Arbitration CAS 2011/A/2430 Football Club Apollonia v. Albanian Football Federation (AFF) & Sulejman Hoxha, award of 18 October 2012

Panel: Mr Martin Schimke (Germany), President; Mr Lucas Anderes (Switzerland); Mr Geraint Jones QC (United Kingdom)

Football
Termination of an employment contract without just cause
Article 63 FIFA Statutes and CAS jurisdiction for appeals against decisions issued by national federations
Referral to the FIFA rules as an arbitration clause
Timeliness of the statement of appeal according to Article R32 CAS Code
Requisites included in the concept of "burden of proof"

1. **Article 128 of the Albanian Code of Discipline does not create by itself CAS jurisdiction, nor speak of CAS appellate jurisdiction. In accordance with consistent CAS case law, Article 63 FIFA Statutes does not by itself grant jurisdiction to cover appeals against decisions issued by national federations and does not *per se* form part of the national association's rules but rather needs to be taken over in the national federation's rules either word by word or per specific and clear reference in order to apply to domestic matters. In order to constitute CAS jurisdiction, an express reference to CAS as the relevant body is needed.**

2. **A provision which intends to enable a party to refer a dispute to CAS should be clear and explicit. A general reference to rules that name CAS as the appellate body is therefore not sufficient. Moreover, the FIFA rules alone do not *per se* constitute a basis for arbitration, but rather an instruction to introduce a regulation providing for CAS arbitration. A provision inserted in the contract between the parties only referring to FIFA Statutes as a whole is not sufficient. Hence, if not even the FIFA rules *per se* constitute CAS jurisdiction, there are no grounds for the referral to FIFA Statutes to be viewed as a specific arbitration agreement.**

3. **Dispatch of the Statement of Appeal is sufficient under the wording of R32 of the CAS Code in order for the Statement of Appeal to be timely.**

4. **Any party wishing to prevail on a disputed issue must give evidence of the facts on which its claim has been based. The two requisites included in the concept of "burden of proof" are (i) the "burden of persuasion" and (ii) the "burden of production of the proof". In order to fulfil its burden of proof, a party must, therefore, provide the CAS panel with all relevant evidence that it holds, and, with reference thereto, convince the panel that the facts it pleads are true, accurate and produce the consequence envisaged by the party. Only when these requirements are complied with is the burden of proof transferred to the other party.**

1. THE PARTIES

1.1 Football Club Apollonia (hereinafter "Appellant) is a football club seated in Tirana, Albania. It is affiliated to the Albanian Football Association.

1.2 The Albanian Football Federation (hereinafter "AFF" or "Respondent 1") is the national football association of Albania and seated in Tirana, Albania. It is affiliated to the Fédération Internationale de Football Association (FIFA).

1.3 Mr. Sulejman Hoxha (hereinafter "Respondent 2", and jointly with Respondent 1 the "Respondents") is a football player currently playing for the club KF "Pogradeci", seated in Pogradec, Albania.

2. FACTUAL BACKGROUND

2.1 The Appellant as a football club and Respondent 2 as a football player signed a Service Contract concerning their mutual duties with respect to Respondent 2's position as a player for the Appellant for a principal duration of three years, effective 22 August 2009 (hereinafter the "Service Contract; cf. sec. VIII.1 of the Service Contract). In its sec. IV.1., the Service Contract provides:

"THE LIABILITIES OF THE CLUB:

1. For services rendered to the club, the player will benefit:

A. ALL[1] 200 000 (two [sic] *thousand) payable within the months of August 2009*

B. ALL 200 000 (two [sic] *thousand) payable within the month of January 2010*

C. A monthly fee of ALL 25,000 (twenty five thousand) payable on the 21st of every month in return for services that the Player has performed for the club during the previous month. The Income tax will be applied on revenues according to the legal liabilities in force.

D. For the other years of the contract, the payments will remain unchanged".

2.2 The Panel notes that the Appellant failed to comply with its payment obligations as provided for by sec. IV of the Service Contract. As of 30 September 2010, Respondent 2 stopped participating in the Appellant's training sessions. The latter fact has been argued by the Appellant, has apparently been adopted by the AFF's Disciplinary Committee (hereinafter the "DC") decision of 29 January 2011 and the AFF's Appeals Committee (hereinafter the "AC") decision of 1 March 2011 and has not been disputed by the Respondents. Thereupon, on 6 October 2010, the Appellant issued a notification about Respondent 2's departure to Respondent 1 as the AFF. In its English translation provided by the Appellant, the 6 October 2010 notification reads: *"Dear Sirs, You are hereby notified that the player Sulejman Hoxha has left*

[1] Albanian Lek.

Apollonia Football Club [sic] *as of date 30.09.2010 not participating in the training sessions that Apollonia first team has organized during the following days. With no prior notice from the player for the reason of leaving, we notify you that according to the provisions of the contract signed with the player Sulejman Hoxha, we will take punitive measures against him".*

2.3 On 12 November 2010, the Appellant issued a request directed to Respondent 1, which states, in brief, that Respondent 2 failed to participate in the Appellant's training sessions since 30 September 2010, thus for more than 28 days, and that therefore, based on Articles 45 and 22 of the Albanian "Rules of Football Operations Provisions, Superior Category, First Category, 2010-2011 edition" (hereinafter "Rules of Football Operations"), the Appellant asked for Respondent 2 to be transferred *"to annuity relations".*

Articles 22 and 45 of the Rules of Football Operations reads in the English translation provided by the Appellant:

"Retired Players 1. The club that holds the federation right of a retired player in accordance with the definitions in paragraph (2) hereinafter in this Article, shall have the right to transfer compensation benefit fee from [sic; should read "to"] the club that receives the right of federation, if relevant player requires federating at the Albanian Football Federation (FSHF).

2. The club at FSHF that has the right of final federation for a player who retires, is considered to have the right of federation for the respective player for a period of 30 (thirty) months from the date of the last match that the respective player has played for this club".

"Abandonment 1. If a player leaves unilaterally and without any authorization from the club or any other body of FSHF [Respondent 1], for a period of more than 28 days, from the activities of the football club that possesses the right of federation for the respective player, and if none of the parties, the club or the player, exercise the right to unilaterally terminate the contract, then the club and the relevant player are considered to have entered in annuity relations, in accordance with Article 22 – Retired Players".

2.4 On 22 November 2010, Respondent 2 initiated proceedings at the DC (the respective proceedings hereinafter the "**first proceedings before the DC**") and requested the termination of the Service Contract (cf. DC's Decision dated 29 January 2011, p. 1, ultimate para.; Statement of appeal, p. 1, para. 3), arguing that the Appellant had failed to make a number of monthly payments under the Service Contract to Respondent 2 (cf. DC's Decision dated 29 January 2011, p. 1, ultimate para. and p. 2, first para.; Statement of appeal, p. 2, para. -2). In the first proceedings before the DC, the Appellant countered Respondent 2's argument of Appellant's failure to pay by submitting that *"all obligations"* towards Respondent 2 had been fulfilled. The DC decided on 15 December 2010 along the following lines: *"Accepting the request of footballer Sulejman Hoxha. The declaration to terminate his contract with Apollonia club for breach of liabilities by the club"* (Statement of appeal, p. 2, para. 3). It shall be noted that the text of the DC's 15 December 2010 decision has not been submitted to the Panel.

2.5 The Appellant appealed the decision dated 15 December 2010 that had been rendered in the first proceedings before the DC to the AC. The AC (the respective proceedings hereinafter

the "**first proceedings before the AC**") changed the DC's 15 December 2010 decision and, on **6 January 2011**, decided to reject Respondent 2's request for termination of the Service Contract (Statement of appeal, p. 2, para. 5). It shall be noted that the AC's 6 January 2011 decision has not been submitted to the Panel.

2.6 On **28 January 2011**, and upon Respondent 2's request to reopen the proceedings due to new evidence, the AC decided that it did not have jurisdiction to decide on that application but that the application would need to be filed with the DC (Statement of appeal, p. 3, para. 2). It shall be noted that the AC's 28 January 2011 decision has not been submitted to the Panel.

2.7 Upon Respondent 2's resubmitted request to reopen the proceedings due to new evidence to the DC in accordance with the AC's 28 January 2011 decision, the DC (the respective proceedings hereinafter the "**second proceedings before the DC**"), on **29 January 2011** and in line with its previous decision in the first proceedings before the DC as described in sec. 2.4 above, decided as follows:

"- The acceptance of the request submitted by player Sulejman Hoxha for the termination of his contract with 'Apollonia' FC.

- His contract with 'Apollonia' FC is declared terminated due to the failure of the football club to comply with the contractual obligations"

(DC's 21 January 2011 decision, operative part; Statement of appeal, p. 3 para. 4).

It shall be noted that the text of the DC's 29 January 2011 decision has been submitted to the Panel by Respondent 1.

2.8 In line with the decisions in the first and second proceedings before the DC as described in secs. 2.4 and 2.7 above and upon Appellant's appeal (the respective proceedings hereinafter the "**second proceedings before the AC**"), the Appeals Committee of the Albanian Football Federation on **1 March 2011** decided as follows:

"To confirm the validity of the decision of the Discipline Committee dated 29.01.2011" (hereinafter the "Decision under appeal"; AC's 1 March 2011 decision, operative part; Statement of appeal, p. 3, ultimate para.).

It shall be noted that the Minutes of the Meeting including the AC's 1 March 2011 decision have been submitted to the Panel by the Appellant. These Minutes of the Meeting read in their English translation:

"Minutes of Meeting

Held today, on 01.03.2011 at the Appeals Committee of the Albanian Football Federation composed of:

1. Alban Mesonjesi (absent)

2. Ardian Haci Substitute chairman

3. Fatmir Leli Member

The appeal of 'Apollonia' Football Club against the decision dated 29.01.2011 of the DC (Disciplinary Committee) of the Albanian Football Federation that has examined the issue returned for review by the Appeals Committee, about the request made by Sulejman Hoxha, 'Apollonia' football Club player, and has decided the termination of his contract with this club for breach of obligations by the club, leaving the player free based on the rules for the Status and Transfer of the Footballer. Within the legal limits, it is exercised an appeal by 'Apollonia' Football Club, at the Appeals Committee.

