



Arbitration CAS 2012/A/3033 A. v. FC OFI Crete, award of 28 November 2013

Panel: Mr Efraim Barak (Israel), President; Prof. Christian Duve (Germany); Mr Cristian Jura (Romania)

Football

Unilateral termination of an employment contract between a player and a club

Entitlement to compensation

Registration and breach of the employment contract of a minor player as aggravating factors pursuant to the “specificity of sport”

Breach of contract during the protected period aggravating factor pursuant to the “specificity of sport”

Difficulties for a player involved in a contractual dispute to mitigate his damages

1. Article 14 of the FIFA Regulations for the Status and Transfer of Players does not specifically determine that, although he has been found to have just cause to terminate his employment contract, a player is entitled to any compensation for breach of contract by the club. However, a party responsible for and at the origin of the termination of the contract is liable to pay compensation for damages suffered as a consequence of the early termination of the contract. Accordingly, if it is the club that was found to be at the origin of the termination of the employment contract, it is thus liable to pay compensation for damages suffered by the player as a consequence of the early termination, even if it is the player who terminated the employment contract by filing a claim against the club with FIFA.
2. Although a player cannot derive any direct right to compensation for damages from the fact that the club at the origin of the termination of the employment contract registered him in violation of Article 19 of the FIFA Regulations for the Status and Transfer of Players, the fact that the club registered a minor for a period of three football seasons and then breached the employment contract after only seventeen months while the club knew that the player’s family moved with him, should be considered as an aggravating factor to be taken into account in increasing the compensation to be awarded to the player pursuant to the “specificity of sport”.
3. A breach of contract occurring within the protected period should be considered as an aggravating factor to be taken into account in increasing the compensation to be awarded pursuant to the “specificity of sport”.
4. Clubs are generally not particularly interested in signing a player that is involved in a contractual dispute with his former club, as they can be held jointly and severally liable to pay compensation for damages in case the player did not have just cause to terminate his contract prematurely. As a result, a player is prevented from mitigating his damages.

I. PARTIES

1. A. (hereafter referred to as the “Appellant” or the “Player”) is a professional football player of Serbian nationality, born on 21 May 1992. The Player is currently registered with the Moldavian football club FC Sheriff Tiraspol. Previously, the Player was registered with FC OFI Crete.
2. FC OFI Crete (hereafter referred to as the “Respondent” or the “Club”) is a football club with its registered office in Heraklion, Crete, Greece. The Club is registered with the Hellenic Football Association, which in turn is affiliated to the Fédération Internationale de Football Association (hereafter referred to as “FIFA”).

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties, the proceedings before the FIFA Dispute Resolution Chamber (hereafter referred to as the “FIFA DRC”) and the evidence examined in the course of the present appeal proceedings. This background is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.
4. On 18 July 2008, when the Player was sixteen years of age, the Player and the Club concluded an employment contract for three football seasons, valid as from the date of signing until 30 June 2011. On the same date, the Player and the Club concluded a supplementary agreement, which was countersigned by the Player’s father as his legal guardian, valid for the same contractual term as the employment contract, *i.e.* until 30 June 2011.
5. On 1 July 2009, the Player and the Club extended the employment relationship by concluding a new employment contract (hereafter referred to as the “Employment Contract”) for three football seasons, valid as from the date of signing until 30 June 2012. This Employment Contract contains, *inter alia*, the following relevant terms:

“4. Obligations of the Club

- 4.1. *It is hereby stipulated that the monthly fees of the Player – which in any case may not be lower than the monthly salary of an unskilled set out in the National Collective Bargaining Agreement – are set to the amount of 1,000 NET €, paid out to the Player by the Club the latest at the end of each month, twelve months per year.*

Apart from the aforementioned monthly fees, the Club is obligated to pay out to the Player Christmas bonus (the amount thereof being equal to the monthly fees of the Player) and Easter

bonus (the amount thereof being half of the monthly fees of the Player), as well as Holiday benefit (the amount thereof being half of the monthly fees of the Player)”.

4.2. *Bonuses as stated in the internal regulation.*

4.3. *Other benefits*

- 1) *APARTMENT FOR THE PLAYER & HIS FAMILY*
- 2) *TWO (2) MEALS DAILY FOR THE PLAYER”.*

6. On 15 July 2009, the Player and the Club entered into a new supplementary agreement (hereafter referred to as the “Supplementary Agreement”) to the Employment Contract (hereafter jointly referred to as the “Employment Contracts”), valid from 15 July 2009 until 30 June 2012. The Supplementary Agreement determines, *inter alia*, the following:

“3. *The total salary of the player for the duration of this contract is agreed to be Eighty One Thousand Euro (€ 81.000,00) NET. The total amount of Eighty One Thousand Euro (€ 81.000,00) NET will be paid as follows:*

Season 2009 – 2010

- *45.000,00 € NET will be paid in cash upon signing the present agreement.*
- *Twelve equal installments of One Thousand Euro (1.000, 00 €) NET each paid at the end of each month with the first payment due in July 30th 2009 and the last payment due in June 30th 2010.*

Season 2010 – 2011

- *Twelve equal installments of One Thousand Euro (1.000, 00 €) NET each paid at the end of each month with the first payment due in July 30th 2010 and the last payment due in June 30th 2011.*

Season 2011 – 2012

- *Twelve equal installments of One Thousand Euro (1.000, 00 €) NET each paid at the end of each month with the first payment due in July 30th 2011 and the last payment due in June 30th 2012.*

4. *In addition to the above-mentioned payments and bonus and in the duration of this agreement, the CLUB is going to provide the player the following benefits:*

- a) *A furnished three bedroom apartment for the PLAYER and his parents. The rent and the utilities (i.e. electricity heating, etc.) will be paid by the Club while the telephone will be paid by the PLAYER or his family.*
- b) *The CLUB will provide to the player with two (2) meals daily for the duration of the present agreement.*
- c) *The CLUB will make all the necessary actions so that the GUARDIAN will acquire a Work Permit for the duration of the present agreement.*
- d) *The CLUB will make all the necessary actions so that, for the duration of the present agreement, the GUARDIAN will be employed legally with a minimum monthly salary which is at least equal to the salary required by the Greek work-employment legislation. (...)*

8. *MODIFICATIONS*

- a) *This Agreement constitutes the entire understanding between the parties hereto and expressly supersedes any oral or other representations made before. (...)”.*

7. In December 2009, the Player left for holidays.

8. On 22 December 2009, the Player sent a letter to the Club with, *inter alia*, the following content:

“7) There is still the sum outstanding of:

- EUR 45,000 cash, payable on 18/07/09*
- EUR 2,000 bonuses for 2008*

This constitutes a substantial breach of your contractual obligations.

(...) Summing up, we ask your club

(I.) to pay EUR 187,572 by 27/12/09 on the undersigned’s account with (...)

- 1. EUR 47,000 for outstanding cash, installments and bonuses;*
- 2. EUR 100,000 for damages to his professional career;*
- 3. EUR [...] for damages, which he suffered in support of his family, namely [...]; (...).”*

9. According to the Player, he was not allowed to re-enter the country at the Greek boarder upon expiration of his holidays since he and his family were not provided with visa.

III. PROCEEDINGS BEFORE THE FIFA DISPUTE RESOLUTION CHAMBER

10. On 6 January 2010, as the Club allegedly failed to comply with its contractual obligations, the Player lodged a claim with FIFA.

11. On 2 January 2011, the Player entered into an employment contract with the Moldavian football club JSC SC Sheriff (hereafter referred to as “SC Sheriff”). The Player and SC Sheriff concluded an employment contract for a period of 4 years, valid as from the day of signing until 31 December 2014. Pursuant to the employment contract, the Player was entitled to receive USD [...] as a signing-on fee, as well as a monthly salary in the amount of USD [...].

