



**Arbitration CAS 2007/A/1273 Trabzonspor SK v. Fédération Internationale de Football Association (FIFA) & Sporting Clube de Portugal, award of 28 April 2008**

Panel: Mr Stuart McInnes (United Kingdom), President; Mr Lucas Anderes (Switzerland); Prof. Massimo Coccia (Italy)

*Football*

*Compensation for training and development*

*Jurisdiction of the Single Judge of the FIFA PSC*

*Deadline and conditions to submit a claim for compensation*

*Application of domestic or foreign mandatory rules by the arbitration tribunal*

*Material public policy and mandatory rules to be applied ex officio by the arbitration tribunal*

*Article 27 para. 2 CC as a rule of international public policy*

*Compatibility of the system of compensation for training and development with Article 27 para. 2 CC*

1. There is a constant, continuous and uniform practice within FIFA that the Single Judge of the Players' Status Committee (PSC) issues an important number of decisions. This practice has to be considered as customary according to the Swiss case law, from which it results that, within an association incorporated under Swiss Law, a body not provided in the bylaws of this association may, in certain circumstances, be recognized as having customary jurisdiction. The customary jurisdiction of the Single Judge of the PSC is furthermore reinforced by the adoption of a written legal basis expressly providing for the competence of the Single Judge, as of 1st July 2005.
2. Regulations of FIFA do not specify which particular steps would have to be taken in order for a claim to be submitted in due time. Accordingly, the Regulations are to be given a broad interpretation so that any communication to FIFA seeking a decision on the amount of the compensation is sufficient to comply with the condition of Article 16 para. 6 of the 1994 FIFA Regulations on the Status and Transfer of Players (RSTP 1994).
3. The freedom provided for in Article 187 of the Swiss Private International Law Statutes (PILS) allows the parties to derogate from mandatory provisions of Swiss law, even if Swiss law is referred to as *lex causae* and shall apply additionally. However, the public policy rules prevail over this freedom and arbitrators will in principle apply the public policy rules or mandatory rules of the *lex causae* without reservation.
4. It is necessary to allow the application of mandatory laws where this is justified by a sufficient interest, also in cases where these rules do not constitute a rule of "*truly international public policy*". The concept of material public policy in the case law of the Federal Tribunal on the action of annulment of an award, in application of Article 190 para. 2 lit. e PILS, is different from the concept of mandatory rules to be applied *ex officio* by the Arbitral Tribunal. One should thus differentiate between the rules of "*truly*

*international public policy*” and the rules which can be considered as being of international public policy when determining the applicable rules of law to decide the case, in the sense of Article 187 para. 1 PILS.

5. Article 27 para. 2 of the Swiss Civil Code (CC) is not only a domestic mandatory rule, but has to be construed as a rule of public policy to be applied not only to internal but also to international situations.
6. In the system set up by the FIFA RSTP (1994) and the FIFA RSTP (1997) as regards compensation for training and development, FIFA bodies have absolute discretion to fix the amount of this compensation. In the absence of any provision or guidelines to assess or calculate the amount of this compensation, it is impossible for the new club to make even a rough estimation of what would have to be paid to a player’s former club. As such, the system is especially wide, not predictable and lacks precision and certainty. It thus has to be recognized that this system is problematic as regards the economic independence, protected by Art 27 para. 2 CC, of the different clubs submitted to the FIFA Regulations. A claim for training and compensation against the new club as provided for by Article 14 para. 1 of the RSTP (1994) is contrary to Article 27 para. 2 CC, which has to be applied as a public policy rule of Swiss Law. Consequently, it has to be considered that Article 14 para. 1 of the RSTP (1994) is null and void.

Trabzonspor SK (“Trabzonspor”) is a football club with its registered office in Trabzon, Turkey. It is affiliated to the Turkish Football Federation, which in turn has been affiliated with the Fédération Internationale de Football Association (FIFA) since 1923.

Sporting Clube de Portugal (“Sporting”) is a football club with its registered office in Lisbon, Portugal. It is a member of the Portuguese Football Association, which has been affiliated with FIFA since 1923.

Trabzonspor and Sporting are subject to and bound by the applicable rules and regulations of the FIFA. FIFA is the governing body of international football. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players, worldwide. FIFA is an association established in accordance with Article 60 ff. of the Swiss Civil Code and has its seat in Zurich (Switzerland).

Jean-Jacques Missé Missé (“the Player”) is a Belgian player born in 1968, in Cameroun.

On 1st July 1996, the Player and Sporting signed an employment agreement. This agreement was entered into for a fixed period of time from 1 August 1996 to 31 July 1999. It reads, in pertinent part, as follows:

*“(…) between the Club and the Player is agreed an individual employment contract governed by the following provisions:*

*(…)*

6) *The contract is entered into for the following period of time:*

a) *Fixed term: From 1 August nineteen ninety six (96) to 31 July nineteen ninety nine (99) ...*

*(...)*

*In case of termination without just cause by the Player, the latter shall pay to the employer (Club) an indemnity equivalent to the amount of the remunerations still to be paid at the moment of the termination.*

*For the situations not foreseen in the present contract, the rules of the CCT signed between the National Union of Professional Football Players and the Portuguese League of Professional Football will be applicable.*

*The Parties accept and expressly agree, despite their knowledge of art. 48 of the Collective Agreement for Professional Football Players, the jurisdiction of the Employment Tribunal of Lisbon to resolve any dispute arising out of this contract. (...)"*

In January 1997, Sporting engaged disciplinary proceedings against the Player. These disciplinary proceedings resulted in a decision dated 3 February 1997 in which Sporting decided to suspend the Player without remuneration for sixty days.

