Arbitration CAS 2009/A/1801 Aris Football Club v. Dusan Bajevic, award of 17 March 2010

Panel: Mr Luc Argand (Switzerland), Sole Arbitrator

Football
Termination of the employment contract with a coach
Termination with just cause by the club and compensation according to Greek law
Compensation for moral damages according to Greek law
Compensation for defamatory statements to the public according to Greek law

1. **According to Greek law, in cases where a club claims compensation for termination of the contract for just cause, it shall prove the exact amount that constitutes the damage or sufficient elements concerning the truth of the alleged claim. Vague explanations and highly hypothetical arguments about the compensation requested cannot be taken into account, since they cannot prove why the alleged damage should amount to a specific sum; furthermore, in the absence of any proven damage, it is not possible to establish any causal link with the legal cause of liability.**

2. **According to Greek law, a breach of contract cannot be treated as an "unlawful act" because the consequences of the infringement of a contractual obligation are specifically regulated by the provisions for the non-fulfilment of an existing obligation and not by provisions relating to unlawful acts.**

3. **Whoever claims compensation for defamatory statements to the public should provide proof of such statements and demonstrate how such behaviour could have imperiled its future in a damaging way.**

Aris Football Club ("the Club" or "Aris FC") is a Greek Football Club member of the Hellenic Football Federation (HFF). Its first team plays in the Greek Super League (i.e. the Greek first division).

Mr Dusan Bajevic ("the Coach" or "Mr Bajevic"), born on 10 December 1948 in Mostar, Bosnia and Herzegovina, is a Bosnian Serb who is a former football player and the current head coach of AEK Athens.

On 18 September 2007, Aris FC entered into a two-years employment contract ("the Agreement") with Mr Bajevic by means of which the latter agreed to provide his professional services as head coach of the first team [clause 1 Agreement] for a period of 2 sporting seasons (2007-08 and 2008-09), with a bilateral right to renewal until the end of the 2009-10 sporting season [clause 2 Agreement]. For

each sporting season, the Club had to pay the Coach the gross amount of EUR 18'000.- (i.e. EUR 10'000.- net) plus EUR 390'000.- net, i.e. a total amount of EUR 400'000.-, payable in 10 instalments of EUR 40'000.- each [clause 8 and 9 Agreement].

Concerning the Coach's "rights and obligations", the following clauses need to be considered:

> *"(…)*
>
> *The Coach will have the exclusive right to decide for the formation of the team for every Championship, Greek Cup and European Cup as well as friendly games, and is also responsible for the theoretical and practical preparation of the professional team.*
>
> *The duties of the Coach are meant to be the application of his abilities and his knowledge as professional coach for the preparation and practice of the team, the setting of the 11 players and the tactics of each game.*
>
> *The Coach agrees to invest the necessary time to execute and follow his duties that are mentioned below.*
>
> *(…).*
>
> *(…) The Coach is obliged to cooperate with the President of the Company and the members of the Administration of the Club every time that will be judged necessary. Also [the Coach] is obliged to cooperate and to be present to the meetings of the Board of Administrators, (…), if he is asked to. (…)".*

On 1 July 2008, the Coach met with Mr Haralambos Skordas, President and Managing Director of the Club ("Mr Skordas" or "the President"), concerning the player Avraam Papadopoulos ("the Player"). On the same day, prior to the evening training, the Respondent announced to the team and technical staff - and subsequently to the media in a press conference - that he had decided to resign from his position as head coach of the Club with immediate effect. As a consequence, the Club terminated, on 2 July 2008, the Agreement with the Coach with immediate effect.

Both the Club (on 16 July 2008) and Mr Bajevic (on 25 July 2008), separately brought the case before the 1st instance Financial Disputes Resolution Committee of the HFF ("1st instance FDRC").
On 10 November 2008, the 1st instance FDRC ruled the issue as follows [Decision number 1096/2008]:

> *"(…) Accepts in part the claim of the (…) Club dated 16 July 2008;*
>
> *Recognises that the coaching services contracted dated 18 September 2007 that was drafted between the parties, was terminated by decision of the (…) Club with just cause;*
>
> *(…);*
>
> *Accepts in part the claim of the (…) Coach dated 25 July 2008;*
>
> *Orders the (…) Club to pay out to (…) the Coach the amount of (…) [EUR 80'000.-] plus legal interest as of the time of the serving of the claim. (…)"*[1].

