



**Arbitration CAS 2011/A/2356 SS Lazio S.p.A. v. CA Vélez Sarsfield & Fédération Internationale de Football Association (FIFA), award of 28 September 2011**

Panel: Mr José Juan Pintó (Spain), President; Prof. Luigi Fumagalli (Italy); Mr Clifford Hendel (USA)

*Football*

*Solidarity contribution*

*Elements identifying a transfer for the purposes of the solidarity contribution mechanism*

*Admissibility of a consent to early termination of contract rendered in advance*

*Qualification of a transaction as a transfer for the purposes of the solidarity contribution mechanism*

- 1. The elements identifying a transfer of a player between clubs for the purposes of the solidarity contribution mechanism are (i) the consent of the club of origin to the early termination of its contract with the player, (ii) the willingness and consent of the club of destiny to acquire the player's rights, (iii) the consent of the player to move from one club to the other, and (iv) the price or value of the transaction.**
- 2. A consent rendered in advance by the club of origin to the early termination of its contract with the player is legally feasible.**
- 3. The reality and the substance of the transaction shall prevail on discussions about forms or schemes of transfers, especially when the FIFA Regulations on the Status and Transfer of Players are drafted in a broad sense that does not impose such schemes or forms for the payment of the solidarity contribution. Therefore, even taking place outside the typical scheme of a "sale" contract, a transaction in which a player gets released from his contractual obligations upon payment of a compensation contractually agreed in advance and joins a new club is to be considered as a transfer for the purposes of the solidarity contribution mechanism.**

**I. THE PARTIES**

- 1. Società Sportiva Lazio S.p.A. (hereinafter, "Lazio" or the "Appellant") is an Italian football club affiliated to Federazione Italiana Giuoco Calcio with seat in Rome, Italy.**
- 2. Club Atlético Vélez Sarsfield (hereinafter, "Vélez" or the "First Respondent") is an Argentinean football club affiliated to Asociación de Fútbol Argentino (hereinafter, "AFA") with seat in Buenos Aires, Argentina.**

3. Fédération Internationale de Football Association (hereinafter, “FIFA” or the “Second Respondent”) is an association submitted to Swiss Law governing the sport of football worldwide with seat in Zurich, Switzerland.

## II. THE FACTS

4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed on the basis of the parties’ submissions and the evidence taken. Additional factual background may be also mentioned in the legal considerations of the present award.

### II.1 THE PLAYER’S MOVEMENTS FROM AL SAAD SPORT CLUB TO LAZIO. THE CLAIM OF VÉLEZ. THE PROCEEDINGS BEFORE FIFA

5. M. (hereinafter, the “Player”) is a football player of Argentinean nationality (...) who from 1998 until 2007 played for Vélez. He was registered for such club as an amateur player from 7 January 1998 until 24 June 2004 and as a professional player from 25 June 2004 until 14 August 2007, as per the information provided in this respect by AFA.
6. On 23 June 2007 Vélez transferred the Player to the Qatari club Al Saad Sport Club (hereinafter, “Al Saad”), with whom the Player signed a 4-year employment contract (hereinafter, the “Contract”).
7. Clause X3 of the Contract stipulated that:  
*If the Player terminates the Contract and such termination is not due to a just cause or a mutual agreement between the parties concerned or the Player breaches the Contract and such breach leads to termination or the right to terminate the Contract, then the Club shall be entitled to receive from the Player a compensation for an amount equal to 20 million Euros.*
8. In January 2008 the Player was transferred on a loan basis to the English club Birmingham FC until 30 June 2008.
9. At the end of the referenced temporary transfer, the Player was again transferred on a loan basis, this time to Lazio, until 30 June 2009 for a loan fee of EUR 2,400,000, payable in 2 instalments of EUR 1,200,000, the first one within the week after the signature of the loan agreement and the other by 10 January 2009.
10. On 22 October 2008, Vélez lodged a claim against Lazio before FIFA seeking payment of the solidarity contribution arising out of the Player’s loan to Lazio.
11. On 22 and 24 March 2009, Lazio paid to Vélez the total amount of EUR 73,442.77 in concept of solidarity contribution in respect of the loan of the Player (EUR 36,721.39 on 22 March and EUR 36,721.39 on 24 March).