Apollonia' football club introduced the lawyer of this club, Mr. Fatos Braja, which claims that we are not for the review of the decision because there is no new evidence and that we are not called to be heard by the Discipline Committee regarding the decision of the latter.

The Appeals Committee reviewed the files and evidence submitted by the Technical Secretariat of the Albanian Football federation and noted that:

Regarding the request for the postponement of the decision by the Appeals Committee, we judge that in this case we are in terms of reviewing a request, submitted to the Discipline Committee, by the highest authority of the Appeals Committee, so in this case the decision of the Discipline Committee referred to the decision for review of the Appeals Committee is sufficient.

Regarding the case, it results from administered tests that 'Apollonia' Football Club has not fulfilled its contractual obligations to conduct the monthly payments in favour of footballer Sulejman Hoxha as defined in the contract between them.

For these reasons the Appeals Committee, based also on Article 83 of [sic] *Disciplinary Committee, decided:*

1. To confirm the validity of the decision of the Discipline Committee dated 29.01.2011

Chairman of the hearing Member

Ardian Haci Fatmir Leli".

It shall be noted that neither the text of the above cited *"Article 83 of* [sic] *Disciplinary Committee"* nor the text of Article 83 of a regulation named differently have been submitted to the Panel.

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT & DECISION ON ORAL HEARING

3.1 The Appellant filed its Statement of appeal dated 19 March 2011 against the Decision along with exhibits, with the CAS which received the Statement on 19 April 2011. As exhibits, the Appellant submitted its 6 October 2010 "Notice for the removal of the player Sulejman Hoxha" in the original Albanian language version as well as an English translation, its 12 November 2010 "Request" for *"[t]he transfer of the player to annuity relations"* in the original Albanian language version as well as an English translation, the 1 March 2011 "Minutes of Meeting" of the AFF Appeals Committee in the original Albanian language version as well as

an English translation, the 22 August 2009 Service Contract entered into between the Appellant and the football player Respondent 2 (hereinafter the "Service Contract") in the original Albanian language version as well as an English translation, another English translation of Articles 22, 43 and 45 of the Rules of Football Operations and an English translation of Articles 82, 94, 102, 106, 114, 115, 116 and 138 of the 2010 Code of Discipline of the AFF (hereinafter the "Code of Discipline").

3.2 The CAS Court Office acknowledged receipt of the Statement of appeal on 21 April 2011, requested payment of the CAS court fee, the nomination of an arbitrator and a copy of the provisions of the statutes or regulations or the specific agreement providing for appeal to the CAS from the Appellant. By the Appellant's undated letter, received with the CAS Court Office on 3 May 2011, the Appellant nominated Mr. Lucas Anderes as arbitrator and submitted a confirmation of a bank transfer of the CAS Court office fee in the amount of CHF 500.

3.3 In its letter dated 3 May 2011, the CAS Court Office noted that the regulations submitted did not appear to provide for an appeal to the CAS and granted the Appellant another deadline to provide the relevant regulations. Within the time-limit set and by its letter dated 5 May 2011, the Appellant forwarded the original Albanian language version and an English translation of Article 128 of the Code of Discipline and clarified at the same time that *"[i]n Albania there is no other body in which the decisions of the Albanian Football Federation can be appealed"*. and asserted that that the CAS was *"[t]he only competent body"* for the appeal.

3.4 By its letter of 6 May 2011, the CAS Court Office served the Statement of Appeal upon Respondents 1 and 2 along with the prior correspondence between the CAS Court Office and the Appellant and, inter alia, advised that English has been chosen as the language of the present arbitration in accordance with Article R29 of the Code of Sports-related Arbitration (hereinafter the "Code").

3.5 By its letter of 11 May 2012, the Appellant stated that its Statement of appeal shall likewise be considered as its appeal brief. By the CAS Court Office's letter dated 16 May 2011, Respondents were invited to submit their Answer. By its letter of even date, the CAS Court Office noted that the Statement of appeal could not be served upon Respondent 2 at the contact details as provided by the Appellant. By its letter of 19 May 2012, the Appellant notified different contact details for Respondent 2 and stated that in the event that delivery could not be made at this address to Respondent 2, delivery to Respondent 2 could be effected through the AFF, i.e. Respondent 1. By its letter of 25 May 2012, the CAS Court Office announced that no delivery could be made at the new contact details provided by the Appellant and forwarded all previous correspondence to Respondent 1 to be sent onwards to Respondent 2.

3.6 By its letter of 22 June 2011, the CAS Court Office found that Respondent 1's time-period to file an Answer expired by 27 May 2011 and Respondent 2's time-period to file an Answer expired by 6 June 2011 and advised the Respondents that the Panel may nevertheless proceed with the arbitration and deliver an award. It further requested the parties to inform the CAS Court office as to *"[w]hether their preference is for a hearing to be held in this matter or for the Panel to*

issue an award based on the parties' written submissions". By its letter of 29 June 2011, the Appellant announced that it had initialised a bank transfer for CHF 16.000 to the CAS of the advance on costs and that *"[w]e* [the Appellant] *agree that the Panel issue an award based on the parties' written submissions"*. By its letter of even date, Respondent 1 likewise announced that it *"[w]ill not request a hearing session but we will end our arguments for the case in writing"*. Since the Appellant, by its letter dated 30 June 2011, did not agree to extend Respondent 1's time-limit to file its Answer, the CAS Court office advised the parties by its letter of 1 July 2011 that the Panel, once constituted, would determine the further conduct of the proceedings.

3.7 As communicated by the CAS Court Office's letter of 26 August 2011, the Panel granted the Respondents an additional twenty days upon receipt of the CAS Court Office's letter to file an Answer. Furthermore, in order to preserve the rights of Respondent 2, the CAS Court Office asked Respondent 1 to verify and provide some proof of delivery to the effect that Respondent 1 had forwarded CAS' correspondence and the Statement of appeal to Respondent 2.

3.8 By its letter of 20 September 2011 and in reply to the CAS Court Office's 26 August 2011 letter, thus in lieu of an Answer, Respondent 1 forwarded an English translation of the DC's 29 January 2011 decision bearing original stamps of Respondent 1. It shall be noted that this decision has been confirmed by the Decision under appeal.

3.9 The Appellant, by its letter dated 21 October 2011, stated that Respondent 2 had been registered as a player with the Football Club Pogradeci of the Albanian superior Category. Not having received Respondent 1's reaction on the Panel's request to verify and provide proof of delivery as requested on 26 August 2011, through the CAS Court Office's letter dated 2 November 2011, the Panel directed Respondent 1 to provide the name and address of the Club at which Respondent 2 is currently playing which appeared to be the club KS Pogradeci. By its letter dated 3 November 2011, Respondent 1 confirmed that Respondent 2 was currently playing for the Club Pogradeci and that Respondent 1 has *"[i]ssued him a copy of all documents issued by CAS"*. Thereupon, and through the CAS Court Office's letter dated 11 November 2011, the Panel again directed Respondent 1 to provide proof of delivery of all documents issued by CAS to Respondent 2. Not having received any reply in this respect, the Panel reiterated its respective request through the CAS Court Office's letter dated 12 December 2011 and asked the Appellant and Respondent 1 to provide the full postal address of the Club Pogradeci in order to assure service of the Statement of appeal and all other correspondence to Respondent 2 at this address. Having been provided with the contact details of the Club Pogradeci by Respondent 1's letter dated 13 December 2011 and the Appellant's letter dated 14 December 2011 which further confirmed that Appellant also delivered all documents yet issued by the CAS to Respondent 2's address at the Club Pogradeci by mail, the CAS Court Office, by 15 December 2011, again forwarded the documents and correspondence on the file to Respondent 2, this time care of the Club KS Pogradeci and, on behalf of the Panel, granted Respondent 2 another time-limit, i.e. until 14 January 2012 to file his Answer, advising Respondent 2 that the Panel may proceed with the arbitration and deliver an award, notwithstanding any failure of Respondent 2 to submit an Answer.

3.10 By the CAS Court Office's letter dated 13 February 2012, it was noted that no Answer of Respondent 2 had been received by the Panel and that the Appellant and Respondent 1 had stated their preference that the award was rendered on the basis of the parties' written submissions without holding a hearing. On behalf of the Panel, Respondent 2 was granted another time-limit of seven days to state whether he preferred that a hearing was held. Furthermore the Panel's Order of Procedure was forwarded to the parties for their signature and finally, the parties were directed by the Panel to submit within 14 days (i) documentary evidence regarding the making of/receipt of payments due under the contract, (ii) the CD filed by Respondent 2 with the Disciplinary Commission or proof for the contention that the CD does not contain any recordings as argued by the Appellant, and (iii) any other evidence that the parties deemed helpful in support of their respective cases. The Order of Procedure signed by the Appellant has been received by the CAS Court Office on 17 February 2012; the Order of Procedure signed by Respondent 1 has been received by the CAS Court Office on 20 February 2012. An Order of Procedure signed by Respondent 2 has not been received, neither did Respondent 2 state his preference for this case to be decided upon an oral hearing or on the basis of the parties' written submissions only.

3.11 Answering the Panel's 13 February 2012 request to submit evidence, by its letter dated 27 February 2012 the Appellant informed the Panel that it was not in possession of the CD requested by the Panel since the CD had not been made available to the Appellant by the Respondents. The Appellant argues that the CD previously submitted as evidence by Respondent 2 in the second proceedings before the DC and the AC was *"a falsified copy devoid of any relevance"*. Further, the Appellant asserted that it had paid all financial obligations towards Respondent 2 in accordance with the Service Contract. The Appellant argues that Respondent 2 *"never expressed any contempt relating to unfulfilled payments on behalf of the Apollonia FC* [the Appellant]*"*. The Respondents did not react to the Panel's 13 February 2012 request to submit evidence.