On 17 November 2008, the Club and the Coach, filed separate appeals before the 2nd Instance Financial Disputes Resolution Committee of the HFF ("2nd instance FDRC") against the 10 November 2008 decision.

[1] English translation provided by the Respondent of the original decision in the Greek language

On 10 February 2009, the 2nd instance FDRC confirmed the decision of the 1st instance FDRC as follows [Decision number 52/09 and 53/09]:

> *"(…) The judicial appeals are accepted juridically and rejected legally. It ratifies the disputed decision number 1096/2008 of the (…) [1st instance FDRC] (…)[2]".*

On 27 February 2009, the decision was notified to Aris FC.

On 9 March 2009, Aris FC filed its statement of appeal against the 10 February 2009 decision with CAS and requested that the case be decided by a Sole arbitrator.

On 19 March 2009, Aris FC filed its appeal brief, requesting the following in its prayers for relief:

> *"In view of the above, the Appellant respectfully asks the Panel:*
>
> *1. to set aside the challenged decision;*
>
> *2. to establish that the Respondent shall pay 600'000 Euros to the Appellant as compensation for the total material damage and loss of profits suffered by the Appellant due to the Respondent's breach of contract without just cause;*
>
> *3. to establish that the Respondent shall pay 400'000 Euros to the Appellant as restitution for the moral damage suffered by the Appellant due to the Respondent's breach of contract without just cause;*
>
> *4. to rule that the amount due to the Respondent from instalments of the contract is not 80'000.- Euros, but 37'518.05 Euros and that this amount should be deducted from the payable compensation to the Appellant;*
>
> *5. to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;*
>
> *6. to establish that the costs of the arbitration procedure shall be borne by the Respondent".*

On 24 March 2009, the CAS Court office informed the Respondent that he ought to submit his response within 20 days (art R55 of the Code of Sports-related Arbitration ["CAS Code"]).

On 26 March 2009, the Coach informed the CAS Court office that he disagreed with the submission of this case to a Sole arbitrator. Accordingly, on 30 March 2009, the Deputy President of the Appeals arbitration ("Deputy President") ruled this issue as follows (art. R50 CAS Code):

> *"(…) In view of (1) the disputed sum of approximately 1'000'000.- Euros (2) the sportive context of this case and (3) the fact that none of the parties alleges that the appeal is an emergency, this dispute will be submitted to (…) three Arbitrators. However, should the Respondent fail to pay [his] share of the advances of costs, (…), the Deputy President may review his decision and decide, (…), to submit this case to (…) a Sole Arbitrator. (…)".*

On 24 April 2009, Mr Bajevic filed his answer to the appeal brief with exhibits, requesting:

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[2] English translation provided by the Appellant of the original decision in the Greek language

"(…)

1. *To reject in whole the claim lodged by the Appellant;*
2. *To order the Appellant to pay to (…) [Mr Bajevic] the amount of 80'000.- already awarded, which is the amount due and payable against (…) [Mr Bajevic's] services offered to it during the (…) season, 2007-08;*
3. *To sentence the Appellant to pay out (…) [Mr Bajevic's] legal fees;*
4. *To order the Appellant to bear the costs of the Arbitration proceedings".*

On 2 June 2009, an order of procedure was issued, which was subsequently accepted and countersigned by both parties.

A hearing was held in Lausanne on 2 July 2009.

On 26 August 2009, the Arbitrator decided to request a legal opinion from a Greek lawyer on various issues raised by this case. On 7 October 2009, a *"request for consultation"* was addressed by the CAS Court office to Mr George Marmaridis, Member of the Lawyer's Bar of Thessaloniki, Greece ("the Expert").

On 6 November 2009, the Expert duly signed the document entitled *"Expert's acceptance and statement of independence"* and, on 24 November 2009, addressed his legal opinion ("Legal opinion") to CAS alongside with a published translation in English of the Greek Civil Code[3].

The Respondent (on 26 December 2009) and the Appellant (on 29 December 2009) filled written comments on the Legal opinion, i.e. within the deadline granted to do so.

