Arbitration CAS 2007/A/1358 FC Pyunik Yerevan v. L., AFC Rapid Bucaresti & FIFA, award of 26 May 2008

Panel: Mr. Rui Botica Santos (Portugal), President; Mr. José Juan Pintó (Spain); Mr. Michele Bernasconi (Switzerland)

Football
Contract of employment
Unilateral termination of the contract without just cause during the Protected Period
Standing of FIFA to be sued in an appeal procedure before CAS
Time limits in the FIFA Regulations
Primacy to the contractual agreement in terms of stipulating the compensation for damages
Interpretation of art. 17 of the FIFA Regulations
Calculation of financial compensation
Specificity of sport
Sporting sanctions
Inducement to breach the contract of employment

1. **When deciding to take part in the proceedings before CAS by filing an answer, asking the Panel to reject the appeal and to confirm the decision of one of its bodies in a matter that is, at least to some extent, of a disciplinary nature, FIFA acts as a party intervening in the case and must therefore be considered to have the standing to be sued.**

2. **The time limit provided in art. 25 para. 5 of the FIFA Regulations (edition 2005) is to be kept apart from the circumstances envisaged in art. 25 para. 4 which deals with cases giving rise to disciplinary issues. Indeed, the FIFA Disciplinary Code contains a separate provision on time limitation.**

3. **Art. 17 para. 1 of the FIFA Regulations provides that the adjudicating body must first verify whether there is any provision in the agreement at stake that does address the consequences of a unilateral breach of the contract by either of the party. Such clauses are, from a legal point of view, liquidated damages provisions.**

4. **The amount of the compensation to be awarded when determining the consequences of the unilateral termination of a contract must necessarily take all the specific circumstances of the case into consideration. It is for this reason that article 17 of the FIFA Regulations does not establish a single criterion, or even a set of rigid rules, but rather provides guidelines to be applied in order to fix a just and fair compensation.**

5. **The salary received from the former club at the moment of the breach of contract provides information with regard to the value of the services rendered by the player.**

However, when such criterion is taken into account, the salary to be received from the new club must prevail, as it is a better reflection of the real value of the services of the player at the time of the breach.

6. **The specificity of the sport must obviously take the independent nature of the sport, the free movement of the players but also the football as a market, into consideration. Therefore, when weighing the specificity of the sport a panel may consider the specific nature of damages that a breach by a player of his employment contract with a club may cause. In this context, the asset comprised by a player is obviously an aspect which cannot be fully ignored.**

7. **There is a well accepted and consistent practice of the DRC not to apply automatically a sanction as per art. 17 para. 3 of the FIFA Regulations. Such an interpretation of the rationale of art. 17 para. 3 may be considered contrary to the literal interpretation, but appears to be consolidated practice and represents the real meaning of the provision as it is interpreted, executed and followed within FIFA.**

8. **An inducement is an influence that causes and encourages a conduct. According to art. 17 para. 4 of the FIFA Regulations, the new club is required to demonstrate that it should not be held liable for having induced the player to breach the contract.**

FC Pyunik Yerevan (the "Appellant" or "FC Pyunik") is an Armenian football club with its registered office in Yerevan, Armenia, and is a member of the Football Federation of Armenia (FFA), which is affiliated to the Fédération Internationale de Football Association.

L. (the "Player" or "First Respondent") is a professional football player, born on 18 May 1986 in Cameroon.

AFC Rapid Bucaresti ("AFC Rapid" or the "Second Respondent"), is a Romanian football club with its registered office in Bucharest, and is a member of the Romanian Football Federation (RFF).

Fédération Internationale de Football Association (FIFA or the "Third Respondent") is the international federation governing the sport of football at worldwide level. FIFA is based in Zurich, Switzerland.

This appeal was filed by the Appellant against the decision rendered by FIFA Dispute Resolution Chamber (DRC) passed on 4 April 2007 (the "DRC Decision"), notified to the Parties on 3 August 2007.

The circumstances stated below are a summary of the relevant facts as established on the basis of the submissions of the Parties and by the evidence produced by them. The FIFA file was also taken into consideration.

On 1 March 2003 FC Pyunik and the Player signed an employment contract (the "Employment Contract") as a professional player for 3 years, *i.e.* valid until 1 March 2006.

At the time that the Employment Contract was signed, the Player was almost 17 years-old and his parents had no involvement in the negotiations regarding the Player's commitments towards FC Pyunik. FC Pyunik stated that the Player had been naturalised as Armenian citizen in September 2002, at the age of 16, of his own free will and without any coercion.

The Player started to receive a monthly salary of USD 300 with staggered increases to USD 1,200 as from 1 October 2004.

On 24 August 2005, approximately six months prior to the expiration of the Employment Contract, FC Pyunik informed FIFA that the Player had left the club without permission and was refusing to return to Armenia. At that time the Player was already 19 years old.

On 12 September 2005 AFC Rapid and the Cameroonian club PWD Social Club de Kumba ("PWD Social") signed a transfer agreement regarding the transfer of the Player. Under the terms of this agreement, AFC Rapid undertook to provide PWD Social with sports equipment and balls in exchange of the transfer of the Player.

On 17 October 2005, Football Federation of Cameroon (FECAFOOT) informed FIFA that it acknowledged the "desertion" of the Player and that it would inform FIFA if the Player applied to be registered with any Cameroonian club.

On 22 November 2005, the Player contacted FIFA and stated that he had been naturalized as Armenian citizen against his will and that he had been suspended by the FFA for two years, because he has left FC Pyunik. For all the above-mentioned reasons the Player demanded to be released from his contracts with FC Pyunik.