12. On 20 February 2011, the Player amended his request for relief. The Player claimed compensation in the total amount of EUR 284,177 as well as 5% interest as from “*the date of the receipt of the petition*”. Specifically, the Player claimed the following amounts:

“- EUR 143,398 consisting of:

- a) EUR 76,000 for remuneration, including 5% interest of EUR 45,000 from 18/07/2009 for the signing-on fee;*
- b) EUR 6,000 for [bonus payments];*
- c) EUR 31,000 for rental of apartment;*

- d) EUR 9,300 for two meals per day;
 - e) EUR [...] for the guardian's job;
 - EUR 100,000 as partial compensation for damages to his professional career including 5% interest;
 - EUR [...] as compensation for damages until the end of November 2009, which he suffered in support of his family namely EUR [...] for payments to his father [...], EUR [...] for payments concerning travelling costs for his sister [...], and EUR [...] for payments concerning travelling costs for his father [...], his mother [...] and his sister [...] including 5% interest".
13. The Player further requested the imposition of sporting sanctions on the Club for breach of contract, as well as that the procedural costs were to be borne by the Club. In addition, the Player also requested FIFA to declare that both contracts and agreements were terminated by him with just cause and to determine that the Club must provide him with a copy of the medical and life insurance policy contracted as well as the sums paid for pension contributions and social security funds along with their respective names, addresses and pertinent information.
14. The Club rejected the claim, asserting that it allegedly had *"not violated any legal regulation or any clause of its professional contracts with the player"*. Also, the Club asserted that it had *"kept to its agreements and provided the player and his relatives with every facilitation in order to allow him to offer his services undistracted"*. To the contrary, the Club alleged that the Player had breached the Employment Contracts by not returning to the training sessions and not participating in a match held on 3 January 2010 after the Player had been given six days holiday leave as of 22 December 2009. The Club did not provide any further explanations or submissions during the proceedings before the FIFA DRC.
15. On 20 July 2012, the FIFA DRC rendered its decision (hereafter referred to as the "Appealed Decision"), with, *inter alia*, the following operative part:
- "1. The claim of the [Player] is partially accepted.
 - 2. The [Club] has to pay to the [Player], within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of EUR 47,000 plus 5% interest p.a. until the date of effective payment as follows:
 - 5% interest p.a. as from 19 July 2009 over the amount of EUR 45,000;
 - 5% interest p.a. as from 8 January 2010 over the amount of EUR 2,000.
 - 3. The [Club] has to pay to the [Player] within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of EUR 14,000 as well as 5% interest p.a. on said amount as from the date of the decision until the date of effective payment.
- (...)
- 5. Any further claims lodged by the [Player] are rejected".

16. On 26 November 2012, the grounds of the Appealed Decision were communicated to the parties, determining, *inter alia*, the following:
- “[T]he Chamber considered that, in the present case, it is established that the [Club] seriously violated the terms of the relevant employment contract by clearly disrespecting its financial obligations in a substantial way” and decided that “the [Club] was found to be in breach of contract, and, in particular, that this breach of contract had reached such a level that the [Player], who suffered the breach, was entitled to terminate the contract unilaterally.
 - (...) Considering all the facts and arguments (...), the Chamber reached the conclusion that the Claimant terminated the relevant employment contract with just cause at the end of December 2009.
 - (...) As to the amount of outstanding remuneration due to the [Player], the members of the Dispute Resolution Chamber determined that since the [Player] offered his services until the end of December 2009, the Chamber considered the [Player] was to receive the uncontested amount of EUR 47,000 composed of EUR 45,000 as signing-on fee that became due on 15 July 2009, EUR 1,000 as the salary of December 2009 and EUR 1,000 as Christmas Bonus concerning the year 2009.
 - (...) Consequently, the Chamber decided that the [Club] is liable to pay the [Player] the amount of EUR 47,000 as outstanding salary as well as 5% p.a. interests over the amount of EUR 45,000 as from 16 July 2009 and 5% p.a. interest over the amount of EUR 2,000 as from the date of the claim, i.e. 8 January 2010”.
 - In respect of the compensation for the damages suffered by the Player as a consequence of the breach of the Employment Contracts by the Club, the FIFA DRC applied article 17(1) of the FIFA Regulations and considered that “the [Player] requested the remaining value considering the [Employment Contract] and the [Supplementary Agreement], i.e. remuneration and the bonuses due for the remaining contractual period, in the total amount of EUR 28,000”.
 - “In continuation, the Chamber took into account that the [Player] had signed a new employment contract with a Moldavian club, JSC SC Sheriff, valid as of 2 January 2011 until 31 December 2014, being entitled to receive USD [...] as signing-on fee as well as monthly salaries in the amount of USD [...]. In this regard, the members of the DRC highlighted that the remuneration under the new contract was considerably higher than the one established under the [Employment Contract] and the [Supplementary Agreement] at the basis of the dispute.
 - Consequently, on the account of all the abovementioned considerations and the specificities of the case at hand, the Chamber decided that the remaining value of the [Employment Contract] and the [Supplementary Agreement] during the period he remained unemployed, i.e. as from 7 January 2010 until 2 January 2011 corresponding to EUR 14,000, was to be considered reasonable and justified as compensation for the breach of contract by the [Club].
 - Regarding the request for rental fees (EUR 31,000) and meals allowances (EUR 9,300), amounting to EUR 40,300, regarding the residual period of the contract, the DRC, on the one hand, pointed out that the [Employment Contract] and the [Supplementary Agreement] did not establish the amount of the rental fee and of the meal allowance and, on the other hand, that the [Player] did not provide any evidence of

the alleged amounts. In this regard, the members of the Chamber referred to the general legal principle of the burden of proof, according to which a party deriving a right from an alleged fact has the obligation to prove the relevant fact (cf. art. 12 par. 3 of the Procedural Rules). Therefore the DRC held that it could not take into account these amounts as a base for calculation of the compensation due by the [Club] to the [Player].

- *In continuation, the DRC analysed the request of the Claimant corresponding to compensation for damages to his professional career in the amount of EUR 100,000. In this regard, the Chamber deem [sic] it appropriate to point out that the request for said compensation presented by the [Player] had no legal basis nor evidence that demonstrated the damage suffered or its quantity. In this context, the members of the Chamber referred once again to the principle of the burden of proof (cf. art. 12 par. 3 of the Procedural Rules) and recalled that it had already granted a compensation for the breach of contract. On account of the aforementioned, the DRC decided that the request for compensation related to professional damages shall be rejected.*
- *Subsequently, the DRC proceeded to analyse the request of the [Player] in the amount of EUR [...] for the salaries which his father, i.e. his legal guardian, would have earned for the remaining contractual period. The [Player] held that the [Club] was responsible for providing his father with a new job, which it failed to do. In this context, the [Player] alleged that the [Club] has to compensate the father and that the latter allegedly assigned him any claim which he personally may have against the [Club]. In this regard, before entering into the substance of the matter, the DRC acknowledged that the [Player] claims such amount making reference to article 4 c) and d) of the [Employment Contract] (...) that established obligations undertook [sic] by the [Club] regarding the father of the [Player]. In this respect, the DRC made reference to article 6 of the Procedural Rules which establishes that only the members of FIFA, clubs, players, coaches and licensed match and players' agents can be a party before FIFA. In addition, the Chamber highlighted that the [Player] cannot invoke damages regarding obligations undertook [sic] by the [Club] in favour of his father. Therefore, the DRC concluded that the claim for the amount of EUR [...] shall be rejected.*
- *In continuation, the DRC acknowledged the claim for the amount of EUR [...] as compensation for damages he suffered in order to support his family from the beginning of the contractual period until the end of November 2009. The members of the Chamber pointed out that the request for compensation presented by the [Player] had neither contractual basis nor evidence which demonstrated the damage suffered. In this context, the members of the Chamber referred once again to the general legal principle of the burden of proof (cf. art. 12 par. 3 of the Procedural Rules) and emphasized that the compensation for the breach of contract granted sufficed, thus the Claimant could not claim any further compensation. On account of the aforementioned, the DRC decided that the request for compensation related to the damages he suffered to support his family shall be rejected”.*

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

17. On 17 December 2012, the Player filed a Statement of Appeal with the Court of Arbitration for Sport (hereafter referred to as the “CAS”). The Player nominated Prof. Dr Christian Duve, attorney-at-law in Frankfurt am Main, Germany, as arbitrator.
18. On 27 December 2012, the Player filed its Appeal Brief. The Player challenged the Appealed Decision taken by the FIFA DRC on 20 July 2012. In its Appeal Brief, the Player submitted the following requests for relief:

“Beyond the decision of the FIFA Dispute Resolution Chamber appealed against the Appellant requests the following relief:

- EUR 30,000 für [sic] remuneration;
- EUR 5,000 for boni [sic];
- EUR 31,000 for rental of apartment;
- EUR 9,300 for two meals per day;
- EUR [...] for the guardian’s job;
- EUR 50,000 as partial compensation for damages to the Appellant’s professional career;
- EUR [...] as compensation for damages until the end of November 2009, which the Appellant suffered in support of his family, namely EUR [...] for payments to his father [...], EUR [...] for payments to his sister [...], and EUR [...] for payments concerning travelling costs for his father [...], his mother [...] and his sister [...];
- including 5% interest as from the date of the receipt of the petition”.

