As it is already known to you, we have signed from 17.08.2006, a contract, which was amended on 30.1.2007, according in which (sic) you are obliged to provide your services, as a football player to the Club "PAE PAS GIANNINA 1966" until 30.6.2010 with the terms and agreements stipulated in it.

Whilst we were absolutely in line towards you with our obligations, you at the start of the current football season […] [w]hen you were informed that the club acquired the football players ZAPROPOULOS and ANTIC you displayed an unprofessional and unacceptable behaviour, which consist in disobedience to the club's coach' and the instructors orders, during the training session and your sarcastic comments to the above mentioned, which unfortunately took place in the presence of fellow football players but in the presence of fans who where (sic) following the teams training sessions.

Despite our recommendations and your promise to observe and show a [suitable] behaviour, at the club's first training session at the Training Centre in Naoussa, where continues the team's preparation, when you discovered that you where (sic) not [among] the coach's first choices you continued with the same unacceptable tactic, disturbing the club's peaceful atmosphere, but even insulting the coach's and the instructor's personality. Resulting in, to force the coach to send you away from the training session, in order to continue the training with the remaining team.

By realizing the extend of your unconventional behaviour, you sent us by fax in English (hard to read) allegedly asking us the reason why you are not included in the coach's first choices, whilst you very well know, that you have already been agreed to transfer to another club, as it is mentioned in newspaper of national range, and additionally you are creating this situation which is mentioned above. […]

On these grounds

We are calling you on Thursday 19.7.2007, time 20.00, to present yourself before the Board of Directors of PAE PAS GIANNINA 1966, at the office (PEAKI East Ioannina) in order to justify for your above mentioned unacceptable and unprofessional behaviour".

On 18 July 2007 the Player sent a letter entitled "Justification" to the Club informing it of his position as follows:

"[…] I might have to remind you that there are some financial pendencies (sic) towards me

[…] It was only on Wednesday 11 July 2007 that I was informed about the recruitment of the football players Antic and Zapropoulos. And on Friday 13 July 2007, I was already separated from the team. As a professional football player, and as it is required from any professional, I can assert that I was always behaving in a best behaviour towards my fellow colleagues football players and towards any person at the administration of the club, such as the club's technical team and always providing the club my best sporting abilities and services.

[…][b]y not officially inform[ing] me of the situation or any of your plans concerning me and by not even providing me with a training schedule, if I was supposed to stay in Ioannina, I sent a simple request from the training camp in Naoussa in order to officially clarify the situation which seemed to be pending from your side.

[…] [T]o not be the first choice in the coach's list is not my issue, but to be confronted with such attitude to a simple raised question from my part, then I can only consider as not the respond (sic) that any professional should receive".

On 20 July 2007 the Player reminded the Club that the following amounts due under the Second Contract had not been paid by the latter:

"Bonus of the amount €10.000,00, stipulated at point 2 paragraph 1, for playing over 8 games

Wage for May 2007, the amount of € 2.370

Wage for June 2007, the amount of € 3,000

[T]ravel expenses back and forth to France amounting to € 932,38, stipulated on paragraph 5

Total amount due: € 16.302,38

With this request, by the present I send you this formal notice to ask you officially to pay me the above stated total net amount no later than Friday 27th of July 2007 (only cash)".

On 24 July 2007, the Club served the Player a copy of "Extract of the Minutes From 19.07.2007 meeting Of the Board of Directors" whereby the Club decided on the basis of the Player's "unprofessional attitude"

"the interruption of the player's contract for the time frame 18.7.2007 to 17.9.2007, which is suspended, and the imposition of the fined amounting (sic) 10.000€".

By letter of the same day the Player wrote to the Club that:

"On Wednesday july (sic) 18th, you requested me to leave […] the training camp of Naoussa, which we had reached on Monday 16th. Since then I have no training support from the club in Ioannina and have had to train on my own.

In order to allow me to prepare in a professional way for the upcoming season I would like you to send me a training program suited to the needs of a professional football player".

On 25 July 2007, and upon request of the Player's father, the HFF informed the Player that the Second Contract was not registered and thus could not be found in the archive of the HFF.

On the same day the Player wrote to the Club:

> *"On Wednesday 25th July 2007 I received from the Hellenic Football Federation (enclosing a copy of the reply and enclosing a copy of the [Second Contract]) that no such contract/private agreement signed on 30th January 2007 exists at the Federation's Register.*
>
> *Consequently to the above mentioned formal reply, I am free and no longer bound with any contractual obligation towards you, since the signed contract on 17/8/2006 ends on 30/6/2007 and it is validated by the relevant department of the Hellenic Football Federation (bearing validation date on 25/8/2006).*
>
> *Consequently to the club's previous unprofessional and unethical behaviour and the club's administration intention to mislead me, resulting to all our previous correspondence will be subject to FIFA Dispute Resolution Chamber, subject to articles 13, 17.4 and 22, 23, 24 and 25".*

On 21 August 2007 the Player lodged a claim against the Club before the FIFA Dispute Resolution Chamber ("FIFA DRC") requesting the net amount of EUR 193,182.38, *i.e.* EUR 19,802.38 for outstanding payments and EUR 173,380.00 as compensation for breach of contract. The Club was invited by FIFA to submit its position to the claim of the player, but it failed to participate in the proceedings or make any submissions before the FIFA DRC.