On 13 January 2006, FC Pyunik rejected the allegations made by the Player affirming that no coercion has been exercised on the Player with respect to his transfer to Armenia and his naturalisation.

On 18 and 25 January 2006 the Player alleged that the claim filed by FC Pyunik with regard to his naturalisation and the disciplinary sanction imposed on him had not been proved and that the Armenian passport showed that he was a Cameroonian citizen. Therefore, he applied for his registration to be cancelled and that he be allowed to join the club of his choice without having to pay any form of compensation.

On 1 March 2006, the AFC Rapid informed FIFA that an employment contract between the Player and PWD Social had been in force from 1 January 2002 to 1 January 2006 and that the International Transfer Certificate (ITC) for the Player had been issued on 26 January 2006.

On 7 March 2006, FIFA asked FECAFOOT, the Player and FFA how and when the Player had left Cameroon and on what basis he was transferred to FC Pyunik.

On 20 March 2006, FECAFOOT confirmed that the ITC was issued upon request from AFC Rapid and that the Player had been registered as an amateur player for PWD Social since 1999.

On 22 March 2006 FFA stated that the Player was registered for the first time in 2002 and that he had been Armenian national when he signed the contract with FC Pyunik in March 2003. The FFA stated also that it was the first association with the power to issue an ITC for the Player and the documents submitted by AFC Rapid were accordingly false.

On 7 April 2006, AFC Rapid informed FIFA that the Player approached the club himself and that the transfer agreement with the Cameroonian club had been concluded on 12 September 2005. The Player had subsequently signed an employment contract on 14 December 2005.

On 10 July 2006, AFC Rapid contacted FIFA requesting an investigation pursuant to art. 23 of the Regulations for the Status and Transfer of Players edition 2001 (the "FIFA Regulations"), as to whether the Player's registration with the FFA was at all proper. In AFC Rapid's view, the Player's registration in Armenia was contrary to FIFA Regulations because it involved an employment contract with a minor that had been signed neither by the parents nor by the Player's legal representative. This means that the Employment Contract was executed in violation of art. 12 of FIFA Regulations and FIFA Circulars 769, 801 and 901. Furthermore, it was also invoked the facts that (1) the Player had been unlawfully naturalised as Armenian citizen; and that (2) since the Player moved from Cameroon to Armenia the issue of an ITC was required considering the international transfer of a minor. For these reasons the contract and its registration should be considered null and void.

On 21 August 2006, FC Pyunik filed a claim against AFC Rapid and M., requesting the payment of compensation for breach of the Employment Contract by the Player, in the month of August 2005, when the Player left the club without permission or just cause.

FC Pyunik alleged that the Player had been induced to breach the Employment Contract. On 6 June 2005, the Player had been in Constanza, Romania with the Armenia under-21 team and met M., who was, at that time, working for AFC Rapid. M. was employed by FC Pyunik and FFA from 24 March 2003 to 7 June 2004 and knew the Player very well. FC Pyunik alleged that when the Player left Armenia he sent his luggage to M.'s girlfriend's address in Bucharest.

Regarding the violation of FIFA Regulations with respect to the transfer of a minor, FC Pyunik pleaded that the Player acquired Armenia citizenship in September 2002 and signed an employment contract with FC Pyunik in March 2003, and that therefore the issue was in any case time-barred (art. 43 of the FIFA Regulations edition 2001; art. 25(5) of the FIFA Regulations edition 2005). The only pending issue before FIFA was the one concerning the breach of contract by the Player and the inducement of AFC Rapid to do so.

On 2 October 2006, AFC Rapid submitted its response. AFC Rapid reiterated that the Player was improper registered in Armenia; that he was duly registered in Cameroon since 1999 and that the Player approached the club by himself. AFC Rapid claimed that the two-year time limit was not applicable to breaches and that the ten-year limitation period under Swiss law was applicable. As far as the talks between the Player and M. at the UEFA European Under-21 Championship on 6 June 2005 were concerned, it pleaded that this fact was absolutely normal as they knew each other.

On 3 October 2006, the Player submitted his response, reiterating that he had been forced to stay in Armenia and to take the Armenian citizenship. By way of counterclaim he claimed a lump-sum compensation payment of EUR 50,000 in damages from FC Pyunik.

A second exchange of correspondence occurred on 9 November 2006 in which FC Pyunik replied to the claims of the Player; and on 7 December 2006 AFC Rapid referred back to its earlier submissions and the Player waived his right to submit a further response.

On 15 September 2006, FIFA informed AFC Rapid that as the dispute between FC Pyunik, the Player and AFC Rapid was purely a financial matter and with the view to allowing the Player to continue his career and the fact that his Employment Contract expired on 1 March 2006, it saw no further obstacles to the Player playing for AFC Rapid.

The DRC also noted that in accordance with constant practice and well-established understanding and case-law, no matter can be addressed if more than two years have elapsed since the facts arose. Consequently, the facts, which arose prior to 24 August 2003 were not discussed or taken into consideration by the DRC.

Entering into the substance of the matter, the DRC concluded that the Player and FC Pyunik were contractually bound by a valid employment contract, based on the following considerations:

- The Player was a minor player at the time he signed the Employment Contract;
- The Employment Contract was concluded for 3 years, in line with art. 18(2) of the FIFA Regulations;
- The Player received all salaries due under the Employment Contract on time;
- According to the applicable national Armenian law, a 16-years old individual has the legal capacity to enter into an employment relationship. In fact, the Employment Contract was signed and for 2 ½ years the Player never had challenged the validity of the contractual relationship.

