Arbitrations CAS 2013/A/3365 Juventus Football Club S.p.A. v. Chelsea Football Club Ltd & CAS 2013/A/3366 A.S. Livorno Calcio v. Chelsea Football Club Ltd, award of 21 January 2015

Panel: Prof. Bernard Hanotiau (Belgium), President; Mr Georg von Segesser (Switzerland); Prof. Jan Paulsson (France)

Football
Termination of the employment contract with just cause by the club
Stay of the procedure – irreparable harm
Acquisition of membership of an association
Lack of contractual relationship between two indirect members of the same federation
Methods of interpretation under Swiss law
Interpretation of the bylaws of a legal entity
Joint and several liability for compensation

1. **A CAS panel has the authority to consider an application for a stay pursuant to Article R48 of the CAS Code and enjoys a great deal of discretion in granting or rejecting such a request. If the appellant has not substantiated what harm it would suffer, how this harm is "irreparable", or the lack of an adequate remedy at law, the request for y stay of the procedure must be dismissed.**

2. **One may become a member of an association either by participating in the founding meeting and approving the articles of association or, at a later stage, by being accepted via membership application. Becoming a member after the founding of the association implies the formation of a specific contractual relationship whereby the candidate expresses its intent to join the association and the association expresses its consent to the candidate's application. This exchange of mutual and concordant assents constitutes a contract, the scope of which is limited to the acquisition of membership. As soon as the applicant acquires the status of member, it is no longer bound to the association by a contractual relationship, but by a specific relationship, associative in nature.**

3. **The statutes of an association are not bilateral contracts between the association and its members. Therefore, there is no basis to conclude that the same statutes constitute a contractual relationship between indirect members of the same association.**

4. **Under Swiss law, the methods of interpretation to be applied are the following: the literal interpretation (*"interprétation littérale"*), the systematic interpretation (*"interprétation systématique"*), the principle of purposive interpretation (*"interprétation téléologique"*), the principle of so-called "compliant interpretation" (*"interprétation conforme"*). As a rule, although the starting point is the wording of the text to be interpreted, there is no hierarchy among the methods listed above. Swiss law**

does not have the concept of *"sens clair"* and that the meaning of a word must also be supported by its purpose. According to the Swiss Federal Tribunal (SFT), the starting point for interpreting is indeed its wording (literal interpretation). There is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review. This may result from the drafting history of the provision, from its purpose, or from the systematic interpretation of the law. Where the text is not entirely clear and there are several possible interpretations, the true scope of the provision will need to be narrowed by taking into account all the pertinent factors, such as its relationship with other legal provisions and its context (systematic interpretation), the goal pursued, especially the protected interest (teleological interpretation), as well as the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation). When called upon to interpret a law, the SFT adopts a pragmatic approach and follows a plurality of methods, without assigning any priority to the various means of interpretation.

5. **There is no unified view on how articles of associations should be interpreted in Switzerland. According to the SFT, the statutes of a private legal entity are normally interpreted according to the principle of good faith, which is also applicable to contracts. However, the method of interpretation may vary depending on the nature and dimension of the legal person involved. As regards the statutes of larger entities, it may be more appropriate to have recourse to the method of interpretation applicable to the law, whereas in the presence of smaller enterprises, the statutes may more legitimately be interpreted by reference to good faith. The subjective interpretation will be required only when a very little number of stakeholders are concerned. International federations whose regulations have effects which are felt worldwide should therefore be subject to the more objective interpretation principles.**

6. **Joint and several liability cannot be imposed upon a new club in the absence a) of the new club being proven to have induced the player's breach or b) of the new club otherwise being at fault, or irrespectively c) of the manner in which the player's employment contract came to an end. It is undisputed that the joint and several liability for compensation (together with disciplinary sanctions if the requirements are met) will discourage any club from inducing a player to breach his contract with a former employer. However, such a deterrent effect has no purpose when a player was dismissed by his former employer and is left with no other option but to find a new employer. The interpretation of the relevant provision cannot result in the imposition upon the new club of an automatic and unconditional liability, without a finding of a fault or negligence and without a contractual basis – and hence without causation. Swiss law does not countenance such a result. Therefore, joint and several liability does not apply in cases where it was the employer's decision to dismiss with immediate effect a player who, in turn, had no intention to leave the club in order to sign with another club and where the new club has not committed any fault and/or was not involved in the termination of the employment relationship between the old club and the player.**

I. PARTIES

1. Juventus Football Club S.p.A. (hereinafter "Juventus" or, together with A.S. Livorno Calcio, the "Appellants") is a football club with its registered office in Turin, Italy. It is a member of the Italian National Football Association (Federazione Italiana Giuoco Calcio – hereinafter the "FIGC"), itself affiliated to the Fédération Internationale de Football Association (hereinafter "FIFA") since 1905.

2. A.S. Livorno Calcio (hereinafter "Livorno" or, together with Juventus, the "Appellants") is a football club with its registered office in Livorno, Italy. It is also a member of FIGC.

3. Chelsea Football Club Ltd (hereinafter referred to as "Chelsea") is a football club with its registered office in London, United Kingdom. It is a member of the Football Association Premier League Limited (hereinafter the "FAPL"), a professional football league under the jurisdiction of the English Football Association Limited (hereinafter the "FA"), which has been affiliated to FIFA since 1905.

II. FACTUAL BACKGROUND

A. Introduction

4. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings, and evidence. References to additional facts and allegations found in the Parties' written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Panel has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, it refers in its award only to the submissions and evidence it deems necessary to explain its reasoning.

B. The termination of M.'s employment contract

5. M. (hereinafter the "Player" or "M.") is a Romanian professional football player born in 1979.

6. On 12 August 2003, the Italian club Parma Football Club S.p.A. (formerly Parma Associazione Calcio) agreed to transfer the Player to Chelsea for a sum of EUR 22,500,000 *"net of any and all fees, taxes or other transaction costs"*.

7. Chelsea and the Player entered into an employment contract, effective from 11 August 2003 until 30 June 2008 (hereinafter the "Employment Contract"). Under this agreement, the Player was to receive a yearly salary of GBP 2,350,000, a sign-on fee of GBP 330,000, as well as bonuses provided for in Chelsea's *ad hoc* regulations.

8. On 12 July 2004, Chelsea carried out private drug targeted tests on some of its players in a manner which infringed the FA's Doping Control Regulations. A fine of GBP 40,000 as well as a warning was imposed upon the club.

9. On 1 October 2004, the FA conducted a targeted drug test on the Player. He was declared positive for cocaine on 11 October 2004.

10. In a letter to the FA dated 17 October 2004, the Player admitted to having taken cocaine.

11. With a letter dated 28 October 2004, Chelsea informed the Player that it was terminating his Employment Contract with immediate effect for gross misconduct.

12. On 4 November 2004, the FA's Disciplinary Commission imposed upon the Player a fine of GBP 20,000 as well as a seven-month ban, effective from 25 October 2004. By decision dated 12 November 2004, the FIFA Disciplinary Committee extended the suspension to apply worldwide.

13. On 29 January 2005, the Player was registered with Livorno. Two days later, on 31 January 2005, he was transferred to Juventus. It is undisputed that Juventus was the only club actually interested in the Player but was hindered to sign him directly as it had reached its quota of non-EU players, who could be transferred from outside Italy under FIGC regulations. In order to circumvent that restriction, Livorno agreed to register the Player first and, subsequently, to transfer him to Juventus. The Player started to play for Juventus after the end of the suspension period, *i.e.* after 18 May 2005.

14. In July 2006, Juventus transferred the Player to AC Fiorentina for a sum of EUR 8,000,000, the payment of which is not disputed.

C. CAS 2005/A/876 – M. v. FC Chelsea - award of 15 December 2005

15. On 10 November 2004, the Player filed an appeal with the FAPL's Board of Directors challenging the decision of Chelsea to terminate his Employment Contract.

16. Eventually and with the agreement of the Player and Chelsea, the FAPL's Appeals Committee (hereinafter the "FAPLAC") was appointed to resolve whether the Player had unilaterally breached the Employment Contract with or without just cause or sporting just cause. The possible consequences in terms of sporting sanctions and/or compensation were not to be addressed by the FAPLAC.

17. On 4 February 2005, Chelsea filed an application with the FIFA Dispute Resolution Chamber (hereinafter the "DRC") for an order determining the compensation in its favour following the unjustified premature termination of the employment relationship caused by the Player. However, Chelsea suggested the proceedings to be adjourned until the FAPLAC had rendered a final decision on whether the Player had breached the Employment Contract with or without just cause or sporting just cause.

18. On 20 April 2005, the FAPLAC decided that the Player had committed a breach of the Employment Contract without just cause within the protected period.

19. On 29 April 2005, the Player lodged an appeal before the Court of Arbitration for Sport (hereinafter the "CAS") against the decision of the FAPLAC. Whilst the Player admitted a serious breach of his contractual obligations by taking cocaine, he claimed that the applicable FIFA Regulations only applied in cases in which a Player *"terminated"* or *"renounced"* his contract, *i.e.* he wrongfully walked away from his contract in order to play for another club. He also argued that he was not guilty of gross misconduct, which would entitle Chelsea to terminate the Employment Contract.

20. On 15 December 2005, the CAS dismissed the Player's appeal, namely on the ground that there *"is no basis in the wording of the FIFA Regulations for a distinction between a player unlawfully walking out under a contract and another player who breaches his contract through other serious misconduct, like the player's taking cocaine or committing a serious on or off the pitch offence which goes to the roots of his contract with his employer. The Player's admitted use of cocaine constitutes the "unilateral breach without just cause" provided by the FIFA Regulations and triggers the consequences deriving thereof, no matter whether this breach causes the Club to give notice of termination or whether the Club continues to hold on to and insist upon performance of the contract despite the Player's breach"* (CAS 2005/A/876).

D. CAS 2006/A/1192 – FC Chelsea v. M. – award of 21 May 2007

21. On 12 May 2006 and consistently with its claim of 4 February 2005 lodged before the DRC (see supra para. 17), Chelsea contacted FIFA seeking an award of compensation against the Player.

22. In a decision dated 26 October 2006, the DRC found that splitting the matter into two (*i.e.* the national arbitration tribunal – FAPLAC – establishing the breach of contract and the DRC deciding on the consequences) was not provided for by the applicable FIFA regulations and would be contrary to its long-standing jurisprudence. In such a context, the DRC held that it was unable to consider the claim lodged by Chelsea for an award of compensation following the decision reached by a national instance, namely the FAPLAC.

23. On 22 December 2006, Chelsea lodged an appeal before the CAS seeking the annulment of the decision rendered by the DRC on 26 October 2006. On 21 May 2007, the CAS upheld Chelsea's appeal, set aside the said decision and referred the matter back to the DRC, *"which does have jurisdiction to determine and impose the appropriate sporting sanction and/or order for compensation, if any, arising out of the dispute"* between Chelsea and the Player (CAS 2006/A/1192, page 17).

E. CAS 2008/A/1644 – M. v. FC Chelsea – award of 31 July 2009

24. On 6 August 2007 and following the CAS Award CAS 2006/A/1192, Chelsea filed with the DRC a *"Re-amended application for an award of compensation"*, seeking damages, to be determined on the basis of various factors, *"including the wasted costs of acquiring the Player (£ 13,814,000), the cost of replacing the Player (£ 22,661,641), the unearned portion of signing bonus (£ 44,000) and other benefits received by the Player from the Club (£ 3,128,566.03) as well as from his new club, Juventus (unknown), the substantial legal costs that the Club has been forced to incur (£ 391,049.03) and the unquantifiable but undeniable cost in playing terms and in terms of the Club's commercial brand values"*, but *"at least equivalent to the replacement cost of £ 22,661,641"*.

25. For his part, the Player submitted that Chelsea's claim should be entirely rejected.

26. On 7 May 2008, the DRC decided the following:

> *"1. The claim of Chelsea Football Club is partially accepted.*
>
> *2. The player, [M.], has to pay the amount of EUR 17,173,990 to Chelsea Football Club within 30 days of notification of the present decision.*
>
> *3. If this amount is not paid within the aforementioned time limit, a 5% interest rate per annum as of the expiry of the said time limit will apply and the matter will be submitted to the FIFA Disciplinary Committee for its consideration and decision.*
>
> *4. Any further request filed by Chelsea Football Club is rejected.*
>
> *5. Any counterclaim filed by [M.] is rejected. (…)".*

27. On 2 September 2008, the Player filed an appeal before the CAS to challenge the DRC's decision of 7 May 2008. For its part, Chelsea submitted that the appeal should be rejected.

28. In an award dated 31 July 2009 (CAS 2008/A/1644), the CAS found that the amount of EUR 17,173,990 determined by the DRC had been calculated in a manner consistent with the case law relating to Article 22 of the 2001 Regulations for the Status and Transfer of Players (hereinafter "RSTP 2001") and with English law. Nevertheless, it held that the full damage actually suffered by Chelsea consisted of the following unamortised costs of acquisition:

• transfer fee paid to Parma:	EUR	16,923,060
• fee paid to an agent in connection with the Player's transfer	EUR	150,436
• sign-on fee paid to the Player	GBP	99,264
• solidarity contribution paid to training clubs	EUR	761,552
• *"transfer levy"*	GBP	272,580
• fees paid by Chelsea to its own agents	EUR	1,278,640

29. The Panel observed that *"the unamortised portion of all acquisitions costs, as determined above (…), totalling EUR 19,113,688 and GBP 371,844, exceeds the amount set by DRC, i.e. EUR 17,173,990. As a result, taking into account the relief requested by the Club, which seeks compensation in the amount already awarded by the DRC, there is no need to consider the other criteria indicated in Article 21 of the Regulations, and the damages to be paid by the Player, even if determined as a result of calculations different from those made by the DRC, have to be confirmed in the amount of EUR 17,173,990"* (CAS 2008/A/1644, para. 122, page 32). The Panel went on to explain why the pertinent provisions of the RSTP 2001, as applied in the matter, did not violate either EU law or the principles of English law relied upon by the Player. It also confirmed that the award duly took into account the specificity of the sport and in particular the interest of the players, of the clubs and of the entire football community. As a result, it dismissed the Player's appeal and ordered him *"to pay to Chelsea Football Club Limited the amount of EUR 17,173,990, plus interest of 5% p.a. starting on 12 September 2008 until the effective date of payment"*.