3.12 By their signature of the Order of Procedure and in line with their previously articulated preference, the Appellant and Respondent 1 confirmed *"[t]heir agreement that the Panel may decide this matter based on the parties' written submissions. The parties confirm that their right to be heard has been respected. Pursuant to Article R57 of the Code, the Panel may consider itself sufficiently well informed to decide this matter without the need to hold a hearing"*. In view of (i) Respondent 2's non-participation throughout the present proceedings (ii) including his failure to even file an Answer within the deadlines that have been repeatedly extended by the Panel and (iii) his failure to comment on his preference for an oral hearing or written proceedings upon the Panel's explicit and repeated request and further considering that (iv) neither the Appellant nor Respondent 1 offered any witness testimony or other evidence for examination at an oral hearing, (v) that the Appellant and Respondent 1 which actively participate in the proceedings prefer this matter to be decided by a written procedure only and that (vi) no further evidence has been submitted or offered by the parties upon the Panel's 13 February 2012 express request to submit evidence, in this light, the Panel failed to see what the conduct of an oral hearing could add to these proceedings and thus decided not to hold an oral hearing in accordance with Article R57 of the Code.

4. THE CONSTITUTION OF THE PANEL

4.1 On 4 August 2011, considering Articles R33, R52, R53 and R54, the present Panel was constituted. By its letters of even date, the parties were informed thereby the CAS Court Office and the file was transferred to the Panel.

4.2 By its letter of 16 September 2011, the CAS Court Office informed the parties that Ms Barbara Helene Steindl was appointed ad hoc clerk in this matter.

5. SUMMARY OF THE PARTIES' SUBMISSIONS

5.1 In its Statement of appeal, the Appellant states that it concluded the three years' Service Contract with Respondent 2, effective as of 22 August 2009 and that *"This contract includes in itself all the rights and obligations of the parties"*. The Appellant argues that the football player Respondent 2 left the club without prior notice on 30 September 2010 which is why the Appellant issued its 6 October 2010 notice to Respondent 1 including the content cited in sec. 2.2 above. In addition, the Appellant issued a request to Respondent 1 dated 12 November 2010, aiming to transfer Respondent 2 to *"annuity relations"* as apply to retired players. The request dated 12 November 2010 was only received and journalized by Respondent 1 on 24 November 2010 and includes the content as mentioned in sec. 2.2 above. The Appellant further sets forth Respondent 2's request for the termination of the Service Contract two days earlier, i.e. on 22 November 2010, confirms that it *"[t]ook part in the trial developed and to the footballer's* [Respondent 2's] *claim that the latter was not paid by the club. The Club [the Appellant] responded with written proof by means of which we have proved that the club has settled all obligations to footballer Sulejman Hoxha. Footballer Hoxha claimed that he had not received the instalment of 200,000 leks foreseen to be taken with in the month of January 2010. As we have proven through the payment of pay slips signed by the footballer, this amount is paid to Mr. Sulejman Hoxha, on 26/10/2010. The pay slip is administered as poof of legal fees but it has not been taken into account by them. For his part, footballer Sulejman Hoxha has not presented any evidence to support his claim"*. In the following, the Appellant refers to the first and second proceedings before the DC and AC and their decisions mentioned in secs. 2.4 to 2.8 above. In its Statement of claim, the Appellant asks the CAS for: *"1. Rejection of the decision of the Appeals Committee dated 01.03.2011 2. Footballer Sulejman Hoxha's obligation to pay an indemnity amounting* [sic] *30.000 Euro to Apollonia Club for immediate, unjustified and premature termination of the contract"*.

5.2 The Appellant criticizes the DC's 15 December 2010 decision issued in the first proceedings before the DC and reflected in sec. 2.4 above, however, the respective allegations need not be recited and dealt with since the DC's 15 December 2010 decision is not part of the Appellant's appeal (see sec. 9.1 below).

5.3 The Appellant further objects to the DC's 29 January 2011 decision issued in the second proceedings before the DC. Although the DC's 29 January 2011 decision is not the Decision under appeal which is why the Panel is not required to review the DC's 29 January 2011 decision *stricto sensu*, the Panel notes that the DC's 29 January 2011 decision has been confirmed by the Decision under appeal which is why the Panel will below deal with the

Appellant's remarks as to the DC's 29 January 2011 decision. The Appellant remarks the following with regard to the DC's 29 January 2011 decision:

(i) the reopening of the case by the DC in the second proceedings before the DC violated Article 138 of the Code of Discipline since Respondent 2's respective application was not submitted within 10 days from the date of the detection of the new evidence;

Article 138 of the Code of Discipline reads in the English translation submitted by the Appellant:

"Review of decisions

Upon receipt and entry into force of a final decision, if a party discovers facts or evidence with would result in obtaining a more favourable decision, that party has the right to require revision of the relevant decision.

1. *The request for review must be submitted within 10 (ten) days from the moment of discovery of the reasons for review.*

2. *The period of pre-writing to submit an application for review of the decision is 1 (one) year after the entry into force of the relevant decision".*

(ii) the new evidence was not detected after the *"final decision as the regulation provides"*;

(iii) *"there was no new evidence after the footballer had falsified a CD in which there was a material recorded of over 1 min length, 50 sec without any content. In this CD submitted as evidence there was not seen and not heard anything"*;

(iv) that the DC was only represented by its Chairman (presumably referring to the DC's meeting) and it was the Chairman on his own without the other two DC members who took the 29 January 2011 decision which would violate Article 82.1 of the Code of Discipline; and

Article 82 of the Code of Discipline reads in the English translation submitted by the Appellant:

"Meetings

1. *Legal Committee meetings are considered valid only if attended by at least three members of the legal committees.*

2. *By order of the president, the secretary of committees notifies the members that should participate in relevant meetings of committees.*

3. *Committees may also meet only with the participation of the respective chairman, in the case of decision making by the sole president in accordance with the definitions in this code.*

4. *The meeting is held only by the chairman or by a trained and qualified member in the legal field".*

(v) that the DC's 29 January 2011 meeting was conducted in violation of Article 94 of the Code of Discipline since the Appellant *"is not required to testify and to be recognized on the new evidence and the request for review".*

Article 94 of the Code of Discipline reads in the English translation submitted by the Appellant:

"Content

1. The parties will be heard before any decision is taken

2. In particular, they can:

a) present their arguments with facts and legal support;

b) require the provision of evidence

c) be involved in securing evidence

d) claim taking a reasonable decision".

(vi) that the meeting underlying the DC's 29 January 2011 decision was held at 6.30pm outside the official working hours of Respondent 1's *"administration for the purpose that the representatives of Apollonia Club* [the Appellant] *were not to be informed. So in this case the club was denied the right to a fair administrative hearing in which the club had the right to be heard and defended against the claims. The Decision dated 29/01/2011, in violation of the Disciplinary Code of the Albanian Football Federation* [Respondent 1], *Article 102 and 103 has not been announced to Apollonia club [the Appellant] as defined in this code".*

Article 103 has not been submitted to the Panel. Article 102 of the Code of Discipline reads in the English translation submitted by the Appellant:

"Notification of Decisions

1. All interested parties are notified of the decision taken.

2. If it is not filed any appeal against a decision for violation of the anti-doping rules taken by the Commission of Appeal for violating anti-doping rules, then they will be notified even at the World Anti-Doping Agency (WADA)".

5.4 The Appellant finally objects to the Decision under appeal rendered upon the second proceedings before the AC upon the Appellant's appeal of the 29 January 2011 decision on the grounds

(i) that it is *"illegal and simultaneously unfounded on evidence administered by judicial organs of the Albanian Football Federation* [Respondent 1]*"*.

(ii) that *"At the meeting on 01.0302011 attended only two of the three members of the committee. In this meeting has been absent for health reasons, the chairman of the Appeals Committee, Mr. Alban Mesonjesi"* and that *"Although the club's representative has requested the postponement of the trial to another date on which the composition of the committee was complete, two committee members, present at the meeting did not took into consideration the request"*.

(iii) that *"The Appeals Committee has taken a decision without examining the case in its entirety and without taking into account the evidence presented by Apollonia club* [the Appellant]*"*.

(iv) that *"The Appeals Committee in its meeting dated 01.03.2011 has taken a completely opposite decision from the one that this committee in the same situation and on the same evidence received on 06.01.2011"*.

(v) that it does not comply with the requirements of form provided by section 115 of the Code of Discipline as *"This decision* [sic] *unargued and free of elements provided for in section 115 of the code, is a decision null and void. In this situation of illegality that characterizes the judicial organs by the respecting the essential documents adopted by the Albanian Football Federation* [Respondent 1] *itself, we ask from the court for Arbitration for Sport to take into consideration our demand and rejuvenate the violated rights of Apollonia club"*.

Article 115 of the Code of Discipline reads in the English translation submitted by the Appellant:

"Form and content of decision

Despite the implementation of Article 116 below, the decision should contain:

a) the composition of the committee

b) the denominations of the parties

c) a summary of facts

d) argumentation of the decision

e) the legal basis on which the decision is taken

f) decision's provision

g) the deadline and the body where the decision appeal can be made.

1. Decisions shall be signed by the chairman and secretary of the commission".

Article 116 of the Code of Discipline reads in the English translation submitted by the Appellant:

"Decisions without grounding

1. *Legal bodies may decide not to communicate the grounding of the decisions taken but to communicate only the relevant terms and conditions of the decision. While the parties shall be notified that they have a term of 10 (ten) days to request in writing full reasoning of the relevant decision, and the default in exercising this right will result in the entry into force of such decision as it is taken.*

2. *If one of the parties requires reasoning of the decision, then the full decision together with its reasoning will be communicated in writing to interested parties. In this case, the deadline for appealing the decision begins at the moment of making that full decision together with its respective reasoning.*

3. *If the parties do not require reasoning of the decision then, the relevant decision shall be filed only by a brief description of the reasoning".*

5.5 In its letter dated 27 February 2012, the Appellant additionally argues that *"Furthermore, in the decisions made by the Discipline Committee and the Appeal Committee, the unfulfilled financial obligations towards the player does not appear as the reason for the contract breach, but a CD provided by him and which we claim to be a falsified copy devoid of any relevance".*

5.6 The Appellant asks the CAS for the

"1. Rejection of the decision of the Appeal's Committee dated 01.03.2011

2. *Footballer Sulejman Hoxha's* [Respondent 2] *obligation to pay an indemnity amounting 30.000 Euro to Apollonia Club* [the Appellant] *for immediate, unjustified and premature termination of the contract".*

5.7 In lieu of an Answer, Respondent 1 submitted *"a copy of the detailed"* DC's 29 January 2011 decision but failed to otherwise submit any arguments on the case.