Based on the previous considerations, the DRC has also reached the following considerations on the substance of the matter:

1. Liability for the breach of contract

As the Player had not presented any valid reason or evidence to support that either his premature departure has been authorised by FC Pyunik, or that he had just cause to leave, it must be considered that the Player breached the Employment Contract.

2. Consequences of the unjustified breach of contract

As per the objective criteria listed in art. 17(1) of the FIFA Regulations, it was considered appropriate to award a compensation of USD 15,000 to FC Pyunik, and as per art. 17(2) of the same regulations, AFC Rapid shall be deemed jointly liable for the payment of this amount. The amount of this compensation has been calculated on the basis of the following criteria:

i) the Player's remuneration (i.e. USD 1,200);

ii) the length of time remaining of the Employment Contract (i.e. 6 months);

iii) the lack of any evidence of any concrete offer from other clubs in relation to the transfer of the Player;

iv) the lack of any exceptional circumstances, which would mitigate or aggravate the amount of compensation.

3. Consequences for the club of inducement of unjustified breach of contract

Further, the DRC stated that as per art. 17(4) of FIFA Regulations, a club seeking to register a player, who has unilaterally breached a contract during the protected period, will be presumed to have induced a breach of contract. This means that AFC Rapid had the burden to demonstrate that it should not be held liable for having induced the Player to breach the contract.

However, the DRC decided to reject the claim to impose a ban on registering any new player, either nationally or internationally, for two consecutive transfer periods, on the basis of the following considerations:

i) The Player admitted that he moved to Bucharest under M.'s influence; however, he also emphasised that AFC Rapid advised him to stay in Cameroon until the expiration of his contract with FC Pyunik and M. had only acted as consultant with regard to the player's football ability.

ii) It was the Player who approached AFC Rapid to conclude a transfer agreement with the PWD Social, where the Player was under contract until 1 January 2006.

iii) The Player only started training with AFC Rapid and signed a new employment contract on 14 December 2005, after concluding the transfer agreement with the abovementioned Cameroonian club.

Considering all the facts and arguments pleaded by the Parties and the DRC's views on the substantive matters, the following decision was reached:

"1. The claim of the club FC Pyunik Yerevan is partially accepted.

2. The player L. is ordered to pay USD 15,000 to the club FC Pyunik Yerevan within the next 30 days as from the date of notification of this decision.

3. The club AFC Rapid Bucaresti is jointly responsible for the payment of the abovementioned amount if the same is not paid within one month of notification of this decision.

4. *If the aforementioned amount is not paid within the stated deadline, an interest rate of 5% per year shall apply, as from the stated deadline.*
5. *Any further claim lodged by FC Pyunik Yerevan is rejected.*
6. *The counter-claim of the player L. is rejected.*
7. *In the event that the above-mentioned amount is not paid within the stated deadline, this matter shall be submitted to FIFA's Disciplinary Committee, so that the necessary disciplinary sanctions may be imposed.*
8. *The club FC Pyunik Yerevan is instructed to inform the player L. immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
9. *(…)"*

On 17 August 2007, the FC Pyunik filed a Statement of Appeal against the DRC Decision with the Court of Arbitration for Sport (CAS), pursuant to art. 61 para. 1 of the FIFA Statutes. On 31 August 2007, the FC Pyunik filed the Appeal Brief.

On 24 September 2007, the Player filed his answer.

On 26 September 2007, FIFA filed its answer.

On 2 October 2007, the AFC Rapid filed its answer.

By a letter dated 4 October 2007, the Parties were invited by the CAS Court Office to state whether they preferred a hearing be held in this matter or for the Panel to issue an award on the basis of the written submissions.

Given the position adopted by the Parties with regard to the need for a hearing and the Appellant's application in the Appeal Brief regarding the consolidation of cases CAS 2007/A/1358 and CAS 2007/A/1359, the Panel decided the following, of which the Parties were duly informed by a notice sent on 23 November 2007:

"(…)

i. *The Panel, in accordance with article R57 of the Code of Sports-related Arbitration (hereinafter "the Code"), has decided to hold a hearing to solve the present dispute. You will be informed in due course about the precise date when it will take place.*
ii. *After due consideration of the request raised by the Appellant in its letter dated 17 August 2007, the Panel has decided that the cases CAS 2007/A/1358 and CAS 2007/A/1359 will be held separately and consequently there will be two awards issued. Nevertheless, the Panel is still evaluating the possibility to hold one sole hearing where both cases will be dealt. In this regard, I hereby invite the parties to file any objections, on or before 1 December 2007, to the possibility of a unified hearing.*

(…)"

In the said notice, the Panel further:

1. requested AFC Rapid and the Player to provide to the CAS Court Office with an English translation of all documents and attachments filed in French language, on or before 14 December 2007, otherwise they would have been disregarded by the Panel in accordance with article R29 of the Code of Sports-related Arbitration ("CAS Code"); and
2. informed AFC Rapid and the Player that since they have failed to pay their part of the advance court fees payable, all counter claims filed will be deemed to be withdrawn.

On 6 February 2008, the hearing took place at the CAS.

During the hearing, the Panel decided to request FIFA, pursuant to art. R44.3 of the CAS Code, to submit a copy of all, or at least of a certain number of the most significant cases in which there has been a final decision by the DRC, which supported the existence of a standard practice on the part of FIFA as to the interpretation and application of article 17(3) of the FIFA Regulations as not to require the automatic and mandatory imposition of sporting sanctions on players who are proved to have breached their contract during the protection period.

