



**Arbitration CAS 2005/A/973 Panathinaikos Football Club v. S., award of 10 October 2006**

Panel: Prof. Massimo Cocchia (Italy), President; Mr Patrick Lafranchi (Switzerland); Mr Raj Parker (United Kingdom)

*Football*

*International transfer of a player*

*Validity of a unilateral option clause inserted in the employment contract*

*Acceptability of a contract with a total duration of five years*

*Terms and conditions of employment under the contract*

*Pacta sunt servanda*

1. To date, no jurisprudence declares unilateral options as absolutely void under all circumstances. In each case, the individual situation between the club and the player has to be scrutinised in order to decide whether the unilateral option provided in the contract can be enforced or not.
2. In light of the facts that the player was aware of, and expressly accepted, his commitment for such duration and that the applicable sporting regulations themselves allow for such a contractual period, a five-year span of an employment contract between a player and his club must be considered as reasonable.
3. The terms and conditions of employment are fair and reasonable if the right of unilateral extension of the contract given to a party is rewarded with an entirely pre-determined substantial increase in remuneration for the other party and no other condition can be imposed by the former to the latter when exerting the unilateral option.
4. It is not *bona fide* and in violation of the principle *pacta sunt servanda* for a party to express its acceptance of the other party's right to unilaterally extend the contract but then to try to escape its obligations by claiming the nullity of the unilateral option clause with the purpose of ensuring for itself a substantial salary increase.

On 27 July 2001, when S. (the “Player” or the “Respondent”), a football player born in 1979, having Greek nationality, was 22 years old and was playing for a third division club in Greece, Panathinaikos Football Club (“Panathinaikos” or the “Appellant”) and the Player signed an employment agreement (the “Employment Agreement”).

The Employment Agreement was signed for an initial period of two years starting on 27 July 2001 and ending on 30 June 2003 and provided for two unilateral options granting Panathinaikos the right to keep the Employment Agreement in force, first for an additional period of two years ending on 30 June 2005 (the “1<sup>st</sup> option”) and then for another period of one year ending on 30 June 2006 (the “2<sup>nd</sup> option”). The Employment Agreement was subject to Greek law and was registered with the Hellenic Football Federation (the “Hellenic Federation”).

The Employment Agreement provided for the following salaries: [...].

On the same day (27 July 2001) the Player and the Appellant signed an additional agreement (the “Bonus Agreement”). The Bonus Agreement provided for annual bonuses in case the Player took part in at least 60% of the games played by Panathinaikos in the Greek Championship, the Greek Cup and the European official competitions. The annual amounts of bonus were of [...] for the 1<sup>st</sup> and the 2<sup>nd</sup> year of contract, of [...] for the 3<sup>rd</sup> and 4<sup>th</sup> year of contract and of [...] for the 5<sup>th</sup> year of contract. As the Employment Agreement and the Bonus Agreement are strictly linked and are expressly part of the same transaction, hereinafter the Panel will refer jointly to both agreements as the “Contract”.

Before the Contract the Player had already played for the Greek Under 21 national team. On 13 February 2002, during his first year with Panathinaikos, the Player was selected to play for the Greek senior national team and to date he has obtained a total of 16 international caps. At the hearing, the Player declared that at the time of the signature of the Contract he knew that it was a 5-year commitment and that he was quite happy with the promised remuneration, including both salary and bonuses.

On 9 June 2003, the Appellant notified a statement of unilateral renewal of the Contract until 30 June 2005. The Player did not object to this statement which was registered with the Hellenic Federation.

On 20 and 21 January 2005, Panathinaikos, the Scottish club Rangers Football Club (“Rangers FC”) and the Player signed an agreement by which the Panathinaikos loaned the Player to Rangers until 30 June 2005 (the “Loan Agreement”). The Loan Agreement provided that Rangers had the option to definitively acquire the Player for the following season(s) on condition that it notified its intention by 31 May 2005 and paid Panathinaikos a transfer fee of Euro 1,500,000. In addition, in the event that the Player was subsequently transferred from Rangers FC to a third club, the Loan Agreement granted Panathinaikos the right to receive 10% of any transfer fee received over and above Euro 2,200,000.

On 20 January 2005, the Player signed an employment contract with Rangers FC for the duration of the loan period, under which he was paid a total salary of [...], in addition to a bonus of [...] if Rangers FC won the Scottish Premier League (which they did). Following the execution of those agreements, an International Transfer Certificate (ITC) was issued and the Player was registered with the Scottish Football Association (the “Scottish FA”).