LAW

CAS Jurisdiction and scope of the Arbitrator's review

1. The jurisdiction of CAS is explicitly recognized by the parties and is furthermore *inter alia* confirmed in the Order of Procedure which was duly signed by both parties. It follows that CAS has jurisdiction to decide on the present dispute.

2. With respect to its power of examination, the Arbitrator observes that the present appeal proceeding is governed by the provisions of Art. R47 ff CAS Code. In particular, Art. R57 CAS Code grants a full power to review the facts and the law.

[3] Constantin Taliadoros, Greek Civil Code, ANT. N. Sakkoulas Publishers 2000 ("Published translation").

Applicable Law

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

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

4. The Arbitrator observes that the FDRC, which rendered both 1st and 2nd instance decisions in accordance with Greek law, is domiciled in Greece. Also, both parties - a Greek football club and a long term Greek resident - have developed their arguments applying Greek law and have agreed, at the hearing, that the dispute be governed exclusively by Greek law. Accordingly, the Arbitrator holds - in accordance with Art. R58 CAS Code, that Greek law is applicable to decide on this dispute.

Evidentiary Proceedings Ordered by the Arbitrator

5. Art. R 44.3 CAS Code provides the following:

"(…), the Panel may at any time order the production of additional documents or the examination of witnesses, appoint and hear experts, and proceed with any other procedural act. The Panel may order the parties to contribute to any additional costs related to the hearing of witnesses and experts".

6. Since Greek law is applicable to decide on this dispute, the Arbitrator deemed it appropriate to appoint Mr. Marmaridis, an independent Greek law expert, to supplement the presentation of the parties on various legal issues.

Admissibility of the appeal

7. Aris FC's statement of appeal was filed within the deadline provided by Art. 35 § 4 FMRPC and art. 62 § 3 the FIFA Statutes, that is, within 10 days after notification of said decision. It furthermore complies with all the other requirement of Art. R48 CAS Code. The appeal is consequently admissible.

Merits

A. Termination of the Agreement

8. While Aris FC is of the opinion - like the 1st and 2nd instance FDRC - that the only valid termination is the Club's 2nd July 2008 termination, the Coach believes on the contrary that the only valid termination is his 1 July 2008 resignation.

9. On the issue of termination of a fixed term contract, Art. 672 Greek civil code ("AK") provides the following [Published translation]:

"Each of the parties shall in any case have the right to terminate at any time the contract on serious grounds [with just cause] without a notice being required. Such right may not be excluded by agreement"[4].

10. The Expert made the following comments regarding 672 AK:

"(…) Greek law envisages the untimely dissolution of the contract if one of the parties terminates it unilaterally due to the existence of a "just cause". (…). The two main conceptual characteristics of the exceptional termination laid down in article 672 AK are (a) the existence of just cause or causes and (b) the absence of previous notice period, so that termination leads to immediate dissolution of the employment contract. (…). Greek law does not enumerate the clauses for which the renunciation of a fixed-term contract is justified and instead prefers the use of the abstract legal notion of "just cause. (…)"[5].

(…)

"The result of this termination is the dissolution of the employment contract, which occurs at the moment of the termination becoming known to the other contracting party [article 167 AK]. (…)"[6].

11. On the contrary and according to the Expert, the absence of "*just cause*" has the following effect on the termination of a fixed term contract:

"In Greek law there is not a specific express provision clarifying the legal effects of the termination which takes place without 'just cause'. (…).

Consequently, if just cause is not lawful and generally the event that the terminating party invokes, is not sufficient, the untimely termination is null and void retroactively by virtue of Article 174 (…) [AK] which states that 'legal act that clashes with a prohibitive provision, if nothing else is concluded, is null'[7]*. (…) Consequently, the termination of the employment contract is considered as if it had never occurred, according to article 180 (…) [AK]. Therefore, the contract is not dissolved, but it remains in force and continues to produce its legal effects. Thus, the rights and duties of the parties emanating from it still exist"*[8].

12. The Arbitrator notes that the Expert shares the point of view of the parties concerning the early termination of a fixed term contract, namely that an early termination with *"just cause*" is considered as valid whereas an early termination without *"just cause*" is considered retroactively null since it is not foreseen by law and has therefore no effect over the validity of the contract, which remains in force. Accordingly, the Arbitrator needs now to clarify the abstract notion of *"just cause"*.