LAW

CAS Jurisdiction

1. The jurisdiction of CAS, which is not disputed, derives from art. 61 para. 1 of the FIFA Statutes and R47 of the CAS Code.

2. Additionally, the Parties confirmed the jurisdiction of CAS by signing the order of procedure.

3. It follows that CAS has jurisdiction to decide this dispute. The mission of the Panel follows from art. R57 of the CAS Code, according to which a panel has full power to review the facts and the law of the case. Furthermore, the same article provides a panel may issue a new decision, which replaces the decision challenged, or set the decision aside and refer the case back to the previous instance.

Applicable Law

4. Art. R58 of the CAS Code reads 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".

5. Then, art. 60 para. 2 of the FIFA Statutes provides as follows:

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

6. The Employment Contract does not contain any choice-of-law clause and the Parties have not otherwise specifically agreed on the applicable law. The Panel will therefore decide according to the various regulations of FIFA and additionally, Swiss Law.

Appellant's request that FIFA be joined as a Respondent

7. The Appellant's applies that FIFA be joined as a Respondent in these proceedings.

8. FIFA has requested to be excluded from the proceedings on the following grounds:

   1. *"(…) the present procedure relates to a dispute between the two clubs and the player of the reference pertaining to a breach of an employment contract and the inducement to such breach of an employment contract respectively, and does not concern FIFA".*

   2. FIFA also stress that *"(…) the Dispute Resolution Chamber, in the matter at stake, acted in its role as the competent deciding body of the first instance and was not a party to the dispute".*

   3. Moreover, FIFA emphasizes that *"(…) the appealed decision of the Dispute Resolution Chamber (…) is not one with any disciplinary nature (…)"* and that *"(…) the appeal in question does not contain any request against FIFA".*

9. In reply the Appellant confirmed to maintain FIFA as a Respondent, basically for the following reasons:

   1. *"(…) if FIFA is not a part in the procedure as a Respondent, the request for sporting sanctions for both the other two Respondents could not be reached (…) [and] no sporting sanctions could be taken by the CAS".*

   2. The Appellant *"(…) have already requested against FIFA, as per [its] «Request for Relief» point 4, of [its] Appeal Brief: that both respondents have to be condemned to sporting sanctions of 6 months and of two transfer windows without inscriptions of players on the national and international level. AS FIFA FAILED TO SANCTION THEN ACCORDING TO THE FIFA REGULATIONS FOR THE STATUS AND TRANSFER OF PLAYERS".*

   3. The *"(…) claim against FIFA is clearly stated in the Appeal Brief and, as per the FIFA Regulations and the contents of the DRC decision, both Respondents are liable for «breach of contract» and «induction of breach of contract» and FIFA should have sanctioned both of them, but failed to do so, in total contraction with the said Regulations".*

10. The Panel notes that the submissions filed by the Appellant contain a specific request against FIFA, and FIFA has filed an answer in the proceedings asking the Panel to reject the appeal and to confirm the decision of the DRC in its entirety. Additionally, the matter at stake is, at least to some extent, of disciplinary nature, since a part of the subject of the dispute is the issue whether FIFA had to sanction AFC Rapid and/or the Player. For these reasons, the Panel considers and decides that FIFA should be considered as a respondent in this procedure, in accordance with its intervention in the proceedings, which became effective when the Appellant reiterated its will to address the appeal against FIFA and FIFA, in its answer, formally requested that CAS reject the appeal and confirm the DRC Decision.

The Merits of the Appeal

11. The appeal challenges the merits of the DRC Decision in respect to the following issues:
    1. The amount of compensation to be granted to the Appellant for the unlawful breach of the contract by the Player, which the Appellant considers should be EUR 250.000;
    2. The joint and several liability of AFC Rapid;
    3. The failure to impose any sporting sanction on the Player; and
    4. The failure to impose any sporting sanctions on AFC Rapid as a consequence of the inducement made by this latter club in the breach of the contract by the Player with the Appellant.

12. The Panel will analyze each of the said issues separately.

13. In his answer the Player claimed that his registration with the Appellant must be considered illegal, with retroactive effect. Leaving the issue of the modalities of the registration of the Player aside for a moment, and assuming the validity of the Employment Contract, the Panel notes that it can be considered that the Player is in breach of contract, in this case, as the DRC finding as to the existence of the said breach has not been contested. Accordingly, the Panel does not have to reconsider this aspect of the case. This matter was decided by the DRC and is not per se at issue in this appeal. The Panel will likewise not consider the Player's counter-claim for damages for loss and damage allegedly incurred to be awarded *ex aequo et bono* in the sum of EUR 50.000, in accordance with the Panel's decision rendered during these proceedings, notice of which was given to the Parties by the CAS Court Office on 23 November 2007, to the effect that the said claim is deemed to have been withdrawn as the corresponding advance costs were not paid.

a) Level of compensation owed by the Player

14. The main issue in this appeal concerns the consequences of the breach by the Player of his Employment Contract with the Appellant.

15. Before proceeding to consider this issue, the Panel will first consider the question raised by the Respondents regarding the alleged unlawful registration of the Player with the Appellant.

16. The Respondents' position regarding this question is as follows:

    i) The registration of the Player by the Appellant is illegal, in complete violation of the applicable FIFA Regulations, particularly the provisions regarding the protection of minors, ITC requirements and naturalization of players;

    ii) Even if Armenian employment legislation recognizes that a player who has passed his sixteenth birthday is able to enter into a contract of employment without needing anyone's approval, this only applies to players of Armenian nationality;

    iii) The fact is that the Player has Cameroonian nationality, as can been seen from his passport.