On 22 August 2007 the Player and the Spanish club Lorca Deportiva CF ("Lorca") signed an employment contract covering the 2007-2008 season. The said contract provided for a total remuneration of EUR 20,000 which the Player received in full.

With respect to the 2008-2009 season, the Player was hired on 31 August 2008 by the Spanish club Agrupación Deportiva Alcorcón ("Alcorcón") where he received EUR 3,250 for his services during the first five months of the season. On 28 January 2009 the Player was transferred to the club S.C.R. Peña Deportiva ("Peña") where he played until the end of the season and received EUR 10,800.

On 13 August 2009 the Player entered into a new contract with the South African club Ajax Cape Town ("Ajax"). For the period 1 August 2009 – 30 June 2010 the Player agreed to receive an annual salary of EUR 30,600 and EUR 15,000 as bonus in the event he appeared in the starting line-up of twenty official games ("the Ajax Contract"). In addition Ajax would pay for the Player's "image and autograph rights" to a company selected by the Player the amount of EUR 20,000 during the 2009-2010 season.

On 12 March 2009 the FIFA DRC passed a decision ("Decision") which was notified to the parties.

The operative part of the Decision reads as follows:

> *"1. The claim of the Claimant, the player Derek Décamps, is partially accepted.*
>
> *2. The Respondent, Club PAS Giannina 1966 FC, has to pay the Claimant the amount of EUR 119.802,38 within 30 days as from the date of notification of this decision.*

3. Any further request of the Claimant is rejected.

4. If the aforementioned amount is not paid by the Respondent within the aforementioned deadline, an interest rated of 5% per year will apply as of expiry of the fixed time limit and the present matter shall be submitted upon request to FIFA's Disciplinary Committee for its consideration and decision. […]".

By facsimile dated 15 June 2009 FIFA served the Decision with reasons on the parties.

In the Decision, the FIFA DRC considered *inter alia* the following:

"With respect to the first issue, the members of the Chamber […] took note of the private agreement dated 30 January 2007, which constituted a prolongation of the contractual term until 30 June 2010. Thereby, the financial conditions were rearranged as follows: EUR 3000 from the end of January 2007 until the end of June 2007, and for the subsequent years, rates of EUR 3'500, EUR 4'00 and EUR 5'000. […]

With regard to the second question, […] the Chamber took note of the player's allegations regarding non-payment of the salary of May 2007, June 2007 and July 2007 […] as well as alleged outstanding bonus payments in the amount of EUR 10,000 […], that following the days of 13 July 2007, the club refused the player's services with regard to a training camp and orally informed him that he was not welcome. […]

As far as the compensation payable by the club to the player for unjustified breach of contract is concerned […] the total remuneration until the end of the contract amounts up to the amount of EUR 146'500. […]

[T]aking into consideration the new employment contract concluded by the player with the Spanish club […] but without any indication if such contract has been prolonged or if a new employment contract was concluded thereafter, and furthermore taking into account all the undisputed but unilateral facts of the case, the Chamber deemed it fit to reduce the amount of the compensation. It decided to award the player a lump sum payment of EUR 100'000 as compensation".

By letter dated 3 July 2009 and received by the CAS on 6 July 2009 the Appellant filed its Statement of Appeal with CAS against the Decision.

On 16 July 2009 the Appellant filed its Appeal Brief and requested from CAS the following:

"1. to set aside the challenged decision;

2. to confirm that the private agreement signed between the parties on 30 January 2007 was invalid and did not produce any effect;

3. to establish that there were no outstanding payments towards the Respondent from the contract signed on 17 August 2006, which had expired on 30 June 2007;

4. to establish that there was no breach of contract by the Appellant and no amount payable to the Respondent;

5. to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;

6. to establish that the costs of the arbitration procedure shall be borne by the Respondent.

Subsidiary, and only in the event that the above is rejected and the Panel decides that the private agreement was valid and binding on the parties:

1. to set aside the challenged decision;

2. to establish that the Respondent breached the contract/private agreement signed between the parties on 30 January 2007, since he abandoned the Appellant's team and signed with another team without having terminated the said contract/agreement;

3. to establish that the Respondent is liable to pay compensation to the Appellant for the damage suffered from the breach of the contract/agreement of 30 January 2007, amounting to 50,000 euros;

4. to establish that no compensation is payable to the Respondent and the calculation in the challenged decision was wrong;

5. to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;

6. to establish that the costs of the arbitration procedure shall be borne by the Respondent".

By letter dated 26 August 2009 and received by CAS on 27 August 2009 the Respondent filed his Answer and raised a Counterclaim before the CAS. The Respondent submitted the following requests to the CAS:

"1. The Appeal of the Appellant against the decision of the FIFA Dispute Resolution Chamber dated 12 March 2009 is to be entirely dismissed.