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[4] Translation provided by the Appellant: *"Each of the parties has the right in any case to terminate at any time the contract with just cause, without giving notice. This right cannot be waived by means of an agreement"* Accordingly, the Arbitrator considers that the words "*with just cause*" are more appropriate than *"on serious grounds"*.

[5] See legal opinion pp 4 and 5.

[6] See legal opinion p. 9.

[7] Translation of Art. 174 AK provided by the Appellant: *"Legal act contravening to as legal provision is considered as null and void, unless otherwise implied by law"*. Published Translation: *"A transaction which is inconsistent with a prohibited provision of the law shall, unless a different conclusion can be drawn, be null"*.

[8] Legal opinion p. 10.

13. The expert gave the following definition of a *"just cause"* under Greek law in an employer/employee relationship:

"Both doctrine and case law appear to agree that "just cause" can be deemed every incident - even isolated - that in the light of the principle of good faith and commercial customs, but also after taking into consideration all circumstances in every case, renders unbearable the continuation of the contract until the time of its dissolution as prescribed in the contract[9]*.*

(…)

The most important reasons which the employer, natural person or legal entity (…) can invoke, may relate to the breach of the employee's duties, as the obligation for supplying the agreed service or the violation of other deriving duties; professional inadequacy, the non-observance of ordely behaviour, the non-compliance with the instructions and orders that the employer gives him/her according to his/her managerial right; the violation of the obligation of faith and the ensuing lack of trust, (…), but also whenever, due to the existence of some incidents that can refer to the person or the relationships of the employer, the continuation of the employment contract becomes,(…), intolerable (…).

The above applies mutatis mutandis to the termination of the contract by the employee. Thus "just cause" can refer to the non-observance of the employer's obligations, such as the omission of the payment of the salary or serious delays therein, the unilateral modification of the employment conditions for the worse, the moral offense of the employee (…).

In addition to the above mentioned general reasons, especially in employment contracts between a football club and a trainer (coach), "just cause" for the unilateral termination of the contract by the employer constitutes the non observance by the employee of his/her duties, such as his/her absence during the preparation of the team or at the training sessions and matches, domestically or abroad; the violation of the obligation of faith; the increasing lack of trust; or the continuous failures in the athletic obligations. Viewed from the side of the employee, the most common reason for the renunciation of the contract is the non-payment of the salary or the continuous delay in its payment"[10]*.*

14. The Arbitrator notes that the definition of "*just cause*" given by the Expert in the specific context of an employment relationship between a club and its coach is perfectly in line with the position of the parties to that respect. Accordingly, the Arbitrator needs now to consider if the subsequent terminations (i) by the Coach (on 1 July 2008) and (ii) by the Club (on 2 July 2008) have been done so with *"just cause"* and are, hence, to be considered as valid.

a) 1 July 2008 resignation by Mr Bajevic

15. The Arbitrator notes that Mr Bajevic considers that his "resignation" on 1 July 2008 is justified by the "incident" that occurred with Mr Skordas regarding the Player on that same day. The Arbitrator observes however that the version of the Parties differ radically concerning the signification of Mr Skodas' intervention:

[9] Legal opinion p. 5.
[10] Legal opinion pp 6 to 8.

- The Appellant is of the opinion that Mr Skordas only asked Mr Bajevic to plan the new season without the Player since the latter had made it clear that he wanted to leave the Club. Furthermore, even if the Appellant would have ordered the Respondent not to use the services of the Player, under no circumstances would such request allow Mr Bajevic to simply "walk away".
- The Respondent, on the contrary, is of the opinion that Mr Skordas gave him the express order to "exclude" the Player from the team. Considering this order a direct intervention in his tasks as head coach, Mr Bajevic told the President he would resign if it was maintained. Since the Club did not object, the Respondent believes that the 1 July 2008 resignation occurred at least by mutual agreement. The Respondent also deems that the President's intervention constitutes a unilateral modification of the employment agreement that gives him the right to terminate the contract with just cause.