The Player has initiated proceedings in front of the Employment Tribunal of Lisbon, requesting for the annulment of the above mentioned decision. The Employment Tribunal of Lisbon however never issued a decision on these proceedings and it seems that the case has been settled.

On 19 May 1997, a second disciplinary proceeding was commenced by Sporting against the Player. In these proceedings, Sporting alleged that the Player missed several training sessions without justification and other breaches of the Player's contractual obligations, such as the presence of his wife in the team hotel during a training period. The aim of these proceedings was to obtain the dismissal of the Player for just cause.

Since September 1996, the Player did not play an official competition for Sporting. The Player also alleged in the several proceedings against Sporting that he had been paid very irregularly and always with delays.

At the end of April 1997, the Player decided to return to Belgium.

On 17 June 1997, at the request of the Player, FIFA decided to authorize the Player to sign a contract with another club.

In its letter authorizing the Player to sign with another club, FIFA expressly reserved the final decisions that the FIFA bodies shall eventually make regarding the early termination of the contractual agreement. In particular, FIFA underlined that the authorization delivered to the Player to sign with another club did not exclude any obligation of the club hiring the Player to pay compensation to Sporting.

On 3 July 1997, Trabzonspor and the Player entered into an employment agreement for a fixed period of time from 1 July 1997 to 30 June 1999.

As Trabzonspor had difficulties in obtaining the International Transfer Certificate, FIFA confirmed in a fax dated 24 July 1997 that the Player had been given authorization to immediately sign with the club of his choice, which obviously meant that the Player must also have the right to start playing for the club of his choice, as soon as he had signed the contract with the same. Considering the problems existing between the Player and Sporting, FIFA declared that the file should be submitted to the FIFA Players' Status Committee at its meeting of 1 September 1997 in Cairo, in order to decide which party may have to pay damages to the other, for non compliance of contractual obligations. In view of the above, FIFA granted the Turkish Football Association the authorization to provisionally register the Player with his club Trabzonspor. At the end of its fax dated 24 July 1997, FIFA pointed out that under Article 14 para. 1 of the FIFA Regulations governing the Status and Transfer of Football Players adopted in 1994 ("RSTP (1994)"), the Turkish club would have to negotiate compensation with the Portuguese Club irrespective of the contractual problems existing between the Player and his former club.

On 9 September 1997, the FIFA Players' Status Committee notified to the Player and to Sporting, through the Portuguese Football Association, a decision, drafted in French, whose operative part reads as follows:

- "1. *Le joueur Missé Missé est libre de toute obligation contractuelle envers le Sporting Club Portugal à partir du 01.07.97.*
2. *Le Club est tenu de verser au joueur Missé Missé la somme de USD 90.861 dans les trente jours à compter de la date de la notification de la présente décision".*

In this decision, the FIFA Players' Status Committee considered that there were no reasons why the application of Article 14 para. of the RSTP (1994) should be excluded in the present case and that this provision might in consequence be invoked by Sporting.

On 29 September 1997, Sporting raised an appeal against the decision of the FIFA Players' Status Committee, requesting the annulment of this decision as regards the payment of an amount as income to the Player. Sporting submitted, amongst other things, that the Portuguese State Courts had exclusive jurisdiction on this point.

On 22 September 1997, Sporting formally declared the immediate termination of the contract with the Player, for just cause.

On 22 September 1997, Sporting sent a fax letter to the managing board of Trabzonspor, declaring that it considered to have the right to receive an amount of USD 1.910.000, "*under Article 14.1 of FIFA Regulations concerning the transfer of football players*".

On 3 December 1997, the FIFA Executive Committee issued a decision, in French, in which it upheld the appeal of Sporting, annulled the decisions taken by the FIFA Players' Status Committee at its meeting of 1 September 1997 regarding the case between Sporting and the Player and transferred the case to the Employment Tribunal of Lisbon.

In its decision, the FIFA Executive Committee considered, amongst other things, that an action was pending in front of the Employment Tribunal of Lisbon, requesting the annulment of the suspension

decided against the Player in the disciplinary proceedings initiated by Sporting, so that the proceedings initiated in front of FIFA shall be stopped, in order to avoid two different decisions on the same facts. In its consideration, the FIFA Executive Committee furthermore added that the “decision” of the FIFA Players’ Status Committee regarding the transfer indemnity shall also be annulled.