In May 2005 Rangers FC and Panathinaikos held several meetings and exchanged correspondence concerning the Player. Rangers FC stated its interest in definitively acquiring him; however, Rangers FC asked for a significant reduction of the transfer fee agreed under the Loan Agreement, claiming that the transfer value of the Player had been decreased by a knee injury. Panathinaikos did not accept to reduce the amount agreed under the Loan Agreement. On 8 June 2006, Rangers FC put forward its final written offer to pay Euro 500,000 as total transfer fee. On 10 June 2006, Panathinaikos rejected this offer and informed Rangers FC that the Player had to return to Panathinaikos for the following season.

On 13 June 2005, Panathinaikos issued a new statement of unilateral renewal until 30 June 2006, which was notified to the Player's home address and to the Player's agent. Panathinaikos also notified the Player that he was expected to show up on 7 July 2005 at the sports centre of Paiania (Greece) to start practicing in view of the new season. The Respondent never appeared at the Appellant's sports centre, despite a new extrajudicial summon notified to the Player and his agent on 11 July 2005.

On 14 June 2005, Panathinaikos, acting through the Hellenic Federation, requested that the Scottish FA deliver the ITC for the Player. However, the Scottish FA refused to issue the ITC because a contractual dispute had arisen in connection with the Player's transfer.

On 16 June 2005, upon the Scottish FA's request to clarify whether a contractual option to unilaterally extend a player's contract was valid, Mr Gianpaolo Monteneri of FIFA wrote that *"this question cannot be answered with a definitive yes or no. It really depends from the concrete circumstances of the case and from the contents of the provisions in the employment contract. In general, unilateral options in favour of clubs are likely to be void"*.

On 28 June 2005, the Player wrote to Panathinaikos that he was not willing to renew the Contract for another year and that he considered it as *"invalid"*.

On 1 July 2005 the Hellenic Federation asked again for the relevant ITC, and on 4 July 2005 the Scottish FA again refused to deliver it.

On 22 July 2005, the Hellenic Federation, acting on behalf of the Appellant, requested the FIFA's intervention in order to obtain the Player's ITC from the Scottish FA. On 25 July 2005, the Player wrote to FIFA and asked for the resolution of the contractual dispute he had with Panathinaikos. FIFA first wrote to the Scottish FA urging it to either issue the ITC or provide FIFA with valid reasons for not doing so. Based on the foregoing and as the Scottish FA did not issue the ITC, two procedures started before FIFA. One procedure started before the Single Judge of the Players' Status Committee (the "Single Judge") following the Hellenic Federation's request for the provisional registration of the Player for the Appellant and another one before the Bureau of the Players' Status Committee regarding the contractual dispute between the Appellant and the Respondent.

On 8 August 2005, the Single Judge issued a decision rejecting the Hellenic Federation's request on the basis that the Player and the Appellant were involved in a contractual dispute which was

pending before FIFA, due to the Player's claim that unilateral options were void and that his contract with the Appellant was thus terminated. The Single Judge came to the conclusion that, based on the Dispute Resolution Chamber's jurisprudence as well as on CAS jurisprudence on unilateral options, he had "*no alternative but to doubt on the current existence of a contractual relationship between the Player and the Appellant*".

On 4 October 2005, the Bureau of the Players' Status Committee issued a decision on the contractual dispute arisen between the Appellant and the Respondent. The Bureau based its ruling on the following grounds:

- (i) In light of articles 22 to 24 of the FIFA Regulations for the Status and Transfer of Players (edition July 2005), FIFA bodies are competent in the present dispute which is a dispute between a club and a player in relation to the maintenance of contractual stability where there has been an ITC request and a claim from an interested party in relation to such ITC request.
- (ii) According to the modified article 26.2 of the FIFA Regulations for the Status and Transfer of Players (cf. FIFA circular n°955) and article 46.3 of the former version of the FIFA Regulations for the Status and Transfer of Players (edition September 2001), the FIFA Regulation for the Status and Transfer of Players (edition October 1997) are applicable.
- (iii) In the case at hand, the extension option contained in the Contract is unilateral to the benefit of the Appellant only, i.e. the stronger party in the employment relationship, and may be exercised by the club twice for a total period of three football seasons, which gives the Appellant unequal bargaining power whereas there is no apparent gain for the Player. Even though the conditions of employment had been increased they necessarily could not take into account the possible enhancement of the Player's value. Furthermore, five years is an enormous portion of a footballer's active career.
- (iv) In addition, the unilateral option curtails the freedom of movement or choice of a professional player and is inconsistent with the general principles of labour law.
- (v) In light of the above, the Bureau accepted the Player's claim and concluded that the contract between the Player and Panathinaikos expired on 30 June 2005.