12. In April 2009 Lazio and Al Saad started negotiations aimed at transferring the Player on a definitive basis to Lazio, but finally did not reach an agreement in this respect.
13. On 27 April 2009, the Player sent a letter to Al Saad in the following terms:  
*I make reference the contract subscribed with Al Saad Sport Club in date 23<sup>rd</sup> June 2007 ("the contract"). By this letter I hereby inform you that, according to article X, paragraph 3 of the Contract, I terminate the contract before its expiring term, effective immediately. I am ready to the compensation as provided in the mentioned article X, paragraph 3.*
14. On 4 June 2009, Lazio and the Player signed a five-year employment contract.
15. On 5 June 2009, Lazio transferred to Al Saad the amount of EUR 20,000,000 in concept of "*compensation for termination notice M.*"
16. On 5 August 2009, Al Saad filed a claim before FIFA against Lazio requesting financial compensation and the imposition of sporting sanctions against such club arising from the movement of the Player from Al Saad to Lazio.
17. On 2 September 2009, Vélez requested before FIFA the payment of the solidarity contribution resulting from the movement of the Player from Al Saad to Lazio.
18. Lazio opposed such request, essentially sustaining that solidarity contribution is payable only upon the (international) transfer of a player between clubs, and in the present case no transfer was concluded with Al Saad. Instead, Lazio asserts that the Player only exercised a contractual right to unilaterally terminate his former contract with Al Saad, after which Lazio hired him as a free agent.
19. On 22 July 2010, the FIFA Dispute Resolution Chamber decided to partially accept the claim of Vélez, and ordered Lazio to pay the amount of EUR 726,936 (EUR 11,553 as regards the solidarity contribution arising out of the initial loan of the Player to Lazio and EUR 715,383 as regards the solidarity contribution arising out of the movement of the Player to Lazio on a definitive basis) plus interest. The operative part of the referenced decision reads as follows:
  1. *The claim of the Claimant, Atlético Vélez Sarsfield, is partially accepted.*
  2. *The Respondent, Società Sportiva Lazio, has to pay to the Claimant, Atlético Vélez Sarsfield, the amount of EUR 726,936, within 30 days as from the date of notification of this decision.*
  3. *Within the same time limit Società Sportiva Lazio has to pay to Atlético Vélez Sarsfield default interest of 5 % per annum on the following partial amounts until the effective date of payment, as follows:*
    - *on EUR 11,553 as from 7 September 2008.*
    - *on EUR 715,383 as from 1 August 2009.*

4. *If the aforementioned sum is not paid within the aforementioned deadline, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision.*
5. *The costs of the proceeding (...) are to be paid by the Respondent, Società Sportiva Lazio, within 30 days of notification of the present decision to FIFA to the following bank account (...).*
6. *Any further claims lodged by the Claimant, Atlético Vélez Sarsfield are rejected.*
7. *The Claimant, Atlético Vélez Sarsfield, is directed to inform the Respondent, Società Sportiva Lazio, 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.*

## II.2 THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

20. Lazio decided to appeal the decision of the FIFA Dispute Resolution Chamber dated 22 July 2010 (hereinafter, the "Appealed Decision") before CAS, and thus filed the relevant Statement of Appeal on 22 February 2011.
21. On 9 March 2011, the Appellant filed the Appeal Brief, in which it requested the CAS to:
  - A) *Set aside FIFA Decision;*
  - B) *Quantify the solidarity payment, if any, that must be paid by the Appellant to the First Respondent arising out of the loan agreement concluded between the Appellant and Al-Saad for the period from 30 June 2008 until 30 June 2009;*
  - C) *Declare that no solidarity payment is owed by the Appellant to the First Respondent arising out of the Player's termination of his employment agreement with Al-Saad and subsequent employment by the Appellant;*
  - D) *Rule any counterclaim by the Respondents to be inadmissible;*
  - E) *Order the Respondents to pay the entire costs of this arbitration;*
  - F) *Order the Respondents to reimburse the Appellant's legal costs and expenses.*
22. On 8 April 2011, FIFA answered the Appeal Brief asking the CAS to render an award in the following terms:
  - a) *To reject the present appeal as to the substance and to confirm, in its entirety, the decision passed by the Dispute Resolution Chamber on 22 July 2010.*
  - b) *To reject the Appellant's request for the Respondents to cover the costs related to the present appeal procedure, and, on the contrary, to order the Appellant to bear all the costs incurred with the present proceedings.*
  - c) *To order the Appellant to cover all legal expenses of the Second Respondent related to the present*