On 26 March 1998, Sporting filed within the President of the FIFA Executive Commission a document entitled “*Appel en revision*” drafted in French. In this document, Sporting requested the FIFA Executive Committee to reconsider the decision dated 3 December 1997 transferring the case to the Employment Tribunal, “*puisque le droit qui assitait le joueur Missé Missé de refuter en justice son licenciement est périmé, et, par conséquent, la décision*”. Sporting also requested the FIFA Executive Committee to declare the right of Sporting to receive “*l’indemnité de valorisation qui lui assiste*”.

This “*appel en revision*” was notified to the Player, which filed in commentaries on 29 January 1999, requesting the Executive Committee to make a decision on the alleged unpaid salaries, corresponding to the one made by the FIFA Players’ Status Committee on 9 September 1997. Trabzonspor was not invited to take part in these proceedings, neither on the request of Sporting, nor on the request of FIFA.

On 18 December 2004, the FIFA Executive Committee issued a decision, drafted in French, entitled “*Décision de révision*”.

The FIFA Executive Committee considered that both Sporting and the Player had requested the reconsideration of the decision dated 3 December 1997.

The FIFA Executive Committee denied the requests for reconsideration, applying the provisions applicable to the reconsideration of the decisions of the Swiss Supreme Court and considering that the conditions provided by these provisions were not fulfilled.

On 30 December 2004, Sporting filed a Statement of Appeal with the CAS. It challenged the decision dated 18 December 2004 and directed its appeal against the Player. In its appeal brief, Sporting submitted that the dispute was not only concerning the reconsideration of a decision but also the issuance of a new decision that should have been made by FIFA regarding its claim against Trabzonspor.

Trabzonspor did not participate in this appeal arbitration proceeding. FIFA was invited by the Panel to file in observations, which it did on 17 June 2005. The Player, although requested, never filed a Statement of Defence.

On 30 August 2005, the CAS issued an award (TAS 2005/A/812), drafted in French, partially upholding the Appeal filed by Sporting and, in application of Article R57 of the Code of Sports-Related Arbitration (“*the Code*”), referring the dispute back to FIFA in order to rule on the question of the indemnity, which was left wholly open by the award (“*la Formation tient à insister sur le fait que la présente décision ne comporte aucun élément préjudiciel sur le bien-fondé ou non des demandes et arguments du SCP en relation avec le droit à une indemnité qu’il allègue. Il appartiendra aux organes compétents de la FIFA de trancher sous réserve des recours prévus*”).

After the notification of the above mentioned CAS award, the proceedings resumed between Sporting and Trabzonspor in front of the FIFA Players' Status Committee, On 20 November 2005, Sporting submitted that an indemnity of USD 5,000,000 was to be paid by Trabzonspor. Trabzonspor answered on 16 January 2006, requesting the dismissal of the claim made by Sporting and submitting that FIFA had no jurisdiction to hear this case.

On 26 September 2006, the Single Judge of the Players' Status Committee issued a decision, in French, on the claim of Sporting, stating as follows in relevant parts ("The Decision"):

"(...)

1. *The single judge concludes that the Rules governing the Status and Transfer of Players adopted in January 1994 are applicable to the present case as regards the substance. Furthermore, this seems to be admitted by the parties.*

(...)

3. *On the basis of Article 3 al. 1 and 2 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (2005), in conjunction with Article 23 al. 1 and 3 and 22 lit. E of the Regulations for the Status and Transfer of Players (2005), the Single Judge considered to have jurisdiction to hear the present case. For the sake of good order, the Single Judge also pointed out that the application of Article 19 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (1994) would have led to the same result.*

(...)

9. *The Single Judge underlined that the transfer did not occur within the European Union and that in consequence, according to the RSTP (1994), an indemnity for training or development was to be paid, in principle, even at the end of a contractual relationship between a player and a club. Furthermore, the Single Judge stated that in the present case, the contract between the Player and the Portuguese club was due to expire on 30 July 1999 and that, in consequence, the transfer occurred within the course of the employment contract between the Player and Sporting Club de Portugal. In consequence, the Single Judge concluded that the case law based on the Bosman case and relied upon by Trabzonspor shall not be taken into account.*
10. *Considering the above, the Single Judge decided that in the present case the conditions of Article 14 al. 1 of the RSTP (1994) are fulfilled and that Trabzonspor has to pay compensation for training and/or development to the former club of the Player, Sporting Club de Portugal. The Single Judge therefore confirms the decision already taken by the Players' Status Committee on 1st September 1997.*
11. *As regards the amount of the indemnity, the Single Judge repeated that, according to Article 17 of the RSTP (1994) when two clubs disagree on the amount of compensation for training and development and refer the matter to FIFA, the dispute is submitted to a special committee. The Single Judge declares that it is not within his jurisdiction to provide a decision on the amount of compensation to be paid for training and development.*

12. *However, the Single Judge referred to Article 16 para. 1 of the RSTP (1994), which provides that if, thirty days after the International Transfer Certificate has been issued, the two clubs have not reached agreement on the amount of compensation, the dispute shall be submitted to FIFA.*
13. *Taking into account the above mentioned provision, the Single Judge invited the Sporting Club de Portugal to make contact with Trabzonspor in order to find an agreement between the parties on the amount of the compensation. If the parties do not reach an agreement within thirty days from the notification of the decision, the dispute shall be submitted to the special committee, which shall issue a decision on the amount of the compensation”.*