On 11 October 2005, the Players' Status Committee notified the decision to the Parties, stating that, according to Article 60, paragraph 1, of the FIFA Statutes, they had the right to file an appeal before the Court of Arbitration for Sport (CAS).

On 21 October 2005, Panathinaikos lodged an appeal before the CAS against the said decision of the Bureau of the Players' Status Committee dated 4 October 2005 (the "PSC Decision").

## LAW

### Jurisdiction

1. The appeal is made pursuant to Article R47 of the Code of Sports-related Arbitration (the “Code”) and Articles 59 and 60, paragraph 1, of the FIFA Statutes, which recognize the jurisdiction of the CAS.
2. The jurisdiction of the CAS is also based upon the signature by both parties of the order of procedure.
3. There is no dispute as to the jurisdiction of the CAS.

### Applicable Law

4. Article R58 of the 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, Article 59.2 of the FIFA Statutes provides as follows:  
*“The CAS Code of Sports-Related Arbitration governs the arbitration proceedings. With regard to substance, CAS applies the various regulations of FIFA [...] and, additionally, Swiss law”.*
6. The Panel remarks that the “*applicable regulations*” are all FIFA rules material to the dispute, and in particular the FIFA regulations entered into force on 1 October 1997, entitled “Regulations for the Status and Transfer of Players” (the “Regulations 1997”). The Panel points out that FIFA then adopted two revised sets of regulations for the status and transfer of players, which came into force respectively on 1 September 2001 (the “Regulations 2001”) and on 1 July 2005 (the “Regulations 2005”). However, Article 26 (*Transitional Measures*) of the Regulations 2005, as amended by FIFA in its circular 955, provides that labour disputes related to contracts signed before 1 September 2001 are to be governed by the regulations in force at the time when the disputed contract is signed or when the disputed facts arise. Article 46 paragraph 3 of the final provisions of the Regulations 2001 provides as well that: “*Contracts between players and clubs concluded before 1 September 2001 will continue to be governed by the previous version of these regulations, which came into force on 1 October 1997, unless the clubs and the players expressly agree to subject their agreements signed after 5 July 2001 to these regulations*”.
7. Based on the foregoing, the Panel finds that the Regulations 1997 are applicable to the Contract, as this was signed on 27 July 2001. This conclusion is not disputed by the Parties.

8. As to any applicable State law, pursuant to Article R58 of the Code, the Panel finds that it would be inappropriate to apply substantive Swiss law to the contract signed between the Respondent and the Appellant on 27 July 2001, as it has no connection whatsoever with Switzerland. The Panel remarks that the Contract was drafted and signed in Greece between a Greek citizen and a Greek football club, set out the rules for activities mostly taking place in Greece and included several explicit references to Greek law (in particular, Greek sports law no. 2725/99). Accordingly, the Panel finds that the Contract is exclusively connected with Greek law.
9. The Panel finds further that, in accordance with Article R58 of the Code, any other aspect of the present dispute which is not covered by the FIFA regulations must be governed by Swiss law, which is the law of the country in which FIFA is domiciled.
10. In conclusion, the Panel holds that the dispute must be decided according to FIFA regulations and, on a subsidiary basis, according to Swiss law, with the important exception of any issues related to the Contract (and the related Bonus Agreement) signed by and between the Respondent and the Appellant on 27 July 2001, which shall be decided in accordance with Greek law.

## Merits

### A. *The jurisdiction of FIFA over this dispute*

11. The Appellant claims that Greek courts have an exclusive jurisdiction over the present case because it is a purely domestic dispute. Therefore, the Appellant asks the Panel to declare that FIFA could not entertain this case and, thus, to annul the Appealed Decision without dealing with the merits of the dispute.
12. The Panel does not share the Appellant's opinion. According to the Preamble of the Regulations 1997, "*these regulations deal with the status and eligibility of players whenever they effect a transfer from one national association to another*". Then, article 33 paragraph 1 of the Regulations 1997 provides as follows:  
*"the loan of a player by one club to another constitutes a transfer. An international transfer certificate shall therefore be issued:*
  - *whenever a player leaves a national association to join another national association (...);*
  - *whenever on expiry of the period of loan, a player rejoins the national association of the club which released him on loan*".
13. Article 19 of the Regulations 1997 designates the FIFA Players' Status Committee as competent to deal with "*a dispute concerning the interpretation of clauses in contracts between national associations, clubs and/or players*".