F. Decision of the Swiss Federal Tribunal – 4A_458/2009 – 10 June 2010

30. On 14 September 2009, the Player filed a Civil law appeal with the Swiss Federal Tribunal (hereinafter "SFT") seeking the annulment of the CAS Award CAS 2008/A/1644.

31. The SFT dismissed the Player's submissions that the CAS award under appeal was incompatible with Swiss public policy within the meaning of Article 190 para. (e) of the Swiss Federal Statute on Private International Law (hereinafter "PILA"), infringed his personality rights and the principle of human dignity, affected in an inadmissible manner his financial future and his economic freedom.

32. In this regard, the SFT stated, *inter alia,* the following:

> *"[M.'s] reference to EU law (judgment of the Court of Justice of the European Union [CJEU] of December 15, 1995 C-415/93 Union royale belge des sociétés de football association contre Jean-Marc Bosman, Rec. 1995 I-4921) is not appropriate. In the case quoted by [M.], the CJEU held contrary to that law the rule according to which a professional football player citizen of a member state could not be employed after the contract with his club had expired by a club of another member state unless the latter had paid a transfer fee to the former (paragraph 114). [M.'s] reference to the judgment of June 15, 1976 in the matter of Servette Football Club v. Perroud (SFT 102 II 211) is not more pertinent; in that case the Federal Tribunal sanctioned a regulation which allowed a club that terminated a player's employment contract to refuse to issue a letter of release to the latter, without which he could not obtain his transfer to another club.*
>
> *This case is different from the matters which gave rise to the two precedents quoted, to the extent that the employees' freedom of movement, invoked by [M.], was not hindered at the end of the employment contract since after his suspension the player found a new employer in Italy, his immediate termination notwithstanding, without the new club having to pay a transfer fee to the [Chelsea]"* (SFT 4A_458/2009, at 4.4.3.1; translation found on the website: www.swissarbitrationdecisions.com).

33. Consequently, in a decision dated 10 June 2010 (4A_458/2009), the SFT rejected the Player's appeal.

34. It is noteworthy to observe that none of the Appellants took part in any of the above-mentioned arbitration or court proceedings.

G. The Player's application before the European Court of Human Rights

35. On 13 July 2010, the Player lodged an application before the European Court of Human Rights (hereinafter the "ECtHR"). His complaint is directed against Switzerland and can be summarized as follows:

- Invoking Article 6 ECHR, the Player submitted that the CAS arbitral Panel in the case *CAS 2008/A/1644 – M. v. FC Chelsea* was not independent and impartial.

- He is a victim of the breach of Article 8.1 and 8.2 of the ECHR as the Awarded Compensation constitutes an inadmissible impediment to his financial future, in particular if it results in a prohibition of exercising a professional activity on account of a debt (according to article 64 of the FIFA Disciplinary Code).

- He is a victim of the breach of Article 4.1 of the ECHR. In view of the considerable amount of his debt, the Player will have to assign his entire wealth to Chelsea, a major club, owned by an extremely rich individual. In other words, he will have to work for the rest of his life, in an attempt to buy back his freedom. This is a form of slavery.

- He is a victim of the breach of article 1 of Protocol No.1 of the ECHR as the Awarded Compensation violates his right of ownership. He is deprived up to the end of his life, of the possibility to be the owner of any property and therefore of all the other rights granted by the ECHR.

- His rights have been breached by the SFT or by Swiss legislation since - in both cases - the lack of protection is attributable to Switzerland.

36. To date, the proceeding before the ECtHR is still pending.

H. FC Chelsea's application with the DRC against the Appellants

37. On 15 July 2010, Chelsea submitted a petition to the DRC against Juventus and Livorno, seeking a declaration of the joint liability of Juventus and/or Livorno, together with the Player, for the payment of the awarded compensation of EUR 17,173,990, plus interest of 5% *p.a.* starting on 12 September 2008 (hereinafter the "Awarded Compensation").

38. Chelsea's claim is based on Article 14.3 of the Regulations governing the Application of the RSTP 2001 (hereinafter "Article 14.3"), according to which *"If a player is registered for a new club and has not paid a sum of compensation within the one month time limit referred to above, the new club shall be deemed jointly responsible for payment of the amount of compensation"*.

39. In a decision dated 25 April 2013, the DRC found that, under the clear wording of Article 14.3, the Player's New Club was automatically jointly responsible for the payment of the Awarded Compensation due by the Player, should the latter fail to fulfil his obligations within a month of notification of the relevant decision. In the DRC's view, this provision makes no distinction between the termination of the contract by a player without just cause and the termination of a contract by a club with just cause. In this light, the DRC concluded that Chelsea's claim against the Appellants only arose when the Player failed to pay the Awarded Compensation once the final decision of the SFT had been rendered. Consequently, it held that Chelsea's petition of 15 July 2010 against the Appellants must *"be considered part of the proceedings that were initially started by Chelsea by means of its claim filed on 4 February 2005"* and was therefore filed correctly and in a timely manner. The DRC dismissed the Appellants' submission that their right to be heard had been violated by the fact that they had never been called to any of the previous procedures before the DRC, the CAS and the SFT. In this respect the DRC stated that *"Chelsea could not invoke joint responsibility of the player's "new club" until a final and binding decision regarding the player's*

obligation to pay compensation to Chelsea had been rendered. Since such a final and binding decision [only existed once] the SFT (…) rejected the player's request for annulment of the CAS award of 29 July 2009, Chelsea was not in a position to start proceedings regarding joint responsibility of the player's "new club" prior to [10 June 2010]. Furthermore, with regard to the [Appellants'] argument that they have not had the chance to defend themselves against Chelsea's claim regarding joint responsibility, the Chamber held that Juventus and Livorno have had ample opportunity to present their case and to challenge the Claimant's submissions against them in front of the DRC during the present proceedings" (para. 23, page 22). Finally, the DRC deemed that "the registrations of the player with both [Appellants] were so closely connected that, given the exceptional circumstances of this specific matter, both Juventus and Livorno should be considered the player's new club in the sense of art. 14 of the Application Regulations" (para. 33, page 25).

40. As a result, on 25 April 2013, the DRC decided the following:

> *"1. The claim of (…) Chelsea Football Club, is accepted.*
>
> *2. (…) Juventus Football Club, and (…) Associazione Sportiva Livorno Calcio, are held jointly responsible, together with the player, for payment of the amount of compensation that the player has been ordered to pay to [Chelsea].*
>
> *3. If the relevant sum is not paid within 30 days as from the notification of this decision, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision. (…)".*

41. On 7 October 2013, the Parties were notified of the DRC's Decision of 25 April 2013, which is under appeal in the present proceedings.

42. It is undisputed that, to date, neither the Player nor the Appellants have paid any compensation to Chelsea.

III. SUMMARY OF THE PROCEEDINGS BEFORE THE CAS

43. On 28 October 2013, each of the Appellants filed a statement of appeal with the CAS in accordance with Article R47 et seq. of the Code of Sports-related Arbitration (hereinafter the "Code"). The procedure initiated by Juventus was recorded under *TAS 2013/A/3365* and the one related to Livorno under *CAS 2013/A/3366*. Juventus nominated Prof. Pierre Lalive as arbitrator and chose to proceed in French. Livorno selected English as the language of the arbitration and nominated Prof. Massimo Coccia as arbitrator.

44. On 29 October 2013, the CAS Court Office acknowledged receipt of both statements of appeal, of the Appellants' payment of the CAS Court Office fee and invited the Parties to comment within three days on whether they agreed to consolidate both procedures and, if so, to provide their positions with regard to the language of the arbitration.

45. On 30 October 2013, Juventus confirmed to the CAS Court Office that it agreed to the consolidation of the procedures provided that (i) the language of the arbitration was French and (ii) the Appellants agreed on a common arbitrator. Separately, it informed the CAS Court Office

that, as stated in its statement of appeal, it had asked Chelsea to agree to a time extension for the filing of its appeal brief and was still waiting for a response.

46. On 31 October 2013, Livorno confirmed to the CAS Court Office that it agreed to the consolidation of both procedures. However, it did not take position as to the language of the arbitration.

47. On 31 October 2013, Chelsea submitted that the proceedings must be conducted in English and that Juventus should not be granted a time extension exceeding four days.

48. On 1 November 2013, the CAS Court Office confirmed to the Parties that it understood from their respective submissions that they did not object to the consolidation of the Procedures *TAS 2013/A/3365* and *CAS 2013/A/3366*. It invited Livorno to provide its position on the language of the procedure within six days and informed the Parties that, *"pending a decision on the language, the deadline for the Appellants to file their appeal briefs is suspended"*.

49. On 6 November 2013, Juventus drew the attention of the CAS Court Office to the fact that it accepted the consolidation of the procedures only under certain conditions, namely, that the language of the arbitration be French.

50. On 7 November 2013, the CAS Court Office acknowledged receipt of Livorno's letter of 6 November 2013, whereby the latter accepted Juventus' request that the language of the proceedings be French.

51. On 7 November 2013, the President of the Appeals Arbitration Division of the CAS rendered an order as follows:

> *"1. The language of the consolidated proceedings CAS 2013/A/3365 Juventus FC v. Chelsea FC and CAS 2013/A/3366 A.S. Livorno Calcio s.p.A. v. Chelsea FC, in accordance with Article R29 of the Code of Sports-related Arbitration, is English.*
>
> *2. Juventus FC, in accordance with Article R29 of the Code of Sports-related Arbitration, is granted a deadline of ten (10) days from the notification of the present Order to file a translation in English of its statement of appeal.*
>
> *3. Juventus FC and A.S. Livorno Calcio S.p.A., in accordance with Article R51 of the Code of Sports-related Arbitration, are granted a deadline of fifteen (15) days from the notification of the present Order to file their appeal briefs.*
>
> *4. Chelsea FC shall be granted a deadline of thirty-five (35) days from the receipt of the appeal briefs to file its answer.*
>
> *5. Juventus FC and A.S. Livorno Calcio S.p.A., in accordance with Article R41.1 of the Code of Sports-related Arbitration, are granted a deadline of ten (10) days from the notification of the present Order to nominate a common arbitrator, failing which it will be for the President of the CAS Appeals Arbitration Division to appoint an arbitrator in their place.(…)".*

52. On 7 November 2013, Juventus requested that the proceedings be stayed pending the judgment of the ECtHR with respect to the action there. On 8 November 2013, the CAS Court Office invited Livorno and Chelsea to comment on Juventus' application by 13 November 2013.

53. On 8 November 2013 and following Chelsea's request, the CAS Court Office informed the Parties that the deadline granted to Livorno and to Chelsea was extended until 18 November 2013.

54. On 11 November 2013, FIFA confirmed to the CAS Court Office that it waived the opportunity to intervene in the arbitration proceedings *TAS 2013/A/3365* and *CAS 2013/A/3366*.

55. On 12 November 2013, Juventus requested an extension of the deadline to file its appeal brief until 30 November 2013. The same day, the CAS Court Office invited Chelsea and Livorno to comment on this request by 14 November 2013.

56. On 13 November 2013, Chelsea informed the CAS Court Office that it objected to Juventus' application for extension of the deadline to file its appeal brief. On 14 November 2014, on the other hand, Livorno expressed its consent to Juventus' request.

57. On 18 November 2013, Livorno informed the CAS Court Office that it too desired an extension of the deadline to file its appeal brief until 30 November 2013.

58. On the same date, Chelsea objected to Juventus' application to stay its appeal pending the outcome of the complaint made by the Player to the ECtHR.

59. Immediately thereafter, the Appellants informed the CAS Court Office that they agreed to nominate Mr Georg von Segesser as common arbitrator.

60. On 19 November 2013, the CAS Court Office acknowledged receipt of the Parties' various letters and informed them that the Appellants' request for an extension of their deadline to file their appeal briefs by 30 November 2013 had been denied by the President of the CAS Appeals Arbitration Division.

61. On 20 November 2013, the CAS Court Office advised the Parties that the President of the CAS Appeals Arbitration Division denied Juventus' request for a stay of the proceedings pending judgment by the ECtHR.

62. On 21 November 2013 and given the fact that the decision of the President of the CAS Appeals Arbitration Division did not state its reasons, Juventus informed the CAS Court Office that it would request the Panel, once constituted, to reconsider its request for a stay.

63. On 22 November 2013, the Appellants filed their respective appeal briefs in accordance with Article R51 of the Code, which contained a statement of the facts and legal arguments accompanied by supporting documents.

64. In support of its submissions, Juventus filed numerous documents, among which two expert reports, both dated 22 November 2013. The first one was prepared by Prof. Sébastien Besson on issues of Swiss Law and the second one, by Mr Benoît Keane, solicitor, on issues of European law.

65. On 29 November 2013, Chelsea informed the CAS Court Office that it was nominating Mr Bernhard Heusler as arbitrator. Ultimately, the latter declined appointment, whereupon Chelsea nominated Prof. Jan Paulsson instead on 16 December 2013.

66. On 20 December 2013, Chelsea applied for a one-week extension of the deadline for its answer to Juventus' and Livorno's appeal briefs.

67. On 23 December 2013, Livorno objected to this application.

68. On 27 December 2013, Juventus informed the CAS Court Office that *"unless it is granted the right to reply in writing to Chelsea's Answer, [it] cannot agree with Chelsea's request for an extension"* of the deadline to file its answer.

69. On 8 January 2014, the President of the CAS Appeals Arbitration Division decided on the following timetable:

- Chelsea's answer to be filed by 13 January 2014;
- Appellants to file their replies within 15 days from the receipt of the answer;
- Chelsea to file an answer to the replies within 15 days from the receipt of such replies.

70. On 13 January 2014, the CAS Court Office informed the Parties that the Panel to hear the case had been constituted as follows: Prof. Bernard Hanotiau, President of the Panel, Mr Georg von Segesser and Prof. Jan Paulsson, arbitrators. It also advised them that *"instructions from the Panel on Juventus FC's requests for reconsiderations of (i) the language of the procedure, (ii) the suspension of the proceedings pending a decision of the ECHR in the [M.] case, and (iii) the deadline to file the second round of submissions, shall follow in due course"*.