For the above mentioned reasons, the Single Judge of the Players’ Status Committee decided the following:

1. *Sporting Club de Portugal has the right to claim compensation for development and/or training from Trabzonspor.*
2. *Sporting Club de Portugal and Trabzonspor have to reach an agreement on the amount of the compensation for development and/or training within thirty days of receipt of notification of the present decision.*
3. *If Sporting Club de Portugal and Trabzonspor do not reach an agreement within the above mentioned deadline, the dispute shall be submitted to the special committee, which shall make a decision on the amount of the compensation.*
4. *According to Article 61 para. 1 of the FIFA Statutes, the decision may be appealed against before the Court of Arbitration for Sport (CAS). The statement of appeal must be sent to the CAS directly within 21 days of receipt of notification of this decision and shall contain all the elements in accordance with point 2 of the directives issued by the CAS, a copy of which we enclose hereto. Within another 10 days following the expiry of the time limit for filing the statement of appeal, the appellant shall file a brief stating the facts and legal arguments giving rise to the appeal with the CAS (cf. point 4 of the directives).*

The Decision of the Single Judge of the Players’ Status Committee has been served on the parties on 29 March 2007.

On 19 April 2007, Trabzonspor filed a statement of appeal with CAS directed against FIFA and Sporting. It challenged the Decision and the submitted the following requests for relief:

- “1. *That the decision taken by the Single Judge of the FIFA Players’ Status Committee on 26 September 2007 be declared null and void.*
2. *That the claim of the Respondent 2 (obligations of Trabzonspor to pay a compensation to Sporting Club Lisbon for the Player) be dismissed completely.*
3. *That the Respondent be ordered to pay any and all costs of the present appeal arbitration procedure.*
4. *That the Respondent be ordered to compensate the Appellant for all costs in connection with the present appeal arbitration procedure, including attorney’s fees, costs for the examination of witnesses, costs for expert opinions”.*

On 30 April 2007, Trabzonspor filed its appeal brief, confirming its request for relief.

On 24 May 2007, Sporting filed an answer, requesting CAS:

- “a. To accept the previous question referred and not to appreciate the issue referring to the rejection of the dismissal with just cause.*
- b. To confirm the contents of the decision taken on 26 September 2006 by the Players’ Status Committee of FIFA.*
- c. To reject, for such purpose, the requests of the Appellant, notably:*
  - i. The wished declaration of invalidity and nullity of the decision and of the norm of Article 14.1 of the RSTP (1994).*
  - ii. The alleged rights a used by SCP.*
  - iii. The alleged forfeiture of the rights of SCP to start an action against the Appellant.*
  - iv. The alleged non competence of the Sole Judge to judge the case.*
  - v. To order SCP to pay the judicial costs and expenses incurred by the Appellant following the appeal.*
- d. To order the Appellant to pay all costs and expenses incurred by SCP with the exercise of its right of defence, inter alia, judicial costs, lawyers and translators’ fees, expenses with displacement of witnesses”.*

On 29 May 2007, FIFA filed an answer, requesting the Panel to reject the appeal as to the substance, to confirm in its entirety the decision passed by the Single Judge of the Players’ Status Committee on 26 September 2006, to reject the Appellant’s request for the first Respondent to cover any costs related to the present procedure and to order the Appellant to bear all the costs of the present procedure, as well as to cover all legal expenses of the first Respondent related to the present procedure.

On 29 June 2007, the CAS Court Office informed the parties that the Panel had decided to reject the Appellant’s request to order Sporting to hand over all the documents concerning the proceedings brought against the Player in front of the ordinary Courts in Portugal. The Panel considered that the proceedings occurring before the ordinary Courts in Portugal concerned a disciplinary sanction and had no bearing on the termination of the contract between the Player and the club and, thus, had no bearing on the issues in dispute between the clubs in the present procedure.

Also on 29 June 2007, the Panel informed the parties that they had the opportunity, on the basis of exceptional circumstances, to file additional submissions, limited to the issues already raised by either party in the first round of briefs.

Trabzonspor sent to the CAS Court Office further submissions dated 26 July 2007. In its additional submissions, Trabzonspor expressly disagreed with the decision made by the Panel as regards the production of the file concerning the proceedings led between the Player and Sporting in front of the State Courts. Furthermore, Trabzonspor elaborated on the arguments presented its appeal brief. It also presented a new argument, submitting that the case at hand had been brought to FIFA when



Trabzonspor had been involved in the proceedings, that is to say at the end of 2005, so that the RSTP (2005) would be applicable to the claim of Sporting against Trabzonspor.

Sporting filed additional submissions on 3 September 2007, containing short comments on the points made by the Appellant in its additional submissions.

A hearing was held on 30 October 2007 at the CAS headquarters in Lausanne.

## LAW

### CAS Jurisdiction

- 1 The jurisdiction of CAS, which is not disputed, derives from Article 60 ff. of the FIFA Statutes in force as of 1 August 2006 and Article R57 of the Code. It is further confirmed by the order of procedure duly signed by the parties.
- 2 It follows that the CAS has jurisdiction to decide on the present dispute.
- 3 Under Article R57 of the Code, the Panel has the full power to review the facts and the law. The Panel therefore held a hearing *de novo*, evaluating all facts and legal issues involved in the dispute.