*procedure.*

23. On 15 April 2011, Vélez answered the Appeal Brief requesting the CAS to:
  - a) *Fully reject Lazio's Appeal;*
  - b) *Uphold FIFA's DRC in its entirety;*
  - c) *Impose Lazio the total cost of arbitration;*
  - d) *Impose Lazio a contribution towards legal fees of CHF 20.000.*
24. The Appellant appointed Mr Luigi Fumagalli as arbitrator in this case.
25. The First Respondent and the Second Respondent could not reach an agreement on the arbitrator to be appointed. In light of it the CAS appointed Mr Clifford J. Hendel as arbitrator.
26. Mr José Juan Pintó Sala was appointed as President of the Panel.
27. On 5 July 2011, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (hereinafter referred to as the "Order of Procedure"), which was countersigned by the parties.
28. The First Respondent raised several objections to the composition of the Panel and the appointment of the arbitrators, which were expressly withdrawn at the end of the hearing held in the present case.
29. Prior to the hearing, and as requested by Vélez, the Panel requested the production of certain documentation from FIFA (the file of instance in this case and part of the FIFA file in the dispute between Al Saad and Lazio concerning the movement of the Player to the latter) and Lazio (bank and tax affidavits and forms in connection with the amount paid to Al Saad by Lazio).
30. The hearing in the present case took place in Lausanne on 21 July 2011. In this hearing, the Panel firstly invited the parties to try to settle the dispute, but finally no agreement was reached. Then, the parties made their respective initial and closing statements and Vélez's President was heard.
31. At the end of the hearing the parties expressly declared that they were satisfied with the way in which the proceedings had been conducted. In particular, as mentioned above, Vélez withdrew the objections it had filed to the composition of the Panel and the appointment of arbitrators in previous written submissions and in the Order of Procedure.
32. The Panel, after the hearing, deemed unnecessary to appoint an expert in the terms requested by the First Respondent.

33. The language of the present proceedings is English.

### III. SUMMARY OF THE PARTIES' POSITIONS

#### III.1 LAZIO

34. Lazio has already paid to Vélez 73,442.77 € in concept of solidarity contribution related to the loan of the Player from Al Saad to Lazio in 2008. However, if the Panel finds that Lazio inadvertently erred in its calculation of the solidarity contribution arising out of the referred loan agreement, it will make prompt payment of the outstanding amounts.
35. No solidarity contribution is due with regard to the hiring of the Player by Lazio on a definitive basis in June 2009 as no transfer in the sense of Article 21 of the FIFA Regulations on the Status and Transfer of Players (hereinafter, the "FIFA RSTP") took place. Lazio hired the Player only after the termination of his relationship with Al Saad, his former club, in which it did not intervene or cooperate. The sum of EUR 20,000,000 paid to Al Saad is to be understood as a compensation for anticipated termination of a contract but not as a transfer fee.
36. Both Clause X3 of the Contract and Article 21 of the FIFA RSTP are clear provisions which do not require interpretations beyond their literal wording. Article 21 of the FIFA RSTP plainly refers to "transfer" as the event triggering the solidarity contribution. In any case, if interpretations were to be made, the criteria of interpretation of contracts and not of statutory provisions should be applied, in accordance with Swiss Law.
37. If FIFA had wanted to broaden the scope of the Article 21 of the FIFA RSTP it could have done so, but this is not the case. Indeed FIFA has acknowledged the fact that the solidarity contribution is not triggered in cases of breach of contract, which goes against any attempt to enlarge the extent of the provision.
38. No transfer of the Player can exist given that the purported "transferor" (Al Saad) never consented to it. Proof of such lack of consent is the fact that Al Saad has started proceedings against Lazio before FIFA seeking compensation and the imposition of sporting sanctions arising from the hiring of the Player by Lazio. The intent of the Appealed Decision to assign to Al Saad an intention to transfer the Player is not acceptable.
39. The issues that arise for consideration by the Panel in this case are the same as those which were considered in the file CAS 2010/A/2098. In both cases the players terminated their contracts in advance and were hired by a new club, which paid the amounts corresponding to the indemnification to be received by the club of origin. Both in the case CAS 2010/A/2098 and in this case, the lack of consent of the club of origin impedes any consideration that a "sale" (case CAS 2010/A/2098) or a "transfer" (this case) was effected. In addition in neither of these cases bad faith of the club of destiny existed.