2. The decision of the FIFA Dispute Resolution Chamber dated 12 March 2009 is to be annulled and the Respondent is to be awarded an adequate compensation to be assessed by the panel of at least EUR 218'632.38.

3. The Appellant shall bear all costs of the arbitration proceedings and the legal costs of Respondent".

By letter dated 12 October 2009 the Appellant filed its Answer to the counterclaim and required from the CAS the following:

"In view of the above, the Appellant maintains the prayers for relief of the Appeal Brief and in addition respectfully asks the Panel:

1. to reject in full the counterclaim of the Respondent that was lodged by means of the Respondent's answer and Counterclaim

2. to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;

3. to establish that the costs of the arbitration procedure shall be borne by the Respondent".

On 21 October 2009 the Panel invited the parties to outline the relevant provisions of Greek law which in their opinion are directly relevant to the case.

On 6 January 2010 the Appellant filed an unsolicited letter with two exhibits, namely a certified translation of Article 7 of the HFF's Regulation of professional players No.2 ("KEP") and a copy of the Respondent's claim (with annexes) before the FIFA DRC, which the Appellant submitted showed that the Respondent was acting in bad faith in relation to the translation of documents and referred to Annex 3 of the claim before FIFA in that respect.

On 14 January 2010 the Panel informed the parties that it had decided to admit exhibit 1, as it considered necessary to have an official translation of Article 7 prepared by the Greek Ministry of Foreign Affairs. The Panel further advised the parties that exhibit 2 was not admitted on file, as the Panel did not believe that it was relevant to the current procedure.

A hearing was held in Lausanne on 21 January 2010. The Panel heard oral arguments by the parties' counsel and by the Respondent himself. Also, the Respondent produced copies of his contracts with all the teams he played for between 2007 and 2009, i.e. Lorca, Alcorcón and Peña, as well as the contract with his current club, Ajax. At the end of the hearing, the parties, after making submissions in support of their respective requests for relief, confirmed that they had no objections to raise regarding their right to be heard and had been treated equally and fairly in the arbitration proceedings.

LAW

Jurisdiction

1. Article R47 of the Code of Sports-related Arbitration (the "CAS Code") states:

   "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".

2. Article 61 para.1 of the FIFA Statutes provides the following:

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

3. The Panel takes note of the fact that the jurisdiction of the CAS has been explicitly recognized by the parties in their briefs and in the Order of Procedure they have signed.

4. It follows that the CAS has jurisdiction to decide the present dispute.

Applicable law

5. Article R58 of the CAS 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. Article 60 para.2 of the FIFA Statutes provides the following:

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

7. It remained undisputed between the parties that the 2005 edition of FIFA's Regulations for the Status and Transfer of Players, (the "FIFA Regulations") shall govern this dispute.

8. Further, the Panel notes that the parties have agreed in the course of the proceedings that Swiss law shall apply to the merits of this case. However, the Respondent does not agree with the Appellant's contention that Greek law, and specifically Article 7 of the KEP, shall be taken into account when determining the validity or not of the Second Contract.

9. The Panel firstly notes that, in spite of the parties' arguments, the KEP is a regulation enacted by the HFF, i.e. by a private association-member of FIFA, and thus does *not* form part of the Greek state law. The Panel therefore has to examine whether the KEP is one of the "applicable regulations" in the sense of Article R58 of the CAS Code. In this respect, the Panel notes that the KEP is expressly mentioned both on the preamble and in clause 8 of the First Contract which refers to future amendments. It is evident that the parties, a French player and a Greek club, submitted themselves not only to the regulations of FIFA but also to the respective regulations of the national association to which the Club belongs and where the Player had agreed to compete. For these reasons the Panel finds that the provisions of KEP and especially Article 7 must be taken into account when addressing the relationship between the First and the Second Contract.

Admissibility

10. The Appeal was filed on 6 July 2009, in accordance with the 21-day time limit stipulated in Article 61 para.1 of the FIFA Statutes and stated in the Decision, which was notified to the parties on 15 June 2009.

11. Pursuant to Article R57 of the CAS Code, the Panel has *"full power to review the facts and the law"*. The Respondent submits however that the Appeal should not be admitted because the Appellant failed without any valid excuse to participate in the proceedings before the FIFA DRC; based on relevant CAS jurisprudence and especially the award in the matter CAS 2007/A/1426, the Appellant should be precluded from raising any new arguments before the CAS.

12. The Panel in the matter CAS 2007/A/1426 considered *inter alia* the following

"It is true that pursuant to art. 57 of the CAS Code the Panel has the full power to review the facts and the law and to issue a decision de novo. However, when a CAS Panel is acting following an appeal against a decision of a federation, association or sports-related body, the power of such a Panel to rule is also determined by the relevant statutory legal basis and, therefore, is limited with regard to the appeal against and the review of the appealed decisions, both from an objective and a subjective point of view. […] [A]s the subsidiary motion of the Appellant was neither object of the proceedings before the Italian sport authorities, not in any way dealt with in the Appealed Decision, the Panel does not consider itself to have the power to decide on it".