17. The Panel shares the view of the DRC regarding which edition of the FIFA Regulations shall be the relevant one. In fact, art. 26 of the FIFA Regulations for the Status and Transfer of Players (edition 2005) states the following: *"Any case that has been brought to FIFA before these Regulations come into force shall be assessed according to the previous regulations (par. 1). All other cases shall be assessed according to these Regulations (para. 2)".*

18. Taking into consideration the fact that the claim was lodged with FIFA on 24 August 2005 and that the current Regulations came into force on July 1, 2005, the edition 2005 of the FIFA Regulations for the Status and Transfer of Players shall apply to the case at hand.

19. In order to establish whether the transfer of the Player to the Appellant was, or was not, in accordance with the provisions of the Regulations regarding Protection of Minors, of the then-applicable Regulations (edition 2001), and the Regulations currently in force (edition 2005), it is necessary to decide whether his naturalisation was, or was not, lawful. In this regard, the Appellant pleads that the Respondents' entitlement to raise this matter is time barred.

20. In fact, according with art. 25 para. 5 of the FIFA Regulations (edition 2005), the FIFA's Players' Status Committee, the DRC and the single judge of the DRC *"shall not hear any case (…) if more than two years have elapsed form the event giving rise to the dispute"*. The fact is that the Employment Contract between the Player and FC Pyunik was signed on March 2003 and the naturalization of the Player or, at least, the attainment of Armenian citizenship in order to play in Armenian national teams occurred in 2002. The Panel should therefore conclude that the alleged violation by the Appellant occurred more than 2 years before the claim was submitted to FIFA. However, if the consequence of the alleged breach by the Appellant is that the Employment Contract is null and void, the said time-barring has not occurred as if the said agreement is null and void it is so *ab initio* and never had any legal validity. Consequently, the nullity of the Employment Contract, if any, can be considered at any time and cannot be time-barred. In the latter regard the Panel clarifies that the time-limit provided in art. 25 para. 5 of the FIFA Regulations is to be kept apart from the circumstances envisaged in the preceding paragraph (i.e. art. 25 para. 4) which provides that *"if there is reason to believe that a case raises a*

disciplinary issue, the Players' Status Committee, the Dispute Resolution Chamber, the Single judge or the DRC judge (as the case may be) shall submit the file to the Disciplinary Committee together with a request for the commencement of disciplinary proceedings, in accordance with the FIFA Disciplinary Code". Indeed, the FIFA Disciplinary Code contains a separate provision on time limitation (cf. FIFA Disciplinary Code, edition 2007, art. 42 ff.). This means that although the DRC was unable to consider circumstances related to facts which occurred more than two years prior to the event giving rise to the dispute, it could nevertheless (i) have acknowledged the nullity, if any, of the Employment Contract and (ii) have submitted the facts, which it considered might amount to a disciplinary offence, to the FIFA Disciplinary Committee.

21. However, the Player had his eighteenth birthday on the 18th May 2004, when the Employment Contract was still in force. This means that, at least as from the Player's eighteenth birthday, any defects related to non-compliance with the minors protection rules in existence when the contract was signed, were resolved or remained at least undisputed between the Parties. The Panel notes that for a fair period of time the Player did play for the Appellant, in exchange of a certain salary. The Panel considers that on the date on which FC Pyunik informed FIFA that the Player had breached the Employment Contract, the contract was validly in force. Accordingly, the question related to the effect on the dispute between the Parties of the alleged breach of the rules regarding the protection of minors on the date on which the Employment Contract was signed, is to be decided so that the Panel is not prevented from considering that the Player breached his contract with the Appellant and to state what the consequences of the said breach are.

22. The first consequence of terminating a contract without just cause is that the party in breach is required to pay compensation. According to art. 17 para. 1 of the FIFA Regulations, *"unless otherwise provided for in the contract, compensation for breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria"*, some of which are also provided in the same article.

23. Art. 17 para. 1 of the FIFA Regulations asks therefore the adjudicating body to first verify whether there is any provision in the agreement at stake that does address the consequences of a unilateral breach of the agreement by either of the party. Such provisions are for instance so-called buy-out clauses, i.e. clauses that determine in advance the amount to be paid by a party in order to terminate prematurely the employment relationship. Such kind of clauses are, from a legal point of view, liquidated damages provisions.

24. The Panel notes that the Parties did not include in the Employment Contract any provision with respect to the amount of compensation to be paid in case of breach of the Employment Contract.

25. To determine the consequences of the unlawful termination of the contract by the Player, in particular the amount of compensation to be awarded, the Panel has to consider the categories of factors provided by art. 17 of the FIFA Regulations.

26. First, the Panel considers important to highlight the ultimate rationale of this provision of the FIFA Regulations, i.e. to support and foster contractual stability (cf. CAS 2005/A/876, p. 17: *"[…] it is plain from the text of the FIFA Regulations that they are designed to further «contractual stability» […]"*).