### Applicable law

- 4 Article R58 of the Code provides the following:  
*“The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision”.*
5. Article 60 para. 2 of the FIFA Statutes further provides for the application of the various regulations of FIFA and, additionally, Swiss law.
- 6 In the present matter, the parties have not agreed on the application of any particular law. Therefore, the rules and regulations of FIFA shall apply primarily and Swiss law shall apply complementarily.

### Admissibility

7. The appeal was filed within the deadline provided by Article 61 of the FIFA Statutes and stated in the Decision, that is within 21 days after notification of such Decision. The parties complied with all of the other requirements of Article 48 of the Code, including the payment of the Court Office fee.
8. It follows that the appeal filed by Trabzonspor is admissible.

### Main issues

9. The main issues to be resolved by the Panel are:
  - a) Was the Single Judge of the Players' Status Committee competent to issue the Decision?
  - b) Was the dispute on the amount of the compensation submitted to FIFA in due time?
  - c) Is Article 14 para. 1 of the RSTP (1994) applicable to the present case?

#### *A. Was the Single Judge of the Players' Status Committee competent to issue the Decision?*

10. Trabzonspor contends that the Single Judge of the Players' Status Committee had no jurisdiction to pass the Decision, so that the Decision would have to be set aside.
11. Firstly it is to be stressed that the denial of the jurisdiction of the Single Judge to pass the present Decision would probably lead the Panel to refer the case back to FIFA, in order for the Players' Status Committee to make a new decision. It would not lead to the mere annulment of the Decision, as the Appellant seems to submit.
12. FIFA contends that the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber ("the Procedural Rules") that came into force on 1st July 2005 would apply to the present proceedings. In that respect, FIFA quotes Article 18 para. 2 of the Procedural Rules, which provides that the said Rules are applicable to proceedings submitted to FIFA after the date on which these Rules came into force. FIFA submits that the proceedings which led to the Decision were opened after the issuance by the CAS of the award in the matter TAS2005/A/812, which was notified on 30 August 2005 and would be subject to the application of the Procedural Rules in force as of 1st July 2005.
13. The Panel is of the opinion that the proceedings which led to the Decision were submitted to FIFA before the date on which the Procedural Rules came into force. Referring to what will be exposed hereunder on the question of whether the dispute was referred to FIFA in due time, the Panel considers that Sporting presented its claim for compensation to FIFA on March 1998 at the latest. Consequently, the Procedural Rules adopted by FIFA in June 2005, providing that

a case under the jurisdiction of the Players' Status Committee may be settled by a Single Judge, are not applicable to the present case.

14. FIFA also contends that the Single Judge had jurisdiction to decide on cases of the competence of the Players' Status Committee before the Procedural Rules adopted in June 2005 came into force, on a customary basis.
15. The Chairman of several organs of FIFA, such as the Disciplinary Committee and the Appeal Committee, may in accordance with Article 57 para. 2 *in fine* respectively Article 58 para. 2 *in fine* of the FIFA Statutes rule alone, as a Single Judge. These provisions already existed in the previous edition of the FIFA Statutes, with identical substantial contents.
16. The Panel is of the opinion that these provisions can be applied to the Players' Status Committee by analogy. It has to be admitted that there is the possibility within all the decision making bodies of FIFA to decide that, under certain circumstances, the Chairman of the Committee has jurisdiction to rule alone.
17. Furthermore, it also has to be admitted that there is a constant, continuous and uniform practice within FIFA that the Single Judge of the Players' Status Committee issues an important number of decisions. This practice has to be considered as customary according to the Swiss case law, from which it results that, within an association incorporated under Swiss Law, a body not provided in the bylaws of this association may, in certain circumstances, be recognized as having customary jurisdiction (see Decision of the Federal Tribunal ("DFI") 72 II 91).
18. In the present case, the Panel comes to the conclusion that the jurisdiction of the Single Judge has to be admitted, taking into account that the practice of submitting cases to the Single Judge has become a constant, continuous and uniform practice, as already admitted by CAS in a previous decision (see TAS 2004/A/589, especially points 66 to 70). The customary jurisdiction of the Single Judge of the Players' Status Committee is furthermore reinforced by the adoption of a written legal basis expressly providing for the competence of the Single Judge, as of 1st July 2005.

B. *Was the dispute on the amount of the compensation submitted to FIFA in due time?*

19. Article 16 para. 6 of the RSTP (1994) provides the following:  
*"The right to submit a dispute to FIFA or to the Confederations as provided for under this Article shall be barred twelve months after the date of issue of the International Transfer Certificate".*
20. According to this provision, a dispute relating to the amount of compensation in respect of the training and development of a player, as provided in Article 14 of the RSTP (1994), cannot be referred to the FIFA Dispute Resolution System indefinitely. In the opinion of Trabzonspor, Sporting would not have complied with the duty of bringing the dispute within twelve months after the date of issue of the International Transfer Certificate, so that it would be forfeited to claim compensation for the transfer of the Player.