### III.2 VÉLEZ

40. With regard to the solidarity contribution deriving from the loan agreement, Lazio has not accredited that the calculation made by FIFA is not correct and thus cannot claim anything in this respect.
41. The movement of the Player from Al Saad to Lazio in June 2009 entitles Vélez to receive from Lazio the corresponding solidarity contribution, which is not only payable in those cases in which a “classical” transfer is executed, but also in those transactions or situations in which a player gets released from his contractual obligations by paying a compensation contractually agreed and joins a new club, especially when, as happened in the present case, it is the new club (and not the Player) who pays such compensation. In such cases, the former club consents to the transfer from the very beginning, that is to say, from the moment in which it hires the player and accepts to include a clause in the contract by virtue of which the player may be released by paying (either directly himself or indirectly by a third party on his account) the contractually-stipulated compensation to the Club. This is precisely the situation created by Clause X3 of the Agreement.
42. A restrictive interpretation of Article 21 of FIFA RSTP would allow clubs to circumvent the obligation of payment of the solidarity contribution, and this would be contrary to the *ratio* of the referred provisions.
43. The above mentioned position is reinforced by the broad wording of Article 1 of Annex 5 FIFA RSTP, which (i) recognises the right to the solidarity contribution when the player “moves” (not restricted to “transfer”) and (ii) stipulates that 5% of contribution is to be calculated on “any compensation” (not restricted to “transfer fee”).
44. The case CAS 2010/A/2098 principles and pronouncements are not applicable to our case as the circumstances are different. In the case CAS 2010/A/2098, the anticipated termination of the contract was envisaged by a Law (the Spanish “Real Decreto” 1006/1985), while in our case the termination faculty arises out of a contractual prerogative, and additionally in the case CAS 2010/A/2098 the request for compensation exercised by the claimant (RC Lens) was based on a contractual provision, while in the present case the request for compensation arises out of the FIFA Regulations (Article 21 and Annex 5 of the FIFA RSTP).

### III.3 FIFA

45. The amount of the solidarity contribution arising out of the loan agreement between Al Saad and the Appellant was correctly calculated in the Appealed Decision.
46. The solidarity contribution deriving from the movement of the Player to Lazio in June 2009 is to be paid as the circumstances of such movement fall within the scope of Article 21 and Annex 5 of the FIFA RSTP.
47. Clause X3 of the Contract is to be considered a “buy-out clause” since it allows the Player to

early terminate the Contract upon the payment of a predetermined amount of money. It is thus nothing else than an offer for the future possible transfer of the Player to a new club. The potential new club was in the position to know the exact amount which should be paid in order to acquire the Player's services, evaluate whether it was prepared to pay it and, eventually, accept the offer. In other words, Al Saad expressed its will to accept the early termination of the Contract by the Player if a third party paid 20 million €, and this is what happened in the present case: the Appellant paid such amount for the premature release of the Player. Although the Appellant was not involved in the negotiations of such amount, it accepted to pay EUR 20 million in order to release the Player from his contractual obligations with Al Saad. Thus, there was a tripartite consent which should be deemed as a transfer agreement in the sense of Article 21 of the FIFA RSTP.

48. Taking into account the Appellant's long-standing interest in the Player, as well as the fact that it indeed signed him on a definitive basis after he early terminated the Contract, it is unlikely that the Player decided to terminate the Contract without having a new employer and, in particular, a club willing to pay EUR 20 million for his release. According to the Contract, the Player was supposed to receive EUR 12,000,000 during four years. Thus, it is evident that the Player could not afford the payment of EUR 20 million without being backed by the Appellant.
49. Not admitting that the solidarity contribution is payable in cases of release of players in application of buy-out clauses would in practice put at the disposal of the clubs an instrument to easily circumvent such contribution and could lead to its elimination.
50. Article 1 of Annex 5 FIFA RSTP is drafted in a broad sense. It does not make reference to "transfer", but to a situation in which the player "moves", and stipulates that the 5% of contribution is to be applied on "any compensation" paid to the former club. This open wording corroborates that movements of players as regards the execution of buy-out clauses are subject to the payment of solidarity contribution.
51. The present case is not comparable with the case CAS 2010/A/2098, basically for the same reasons raised by the First Respondent which have been explained above.