16. The Arbitrator notes that while the direct intervention of Mr Skordas in Mr Bajevic's coaching activity is not acceptable per se - particularly so since the Agreement expressly provides that the Coach has the exclusive right to decide for the formation of the team[11] - the Arbitrator is also of the opinion that said intervention does not constitute a *"just cause"*, even if said direct intervention was of the kind described by the Coach and his assistant - issue that the Arbitrator will not need to decide. Indeed, as rightfully analysed by the 1st and 2nd instance FDRC, the Arbitrator is of the opinion that Mr Bajevic was in a position:
    - To refuse to abide to the President's order by considering it as contrary to clause 3 Agreement - which gave him exclusive right to decide for the formation of the team for every Championship, Greek Cup, European Cup and friendly games - and to let Mr Skordas know that ;
    - To continue to render his services to the Club as head coach. To that respect, the Arbitrator notes that the Player was about to leave the Club when the incident occurred - which he actually did 3 days later - so that the Mr Bajevic could not ignore that he would most likely not be able to count on the Player for the upcoming season.

17. However, under no circumstances was the Coach in a position "to resign" from his position as head coach by simply walking away: Indeed, as admitted by the Expert[12], such behaviour *"is in essence a denial of supplying his services, which is the main duty of the employee in an employment contract"*. Accordingly, the Arbitrator will hold that the "resignation" on 1 July 2008 by the Coach was done without *"just cause"* and that it must be deemed as invalid (Art. 174 AK).

b) 2 July 2008 termination by the Club

18. As a consequence of Mr Bajevic's "resignation" on 1 July 2008, the Club decided, on 2 July 2008, to terminate the Agreement with immediate effect.

[11] Clause 3 Agreement.
[12] Legal opinion p. 8.

19. The Arbitrator is convinced that the decision by Mr Bajevic to leave his position as head Coach without further notice did render the continuation of the employment contract intolerable until its expiration date particularly more so since the Club was left without a coach while the new season was about to begin - i.e. at a difficult moment when most coach changes/swaps had already occurred.

Therefore, the Arbitrator will hold that the denial of the Coach to provide the agreed services on 1 July 2008 in violation of the Agreement constitutes a "*just cause*" for the 2 July 2008 termination by the Club, which is, accordingly, valid (Art. 672 AK).

B. Compensation for "material damage" and "loss of profit"

20. The Appellant claims a total amount of EUR 600'000.- *"as compensation for the total material damage and loss of profit"*[13] caused by the Respondent's breach of contract. To support this claim, the Appellant referred to some previous CAS awards (TAS 2005/A/902 and CAS 2005/A/893). For the sake of completeness, the Sole Arbitrator underlines here that this jurisprudence is not relevant here as it is related to the interpretation of Swiss law whereas Greek law is applicable in the present case.

21. On this issue, Art. 673 AK provides the following [Published translation]:

"If the serious ground that justified termination consists of or is due to a breach of contract the guilty party shall be liable for damages"[14].

22. The Expert made the following comments concerning the conditions that must be fulfilled in order for compensation to be granted in accordance with Art. 673 AK:

"(…) for the recognition of the right to compensation described in Art. 673 (…) [AK], the three general conditions of the obligation to compensation have to be met cumulatively, that is the existence of damage, legal cause of liability and causation between the cause of liability and the damage"[15].

23. The legal cause of liability being - as discussed above - the 1 July 2009 breach of the Agreement by the Coach, the Arbitrator needs now to analyse the other two conditions.

24. According to the Expert, "damage" is defined in accordance with Art. 298 AK, which provides the following (Published translation):

"Damages shall comprise the decrease in the existing patrimonium of the creditor (positive prejudice) as well as loss of profit.

Such profit shall be that which can be anticipated as probable in the usual course of things or by reference to special circumstances in particular to the preparatory steps taken".

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[13] See Appeal brief p. 13.

[14] Translation provided by the Appellant: *"If the just cause for which the termination took place, constitute or is due to a breach of contract, the party who committed the breach has an obligation to pay compensation".*

[15] Legal opinion p. 13.

25. Concerning the compensation technically due in accordance with Art. 673 AK in an employer/employee relationship for the existing damage, the Expert made the following comments:

"Damage is considered to be any harm that is caused to the material and immaterial goods of a person, namely every unfavourable alteration of those. The reduction of the existing property of the damaged person, which is usually the reduction of its credit, but also the increase of it liability (for example the contracting of new debts) is called positive damage (damnum emergens). Nevertheless, damage can also be established without actual reduction of property, in case where increase would have taken place if the harmful event had not occurred (…). In those cases we refer to consequential or negative damage/lost profit (lucrum cessans)"[16].