71. On 13 January 2014, Chelsea filed its answer in accordance with Article R55 of the Code. In support of its submissions, it filed numerous documents, among which an expert report dated 13 January 2014 prepared by Prof. Hans Caspar von der Crone.

72. On 15 January 2014 and in view of the volume of documents filed by Chelsea, the Appellants requested a deadline of at least 30 days to file their replies to the answer. Chelsea confirmed to the CAS Court Office that it was opposed to this application.

73. On 17 January 2014, the CAS Court Office informed the Parties that the Panel had decided on the following:

"(…)

- *Juventus FC's request for reconsideration of the language of the procedure is denied and English is confirmed.*
- *The Appellants' request for a time-limit of 30 days from the receipt of the Respondent's answer to file their replies is granted. The Respondent shall then be granted a similar deadline of 30 days to file its rejoinder.*
- *Together with their replies and rejoinder, the parties are invited to file further comments on the issue of a possible suspension of the proceedings pending a decision of the ECHR in the [M.] case. The Panel has decided to reserve its decision in this respect after the replies and rejoinder are filed and after the parties' oral presentations on this issue at the hearing".*

74. On 12 February 2014, Juventus informed the CAS Court Office that the Parties agreed that the Appellants would file their reply on or before 18 February 2014 and Chelsea would submit its rejoinder on or before 24 March 2014. The Panel accepted this timetable.

75. On 18 February 2014, the Appellants filed their respective replies.

76. In support of its submissions, Juventus filed two further legal opinions, respectively dated 14 and 15 February 2014, prepared by Prof. Sébastien Besson and Prof. Thomas Probst on issues of Swiss Law.

77. On 1 April 2014 and on behalf of the Panel, the CAS Court Office informed the Parties that Juventus' request for a stay of the proceedings pending the ECtHR's judgment would be dealt with at a later stage.

78. On 24 March 2014, Chelsea filed its rejoinder. In support of its submissions, it filed another expert report dated 24 March 2014 and prepared by Prof. Hans Caspar von der Crone.

79. On 12 May 2014, the Parties were informed that the Panel had decided to hold a hearing, which with the agreement of the Parties was scheduled for 1 October 2014.

80. On 3 September 2014, each of the Parties signed and returned the Order of Procedure in these appeal proceedings.

81. On 30 September 2014, Juventus requested the Panel's authorization to submit a copy of two recent decisions rendered by the SFT. In accordance with Article R56 of the Code, and given that both Livorno and Chelsea agreed with the production of these new documents, the President of the Panel decided to accept Juventus' request.

82. The hearing was held on 1 October 2014 at the CAS premises in Lausanne. The Panel members were present and assisted by Mr William Sternheimer, CAS Managing Counsel & Head of Arbitration, and Mr Patrick Grandjean, *ad hoc* Clerk.

83. The following persons attended the hearing:

- Juventus was represented by its Head of Legal Service, Mr Fabio Tucci, accompanied by its legal Counsel, Mr Antonio Rigozzi, Mr Fabrice Robert-Tissot, Mr Cesare Gabasio.
- Livorno was represented by its legal Counsel, Mr Mattia Grassani, Mr Federico Menichini, Mr Fabrizio Duca, attorneys-at-law, and Mr Luca Smacchia, trainee.
- Chelsea was represented by its Head of Legal, Mr James Bonington, accompanied by its legal Counsel, Mr Stephen Sampson, Mr Lloyd Thomas, Mr Adam Lewis, Mr Brian Kennelly, and Mr Stephan Netzle.

84. At the outset of the hearing, the Parties confirmed that they did not have any objection as to the composition of the Panel.

85. The Panel heard evidence from the following experts, who were questioned by the members of the Panel, examined and cross-examined by the Parties' respective Counsel:

- Mr Benoit Keane,
- Prof. Sébastien Besson;
- Prof. Thomas Probst;
- Prof. Hans Caspar von der Crone.

86. The first three expert witnesses were called by Juventus and Prof. von der Crone by Chelsea.

After the Parties' closing arguments, and their declaration that they were satisfied with the conduct of the proceedings, the Panel closed the hearing.

IV. SUBMISSIONS OF THE PARTIES

A. Juventus' Position

87. In its appeal brief filed on 22 November 2013, Juventus submitted the following requests for relief:

> *"(…) the Appellant respectfully requests the Court of Arbitration for Sport to:*
>
> 1. *Declare the present appeal admissible.*
> 2. *Set aside the Decision under Appeal.*
> 3. *Declare that Juventus FC does not have to pay any sum of money to Chelsea in connection with the engagement of the player [M.] in 2005.*
> 4. *Condemn Chelsea to reimburse all the costs of the proceedings before the DRC.*
> 5. *Condemn Chelsea to pay all the costs of the present arbitration.*

6. *Condemn Chelsea to pay compensation for the costs incurred by Juventus FC before the Court of Arbitration for Sport, including the attorney costs and the court filing fee".*

88. The submissions of Juventus, in essence, may be summarized as follows:

- Juventus was not called to participate in the proceedings initiated by Chelsea against the Player before the FAPLAC, FIFA, CAS or the SFT. All the decisions were directed against the Player only and cannot be enforced against Juventus. Any other conclusion would clearly infringe its right to be heard, and thus contravene Swiss law. Juventus has indeed never had the chance to defend itself in any of the previous procedures. In particular, it was unable to raise any of the *"collective defenses and objections that [M.] has or could have raised against Chelsea, i.e. the defenses and objections that relate to the common basis for the joint obligations". "In other words, a decision or award rendered against one of the obligors [here [M.] has no res judicata effect vis-à-vis the other co-obligors [here Juventus and Livorno] if the latter [here Juventus and Livorno] were not involved in the proceedings against the former [here M.]".* Article 14.3 cannot be applied so as to enforce a decision which has no *res judicata* against Juventus.

- In addition, the decision taken by the FAPLAC (which found that the Player had committed a breach of the Employment Contract without just cause within the protected period) is not legally binding upon Juventus, as it is not a member of the FA.

- The basic principle of the right to defence means that the decisions which Chelsea is now seeking to enforce against Juventus are unopposable to it absent proceedings a) in which a specific claim on joint liability was raised against the Italian club, b) where Juventus was called as respondent and c) where final decisions were issued against it. None of these requirements were met. Furthermore, Juventus did not intervene in the proceedings against the Player since the alleged joint liability of the Italian club was never raised.

- When Juventus entered into the employment agreement with the Player, there was no indication whatsoever that it would ever be prosecuted as joint and several debtor and ordered to meet its employee's obligations more than 5 years after having registered the Player.

- According to general principles of interpretation applicable under Swiss law, Article 14.3 does not imply an automatic joint liability of the Player's "New Club". This provision comes into play only *"if the contractual breach is constituted by a withdrawal from the contract by the player without just cause and if such withdrawal is inspired by the player's willingness to transfer to a new club".* The circumstances here are completely different, since it was Chelsea's decision to terminate its employment relationship with the Player who had no intention to leave Chelsea. *"While it can be considered as acceptable to hold a club jointly liable when it hires a player who has wrongfully terminated the employment agreement with his previous club, the same does not apply when the player was terminated by his previous club".* This interpretation is consistent with the wording of Article 14.3, with this provision's relationship with other articles of the same regulations, and with its purpose revealed by the history of its adoption.

- Chelsea cannot rely on the principle of contractual stability, since it is not the player who decided to leave Chelsea but rather it is Chelsea that put the player in the position of having to find a New Club following his termination. *"Holding the new club jointly and severally liable in the present circumstances does not serve to protect or promote contractual stability, as the contract has already been terminated by [Chelsea's] unilateral decision and the player is left with no choice but to find a new club"*.

- Chelsea wrongly relies on FIFA Circular Letter n° 769 of 24 August 2001 (designed to summarise and explain the main points of the agreement reached by FIFA with the European Commission on the principles for the amendment of FIFA's rules regarding international transfers - hereinafter the "FIFA Circular Letter n° 769") to submit that, when it comes to the New Club's joint responsibility for compensation, Article 14.3 is to be construed as imposing responsibility on the New Club *"whether or not it is found to have induced breach"*. The words *"whether or not it is found to have induced breach"* appear indeed in the FIFA Circular Letter n° 769 but are a) placed in parenthesis, b) are not accompanied by any explanation or reason, c) and there is no link made between the New Club's alleged obligation and the need to ensure contractual stability. *"It is submitted that such an isolated parenthesis in a circular letter is not decisive in and of itself. In any event, the fact remains that the content of the parenthesis in the [FIFA Circular Letter n° 769] (i.e. "whether or not it is found to have induced breach") is not contained in Article 14.3"*.

- Chelsea's proposed interpretation of Article 14.3, according to which the joint and several liability rises simply from a club's status as a player's New Club, would make this provision *"non-compliant with both (i) Swiss law (applicable to the merits) and (ii) EU law (applicable as mandatory law and which influenced the very adoption of the 2001 FIFA Regulations that are here the object of interpretation)"*.

- As a matter of Swiss law, Chelsea's interpretation would infringe the Player's personality rights and *"a breach of Swiss public policy is also not to be excluded"*. In this respect, the present case *"has strong analogies with the Matuzalem situation (SFT 138 III 322). A player with a liability in the range of EUR 20,000,000 would be severely impacted in his ability to find a new club if such new club were to become automatically 'jointly responsible' in the absence of payment by the player. The player's ability to exercise his profession would be severely jeopardized"*.

- In addition, under Swiss law, a monetary claim can only be successful if the claimant can rely on a source of obligations and thus a cause of action. The *"only causes of action that are conceivable under Swiss law are (i) contract, (ii) torts, (iii) unjust enrichment and, possibly, (iv) liability based on trust"*. In the present case, Chelsea has no cause of action.

- In the absence of a contract between the Parties, Chelsea cannot bring a contractual claim. The mere fact that Juventus is a member of FIGC, which itself is a member of FIFA, does not create a contractual relationship between Juventus and Chelsea. Similarly, there is no warrant for concluding that Juventus agreed to give to Chelsea an independent guarantee provided for under Article 111 of the Swiss Code of Obligations (hereinafter "CO") or to become jointly liable within the meaning of Article 143 para. 1 CO. In addition a *"Club*

cannot validly enter into such a contractual scheme as the debt it allegedly accepts to assume is neither determined nor determinable". This would constitute an excessive commitment, which is prohibited under Article 27 of the Swiss Civil Code (hereinafter "CC") and under Article 19 para. 2 CO.

- Since Juventus has not committed any fault, was not involved in the termination of the Employment Contract with the Player, and did not induce the Player to leave Chelsea, which to the contrary sacked the Player, it would be unjust to condemn Juventus to pay the damages claimed by Chelsea. Under these circumstances and as a matter of fairness, Juventus' joint liability should in any event be reduced, if not excluded.

- Chelsea is wrong to contend that the Awarded Compensation for which Juventus is held jointly liable, together with the Player, is nothing more than the substitute for a transfer fee, had the Player left Chelsea consensually in order to sign with Juventus. At the moment the Player was registered with Juventus, his value was obviously not as high as EUR 17,173,990. This is particularly true in view of all the circumstances surrounding the Player's transfer to Chelsea, his breach of the Employment Contract, his ban, and the attendant drug issues.

- Furthermore, Chelsea's claim is time-barred pursuant to Swiss law. Assuming that its claim is admissible, it would arise out of an extra-contractual relationship between Chelsea and Juventus. Therefore, Chelsea's claim would be governed by the provisions of title 1, Chapter 2 CO, *i.e. "Obligations in Tort"*. According to Article 60 CO, a claim for damages becomes time-barred one year from the date on which the injured party became aware of the loss or damage and of the identity of the person liable for it. *"In the present case, Chelsea became aware of the damage at the latest when [M.] refused to pay the compensation ordered by the DRC on 13 August 2008 (which corresponds to the date when the DRC Decision of 7 May 2008 was served to the Player)"*. Thus, the claim filed by Chelsea against Juventus on 15 July 2010 is time-barred.

- Chelsea's claim against Juventus is also time-barred in accordance with Article 44 of the RSTP 2001, which provides that the *"FIFA Players' Status Committee shall not address any dispute under these regulations if more than two years have elapsed since the facts leading to the dispute arose"*. In the present case, the facts leading to the dispute arose on 31 January 2005, when Juventus entered into an employment agreement with the Player. *"Since the proceedings against Juventus/Livorno were initiated only on 15 July 2010, i.e. more than 5 years after the "facts leading to the dispute arose", Chelsea forfeited any right it might have had under Article 14.3 of the Application Regulations"*. Chelsea confuses the moment the claim must be paid with the moment the facts leading to the dispute arose.

- *"The automatic imposition of joint and several liability upon the new club of a player following the player's contract would, in the absence of any inducement, violate EU competition law"*.

– Pursuant to the applicable regulations, the New Club is the first club for which a player registers after the contractual breach. Hence, only Livorno could possibly be held jointly liable with the Player.

B. Livorno's Position

89. In its appeal brief filed on 22 November 2013, Livorno submitted the following requests for relief:

> *"Livorno lodges the present appeal brief to request Court for Arbitration for Sport:*
>
> - *to acknowledge the competence of CAS to decide the present appeal;*
> - *on the merits, to accept the present appeal and:*
>   - *in first instance to revoke and to cancel the decision of the F.I.F.A. Dispute Resolution Chamber passed in Zurich, Switzerland, on 25th April 2013, notified by facsimile to the Appellant on 07th October 2013;*
>   - *in second instance to consider Juventus F.C. S.p.a. as the only one club jointly responsible with the player [M.] for the payment of the amount of compensation that the Player has been ordered to pay to Chelsea F.C. Limited.*
> - *to condemn Chelsea F.C. Limited and/or Juventus F.C. S.p.a. to pay all cost of the present proceeding, and the DRC proceeding, as well as the legal costs and fees, with the reimbursement of the amount paid by A.S. Livorno Calcio S.p.a. in the present dispute".*

90. Livorno mainly relied on arguments similar to those of Juventus. Its additional submissions, in essence, may be summarized as follows:

– The New Club within the meaning of Article 14.3 "is not a guarantor of the player in case of failure of payment by him, but is, eventually, jointly and severally liable for the payment". As a consequence, Chelsea should have included Livorno as from the very beginning of the procedures against the Player, enabling the Italian club to defend itself with respect to the contention of joint liability.