## **IV. LEGAL CONSIDERATIONS**

### **IV.1 CAS JURISDICTION**

52. Jurisdiction of CAS to decide on the present case arises out of Articles 62 and 63 of the FIFA Statutes and Article R47 of the CAS Code. In addition CAS jurisdiction has been expressly accepted by the parties, which signed the Order of Procedure of the present case.
53. Therefore, the Panel considers that CAS is competent to decide on this case.

## **IV.2 APPLICABLE LAW**

54. Article R58 of the CAS 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.*

55. Article 62.2 of the FIFA Statutes states the following:

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

56. In accordance with such provisions the Panel understands that the present dispute shall be resolved according to the FIFA Regulations and additionally Swiss Law. It is to be mentioned that the parties have also agreed to this.

## **IV.3 ABOUT THE DISPUTE SUBMITTED TO THE PANEL BY THE PARTIES**

### ***IV.3.1. The object of the dispute***

57. According to the parties' written submissions and the arguments raised by them in the hearing, the object of the dispute may be briefly summarized as follows:

- (i) The Appellant considers that the Appealed Decision should be set aside as, in its opinion, no solidarity contribution is payable to Vélez in respect of the definitive hiring of the Player by Lazio in June 2009 given that no transfer (within the meaning of Article 21 of the FIFA RSTP) of such Player took place. Additionally it requests the CAS to quantify the solidarity payment arising out of the loan agreement of the Player to Lazio in 2008.
- (ii) The First Respondent and the Second Respondent consider that the solidarity contribution is to be paid by Lazio as the transaction leading to the definitive hiring of the Player by Lazio in June 2009 is to be considered a transfer in the sense of Article 21 of the FIFA RSTP, and thus request the CAS to confirm the Appealed Decision.

### ***IV.3.2. The starting point: the provisions of the FIFA RSTP on solidarity contribution***

58. The Panel shall start the examination of the *quaestio litis* by recalling the terms of the relevant provisions of the FIFA RSTP on solidarity contribution, namely Article 21 and Article 1 of Annex 5, which in their pertinent parts read as follows:

(i) Article 21:

*If a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club (solidarity contribution). The provisions concerning solidarity contributions are set out in Annex 5 of these regulations.*

(ii) Article 1 of Annex 5:

*If a Professional moves during the course of a contract, 5% of any compensation, with the exception of Training Compensation, paid to his Former Club shall be deducted from the total amount of this compensation and distributed by the New Club as a solidarity contribution [...].*

59. This being said the Panel shall address the requests made by the Appellant in its Appeal Brief: (i) the quantification of the solidarity payment arising out of the loan agreement concluded between Lazio and Al Saad in 2008 and (ii) the declaration that no solidarity contribution is to be paid by the Appellant as regards the termination of the Player's agreement with Al Saad and its subsequent employment with the Appellant.

***IV.3.3. The solidarity contribution with regard to the loan agreement of the Player to Lazio***

60. The Panel notes in this respect that:

- (i) All the parties acknowledge that the solidarity compensation is to be paid as regards the loan agreement for the Player concluded between Al Saad and Lazio in 2008.
- (ii) Lazio paid for such concept to Vélez the amount of EUR 73,442.77 in two instalments of EUR 36,721.39 on 22 and 24 March 2009.
- (iii) In accordance with the Appealed Decision, EUR 11,553 would be still pending and Vélez would be entitled to receive them.
- (iv) Lazio has stated in its Appeal Brief that if the Panel finds that Lazio inadvertently erred in its calculation of the solidarity contribution arising out of the loan agreement, it will make prompt payment of the outstanding amounts.

61. Taking the above mentioned into account and given that the Appellant has requested the CAS to quantify the solidarity payment arising out of the referred loan agreement, the Panel will make the relevant calculations and ascertain if the amount payable in such concept in accordance with the Appealed Decision is to be confirmed or to be modified.

62. For the quantification of the solidarity payment Article 1 of Annex 5 of the FIFA RSTP is to be applied. This provision reads as follows:

*If a Professional moves during the course of a contract, 5% of any compensation, with the exception of Training Compensation, paid to his Former Club shall be deducted from the total amount of this compensation and distributed by the New Club as a solidarity contribution to the club(s) involved in his training and education*

*over the years. This solidarity contribution will reflect the number of years (calculated pro rata if less than one year) he was registered with the relevant club(s) between the Seasons of his 12<sup>th</sup> and 23<sup>rd</sup> birthdays, as follows:*