19. On 4 January 2013, FIFA renounced its right to request its possible intervention pursuant to Article R54 and Article R41.3 of the Code of Sports-related Arbitration (hereafter referred to as the “CAS Code”).
20. On 8 January 2013, the CAS Court Office informed the parties that the Club had failed to nominate an arbitrator within the prescribed deadline and that therefore, in accordance with Article R53 of the CAS Code, the President of the CAS Appeals Arbitration Division, or his Deputy, would proceed with the appointment of an arbitrator *in lieu* of the Club. The President of the CAS Appeals Arbitration Division appointed Dr Cristian Jura, attorney-at-law in Bucharest, Romania, as arbitrator *in lieu* of the Respondent.
21. On 30 January 2013, the CAS Court Office informed the parties that in the absence of any answer filed by the Club, in accordance with Article R55 of the CAS Code, the Panel, once constituted, would be able to nevertheless proceed with the arbitration and deliver an award.
22. On 5 February 2013, the Player sent a letter to the CAS Court Office stating that he agreed with the Panel “*issuing an award based on written submissions*”. The Club did not provide the CAS Court Office with any position in this respect.
23. On 6 February 2013, the CAS Court Office informed the Player that in the event no hearing would take place, his witnesses would not be heard and that if the Player wished that its witnesses would be examined by the Panel that he must ask for a hearing to be held.
24. On 7 February 2013, the Player informed the CAS Court Office that “*[i]f the Panel deems itself to be sufficiently well informed, the Appellant considers that a hearing will not be necessary, Article R57. With this regard the Appellant refers, inter alia, to Exhibit 9, which contains [the Appellant father]’s affidavit of 27/12/2012, according to which the facts relating to the contract and the dispute are well proved*”.

25. On 20 February 2013, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to decide the above-referenced case would be constituted by:
 - Mr Efraim Barak, attorney-at-law in Tel Aviv, Israel, as President;
 - Prof Dr Christian Duve, attorney-at-law in Frankfurt am Main, Germany; and
 - Dr Cristian Jura, attorney-at-law in Bucharest, Romania, as arbitrators
26. On 4 April 2013, following a request from the President of the Panel pursuant to Article R57 of the CAS Code, FIFA provided the CAS Court Office with a copy of its file related to the matter.
27. On 17 June 2013, the CAS Court Office informed the parties of the Panel's decision not to hold a hearing in the present procedure. Also, the parties were invited to sign and return the Order of Procedure enclosed in such correspondence.
28. On 19 June 2013, the Appellant signed and returned the Order of Procedure to the CAS Court Office.
29. On 25 June 2013, the Club was granted an ultimate deadline to provide the CAS Court Office with a signed Order of Procedure and the parties were advised that, should the Club fail to do so, the Panel may nevertheless proceed and deliver an award.
30. On 3 July 2013, the CAS Court Office, on behalf of the Panel, requested the Player to answer certain questions of the Panel and to provide evidence or documents in his possession in order to corroborate his claims.
31. On 10 July 2013, the Player answered the questions posed by the Panel and provided an additional witness statement of his father.
32. The Club has been duly notified of all CAS correspondence, but failed to participate in the present proceedings. The Panel has nonetheless decided to proceed with the arbitration and deliver the present award in accordance with Article R55 of the CAS Code.

V. SUBMISSIONS OF THE PARTIES

33. The following outline of the parties' positions is illustrative only and does not necessarily encompass every contention put forward by the parties. However, the Panel has carefully considered all the submissions made by the parties, even if there is no specific reference to those submissions in the following summary.

A. A. (Appellant)

34. The submissions of the Player, in essence, may be summarized as follows:

- The Player maintains that the Club illegally registered him as a minor and that the Club did not comply with the requirements set out in Article 19 of the FIFA Regulations on the Transfer and Status of Players (hereafter referred to as the “FIFA Regulations”). The Player indicates that although the Player repeatedly requested FIFA to impose sporting sanctions on the Club during the proceedings before the FIFA DRC, no sanctions were imposed on the Club by FIFA. The Player further argues that the fact that FIFA never insisted on the fulfilment of the requirements according to Article 5 of Annex 2 to the FIFA Regulations constitutes, at the least, a violation of the obligation of impartiality with regard to the Player.
- The Player argues that the FIFA Regulations, combined with the delays during the FIFA DRC proceedings, caused considerable damage to the Player. In the Player’s view, since the Club argued that it was the Player who was in breach of the Employment Contracts, any new club which might have been interested in the services of the Player inevitably incurred the risk that it could be jointly liable for the damages if indeed the FIFA DRC would finally decide that the Player was responsible for the breach. The Player maintains that the FIFA DRC violated Article 25(1) of the FIFA Regulations by failing to adjudicate the matter within 60 days of receipt of a valid request. The Player concludes from this *“that there is strong evidence about the impartiality [sic] of the FIFA, respectively its representatives and the Dispute Resolution Chamber”*.
- The Player submits that there are several aggravating circumstances to be taken into account in assessing the breach committed by the Club. The Player argues that he was very talented, but that in spite of his talent, the Club did not fulfil its contractual obligations towards him. Additionally, the Player submits that the Club failed to insure the Player against any health risks or insure his life, or to make payments for the Player’s pension scheme and social security, although the Club was obliged to do so pursuant to Articles 4.5 and 4.6 of the Employment Contract. Since the Club failed to pay, and never disputed that it failed to pay, the Player’s remuneration in the amount of EUR 47,000 and did not assist the Player in obtaining a visa, the Player submits that the Club’s breach of the Employment Contract is evident. The Player further insists that the signing-on fee of the Player’s first employment contract, dated 15 July 2009, remained unpaid for 45 months.
- In light of the above, the Player requests to be awarded compensation in the total amount of EUR 187,177, as set out in his requests for relief, in addition to the amount of EUR 61,000 already awarded by the FIFA DRC.

B. FC OFI Crete (Respondent)

35. The Respondent did not file any written submissions in the proceedings before the CAS in the present appeal arbitration proceedings, despite being invited to do so.

VI. ADMISSIBILITY

36. The appeal was filed within the deadline of 21 days set out in Article 67 (1) FIFA Statutes (2012 edition). The appeal complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

37. It follows that the appeal is admissible.

VII. JURISDICTION

38. The jurisdiction of CAS derives from article 67 (1) FIFA Statutes as it determines that “[a]ppeals against final decisions passed by FIFA’s legal bodies and against decisions passed by Confederations, Members or Leagues shall be lodged with CAS within 21 days of notification of the decision in question” and Article R47 of the CAS Code. The jurisdiction of CAS is further confirmed by the Order of Procedure duly signed by the Appellant. Although the Respondent did not sign the Order of Procedure, it did not submit any defence of lack of jurisdiction of CAS as is required by Article R55 of the CAS Code.

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

VIII. APPLICABLE LAW

40. Article R58 of the CAS Code provides the following:

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

41. The Panel notes that Article 66 (2) FIFA Statutes stipulates the following:

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

42. The Appellant maintains that according to Article R58 of the CAS Code, Swiss law is applicable to the merits taking into account that the parties did not adopt a choice of law clause in the Employment Contract or the Supplementary Agreement. Moreover, the specificity of sport that may be found in the FIFA rules, regulations and by-laws should be applied.

43. The Respondent did not submit any position in this respect.

44. In view of the Appellant’s agreement to the application of the regulations of FIFA and Swiss law and the Respondent’s failure to provide any position regarding the law to be applied to the merits of the dispute, the Panel is satisfied to accept that it shall primarily apply the various regulations of FIFA. Additionally, the Panel will apply Swiss law should the need arise to fill a possible gap in the various regulations of FIFA. Finally, the Panel notes that questions related to the payment of medical insurance, social security and pension contributions could be governed by Greek law, as this is the law of the seat of the Club and the law with the

closest connection to these topics. However, as this issue was not raised by the Respondent and in light of the decision on the merits in respect of these matters, the applicable law in respect of these issue became irrelevant and the Panel will therefore not deal with this issue.

IX. PRELIMINARY ISSUES

A. The scope of the appeal proceedings

45. During the FIFA proceedings, it was in dispute between the parties whether or not the Player had just cause to unilaterally terminate the Employment Contracts with the Club. As FIFA decided that the Player had just cause to terminate the Employment Contracts and since the Club did not file an independent appeal with CAS against the Appealed Decision, the findings of the FIFA DRC regarding this issue became final and binding. As such, for the sake of these proceedings, the fact that the Player terminated the Employment Contracts with just cause and the Club being responsible for the breach is considered undisputed in the present appeal arbitration proceedings.
46. According to the Player's request for relief, the Player is claiming additional amounts "*[b]eyond the decision of the FIFA Dispute Resolution Chamber*". Accordingly, the Panel observes that the Appealed Decision is not contested by the Player as far as the outstanding remuneration amounting to EUR 47,000 plus 5% interest *p.a.* is concerned. As far as the compensation amounting to EUR 14,000 plus 5% interest *p.a.* is concerned, it is not clear whether this amount is contested as such or whether the Player is merely claiming additional damages (see p. 4, 18 of the Appeal Brief).
47. Finally, the Panel observes that the Player filed further requests for relief before the FIFA DRC (see pp. 3-4 of the Appeal Brief, *e.g.* a request to order the Respondent to provide additional information to the Player in regard to his health insurance, pension payments, a request to impose sporting sanctions on Respondent for the breach of contract, etc.). Although these requests were rejected by the FIFA DRC (see p. 12 of the Appealed Decision), the Player did not file these claims before the Panel. Accordingly, these claims are excluded from the scope of these appeal proceedings.