21. On 26 March 1998, Sporting lodged a document within FIFA entitled “*Appel en révision*”. In its “*Appel en révision*”, Sporting requested FIFA, amongst others, “*that the right of Sporting to receive an indemnity for development be pronounced*”.
  22. In the case TAS/2005/A/812, which concerned the same facts as the present case but opposed Sporting to the Player Missé Missé, the Panel considered that the claim of Sporting to be awarded an indemnity has been clearly expressed and submitted to a FIFA body within the one year deadline provided for in Article 16 para. 6 of the RSTP (1994).
  23. Even if not bound on this point by the decision made in the proceeding TAS/2005/A/812, the Panel in the present case totally shares the above mentioned views expressed in this CAS award. The Panel is of the opinion that the appeal sent by Sporting to FIFA on 26 March 1998 is to be considered as a submission of the dispute to FIFA. In that respect, the Regulations of FIFA do not specify which particular steps would have to be taken in order for a claim to be submitted in due time. Accordingly, the Regulations are to be given a broad interpretation so that any communication to FIFA seeking a decision on the amount of the compensation is sufficient to comply with the condition of Article 16 para. 6 of the RSTP (1994).
  24. In view of the above, the appeal filed by Sporting with FIFA on 26 March 1998 has to be considered as a submission of the claim to be awarded compensation to FIFA, especially as this appeal was directed against a FIFA decision which pronounced the annulment of any decision taken on the question of the compensation.
  25. It follows that Sporting has presented its claim in front of the FIFA in due time and that this claim is not time barred pursuant to Article 16 para. 6 of the RSTP (1994).
- C. *Is Article 14 para. 1 of the RSTP (1994) applicable to the present case?*
26. Trabzonspor contends in its additional submissions that the RSTP (2005) would have to be applied to the present case, because a formal petition against Trabzonspor was only submitted to FIFA in 2005.
  27. Referring to what has been considered here above, the Panel is clearly of the opinion that the claim of Sporting has been submitted to FIFA on March 1998 at the latest. Accordingly, the Regulations in force in March 1998 are applicable to the present case, that is to say the Regulations Governing the Status and Transfer of Football Players adopted by FIFA in December 1993 and in force as of 1st January 1994, or RSTP (1994).
  28. Trabzonspor furthermore contends that Article 14 para. 1 of the RSTP (1994) has to be considered as null and void and is thus not applicable to the present case. To substantiate this argument, Trabzonspor relies on a decision issued by the Commercial Court of Zurich on 21 June 2004 (ZR 104 (2005), pp. 97 ff). In this case, a Spanish football club challenged a FIFA

decision awarding compensation to another club in application of Article 14 para. 1 of the RSTP (1997), which is totally similar to Article 14 para. 1 of the RSTP (1994).

29. The Panel has carefully analysed this decision, drafted in German, which can be briefly summarized as follows:

- On 22 July 2000, an agreement was made between the Claimant and a Croatian football player. The former club of this player, a Croatian football club, whose employment agreement with the player had expired, asked from the claimant the payment of compensation for training and development, invoking Article 14 para. 1 of the RSTP (1997).
- FIFA awarded compensation to the former club, in the amount of USD 500.000.
- The new club challenged this decision in front of the Swiss Courts, basing its petition on Article 75 of the Swiss Civil Code, which provides the possibility for any member of an association to appeal the decisions allegedly contrary to the law or to the bylaws of the association.
- The Commercial Court came to the conclusion that Article 14 para. 1 of the RSTP (1997) was to be considered as an excessive limitation of the individual competition ability and thus contrary to Article 27 of the Swiss Civil Code, on the ground that the limitation of the debtor was in the present case depending on the arbitrariness of a third party, so that the basis of the economic existence of the debtor would have been at risk. In that respect, the Commercial Court considered that Article 14 para. 1 was too wide in the sense that it did not contain any provision as regards the calculation of the compensation for training or development. In consequence, any claim resulting from Article 14 para. 1 of the RSTP (1997) would lack a sufficient legal basis in order to be considered as valid under Swiss law. Furthermore, this provision would constitute a limitation of the economic independence of the FIFA members, which cannot be deemed to be in a position to fully and independently choose to be submitted to these Regulations, in consideration of the monopolistic status of FIFA in the world of football.
- The Court also considered that the compensation provided for in Article 14 para. 1 of the RSTP (1997) constituted a distortion of competition and was in consequence contrary to Article 81 and 82 of the Treaty on European Community, and also contrary to Article 5 and 7 of the Swiss Competition Law. The Court considered in particular that this distortion of competition resulted from the fact that the former club was in a position to decide the future of a player depending from whether it finds an agreement on the compensation to be paid or not.
- The Commercial Court concluded that the violation resulting from Article 14 para. 1 of the RSTP (1997) constituted an important breach of relevant European and Swiss legal provisions, so that these Regulations were to be considered as null and void. The Commercial Court thus admitted the claim of the former club challenging the validity of the FIFA decision ordering to pay compensation to the new club.