- Season of 12th birthday: 5% (i.e. 0.25% of total compensation);*
- Season of 13th birthday: 5% (i.e. 0.25% of total compensation);*
- Season of 14th birthday: 5% (i.e. 0.25% of total compensation);*
- Season of 15th birthday: 5% (i.e. 0.25% of total compensation);*
- Season of 16th birthday: 10% (i.e. 0.5% of total compensation);*
- Season of 17th birthday: 10% (i.e. 0.5% of total compensation);*
- Season of 18th birthday: 10% (i.e. 0.5% of total compensation);*
- Season of 19th birthday: 10% (i.e. 0.5% of total compensation);*
- Season of 20th birthday: 10% (i.e. 0.5% of total compensation);*
- Season of 21st birthday: 10% (i.e. 0.5% of total compensation);*
- Season of 22nd birthday: 10% (i.e. 0.5% of total compensation);*
- Season of 23rd birthday: 10% (i.e. 0.5% of total compensation).*

63. Applying this provision to the case at stake it is to be noticed that:

- (i) The Player, born on 18 March 1987, was registered for Vélez from 7 January 1998 until 14 August 2007, i.e. from the age of 11 to the age of 20.
- (ii) The Player was registered as an amateur player of Vélez from 7 January 1998 until 24 June 2004 and as professional player from 25 June 2004 until 14 August 2007.
- (iii) Since the first season to be taken into account for the purposes of the calculation of the solidarity payment is the one of the player's 12<sup>th</sup> birthday and the Player was registered for Vélez until 14 August 2007 (season of his 21<sup>st</sup> birthday), the Panel understands that the Player remained in Vélez (for the purposes of calculating the solidarity mechanism) 9 complete seasons and 45 days of the subsequent season. In this respect it is to be taken into account that in Argentina, the seasons are coincident with the natural year for amateur players, while professional players' seasons start on 1 July and end on 30 June.
- (iv) The loan fee agreed between the parties was EUR 2,400,000.
- (v) 5% of such loan fee amounts to EUR 120,000.

64. Taking into account the loan fee paid, the time in which the Player remained in Vélez and the provisions of Annex 5 of the FIFA RSTP, the Panel understands that Vélez is entitled to solidarity compensation in an amount equal to 3,56% (0,25% x 4 seasons + 0,5% x 5 seasons + 0,06% corresponding to the period 1 July-14 August 2007) on EUR 2.400.000, i.e., EUR 85.440.
65. Given that Lazio has already paid to Vélez EUR 73.442,77 for such concept (two payments of EUR 36.721,39), the Panel understands that the extra amount to be paid by Lazio in this respect is (85.440 – 73.442,77) EUR 11.997,23 and not the sum of EUR 11.553 foreseen in the Appealed Decision.
66. The Panel understands that as regards the petition for quantification of the solidarity contribution made by the Appellant it shall also enter into the determination of the interest as this has an impact on the amount to be finally paid to Vélez. In this respect, the Appealed Decision stipulates that default interest of 5% per annum shall be applied to the solidarity contribution until the effective date of payment, on which the Panel agrees. However the Panel disagrees with the “*dies a quo*” from which interest shall accrue in accordance with the Appealed Decision (7 September 2008).
67. In this respect the Panel notes that Article 2.1 of Annex 5 of FIFA RSTP reads as follows (emphasis added by the Panel):
- 1. The New Club shall pay the solidarity contribution to the training club(s) pursuant to the above provisions no later than 30 days after the player's registration or, **in case of contingent payments, 30 days after the date of such payments***
68. In accordance with the loan agreement concluded between Al Saad and Lazio, the loan fee was payable in 2 contingent payments of EUR 1,200,000 each, the first to be made within 1 week from the signature of the agreement and the other within 10 January 2009. As Lazio has already paid EUR 73,442.77, the solidarity contribution corresponding to the first instalment (and to a very significant part of the second instalment) is deemed to be paid. Therefore in the Panel's view, interest shall accrue only on the remaining amount (EUR 11.997,23) and from 10 February 2009, i.e. 30 days after the date of payment of the second instalment, and not from 7 September 2008 as the Appealed Decision states.
69. In consequence the Panel considers that the Appealed Decision shall be modified in the sense that (i) the amount of solidarity contribution pending of payment as regards the loan agreement of 2008 is EUR 11.997,23 and (ii) interest on such amount shall accrue from 10 February 2009 until the date of effective payment.