- *"Hence, after about 8 (eight) years since the beginning of the dispute, Livorno is requested to pay the sum of 17,173,990,00 plus interest without the right to defend its position".*

- Chelsea's claim against Livorno was filed on 15 July 2010. As a consequence, the dispute should be governed by the RSTP's edition of 2009 (hereinafter "RSTP 2009"), which provides a different set of rules as regards the issue of the New Club's joint liability[1]. Article 17.2 and 17.4 of the RSTP 2009 establish liability upon the existence of a timely and perceivable connection between a player's withdrawal from an on-going contract and his subsequent transfer to a New Club. In view of the lack of such a connection in the present case, Livorno cannot be held jointly liable with the Player to pay compensation,

[1] This submission became redundant, as, in its reply, Livorno conceded that *"As acknowledged by the Parties, the provision under discussion is art. 14.3 of the FIFA 2001 Regulations Governing the Application of the [RSTP]"* (Livorno's reply, page 2).

due to its mere capacity as New Club. It is undisputed that Livorno *"has never induced [M.] to breach the contract nor was interested in the performance, i.e. the absurd ideas to induce the Player to use cocaine and/or to induce Chelsea to terminate the employment contract"*.

- It is simply not reasonable to allege that the purpose of Article 14.3 is to compensate a club which chose to put an end to its employment relationship with its player and have a blameless third party pay for the resulting damages. Such reasoning is at odds with contractual stability, which is the main objective of Article 14.3. Instead of terminating its employment contract with the Player, Chelsea could have sanctioned him, transferred him, or given him a warning. The truth is that it had lost interest in the Player and wanted to get rid of him. It defies reason that Livorno should bear the consequences of such a choice.

- The Player was a free agent when he was registered by Livorno. The latter had therefore no reason to contact his former employer, which was no longer contractually bound to the Player, as his employment agreement had been terminated.

- In view of the circumstances, Juventus is the New Club for the purpose of the applicable regulations. Hence, should Chelsea's claim succeed, only Juventus could in any event be ordered to pay the Awarded Compensation.

C. Chelsea's Position

91. In its answer filed on 13 January 2014, Chelsea submitted the following requests for relief:

> *"CAS is with respect asked to:*
>
> *201.1 Dismiss the Appeals; and*
>
> *201.2 Uphold the decision of the FIFA DRC;*
>
> *201.3 In the alternative, uphold the decision of the FIFA DRC as against Juventus;*
>
> *201.4 In the further alternative, uphold the decision of the FIFA DRC as against Livorno;*
>
> *201.5 Order that Juventus and Livorno, alternatively Juventus, in the further alternative Livorno do pay Chelsea's legal costs of these proceedings and the CAS costs of the arbitration"*.

92. The submissions of Chelsea may, in essence, be summarized as follows:

- Chelsea did not unilaterally terminate the Employment Contract but it was the Player's actions, which caused the contract to come to an end; the Player created that situation and Chelsea cannot be blamed for dealing with it in the way it deemed fit. Whether it was the Player's intention to leave his employer to join a New Club is absolutely irrelevant to the question of the latter's joint and several liability. In any manner and legally speaking, the distinction on which the Appellants rely is irrelevant, as the applicable regulations do not differentiate between the termination of the contract by a player without just cause and the termination of a contract by a club with just cause.

- Pursuant to Article 14.3, the Player's New Club is necessarily jointly and severally responsible for the payment of the compensation due by the Player, should the latter fail to fulfil his obligations within a month of notification of the relevant decision. The liability stems simply from a club's status as a player's New Club. This is clear under the Regulations and is consistent with Swiss law. Article 14.3 does not contain any explicit limitation to its application. The New Club's joint and several liability is *"not in any way dependent on a new club being proven to have induced the player's breach or otherwise being at fault. Nor is it any way dependent upon the manner in which the player came to be in breach, leading to the contract coming to an end"*. This interpretation is consistent with the wording of Article 14.3, with this provision's relationship with other articles of the same regulations, and with its purpose. It is also consistent with FIFA Circular Letter n° 769, FIFA DRC, and CAS jurisprudence.

- The Appellants' joint and several liability does not depend on their having induced or otherwise been involved in the Player's contractual breach. Inducement is only relevant when a sanction must be imposed. It is independent from the enforcement to pay the Awarded Compensation.

- The rationale of Article 14.3 is not only to prevent poaching of players but also to ensure that the New Club does not obtain a sporting or financial benefit from acquiring the player's services for free, while the original club is left uncompensated following the unjustified breach caused by the player. This provision is designed to protect contractual stability by means of a deterrent, namely by ensuring that the parties who benefit from the player's breach - the player himself and his New Club – are not allowed to enjoy that benefit without paying compensation to the player's former club. *"What the club is entitled to, and needs, is the proper performance of the playing contract for the term, free of breach, not the merely technical retention of the registration. A contractual breach that is so serious as to repudiate the contract, and for which the innocent club is entitled to accept as bringing the contract to an end, is clearly inimical to contractual stability"*. Article 14.3 aims to prevent breaches, whether they take the form of an announcement by the player without cause that he is terminating, or a breach that is so serious that the club can accept it as terminating the contract.

- In the present case, Juventus was able to acquire the Player's services for free, after he left Chelsea. The money it saved from not having to pay a transfer fee was at Juventus' disposal for other investments. Juventus obtained significant sporting advantage through the acquisition of the Player, who played a major role in his team winning the Scudetto (the Italian Championship). Juventus also gained a considerable financial benefit from this situation as, in July 2006, it agreed to transfer the Player to AC Fiorentina for a sum of EUR 8,000,000. Under these circumstances, it is reasonable to hold that Article 14.3 compels the New Club *"to do the equivalent of what it would otherwise have to do if it wished to secure a player who was properly performing for the term of his playing contract. The compensation is a substitute for the transfer fee that any club has to pay if it wishes to secure a consensual early termination of a player's contract with his club"*.

- *"Chelsea's primary case is that the decision of the FIFA DRC that both [Juventus] and [Livorno] are new clubs for the purpose of Article 14.3 should be upheld"*. Alternatively, Juventus should be

regarded as the New Club, as, contrary to Livorno, it obtained a sporting and financial benefit from acquiring the Player's services. In the last resort only, Livorno should be considered as the New Club for the purpose of Article 14.3.

- There is no public policy issue at stake in requiring the application of Article 14.3 and the analogy drawn by the Appellants with the *Matuzalem* case is misplaced. Article 14.3 is enforceable as a matter of Swiss law and does not violate the Player's personality rights. In any manner, Juventus cannot rely on an infringement of the Player's personality rights because he is not a party to the present proceedings. Furthermore, the SFT found that the Player's personality rights had not been infringed and that his freedom of movement had not been compromised in any manner, since he actually found a new employer. Juventus' own personality rights are not affected by the obligation stipulated in Article 14.3.

- *"Juventus finally concedes that Article 14.3 would comply with Swiss law if the joint responsibility of the new club applied only where it was the player (signed by the new club) who terminated the employment agreement with the former club. (…) Juventus does not however set out why Swiss law would inhibit the application of Article 14.3 where it was the Club that accepted the player's breach of contract as bringing the contract to an end".* Swiss labour law does not draw any distinction between a termination expressly notified by the employee or a termination notified by the employer after the employee has breached the employment agreement.

- EU competition law is not violated by Article 14.3. This provision is nothing more than the codification of the system agreed upon by the European Commission, when it reviewed the main principles for amending FIFA's rules regarding international transfers. There is no reason therefore to depart from the unambiguous wording of Article 14.3.

- The underlying obligation of the Appellants to pay the amount which the Player failed to pay is a form of guarantee under Article 111 CO (*"porte-fort"* or "Guarantee of performance by third party") or a joint and several obligation under Article 143 CO.

- The compensation resulting from a breach of contract is sufficiently determined or determinable for the purpose of Swiss law and does not infringe Article 27 CC.

- No club is obliged to become the New Club. It was Juventus' independent choice to hire the Player. It is not a case of strict liability but of a club registering a player for free. Juventus could have easily contacted Chelsea in order to negotiate all the various terms relating to the acquisition of the Player's services. As a result, the Appellants' argument that automatic enforcement against a third party is contrary to Swiss public policy is misconceived, because there is no automatic enforcement when the third party can choose whether or not to take on the responsibility. Against this background, Juventus cannot claim that Chelsea's interpretation of Article 14.3 would lead to an unfair result.

- Juventus cannot successfully argue that it is not bound by Article 14.3 on the grounds that Swiss law requires that such an assumption of debt or joint liability arise from a specific agreement or declaration, neither of which were ever expressed by Juventus. *"If*

Juventus is correct in its contention that FIFA's jurisdiction cannot be created by the club's membership of a FIFA-member national association then neither Juventus, nor any other club, is bound by any FIFA rules and FIFA cannot apply any of its rules to Juventus or any other club".

- Chelsea's claim is not time-barred. *"The Appellants are bound by the FIFA rules and so FIFA can apply Article 14.3 to them, and impose for example a transfer ban if they fail to pay. To the extent that the nature of the obligation between Juventus and Chelsea under Swiss law requires identification, it is not in tort, but in guarantee under Art. 111 CO or under Art. 143 et seq. CO. As a consequence the one year statute of limitation in Art 60 CO (which applies to damages resulting from tort) does not apply. To the extent that any limitation provision applies, it would be the ordinary statute of limitation of 10 years as determined by Art. 127 CO".*

- Chelsea's claim against the Appellants is also not time-barred under Article 44 of the RSTP 2001. Under the applicable FIFA regulations, the right to enforce an award of compensation against one or both Appellants only arose once the Player was in default of an order to pay compensation for one month. As a matter of fact, the RSTP 2001 establishes a three-step process: in the first stage, it must be established whether there has been a unilateral breach of contract without just cause. Then the level of compensation for the breach is assessed. Finally, the club may proceed to enforcement of the decision if the compensation is not paid within the specified time limits of Article 14. Therefore, there was no *"dispute"* between Chelsea and the Appellants until the Player had failed to satisfy his obligation to pay compensation to Chelsea within one month of the final order. It was only after these *"facts giving rise to the dispute"* that the liability of the New Clubs arose. In other words, Chelsea's claim against Juventus and Livorno only arose when the Player failed to pay the compensation once the final decision of the SFT had been rendered. *"Consequently, the time that Chelsea had in which to pursue the Appellants did not begin running until 10 July 2010, being one month after the SFT had extinguished the Player's last attempt at appealing the CAS Award".*

- The Appellants are wrong to contend that, because they were not a party to the proceedings between Chelsea and the Player, their rights of defence have been infringed. Neither the applicable RSTP 2001 nor the applicable Swiss law required Juventus or Livorno to be joined as a defendant to the original proceedings against the Player. The Appellants cannot re-open the Player's case, which has been finally decided by CAS and confirmed by the SFT, since this is not contemplated by Article 14.3. The *"liability of the new club is automatic: it arises regardless of fault and there is no defence. It would therefore have made no difference had the Appellants advanced defences to their joint responsibility for payment of the Compensation, because any such defences would necessarily have failed".* The same result would be achieved if the Appellants' obligation was based on Article 111 CO or Article 143 CO.

- Anyhow, the Appellants were well aware of the proceedings against the Player, and both Italian clubs could have supported the Player or sought to intervene and join him as a defendant, in order to try to avoid their own contingent liability to pay compensation. The Appellants having had such procedural possibilities, it was not for Chelsea to seek to initiate a greater degree of involvement on their part. In any event, neither of the

Appellants has invoked any substantial argument that could have changed the outcome of the proceedings against the Player.

- Livorno is wrong to contend that the RSTP 2009 govern the present dispute, which is inextricably linked to the proceedings initially started by Chelsea by means of its claim against the Player filed on 4 February 2005. *"Chelsea's application against the Appellants is not a "new" claim, which falls to be considered under "new" Regulations. It is part and parcel of the same indivisible set of proceedings, which started against the Player, and are now finishing against his new club/s"*. In any event, the principle of the New Club's automatic joint liability without fault is substantially the same in the RSTP 2001 and 2009.

V. APPLICABLE LAW

93. Article R58 of the Code provides the following:

> *"The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

94. According to Chelsea, the present procedure is the last stage of a three-step process initiated on 4 February 2005, when it filed an application with the DRC against the Player. After establishing the Player's unilateral breach and his failure to pay the Awarded Compensation, Chelsea is now enforcing its claim against the Player's joint debtors, *i.e.* the Appellants. As a consequence, Chelsea is of the view that the applicable regulations to govern the present dispute should be FIFA's set of rules applicable as of February 2005. The Appellants' position on the matter is not clear as their position changed over time.

95. In any event, whether the applicable FIFA Statutes are the ones in force as of February 2005 or the ones in force as of July 2010 (when Chelsea submitted a petition to the DRC against the Appellants), both editions provide that *"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"* (Article 59 para. 2 FIFA Statutes, edition 2004 and Article 62 para. 2 FIFA Statutes, edition 2009).

96. In their respective submissions lodged before the CAS as well as during the hearing held on 1 October 2014, the Parties stated that, on the basis of FIFA Statutes, the CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law. As regards the edition of the applicable RSTP, they agreed that the 2001 version was the pertinent one:

- *"Juventus does not contest that the applicable regulations are the 2001 Player Status Regulations"* (Juventus' reply, page 53, para. 204; page 54, para. 208).
- *"As acknowledged by the Parties, the provision under discussion is art. 14.3 of the FIFA 2001 Regulations Governing the Application of the [RSTP]"* (Livorno's reply, page 2).

- *"The issue in these appeals is whether the FIFA DRC correctly applied a sporting rule under FIFA's regulations (…). That provision is Article 14.3 of the FIFA 2001 Regulations Governing the Application of the Regulations on the [RSTP]"* (Chelsea's answer, page 3, para. 1 and 2).

97. In sum, the primary applicable rules are the FIFA regulations (namely the RSTP 2001), subject to mandatory or suppletive provisions of Swiss Law.