30. In the above mentioned case, the State Court has applied domestic mandatory provisions, in connection with mandatory provisions of European Law. In the Panel's view, the decision made by the Commercial Court of Zurich is fully justified in the perspective of a State Court, which has to ring fence a party's autonomy by its domestic mandatory rules.
  
31. To decide whether an international arbitral tribunal having its seat in Switzerland has to comply with the same duties as a State Court as regards the application of domestic or foreign mandatory rules of law is a very difficult issue. The question is widely discussed, in connection with Article 187 PILS. It results from this provision that the Arbitral Tribunal shall decide the case according to the rules of law chosen by the parties or, in the absence thereof, according to the rules of law with which the case has the closest connection. It is recognized by the relevant authors, as well as in the CAS case law, that Article 187 PILS allows an Arbitral Tribunal to decide a dispute in application of private rules of law, as sporting regulations or rules issued by an international federation (see amongst others RIGOZZI A., *L'arbitrage international en matière de sport*, Bâle, 2005, No. 1178; see also TAS/2005/A/983 et 984, especially n. 62 and following). The parties having chosen to submit their dispute to an Arbitral Tribunal with its seat in Switzerland are thus free to choose that this dispute shall be decided independently from any State law.
  
32. This choice has however some limits. Even the most liberal authors consider that it is necessary to allow the application of mandatory laws where this is justified by a sufficient interest, also in cases where these rules do not constitute a rule of "*truly international public policy*" (see POUDRET/BESSON, *Comparative Law of International Arbitration*, 2nd edition, London 2007, No. 707 c, p. 615). In that respect, it is to be stressed that the concept of material public policy in the case law of the Federal Tribunal on the action of annulment of an award, in application of Article 190 para. 2 lit. e PILS, is different from the concept of mandatory rules to be applied *ex officio* by the Arbitral Tribunal. One should thus differentiate between the rules of "*truly international public policy*" as referred to by POUDRET/BESSON, which are relevant to challenge an award in front of the Federal Tribunal, and the rules which can be considered as being of international public policy when determining the applicable rules of law to decide the case, in the sense of Article 187 para. 1 PILS.
  
33. In view of the above, the Panel is of the opinion that the claim of Sporting must be scrutinized in the light of Article 27 of the Swiss Civil Code. In that respect, the Panel notes that, according to Article 60 para. 2 of the FIFA Statutes, Swiss Law has to be applied additionally to the various Regulations of FIFA. As exposed here above, this choice is perfectly admissible according to Article 187 PILS. Hence, the freedom provided for in Article 187 PILS allows the parties to derogate from mandatory provisions of Swiss law, even if Swiss law is referred to as *lex causae* and shall apply additionally. However, the public policy rules prevail over this freedom and there is a wide consent between the relevant authors that arbitrators will in principle apply the public policy rules or mandatory rules of the *lex causae* without reservation (see POUDRET/BESSON, *op. cit.*, No. 706, p. 609; BERGER/KELLERHALZ, *Internationale und Interne Schiedsgerichtsbarkeit in der Schweiz*, Berne 2006, No. 1301, page 458; see also DTF 120 II 155 c. 6a (167): "(...) *En revanche, le Tribunal arbitral est tenu, dans tous les cas, de respecter l'ordre public du pays dont il doit appliquer le droit (...)*").

34. Article 27 para. 2 CC is considered by the Swiss authors as a rule of public policy (see for instance THÉVENAZ A., *La protection contre soi-même - Etude de l'Article 27 al. 2 CC*, Berne 1997, No. 219, page 138; see also HUGUENIN C., in *Basler Kommentar zum Schweizerischen Privatrecht*, 2nd ed., Basel 2002, No. 28 ad art. 27). It has thus to be considered that Article 27 para. 2 CC is not only a domestic mandatory rule, but has to be construed as a rule of public policy to be applied not only to internal but also to international situations. In consequence, the Panel is of the opinion that Article 27 para. 2 CC is to be taken into consideration the present case, as a mandatory rule of public policy of the *lex causae*, especially in light of the decision rendered by the Commercial Court of Zurich dated 21 June 2004.
  
35. After a careful analysis of the decision of the Commercial Court of Zurich, the Panel finds absolutely no reason to depart from the considerations made in this decision in respect of Article 27 para. 2 CC. These considerations are fully consistent with relevant Swiss case law and the decision of the Commercial Court is based on very strong arguments.
  
36. The Panel understands that the system of awarding compensation to the former club was infringing the economic independence of the new club in the sense that the FIFA bodies have absolute discretion to fix the amount of this compensation. In the absence of any provision or guidelines to assess or calculate the amount of this compensation, it is impossible for the new club to make even a rough estimation of what would have to be paid to a player's former club. The Panel has to admit that the system set up by the FIFA RSTP (1994) and the FIFA RSTP (1997) as regards compensation for training and development is especially wide, not predictable and lacks precision and certainty. It thus has to be recognized that this system is problematic as regards the economic independence, protected by Art 27 para. 2 CC, of the different clubs submitted to the FIFA Regulations.
  