14. The Panel notes that the Respondent was registered with the Scottish FA when the Appellant raised its claim before FIFA through its national federation. The claim is based on the Respondent's refusal to return to Greece and thus to be transferred back from the Scottish FA to the Hellenic Federation. The Scottish FA, indeed, did not issue the required international transfer certificate and FIFA refused to provisionally register the Player with the Hellenic Federation. Therefore, in the Panel's view, there is no doubt that the dispute is related to an international transfer, regardless of the fact that this depends on a loan agreement made between Rangers FC, the Appellant and the Respondent. It is also clear that the dispute is related to the interpretation and the validity of the unilateral options inserted in the Contract.
15. As the dispute is related to an international transfer and to the interpretation of clauses in a contract between a club and a player, it is governed by the Regulations 1997. Accordingly, the FIFA Players' Status Committee had jurisdiction to deal with the dispute under article 19 of those Regulations. By way of consequence, this preliminary submission on behalf of the Appellant fails, and the Panel holds that it may adjudicate the appeal upon its merits.

B. *Validity of the unilateral option*

16. The Respondent argues that the unilateral options provided in the Contract bring an illegitimate imbalance between the Parties as the Appellant could unilaterally decide to keep the Respondent under contract depending on his competitiveness, whereas the Respondent had to wait until two weeks before the end of the intermediate contractual term to know whether he would be still under contract or not.
17. The Panel first notes that the Regulations 1997 do not provide for any specific rule on unilateral options, be it regarding the option to terminate the contract or to renew it. The Panel notes further that Greek Sports Law 2725/99 expressly authorises unilateral options and that the rules on unilateral options provided in the Contract are based on the Greek Sports Law 2725/99.
18. On the other hand, the Panel notes that CAS and FIFA jurisprudence tend to question such unilateral options. However no jurisprudence known by the Panel declares such options as absolutely void under all circumstances. In each case, the individual situation between the club and the player has been scrutinised in order to decide whether the unilateral option provided in the contract could be enforced or not. In the present case, the Players' Status Committee did the same as it mentioned under paragraph 13 of the Decision that the clause was of "*disputable validity*" and looked at the specific situation of the parties.
19. The first issue to be determined is whether a total 5-year duration for a footballer's contract is acceptable or not. The Panel notes that the Player admitted at the hearing that it was his understanding that the duration of the contract was of 5 years and that he was happy with it. The Panel also notes that under article 18 of the Regulations 2005 "*The minimum length of a contract shall be from the date of its entry into force to the end of the Season, while the maximum length of a contract shall be five years*"; in the Panel's view, although the Regulations 2005 are not directly

applicable in the present case, they must be taken into account in order to ascertain the reasonableness of the duration of a contract. Based on the foregoing, the Panel considers that the fact that the Player was bound for a total period of 5 years if the option was exerted twice, which the Appellant in fact did, is not in itself a reason for discarding the option clause. In this regard, the argument of the Players' Status Committee (paragraph 17 of the Appealed Decision) deeming a 5-year contractual period as "*an enormous portion of a footballer's active career*" is irrelevant; as a 5-year span is expressly allowed by current FIFA rules and is thus to be considered as wholly reasonable (particularly in light of the fact that from the beginning of the Contract the Player was aware of, and expressly accepted, his commitment for such duration).

20. The second issue concerns the terms and conditions of employment under the Contract, with particular regard to the two unilateral extensions (for two years and then for one year) provided to the benefit of the Appellant. First of all, the Panel notes that the Contract substantially improved the Player's treatment in comparison to his former Greek club, where his yearly salary was of [...]. Then, the Panel notes that the Contract provided for substantial increases of the Player's salary and bonus in connection with each extension of the Contract. [...]. The Contract then provided for a salary increase of 25% [...] and a bonus increase of 66.6% [...] in consideration of the first 2-year extension (thus for the 3<sup>rd</sup> and 4<sup>th</sup> years). The second and last unilateral extension (for the 5<sup>th</sup> year of the Contract) carried the 100% increase of the Player's remuneration, as both its salary and its bonus doubled [...].
21. The Panel is of the view that the remuneration paid to the Player during the Contract was fair and reasonable, notably taking into account his previous salary and Greek standards. It must be noted that at the moment of the signature of the Contract, the Player was still a young and relatively unknown player, whose sporting future was uncertain. Then, the Panel observes that the Contract obliged the Appellant, in consideration of his right to retain the Player for the full 5-year period, to substantially increase the Player's remuneration. As the significant increases of remuneration had been entirely pre-determined for the full 5-year period, and as the Appellant could not impose other conditions when exerting the options, the Panel is of the opinion that the terms and conditions of employment were fair and reasonable and that the unilateral options did not give the Appellant "*unequal bargaining power*" with "*no apparent gain for the player*" (paragraph 14 of the Appealed Decision).
22. The Panel is of the opinion that the important remuneration increases linked to the extension of the Contract must be considered as the price paid to the Player in order for the Appellant to exert the options. In other words, the Player has been contractually rewarded with a substantial compensation in consideration of the right of unilateral extension given to the Appellant. In this regard, the present case is clearly distinguishable from the CAS case 2004/A/678 quoted by the Respondent; in that case, the player was poorly paid during the first period and hardly better paid during the renewal period of the contract. In the present case, the Panel stresses again that the Player was reasonably paid during the first period of the contract and his remuneration was then substantially increased for the two extensions of the Contract.