#### ***IV.3.4. The solidarity contribution related to the definitive hiring of the Player by Lazio in June 2009***

70. To determine if the solidarity contribution is triggered by the definitive hiring of the Player by Lazio in June 2009 the Panel shall analyze the nature of the transaction/s involved and the terms of the FIFA rules providing for such a contribution.

71. With regard to the nature of the transaction/s, the Panel has taken into consideration that:
- (i) The Player was initially transferred on a loan basis by Al Saad to Lazio for the period 1 July 2008-30 June 2009.
  - (ii) By the end of the term of the loan (April 2009), Lazio declared its interest to definitively hiring the Player, which at that time had a contract in effect with Al Saad. Negotiations for such purpose were started, but no agreement was reached between Lazio and Al Saad.
  - (iii) The Player and Al Saad agreed in Clause X3 of the Contract that should the Player terminate the Contract without just cause, Al Saad would be entitled to a compensation of EUR 20 million. It is reminded that the referenced clause reads as follows:  
  
*If the Player terminates the Contract and such termination is not due to a just cause or a mutual agreement between the parties concerned or the Player breaches the Contract and such breach leads to termination or the right to terminate the Contract, then the Club shall be entitled to receive from the Player a compensation for an amount equal to 20 million Euros.*
  - (iv) On the basis of the terms of such Clause X3 of the Contract, on 27 April 2009 the Player terminated such Contract before its expiry date, and made aware to Al Saad that he was ready to pay the compensation as provided in such contractual clause.
  - (v) Weeks after Lazio and the Player signed a five-year employment contract and the day after, Lazio transferred to Al Saad the amount of EUR 20,000,000 in concept of *"compensation for termination notice M."*
72. Concerning the FIFA provisions involved, the Panel observes that Article 21 FIFA RSTP stipulates that if a player is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive the so-called solidarity contribution, and that Article 1 of Annex 5 FIFA RSTP foresees that if a player moves during the course of a contract, 5% of any compensation, with the exception of training compensation, paid to his former club shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution. In accordance with Swiss Law, these provisions shall be interpreted in accordance with the criteria of interpretation of contracts.
73. This being said, the Panel shall establish if the described transaction/s which ended with the Player being hired by Lazio on a definitive basis shall be understood as a transfer or movement in the terms of the referenced FIFA RSTP provisions or if, on the contrary, it is a mere termination of the Contract unilaterally effected by the Player without the cooperation of the former and the new club that cannot be qualified as a transfer. Depending on the decision taken in this respect, solidarity contribution will be payable or not.
74. In the Panel's view, the elements identifying a transfer of a player between clubs for the purposes of the solidarity contribution mechanism are (i) the consent of the club of origin to the early termination of its contract with the player, (ii) the willingness and consent of the club of destiny to acquire the player's rights, (iii) the consent of the player to move from one club

to the other, and (iv) the price or value of the transaction.

75. Applying the above mentioned elements to this case the Panel is of the opinion that:
- (i) The consent of the club of origin (Al Saad) indeed existed, it not being sustainable to state that Al Saad had no contractual role in this story. From the very moment in which Al Saad accepted to include Clause X3 in the Contract it was undoubtedly consenting and admitting that the Player could leave Al Saad to join another club upon Al Saad's receipt of compensation of EUR 20,000,000. This is to be understood as a consent rendered in advance, which in the Panel's view is legally feasible. The proceedings started by Al Saad against Lazio do not hinder, in the Panel's view, the clear existence of such consent appearing from the wording of Clause X3 of the Contract.
  - (ii) It is patent that Lazio was willing to hire the Player and that it indeed hired him. No room then for doubt about Lazio's consent in this respect.
  - (iii) The Player also consented to move from Al Saad to Lazio. It is undisputed that he unilaterally terminated the Contract and weeks after joined Lazio.
  - (iv) The element of price or value exists in the present case, given that the club of origin (Al Saad) received a compensation (EUR 20 million) which indeed was paid by the club of destiny as appears from the evidence produced to the present file. The fact that this payment was made not immediately after the Contract's termination date (27 April 2010) but weeks after does not imply that the element of price disappears from the transaction, such delay, in the Panel's view, being irrelevant for the mentioned purposes. In this respect it is to be highlighted that no mention or evidence has been brought to the proceedings concerning potential compensations or liquidations with the Player of such payment allegedly made on its account by Lazio, which reinforces, in the Panel's view, the element of consent and willingness of the club of destiny to the movement of the Player.
76. The Panel is therefore convinced that the above-described transaction should properly be considered as a transfer in the sense of Article 21 and Article 1 Annex 5 of the FIFA RSTP. The fact that this transaction is not identical to the typical or common pattern of transfer (in which the wills and consents of all the parties are declared in the same act by signing a written agreement) does not mean at all that it should not be considered a transfer if the basic elements constituting a transfer concur. In this respect the Panel shall mention that CAS, in the award 2010/A/2098 has expressly recognised that "*a transfer of a player can also take place outside the scheme of a ("sale") contract [...]*". In the Panel's view the reality and the substance of the transaction shall prevail on discussions about forms or schemes of transfers, especially when the FIFA provisions do not impose such schemes or forms for the payment of the solidarity contribution.
77. *Ad abundantiam* and given the argumentation made by the Appellant in this respect, the Panel wants to stress that the circumstances of the case CAS 2010/A/2098 are not comparable to the situation that gave rise to the present dispute, so it is not in any respect anomalous or