(…)

"When the employer is the beneficiary of the compensation of Article 673 (…) [AK], the compensation consists of the amount he/she spent to employ another employee or the additional salary he/she may have agreed with the replacement or the amount of the damage he/she suffered from the discontinuation of the employee's activity. When the employee is the beneficiary of the compensation, as a rule the compensation consists of the total salary which he/she would have received until the agreed end of the contract. (…)"[17].

26. The Arbitrator notes that the definition of "damage" given by the Expert is perfectly in line with the position of the parties. However, the parties differ on the level of proof required to seek compensation: While the Respondent believes that full proof is required to seek the restitution of both positive and negative damage, the Appellant is of the opinion that *"an approximate estimation"* is sufficient for the restitution of negative damage/lost of profit.

27. On the required "level of proof", the Expert is of the following opinion:

"The party who seeks compensation is required to adduce all evidence clarifying the exact amount of the damage. As a rule, Greek law requires absolute proof. There is absolute proof when the evidence adduced is so compelling that no rational and experience person can have any doubts about the truth of the subject matter that has to be proven. (…) Nevertheless, in some cases that are expressly mentioned by law, the approximate estimation of the damage may suffice. Approximate estimation is the judgment that is based on objective elements which support the truth of the alleged claim that has to be proven and which are superior to the elements that are against it. This estimation leads to a reduced degree of judicial conviction, namely simple probability and not certainty about the truth of the facts that had to be proven. Therefore, in the case of the deriving lost profit for which, as a rule, achieving full judicial conviction may not be realistic, Art. 298 passage b (…) [AK] allows the judge to be satisfied with the probability, which exists when sufficient elements that argue for the truth, are present. Nevertheless, because the probability has to be well-funded, the claim for lost benefit has to be well-defined. For this, a detailed account of the concrete events, circumstances and measures which rendered the profit probable regarding the separate sums as well as a special invocation of these sums are needed.

Furthermore, in cases in which, according the previous legal provisions, evidence is missing, for the well-funded pronouncement on the obligation for compensation (…), for equity reasons it is at the discretion of the judge to grant reduced (i.e. not higher than the actual damage) reasonable compensation. The abovementioned possibility of granting reasonable compensation has to be expressly laid down in a certain legal provision. Art. 673 (…)

[16] Legal opinion p. 12.
[17] Legal opinion pp 15 and 16.

[AK] does not allow so. Only Art. 225, 286, 331, 674, 675, 918, 132, 153, 171 §2, 387§1 and 932 (…) [AK] expressly allow for the possibility of granting reasonable compensation"[18].

28. The Arbitrator notes that the expert is perfectly in line with the Respondent concerning the required level of proof. Since the Club neither clearly demonstrated the accuracy of its opinion nor justified why the Expert may be wrong to that respect (e.g. by quoting doctrine and/or case law), the Arbitrator will consider accordingly that compensation for *"material damage and loss of profit"* in application of Art. 673 AK can only be awarded to the Club if the latter proves the exact amount that constitutes the damage or if sufficient elements concerning the truth of the alleged claim are present.

29. In the present case, the Club only "vaguely" explained why it requested a EUR 600'000.- compensation for *"material damage and loss of profit"*, namely that:

- A new coach had to be found within a very short period of time;
- The new coach was to be considered less successful than the Respondent, who had a brilliant record and had been voted as "best Greek Coach of the year" while working for FC Aris;
- The Club qualified in the UEFA Cup while Mr Bajevic was working for the Appellant whereas it was eliminated in the first round the following year, representing a EUR 200'000.- loss for the Club since it would "probably" have done better in the UEFA Cup with the Coach still in place.

30. To that respect, the Arbitrator considers that none of these arguments tend to prove as to why the alleged damage should amount to EUR 600'000.-. In particular, the alleged "loss of bonus" remains highly hypothetical. Also, the Club even admitted, during the hearing, that the calculation of the damage was *per se* a *"difficult task"* and that it was almost impossible to provide a clear figure. Furthermore, Aris FC was able to hire a new coach within 3 days and could still manage to prepare for the new season in an appropriate way and without any relevant disturbance. Therefore, the Arbitrator will hold that Aris FC has failed to provide any material proof as to why the damage should amount to CHF 600'000.-. Moreover, in the absence of any proven damage, there cannot be any causal link with the legal cause of liability.