27. Second, the Panel considers that the amount of the compensation to be awarded must necessarily take all of the specific circumstances of the case into consideration. It is for this reason that article 17 of the FIFA Regulations does not establish a single criterion, or even a set of rigid rules, but rather provides guidelines to be applied in order to fix a just and fair compensation. It is against this background that art. 17 requests to establish such an amount in accordance with due consideration of the law of the country concerned, the specificity of sport and further objective criteria, including in particular the remuneration and other benefits due to the player under the existing contract and/or the new contract, the remaining time of the existing contract up to a maximum of five years as well as the fees and expenses paid or incurred by the former club (amortised over the term of the contract). Finally, one has to consider whether the breach occurred within or out of the so-called Protected Period (i.e. the period of three entire seasons or three calendar years, whichever come first, following the entry into force of the employment relationship, if the employment agreement was concluded prior to the 28th birthday of the player concerned, while the period is of two years, or two football seasons respectively, if the agreement was concluded after the 28th birthday of the player – cf. the section "Definitions" of the FIFA Regulations).

28. The Panel shall now review the factors indicated in art. 17 of the FIFA Regulations in order to guide it in the fixing of the compensation to be awarded in this case.

29. The Panel starts by considering that in the present case, the monthly remuneration paid to the Player on the date when the Employment Contract was terminated was of USD 1,200.

30. Further, the remaining time of the Employment Contract, i.e. the existing contract, was of 6 months.

31. The Panel also considers that at the time when the Employment Contract was signed, the Player was 16 years-old. When the Employment Contract was breached, the Player was 19 years-old. Further, the Panel acknowledges that the Player at the time when the events occurred had no disciplinary antecedents.

32. On the other hand, and as is stated above, not only did the breach by the Player occur during the Protected Period, but the Player also flew to Bucaresti when he was supposed to go make trials with one of the French clubs that had shown interest in hiring the Player (Ajaccio and Istres). Furthermore, the Player left FC Pyunik without any notice, which means that FC Pyunik was suddenly deprived of the Player's services. These circumstances are such as to render the Player's conduct particularly reprehensible.

33. FC Pyunik considers that the amount of compensation to be awarded should be € 250.000,00 as this is the amount that was offered by various clubs (Ajaccio and Istres, from France) for

the transfer of the Player. The Panel considers in this regard that the jurisprudence of CAS is not strictly consistent with regard to the issue whether a club can request the compensation for an opportunity of a transfer fee which went lost because of the breach of the contract by the player. However, this issue does not need to be resolved by this Panel, for FC Pyunik failed to prove any offer made for the Player by any club.

34. The Panel also notes the contradiction of the position adopted by FC Pyunik's in that it states that it wished to exercise the right to retain the Player and, at the same time, it demonstrates that its essential interest was in "selling" and "dealing in" the Player. All of which because the Employment Contract was coming to an end.

35. The Panel considers that based on the evidence submitted, it may have been proved that FC Pyunik was taking steps with a view to the transfer of the Player to a European club, such as Ajaccio or Istres, but it has not been proved that it was in a position or at least close to do so, or what amount it would receive for such a transfer.

36. Returning to the application of the criteria indicated by art. 17 of the FIFA Regulations, the Panel is also required to consider the remuneration and other benefits due to the Player under the new contract. In this regard and according to clause 8 of the Employment Contract signed on 14 December 2005 between AFC Rapid and the Player, the Player was entitled to receive the sum of USD 25,000 during the first six months of the contract and would have earned the sum of USD 110.000, USD 60.000 and USD 60.000 in the following seasons (i.e. 2006-2007, 2007-2008 and 2008-2009).

37. The Panel retains that it is fair to say that the salary to be paid by FC Pyunik to the Player at the moment of the breach provides some information with regard to the value of the services rendered by the Player to the Appellant. However, this is true to some extent only. On one hand, to apply automatically such a figure would deprive art. 17 of the FIFA Regulations of its meaning and would hardly correspond to a fair and just solution. On the other hand, one should also consider that the loss of an asset can hardly be always just the equivalent of the sum of the amounts due to keep the right to use such asset. Additionally, when the salary criterion is taken into account, one may also consider the salary that a player will receive from his new club, as this may provide additional guidance on the value of the services of that player at the time of the breach.

38. Accordingly, the Panel will take into consideration that the Player received a salary from AFC Rapid of USD 25,000 for the first six months of his contract (January to June 2006), i.e the equivalent of USD 4,166 per month.

39. As mentioned above, one of the criteria of art. 17 of the FIFA Regulations is the law of the country concerned. The jurisprudence of CAS on the question as to which is the relevant law is not consistent. In the present case, considering that neither of the involved parties has made any particular comments or representations under this heading, the Panel is inclined to decide that this criterion is not relevant for the determination of the compensation in relation with the present dispute.

40. Art. 17 of the FIFA Regulations also refers to the specificity of the sport, without however providing any indication as the content of such factor. The Panel considers that the specificity of the sport must obviously take the independent nature of the sport, the free movement of the players (cf. CAS 2007/A/1298, 1299 & 1300, no. 131 ff.) but also the football as a market, into consideration. In the Panel's view, the specificity of the sport does not conflict with the principle of contractual stability and the right of the injured party to be compensated for all the loss and damage incurred as a consequence of the other party's breach. This rule is valid whether the breach is by a player or a club. The criterion of specificity of sport shall be used by a panel to verify that the solution reached is just and fair not only under a strict civil (or common) law point of view, but also taking into due consideration the specific nature and needs of the football world (and of parties being stakeholders in such world) and reaching therefore a decision which can be recognised as being an appropriate evaluation of the interests at stake, and does so fit in the landscape of international football.