13. The Panel concurs with the opinions expressed in para. 12 above. However, the case at hand is distinct, since the Appellant did not make <u>any</u> submissions before the FIFA DRC. The Panel is

unable to follow the Respondent's argument that, once a party does not – for whatever reason – participate in the first instance proceedings it is automatically deprived of its right to appeal the respective decision to CAS. There is no provision in the CAS Code, nor did the Respondent point out one, making the admissibility of an appeal conditional upon the appellant's involvement in the previous instance. Also, relevant provisions of the Swiss code of civil procedure of the Canton of Aargau invoked by the Respondent do not apply to this case: procedural matters before CAS are governed by the CAS Code and the Swiss Private International Law Act (PILA) and not by Swiss civil procedural rules.

14. The Panel finds that the Appellant is entitled to defend itself against the Respondent's claims and to challenge the Decision in this regard. Therefore, the Appeal complies with the requirements of the CAS Code and is admissible.

Merits

15. The main issues to be decided by the Panel are

(a) Did the Second Contract substitute the First Contract?

(b) If yes, did the Player have a just cause to terminate the Second Contract?

(c) What are the consequences of the termination?

A. The First and the Second Contract

16. At the outset, the Panel notes that the parties disagree with respect to the validity of the Second Contract.

17. Article 7 of the KEP entitled ("Type of Contract – Ratification by the Organizer") reads as follows:

"1. The contract between a club (PAE) and a player is drafted in six (6) copies on a special form provided by the Hellenic Football League and is submitted to the said League for ratification with responsibility of the club (PAE) within five (5) days from its execution at the latest. If no action is taken within the aforementioned deadline and if the club (PAE) has not submitted the contract, the player has the right within the next five days to submit to the Hellenic Football League a copy of the contract he has in his hands and to submit to the Hellenic Football Federation for approval registration card of professional football player, without the signature of the club (PAE).

2. Within five (5) days from the receipt of the contract, the Hellenic Football League examines the legality of its terms, ratifies it and registers the same in a special book that is kept for such purpose. If during the examination is discovered that there is a legal defect or lack of the details of article 6 of the present Regulation or of any other term determined by special provisions, the contract is returned immediately to the club (PAE) in question, that has the obligation to make jointly with the player, within fiver (5) days from its receipt, the necessary corrections or completions and to resubmit it for examination and ratification. After the final examination of the contract, its ratification by the Board of Directors of the Hellenic Football League sends one (1) ratified copy to the

Hellenic Football Federation, one (1) ratified copy to the Panhellenic Professional Football Players Association (PSAP) and one (1) ratified copy to the football player.

3. Amendments of the terms of the contract by the contracting parties can be made at any time within the duration of the contract and must be proven, otherwise they are penalized as invalid, exclusively by means of a written document with a certain date, signed by the interested football player and the club (PAE), which is submitted, within the exclusive deadline of ten (10) days, with responsibility of the club (PAE) or the player to the Hellenic Football League for ratification, with a simultaneous notification to the Panhellenic Professional Football Players Association (P.S.A.P.). For the certain date, the signature of the document by the player in front of a police authority is enough"

(translation provided by the Translation Service of the Greek Ministry of Foreign Affairs).

18. The Panel notes that the procedure of player contracts' ratification described in Article 7 of the KEP is particularly detailed and has clearly the objective of ensuring compliance with the applicable HFF regulations and securing the rights of the contractual parties. The contracts must bear "a certain date" certified by a public authority (usually a police department) so that the danger of pre-dating, post-dating or even falsifying contracts is addressed. Further, all contracts and their amendments must be submitted to the EPAE in order for the latter to control that all players participating in its competitions have been legitimately hired in accordance with local labour law and HFF regulations. Further copies are then forwarded to the HFF and the players' association.

19. Despite the parties' disagreement on the translation of Article 7, the Panel has little doubts that the KEP speaks of "invalidity" as the legal consequence of "non-ratification" of a contract by the EPAE. The Panel indeed understands from the said provision that a player whose contract is not ratified by the EPAE would not be in a position to receive a license from the HFF and participate in Greek football activities. What is of the essence, however, is whether the parties can still assert rights and obligations from a contract – or an amendment thereof – which has not been ratified.

20. In the present matter, given the above-mentioned *ratio* of Article 7, the Panel is of the opinion that the Second Contract, be it an amendment or a new contract, is not *ipso jure* null and void simply because it was not registered. The Appellant has not disputed the Second Contract's compliance with the HFF regulation nor argued that, had the Second Contract been submitted to the EPAE, it would not have been ratified. Also, it has remained uncontested that the parties freely entered into the Second Contract on a certain date, i.e. 30 January 2007. In fact the Club submits that it exercised great pressure on the Player to convince him to prolong his employment agreement with the Club in view of his high level of performance.

21. Further, the fact that the Club started on February 2007 to pay the Player the new salary of EUR 3,000 as stipulated in the Second Contract and continued to treat him as a fundamental component of its football team, fielding him in 18 games until June 2007, is clear evidence that the Club itself believed the Second Contract was in force. Even in July 2007, i.e. after the expiry date stipulated in the First Contract, the Club exercised its disciplinary powers as employer on the Player and made explicit reference to the Second Contract in the extrajudicial summons it served on him. In this context, the Appellant falls short from convincing the Panel that a Greek

professional football club was misled by a 21-year old French football player regarding the true contents of Greek football regulations and that the Club had not realized that the Second Contract had not been submitted to EPAE.