VI. JURISDICTION

98. The jurisdiction of CAS, which is not disputed by the Parties, derives from the FIFA Statutes (see Article 59 of the FIFA Statutes, edition 2004; Article 62 of the FIFA Statutes, edition 2009) and Article R47 of the Code. It is further confirmed by the order of procedure duly signed by the Parties.

99. It follows that the CAS has jurisdiction to decide on the present dispute.

100. Under Article R57 of the Code, the Panel has full power to review the facts and the law.

VII. ADMISSIBILITY

101. Both appeals are admissible as the Appellants submitted them within the deadline provided by Article R49 of the Code as well as by the FIFA Statutes (Article 60 para. 1 of the FIFA Statutes, edition 2004; Article 63 para. 1 of the FIFA Statutes, edition 2009). The appeals further comply with all other requirements set forth by Article R48 of the Code.

VIII. PROCEDURAL ISSUES

a) Production of new documents

102. In its appeal brief, Juventus requested the production of numerous documents in the event that the CAS accepted *"the validity and enforceability of Article 14.3 as interpreted by Chelsea"*. It reiterated its request in its reply, as well as during the hearing held on 1 October 2014.

103. In view of the outcome of the present arbitration, Juventus' request becomes moot and requires no further consideration.

b) Stay of the procedure

(i) Juventus' request

104. On 7 November 2013, Juventus requested that the present proceedings be stayed pending the ECtHR's disposition of the Player's complaint. On 20 November 2013, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division denied Juventus' request. On 21 November 2013, Juventus asked for its request to be reconsidered,

once the present Panel was constituted. It confirmed its request during the hearing held on 1 October 2014.

(ii) Juventus' position

105. In its reply, Juventus summarized the grounds of its request as follows (page 86, para. 300 of its reply):

> *"(i) Since Juventus was not involved in the previous proceedings against the [M.], it appears to be consistent with the principle of procedural economy to stay the present arbitration until the pending action before the ECtHR is completed, the outcome of which could make this arbitration altogether moot.*
>
> *(ii) Such stay is all the more warranted as this is the first time, in the history of sports law, that a case involving a CAS award is referred to the Court and the parties (i.e. [M.] and Switzerland, as well as Chelsea) are expected to answer (and have in fact answered) specific questions in this regard.*
>
> *(iii) As CAS has shown some deference to the Swiss Supreme Court, the ECtHR deserves at least the same deference.*
>
> *(iv) A judgment of the ECtHR is a ground for revision of a judgment of the Swiss Supreme Court (Article 122 of the Swiss Supreme Court Act (the "SCA"))".*

(iii) Livorno's position

106. Livorno is of the view that Juventus' request should be granted. The Awarded Compensation has been confirmed by the decision of the SFT *4A_458/2009* of 10 June 2010, which constitutes the basis of Chelsea's claim against the Appellants. Should the complaint filed by the Player before the ECtHR be successful and should the ECtHR find that Switzerland is in breach of the ECHR, the Player will certainly obtain a revision of the decision rendered by the SFT. Consequently, Chelsea's claim against the Appellants will arise only when a new award on compensation enters into force and the Player fails to pay for it within a month of the relevant new decision.

(iv) Chelsea's position

107. According to Chelsea, Juventus' request should not be granted, as it would do disservice to the objective of procedural efficiency – the present arbitration being almost complete. Furthermore, the chances of the pending CAS procedure being affected by the outcome of the Player's claim directed against Switzerland are remote. Even if the Player were to succeed before the ECtHR, there is no indication that it would actually lead to a different outcome with regard to the amount awarded to Chelsea by the CAS arbitral Panel in the case *CAS 2008/A/1644 – [M.] v. FC Chelsea*, as upheld by the SFT's decision *4A_458/2009* of 10 June 2010. The Appellants would also not suffer an irreparable harm if they had to pay compensation to Chelsea now, as a result of this arbitration. Any amount so paid now in excess of the revised amount would simply fall to be reimbursed by Chelsea. *"As a matter of principle, Juventus' potential reclaim of payments cannot therefore justify a request for a stay of the procedure".*

(v) The Panel's decision as regards Juventus' application for a stay

108. The Panel has the authority to consider an application for a stay pursuant to Article R48 of the Code. Juventus admits that the Panel enjoys a great deal of discretion in granting or rejecting such a request (Juventus' reply of 18 February 2014, paras. 307 and 323).

109. As a preliminary remark, the Panel observes that the main justification advanced by the Appellants to support the request for a stay is the mere fact that the Player filed a complaint before the ECtHR and the fact that *"Switzerland was, for the first time in the history of sports arbitration, invited to file an answer"*. In itself, these arguments are not compelling; they do not suffice to persuade the Panel that the resolution of the present dispute should be postponed.

110. In addition, the Panel has considered the following relevant factors:

- The principle of procedural efficiency; the duration of the ECtHR proceedings and of the potential revision proceedings before the SFT remains unknown;

- The ECtHR case relates to a different subject matter than the one of this arbitration;

- Juventus' failure to prove a potential effect of the ECtHR's decision (ruling on the appearance of a lack of impartiality of an arbitrator) on the quantum award of the CAS Panel in *CAS 2008/A/1644 – [M.] v. FC Chelsea*; and,

- Juventus' failure to prove that the strict revision requirements of Article 122 SCA, which must be met cumulatively, are met in this case.

111. The Panel observes that the Appellants have neither contended nor demonstrated that they would suffer irreparable harm if the request for a stay were denied. They did not substantiate what harm they would suffer, how this harm is "irreparable", or the lack of an adequate remedy at law. In particular, they did not state that complying with a decision ordering them to pay the Awarded Compensation (which at the end might be revised or, in the best case, dismissed) would place them in financial distress or would cause them some kind of damage (reputational, of sporting nature, etc.), which could not be compensated monetarily. They also did not suggest that Chelsea would not be able to pay for any revised damage or that the compensation would be very difficult to assess. In the absence of evidence to the contrary, and should the future judgment of the ECtHR have an impact on the present arbitration, there is no reason to find that, ultimately, the Appellants' damage would not be reparable by a monetary award against Chelsea.

112. In light of the foregoing, it is not necessary to examine the likelihood of success of the Player's complaint before the ECtHR.

113. In addition, the Panel dismisses the application for a stay, observing that in any event the outcome of this arbitration removes the practical interest of Juventus' request.

c) Is Chelsea's compensation claim time-barred?

114. The Appellants contend that the claim filed by Chelsea against them on 15 July 2010 is time-barred under Swiss law (Article 60 CO) as well as by virtue of Article 44 of the RSTP 2001. They submit that:

- Under Swiss law and in the best-case scenario, Chelsea's claim inevitably arises out of an extra-contractual relationship between Chelsea and the Appellants. The relevant provisions on torts are therefore applicable. Pursuant to Article 60 CO, the statute of limitations, which applies to a claim of this nature, requires the creditor to bring suit within one year, and runs from the day the injured party became aware of the loss or of the damage. In other words, Chelsea's claim was time-barred one year after it *"became aware of the damage at the latest when Mr. [M.] refused to pay the compensation ordered by the DRC on 13 August 2008" (which corresponds to the date when the DRC Decision of 7 May 2008 was served to the Player)"*.

- Article 44 of the RSTP 2001 provides that the *"FIFA Players' Status Committee shall not address any dispute under these regulations if more than two years have elapsed since the facts leading to the dispute arose"*. In the present case, the facts leading to the dispute arose on 31 January 2005, when Juventus entered into the employment agreement with the Player. The proceedings against the Appellants were initiated only on 15 July 2010, i.e. more than 5 years after the *"facts leading to the dispute arose"*.

115. In response to the Appellants' submissions, Chelsea contends:

- *"To the extent that the nature of the obligation between Juventus and Chelsea under Swiss law requires identification, it is not in tort, but in guarantee under Art. 111 CO or under Art. 143 et seq. CO. As a consequence the one-year statute of limitation in Art. 60 CO (which applies to damages resulting from tort) does not apply. To the extent that any limitation provision applies, it would be the ordinary statute of limitation of 10 years as determined by Art. 127 CO"*.

- There was no *"dispute"* within the meaning of Article 44 of the RSTP between Chelsea and the Appellants until the Player had failed to satisfy his obligation to pay compensation to Chelsea. It was only after these *"facts giving rise to the dispute"* that the liability of the *new clubs* arose. *"Consequently, the time that Chelsea had in which to pursue the Appellants did not begin running until 10 July 2010, being one month after the SFT had extinguished the Player's last attempt at appealing the CAS Award"*.

116. The Panel observes that the Parties dealt with the issue of the statute of limitations only at the end of their submissions, focusing their main arguments on the question of the interpretation of Article 14.3. Under these circumstances, the Panel will follow the Parties' approach and will refrain from examining the matter of time-bar as a preliminary matter and will focus its attention in the first place on the meaning and scope of Article 14.3. Given the Panel's decision on the correct interpretation of this provision, the question of whether Chelsea's compensation claim is time-barred falls away.

IX. MERITS

117. The following facts are undisputed:

- The Player tested positive for cocaine in October 2004.
- Following this adverse analytical finding, the employment relationship between Chelsea and the Player came to a premature end.
- The Player did not engineer the contractual breach in order to be free to move to the club of his choice.
- The Appellants did not induce the Player to breach his contract with Chelsea; nor were they implicated in any manner in the Player's drug habits.
- Livorno and, subsequently, Juventus registered the Player approximately three months after the end of his employment relationship with Chelsea.
- The situation must be assessed in the light of Article 14.3.

118. On the basis of the above, the DRC found that the Appellants were jointly responsible, together with the Player, for the payment of the Awarded Compensation. For the reasons already exposed, the Parties cannot agree upon the scope of Article 14.3. In substance, the Appellants claim that Article 14.3 applies in cases where a player leaves a club with the intention of joining another one, whereas Chelsea is of the view that the Appellants' liability stems simply from their status as the Player's New Club. Both the Appellants and Chelsea rely on general principles of interpretation of Swiss law to support their positions.

119. In light of the foregoing, the Panel will address the following issues:

(i) What does Article 14.3 actually say?

(ii) What is the legal nature of Article 14.3 under Swiss law?

(iii) The principles governing the interpretation of the bylaws of a legal entity.

(iv) The literal interpretation of Article 14.3.

(v) Other aids to interpretation.

(i) What does Article 14.3 actually say?

120. Article 14.3 is part of the *"Regulations governing the Application of the [RSTP]"*. It falls under Chapter VI *"Enforcement of compensation awards"* and reads as follows:

> *"1. The party responsible for a breach of contract is obliged to pay the sum of compensation determined pursuant to Art. 42 of the FIFA Regulations for the Status and Transfer of Players within one month of notification of the relevant decision of the Dispute Resolution Chamber.*

2. *If the party responsible for the breach has not paid the sum of compensation within one month, disciplinary measures may be imposed by the FIFA Players' Status Committee, pursuant to Art. 34 of the FIFA Statutes. Appeals against these measures may be lodged to the Arbitration Tribunal for Football (TAF).*

3. *If a player is registered for a new club and has not paid a sum of compensation within the one month time limit referred to above, the new club shall be deemed jointly responsible for payment of the amount of compensation.*

4. *If the new club has not paid the sum of compensation within one month of having become jointly responsible with the player pursuant to the previous paragraph, disciplinary measures may be imposed by the FIFA Players' Status Committee, pursuant to Art. 34 of the FIFA Statutes. Appeals against these measures may be lodged to the Arbitration Tribunal for Football (TAF)".*

(ii) What is the legal nature of Article 14.3 under Swiss law?

- Preliminary remarks

121. There is a need to clarify the nature of Article 14.3 as it is the indispensable prerequisite for the application of the appropriate method of interpretation: whether this provision must be interpreted according to the general rules of interpretation of contracts (i.e. the statements of the parties are to be interpreted as they could and should be understood on the basis of their wording, of the principle of good faith, of the context as well as under the overall circumstances - see SFT 133 III 61 at 2.2.1 p. 67; SFT 132 III 268 at 2.3.2 p. 274 et seq.; SFT 130 III 66 at 3.2 p. 71 et seq.; with references) or according to other principles, namely the methods of interpretation applicable to the interpretation of statutes and articles of by-laws of legal entities.

122. In addition, the determination of the nature of Article 14.3 will also condition the way it is viewed as a part of the relevant juridical framework. Its interpretation must be consistent with the applicable legislation, so that its implementation does not lead to an unlawful result.

123. It is undisputed that the situation must be assessed according to Swiss law (see Chapter V above). In their respective submissions, the Parties sought to establish the nature of the obligation allegedly owed by the Appellants exclusively by referring to Swiss law, the application of which was furthermore confirmed by their respective legal experts during the hearing.

- The Parties' respective positions

124. According to Chelsea and under Swiss law, the Appellants' obligation resulting from Article 14.3 is a form of guarantee under Article 111 CO or of joint responsibility under Article 143 CO. Article 111 CO, under the title *"Guarantee of performance by third party"*, states that *"A person who gives an undertaking to ensure that a third party performs an obligation is liable in damages for non-performance by said third party"*. Article 143 CO, under the title *"Joint and Several Obligations"*, provides that *"(1) Debtors become jointly and severally liable for a debt by stating that each of them wishes to be individually liable for performance of the entire obligation. (2) Without such a statement of intent, debtors are joint and severally liable only in the cases specified by law"*.

125. Chelsea asserts that the Appellants are bound by the applicable FIFA Regulations and that Article 14.3 is therefore directly applicable to them through Article 10 para. 4 lit. a) of the FIFA

Statutes. According to its legal expert, Prof. von der Crone (first legal opinion, para. 80), *"the conditional guarantee under Art. 14 (3) is based on the membership of the clubs in the FIFA system. Consequently the resulting obligation is of contractual nature"*. He continues that *"Swiss law establishes direct legal relationship between members in its statutes and that it can, by doing so, in analogy to a contract in favour of a third party create claims directly enforceable among members"* (second legal opinion, para. 13). Prof. von der Crone invokes this statement of Prof. Hans Michael Riemer (Berner Kommentar, Band 1, Bern 1990, Art. 70 CC, N. 134, translated by Prof. von der Crone, second legal opinion, para. 29): *"in analogy to a contract in favour of a third party (Art. 112 CO), duties of contribution of certain members of an association could be created so that other members have a direct claim"*.