31. Accordingly, the Arbitrator will hold that the claim for compensation for material damage and loss of profit must be rejected.

C. Compensation for moral damage

32. The Appellant claims a total amount of EUR 400'000. - *"as compensation for moral damage"*[19] caused by the Respondent's breach of the Agreement.

[18] Legal opinion pp 16 and 17.
[19] See Appeal brief p. 13.

33. The Expert explained the following concerning pecuniary compensation for *"moral damage"* in the specific context of a breach of contract:

"[Art. 914 AK][20] (…) establishes general liability for unlawful act (tort). (…) Nevertheless, the unlawfulness of an act cannot be determined by art. 914 (…) [AK]; rather, it is established when it is confirmed that a given act violates a legal provision"[21].

(…)

"Pecuniary compensation for moral damage/tort is granted only where this is explicitly foreseen, according to art. 299 (…) [AK][22]*, 'pecuniary compensation for the damage that is not relating to property is owed in the cases in which the law provides for'. These provisions are only two (…): Art. 59 & 932 [AK]. The pecuniary compensation for moral damage/tort is independent from the compensation for the material damage, in that the suffering person may apply only for pecuniary compensation for moral damage/tort, only for material damage or for both. Art. 932 (…) [AK]*[23] *requires the fulfilment of two conditions (a) the commission of an unlawful act (…) [b. Which is] the cause of moral damage/tort"*[24].

(…)

"The breach of a contract does not by itself constitute an unlawful act of the debtor against the creditor and, therefore, the breach of the contract does not automatically lead to compensation for moral damage. Nevertheless, if it is proven that the behaviour of the debtor constitutes at the same time an unlawful act against the creditor, the latter, besides the compensation for material damages, can also apply for pecuniary compensation for moral damage/tort. Consequently, the law excludes the compensation for moral damage/tort in cases of contractual relationship, unless the same facts constitute at the same time an unlawful act"[25].

34. While the Legal opinion is perfectly in line with the position of the Coach concerning the issue of compensation for moral damage, the Appellant believes that the Expert is mistaken in retaining that the breach of contract by the Coach does not, *per se* constitute an *"unlawful act"* in the sense of Art. 914 and 932 AK. The Club believes indeed that a compensation must be granted because of the deemed *"unlawfulness"* of the breach committed by the Coach.

35. The Arbitrator notes, however, that the Club did not justify its point of view (e.g. by quoting doctrine and/or case law). On the contrary, the Appellant expressly recognized that the Expert's interpretation of Art. 914 AK - namely that a breach of contract is not *per se* an unlawful act - had *"a lot of supporters"*.

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[20] Published translation of Art. 914 AK: *"A person who has caused illegally and through his fault prejudice to another shall be liable for compensation"*.

[21] Legal opinion p. 17.

[22] Published translation of Art. 299 AK: *"In regard to loss that is not pecuniary a monetary compensation shall be due in the cases provided for in the law"*.

[23] Published translation of Art. 932 AK: *"Independently of the compensation for pecuniary prejudice the Court may upon the occurrence of an unlawful act allot a reasonable amount of money to be determined in the Court's appreciation as reparation for moral prejudice. This provision shall apply especially in regard to a person who suffered harm in his health honour or purity or who was deprived of his liberty"*. Translation by the Appellant: *"In case of an unlawful act, irrespectively of the compensation for the material damage, the court can award a reasonable, according to its judgment, restitution in money for moral damage. That applies especially for the person that suffered an insult of his health, honor or purity or who was deprived of his liberty. In the case of a person who was killed, such reparation in money can be adjudicated to the victim's family for pain and suffering"*.

[24] Legal opinion pp 20, 21 and 22.

[25] Legal opinion p. 21 (see also p. 27).

36. Also, the Arbitrator notes that the Expert clearly explained that a breach of contract cannot be treated as an *"unlawful act"* because the consequences of the infringement of a contractual obligation are specifically regulated by the provisions for the non-fulfilment of an existing obligation (art. 335 ff AK) and not by provisions relating to unlawful acts[26].