B. The Player's registration as a minor

48. The Panel acknowledges the Player's arguments as to his alleged illegal registration as a minor with the Club. The Player's position in this respect is two-fold: on the one hand the Player demanded action from FIFA in sanctioning the Club for its alleged illegal registration of a minor during the FIFA DRC proceedings and, on the other hand, the Player claims additional compensation for the damages caused as a result of his alleged illegal registration.
49. The Panel cannot adjudicate upon any allegations against FIFA in the present appeal arbitration proceedings; (a) FIFA is not a party to the present proceedings, and (b) such a request was not contained in the request for relief in these proceedings. Insofar as the Player relies on his alleged illegal registration as a minor in order to claim additional compensation

from the Club due to the fact that it caused damages to him and that it was, in turn, one of the reasons that led to the breach of the Employment Contracts by the Club, the Panel will assess this issue together with the legal merits set out below.

C. The delays in the proceedings before the FIFA DRC

50. The Panel further notes the Player's arguments regarding the delays in the proceedings before the FIFA DRC and that this allegedly caused the Player "*additional harm*".
51. This accusation of the Player is also directed at FIFA. However, FIFA is not a party to the present proceedings. As indicated above, the Panel is, therefore, not in a position to adjudicate upon any allegations against FIFA. Insofar as the Player claims additional compensation from the Club because of the delays in the FIFA proceedings, the Player failed to demonstrate how the Club could have contributed to or have caused such delays and, accordingly, on which basis the Club should be held liable for these delays. For this reason, the damages caused by the delays, if any, are not circumstances that can be taken into account by the Panel in its decision whether or not to award an additional amount of compensation to the Player.

X. MERITS

A. The Main Issues

52. The finding of the FIFA DRC in the Appealed Decision according to which the Employment Contracts were terminated by the Appellant at the end of December 2009 is not contested by the Parties and is therefore confirmed by the Panel.
53. In view of the above, the main issues to be resolved by the Panel are:
 - a) Is the amount of outstanding remuneration awarded to the Player by the FIFA DRC correct?
 - b) Is the amount of compensation for breach of the Employment Contracts awarded to the Player by the FIFA DRC correct?
 - c) Is any compensation to be awarded to the Player under the "specificity of sport"?
- a) ***Is the amount of outstanding remuneration awarded to the Player by the FIFA DRC correct?***
54. As reflected in the grounds for the Appealed Decision, the FIFA DRC decided that the Player had just cause to terminate the Employment Contracts as the Club had "*seriously violated the terms of the relevant employment contract by clearly disrespecting its financial obligations in a substantial way*".
55. The FIFA DRC ordered the Club to pay to the Player outstanding remuneration in the amount of EUR 47,000 plus 5% interest *p.a.* until the date of effective payment. Specifically, the FIFA DRC ordered the Club to pay to the Player the outstanding signing-on payment in

the amount of EUR 45,000 plus 5% interest *p.a.* as from 19 July 2009, as well as the outstanding salary for December 2009 and the Christmas bonus for 2009 in the amount of EUR 2,000 plus 5% interest *p.a.* as from 8 January 2010.

56. The Player is now requesting the Panel to award additional outstanding remuneration “*beyond the decision of the FIFA Dispute Resolution Chamber*”. Accordingly, the Panel will assess whether this amount is correct or should be amended in light of its *de novo* competence pursuant to Article R57 of the CAS Code.
57. It remained undisputed throughout the proceedings before the FIFA DRC as well as in the present appeal arbitration proceedings that the Club did not pay the signing-on fee of EUR 45,000 to the Player and that, according to the Supplementary Agreement, this amount fell due “*upon signing the present agreement*”, *i.e.* on 16 July 2009.
58. The Panel notes that at the time the Player filed his claim with FIFA, on 6 January 2010, this signing-on fee had already been unpaid for over five months and that the Player put the Club in default by requesting the payment of the outstanding amounts in his letter dated 22 December 2009.
59. The Panel, therefore, has no hesitation in confirming the Appealed Decision that the Player is entitled to a signing-on fee of EUR 45,000 and that the Club shall pay 5% interest *per annum* on this amount.
60. In respect of the interest, the Panel notes a contradiction between the operative part and the reasoning of the Appealed Decision. In the grounds for the Appealed Decision, it is reflected that the signing-on fee of EUR 45,000 fell due on 15 July 2009 and that interest on this amount must be paid as from the first day after the due date, *i.e.* 16 July 2009. Contrarily, the operative part of the Appealed Decision determines that interest must be paid as from 19 July 2009.
61. Although the difference is only three days, the Panel adheres to the reasoning of the Appealed Decision and considers the reference to 19 July 2009 in the operative part to be erroneous. Although the Panel finds that interest on the amount of EUR 45,000 should be paid as from 16 July 2009, because the Appellant did not file a request for relief in this respect, this would constitute a ruling *ultra petita*. As such, the Panel confirms the Appealed Decision in awarding 5% interest over the amount of EUR 45,000 as from 19 July 2009.
62. In continuation, the Panel notes that the FIFA DRC awarded the Player the amount of EUR 2,000 for outstanding salaries, consisting of the Player’s December 2009 salary amounting to EUR 1,000 and the Christmas bonus for 2009 amounting to EUR 1,000.
63. Although the Player did not submit any arguments in this respect, the Panel observes that this is not in line with the content of the Player’s letter to the Club dated 22 December 2009. This letter reflects that the amount of EUR 2,000 concerns “*bonuses for 2008*” under the first additional agreement dated 18 July 2008 and not the Player’s salary of December 2009 and the Christmas bonus for 2009. However, since the Player did not specifically request for these

“bonuses for 2008” to be awarded by CAS, the Panel finds that awarding such bonuses would constitute a ruling *ultra petita*.

64. In respect of the December 2009 salary and the Christmas bonus of 2009, the Panel observes that the Supplementary Agreement determines that the Player’s salaries were to be paid *“at the end of each month with the first payment due in July 30th 2009 and the last payment due in June 30th 2010”*. Consequently, when the Player sent a reminder to the Club requesting it to comply with its contractual obligations on 22 December 2009, these amounts did not yet fall due, as the Club was still entitled to pay these amounts up until the end of the month.
65. However, the December 2009 salary and the 2009 Christmas bonus remained unpaid at the time the Player filed his claim with FIFA on 7 January 2010, whereby the Player implicitly terminated his Employment Contracts with the Club. The Panel adheres to the Appealed Decision and finds that indeed these two payments must be considered as outstanding and, therefore, confirms the Appealed Decision in this respect.
66. Consequently, the Panel confirms the Appealed Decision of the FIFA DRC in deciding that the Club is liable to pay the Player the amount of EUR 47,000 net for the outstanding salary payments. In respect of the interest, the Panel decides that on the amount of EUR 45,000, 5% interest *per annum* should be paid as from 19 July 2009 and that in respect of the Player’s December 2009 salary and 2009 Christmas bonus in the amount of EUR 2,000, 5% interest *per annum* should be paid as from the date following the day on which the Player filed his claim with FIFA, *i.e.* as from 8 January 2010.
- b) *Is the amount of compensation for breach of contract awarded to the Player by the FIFA DRC correct?***
67. Having established that the Club is to be held liable for the early termination of the Employment Contracts, the Panel will now proceed to assess the consequences of the unilateral breach by the Club.
68. The Panel observes that the FIFA DRC awarded the amount of EUR 14,000 to the Player as compensation for the breach of contract by the Club as well as 5% interest *per annum* as from the date of the Appealed Decision until the date of effective payment.
69. In addition to this amount of EUR 14,000 already awarded in the Appealed Decision, in the present appeal the Player requests to be awarded the amount of EUR 187,177 as compensation. The Panel will proceed to separately adjudicate upon the different damage positions accumulating to such amount.
70. The Panel observes that Article 14 of the FIFA Regulations reads as follows:

“A contract may be terminated by either party without consequences of any kind (either payment or compensation or imposition of sporting sanctions) where there is just cause”.