6. JURISDICTION OF THE CAS

6.1 Article R47 of the Code provides as follows:

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

6.2 In its Statement of claim, the Appellant made no specific reference to the basis of CAS appellate jurisdiction in this case. Within the time-limit set by the CAS Court Office, the Appellant forwarded the original Albanian language version and an English translation of Article 128 of the Code of Discipline as a basis for the CAS appellate jurisdiction and clarified

at the same time that *"[i]n Albania there is no other body in which the decisions of the Albanian Football Federation can be appealed"* and asserted that the CAS was *"[t]he only competent body"* for the appeal (see 3.3 above). With reference to the CAS Court Office's letter inviting Respondent 1 to file its Answer to the Statement of claim, Respondent 1 filed the DC's 29 January 2011 decision in lieu of an Answer and thus waived any defense of lack of jurisdiction since the latter would have needed to be included in the Answer. Also, by the Appellant's and Respondent 1's signature of the Order of Procedure, the CAS' appellate jurisdiction in this matter has been confirmed by the Appellant and Respondent 1. Respondent 1 thus agreed that the DC's 20 January 2011 decision and the Decision under appeal dated 1 March 2011 rendered by the AC, both the DC and the AC presenting legal commissions of Respondent 1 as the national Albanian football federation, may be reviewed on appeal by the CAS. The Panel therefore finds that it has jurisdiction to deal with this appeal in relation to the Respondent 1.

6.3 Respondent 2 failed to return a signed copy of the Order of Procedure. Article 128 of the Code of Discipline offered as a basis for CAS appellate jurisdiction by the Appellant reads in the English translation submitted by the latter:

"1. FIFA and relevant bodies within this organization will serve as the Court of Arbitration for Sports".

The choice of forum clause included in XII.4 of the Service Contract reads in the English translation submitted by the Appellant:

"If disputes will not be resolved in understanding, the parties will address to the competent court".

6.4 The Panel notes that the CAS may not be perceived as a relevant body within FIFA which is why Article 128 of the Code of Discipline does not create by itself CAS jurisdiction, nor speak of CAS appellate jurisdiction. The same applies to clause XII.4 of the Service Contract which merely refers "disputes" of an undefined scope to the "competent court" that remains unidentified by clause XII.4 of the Service Contract.

6.5 Since Respondent 1, and through Respondent 1 also the Appellant, are subject to the 2011 FIFA Statues, Article 63 2011 FIFA Statutes thus applies.

Article 63 2011 FIFA Statutes reads:

"Jurisdiction of CAS 1. ***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.*** *2.* ***Recourse may only be made to CAS after all other internal channels have been exhausted.*** *3. CAS, however, does not deal with appeals arising from: (a) violations of the Laws of the Game, (b) suspensions of up to four matches or up to three months (with the exception of doping decisions); (c) decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.* [ ]*"* (emphasis added).

6.6 The Decision under appeal rendered by the AC is a domestic decision of Respondent 1 as a FIFA member and thus complies with the first test for CAS appellate jurisdiction under Article

63.1 2011 FIFA Statutes. Pursuant to the Appellant's statement to the effect that *"[i]n Albania there is no other body in which the decisions of the Albanian Football Federation can be appealed"*. which has not been contested by Respondent 1 but rather been confirmed by the latter's agreement to CAS appellate jurisdiction and which is in line with the AC's statement that it is the *"highest authority"* in the text of the Decision under appeal, the Panel is satisfied that "all other internal channels have been exhausted" which satisfies prong two of the test for CAS appellate jurisdiction under Article 63.2 2011 FIFA Statutes and the test that the Appellant exhausted the legal remedies available to him prior to the appeal under R47 of the Code. It shall be noted that neither of the parties alleged the existence of another "independent arbitral tribunal" for this matter under Article 63.3 c) 2011 FIFA Statutes.

6.7 Furthermore, R47 of the Code requires that either the statutes or regulations of the federation appealed against provide for CAS jurisdiction or that the parties entered into an individual arbitration agreement. In this respect, the Panel notes that the entire FIFA Statutes, including Article 63 thereof, has been incorporated into the Service Contract between the Appellant and Respondent 2 by virtue of clause I.2 c) of the Service Contract dated 22 August 2009. The Panel also notes that Article 63 of the August 2009 FIFA Statutes is identical to Article 63 2011 FIFA Statutes.

Clause I.2 c) of the Service Contract reads:

"General Contract Terms 1. This contract governs legally the relationship between the parties of this contract. 2. As it follows, are integral parts of this contract: a) [ ] *b)* [ ] *c) Statutes and Regulations of UEFA and FIFA (including Games Rules) d)* [ ]*".*

6.8 In this context, the Panel refers to the consistent CAS case law according to which Article 63 FIFA Statutes does not by itself grant jurisdiction to cover appeals against decisions issued by national federations and does not per se form part of the national association's rules but rather needs to be taken over in the national federation's rules either word by word or per specific and clear reference in order to apply to domestic matters (see in particular CAS 2011/A/2483, para. 68 and CAS 2010/A/2170 & CAS 2010/A/2171, para. 48 to 48 as well as CAS 2008/A/1656, CAS 2004/A/676, CAS 2005/A/952, CAS 2002/O/422, CAS 2009/A/1910). As was concluded above, neither Article 128 of the Code of Discipline nor clause XII.4 of the Service Contract expressly refer to CAS as being the relevant body to resolve this dispute. In order to constitute CAS jurisdiction though, an express reference to CAS as the relevant body is inevitable. However, the question remains as to whether clause I.2 c) of the Service Contract is a contractual provision which confers jurisdiction on CAS to resolve the dispute at hand.

6.9 Interpreting clause I.2 c) of the Service Contract from a literal and teleological point of view as effected in CAS 2170 & 2171 (award, para 52), the CAS Panel notes that by clause I.2 c) of the Service Contract, the Appellant obviously desired to make sure that the FIFA Statutes are adhered to and that the Player complies with those Statutes. This view is confirmed by clause I.3 of the Service Contract which reads in the English translation submitted by the Appellant:

"The player admits the correct implementation of statutes and regulations listed above for all that is in accordance with the Albanian legislation in general and sports

legislation in particular. *The player admits that the regulations adopted by Apollonia Club have been made available for him and after he has read them, he has understood them before signing the contract while F.Sh.F, UEFA and* ***FIFA regulations have been available at the headquarters of the club****"* (emphasis added).

6.10 However, as stated above, according to CAS 2008/O/1736, a provision which intends to enable a party to refer a dispute to CAS should be clear and explicit. A general reference to rules that name CAS as the appellate body is therefore not sufficient. Moreover, following the mentioned settled case law of CAS (see above, para. 6.8), the FIFA rules alone do not per se constitute a basis for arbitration, but rather an instruction to introduce a regulation providing for CAS arbitration. In the present case, the Service Contract only refers to FIFA Statutes as a whole. The FIFA Statutes by itself does not constitute CAS jurisdiction, though. Hence, if not even the FIFA rules per se constitute CAS jurisdiction, there are no grounds for the referral to FIFA Statutes to be viewed as a specific arbitration agreement. Therefore, the mere referral to the FIFA Statutes as a whole in the Service Contract is not sufficient in order to constitute CAS jurisdiction in relation to Respondent 2.

6.11 Moreover, as regards the Appellant's second prayer for relief as cited in 5.1 above, the Panel finds that CAS also lacks jurisdiction for another reason. The Panel notes that neither party alleged that the respective declaration requested by the Appellant, to the effect that Respondent 2 is obliged to pay an indemnity to the Appellant for immediate, unjustified and premature termination of the contract, has previously been claimed in the first or second proceedings before the DC and AC or that such a claim was subject to the Decision under appeal. The Panel notes that neither the DC's 29 January 2011 decision nor the Decision under appeal refer to such a claim nor do they deny such a claim. Pursuant to R47 of the Code, the Appellant has therefore not exhausted the legal remedies available for this claim which is why the CAS is not competent to adjudicate the same.

7. APPLICABLE LAW

7.1 Article R58 of the Code provides as follows:

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

7.2 Clause XII of the Service Contract provides that *"The Albanian law is the law applicable in the case of contractual gaps"*. In view of R58 of the Code, the Panel observes that the Appellant and Respondent 2 chose Albanian substantive law to apply "[i]n case of contractual gaps". Considering that in the absence of a choice of law, Albanian substantive law would anyway apply as the law of the country in which the sports-related body issuing the challenged decision is domiciled, which here is the AFF's Appeals Committee, there is no need to distinguish in the following whether any aspect to be considered under Albanian law may qualify as a *"contractual gap"* or not.

8. ADMISSIBILITY

Timely Appeal

8.1 Article R49 of the Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against.* [ ]*".*

8.2 The Decision under appeal was issued on 1 March 2011. The Appellant's Statement of appeal is dated 19 March 2011; however, the originals of the Statement of appeal dated 19 March 2011 were only received by mail by the CAS Court Office on 19 April 2011.

8.3 The Panel notes that neither the Appellant nor Respondent 1 argue or provide any regulations of the AFF or of its Appeals Committee that would provide a specific time limit for appeals against decisions of the AFF Appeals Committee. Thus, the Panel finds that the time limit of twenty-one days from the receipt of the decision appealed against shall apply pursuant to Article R49 of the Code.