126. According to the Appellants, the guarantee under Article 111 CO or the assumption of debt based on Article 143 CO require a contractual agreement to this effect. They argue that the fact that the Parties are indirect members of FIFA does not create a contractual relationship between them. Assuming that there were contractual links between the Parties, both provisions require the constituent element of a contract to be met. In the present case, the debt to be assumed by the New Club is neither determined nor determinable (Prof. Besson, first legal opinion, para. 93) and Article 14.3 does not constitute an offer for, nor an acceptance of, nor a consent to a guarantee agreement or to an assumption of debt agreement between the Appellants and Chelsea (Prof. Probst, legal opinion, para. 50 and para. 57). If Chelsea's contention were followed, it would mean that the Appellants promised a guarantee not only *"to Chelsea but, by the same token, also to the several thousands of other clubs affiliated to one of the 209 FIFA members and that such a wide-spread promise was made for an unlimited amount but also for an unlimited duration"* (Prof. Probst, legal opinion, para. 46). Such a guarantee would obviously go against the New Club's personality rights as protected by Article 27 para. 2 of the Swiss Civil Code (hereinafter "CC"), according to which *"No person may surrender his or her freedom or restrict the use of it to a degree which violates the law or public morals"* (Prof. Besson, first legal opinion, para. 90; Prof. Probst, legal opinion, para. 46). Rules of an association can be binding but it does not mean that they are contractual in nature (Prof. Besson, first legal opinion, para. 33).

- **The Panel's determination**

127. The issue to be resolved is whether there is a contractual relationship between the former club and the New Club due to the mere fact that they are indirect members of FIFA and that the New Club hired a player, a) who was dismissed with immediate effect by the former club and b) who had no intention to leave the latter.

128. The Parties' legal experts agree that the obligations resulting from Articles 111 CO or 143 CO require the existence of a contract between the relevant Parties (Prof. Probst, legal opinion, para. 43 and para. 54; Prof. Besson, first legal opinion, para. 92 *et seq.;* Prof. Besson, second legal opinion, para. 31 *et seq.*; Prof. von der Crone, first legal opinion, para. 80). It is also undisputed among the Parties that clubs must comply with the relevant FIFA regulations and that no direct or express contract has been concluded between Chelsea and the Appellants with respect to the Player.

129. One may become a member of an association either by participating in the founding meeting and approving the articles of association or, at a later stage, by being accepted via membership

application (Article 70 para. 1 CC; SFT 108 II 6). In the latter case, on the one hand, the applicant wishing to become a member must – at least implicitly – manifest its acceptance to be bound by the statutes of the association and, on the other hand, the association must – either formally or informally – accept its membership application. Becoming a member after the founding of the association implies the formation of a specific contractual relationship whereby the candidate expresses its intent to join the association and the association expresses its consent to the candidate's application (FOËX B., in PICHONNAZ/FOËX, Commentaire romand, Helbling & Lichtenhahn, Bâle, 2010, ad. art. 70, n 5, p. 511). This exchange of mutual and concordant assents constitutes a contract, the scope of which is limited to the acquisition of membership. As soon as the applicant acquires the status of member, it is no longer bound to the association by a contractual relationship, but by a specific relationship, associative in nature (*ibidem*). In this respect, the SFT has confirmed that, in the absence of contract between an indirect member of a federation and the federation itself, there is no contractual liability (SFT 121 III 350, consid. 6 a) and 6 b), hereinafter the *"Grossen case"*).

130. In the *Grossen case*, Mr René Grossen, an amateur wrestler, was an indirect member of the *"Fédération Suisse de Lutte Amateur"* (hereinafter "FSLA"). He fulfilled the requirements set by the FSLA to qualify for the World Wrestling Championships. As part of his preparation for this event, Mr Grossen incurred costs, consisting namely of unpaid holidays and training camps. Without any valid reason, FSLA changed the rules concerning the qualification to the World Wrestling Championships, with the result that Mr Grossen's selection was reversed. The athlete lodged a claim against FSLA for payment of his expenditures. The SFT held that there was no contractual relationship between Mr Grossen and FSLA and had therefore to resolve whether Mr Grossen's claim could rely on another source of obligations *("a) Faute d'un quelconque contrat liant les parties, une responsabilité contractuelle de la défenderesse n'entre pas en considération en l'espèce. b) Il convient de se demander en revanche si la responsabilité de la défenderesse n'est pas engagée sur la base de l'art. 41 CO"* (SFT 121 III 350)). It awarded Mr Grossen compensation on the ground that the FSLA had an enforceable duty to act in good faith vis-à-vis athletes. The compensation was awarded on account of breach of trust, as it was Mr Grossen's legitimate expectation that the rules he complied with would be respected.

131. In view of the above, the Panel does not consider that there is a contractual relationship between the Appellants and Chelsea. If there is no contractual relationship between an indirect member (i.e. any of the Parties) and a sport federation (i.e. FIFA), the conclusion should be the same as regards the relationship between two indirect members of the same federation. Bearing in mind that the Appellants and Chelsea have concluded no specific agreement with respect to the Player, the Panel does not see how Chelsea can claim a) that the Appellants have contractually agreed to provide to Chelsea an independent guarantee within the meaning of Article 111 CO or b) that they have contractually agreed to assume the Player's debt within the meaning of Article 143 CO. Acceptance of general rules (such as FIFA Regulations) does not necessarily entail subjection to specific obligations when their scope must be determinable on the basis of minimum criteria.

132. Prof. von der Crone is of the view that any reference to the *Grossen case* is misconceived as neither Mr Grossen's club nor the FSLA obliged *"their members to respect the statutes and regulation of the [FSLA]"*. According to him, *Grossen* is only relevant for matters related to claims based on

the principles of *culpa in contrahendo* or *venire contra factum proprium* (Prof. von der Crone, second legal opinion, para. 42 *et seq.*).

133. Assuming however that there is a contractual relationship between the Parties, Chelsea encounters the following difficulties:

- Articles 111 CO and 143 CO are contractual in nature. Both provisions require the constituent element of a contract to be met. Under Swiss law, the conclusion of a contract requires a mutual expression of intent by the parties (Article 1 CO). Where the parties have agreed on all the essential terms, it is presumed that the contract will be binding notwithstanding any reservation on secondary terms (Article 2 para. 1 CO). In other words, it is necessary for a valid contract to come into existence that the parties have agreed on the minimum content of their respective obligations.

  According to the SFT, the guaranteed debt must be sufficiently determinable at the moment of the conclusion of the contract. This derives from Articles 19 para. 2 CO and 27 para. 2 CC (SFT 120 II 35 consid. 3 a). The debt is sufficiently determinable when the creditor and the object of the claim can be identified. In this light, the commitment whereby the guarantor accepts to take responsibility for any future claims, regardless of their legal ground, is not acceptable (SFT 128 III 434, consid. 3 a). In a matter of contract of surety (Articles 492 *et seq.* CO), the SFT considered as null and void the clause whereby the guarantor consented in advance to any change in the person of the principal debtor. It held that the validity of the guarantee was subject to the condition that the guarantor must be in a position to see clearly the nature and the extent of the risk it was willing to assume (SFT 67 II 128 consid. 3).

  The Panel is of the opinion that Article 14.3 does not contain the basic terms or minimum content in order to be held effective against the New Club, which hired a player dismissed with immediate effect by his former employer.

- The obligation under Article 111 CO is an abstract undertaking to pay a specified amount to the secured party upon the latter's request. The payment of the guarantee (which is non-accessory to the third party's debt) becomes due when the third party fails to perform its obligation. The cause of its failure is irrelevant (TERCIER/FAVRE, Les contrats spéciaux, 4th edition, Schulthess, 2009, page 1074, para. 7156 and references).

  Pursuant to Article 14.3, *"the new club shall be deemed jointly responsible for payment of the amount of compensation"*. The terms *"jointly responsible"* suggest that the debt of the guarantor is an accessory to the main debt, which is incompatible with Article 111 CO (Prof. Besson, second legal opinion, para. 45).

  In this respect, it seems obvious to the Panel that Chelsea's claim against the Appellants is inseparably tied to Chelsea's claim against the Player. Should the Player be, for any reason, released from his obligations towards Chelsea, it does not seem reasonable that Chelsea's claim against the Appellants would survive. Following therefrom, and still assuming that a contractual relationship exists, (which is clearly not the view of the Panel),

the relationship would have to be qualified as a contract of suretyship pursuant to Article 492 at seq. CO rather than a guarantee under Article 111 CO.

Moreover, where it is not possible to clearly establish the parties' intent with regard to the abstract undertaking, there is according to the SFT a presumption that the parties meant to be bound by a contract of surety (Articles 492 *et seq.* CO), the validity of which is subject to the respect of certain formal requirements (*e.g.* the indication of the maximum amount of the guarantor's liability), which are not met in the present case.

The Panel is accordingly of the opinion that Article 14.3 does not constitute a guarantee under Article 111 CO nor a suretyship under Article 492 CO.

- Still assuming that there is a contractual relationship (*quod non*), Article 14.3 cannot establish an assumption of debt under Article 143 CO. The cumulative assumption of debt between the creditor and the debt acquirer, must meet the ordinary legal requirements for the conclusion of a valid contract pursuant to the rules of the Swiss Code of Obligations (see above and SFT 128 III 434). The wording of Article 14.3 is much too undetermined and not sufficiently determinable as it does not identify which specific claim of which creditor against which debtor is concerned by the alleged assumption of debt. As Prof. Probst rightly concluded in his opinion: *"Swiss Law of Obligations does not endorse the concept of a contract with whom it may concern and on what object and amount it may be"*.

- With regard to Chelsea's view that Article 14.3 provides for a strict liability, Prof. Probst pointed out that, *per se*, Article 14.3 in itself already imposes a very serious liability. This joint liability applies not only when there is inducement from the New Club but worse, when there is a presumption of inducement, such as would arise from the moment the player leaves his club without serious reason and is hired by the New Club.

  According to Prof. von der Crone, Article 14.3 does not contain any limitation and does not condition *the new club's* joint and several liability on the New Club being proven to have induced the player's breach or otherwise being at fault.

  The award in case CAS 2007/A/1298, 1299 & 1300 (Webster case) rejected a contention by the New Club to the effect that (para. 160) *"it should not be held jointly liable on the basis of the foregoing provision because it took no part in inciting the Player to leave [his former club] and that it had not made him any offer or even made contact with him at the time he decided to leave [his former club]"*. The Panel held that (para. 160 *et seq.*) *"In light of the evidence on record, the Panel has no reason to doubt [the New Club's] assertion in this respect or therefore to conclude that [the new club] had any causal role in the Player's decision to terminate his contract with [his former club] (…). Consequently, the Panel considers that the joint and several liability provided under 17 (2) must be deemed a form of strict liability, which is aimed at avoiding any debate and difficulties of proof regarding the possible involvement of the new club in a player's decision to terminate his former contract, and as better guaranteeing the payment of whatever amount of compensation the player is required to pay to his former club on the basis of article 17. The Panel finds therefore that [the New Club] is jointly and severally liable with the Player for the payment of [the compensation following his breach of the contract without just cause]"*.

Prof. Probst and Prof. Besson expressed the view that by a parity of reasoning the New Club's liability should not *a contrario* be applied lightly in cases, like the present one, where it is clear that there has not been inducement. It would otherwise be strikingly unfair to impose liability. Indeed, one can conceive that there can be in some cases a strict liability regime, *i.e.* liability without fault, but there is no example in the law of a liability without causation (in a non-contractual context, which is the case here); or even worse, liability when the New Club has had no role in the disruption of the prior employment.

It is a fundamental principle under Swiss law that obligations do not arise in the absence of a valid cause (SFT 105 II 183 and TEVINI S., in THÉVENOZ/WERRO, Commentaire romand, Helbling & Lichtenhahn, Bâle, 2012, ad art. 17, n 2, p. 129 and numerous references).

In the present case, it is Chelsea's case that the valid cause at the origin of its contractual claim stems simply from the Appellants' status as the Player's New Club. As there is no contractual relationship between the Parties, Chelsea's conclusion is untenable.

134. Based on the foregoing, the Panel comes to the conclusion that the alleged guarantee cannot arise solely by virtue of the Appellants' indirect membership in the FIFA system, as claimed by Chelsea. Given that the statutes of an association are not bilateral contracts between the association and its members, there is no basis to conclude that the same statutes constitute a contractual relationship between indirect members of the same association.

135. This conclusion is consistent with a previous CAS Case 2009/A/1909, which concerned a player who had concluded two employment contracts, valid as from 1 July 2008. The first agreement was signed on 1 February 2008 with a Spanish club and the second with a Qatari club on 17 March 2008. The player decided to honour the first signed contract. The Qatari club initiated proceedings with FIFA to obtain compensation as a consequence of the breach of contract without just cause, and to hold the Spanish club jointly and severally liable for the payment of such compensation. In the appeal proceedings before it, the CAS found that the player was indeed bound by the second contract (para. 37), which he breached without just cause (para. 40). It held that the Spanish club could not be held jointly and severally liable for the payment by the player of the damages awarded to the Qatari club, because its contract with the player had been signed before the contract signed with the Qatari club. *"As a result, [the Spanish club], being already the club of the Player at the time of the breach, cannot be considered as the new club of the Player for the purposes of Article 17.2 of the Regulations"* (para. 55). Moreover, the Spanish club raised a counterclaim against the Qatari club for the damages it incurred because of the latter's conduct. The Panel dismissed the Spanish club's counterclaim on the following grounds (para. 73):

"Failing a contract between [the Spanish club] and [the Qatari club], [the Spanish club's claim] intends to enforce an extra-contractual (or tort) liability of [the Qatari club], alleging a sort of interference of [the Qatari club] with the plain implementation of the first contract. The Panel, however, remarks that no legal basis for such claim has been specified by [the Spanish club], and, in any case, that no wrongful action appears to have been committed by [the Qatari club]: [the Qatari club] had a contract signed by the Player, even though a

termination without just cause had been declared. [The Qatari club], therefore, was entitled to try to enforce the contractual obligations of the Player. By doing so, [the Qatari club] did not commit any wrongful action".