71. Although the Panel has established that the Player had just cause to terminate his Employment Contracts with the Club, this provision does not specifically determine that the Player is entitled to any compensation for breach of contract by the Club.
72. The Panel, however, is satisfied that the Player is, in principle, entitled to compensation because of the breach of the Employment Contracts by the Club. In this respect, the Panel makes reference to the Commentary to the FIFA Regulations on the Status and Transfer of Players (hereafter referred to as the “FIFA Commentary”). According to Article 14 (5), (6) of the FIFA Commentary, a party *“responsible for and at the origin of the termination of the contract is liable to pay compensation for damages suffered as a consequence of the early termination of the contract and sporting sanctions may be imposed”*. Accordingly, although it was the Player who terminated the Employment Contracts by filing a claim against the Club with FIFA, the Club was at the origin of the termination of the Employment Contracts and is thus liable to pay compensation for damages suffered by the Player as a consequence of the early termination.
73. The Panel observes that Article 17 (1) of the FIFA Regulations determines the financial consequences of a premature termination of a contract:

“The following provisions apply if a contract is terminated without just cause:

- 1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annex 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period”.*
74. As the Employment Contracts do not contain any contractual provisions determining the consequences of a possible unilateral breach by one of the signatories, the Panel applies Article 17 of the FIFA Regulations and notes that there is ample jurisprudence of CAS on the issue of breach of contract. The vast majority of this jurisprudence establishes that the purpose of Article 17 of the FIFA Regulations is basically nothing more than to reinforce contractual stability, *i.e.* to strengthen the principle of *pacta sunt servanda* in the world of international football, by acting as a deterrent against unilateral contractual breaches and terminations, be it breaches committed by a club or by a player (CAS 2012/A/2874, §128, CAS 2012/A/2932, §84; CAS 2008/A/1519-1520, §80, with further references to CAS 2005/A/876, p. 17: “[...] it is plain from the text of the FIFA Regulations that they are designed to further ‘contractual stability’ [...]”; CAS 2007/A/1358, §90; CAS 2007/A/1359, §92: “[...] the ultimate rationale of this provision of the FIFA Regulations is to support and foster contractual stability [...]”, confirmed in CAS 2008/A/1568, §6.37).
 75. In respect of the calculation of compensation in accordance with Article 17 of the FIFA Regulations and the application of the principle of “positive interest”, the Panel took note of the explanation thereof by a previous CAS Panel:

“When calculating the compensation due, the judging body will have to establish the damage suffered by the injured party, taking in consideration the circumstances of the single case, the arguments raised by the parties and the evidence produced. Of course, it is the injured party that requests compensation who bears the burden of making, as far as possible, sufficient assertions and who bears as well the burden of proof.

As it is the compensation for the breach or the unjustified termination of a valid contract, the judging authority shall be led by the principle of the so-called positive interest (or “expectation interest”), i.e. it will aim at determining an amount which shall basically put the injured party in the position that the same party would have had if the contract was performed properly, without such contractual violation to occur. This principle is not entirely equal, but is similar to the praetorian concept of in integrum restitution, known in other law systems and that aims at setting the injured party to the original state it would have [had] if no breach had occurred.

The fact that the judging authority when establishing the amount of compensation due has a considerable scope of discretion has been accepted both in doctrine and jurisprudence (cf. CAS 2008/A/1453-1469, N 9.4; CAS 2007/A/1299, N 134; CAS 2006/A/1100, N 8.4.1. In relation to Swiss employment law, see Streiff/von Kaenel, Arbeitsvertrag, Art. 337d N 6, and Staehelin, Zürcher Kommentar, Art. 337d N 11 – both authors with further references; see also Wyler, Droit du travail, 2nd ed., p. 523; see also the decision of the Swiss Federal Tribunal BGE 118 II 312f.) (...).

The principle of the “positive interest” shall apply not only in the event of an unjustified termination or a breach by a player, but also when the party in breach is the club. Accordingly, the judging authority should not satisfy itself in assessing the damage suffered by the player by only calculating the net difference between the remuneration due under the existing contract and a remuneration received by the player from a third party. Rather, the judging authority will have to apply the same degree of diligent and transparent review of all the objective criteria, including the specificity of sport, as foreseen in art. 17 FIFA Regulations” (cf. CAS 2008/A/1519-1520, at §80 et seq.).

76. The Panel finds that the legal framework set out above and the principle of positive interest are also applicable to the present case. Against this background, the Panel will proceed to assess the Player’s objective damages one by one below, before applying its discretion to adjust the total amount of objective damages based on the “specificity of sport” and other objective criteria set out in Article 17 of the FIFA Regulations.
 - 1) *Remuneration and bonus payments*
77. As far as remuneration and bonus payments are concerned, the Player is requesting EUR 30,000 for remuneration and EUR 5,000 for bonus payments.
78. In its Appealed Decision, the FIFA DRC took into account that the Player concluded an employment contract with SC Sheriff on 2 January 2011. Since the Employment Contracts between the Player and the Club were terminated on 7 January 2010, the Player remained unemployed for a few days less than a year. Although the Employment Contracts were supposed to last until 30 June 2012, the FIFA DRC “decided that the remaining value of the [Employment Contract] and the [Supplementary Agreement] during the period he remained

unemployed, i.e. as from 7 January 2010 until 2 January 2011 corresponding to EUR 14,000, was to be considered reasonable and justified as compensation for the breach of contract by the [Club]”.

79. The Player does not agree with these conclusions of the FIFA DRC. The Player maintains that the Club only paid him his salaries until the end of November 2009. Accordingly, his salaries for seven months until the end of June 2010, twelve months until the end of June 2011 and for twelve months until the end of June 2012 (altogether, outstanding salaries for 31 months amounting to EUR 31,000) should be paid to him by the Club. Adding the signing-on fee of EUR 45,000, this amounts to a compensation of EUR 76,000.
80. The Player further argues that *“in para II.26 of the [Appealed Decision] the DRC fixed the outstanding remuneration to € 47,000 consisting of € 45,000 signing-on fee, € 1,000 salary and € 1,000 Christmas bonus. However, taking into account of the fact that the contract terminated at the end of June 2012 the Appellant may claim the payment of € 76,000 for the signing-on fees and salaries until that time in compensation. Additionally, the Appellant may claim € 6,000 as payment for bonuses until that time, additionally in compensation. The amount fixed by the DRC in para. II.26 of the decision appealed against, is too low”.*
81. The Club did not provide any position in this respect.
82. As set out *supra*, the Panel confirmed the Appealed Decision in respect of the signing-on fee, the 2009 December salary and the 2009 Christmas bonus, in the amount of EUR 47,000, as outstanding payments. This amount will therefore not be taken into account in calculating the compensation to be paid by the Club for breaching the Employment Contracts as this would lead to certain amounts being taken into account twice.
83. Considering that the December 2009 salary has already been awarded to the Player as part of the outstanding salaries due to him, the Panel notes that the remaining value of the Employment Contracts at the time of termination is EUR 30,000 (January – June 2010: 6 x EUR 1,000 for the 2009/2010 season and EUR 12,000 for both the 2010/2011 and the 2011/2012 seasons). The total amount of bonuses due during the remaining term of the Employment Contracts at the moment of the breach is EUR 5,000 (Easter and Holiday bonuses for the 2009/2010 season and Christmas, Easter and Holiday bonuses for both the 2010/2011 and the 2011/2012 seasons). Consequently, the total remaining value of the Employment Contracts at the time of breach was EUR 35,000 and this amount corresponds to the requests for relief of the Player. Considering the principle of positive interest, the amount of EUR 35,000 is the total amount of salary and bonuses the Player would have received should the Club not have breached the Employment Contracts. The Panel therefore finds that this is the amount that shall be used as the basis for calculating the total amount of compensation due.
84. The Panel, however, notes that it remained undisputed that on 2 January 2011, the Player concluded a new employment contract with SC Sheriff and that the Player was entitled to receive a monthly salary of USD [...], plus a signing-on bonus of USD [...].