8.4 Pursuant to R32 of the Code, *"[t]he time limits fixed under this Code shall begin from the day after that on which notification by the CAS is received. Official holidays and non-working days are included in the calculation of time limits. The time limits fixed under this Code are respected if the communications by the parties are sent before midnight on the last day on which such time limits expire"* (emphasis added).

8.5 The Panel observes that dispatch of the Statement of appeal is sufficient under the wording of R32 of the Code in order for the Statement of appeal to be timely. Considering that the Decision under appeal is dated 1 March 2011, the appeal dated 19 March 2011 would be timely if dispatched before 22 March 2011. The envelope containing the Statement of appeal is date-stamped "21.03.2011" and a postal receipt with the documents bears the "date de dépôt" of 21/3/2011. Since postal service from Albania to Switzerland is ordinarily slow, the Panel is satisfied that the Appellant dispatched the originals of the Statement of appeal on 21 March 2011 although they were only received by the CAS on 19 April 2011. Thus, the Appellant's Statement of appeal dated 19 March 2011 whereby the Decision of the AFF Appeals Committee of 1 March 2011 is appealed is held timely filed and therefore admissible.

9. MERITS OF THE APPEAL

9.1 The DC's 15 December 2010 decision and the AC's 6 January 2011 decision rendered in the first proceedings before the DC and the AC respectively have not been submitted to the Panel and are not subject to appeal.

A. The DC's 21 January 2011 Decision

9.2 Since the DC's 21 January 2011 decision has been confirmed by the Decision under appeal, the Panel will review the Appellant's objections to the DC's 21 January 2011 decision in an effort conclusively to resolve the present dispute on the merits, although the DC's 21 January 2011 decision is not subject to this appeal *stricto sensu*.

B. Whether The Appellant Made All Payments Required Under The Service Contract

9.3 The Panel understands that essentially, it is the Appellant's submission that contrary to the facts underlying the DC's 21 January 2011 decision, Respondent 2 breached the Service Contract by leaving the Appellant without prior notice on 30 September 2010 although the Appellant had *"settled all obligations"* towards Respondent. Taking into account that the Service Contract was effective as of 22 August 2009 and that Respondent 2 stopped his participation in the Appellant's training sessions on 30 September 2010, the Panel calculates that the contractual relationship between the Appellant and Respondent 2 lasted for about thirteen months.

9.4 In summary, the DC's 21 January 2011 decision held in this respect that the Appellant did not make the monthly payments to Respondent 2 on the 21st of every month in the amount of ALL 25,000 as required by the Service Contract (sec. IV.1.C of the Service Contract) but made a number of irregular payments in 2009 and 2010 out of which the DC considered only six payments corresponded to the provisions of the Service Contract, the last one having been made in April 2010, while all other payments were made at different points in time and/or for lower amounts than contractually required. From the DC's 21 January 2011 decision, it follows that in order to arrive at the above facts, the DC reviewed Respondent 2's account records with the National Bank where Respondent 2 held his account to which the Appellant's payments were credited as well as a table containing the payment calculations and data concerning the Appellant's funds submitted by the Appellant. Also, the Appellant's 6 October 2010 notification and its 12 November 2010 request have been considered by the DC. According to the DC's 21 January 2011 decision, the DC took the Appellant's argument into account that lower payments were due to the Respondent's *"level of participation"* in the training sessions. On this basis, the DC held that the Appellant violated sec. IV of the Service Contract since it had not complied with its contractual payment obligations towards Respondent 2. The DC further held that the Appellant was not contractually entitled to make deductions from the monthly payments and further was unable to prove Respondent 2's alleged lack or failure to participate in training sessions.

9.5 The Panel notes that in its appeal, the Appellant neither made the argument nor did it submit any proof to support an assertion that it was entitled to make unilateral deductions from the payments due to Respondent 2 but rather made the general statement that the Appellant had *"settled all obligations"* and *"paid all the financial obligations towards the player Mr. Sulejman Hoxha in accordance with the contract signed by the parties"*. The Appellant submitted the Service Contract whose sec. IV.1. regulates the Appellant's payment obligations. Given that Respondent 1 submitted the DC's 29 January 2011 decision in lieu of an Answer, the issue of whether the Appellant made all payments required to Respondent 2 is disputed since DC's 29 January 2011

decision is based on the finding that the Appellant failed to make all payments required to Respondent 2. However, the Appellant failed to submit any evidence for the fulfilment of its payment obligations towards Respondent 2 under IV.1 of the Service Contract even upon the Panel's 13 February 2012 request to submit evidence which specifically requested *"(i) documentary evidence regarding the making of/receipt of payments due under the contract"* (see 3.10 above).

9.6 In this respect, the Panel holds that the burden of proof in respect of the Appellant's allegation that the Appellant made all payments due to Respondent 2 under the Service Contract is on the Appellant. The question of which party bears the burden of proof and its dimension has been subject to multiple CAS decisions. It is therefore established CAS jurisprudence that:

"According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked. This means, in practice, that when a party invokes a specific right it is required to prove such facts as normally comprise the right invoked, while the other party is required to prove such facts as exclude, or prevent, the efficacy of the facts proved, upon which the right in question is based. This principle is also stated in the Swiss Civil Code. In accordance with Article 8 of the Swiss Civil Code "Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right" (free translation from the French original version – "Chaque partie doit, si la loi ne prescrit le contraire, prouver les faits qu'elle allègue pour en déduire son droit »). It is well established CAS jurisprudence that any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. must give evidence of the facts on which its claim has been based. The two requisites included in the concept of "burden of proof" are (i) the "burden of persuasion" and (ii) the "burden of production of the proof". In order to fulfil its burden of proof, a party must, therefore, provide the Panel with all relevant evidence that it holds, and, with reference thereto, convince the Panel that the facts it pleads are true, accurate and produce the consequence envisaged by the party. Only when these requirements are complied with has the party fulfilled its burden and has the burden of proof been transferred to the other party" (see also CAS 2005/A/968 and CAS 2004/A/730)" (emphasis added; CAS 2007/A/1380).

"The party bearing the burden of evidence, in order to satisfy it, does not need to establish "beyond any reasonable doubts" the facts that it alleges to have occurred; it simply needs to convince the Panel that an allegation is true by a "balance of probability", i.e. that the occurrence of the circumstances on which it relies is more probable than their non-occurrence. In this respect, it must be noted that disciplinary rules enacted by sports authorities are private law (and not criminal law) rules. Consequently, any legal issue concerning the satisfaction of such burden of proof should be dealt within the context of the principles of private law of the country where the interested sports authority is domiciled. In this respect, in Swiss law Article 8 of the Civil Code, which establishes the rule on the burden of proof, allows the adjudicating body to base its decision also on natural inferences" (emphasis added; CAS 2010/A/2209).

"In CAS arbitrations, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue. In other words, the party which asserts facts to support its rights has the burden of establishing them. In this respect, the CAS Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence" (CAS 2009/A/1810 & 1811).

9.7 Since the Appellant failed to submit any evidence whatsoever in support of its allegation that it made all payments required under the Service Contract to Respondent 2, it failed to discharge the burden of proving such payments and the Panel is thus not convinced that it performed the payment obligations required, as alleged. Given that the proof of compliance with payment obligations is a burden of proof that is rather easy to discharge by the submission of documentary evidence, e.g. the *"payment slips"* mentioned in the Appellant's Statement of appeal but not submitted to the Panel, the Panel, on the basis of the DC's 29 January 2011 decision which examines the pertinent evidence taken in the second proceedings before the DC finds it more probable that a substantial number of the due payments to Respondent 2 were not made in accordance with the Service Contract (DC's 29 January 2011 decision, page. 3, para. 2) and that the last lawful payment by the Appellant prior to Respondent 2's failure to participate in the Appellant's training sessions as of 30 September 2010 was made in April 2010. The Panel notes that in its Statement of appeal, the Appellant did not allege that it was entitled to any unilateral deductions from Respondent 2's payments. Suffice it thus to say that even if any case had been advanced by the Appellant, claiming an entitlement to make any unilateral deductions, such unilateral deduction would appear unlawful as the service Contract gives no right to the Appellant unilaterally to make deductions from payments due under the Service Contract which the Appellant itself claims to *"*[ ] *include*[s] *in itself all the rights and obligations of the parties"*.

9.8 The Panel's finding that a substantial amount of payments have not been made to Respondent 2 by the Appellant is neither affected by the Appellant's argument that it had made the payment of ALL 200,000 to Respondent 2 due in January 2010 (cf. sec. IV.1.B of the Service Contract) and/or on 26 October 2010 since this conduct does not demonstrate payment in accordance with the Service Contract, but a delay in payment of nine months by the Appellant. Likewise, the Appellant's other argument that Respondent 2 *"never expressed any contempt relating to unfulfilled payments on behalf of the Apollonia FC* [the Appellant]*"*. (Appellant's letter dated 27 February 2012) is irreconcilable with Respondent 2's request to terminate the Service Contract for the Appellant's lack of payment in the first proceedings before the DC.

9.9 Since the last lawful payment to Respondent 2 was made in April 2010 and the Appellant was thus in default with its obligations from April 2010, the Panel finds that Respondent 2 was in turn entitled to withhold the performance of a part of his duties and to not participate in the training sessions of the Appellant as per 30 September 2011. The Panel notes that the Service Contract does not contain any general provisions and also fails to set forth the respective deadlines and requirements for termination upon notice and termination for cause. However, it is a general principle of law that long-term contracts may be terminated for cause since one party cannot be bound to continuing contractual performance if the other defaults. This Panel finds that since the Appellant failed to make a substantial amount of payments to Respondent 2 in accordance with the Service Contract and considering that the last lawful payment to Respondent 2 was made in April 2010, the DC was right in its 29 January 2011 decision to the extent that it terminated the Service Contract for this cause alone. It is unclear to the Panel how the Appellant's 6 October 2010 notification and its 12 November 2010 request – both issued after Respondent 2 had stopped his participation in the Appellant's training sessions on 30 September 2010 – should change this situation and the Appellant also failed to point out their alleged significance to the Panel.