136. In view of the above considerations, the Panel finds that the Appellants' putative liability based on Article 14.3 is not contractual in nature.

(iii) The principles governing the interpretation of the bylaws of a legal entity

- Introduction

137. At the hearing, the Parties' respective experts accepted that, under Swiss law, the methods of interpretation to be applied are the following:

- the literal interpretation (*"interprétation littérale"*);
- the systematic interpretation (*"interprétation systématique"*);
- the principle of purposive interpretation (*"interprétation téléologique"*);
- the principle of so-called "compliant interpretation" (*"interprétation conforme"*).

138. They also agreed that, as a rule, although the starting point is the wording of the text to be interpreted, there is no hierarchy among the methods listed above. Prof. Probst explained that Swiss law does not have the concept of *"sens clair"* and that the meaning of a word must also be supported by its purpose. Between the various rules of interpretation, there is a chronological order but not a logical one. Prof. von der Crone accepted the absence of hierarchy in the methods of interpretation but emphasised that the wording was of significant importance.

139. According to the SFT, the starting point for interpreting is indeed its wording (literal interpretation). There is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect the core meaning of the provision under review. This may result from the drafting history of the provision, from its purpose, or from the systematic interpretation of the law. Where the text is not entirely clear and there are several possible interpretations, the true scope of the provision will need to be narrowed by taking into account all the pertinent factors, such as its relationship with other legal provisions and its context (systematic interpretation), the goal pursued, especially the protected interest (teleological interpretation), as well as the intent of the legislator as it is reflected, among others, from the drafting history of the piece of legislation in question (historical interpretation) (SFT 132 III 226 at 3.3.5 and references; SFT 131 II 361 at 4.2). When called upon to interpret a law, the SFT adopts a pragmatic approach and follows a plurality of methods, without assigning any priority to the various means of interpretation (SFT 133 III 257 at 2.4; SFT 132 III 226 at 3.3.5).

- The interpretation of the bylaws of a legal entity

140. There is no unified view on how articles of associations should be interpreted in Switzerland (FLEISCHER H.; Die Auslegung von Gesellschaftsstatuten: Rechtsstand in der Schweiz und rechtsvergleichende Perspektiven; GesKR 4/2013, p. 8; ZEN-RUFFINEN P., Droit du Sport, Schulthess 2002, p. 63).

141. The issue is whether the articles of associations should be interpreted by using the principles applied to the interpretation of contract or to the interpretation of statutory laws. As the articles of association form the contractual basis of an association - a private law institution - it can be argued that they have much in common with contracts and should therefore be interpreted through the contractual principles of the subjective intent of the parties and good faith (FORSTMOSER/MEIER-HAYOZ/NOBEL, §7 N 4; ZELLER, §11 N 129-133; VALLONI/PACHMANN, p. 25). However, articles of association also set forth constitutive principles which may have effects to others apart from the original members of the association, and should therefore be subject to the more objective approach followed with respect to statutory laws (FORSTMOSER/MEIER-HAYOZ/NOBEL, §7 N 3).

142. Factors taken into account by Swiss scholars when deciding what method of interpretation should be used include the following:

- The most important guiding principle for interpretation is the purpose; the purpose and the interests of the members take precedence over the intentions and interests of the founders. Articles of association should be interpreted in an objective way pursuant to the same principles applicable to the interpretation of statutes (HEINI/SCHERRER in Basel Commentary, 4th ed. N 22 to Art. 59 CC).

- The interpretation must take into consideration the fact that the articles of association are binding on future shareholders and therefore be construed from the point of view of persons who are not familiar with the origins and rely on the text itself (FLEISCHER, *op. cit.*, p. 509, citing SFT 26 II 276).

- The method of interpretation of articles of association of a corporation offering shares to the wider public should be similar to that applied to the interpretation of statutory law (FLEISCHER, *op. cit.*, p. 509, citing SFT 107 II 179; 4C.386/2004, cons. 3.4.1).

- The nature of the provision to be interpreted should be taken into account: principles of contract interpretation may commend themselves when the provision relates only to internal issues, whereas principles of statutory interpretation become prominent when the provision concerns the interests of third parties (FORSTMOSER/MEIER-HAYOZ/NOBEL, §7 N 44-46).

- Similarly, German courts differentiate between provisions with legal effects on individuals and those affecting the corporation as a whole (FLEISCHER, *op. cit.*, p. 511).

143. According to the SFT, the statutes of a private legal entity are normally interpreted according to the principle of good faith, which is also applicable to contracts (SFT 4A_392/2008, at 4.2.1 and references). However, the method of interpretation may vary depending on the nature and dimension of the legal person involved. As regards the statutes of larger entities, it may be more appropriate to have recourse to the method of interpretation applicable to the law, whereas in the presence of smaller enterprises, the statutes may more legitimately be interpreted by reference to good faith. The subjective interpretation will be required only when a very little number of stakeholders are concerned (SFT 4A_235/2013, at 2.3 and 4C.350/2002, at 3.2).

144. FIFA is a very large legal entity with over not only two hundred affiliated associations, but also far more numerous indirect members who must also abide by FIFA's applicable regulations (SFT 4P.240/2006). It is safe to say that FIFA's regulations have effects which are felt worldwide, and should therefore be subject to the more objective interpretation principles.

(iv) The literal interpretation of Article 14.3

145. According to Article 14.3, *"the new club shall be deemed jointly responsible for payment of the amount of compensation"*.

146. The Appellants infer from the words *"shall be deemed"* a rebuttable possibility and presumption, but not a certainty or automaticity (Prof. Besson, first legal opinion, para. 47). According to them, just as a New Club can rebut the presumption under Article 23 of the RSTP 2001 (pursuant to which it is presumed to have induced the breach of contract by the player and therefore must be sanctioned), a New Club can also escape joint liability by establishing that it was not involved in any manner in the termination of the Player's employment agreement with his former employer (ibidem, para. 47 and Prof. Besson, second legal opinion, para. 21 *et seq.*).

147. Chelsea is of the view that the words *"shall be deemed"* rather indicates that the New Club is responsible in circumstances where the player has not paid the awarded compensation. In support of this allegation, Prof. von der Crone asserted that *"According to Black's Law Dictionary, the word 'deemed' is used whenever describing a joint and several liability and is in the context of the present case to be interpreted as a synonym for 'is'"* (first legal opinion, para. 27 and second legal opinion, para. 33 *et seq*). Chelsea submits that whether the New Club induced the Player to breach his contract is a separate issue, and only relevant from a disciplinary point of view and does not concern the joint liability of the New Club for the Awarded Compensation, left unpaid by the Player.

148. In view of the Parties' respective and conflicting positions, it follows that Article 14.3 is not as unambiguous as either the Appellants or Chelsea want the Panel to believe. Although "shall be deemed" may be reduced to "is", that depends on whether the conditions that require the *deeming* have been met – which is the central question of this case. Under these circumstances, it is necessary to look beyond the wording of this provision.

(v) The other interpretation tools

- The contextual approach

149. The Panel agrees with Juventus' contention that the context surrounding the implementation of the RSTP 2001 is of crucial importance in interpreting Article 14.3. Although the European Court of Justice (ECJ) delivered two judgments concerning the sports sector during the 1970s (Walrave and Koch v. Association Union Cycliste Internationale, case no. C-36/74, 12 December 1974 and Doña v. Montero, case no. C-13-76, 14 July 1976), it was not until the 1990s that the European Union began to intervene significantly in sport, concomitantly with the realisation of its emergence as a globally significant economic activity. The ECJ's judgment of 1995 concerning the Belgian footballer Jean-Marc Bosman inspired a series of complaints by sportsmen and women against sports organisations, whose decisions and/or rules were thus

challenged in the European courts, resulting in restrictions on their autonomous regulatory power. The *Bosman* judgment ultimately caused FIFA to change its rules on transfers of players in 2001 (CHAPPELET J.-L., Autonomy of sport in Europe, Sports policy and practice series, Council of Europe Publishing, February 2008, p. 25).

150. *Bosman* arose out of a dispute in 1990 between Mr Bosman and his club. Mr Bosman claimed that the transfer rules of the Belgian Football Federation and of UEFA-FIFA had prevented his engagement by a French club. In its decision, the ECJ held that the then-applicable transfer rules directly affected the players' access to the employment market in other Member States and could thus impede the freedom of movement of workers (Case C-415/93, *Bosman*, European Court Reports, 1995, I-4921, 15 December 1995). According to the European Commission, the precise meaning of the Court's decision was the following: *"If a professional football player's contract with his club expires and if that player is a citizen of one of the Member States of the European Union, this club cannot prevent the player from signing a new contract with another club in another Member State or making it more difficult, by asking this new club to pay a transfer, training or development fee"* (CAS 2003/O/527, para. 7.2.3, page 8 and references).

151. As part of the reform of the FIFA and UEFA rules following the *Bosman* decision, FIFA adopted the RSTP 2001 after it *"reached agreement with the European Commission on the main principles for the amendment of FIFA's rules regarding international transfers. Thereupon, FIFA drafted amendments to its regulations on the status and transfer of players, taking into account these principles"* ("FIFA Circular Letter n° 769", page 1).

152. According to the Statement of the then Competition Commissioner Mario Monti of 5 June 2002 (IP/02/824) *"FIFA has now adopted new rules which are agreed by FIFpro, the main players' Union and which follow the principles acceptable to the Commission. The new rules find a balance between the players' fundamental right to free movement and stability of contracts together with the legitimate objective of integrity of the sport and the stability of championships. It is now accepted that EU and national law applies to football, and it is also now understood that EU law is able to take into account the specificity of sport, and in particular to recognise that sport performs a very important social, integrating and cultural function. Football now has the legal stability it needs to go forward"*.

153. It is undisputed that one of the objectives of the FIFA regulations is to protect contractual stability, which is considered to be *"of paramount importance in football, from the perspective of clubs, players, and the public"* ("FIFA Circular Letter n° 769", page 10). The potential conflict between rules governing contractual stability and players' freedom of movement obviously provided the backdrop for FIFA regulations, which must strike a balance between the players' rights and an efficient transfer system, responding to the specific needs of football and preserving the legitimacy and proper functioning of sporting competition.

154. In the case Jyri Lehtonen v. FRBSB (C-176/96 of 13 April 2000), the ECJ found that rules on transfer periods can constitute an obstacle to freedom of movement for workers. However, it also held that such restrictions may be objectively justified. In particular, it observed that *"the setting of deadlines for transfers of players may meet the objective of ensuring the regularity of sporting competitions. Late transfers might be liable to change substantially the sporting strength of one or other team in the course of the championship, thus calling into question the comparability of results between the teams taking part in that*

championship, and consequently the proper functioning of the championship as a whole. (…) The teams taking part in the play-offs for the title or for relegation could benefit from late transfers to strengthen their squads for the final stage of the championship, or even for a single decisive match. However, measures taken by sports federations with a view to ensuring the proper functioning of competitions may not go beyond what is necessary for achieving the aim pursued" (para. 42 to para. 56; emphasis added).

155. In other words, a certain stability of employment contracts is necessary for a working economy, which means that rules preventing a player from unilaterally terminating his contract for a given length of time, are acceptable. The question is how long such restriction on an employee's right to free movement may be justified.

156. In the wake of *Lehtonen*, the European Commission stated that national legislation imposing obligations in the case of breach of contract does not infringe Community law, as long as it avoids a disproportionate restriction on free movement (Case IV/36.583 SETCA - FCTB/FIFA of 28 May 2002 – hereinafter *"SETCA"*). The Commission notably made the following assessments of specific measures (see para. 52):

- unilateral termination of the player's employment contract for just cause or sporting just cause is authorized;
- apart from these two situations and in order to preserve the regularity and proper functioning of sporting competitions – which is a legitimate objective recognized by the ECJ in the *Lehtonen case* – unilateral breaches of contract are only possible at the end of a season;
- to the same end, a player who breaches his contract during the first or the second year (or during the first year only, in the case of a player who signed his contract after he turned 28) may be suspended;
- such a suspension cannot be longer than 4 months, unless there is recidivism or lack of notice, in which case the suspension may extend to 6 months;
- unilateral termination may result in financial compensation consistent with the applicable national law, designed to remedy and deter the breach of a contractual obligation.

157. Based on the foregoing, the Commission held that the limitations on unilateral termination introduced by the new FIFA Regulations would help improve the production and distribution of sport entertainment, since they would preserve the integrity of competitions. It stated that the prohibition of unilateral termination of contracts by players or by clubs during the season was essential to achieve the desired results. Should players be free to leave the competition at any given moment, the sporting value of the team during the championship would be significantly impaired, affecting and compromising the clubs and the smooth running of the championship as a whole (para. 56 of the award in *SETCA*).

- **In the present case – contractual stability**

158. It is undisputed that contractual stability is at the centre of the debate.

159. Chelsea claims that the rationale of Article 14.3 is not only to prevent poaching of players but also to ensure that the New Club does not obtain a sporting or financial benefit from acquiring the player's services for free while the original club is left uncompensated following the unjustified breach caused by the player. According to Chelsea, this provision is designed to protect contractual stability by means of a deterrent, namely by ensuring that the parties who benefit from the player's breach – the player himself and his New Club – are not allowed to enjoy that benefit without paying compensation to the player's former club. Chelsea considers that Article 14.3 compels the New Club *"to do the equivalent of what it would otherwise have to do if it wished to secure a player who was properly performing for the term of his playing contract. The compensation is a substitute for the transfer fee that any club has to pay if it wishes to secure a consensual early termination of a player's contract with his club"*.

160. According to the Appellants, Article 14.3 – and FIFA regulations in general – are not meant to protect a club's bad investment. Their purpose *"is to ensure contractual stability, i.e. to avoid players terminating their contracts without cause to move to another club; it is not to compensate a club that has decided to unilaterally terminate a player (for reasons that have nothing to do with the player's intention to quit the club)"*. If Chelsea's contention were followed, players in a situation similar to that of M. would never find a new employer.