85. The Panel finds that, in principle, the remuneration the Player earned with SC Sheriff during the remaining contractual term of the Employment Contracts should be deducted from the amount the Player would have earned with the Club should the Club have properly performed the Employment Contracts.
86. However, in the present case, the Panel finds that it is not the entire remuneration the Player earned with SC Sheriff which must be taken into account. Rather, only the period the Player had a contractual engagement with SC Sheriff must be excluded from the period over which compensation shall be paid. In this respect, the Panel accepts the view expressed by the Player that he faced difficulties in finding a new club due to the contractual dispute with the Club. As such, the Panel finds it reasonable and fair to award compensation to the Player corresponding to the period the Player remained unemployed.
87. Taking into account that the Player remained unemployed during the period between the contractual termination on 7 January 2010 and the day he concluded an employment contract with SC Sheriff, the Panel follows the approach of the FIFA DRC in its Appealed Decision and finds it just and fair that the Player shall be compensated only for this period. Accordingly, the Player shall be compensated with twelve months' salary (EUR 12,000) and with the Christmas (EUR 1,000), Easter (EUR 500) and Holiday (EUR 500) bonuses that normally should have been paid by the Club during this period, *i.e.* a total compensation of EUR 14,000 net.
88. According to the Player's requests for relief, the Player also requested 5% interest as from the date of receipt of the petition, *i.e.* the Player's claim before FIFA DRC. The Panel should therefore briefly assess whether this request should be satisfied. In this regard, the Panel notes that FIFA DRC decided that the Respondent is liable to pay to the Player the total amount of EUR 14,000 as compensation. However, 5% interest was granted "*as from the date of the decision, i.e. 20 July 2012, until the date of effective payment*" as opposed to the date of filing of the petition.
89. The Panel observes that article 73 of the Swiss Code of Obligations (hereafter referred to as the "SCO") provides as follows:

"Where an obligation involves the payment of interest but the rate is not set by contract, law or custom, interest is payable at the rate of 5% per annum".
90. Based on the above article and given the circumstances of this case, the Panel finds that indeed over the amount of compensation interest at a rate of 5% *per annum* shall be awarded, as was already determined by the FIFA DRC. However, the Panel finds that the FIFA DRC erred in establishing that the interest should be calculated as from the date of the Appealed Decision. The date of the Appealed Decision is an arbitrary date on which indeed the Player was declared entitled to this amount, however, in this case the entitlement existed already at the moment of the termination of the Employment Contracts with just cause (see also article 102(2) SCO) and therefore the Player is entitled to interest as of that moment, which took place before the Player filed the petition. However, as the Player himself requested that interest should be calculated as of the date following the date of the filing of the petition to FIFA, the Panel so orders.

2) *Rental fees of the apartment and meals allowance*

91. As far as rental fees and meals are concerned, the Player is requesting EUR 31,000 for rental of an apartment and EUR 9,300 for two meals per day.
92. The FIFA DRC rejected the Player's request for rental fees (EUR 31,000) and meals allowance (EUR 9,300) because, on the one hand, the FIFA DRC pointed out that *"the [Employment Contract] and the [Supplementary Agreement] did not establish the amount of the rental fee and of the meal allowance and, on the other hand, that the [Player] did not provide any evidence of the alleged amounts. In this regard, the members of the Chamber referred to the general legal principle of the burden of proof, according to which a party deriving a right from an alleged fact has the obligation to prove the relevant fact (cf. Art. 12 par. 3 of the Procedural Rules). Therefore the DRC held that it could not take into account these amounts as a base for calculation of the compensation due by the [Club] to the [Player]"*.
93. The Player is however of the opinion that, contrary to the relevant provisions in the Employment Contracts, *"the Respondent refrained from the rental of a three bedroom apartment for the benefit of the Appellant, in spite of the fact that the Guardian of the Appellant had consistently requested that the Respondent should fulfil this contractual obligation"*. The Player does not agree with the stance of the FIFA DRC that he did not submit any evidence with regard to the rental fee. The Player maintains that he informed FIFA in his submissions that *"any facts can also be proven by oral evidence of the witnesses Mr. [Appellant's father], Ms. [Appellant's mother] and Ms. [Appellant's sister], which should be heard"*. According to Article 12 (1) of the FIFA Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber (hereafter referred to as the "FIFA Procedural Rules") evidence consists, *inter alia*, of witness testimony. According to the Player, it is, therefore, inconceivable as to why the FIFA DRC did not take the Player's offer into consideration to hear the above-mentioned persons as witnesses. It is also surprising that the FIFA DRC asserted that the Player failed to prove the alleged facts, because the Respondent had not contested these facts. The Player argues that the Club did not contest these facts has to be interpreted as an acceptance of their truth pursuant to Article 9 (3) of the FIFA Procedural Rules.
94. The Player also makes reference to an exhibit to his appeal brief based on which he maintains that *"a mere 3-room apartment in Heraklion costs a rent of € 1,100 per month. A 3-bedroom apartment will be at least € 300 more expensive"*. In breach of its obligations, the Club did not rent the apartment from July 2008 onwards. Accordingly, the Player finds that the Club is liable to pay damages to him for a time period of five months in 2008, twelve months in 2009, twelve months in 2010 and two months in 2011, because the Player could not find a new job before 2011. Accordingly, the Player claims the amount of EUR 31,000 as damages for the breach of his contractual obligations concerning the rental fee for a total time period of 31 months.
95. In respect of the meals, the Player argues that the Club did not provide him with costs reimbursement for two meals a day during the entire contractual period, even though the Player had requested that the Club should fulfil its contractual obligations from the beginning of the working relationship. The Player again pointed out that he had offered the taking of evidence by witnesses for any relevant facts in his petition. In addition, the Player argues that

it is obvious that meals for high-performing sportsmen are expensive. Accordingly, such meals will cost at least EUR 10 per day and an average of at least EUR 300 per month.

96. Accordingly, the Player finds that the FIFA DRC, instead of referring to the rule on the burden of proof, should have interrogated the witnesses in case it had any doubt about the facts, which were not contested by the Club. The Player finds that the Club is liable to pay these damages for a period of 31 months beginning from July 2008 onwards, leading to a claim in the total amount of EUR 9,300.
97. The Club did not submit any position in respect of these two issues.
98. The Panel finds that whether or not the FIFA DRC should have heard the witnesses can be left unanswered as this procedural flaw, if any, can be cured by CAS in the present appeal proceedings. It is consistent jurisprudence of CAS that the *de novo* rule of Article R57 of the CAS Code is intended to address and cure “any procedural defect” that occurs at the initial stage (CAS 2007/A/1396 & 1402, §43, with further references to CAS 2006/A/1177; CAS 2008/A/1594, §109: “*However, as CAS has complete power to review the facts and the law and to rule the case de novo, the procedural deficiencies which affected the procedures before FILA disciplinary bodies may be cured by virtue of the present arbitration proceedings*”, with further references to CAS 2006/A/1175, §§61 and 62, CAS 2006/A/1153, §53, CAS 2003/O/486, §50).
99. The Panel observes that the Player called his father, his mother and his sister as witnesses, but that only a witness statement of the father was enclosed in the appeal brief, in which the father solely confirmed that “[t]he facts and factual issues stated in this [appeal brief] are true insofar they concern the contractual relationship and the dispute between my son, A., and the Greek club OFI Crete”.
100. By means of a letter dated 3 July 2013, the Panel requested the Player to provide any evidence or documents in his possession indicating that he rented an apartment during the period in which he was playing with the Club, as well as supporting his claims for damages for the breach of the contractual obligation concerning the rental fee for a period of 31 months. Finally, the Player was also requested to provide a copy of the lease/rent agreement as well as receipts for the rent payments.
101. On 10 July 2013, the Player answered the questions posed by the Panel. By means of this letter, corroborated by an additional witness statement of the Player’s father, the Player maintained that he could not rent an apartment during the period he worked for the Club “because he was not a lawful resident in Greece. This was due to the fact that the [Player] did not have a valid visa, a valid work permit and a valid residence permit. For these reasons the Player has no evidence that he alone or with his Custodian or Legal Guardian rented an apartment during the period he played in Greece, and there was no lease agreement or receipts for payment. (...) The [Club] hosted them “for the time being” in a flat, which may have belonged to a person of the [Club’s] administration. This flat was at a distance of some 10 km from the [Club’s] premises where the [Player] had to turn up for training and playing. For these reasons, the [Player] had to take a taxi to travel from that place to the club’s grounds and back, often twice a day, since the training took place in the morning and in the afternoon. The [Player] could not cook, and therefore he had to use restaurants. Accordingly, most of his money was spent on costs of taxis and restaurants”.