23. The Panel also deems irrelevant the comparison (to be found at paragraph 15 of the Appealed Decision) between the remuneration set forth by the Contract and the salary offered by Rangers FC to the Player. It is well known that football clubs operating in richer markets are able to offer a higher income to players. The salary offered by Rangers FC, therefore, should not be used in order to assess whether the contractual conditions agreed between the Appellant and the Player were fair or not.
24. Based on the foregoing, the Panel considers that in the present case the unilateral option in favour of the Appellant, as set forth by the Contract, does not create an illegitimate situation which should lead the Panel to declare the option as void.

C. *Pacta Sunt Servanda*

25. The Panel is of the opinion that the basic legal principle *pacta sunt servanda* should never be easily disregarded. The facts of this case lead the Panel to believe that the Player tried to circumvent this fundamental principle of the law of contracts.
26. The Panel points out that the Player clearly accepted the first extension of the Contract by never objecting to it and by playing for the Appellant's team. Then, in the Panel's view, the Player also expressed his acceptance of the Appellant's right to further extend the Contract for the 2005-2006 season. Indeed, in January 2005 the Player signed, together with the concerned clubs, the Loan Agreement (see *supra*) which provided that at the end of the loan Rangers FC could definitively obtain the Player only by paying to Panathinaikos a transfer fee of Euro 1,500,000. Therefore, the Player implicitly accepted – a few months before the deadline – the fact that Panathinaikos had the right to extend the Contract for one more year and, thus, the right to release him only upon payment of a transfer fee by the new club.
27. It was clear from the evidence offered by the Player at the hearing that he changed his mind when he was in Scotland and realized that, by staying at Rangers FC, he could earn more money than by going back to Panathinaikos.
28. Based on the foregoing, the Panel is of the opinion that the Respondent decided to escape his obligations by artificially claiming the nullity of the unilateral option set forth by the Contract. In this way, the Player aimed at ensuring for himself a substantial salary increase, despite an already accepted comfortable salary offered by the Appellant. This Player's attitude is not *bona fide* and is in violation of the principle *pacta sunt servanda*.

D. *Option validly exercised*

29. The Respondent argued that in any case the unilateral option had not been validly notified to him and that, for this reason as well, the contract ended on 30 June 2005.

30. The Panel notes that the documents provided, as well as the evidence given by Mr. Patrick Comminos and the explanations of the Parties, proved without any doubt that the option had been formally and correctly exerted by the Appellant.

*E. Conclusion*

31. Based on the foregoing and on the specific circumstances of the present case, the Panel finds that the Appellant had the right to avail itself of the options provided by the Contract. Therefore, the Contract ended on the date of its regular termination after the full 5-year period, that is on 30 June 2006. As the Respondent refused to go back to Greece and play for the Appellant, he breached his Employment Agreement without just cause. Because of this breach of contract, the Panel holds that the Respondent is liable for damages.

*F. Damages to be calculated by FIFA*

32. The Panel refers to the Appellant's prayers and notes that it lacks the necessary information to fix the damages to be paid by the Respondent to the Appellant in connection with his breach of the Contract. The Panel thus decides to uphold the Appellant's principal prayers, to annul the Appealed Decision and to refer the case back to FIFA in accordance with art. R57 of the Code, leaving to FIFA to decide on the consequences of the breach of contract. FIFA shall thus assess the damages due by the Respondent to the Appellant in accordance with the present award.

**The Court of Arbitration for Sport rules that:**

1. The appeal submitted by Panathinaikos FC is upheld.
2. The decision issued on 4 October 2005 by the FIFA Players' Status Committee is set aside.
3. The case is referred back to FIFA, which will decide on the consequences of the breach by S. of the agreement of 1 July 2001 between him and Panathinaikos FC.

(...).