22. At this point the Panel wishes to emphasize that the basic legal principle *pacta sunt servanda* should never be easily disregarded. Indeed, the Panel is of the opinion that a party's right to invoke a formal requirement and unilaterally declare a contract as void is acceptable to the extent it is not exercised in violation of the principle of *bona fide* (see also CAS 2005/A/973, paras. 66-69). The facts of this case, and especially the Club's behaviour in the period February-July 2007, lead the Panel to believe that the Club tried to circumvent this fundamental principle of the law of contracts by artificially claiming the nullity of the Second Contract for the first time before CAS.

23. Therefore, the Panel finds that the Second Contract governed the employment relationship of the parties as of 30 January 2007.

B. Termination of the Second Contract

24. The Panel shall now address the second question, i.e. whether the Player was in position to terminate the Second Contract for just cause on 25 July 2007.

a) Delay in payment

25. At the outset, the Panel finds that on the date of termination (25 July 2007) the Club owed the Player the following amounts:

a) EUR 2,370 for the May salary, since only a partial payment of EUR 630 was made;

b) EUR 3,000 for the June salary; the Club's arguments on points (a) and (b) were exclusively based on the (false) hypothesis that the Second Contract should be deemed invalid.

c) EUR 932.38 as travel expenses between the Club's seat in Greece and the Player's home in France. The Club disputes this amount as non-documented, however acknowledging that the Player returned home in France after the end of the 2006-2007 season and rejoined the team in Giannina after the summer holiday. The Panel finds that, since the Player had a right to receive two flight tickets per season by the Club in accordance with Article 5 of the Second Contract, the Club shall reimburse him for the said travel expenses between his home and place of work.

d) EUR 10,000 as participation bonus for the 2006-2007 season. Although the Club acknowledges the debt, it submits that the Second Contract provides no due date of payment and that it is a custom to pay bonuses of a season not earlier than the beginning of the following season. The Panel cannot follow this argument and, interpreting the Second Contract in that respect, finds no reason for which bonuses arising from a player's performance during a sporting season should be paid several months later and not – at the latest – at the end of the relevant season. It follows that the Player should have

received the participation bonus together with his last salary for the 2006-2007 season, *i.e.* in June 2007, and thus said amount was already due on 25 July 2007.

26. Therefore, the Panel finds that the Player's claims contained in his letter dated 20 July 2007 to the Club were correctly calculated and amounted to EUR 16,302.38.

27. It is important to note at this point that the First Contract explicitly states that the monthly salaries should be paid *"until the end of each month"*. Since the Second Contract simply provides for different figures without changing the due date, the Panel finds that the above-mentioned salaries of May and June 2007 became due on 31 May 2007 and 30 June 2007 respectively. For the same reason, the July 2007 salary was not yet due on the date of termination and thus the Player's argument before CAS that he was owed three salaries cannot be accepted.

28. The Panel now moves to evaluate whether the Club's failure to timely pay the above-mentioned amounts can be considered as just cause for the termination of the Second Contract by the Player.

29. Article 14 of the FIFA Regulations reads

"A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) in the case of just cause".

30. In accordance with Swiss law an employment contract which has been concluded for a fixed term, can only be terminated prior to the expiry of its term if there are "valid reasons" or if the parties reach mutual agreement regarding the end of the contract[1]. In this regard Art. 337 para. 2 of the Swiss Code of Obligations (CO) states – according to the translation into English by the Swiss-American Chamber of Commerce: *"A valid reason is considered to be, in particular, any circumstances under which, if existing, the terminating party can in good faith not be expected to continue the employment relationship"* (emphasis added by the Panel).

31. According to Swiss case law, whether there is "good cause" for termination of a contract depends on the overall circumstances of the case[2]. In principle, the breach is considered to be of a certain severity when there are objective criteria which do not reasonably permit an expectation that the employment relationship between the parties be continued, such as a serious breach of confidence[3]. Pursuant to the established case law of the Swiss Federal Supreme Court, early termination for valid reasons must, however, be restrictively admitted[4]. The only relevant criterion is whether the breach of obligation is such that it causes the

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[1] See also ATF 110 I 167; WYLER R., *Droit du travail*, Berne 2002, p. 323; STAEHELIN/VISCHER, *Kommentar zum Schweizerischen Zivilgesetzbuch, Obligationenrecht, Teilband V 2c, Der Arbeitsvertrag, Art. 319-362 OR*, Zurich 1996, marg. no. 17 ad Art. 334, p. 479.

[2] ATF 108 II 444, 446; ATF 2 February 2001, 4C.240/2000 no. 3 b aa.

[3] See ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 5 May 2003, 4C.67/2003 no. 2; WYLER R., *op.cit.*, p. 364; TERCIER P., *Les contrats spéciaux*, Zurich Basle Geneva 2003, no. 3402, p. 496.