102. In view of the above statements, the Panel is not satisfied that the Player incurred any damages in respect of rental fees. From the Player's statements in his letter dated 10 July 2013, it appears that "[t]he [Club] hosted them 'for the time being' in a flat, which may have belonged to a person of the [Club's] administration". As such, apparently, the Player did not incur any costs by having to pay for an apartment himself. The Panel finds that it has not been established by the Player that the Club violated article 4(a) of the Supplementary Agreement, *i.e.* the Player did not convince the Panel that the Club did not provide him with "[a] furnished three bedroom apartment for the PLAYER and his parents". There was no contractual obligation for the Club to provide the Player with an apartment close to the premises of the Club. In addition, the Supplementary Agreement also does not indicate a minimum value of the apartment to be provided by the Club. In the absence of any additional evidence which could establish the Player's request and especially due to the fact that the Player did not provide any evidence for rent fees that he actually paid, the Panel finds that the Player did not meet his burden of proof in respect of the rental fees.
103. Consequently, the Player's request to be compensated for rental fees is dismissed.
104. In respect of the meals allowance, based on the evidence provided to it, the Panel is satisfied that the Player incurred certain damages. Corroborated by the witness statements of the Player's father, the Panel accepts that the Club failed to "provide to the player with two (2) meals daily for the duration of the present agreement", as was required by article 4(b) of the Supplementary Agreement. In this respect, considering the quantity of meals and the small amounts spent, it cannot be required from the Player to submit documentary evidence to establish that he indeed paid for such meals himself.
105. However, since a subsequent Employment Contract and Supplementary Agreement with the Club were signed at the beginning of the 2009/2010 season, without the Player having protested or raising any complaints in respect of these unpaid amounts, the Panel, in majority, is satisfied that the Player waived any claims he might have had based on the initial Employment Contracts. Hence, the Player cannot be compensated for meals over the 2008/2009 season.
106. Furthermore, the Panel, in majority, is of the opinion that the entitlement for the meal allowance is directly related to the actual need to cover the costs of the meals – if not provided by the Club – while the Player was actually playing for the Club and thus this right existed as long as the subsequent Employment Contract was valid, *i.e.* until the end of December 2009. Therefore, and because the Player was not allowed to re-enter to Greece and thus terminated the Employment Contracts with just cause at the end of December 2009, the Player is not entitled to be compensated for this allowance which became irrelevant after the termination of the Employment Contracts. Nevertheless, the Panel may take this element in consideration when dealing and deciding the issue of the compensation under the specificity of sport.
107. Thus, the only period during which the Player was entitled to receive two meals allowances per day from the Club was from July 2009 (when the subsequent Employment Contracts were signed) until the end of December 2009 (when the Employment Contracts were terminated),

i.e. for a period of six months. Accordingly, the Panel, in majority, is satisfied that the Player incurred damages of EUR 300 per month for a period of six months, *i.e.* EUR 1,800. Based on the reasons explained in §90 *supra*, over this amount interest of 5% *per annum* shall accrue as of the date following the date of the filing of the petition with FIFA.

3) *Salary for the Player's legal guardian*

108. As far as compensation for the guardian's job is concerned, the Player is requesting EUR [...].

109. The FIFA DRC decided to reject the Player's claim for compensation in relation to the Club's contractual obligation to provide the Player's father with employment. The FIFA DRC made reference to article 6 of the FIFA Procedural Rules establishing that *"only the members of FIFA, clubs, players, coaches and licensed match and players' agents can be a party before FIFA. In addition, the Chamber highlighted that the [Player] cannot invoke damages regarding obligations undertook [sic] by the [Club] in favour of his father. Therefore, the DRC concluded that the claim for the amount of EUR 21,098 shall be rejected"*.

110. The Player does not agree with this decision and refers the Panel to Article 112 SCO. The Player maintains that *"according to Swiss law, the third person does not become a party to the contract. Accordingly, the Player remains authorised to claim the performance from the Respondent. Based upon the assignment between the Guardian (third person) and the Appellant for the Appellant's benefit, the Appellant is authorised to claim the payments based on the Respondent's violation of Clause 4.c) and 4.d) of the Agreements of 18/07/2008 and 15/07/2009 to himself"*. The FIFA DRC's assumption that the relevant obligations were undertaken only with regard to the father does not correspond to the text of the Supplementary Agreement, which clearly states that these obligations are undertaken towards the Player. The Player finds his claim for the salary of his guardian amounting to EUR [...] well founded.

111. The Club did not forward any position in this respect.

112. The Panel notes that article 112 of the SCO, in an unofficial translation, provides that:

- "1. A person who, acting in his own name, has entered into a contract whereby performance is due to a third party is entitled to compel performance for the benefit of said third party.*
- 2. The third party or his legal successors have the right to compel performance where that was the intention of the contracting parties or is the customary practice.*
- 3. In this case the obligee may no longer release the obligor from his obligations once the third party has notified the obligor of his intention to exercise that right"*.

113. Article 19 of the FIFA Regulations determines as follows:

- "1. International transfers of players are only permitted if the player is over the age of 18.*
- 2. The following three exceptions to this rule apply:*

a) *The player's parents move to the country in which the new club is located for reasons not linked to football. (...)*".

114. In the opinion of the Panel, it derives from Article 4(c) and (d) of the Supplementary Agreement, the content of which is identical to Article 4(c) and (d) of the supplementary agreement to the employment contract concluded on 18 July 2008, that the Player's father followed the Player, who was sixteen years of age at that time, to Greece because of his football career. The Player's father did not move to Greece for "*reasons not linked to football*". This conclusion is further supported by the Player's statement in his appeal brief that "[b]ased on these contractual promises the Guardian had given up his work in Serbia and left his country with his wife and their daughter".
 115. The Panel finds that the registration of minors is an undesirable practice in the world of football and should be prevented. Such transfers violate the principles enshrined in the FIFA Regulations. As such, the majority of the Panel is of the opinion that neither a club, nor a player, should be able to derive any right from such illegal registration.
 116. For the avoidance of doubt, the Panel wishes to emphasise that this is not a declaration that the Club violated the FIFA Regulations by illegally registering a minor player. This would have to be determined by the competent bodies of FIFA. However, the majority of the Panel finds that because the Player himself argued that he was illegally registered as a minor by the Club, and because the Player himself (and his guardians) by signing employment contracts with the Club was or should have been aware to the fact that such agreements contradict the FIFA Regulations, he cannot derive any rights from a provision that, assuming the Player's registration was indeed illegal, would clearly contradict the FIFA Regulations.
 117. Consequently, the Panel decides that no compensation is awarded to the Player for this reason.
- 4) *Damages to the Player's professional career*
118. As far as compensation for damages to the Appellant's professional career is concerned, the Player is requesting EUR 50,000.
 119. The FIFA DRC found the Player's claim for EUR 100,000 as partial compensation for the damages to his professional career "*had no legal basis nor evidence that demonstrated the damage suffered or its quantity*".
 120. In the present appeal arbitration proceedings, the Player reiterates his claim for damages to his professional career. However, the Player reduced his claim in the present appeal arbitration proceedings to the amount of EUR 50,000.
 121. The Player refers to CAS 2008/A/1447 and maintains that based on this jurisprudence of CAS such a claim for damages can be based on articles 97, 337b and 337c of the SCO, the latter provision being applied by way of analogy. The Player maintains that the "*unfair conduct of*

the [Club] after his breach of the contract caused an increased harm to the Appellant. The specificity of the sport consists particularly in the free movement of players but also the football as a market. The [Club], who asserted in his letter to the FIFA of 01/10/2010, that he did not commit a breach of contract but that instead the [Player] was in breach of contract, damaged additionally the [Player's] position in the market".

122. The Player confirms that he currently earns a monthly salary of USD [...] and that he received a single signing-on fee of USD [...] from SC Sheriff, but he maintains that he does not receive bonuses and that he is not entitled to a three bedroom apartment and two meals per day. Accordingly, the Player finds that the FIFA DRC's assumption that the Player's remuneration with the new club is "*considerably higher than the one established under the [Employment Contracts] at the basis of the dispute*" is wrong.
123. The Club did not submit any position in this respect.
124. The evidence adduced by the Player that the breach of contract by the Club caused damages to his professional career does not convince the Panel. It is not clear to the Panel how the Player calculated his claim for EUR 50,000 and why this amount should be awarded as compensation. In this respect, the Panel adheres to the considerations of the FIFA DRC in its Appealed Decision and finds that the Player failed to substantiate this request for relief.
125. One year after the breach of contract by the Club, the Player signed an employment contract with a substantially higher salary with SC Sheriff on 2 January 2011. Although it may be true that under this new contract the Player was not entitled to bonuses, an apartment and meals, taking into account these extra expenses of the Player, the Panel is not convinced that his total income is lower with SC Sheriff than it was with the Club. As such, the Player failed to substantiate his damages.
126. Consequently, as the Player did not convince the Panel that his career directly suffered from the breach of contract, no compensation is awarded to the Player for this reason. However, the Panel will take this factor into account in assessing whether the total amount of compensation based on the objective damages incurred by the Player should be amended in light of its discretion based on the specificity of sport mentioned in Article 17 of the FIFA Regulations.

5) *Damages caused in relation with insurance and pension schemes*

127. The Player submits that "*the [Club] "saved" these payments of monthly € 700, which the [Player] was due, at least for the time from 01/07/2008 onwards during 31 months. Accordingly, the [Player] claims damages at the amount of € 21,700 for the loss of health insurance payments, life insurance payments and payments to social pension schemes and social security payments*".
128. The Panel notes the Player's observation that the Club "saved" these expenses. The Panel finds that the mere fact that the Club saved certain expenses does not necessarily mean that the Player incurred extra costs. Insofar as the Player claims damages because the Club failed to conclude medical insurance, life insurance, social pension schemes or make social security payments, the Panel finds that these claims cannot be accepted in the absence of any proof of

additional costs incurred by the Player. The Panel finds that awarding the compensation claimed would contravene the principle of positive interest recalled *supra*.