41. Therefore, when weighing the specificity of the sport a panel may consider the specific nature of damages that a breach by a player of his employment contract with a club may cause. In particular, a panel may consider that in the world of football, players are the main asset of a club, both in terms of their sporting value in the service for the teams for which they play, but also from a rather economic view, like for instance in relation of their valuation in the balance sheet of a certain club, if any, their value for merchandising activities or the possible gain which can be made in the event of their transfer to another club. Taking into consideration all of the above, the asset comprised by a player is obviously an aspect which cannot be fully ignored when considering the compensation to be awarded for a breach of contract by a player (cf. CAS 2005/A/902 & 903, no. 122 ff.; more restrictive CAS 2007/A/1298, 1299 & 1300, no. 120 ff.).

42. Given the grounds stated above, it is believable that the Appellant had a legitimate expectation of gain in respect of a possible transfer of the Player. However, the Appellant failed to adduce any evidence that it had received a specific and real offer from any club for the Player. The amount of compensation to be awarded cannot take any unsubstantiated offer into consideration. Additionally, the Appellant was not able to substantiate in any way which could be the economic damage suffered through the loss of the Player.

43. As is stated above, the provisions of art. 17 of the FIFA Regulations are not limitative and grant to the adjudicating body the discretion to have recourse to other objective criteria, which are applicable to the specific case. It should be stressed in this regard that the Player has been playing with the Cameroon Olympic Team for the Qualification for Beijing and that he was transferred to a German Club of the Second Division.

44. Finally, the Panel notes that FC Pyunik has not pleaded nor substantiated that income or performance of its football team declined because it was deprived of the Player's contribution. Furthermore, at the hearing FC Pyunik confirmed that it did not replace the Player by a new player, so that no such replacement expenses of the Appellant regarding this aspect has been

proved or quantified. Finally, as mentioned above, the possibility of a transfer of the Player prior to the termination of the contract has not been substantiated either.

45. Taking into due consideration all of the above and acknowledging that according to art. 42 para. 2 of the Swiss Code of Obligations if the exact amount of damages cannot be established, the judge shall assess them in his discretion, having regard to the ordinary course of events and the measures taken by the damaged party, the Panel comes to the following conclusion:

46. Given the fact that:

(i) the Player received from the Appellant a monthly remuneration of USD 1,200;

(ii) the termination of the Employment Contract was 6 months away;

(iii) the first new salary of the Player with AFC Rapid was of an equivalent of USD 5,000 for the month of January 2006 and USD 4,000 per month for the period from February to June 2006, as against the USD 1,200 that the Player was receiving in the FC Pyunik when he breached the Employment Contract. When the salary criterion is taken into account, the one to be received from the new club must prevail on the one received from the former club, as it is a better reflection of the real value of the services of the Player at the time of the breach;

(iv) AFC Rapid is better known than FC Pyunik and has a greater international projection;

47. The Panel is satisfied, for all reasons exposed above, and taking into due consideration all the elements of this dispute, that it is appropriate to fix the compensation to be paid by the Player to the Appellant in USD 25.000,00.

48. Finally, with respect to the amount of USD 25.000,00 hereby awarded, the Panel considers that it shall bear interest from the first day following the date on which the Player is considered to be in breach of the Employment Contract, in accordance with the compensation system instituted by art. 17 para. 1 of FIFA Regulations, so that this date is the date on which the compensation became due. As per Swiss Law, the rate of interest of 5% shall apply. The Panel considers that the Player breached the Employment Contract when he left FC Pyunik without any justification, i.e. on 24 August 2005.

b) Joint and several liability of AFC Rapid

49. The DRC decided that the *"(…) AFC Rapid is jointly responsible for the payment of the above-mentioned amount if the same is not paid within one month of notification of the (…) decision"*.

50. The Panel notes that AFC Rapid did not appeal against the DRC Decision and, therefore, has not challenged explicitly its joint and several liability in respect of such compensation as the Player is ordered to pay to FC Pyunik. However, AFC Rapid requested this Panel to establish that the Appellant is not entitled to any compensation.

51. The Panel decides, in any event, to uphold the position of the DRC in this regard.

52. According to art. 17 para. 2 of the FIFA Regulations, AFC Rapid, as the Player's new club, is jointly and severally liable with the Player for the payment of the applicable compensation. This liability is independent of any possible inducement by or involvement of AFC Rapid to a breach of contract, as confirmed by the CAS (Cf. CAS 2006/A/1100; CAS 2006/A/1141 and CAS 2007/A/1298, 1299 & 1300).

c) The failure to impose sporting sanctions on the Player

53. This Panel is also called upon to decide on the Appellant's application that sporting sanctions be imposed on the Player.

54. The Appellant considers that the DRC disregarded art. 17 para. 3 of the FIFA Regulations by not imposing a sporting sanction on the Player. The said provision states that *"sporting sanctions shall also be imposed on any player found to be in breach of contract during the Protected Period"*. In this respect, the DRC Decision considered that the above mentioned provision gives the competent body the power to decide to impose a sporting sanction on a player found to be in breach of contract during the Protected Period, but not the obligation to do so. In view of the specific circumstances of the case, including the young age of the Player at the time he signed the Employment Contract and the controversy surrounding his registration from the Appellant, the DRC decided not to impose any sporting sanctions, which would have had a considerable impact on the Player and were considered to be excessive and inappropriate.

55. It follows from a literal interpretation of the said provision that it is a duty of the competent body to impose sporting sanctions on a player who has breached his contract during the protected period: "shall" is obviously different from "may"; consequently, if the intention of the FIFA Regulations was to give the competent body the power to impose a sporting sanction, it would have employed the word "may" and not "shall". Accordingly, based on the wording of art. 17 para. 3 of the FIFA Regulations, a sporting sanction should have been imposed.