[4] ATF 2 February 2001, 4C.240/2000 no. 3 b aa; ATF 127 III 351; WYLER R., *op.cit.*, p. 364; TERCIER P., *op.cit.*, no. 3394, p. 495.

confidence, which the one party has in future performance in accordance with the contract, to be lost.

32. This is the case when there is a substantial breach of a main obligation such as the employer's obligation to pay the employee. However, the latter applies only subject to two conditions. Firstly, the amount paid late by the employer may not be "insubstantial" or completely secondary. Secondly, a prerequisite for terminating the contract because of late payment is that the employee must have given a warning. In other words, the employee must have drawn the employer's attention to the fact that his conduct is not in accordance with the contract (see also CAS 2005/A/893; CAS 2006/A/1100, marg. no. 8.2.5 *et seq.*).

33. With respect to the period of time that must have elapsed before the employer's failure to pay the salary constitutes a just cause for the termination of the contract, the Panel refers to the commentary to Article 14.2 of the Commentary to the FIFA Regulations:

"The definition of just cause and whether just cause exists shall be established in accordance with the merits of each particular case. In fact, behaviour that is in violation of the terms of an employment contract still cannot justify the termination of a contract for just cause. However, should the violation persist for a long time or should many violations be cumulated over a certain period of time, then it is most probable that the breach of contract has reached such a level that the party suffering the breach is entitled to terminate the contract unilaterally. The following examples explain the application of this norm.

Example 1: A player has not been paid his salary for over 3 months. Despite having informed the club of its default, the club does not settle the amount due. The player notifies the club that he will terminate the employment relationship with immediate effect. The fact that the player has not received his salary for such a long period of time entitles him to terminate the contract, particularly because persistent noncompliance with the financial terms of the contract could severely endanger the position and existence of the player concerned (Under normal circumstances, only a few weeks' delay in paying a salary would not justify the termination of an employment contract)"

(emphasis added by the Panel).

34. In the present case the delay in the payment of the amounts described above (para. 25) did not exceed two months: the May salary was partially not paid for a period of approx. 8 weeks (55 days) while the June salary and the participation bonus were less than 4 weeks (25 days) late. The total amount owed (EUR 16,302.38) is not unsubstantial when compared to the total value of the Second Contract, but only EUR 2,370 thereof were delayed for more than one month.

35. In view of the above consideration and of related CAS jurisprudence which is in line with the FIFA guideline of unpaid salary *"for over 3 months"*[5], the Panel finds that the Club's breach was such that it did not bring the Player into a situation where *"in good faith he could not be expected to continue the employment relationship"*. In the Panel's opinion, the delay in payment as evidenced in these proceedings, both time-wise and amount-wise, is not as serious a violation that can *per se* constitute a just cause for the termination of the Second Contract.

[5] See CAS 2007/A/1210; CAS 2006/A/1180; CAS 2007/A/1352.

36. The Panel is aware of – a few – CAS awards in which the delay of two salaries was exceptionally acknowledged as sufficient foundation for the creation of just cause in conjunction with other factors pointing to the same direction[6]. Nevertheless, even if this Panel would be ready to accept such argument in the case at hand (although there are less than two full salaries owed here along with one participation bonus and a round trip ticket), the Player would still not be entitled to invoke the delay in payment as a cause of termination on 25 July 2007, for the simple reason that in his notice to the Club he had set a deadline until 27 July 2007 for the payment of the outstanding amounts.

37. Indeed, the Player's letter dated 20 July 2007 – to which he refers as *"formal notice"* – clearly indicates that he was prepared to remain under contract and wait for the payment of the amounts due until 27 July 2007. This notice complies with the requirements of Art. 107 of the CO and would most likely allow him to terminate the Second Contract a few days later, provided that the deadline would have elapsed without payment by the Club and a third salary (July 2007) would also have become due. Instead, the Player chose to put an end to the employment relationship on 25 July 2010. The Panel considers that the requirement of a written warning provided under Swiss law was not met in this case since the threatened consequence (termination) was exercised by the Player before the end of the deadline for payment. In addition, when focusing on the issue of the delayed payments, the Player's behavior was in violation of the general principle *venire contra factum proprium*, since he did not allow the Club to cure the breach within the time-limit that he had a few days earlier unilaterally imposed on the Club. For this reason the Panel holds that the Player was stopped from making use of the outstanding payments, either as a sole reason of termination or as part of accumulated breaches by the Club, as early as on 25 July 2007.

38. Lastly, it is worth emphasizing that the termination letter of 25 July 2007 makes no express reference to the Club's failure to timely effect payments but rather to *"the club's previous unprofessional and unethical behaviour and the club's administration intention to mislead [the Player]"*.

39. Therefore, the Panel finds that at the time of termination, the delay in payments by the Club could neither establish a just cause of the termination of the Second Contract nor be taken into account as one of multiple breaches.

b) Non-registration of the Second Contract

40. The Player submits that he was misled by the Club in that the latter never registered the Second Contract with the competent Greek football authorities and thus he did not appear on the Club's list of players maintained by the HFF after the expiry of the First Contract on 30 June 2007.