161. The Panel observes that none of the three cases of *Bosman*, *Lehtonen, SETCA* involved a contention that joint and several liability could be imposed upon a New Club which hired a player whose contract had already been terminated by his former employer. In this respect, the Panel notes that there is no doubt that the Player was in breach and fully responsible for the circumstances that justified the termination of his employment. That, however, obviously does not mean that he intended that his action would have those consequences, or that (more to the point) the Club did not have a choice in reacting to his breach. In simple terms: the Player was the author of his misfortune, but the Club was not required to terminate his employment if they still valued his services and preferred to hold him to his contract. The Club was entitled, not obliged, to dismiss him. That makes all the difference in terms of assessing the position of his subsequent employer(s) under the FIFA regulations, read in light of their object and purpose.

162. The present case seems one of the first impression. The findings of the ECJ and of the European Commission indicate that the new rules were intended a) to prevent late transfers which *"might be liable to change substantially the sporting strength of one or other team in the course of the championship"* (*Lehtonen* para. 54) and b) to allow a club to build a successful unit and to work with players over a given length of time, without incurring the danger of losing them whenever they receive a better offer from another club *(SETCA para. 57)*. Nor can it be inferred from the above cases that a player who committed an act of misconduct is in a similar position as the player who leaves his employer to join another club. In the present case, the Player tested positive for cocaine and Chelsea decided that the appropriate measure was to end his Employment Contract instead of resorting to other disciplinary measures without the radical financial impact implied by the termination.

163. In such a context, Chelsea's proposed interpretation of Article 14.3 seems difficult to follow as it is Chelsea which chose to sack the Player and, as a consequence, to exclude him from its team. On 28 October 2004, when Chelsea put an end to the Player's Employment Contract, no issue

of contract stability, whose purpose was to safeguard the functioning and regularity of sporting competition, was at stake. As Chelsea took the decision to sever its relationship with the player, it strains logic for the club now to contend that the Appellants somehow enriched themselves by acquiring an asset (the player) which it chose to discard.

164. At the moment it terminated the Employment Contract with the Player, Chelsea's claim was exclusively directed against the Player. Should the Player have never entered into a new employment contract, Chelsea would have never been compensated, given the plain unlikelihood that the Player would never be able to pay the awarded amount (see Chelsea's answer, paras. 6, 44.9 and 49.4). Under these circumstances, the Panel finds it hard to understand how, in the name of contract stability, Chelsea's claim of EUR 17,173,990 against the Player is to be borne jointly and severally by the New Club, which has never expressed a specific agreement in this regard, had nothing to do with the Player's contractual breach, and was not even called to participate in the proceedings, which established the Awarded Compensation.

165. With this in mind, Chelsea's position seems all the more contradictory given that, when it fired the Player, it took the risk of bearing the damage resulting from the contractual breach. Chelsea now advances the inconsistent contention that the integrity of sport and the stability of championships would be endangered if the New Club could obtain a sporting or financial benefit from acquiring the Player's services for free while the original club is left uncompensated. It seems incongruous for Chelsea to try to seek an advantage from the fact that the New Club benefits from the Player's services, whereas Chelsea was no longer interested in his services.

166. If Chelsea had attributed some value to the Player, it would have looked into a possible transfer with another club willing to pay for the Player's services. Obviously, Chelsea chose to follow another path: instead of negotiating the transfer of the Player, whose value was certainly affected by his drug habits and by the fact that Chelsea wanted to prematurely terminate his Employment Contract, Chelsea:

a) decided to fire the Player, who was found to be responsible for the contractual breach on 20 April 2005, by decision of the FAPLAC, confirmed on 15 December 2005 (CAS 2005/A/876), i.e. more than two, and ten months, respectively, after the Player's registration with the Appellants;

b) obtained the confirmation of the Awarded Compensation against the Player, which acquired force of *res judicata* on 10 June 2010, (i.e. almost five years after the Player's registration with the Appellants), following lengthy proceedings in which the Appellants were never called to appear;

c) submitted a petition against the Appellants to the DRC, which held them jointly responsible, together with the Player, for the payment of the Awarded Compensation, with a decision notified on 7 October 2013.

167. The above circumstances call for the following comments:

- In October 2013, more than eight years elapsed since the Appellants registered the Player. If contract stability, integrity of the sport, and the stability of championships had somehow been affected, Chelsea could have corroborated this contention with concrete evidence. It failed to do so.
- For all the reasons already exposed, claims based on contract stability obviously require a certain level of immediacy. In the present case, Chelsea has not established in any manner that it had ever approached the Appellants before it initiated proceedings with the DRC on 15 July 2010.

  According to Chelsea, it was for the Appellants to get in touch with it in order to negotiate all the various terms relating to the acquisition of the Player's services. However, Chelsea does not explain on what basis Livorno or Juventus were required to enter into communication with it, since when the Italian clubs registered the Player the latter was a free agent. Chelsea has never brought to the Appellants' attention that they might be held jointly and severally liable for the Player's contractual misconduct. There appeared to be even less reasons for the Appellants to inquire from Chelsea as to the Player's potential liability and its effects, as they were never contacted in the course of several years and had never been called to participate in the proceedings initiated by Chelsea against the Player before the FAPLAC, FIFA, CAS or the SFT.

168. In these circumstances, Chelsea's conduct appears to have had no other purpose than to increase its chances for greater financial compensation. Its position was particularly comfortable since, when it decided to initiate the proceedings against the Player, the Appellants had already registered him. Instead of immediately approaching Livorno or Juventus, it left them unaware of its ultimate intention until the Awarded Compensation acquired force of *res judicata*. The Panel does not see how Chelsea's posture and strategy could be said to embody the pursuit of contractual stability. In particular, it does not see the connection between the damage being claimed and the interest of protecting legitimate contractual expectations.

- In the present case – the Player's freedom of movement

169. There must be a balance between players' fundamental right to free movement and the principle of stability of contracts, as supported by the legitimate objective of safeguarding the integrity of the sport and the stability of championships.

170. On the facts of this case, it appears unreasonable to assert – as Chelsea does – that, according to Article 14.3, joint liability could be imposed upon a New Club, even in the absence a) of the New Club being proven to have induced the player's breach or b) of the New Club otherwise being at fault, or irrespectively c) of the manner in which the player's employment contract came to an end. It is undisputed that the joint and several liability for compensation (together with disciplinary sanctions if the requirements are met) will discourage any club from inducing a player to breach his contract with a former employer. However, such a deterrent effect has no purpose when a Player was dismissed by his former employer and is left with no other option but to find a new employer. If Chelsea's interpretation were to be followed, it would mean that

Article 14.3 would result in the imposition upon the New Club of an automatic and unconditional liability, without a finding of a fault or negligence and without a contractual basis – and hence without causation. Swiss law does not countenance such a result (SFT 105 II 183 and TEVINI S., *op. cit.*, ad art. 17, n 4, p. 129 and numerous references).

171. Chelsea's response to the above findings is that no club is obliged to become the New Club. For Chelsea, it was Juventus' independent choice to hire the Player, with the underlying obligation to contact Chelsea in order to negotiate all the various terms relating to the acquisition of the Player's services. It is Chelsea's position that *"Each new club [whether it is responsible or not for the breach of the contract] must however, entirely reasonably, pay the price for the player (if he does not pay the compensation) set either by the club choosing simply to become a new club and assume the responsibility for what is awarded in the future, or by the club negotiating with the old club before becoming a new club"*.

172. The Panel finds Chelsea's interpretation of Article 14.3 untenable. If the New Club had to pay compensation even if it is established that it bears no responsibility whatsoever in the breach of the Employment Contract, the player would be hindered from finding a new employer. As a matter of fact, it is not difficult to perceive that no New Club would be prepared to pay a multi-million compensation (or transfer fee), in particular for a player who was fired for gross misconduct, was banned for several months, and suffered drug problems.

173. Chelsea claims that the amount to be paid by the New Club could be assessed through negotiation, just like a transfer fee. The two situations are not comparable:

- In the present case, the Player was dismissed. If negotiations were to be carried out between his former employer and a potential New Club, the Player would not receive any salary, whereas in normal transfer negotiations, the player is bound to the club that is paying his salary. Chelsea's comparison is unconvincing, as it would not have to pay the Player while conducting the negotiations with a potential New Club.
- In the present case, it is only in December 2005 that the Player was found to be responsible for the contractual breach, *i.e.* more than 10 months after his registration with the Appellants and more than a year after his dismissal by Chelsea. Until then, Chelsea's claim against the Player was uncertain and so was its entitlement to request from the New Club the equivalent of a transfer fee. If Chelsea's position were to be upheld, any negotiation would have to wait until a finding is made on whether the termination of the contract by the club was with or without just cause. During this period, no reasonable club would have taken the chance of hiring the Player.
- In the present case, it took almost five years for the Awarded Compensation to acquire force of *res judicata* (against the Player). Before the DRC, Chelsea claimed that its damage was to be determined on the basis of various factors, *"including the wasted costs of acquiring the Player (£ 13,814,000), the cost of replacing the Player (£ 22,661,641), the unearned portion of signing bonus (£ 44,000) and other benefits received by the Player from the Club (£ 3,128,566.03) as well as from his new club, Juventus (unknown), the substantial legal costs that the Club has been forced to incur (£ 391,049.03) and the unquantifiable but undeniable cost in playing terms and in terms of the Club's commercial brand values", but "at least equivalent to the replacement cost of £ 22,661,641"*.

The DRC awarded EUR 17,173,990, whereas CAS found that Chelsea was actually entitled to receive a greater amount, but, under the *ultra petita* principle, refrained from going beyond Chelsea's request for relief (see CAS 2008/A/1644; para. 122, page 32). This confirms that the calculation of the compensation following the breach of contract without just cause is unforeseeable (See CAS 2008/A/1519-1520; para. 89 and VALLONI/WICKI, Compensation in case of breach of contract according to Swiss law, European Sports Law and Policy Bulletin, 1/2011, p. 159). In other words, a New Club would have to take the chance of hiring the Player and accept to be liable for the payment of an amount which is not determinable in advance. This is even more true as the New Club does not have information needed to assess such amount (namely the objective criteria, such as the salary and other benefits to which the player was entitled according to the old contract, the fees and expenses paid by the former club that were amortised over the duration of the contract, and the like).

- In the present case, Chelsea was not under time pressure to conclude a deal with a New Club. It is hardly imaginable that Chelsea would claim GBP 22,661,641 before the DRC and, simultaneously, would be ready to settle with a New Club for a substantially lower amount.

- The higher the compensation claimed the less chances for the Player to find a New Club with sufficient financial resources to consider the possibility of obtaining his services. This will also diminish considerably the Player's chances to find a new employer.

174. It results from the above, that as long as no New Club would reach an agreement with the *old club*, the player would simply not be able to work and make his living. Chelsea's interpretation of Article 14.3 would bring the matter back into pre-*Bosman* times, when transfer fees obstructed the players' freedom of movement. In *Bosman,* it was found that *"rules are likely to restrict the freedom of movement of players who wish to pursue their activity in another Member State by preventing or deterring them from leaving the clubs to which they belong even after the expiry of their contracts of employment with those clubs. Since they provide that a professional footballer may not pursue his activity with a new club established in another Member State unless it has paid his former club a transfer fee agreed upon between the two clubs or determined in accordance with the regulations of the sporting associations, the said rules constitute an obstacle to freedom of movement for workers"* (para. 99 and 100). It can be observed here that the SFT was mindful of *Bosman* as well as of the Player's freedom of movement when it decided to confirm the Awarded Compensation (*"This case is different from the matters which gave rise to the two precedents quoted [i.e. Bosman case and SFT 102 II 211], to the extent that the employees' freedom of movement, invoked by [Mr M.], was not hindered at the end of the employment contract since after his suspension the player found a new employer in Italy, his immediate termination notwithstanding, without the new club having to pay a transfer fee to [Chelsea]"* (SFT 4A_458/2009, at 4.4.3.1).

(vi) Conclusion

175. Chelsea's interpretation of Article 14.3 is overly broad. It goes beyond the objective of protecting contractual stability. If Chelsea's interpretation were accepted, the balance sought by the 2001 RSTP between the players' rights and an efficient transfer system, which responds to the specific needs of football and preserves the regularity and proper functioning of sporting competition would be upset. It is incompatible with the fundamental principle of freedom to

exercise a professional activity and is disproportionate to the protection of the old club's legitimate interests. For the reasons already exposed, if Chelsea's position were to be upheld, New Clubs would be put off employing players carrying a compensation obligation. These players would then end up being permanently deprived of any source of professional revenue.

176. The obvious complication, which would arise if a potential New Club were to absorb the damages possibly assessed against a player sacked because of his misconduct, is considerable. The New Club might face the prospect of having to wait for a long time before knowing the amount due. This would likely have the consequence of freezing the player's prospect on the job market. These effects are so obvious and significant that the failure to regulate them indicates that the author of Article 14.3 did not conceive that the text would apply to a player who had not wanted to leave the *old club*.

177. On the basis of the above considerations, the Panel finds that Article 14.3 does not apply in cases where it was the employer's decision to dismiss with immediate effect a player who, in turn, had no intention to leave the club in order to sign with another club and where the New Club has not committed any fault and/or was not involved in the termination of the employment relationship between the old club and the Player. These findings do not compromise contractual stability, as a player will still be dissuaded from unilaterally breaching his contract (in some other way than terminating it), because he will then face the burden of a potential compensation awarded in favour of his previous club. The prospect of having to pay a high compensation may actually serve as a broader deterrent for players willing to put an end to their employment contracts than if a New Club were to be found jointly and severally liable.

178. Consequently, the Panel decides that the Decision under Appeal must be set aside.

179. The above conclusion makes it unnecessary for the Panel to consider the other requests and submissions presented by the Parties. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by Juventus Football Club S.p.A. on 28 October 2013 against the decision issued by the FIFA Dispute Resolution Chamber on 25 April 2013 is upheld.

2. The appeal filed by A.S. Livorno Calcio on 28 October 2013 against the decision issued by the FIFA Dispute Resolution Chamber on 25 April 2013 is upheld.

3. The decision issued by the FIFA Dispute Resolution Chamber on 25 April 2013 is set aside.

(…)

7. All other motions or prayers for relief are dismissed.