37. It has to be noted that FIFA modified drastically the provisions concerning the payment of compensation for training and development in the Regulations for the Status and Transfer of Players adopted in 2001. In the RSTP (2001), FIFA introduced seven articles (Article 13 to 20) concerning the payment of training compensation for young players. The obligation to pay compensation is, amongst other things, limited to situations where the transferred player has not yet reached the age of 23 (Article 15 of the RSTP (2001)). The amount of compensation to be paid is furthermore subject to detailed rules contained in Regulations Governing the Application of the Regulations for the Status and Transfer of Players. The set of rules concerning training compensation has furthermore been improved and specified in the Regulations for the Status and Transfer of Players adopted by FIFA in 2005 (see Article 20 of the RSTP (2005) and annex 4 to these Regulations, containing seven articles). This shows that there was a need for the improvement of the system and of the legal certainty resulting from this system.
  
38. The Panel also notes that the Regulations adopted by FIFA in 2001 and 2005 expressly contain provisions on the contractual stability, providing that compensation has to be paid in case of breach of a contract. Since 2001, the Regulations contain precise provisions regarding the consequences of a breach of a contract, either by a player or by a club, and the eventual

obligation for a player and a new club to pay compensation in case of termination of the contract without just cause, the player and the new club being jointly and severally liable for this payment. The Regulations currently in force also provide for a clear description of what has to be considered as just cause to terminate a contract and thus gives a clear picture of the situation when the new club can be held jointly liable to pay such compensation. There are also in the RSTP (2005) several criteria in order to assess the amount of compensation to be paid.

39. Such provisions did not exist under the regime of the RSTP (1994). In particular, the Panel is of the opinion that compensation provided for in Article 14 para. 1 of the RSTP (1994) is to be distinguished from compensation to be paid for termination of the contract without just cause. From its clear wording, Article 14 para. 1 of the RSTP (1994) relates to compensation for training and development, that is to say compensation for what the former club has brought to the value of the player in terms of development. This concept corresponds to the concept of training compensation provided for in Article 20 of the RSTP (2005), as well as to the concept of training compensation for young players provided for by Article 13 ff. of the RSTP (2001). Compensation for training and development is not similar to compensation that might be awarded to the former club in case of breach of contract by the player, for instance, early termination without just cause.
40. Under the regime of the RSTP (1994), in case of breach of the contract by the player, a club would have a claim against this player, that is to say against its contractual counterparty. This claim is different from the one directed against the new club for training and compensation as provided for in Article 14 para. 1 of the RSTP (1994). This difference also results from the construction of the wording of Article 14 para. 1 of the RSTP (1994), which refers only to training and compensation and does not mention the existence or the inexistence of the contractual relationship between the player and the former club, or gives any relevance to the fact that the contract with the former club is still in force or not. It is thus quite logical to consider that the aim of Article 14 para. 1 of the RSTP (1994) was not to ensure the contractual stability.
41. In the light of the above mentioned distinctions, the Panel wants to stress that the considerations of the Commercial Court of Zurich cannot be transposed to a situation where the claim of the former club relies on the contractual breach of the employment agreement by the player, actually giving rise to a claim according to Article 17 of the RSTP (2005).
42. Based on these considerations, the Panel reaches the conclusion that the claim for training and compensation against the new club as provided for by Article 14 para. 1 of the RSTP (1994) is contrary to Article 27 para. 2 CC, which has to be applied to the present dispute as a public policy rule of Swiss Law. As a consequence, it has to be considered in the present case that Article 14 para. 1 of the RSTP (1994) is null and void and, accordingly, that Sporting has no claim against Trabzonspor to be paid compensation for the training or development of the Player Missé Missé.
43. Because the claim of Sporting is to be rejected in application of Article 27 para. 2 CC, there is no need to address the question – raised by the Appellant – of the compatibility of Article 14



para. 1 of the RSTP (1994) with the provisions of Swiss and/or European Competition Law. For the sake of good order and to avoid any misinterpretation of this award or of its contents, the Panel wants to stress that it is beyond doubt that the FIFA Regulations that came into force in 2001 are not contrary to European or Swiss Competition Law as regards training compensation or contractual stability. As has been made clear previously, the whole FIFA transfer system has been highly modified as of 2001 and has been approved by the European Commission, as pointed out in obiter by the Commercial Court of Zurich in its decision (see ZR 104 (2005) pp. 97 and following, especially p. 106, c. 3.3.6 *in fine*).

44. Based on the foregoing, and after taking into due consideration all evidence produced and all arguments made, the Panel finds that Sporting has no claim for the payment of compensation for the training and/or development of the Player Missé Missé.
45. Trabzonspor appeal is therefore upheld.

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

1. The appeal filed on 19 April 2007 by Trabzonspor SK against the decision issued on 29 March 2007 by the Single Judge of the FIFA Players' Statutes Committee is upheld.
2. The decision issued on 29 March 2007 by the Single Judge of the FIFA Players' Statutes Committee is set aside and the claim of Sporting Club de Portugal to be paid compensation by Trabzonspor SK for the training and/or development of the Player Jean-Jacques Missé Missé is rejected.
3. Any further claims lodged by the parties are denied.
4. (...).
5. (...).