41. The Panel notes that the KEP does not provide for an *exclusive* duty of the Club to register a contract. In case of a first contract between two parties, the club shall file it with EPAE within five days from its signing; if it fails to do so then the player has the right to submit it within a

[6] CAS 2007/A/1232.

deadline of another five days. In case of contract amendments, Article 7 para. 3 of the KEP provides that the contract

"is submitted, within the exclusive deadline of ten (10) days, with responsibility of the club (PAE) or the player to the Hellenic Football League for ratification"

(emphasis added by the Panel).

42. It is evident that the Club did not breach the Second Contract by not registering it: the Player himself could (and should) have taken the necessary steps to ensure that such an important amendment, prolonging his employment relationship with the Club for three more years and substantially raising his salary, was properly executed and ratified. The Panel notes that at all stages the Player had the benefit of Greek legal advice: the First Contract is co-signed by his authorized attorney (signature and name illegible), the Second Contract is co-signed by his agent Mr. Elefterios Sidiropoulos and, admittedly at the time the dispute arose in June-July 2010 he and his father were being advised by representatives of the Greek Football Players' Union, who additionally filed the claim with the DRC in August 2007. Therefore, the Player had the means of making use of his own rights as provided under the applicable HFF Regulations but failed to do so.

43. Aside from the fact that the Club cannot be found in breach of the Second Contract for an action/omission (contract registration with EPAE) for which the Player was co-responsible, the Club had shown in the period February-June 2007 that it recognized the Second Contract by fielding him in a large number of games and paying him the new salary. Also, by 25 July 2007 the Player had not suffered any harm due to the contract's non-registration: he did not miss any games of the 2007-2008 season since the first official game would not take place before late August/early September 2007.

44. Therefore, the Panel finds that the non-registration with the EPAE of the Second Contract does not constitute just cause to terminate the same on 25 July 2007.

c) Alleged exclusion of the Player from the team

45. The parties have submitted to CAS several documents exchanged between them during the period 17-25 July 2007 and have argued that said documents summarize and establish the contract violations committed by the opposite party. On the one hand the Player submits that due to the arrival of a new coach and the hiring of two new players in his position, the Club was not anymore interested in his services and was trying to put pressure on him to dissolve the contract through a series of actions: the head coach did not allow him to travel to Naoussa with the rest of the team; after the assistant coach intervened and allowed him to travel, the head coach asked him to train alone. The Player requested explanations for such removal and subsequently a training schedule. On the other hand the Club claims that the Player did not accept the fact that he would be considered a substitute player and his reaction was *"unacceptable and unprofessional"* including insulting the coach and teammates.

46. The Panel notes that the Player does not complain about the training sessions that took place between 9 July 2007 (when the Player rejoined the team) and 13 July 2007 (when he was allegedly separated from the team for the first time). On 16 July 2007 the team went to Naoussa for the second phase of its preparation and the Player, under circumstances which are disputed, followed the team.

47. As regards the week 17-24 July 2007, the same day that the Player complained about his exclusion from the team during a training session in Naoussa, the Club initiated a disciplinary procedure and invited him in writing to explain his – allegedly unlawful – actions. Thereafter, on 24 July 2007, the same day that the Player requested a training schedule, the Club imposed a disciplinary sanction on him in the form of two-month contract suspension and EUR 10,000 fine.

48. The Panel considers that, as a matter of fact, aside from the above-mentioned documents and the Player's testimony at the hearing, no other evidence brought forward by the parties can be taken into account as relevant or corroborating evidence on this particular issue. Neither party has filed witness statements or called witnesses at the hearing that could enlighten the Panel in that regard. The Club challenged the Player's testimony at the hearing since he was not named as a witness in the Respondent's Answer. The Panel admitted the Player's testimony on record bearing in mind however that it has limited evidentiary value and shall be evaluated accordingly due to his capacity also as a party in these proceedings.

49. In view of the above, the Panel finds the evidence before it inconclusive as to whether the Player was (and in what form) excluded from the training sessions with the rest of the team and, if so, whether this was a result of the Club's unjustified decision or a necessary disciplinary measure imposed on him due to his behavior towards the new coach and assistant coach.

50. Considering that the burden of proof lies with the Player, who shall establish the circumstances constituting the just cause, the Panel finds that the Player had no just cause in terminating the Second Contract due to his alleged exclusion from the team.

51. In addition, even if the Panel accepted the Player's version of the facts, the Panel notes that the Player did not make any reference to his exclusion from the team's activities either in his notice of 20 July 2007 or in his termination letter of 25 July 2007. On the contrary, on 24 July 2007 he sent a letter to the Club asking for instructions on how he should train alone in Giannina. As in the case of outstanding payments (see above paras. 36-37), the Player gave no indication to the Club that if he did not receive the training schedule within the following 24 hours he would cancel the Second Contract. Terminating the contract just the following day and vaguely invoking an *"unprofessional and unethical behaviour and the club's administration intention to mislead me"* falls far from meeting the requirements set by the FIFA Regulations and Swiss law (described above in paras. 29-32) with regards to termination.