56. However this Panel considers that rules and regulations have to be interpreted in accordance with their real meaning. This is true also in relation with the statutes and the regulations of an association. Of course, if the wording of a provision is clear, one needs clear and strong arguments to deviate from it.

57. During the hearing, FIFA observed that it is stable, consistent practice of FIFA and of the DRC in particular, to decide on a case by case basis whether to sanction a player or not. Even though it is fair to say that the circumstances behind the decisions filed by FIFA to demonstrate such practice differ from case to case, the Panel is satisfied that there is a well accepted and consistent practice of the DRC not to apply automatically a sanction as per art. 17 para. 3 of the FIFA Regulations. The Panel is therefore inclined to follow such an interpretation of the rationale of art. 17 para. 3 of the FIFA Regulations which may be

considered contrary to the literal interpretation, but appears to be consolidated practice and represents the real meaning of the provision as it is interpreted, executed and followed within FIFA. It is indeed noteworthy that a sporting sanction, by which the Player was suspended from playing for two years, was imposed of the Player within the ambit of FFA disciplinary proceedings.

58. This being so, the Appellant's application that a sporting sanction be imposed on the Player is dismissed.

d) The failure to impose any sporting sanctions on AFC Rapid as a consequence of the inducement made by this latter club in the breach of the Employment Contract by the Player

59. Finally, this Panel has to decide regarding the Appellant's application to consider that AFC Rapid induced the Player to breach his contract with the Appellant and consequently that sporting sanctions shall be imposed on AFC Rapid.

60. The relevant provision is art. 17 para. 4 of the FIFA Regulations, which states that *"sporting sanctions shall be imposed on any club found to be inducing a breach of contract during the Protected Period"* and that *"it shall be presumed, unless established to the contrary, that any club signing a Professional who has terminated his contract without just cause has induced that Professional to commit a breach"*.

61. As a consequence, AFC Rapid is required to demonstrate that it should not be held liable for having induced the Player to breach the contract.

62. In the DRC proceedings the Player admitted in his statement dated 15 March 2006 that, acting under M.'s influence, he left the club and travelled to Romania, where he had been offered a contract. However, the Player emphasized in the same statement that AFC Rapid advised him to stay in Cameroon until the contract with FC Pyunik had expired.

63. AFC Rapid emphasized that the Player had approached the club himself and that AFC Rapid had concluded a transfer agreement with PWD Social Club of Kumba, where the Player had been under contract until 1 January 2006.

64. Furthermore, the following facts have also been proved:

1) AFC Rapid signed a transfer agreement with the Cameroonian club PWD Social Club de Kumba with regard to the Player on 12 September 2005;

2) The FECAFOOT issued the ITC for the Player on 26 January 2006;

3) The Player informed that he had left FC Pyunik because of his precarious situation in Armenia and that AFC Rapid had advised him to stay in Cameroon until the contract with FC Pyunik expired;

4) The Player has signed an employment contract with AFC Rapid on 14 December 2005;

5) The Player was not registered with the new Club, AFC Rapid, prior to the expiration of the breached Employment Contract with FC Pyunik, i.e. not before the 1 March 2006.

65. An inducement is an influence that causes and encourages a conduct.

66. This Panel considers that AFC Rapid has rebutted the presumption that it should have induced the Player in his decision to breach his contract with FC Pyunik. Although it is true that the then trainer of AFC Rapid had also been the Player's trainer and met the Player a short time before the Player left his former club, it is also true that the said meeting was a meeting in the context of a sporting competition and cannot therefore be considered per se as the basis of the inference of any intention or premeditation on the part of AFC Rapid to induce the Player to breach his contract.

67. Additionally, the Panel wishes to underline that AFC Rapid employed the Player on the basis of an ITC rendered by a National Association, in this case FECAFOOT. Based on the evidence submitted, the Panel is satisfied that AFC Rapid had no reasons to question the information about the Player's registration in Cameroon and the information received from FECAFOOT.

68. It is also necessary to take into consideration that the procedures leading up to the registration of the Player by AFC Rapid have not been challenged by FIFA.

69. Finally, AFC Rapid did not register the Player prior to the date on which his previous contract expired.

70. In the light of the above, and notwithstanding the other piece of circumstantial evidence submitted by the Appellant (like declarations in the media, shipment documents, etc.), this Panel considers that the Player left Armenia on his own initiative and that AFC Rapid did not induced or had any influence on the Player's decision to breach his contract. In the light of the facts adduced, this Panel considers that the decision to leave FC Pyunik had already been taken by the Player even prior to his encounter with his former coach.

71. As AFC Rapid has rebutted the presumption to which it was subject and given the lack of inducement of the breach of the contract by the Player, there is no reason to impose any sporting sanctions against AFC Rapid, as was correctly decided by the DRC.

72. The application to impose sporting sanctions to AFC Rapid is therefore dismissed.

e) Other Prayers for Relief

73. This conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the Parties to the Panel: Accordingly, all other prayers for relief are rejected.

The Court of Arbitration for Sport rules:

1. The appeal filed on 17 August 2007 by the Appellant against the decision handed down on 4 April 2007 by the FIFA Dispute Resolution Chamber is partially upheld.

2. The decision issued on 4 April 2007 by the FIFA Dispute Resolution Chamber is partially reformed in the sense that L. is ordered to pay to FC Pyunik Yerevan an amount of USD 25.000, plus interest at 5% per annum starting on 25 August 2005 until the effective date of payment.

3. (…).

4. (…).

5. All other or further claims and counterclaims are dismissed.