incoherent that the pronouncements made and grounds followed in one case and the other are different. Although both cases may present certain similarities, there are major differences which impact in their respective outcomes, mainly the following:

- (i) In the case CAS 2010/A/2098 certain specificities deriving from the application of Spanish Law (Real Decreto 1006/1985) had to be taken into account, in particular the absolute right conferred by such “Real Decreto” to players to put an end to their employment contracts with clubs by paying a compensation to their employer clubs. In such case the club of origin (Sevilla CF) did not consent to the player’s move to the club of destiny (FC Barcelona). As mentioned in such award, *“the player’s release from the Employment Agreement was not effected by Sevilla, but by operation of the Law. Sevilla did not consent to the early termination of the Employment Agreement”*. The move of S. did not depend on Sevilla, as a legal provision entitled the player to leave at any time by paying compensation. This is totally different from the present case, in which Al Saad, as explained above, freely decided to consent (in advance) to the potential future move of the Player. Al Saad was not bound by a Law necessarily requiring it to let a player go (as happened in the case CAS 2010/A/2098). Its agreement or consent was necessary to effect the transfer of the Player and it freely and voluntarily decided, by means of the corresponding contractual clause, to permit the move of the Player in exchange for a compensation. Al Saad consented to such leave, this being one of the relevant elements of a transfer. This, in the Panel’s view, makes the difference.
  - (ii) In the case CAS 2010/A/2098, RC Lens claimed against Sevilla CF for an amount arising out of a contractual commitment (additional payment in case of “resale” of S.) which both parties freely agreed, defined and drafted. However in the present case Vélez requests the payment of an amount to Lazio based not on a contractual stipulation but on certain FIFA regulations (solidarity contribution) which tend to foster the training of young players and that shall be respected by the operators in the world of football.
78. Therefore the Panel considers that Lazio shall pay the solidarity contribution deriving from the transaction which ended in the definitive hiring of the Player in June 2009 and thus rejects the petition contained in point (iii) of the Appellant’s request for relief in the Appeal Brief.
79. Given that none of the parties has requested the Panel neither to verify the correctness of the amount of this solidarity contribution established in the Appealed Decision nor to recalculate it, the Panel can only confirm the amount calculated and granted by the first instance body, which in accordance with the referred Appealed Decision is 715,383 € with 5% interest per year as from 1 August 2009 until the effective date of payment (para. 45 of the Appealed Decision).

## ON THESE GROUNDS

### The Court of Arbitration for Sport rules:

1. The Decision of the FIFA Dispute Resolution Chamber dated 22 July 2010 concerning a dispute between Società Sportiva Lazio S.p.A. and Club Atlético Vélez Sarsfield (elk 09-01224) is confirmed, except for the amount payable by Società Sportiva Lazio S.p.A. to Club Atlético Vélez Sarsfield as solidarity contribution, which is fixed at EUR 727.380,23 plus interest of 5% per annum on the following partial amounts until the effective date of payment, as follows:
    - On EUR 11.997,23 (solidarity contribution arising out of the loan agreement concluded between Società Sportiva Lazio S.p.A. and Al Saad Sport Club for the period from 30 June 2008 until 30 June 2009), as from 10 February 2009.
    - On EUR 715.383 (solidarity contribution arising out of the definitive hiring of M. by Società Sportiva Lazio S.p.A. in June 2009), as from 1 August 2009.
  2. The remaining outstanding petitions of the parties are not accepted.
- (...).