129. As such, no compensation is awarded to the Player for the Club's failure to pay the Player's insurance and pension schemes. However, again, the Panel considers this to be a factor that shall be taken into account in assessing whether the total amount of compensation based on the objective damages incurred by the Player should be amended in light of the specificity of sport referred to in Article 17 of the FIFA Regulations.

6) *Damages incurred by the Player because of supporting his family*

130. According to the requests for relief, the Player is claiming EUR [...] as compensation for damages until the end of November 2009, which the Appellant suffered in support of his family, namely EUR [...] for payment to his father [...], EUR [...] for payments to his sister [...], and EUR [...] for payments concerning travelling costs for his father [...], his mother [...] and his sister [...].
131. In respect of the Player's claim for damages incurred by supporting his family, the FIFA DRC considered that the Player's claim *"had neither contractual basis nor evidence which demonstrated the damage suffered"*.
132. The Player maintains that *"[b]ased on the individual circumstances of the case it is clear that the [Club] is also liable to pay to the [Player] damages, which he suffered in support of his family at an amount of € [...] (...). The specificity of sport, in particular the principle of the protection of minors as recognized in Article 19 of the [FIFA Regulations] (...) require that in the circumstances of the particular case the minor should be accompanied by his family"*. Because the Club failed to provide the Player's father with a job, the Player *"was the only person in the family who earned money. Due to the difficult economic situation in Serbia and the [Player's] difficult position in Greece the Guardian and the other members of the family could not simply return to Serbia. They had to rely on the financial support by the [Player] in order to remain and continue to support him"*.
133. The Panel finds on majority that the Player's interpretation of Article 19 of the FIFA Regulations is incorrect. The provision merely prohibits the registration of a minor with a foreign club, unless the family of the player moves to another country for reasons not related to football and the Player subsequently, after the family's move, signs a contract with a club. The article clearly does not deal with any consequences deriving from a situation under which the parties, as is the case here, breached this rule. For sure there can be no justification to allow a player and his family to benefit from such breach of the rule by asking FIFA or any other adjudicating panel to issue an award that may give an incentive for players and clubs to breach the rule. Any such interpretation will be clearly against the basic spirit and rationale of Article 19 and thus should be denied.
134. Accordingly, there was no obligation for the family to stay together with the Player; it was merely a choice. Although it was very understandable, this choice does not correspond to the spirit and purpose of Article 19 of the FIFA Regulations and the expenses related to the stay of the Player's family in Greece cannot be directly attributed to the Club.

135. Furthermore, insofar as the Player's claim relies on the Club's failure to find employment for the Player's father, this argument must be rejected as this has already been decided *supra*.
136. Consequently, the Player's claim for damages incurred because of supporting his family is rejected. However, again, the Panel considers this to be a factor that shall be taken into account in assessing whether the total amount of compensation based on the objective damages incurred by the Player should be amended in light of the Panel's discretion pursuant to the specificity of sport referred to in article 17 of the FIFA Regulations.

Conclusion

137. In light of the above, the Panel partially overturns the Appealed Decision and awards a net amount of EUR 15,800 to the Player as compensation for the damages incurred by him as a result of the breach of the Employment Contracts by the Club, with 5% interest *per annum* accruing as of the date following the date of the filing of the petition with FIFA.

c) *Is any compensation to be awarded to the Player under the "specificity of sport"?*

138. In the developments above, the Panel considered all objective damages incurred by the Player. Below, the Panel will assess whether there are any reasons that should lead the Panel to decide that such amount should be amended in light of the Panel's discretion in adjusting such amount pursuant to the "specificity of sport" enshrined in article 17 of the FIFA Regulations.
139. The notion of the "specificity of sport" has been commented upon and interpreted in CAS jurisprudence. The Panel adheres to the views expressed in the following two arbitral awards:

"(...) the specific circumstances of a case may lead a Panel to increase the amount of compensation, by letting itself inspire, mutatis mutandis, by the concept of fair and just indemnity foreseen in the art. 337c para. 3 and art. 337d para. 1 Swiss Code of Obligations, without applying the strict quantitative limits foreseen in such rules. (...)" (CAS 2008/A/1519-1520, § 156).

"(...) The criterion of specificity of sport shall be used by a Panel to verify that the solution reached is just and fair not only under a strict civil (or common) law point of view, but also taking into due consideration the specific nature and needs of the football world (and of the parties being stakeholders in such world) and reaching therefore a decision which can be recognised as being an appropriate evaluation of the interests at stake, and does so fit in the landscape of international football" (CAS 2007/A/1358, § 40 of abstract published by CAS).

140. The Panel will therefore assess whether it feels the objective amount of damages of EUR 15,800 is just and fair or whether this amount should be reduced or increased in light of the "specificity of sport".
141. The Panel considers that the Player's claims in respect of the alleged damages to his professional career, the damages caused in relation to the pension and social security schemes, and the damages incurred by the Player in supporting his family are not objectively

quantifiable, but are aggravating factors that should be taken into account in increasing the compensation to be awarded to the Player.

142. In addition, the fact that the Club registered a minor of sixteen years of age for a period of three football seasons and then breached the Employment Contracts after only seventeen months while the Club knew that the Player's family moved with him to Greece, should be considered as an aggravating factor.
143. Furthermore, the Club's failure to pay the Player his signing-on fee of EUR 45,000 from the beginning of the contractual engagement, the Club's failure to take the necessary arrangements in order for the Player to obtain a valid visa or any other kind of residence permit and the Club's awareness of the fact that the Player's family largely relied on the Player's income should be taken into account as aggravating circumstances.
144. The Panel also takes into account that the breach of contract occurred within the protected period, *i.e.* "*within a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional (...)*" (cf. Definition of "protected period" in the FIFA Regulations).
145. Lastly, the Panel considers the Player's argumentation as to the fact that a player involved in a contractual dispute regarding breach of contract normally encounters difficulties in finding a new club, especially if the respective proceedings are still pending. If a player signed a contract with a new club and FIFA or CAS finally decided that the player did not have just cause to terminate his contract prematurely, the new club would be jointly and severally liable. For this reason, clubs are generally not particularly interested in signing a player that is involved in a contractual dispute with his former club. As a result, a player is prevented from mitigating his damages.
146. Taking into account these multiple and severe aggravating circumstances and in the absence of any answer from the Club, the Panel finds it fair to award an additional compensation to the Player of one year salary, *i.e.* EUR 12,000 net, plus interest of 5% *per annum* accruing as of the date of issuance of the present award.

B. General Conclusion

147. Based on the aforementioned, and after taking due consideration of the regulations applicable to the event and all the evidence produced and all arguments submitted, the Panel finds that:
 - a) The Club is liable to pay to the Player the amount of EUR 47,000 net as outstanding salary as well as 5% interest *p.a.* on the amount of EUR 45,000 as from 19 July 2009 and 5% interest *p.a.* on the amount of EUR 2,000 as from the date the Player submitted his claim with FIFA, *i.e.* 8 January 2010.
 - b) The Club is liable to pay to the Player the net amount of EUR 15,800 as compensation for the breach of contract by the Club as well as 5% interest *p.a.* on the amount of EUR

15,800 as from 8 January 2010 and 5% interest *p.a.* on the amount of EUR 12,000 as from the date of issuance of the present arbitral award.

- c) In light of the aggravating circumstances of the breach by the Club and the “specificity of sport”, the Player is entitled to an additional amount of compensation equal to one year salary under the Employment Contracts, *i.e.* EUR 12,000 net.

148. Consequently, the Panel partially upholds the appeal. Any other prayers and requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by A. on 17 December 2012 against the Decision issued on 20 July 2012 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is partially upheld.
 2. The Decision issued on 20 July 2012 by the Dispute Resolution Chamber of the Fédération Internationale de Football Association is set aside.
 3. FC OFI Crete is ordered to pay to A. the amount of EUR 47,000 net (forty-seven thousand Euro) for outstanding payments owed by FC OFI Crete to A., with interest accruing as follows:
 - a) 5% interest *p.a.* as of 19 July 2009 on the amount of EUR 45,000;
 - b) 5% interest *p.a.* as of 8 January 2010 on the amount of EUR 2,000.
 4. FC OFI Crete is ordered to pay to A. the amount of EUR 27,800 (twenty-seven thousand eight hundred Euro) net as compensation for the unilateral breach of contract by FC OFI Crete, with interest accruing follows:
 - a) 5% interest *p.a.* as of 8 January 2010 on the amount of EUR 15,800;
 - b) 5% interest *p.a.* as of the date of issuance of the present award on the amount of EUR 12,000.
- (...)
7. All other motions or prayers for relief are dismissed.