C. The CD submitted As Evidence by Respondent 2 and its significance

9.10 The Appellant's argument that the CD recording submitted as evidence by Respondent 2 did not qualify as new evidence timely discovered and filed but as falsified evidence that did not allow for the proceedings to be reopened by the second proceedings before the DC (see 5.3 (i) to (iii) above) shall all be dealt with at once.

9.11 The Appellant's above allegations are disputed since the DC's 21 January 2011 decision filed in lieu of an Answer by Respondent 1 indeed reopened the proceedings due to the CD recording and apparently considered it authentic. The DC also took the recording into account – however only as an additional ground – to terminate the Service Contract. Pursuant to the DC's 21 January 2011 decision, the CD recording in question contains a recording of the Appellant's club manager *"[t]o sign a notary declaration saying that players of 'Apollonia' FC had rigged certain matches, in order for him to be allowed to participate in the club; otherwise, he would not be allowed to play in the matches for the club"* (DC's 29 January 2011 decision, p. 3, first para). The fact that a CD recording has been submitted for the second proceedings before the DC and that it contained some material (*"material recorded of over 1 min length, 50 sec"* according to the Appellant) is undisputed by the Appellant, however, according to the Appellant the respective material was *"without any content"*.

9.12 Pursuant to CAS 2007/A/1380, *"According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked"* (emphasis added). Further, pursuant to CAS 2009/A/1810 & 1811, *"In CAS arbitrations, any party wishing to prevail on a disputed issue must discharge its burden of proof, i.e. it must meet the onus to substantiate its allegations and to affirmatively prove the facts on which it relies with respect to that issue"* (emphasis added). The Panel finds that the Appellant, which argues that the CD recording has not been submitted within 10 days from the date of its discovery and was not discovered after the AC's 6 January 2011 decision as provided by Article 138.1 of the Code of Discipline, has failed to substantiate its respective allegations as the Appellant has not submitted any facts to the Panel which would detail and explain why the CD recording has been discovered and filed late. Also, the Appellant bears the burden of proof for these allegations as well as for the argument that *"there was no new evidence after the footballer had falsified a CD in which there was a material recorded of over 1 min length, 50 sec without any content. In this CD submitted as evidence there was not seen and not heard anything"* – these arguments all being allegations which would extinguish Respondent 2's right to have the proceedings before the DC reopened. The Appellant would thus have needed to submit evidence to the effect that it is more probable than not that the CD recording was discovered and filed late as well as falsified. The Appellant, however, failed to offer any evidence whatsoever for its allegations as summarized above. On the basis of the fact that it is undisputed that a CD recording with some material has been submitted to the DC and judging from experience that if a CD recording is submitted as evidence it is more probable than not that such recording contains some content rather than no content and that in the event the CD recording did not include any content, Respondent 2 as well as the DC members issuing the 20 January 2011 decision who describe the content of the CD recording in the decision, would all need to be involved in a potential conspiracy against the Appellant which has neither been alleged by the Appellant nor can this simply be insinuated by the Panel. This

leads the Panel to believe that it is more probable than not that there indeed was an authentic CD recording including content as described by the DC's 29 January 2011 decision (see 9.11 above) and that the CD recording has been timely discovered and filed in order to allow the reopening of the first proceedings before the DC.

9.13 The Appellant's allegation that the CD has not been made available to the Appellant by the Respondents does not change the Panel's view on this point. Indeed, the Appellant argues to have information available regarding the CD recording that is not included in the description of the recording in the DC's 29 January 2011 decision, i.e. that *"[ ] the footballer had falsified a CD in which there was a material recorded of over 1 min length, 50 sec without any content. In this CD submitted as evidence there was not seen and not heard anything"* (emphasis added). Thus, even in case the Appellant has not received a physical copy of the CD, according to its own argument, it has information available about its content. Thus, in order to prove its submission that the material recorded on the CD for 1min 50 sec did not show any content, the Appellant could e.g. have submitted a sworn declaration of its respective informant or offered a witness for the oral hearing. The Appellant has not offered either form of proof.

D. Whether The DC Met And Issued Its Decision In Valid Composition

9.14 The below considers the Appellant's argument that the DC cannot validly meet in the sole presence of its Chairman (see 5.3 (iv) above) and take the 29 January 2011 decision, allegedly made by the DC's Chairman alone, thus in violation of Article 82.1 of the Code of Discipline.

9.15 Pursuant to the English translation of Articles 82.1 and 82.3 of the Code of Discipline as submitted by the Appellant, *"1. Legal Committee meetings are considered valid only if attended by at least three members of the legal committees",* however, *"3. Committees may also meet only with the participation of the respective chairman, in the case of decision making by the sole president in accordance with the definitions in this code".*

9.16 The Appellant has not submitted any evidence that the DC's 29 January 2011 meeting has been held by its Chairman alone and that the decision has been taken by the Chairman alone. The English translation of the DC's 29 January 2011 decision provided by the Respondent 1 reads in its introductory section as follows:

"On 29/01/2011 The Disciplinary Commission, composed of:

Eno Bushi Chair

Saimir Dauti Member

Ramazan Rragami Member

After the case concerning:

Plaintiff: Sulejman Hoxha,

Object: Termination of contract with 'Apollonia' FC

was returned for reconsideration by the Appellate Commission, heard this case as well as the new evidence presented by the plaintiff in support of his request.

Under the aforementioned decision, in point 1, the Disciplinary Committee has decided:

To accept the request by player Sulejman Hoxha to terminate his contract with 'Apollonia' FC. His contract with 'Apollonia' is deemed terminated due to the failure of the football club to comply with the contractual obligations.

Pursuant to article 115 of the Sports Disciplinary Commission [KDS], this decision was not reasoned and, following the request by 'Apollonia' FC, dated 05/02/(2011, within the term stipulated by this provision, hereafter is presented the reasoning of the decision" (emphasis added).

In its English translation (the Albanian original has not been made available to the Panel), the decision bears the following signature line:

"Chair

Eno BUSHI".

The Appellant's argument that the DC meeting of 29 January 2011 was held in the sole presence of the DC's Chairman, who took the decision on his own, is thus disputed by Respondent 1's submission of the DC's 29 January 2011 decision in lieu of an Answer with the above cited content which indicates that the three members of the DC heard – and were thus present – at the 29 January 2011 meeting and also took the decision in this composition. In this respect, the Panel notes that pursuant to the above cited reference the DC's 29 January 2011 decision in its English translation as submitted by Respondent 1, does not present a copy of the decision issued with brief reasoning pursuant to Article 115 of the Code of Discipline but a copy of the decision with full reasoning requested by the Appellant pursuant to Article 116 of the Code of Discipline.

9.17 Again, pursuant to CAS 2007/A/1380, *"According to the general rules and principles of law, facts pleaded have to be proved by those who plead them, i.e., the proof of facts, which prevent the exercise, or extinguish, the right invoked, must be proved by those against whom the right in question is invoked"* (emphasis added), the Panel considers it the Appellant's burden to prove its allegations as summarized in 9.14 above. This burden has not been met since the Appellant did not offer any evidence whatsoever for the allegation that the DC's Chairman held the 29 January 2011 DC meeting alone and decided the matter on his own, which is why the Panel considers it more probable than not that the DC's 29 January 2011 meeting and decision was held and taken in the composition of its three members. Assuming that meetings of the DC qualify as "legal committee meetings" to which Article 82.1 of the Code of Discipline applies, a point which has not been substantiated by the Appellant, such meetings and decision making is valid in accordance with Articles 82.1 and 114 of the Code of Discipline (see also 9.18 below).

Article 114 of the Code of Discipline reads in the English translation submitted by the Appellant:

"1. Decisions are taken by simple majority of votes of members present at the meeting

2. Any member being present shall vote

3. If the voting process turns out equal, then the vote of the chairman governs".

9.18 In this respect, the Panel also takes into account that the DC's 29 January 2011 decision in its signature line shows only the name of the Chairman. However, this does not contradict the Panel's finding supported by the above cited text of the DC's 29 January 2011 decision according to which the *"Disciplinary Commission"* decided in the presence of its three members since pursuant to Articles 114 and 115.1 of the Code of Discipline the "taking of a decision" is separate from the "signature" of the decision; the latter only requiring the Chairman's signature but not the signatures of the other members of the DC.

E. Whether Due Process Has Been Respected In The Second Proceedings Before The DC

9.19 The Appellant argues that the second proceedings before the DC resulting in the DC's 29 January 2011 decision violates Article 94 of the Code of Discipline as the Appellant was *"[ ] not required to testify and to be recognized on the new evidence and the request for review"*., that the DC's 29 January 2011 meeting was held at 6.30pm outside the official working hours of Respondent 1's *"administration for the purpose that the representatives of Apollonia Club* [the Appellant] *were not to be informed. So in this case the club was denied the right to a fair administrative hearing in which the club had the right to be heard and defended against the claims. The Decision dated 29/01/2011, in violation of the Disciplinary Code of the Albanian Football Federation* [Respondent 1]*, Article 102 and 103 has not been announced to Apollonia club [the Appellant] as defined in this code"* (cf. 5.3 (v) and (vi) above)*"*.