37. Accordingly, the Arbitrator will follow the Respondent and the Expert and hold that the 1 July 2008 breach by the Coach is not per se an *"unlawful act"* allowing compensation for moral damage.

38. The Club further believes that compensation must be granted because the Coach violated Art. 919 and 920 AK on 1 July 2008.

39. Article 920 AK (*"Defamatory rumors"*) provides the following [Published translation]:

"A person who supports or spreads knowingly or by faulty ignorance untrue information which imperils the credit profession or future of another shall be liable to compensate the latter"[27].

40. According to the Expert, the conditions of article 920 AK are as follows:

"(1) Support or spreading of groundless news. (…). (2) (…) The person who announces or spreads the untruthful news has to know or to culpably (negligently) ignore its untruth. (…). (3) Danger to the credit, profession or to the future of someone. Moreover, the untrue news has to causally, and actually expose to danger one of those restively mentioned goods of a person or of a legal entity. (…). (4) Damage. The proof of material damage (damage of property) which is causally occasioned by the exposing to danger of one of the aforementioned goods, is needed"[28].

41. The Arbitrator notes that in the present case, the Appellant did not provide any sort of proof asserting that Mr Bajevic may have voiced defamatory statements or disseminated false information concerning the Club while "walking away" on 1 July 2009 or while making his subsequent public announcement to the press. Furthermore, the Club did not demonstrate how such behaviour may have imperiled its future in a damaging way. Therefore, the Arbitrator will hold that Mr Bajevic did not violate Art. 920 AK.

Art. 919 AK (*"morality offended"*) provides the following [Published translation]:

"A person who has intentionally caused prejudice to another in a manner contrary to morality shall be liable for compensation"[29].

42. According to the Expert, *"morality"* is defined as follows:

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[26] Legal opinion p. 19 (see also p. 27).

[27] "Translation provided by the Appellant: *"Whoever knowing or by negligence ignoring, maintains or disseminates untrue information that jeopardize the faith, the business or the future of another, has the obligation to compensate him".*

[28] Legal opinion p. 24.

[29] Translation provided by the Appellant: *"Whoever intentionally damaged another in a way contrary to the morality has the obligation to compensate him".*

"(…) [Morality] is not the personal morality (…), but the social morality, namely the one that is produced into a wider circle (…) of persons. (…) The notion of social morality comprises what is recognized by the wider circle (…) or what constitutes the result of the perception of the person who is thinking in a moral and prudent way into this circle"[30].

43. The Arbitrator notes that the Club neither explained nor demonstrated how the Coach's behaviour on 1 July 2008 may have offended "public morality" in a damaging way for the Club. Therefore, the Arbitrator will hold that Mr Bajevic did not violate Art. 919 AK.

44. Accordingly, the Arbitrator considers - likewise to the 1st and 2nd instance FDRC - that there is no ground for compensation for moral damage and rule that the claim related thereto must be rejected.

D. Amounts due to Mr Bajevic

45. It is undisputed that at the time of termination, Aris FC still owed Mr Bajevic an amount of EUR 80'000.- corresponding to the net installments remaining due for the months of May and June 2008 (2 x EUR 40'000.-).

46. In its Appeal brief, Aris FC claims that this amount should be reduced to EUR 37'518.05 to take into consideration various payments apparently made by the Appellant on behalf of the Respondent *"to please him"* (such as: hotel expenses extra flights, etc…). However, Aris FC expressly recognized during the hearing that these expenses would not have been claimed to the Coach *"under normal circumstances"* and that it had decided to do so as a consequence of the present litigation.

47. The Arbitrator notes that the Appellant failed to provide any sorts of proof (payment slips, documents signed by Mr Bajevic, etc.) concerning any payment it might have done on behalf of the Coach and for which it now requests to be compensated for. Accordingly, the Arbitrator will hold that the full EUR 80'000.- are due to Mr Bajevic and that the claim for reduction made by the Appellant must be rejected.

The Court of Arbitration for Sport rules:

1. The appeal filed by Aris Football Club against the decision rendered on 10 February 2009 by the 2nd instance financial disputes resolution committee of the Hellenic Football Federation is rejected;

(…)

4. All other prayers for relief are dismissed.

[30] Legal opinion p. 25.