52. In a nutshell, considering the evidence before it and the parties' submissions, the Panel finds that the Player was in a dispute with the Club during the period 13 – 24 July 2007 regarding his role in the team after the new coach's arrival. Under these circumstances, the Player raised also

the issue of late payments and admittedly started his "efforts to find a new job" (p. 11 of the Answer) since the transfer window would close at the end of August. After receiving confirmation by the HFF on 25 July 2007 that the Second Contract was not registered, he realized that the Club was not in a position to stop his transfer and that his International Transfer Certificate could not be denied by the HFF in the absence of a registered contract. Without any delay, by letter of the same day he informed the Club that he was a free player already since the expiry of the First Contract on 30 June 2007:

"[…] Consequently to the above mentioned formal reply, I am free and no longer bound with any contractual obligation towards you, since the signed contract on 17/8/2006 ends on 30/6/2007 […]"

(emphasis added by the Panel).

53. Notwithstanding the Player's contention that he was not bound by the Second Contract due to its non-registration, in the same letter the Player anticipated his recourse to the FIFA DRC: indeed, on 21 August 2007 he filed a claim seeking damages on the basis of the terms contained in the Second Contract.

54. The Panel is unable to reconcile these two legal approaches followed by the Player in his letter of 25 July 2007. Although the Panel has certain sympathy to the Player's situation in view of the outstanding salaries and the Club's decision to impose a disciplinary sanction on him, the letters prepared by his advisors and signed by him convey a totally different picture: a player who was mainly interested in being disengaged from his contractual obligations and preferred to leave a few days earlier than give the Club the – statutorily required – last chance to cure the alleged breaches before a cause for termination is established. The course of action followed by the Player is not in compliance with the principle of contractual stability in football and cannot be approved by this Panel.

55. Therefore, the Player's termination of the Second Contract on 25 July 2007 was unjust.

C. Consequences of Termination

56. At the outset the Panel notes that, given the termination of the Second Contract without just cause, the Player's counterclaim shall be rejected.

57. Furthermore, the Panel notes that in addition to the amount of EUR 16,308 (as analyzed in para. 25) the Club shall pay to the Player also the 25/30 of the July 2007 salary, i.e. the period during which the Player was still under contract and was offering his services. Under this *pro rata* calculation, the Panel finds that the Club owes to the Player EUR 2,916.66 for the first 25 days of July 2007.

58. Consequently, the Club shall pay the Player EUR 19,219.04 for outstanding salaries, participation bonus and travel expenses.

59. Turning now to the Club's claim for compensation the Panel refers to Article 17 of the FIFA Regulations which provides as follows:

"The following provisions apply if a contract is terminated without just cause:

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of Art. 20 and annex 4 in relation to Training Compensation, and unless otherwise provided for in the contract, compensation for breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the Former Club (amortised over the term of the contract) and whether the contractual breach falls within a Protected Period".

60. The Panel is mindful of the principle that compensation shall be paid *"in all cases"* by *"the party in breach"* but notes that the circumstances of this case are exceptional in that the Club

a) Did not pay any transfer fee for the Player before signing the First Contract with him;

b) Has forcefully challenged before CAS the validity of the Second Contract under Greek law although it applied it for a period of six months;

c) At the time of termination had not yet submitted the Second Contract with the EPAE for the 2007-2008 season and was thus not legally entitled to deny the Player's transfer to another club or ask for a transfer fee;

d) Did not pay any amounts to the Player for the 2007-2008 season;

e) Also breached the contract by not paying to the Player several amounts arising from the 2006-2007 season;

f) Had hired two new players in the Player's position already before termination and, according to the Club owner's statements at that time (which were confirmed by the Club at the hearing) the Player *"if he wants he can remain as a second choice we will keep him, otherwise we will look at alternative solutions"*.

61. The Panel finds that the Club was unable to establish the damage it allegedly suffered by the Player's termination and which should be restituted by the latter. The fact that the Club's breach in the sense of delayed salary payments was not such that could justify the termination as early as on 25 July 2007 does not automatically mean that the Player shall pay compensation to the Club.

62. In addition, it is evident that neither from a financial perspective nor from a sporting perspective the Club suffered any damages from the Player's departure.

63. Therefore, the Club's claim for compensation must be rejected as unfounded.

64. The Panel emphasizes that it reached the above conclusions on the basis of very particular circumstances as evidenced, and without therefore intending to give any direction whatsoever for future cases.

65. This decision has been taken by the members of the Panel by majority.

The Court of Arbitration for Sport rules:

1. The appeal filed on 6 July 2009 by PAS Giannina 1996 FC against the decision issued on 12 March 2009 by the FIFA Dispute Resolution Chamber is partially upheld.

2. PAS Giannina 1996 FC is ordered to pay to Mr. Derek Décamps the amount of EUR 19,219.04 plus interest at 5% per annum starting from 30 days following the date of notification of the FIFA Dispute Resolution Chamber decision until the effective date of payment.

3. The counterclaim filed by Mr. Derek Décamps on 26 August 2009 is rejected.

4. Any other or further-reaching motions or prayers for relief are dismissed.

(…).