9.20 With respect to the Appellant's argument that the DC's 29 January 2011 decision has not been *"announced"* to the Appellant in violation of Articles 102 and 103 of the Code of Discipline, the Panel observes that Article 103 of the Code of Discipline has not been made available to the Panel. Thus, a (potentially oral) *"announcement"* of the DC's decisions does not seem legally required under the Code of Discipline as submitted to the Panel. Anyhow, if the Appellant's argument is understood in a way to comprise the "notification" of the DC's 29 January 2011 decision, which is indeed required by Article 102.1 of the Code of Discipline, the Panel holds the following: Based on the text of the DC's 29 January 2011 decision submitted by Respondent 1 in lieu of an Answer, it is disputed that the DC's 29 January 2011 decision has not been notified to the Appellant but it is undisputed that the Appellant has not been heard in the second proceedings before the DC resulting in the DC's 29 January 2011 decision. First dealing with the issue of notification, the Panel finds that the burden of proof for the notification of the DC's 29 January 2011 decision is on the Respondents. In this respect, the Panel takes note of the above cited reference in the DC's 29 January 2011 decision to the Appellant's request that the decision be issued with full reasoning. The DC's 29 January 2011 decision is in the form submitted by Respondent 1 to the Panel (albeit in an English

translation) was rendered (cf. 9.16 above). According to this reference, the Appellant had knowledge of the DC's 29 January 2011 decision and its content at that time (probably issued with brief reasoning pursuant to Article 116.3 of the Code of Discipline) since it requested the issuance of a fully reasoned decision pursuant to Article 116.1 of the Code of Discipline. The Appellant failed to substantiate whether the alleged lack of notification relates to the DC's 29 January 2011 decision issued with brief reasoning or the DC's 29 January 2011 decision with full reasoning. Anyway, if the Appellant's argument concerns the former, the Appellant's actual knowledge of the decision (the Appellant also cited a part of the decision's holding in its Statement of appeal) could cure any absence of formal notification of the decision. If the Appellant's argument concerns the latter, the Panel finds it more probable than not that the fully reasoned DC's 29 January 2011 decision has indeed been notified to the Appellant. This firstly derives from the experience that when decisions are re-issued as fully reasoned decisions upon a party's request, which involves a certain effort of the body in question, that has been done by the DC in respect of its 29 January 2011 decision, and all the more if the respective decision makes explicit reference to the request for the re-issuance of the decision as is the case here. Such decisions are usually notified to the party that requested it as the whole task of re-issuing a fully reasoned decision would be futile it was not notified to the requesting party. Secondly, on the basis of Articles 116.1 and 116.2 of the Code of Discipline, the Panel takes it that the DC's 29 January 2011 decision, including the brief reasoning, would only have come into force if a request for a fully reasoned decision had not been made. As such a request was made and a fully reasoned decision was issued, the DC's 29 January 2011 decision, including brief reasoning, did not enter into force (which is why a failure of its notification to the Appellant, again, would not matter) and the DC's 29 January 2011 decision including the full reasoning only entered into force and the time-limit for its appeal only ran from the issuance/notification of the fully reasoned decision. Since the Appellant appealed the DC's 29 January 2011 decision before the AC, at least the DC's 29 January 2011 decision, including full reasoning, must have been notified to the Appellant as it would not make any sense to appeal a decision that never entered into force. Illogical conduct shall, however, not be insinuated. In any case, procedural deficiencies like any failure of notification – which the Panel does not hold established here – would be cured by the Appellant's appeal to the CAS as an instance with the power of de novo review (cf. 9.24 below).

9.21 Dealing with the right to be heard, although the Appellant has not submitted any evidence in support of its respective allegation, the Panel finds that any failure to hear the Appellant in favour of the Appellant's position is undisputed and established by the DC's 29 January 2011 which states the following:

"On 29/01/2011 The Disciplinary Commission, composed of:

[ ],

heard this case as well as the new evidence presented by the plaintiff in support of this request. [ ]

The circumstances:

[ ]

In the first hearing, dated 15/12/2010, the committee has summoned and heard the plaintiff and 'Apollonia' FC, as interested parties in this case, and has also examined the documents submitted by both parties, documents which have been re-examined during the reconsideration process.

After having examined again the documents presented by the parties and the evidence submitted by the plaintiff, the commission

Finds that, [ ]*".*

9.22 If follows from the above cited parts of the DC's 29 January 2011 decision that the second proceedings before the DC consisted in the re-examination by the DC of the evidence submitted by the parties in the first proceedings before the DC and examination by the DC of the new evidence (i.e. CD recording) submitted by Respondent 2 (i.e. plaintiff in these second proceedings before the DC) for the reopening of the case. The text of the 29 January 2011 decision does not reflect that the Appellant would have been heard on the new evidence. The Panel, however, notes the Appellant's statement that it *"[t]ook part in the trial developed and to the footballer's* [Respondent 2's] *claim that the latter was not paid by the club the Club* [the Appellant]*"* in the first proceedings before the DC.

9.23 The Panel understands that pursuant to Article 94 of the Code of Discipline, the parties have a right to be heard before a decision is taken, to present evidence and take part in the taking of evidence. Those rights of the Appellant have been violated by the second proceedings before the DC. The second proceedings before the DC which resulted in the 29 January 2011 decision are thus procedurally defective.

9.24 Pursuant to R57 of the Code, the Panel has full power to review the facts and the law and may issue a new decision which replaces the decision challenged. It is established CAS jurisprudence that a procedural defect that occurred prior to an appeal to the CAS may therefore be cured under certain conditions:

"Even if there was a procedural defect in the first instance in this regard, the CAS case law is quite clear that the de novo rule is intended to address and cure "any procedural defect" that occurs at the initial stage, after all relevant parties have been heard. As it was said in CAS 2009/A/1920: 87. According to article R57 of the Code, the CAS has full power to review the facts and the law. The consequences deriving from this provision are described in the consistent CAS jurisprudence, according to which "if the hearing in a given case was insufficient in the first instance (…) the fact is that, as long as there is a possibility of full appeal to the Court of Arbitration for Sport, the deficiency may be cured" (CAS 94/129 award of 23 May 1995, par. 59). Later the CAS has reaffirmed this principle, holding that "the virtue of an appeal system which allows for a rehearing before an appeal body is that issues relating to the fairness of the hearing before the Tribunal of First instance 'fade to the periphery'" (CAS 98/211, award of 7 June 1999, par. 8). More recently, the CAS has further relied on the Swiss Federal Tribunal case law, which held that "any infringement of the right to be heard can be cured when the procedurally flawed decision is followed by a new decision, rendered by an appeal body which had the same power to review the facts and the law as the tribunal of first instance and in front of which the right to be heard had been properly exercised" (CAS 2006/A/1177, award of May 2009, par. 7.3). For another recent case, see for instance, CAS 2008/A/1594 para. 109, "However, as CAS has complete power to review the facts and the law and to rule the case de novo, the procedural deficiencies which

affected the procedures before FIFA disciplinary bodies may be cured by virtue of the present arbitration proceedings (see e.g. CAS 2006/A/1175 paras. 61 and 62, CAS 2006/A/1153, para. 53, CAS 2003/O/486, para. 50)". This CAS jurisprudence is actually in line with European Court of Human Rights decisions, which in par. 41 of the Wickramsinghe Case concluded that "even where an adjudicatory body determining disputes over civil rights and obligations does not comply with Article 6 (1) [ECHR] in some respect, no violation of the Convention will be found if the proceedings before that body are subject to subsequent control by a judicial body that has full jurisdiction and does provide the guarantees of Article 6 (1)" (emphasis added; CAS 2007/A/1396 & 1402, para 43).

9.25 On the basis of the above CAS jurisprudence, the Panel holds that the fact that the Appellant has been heard in the present proceedings before the CAS (the Appellant also explicitly confirmed that its right to be heard has been respected by signing the Order of Procedure) indeed cures the procedural defect that occurred in the second proceedings before the DC. The right to be heard does not necessarily include the conduct of an oral hearing whose conduct the Appellant anyway rejected here, but rather the right of a party to present its arguments and evidence before an instance that has the power to review the facts and the law. Given that CAS Panels are entitled to perform a de novo review of the facts and the law of prior decisions, CAS Panels present such an instance. The Appellant has been heard by this CAS Panel by virtue of the Appellant's Statement of appeal along with its presentation of evidence as summarized in 3.1 above. Having been invited by the CAS Court office to submit its appeal brief, the Appellant stated by its letter of 11 May 2012 that its Statement of appeal shall likewise be considered its appeal brief and thus refrained from filing a further substantive submission in these proceedings. The Appellant neither submitted any additional evidence upon the Panel's 13 February 2012 request to submit evidence which inter alia expressly requested the presentation of *"(iii) any other evidence that the parties deem helpful in support of their respective cases"*. In accordance with CAS 2009/A/1810 & 1811, the Panel wishes to highlight that "[ ] *the CAS Code sets forth an adversarial system of arbitral justice, rather than an inquisitorial one. Hence, if a party wishes to establish some facts and persuade the deciding body, it must actively substantiate its allegations with convincing evidence*". In this regard, the Panel notes that the Appellant, which claims that it has not been heard and could not comment on the new evidence (i.e. the CD recording) submitted by Respondent 2 for the reopening of the case in the second proceedings before the DC, failed even before this Panel to properly substantiate and provide any evidence for its allegation that the CD recording does not qualify as new evidence, was falsified and/or had been detected and filed late (see 9.12 et seq. above), neither did it substantiate and support with evidence the allegations it wished to make in the second proceedings before the DC if its right to be heard had been respected or what other effect its participation in the DC's 20 January 2011 meeting may have had. The right to be heard only provides for the opportunity of a party to be heard, by presenting evidence and argument(s) in support of a decision in its favour. The Appellant has failed to deliver any such evidence and/or persuasive arguments before this Panel. The Panel finally refers to the Appellant's participation and representation by outside legal counsel at the oral hearing held in the second proceedings before the AC, that resulted in the Decision under appeal submitted to the Panel, in the form of Minutes of the Meeting at which the Appellant was heard (cf. for the record of the Appellant's participation in this hearing, cf. the wording of the Decision under appeal cited in 2.8 above). The Appellant's opportunity to be heard in the second proceedings before the AC (an instance which according to the Appellant's own statement must have the power to fully review the

law and the facts as applied by the lower instance since the AC, in the first proceedings before the AC, reversed the DC's decision rendered in the first proceedings before the DC) presents another cure to the procedural defect that occurred in the lower instance (i.e. the second) proceedings before the DC – irrespective of whether and which allegations the Appellant made or failed to make in the oral hearing held in the second proceedings before the AC.

F. Whether The Decision Under Appeal Complies With Requirements As to Form And Content, Considered The Appellant's Evidence and Sufficiently Examined The Case

9.26 The Decision under appeal rendered by the AC confirms the DC's 21 January 2011 decision which is why the Panel thought it prudent to also examine the Appellant's objections to the latter decision as effected in 9.2 to 9.26 above which results in the Panel upholding the DC's 21 January 2011 decision.

9.27 As reflected in detail in 5.4 (i), (iv) and (v) above, the Appellant further objects to the Decision under appeal on the grounds that the Decision under appeal fails to comply with the requirements of form of Article 115 of the Code of Discipline, is not based on the evidence provided, did not take into account the evidence presented by the Appellant, failed to examine the case in its entirety and lacks reasoning. Apart from the Decision under appeal and the respective legal provisions, the Appellant did not submit any further evidence in support of the above allegations to the Panel.

9.28 An English translation of the Decision under appeal presented in the form of Minutes of the Meeting has been submitted by the Appellant and is cited in 2.8 above.

9.29 The Appellant's argument that the Decision under appeal is not based on the evidence submitted by the parties and, in particular, did not take into account the evidence submitted by the Appellant is yet rejected on the basis of the text of the Decision under appeal. This is because the AC, in the Decision under appeal, recorded that it reviewed the files and the evidence submitted, from which it concluded that the Appellant had failed to make the payments due under the Service Contract.

9.30 The bases upon which the Appellant's argument, that the AC took the Decision under appeal without examining the case in its entirety, fails are threefold: On the one hand, the Appellant failed to comply with its duty to substantiate before the Panel what evidence or argument exactly the AC failed to examine in the second proceedings before the AC. This Panel is thus not in a position to review whether the examination of such identified evidence or argument(s) of the Appellant could and should have resulted in a different outcome. On the other hand, as stated in 9.29 above, the AC recorded in the text of the Decision under appeal that it indeed reviewed the files and evidence submitted in the oral hearing that had been attended by the Appellant's representative but not by Respondent 2, according to the text of the Decision under appeal. From the file and evidence submitted, the AC concluded that the Appellant failed to fulfil the Service Contract towards Respondent 2 which is why the AC confirmed the DC's 29 January 2011 decision that terminated the Service Contract. On this basis, the Panel finds that the case has been properly conducted by the AC. Thirdly, even if the AC at the second instance merely confirmed the DC'S 29 January 2011 decision without full

examination of the Appellant's arguments as to the facts and the law, this procedural deficiency at the second instance – which is not held established neither on a factual nor on a legal basis by this Panel – would have been cured by the Appellant's appeal to the CAS as an instance which has full power to review the facts and the law de novo. However, again before the CAS, the Appellant failed to provide evidence in support of a decision on the merits in its favour (cf. 9.24 et seq. above).

9.31 The Appellant's argument that the Decision under appeal is unreasoned and otherwise fails to comply with the requirements of form and content set forth by Article 115 of the Code of Discipline (cited in 5.4 above) which would result in the Decision under appeal being null and void, is held to be unfounded by the Panel. The Decision under appeal indeed contains a) the members of the AC, b) the names of the parties to the dispute, c) a summary of facts, albeit very condensed (*"[ ] 'Apollonia' Football Club has not fulfilled its contractual obligations to conduct the monthly payments in favor of footballer Sulejman Hoxha as defined in the contract between them.* [ ]*"*), d) reasoning (see also c) before), the legal basis on which the decision is taken since the AC refers to Article 83 of the *"Disciplinary Committee"* (presumably the Code of Discipline) which has not been submitted to the Panel, and f) an operative part in which the AC confirms the DC's 29 January 2011 decision. On the basis of the text of the Decision under appeal which has not been opposed by the Respondents, the Appellant is correct to say that the Decision under appeal fails to comply with Articles 115.g) and 115.1 of the Code of Discipline as the Decision under appeal neither sets forth the deadline and body where an appeal can be made nor does the Decision under appeal appear to have been signed by the Secretary of the commission. This Panel is of the view that the lack of an instruction on the right to appeal and lack of the signature of the AC's secretary are minor defects of form which do not render the Decision under appeal null and void. This view if backed by the fact that first, Article 115 of the Code of Discipline distinguishes requirements of content from requirements of form in its heading and while in the Panel's view it may well be fatal for a decision not to comply with certain important requirements of content (the Panel would consider as such e.g. the requirements provided by Article 115.b), calling for the parties' denomination and f) calling for an operative part), the lack of minor requirements of form (the Panel would consider as such e.g. the requirements provided by Article 115.e) calling for the legal basis on which the decision is taken, g) calling for an instruction on the right to appeal and 115.1 calling for the additional signature of the AC's Secretary apart from the Chairman's signature) generally do not entail the drastic consequence of nullity and voidness of a decision, in particular if the minor formal default was without effect (the Appellant appealed to the CAS notwithstanding the lack of instruction on appeal) or is only a partial default as is the case here (the signature of the chairman is stated in print but the signature of the AC's secretary is not). Also, the Code of Discipline does not subject the validity of decisions to their compliance with the requirements set forth in Article 115 of the Code of Discipline, whereas it e.g. expressly provides in Article 82.1 of the Code of Discipline that save for the stated exceptions, *"Legal Committee meetings are considered valid only if attended by at least three members of the legal committees"*.

9.32 The Appellant's argument that only two of the three members of the AC attended the 1 March 2011 AC meeting – a fact which remained undisputed – shall be examined below. The text of article 82 of the Code of Discipline is cited in 5.2 above.

9.33 The Panel notes that Mr. Alban Mesonjesi has been marked "absent" in the Minutes of the Meeting including the Decision under appeal. The Appellant alleges that he is the Chairman of the AC who failed to participate in the AC's 1 March 2011 meeting for health reasons; two other facts with remained undisputed by the Respondents. The Panel likewise notes from the Decision under appeal that Mr. Ardian Haci who participated in the AC's 1 March 2011 meeting along with the AC's member Mr. Fatmir Leli is referred to as the *"substitute chairman"*. In the experience of the Panel, it is common that in addition to the Chairmen of committees, *"substitute chairmen"* or otherwise called "Vice-Chairman" are provided for in cases where the Chairman is prevented from attending, the Vice Chairman is usually empowered to conduct the Chairman's business.

9.34 Examining the Appellant's objection to the composition of the AC at its 1 March 2011 meeting, the Panel finds on the basis of the English translation of Article 82 of the Code of Discipline as submitted by the Appellant, that the Chairman – and thus probably also the Vice-Chairman – may validly meet as the AC and decide on his own. The Panel notes that Article 82.1of the Code of Discipline in principle provides that valid legal committee meetings require the attendance of three members, save where Article 82.3 of the Code of Discipline applies, which allows for meetings to be held by the Chairman alone in cases where the Chairman can decide on his own *"in accordance with the definitions"* in the Code of Discipline. Articles 82.1 and 82.3 of the Code of Discipline thus need to be read together. Although it was the Appellant which submitted the English translation of Article 82 of the Code of Discipline, it has not alleged or proved that the present case is one in which an AC meeting could not be held by the Chairman alone and/or by the Vice-Chairman alone if the Chairman is prevented from attending and/or alleged and/or proved that the decision could not validly be taken by the Chairman/Vice-Chairman alone pursuant to Article 82.3 of the Code of Discipline. Given that the AC's Vice-Chairman took part in the meeting and the making of the Decision under appeal, the Panel is thus not convinced that the Decision under appeal would be rendered invalid by Article 82 of the Code of Discipline.

9.35 In addition, the Appellant argues that it is *"legally inexplicable"* that the Decision under appeal is contrary to the AC's 6 January 2011 decision (which has not been submitted to the Panel). For lack of any valid additional argument and evidence to the effect that the decision rendered in the second proceedings before the AC deviated from the decision rendered in the first proceedings before the AC due to any unlawful circumstances, the Panel finds that this argument is without any legal significance, in particular in view of the fact that the circumstances underlying the AC's decision changed upon the submission of new evidence (i.e. the CD recording) which may well have influenced the AC's consideration of the evidence before it and thus the entire case on the merits in the second proceedings before the AC.

9.36 Finally, as to the merits of Appellant's argument that the CD recording's content, but not the Appellant's failure to comply with its payment obligations in accordance with the Service Contract, gave rise to the breach of the Service Contract established by the DC's 29 January 2011 decision as well as the Decision under appeal rendered by the AC, the Panel holds that both aforementioned decisions find breaches of the Service Contract on the basis of the Appellant's failure to comply with its payment obligations under the Service Contract towards Respondent 2, the DC's 29 January 2011 decision additionally finding the content of the CD

recording as another breach of the Service Contract. The Appellant's argument is thus rejected on the merits, even if it would be held validly raised as a matter of procedure, which it is not. R56 of the Code provides that *"[u]nless the parties agree otherwise or the President of the Panel orders otherwise on the basis of exceptional circumstances, the parties shall not be authorized to supplement or amend their requests or their argument* [ ] *after the submission of the appeal brief and of the answer"*. The present argument has been made in the Appellant's 27 February 2012 letter sent after the Statement of appeal and the Appellant's statement that the Statement of appeal shall qualify as its appeal brief. The President of this Panel does not see any exceptional circumstances which would support the valid amendment of the Appellant's Statement of claim for this argument which is why this argument may anyway not be taken into account by the Panel.

G. Conclusion

9.37 In view of the above examination of the Appellant's objections to the DC's 29 January 2011 decision and the Decision under appeal (9. above), the Panel holds that the Appellant's appeal is dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The CAS has no jurisdiction over the Second Respondent, Sulejman Hoxha.

2. The appeal of the Football Club Apollonia is dismissed, to the extent that the CAS has jurisdiction.

3. The decision of the Albanian Football Federation's Disciplinary Committee dated 29 January 2011 and of the Albanian Football Federation's Appeals Committee dated 1 March 2011 are confirmed.

4. (…).

5. (…).

6. All other requests or motions submitted by the parties are dismissed.