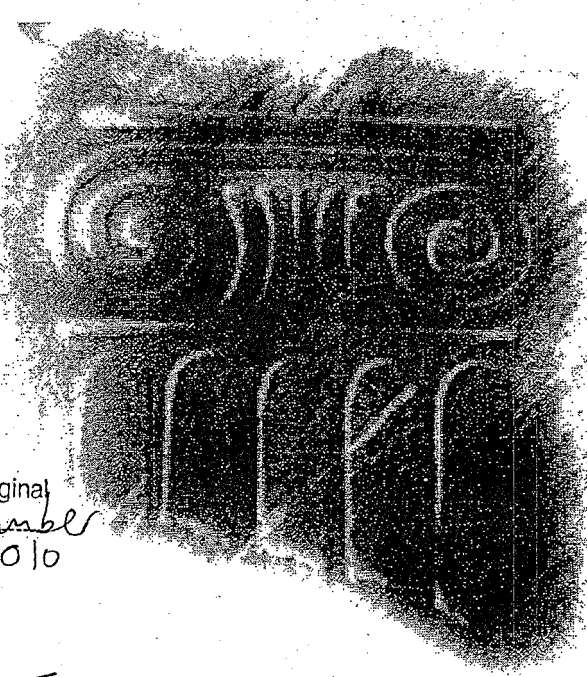


# Tribunal Arbitral du Sport --- Court of Arbitration for Sport



We hereby certify that this is a true and correct copy of the original  
Dated 23<sup>rd</sup> September 2010

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7, DEVONSHIRE SQUARE  
LONDON  
EC2M 4YH

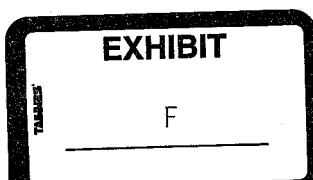
## ARBITRAL AWARD

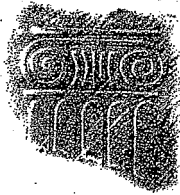
ADRIAN MUTU, Florence, Italy

v/

CHELSEA FOOTBALL CLUB LIMITED, London, United Kingdom

CAS 2008/A/1644 Lausanne, July 2009





Tribunal Arbitral du Sport  
Court of Arbitration for Sport

CAS 2008/A/1644 **Adrian Mutu v/ Chelsea Football Club Limited**

**ARBITRAL AWARD**

delivered by the

**COURT OF ARBITRATION FOR SPORT**

sitting in the following composition:

President: Prof. Luigi **Fumagalli**, Attorney-at-Law, Milan, Italy

Arbitrators: Mr Jean-Jacques **Bertrand**, Attorney-at-Law, Paris, France  
Mr Dirk-Reiner **Martens**, Attorney-at-Law, Munich, Germany

between

**Adrian Mutu**

represented by Mr Paolo Rodella, Attorney-at-law, Rome, Italy and Mr Stephen D. Sutton, Solicitor, London, United Kingdom.

as Appellant

and

**Chelsea Football Club Limited**

represented by Mr Stephen Sampson, Solicitor, London, United Kingdom

as Respondent

\* \* \* \* \*

## 1. BACKGROUND

### 1.1 The Parties

1. Adrian Mutu (hereinafter referred to as the "Player" or the "Appellant") is a professional football player of Romanian nationality, born on 8 January 1979.
2. Chelsea Football Club Limited (hereinafter referred to as the "Club" or the "Respondent") is a football club with registered office in London, United Kingdom. The Club is a member of the Football Association Premier League Limited (hereinafter referred to as the "FAPL"), a professional football league under the jurisdiction of the English Football Association Limited (hereinafter referred to as the "FA"), which has been affiliated with the Fédération Internationale de Football Association (hereinafter referred to as the "FIFA") since 1905.

### 1.2 The Dispute between the Parties

3. On 12 August 2003, the Player was transferred from the Italian club AC Parma (hereinafter referred to as the "Former Club") to the Club. Upon such transfer,
  - i. the Club agreed to pay the Former Club, under a transfer agreement (hereinafter referred to as the "Transfer Contract"), the amount of Euro 22,500,000, "*net of any and all fees, taxes or other transaction costs*";
  - ii. the Player and the Club entered into an employment contract starting on 11 August 2003 and expiring on 30 June 2008 (hereinafter referred to as the "Employment Contract"), under which
    - the Player was to receive
      - an "*annual gross salary*" of £ 2,350,000, "*payable monthly at the end of each calendar month*";
      - a "*once only signing on fee*" of £ 330,000, to be paid in five instalments of £ 66,000 each, the first due on registration of the Employment Contract, the others on 31 August 2004, 31 August 2005, 31 August 2006 and 31 August 2007, as well as
      - "*such of the bonuses and incentives as the Player shall be entitled to receive under the terms of the Club's bonus and incentive scheme*" and a "*special goal bonus*";
    - the Club agreed to pay the Player's agent, Becali Sport (hereinafter referred to as the "Agent"), the amount of Euro 500,000, to be paid in five instalments of Euro 100,000 each, due on 31 August 2003, 31 August 2004, 31 August 2005, 31 August 2006 and 31 August 2007.
4. On 1 October 2004, a targeted drug test was held on the Player by the FA. The test was declared positive for cocaine on 11 October 2004.

5. On 28 October 2004, the Club terminated the Employment Contract with immediate effect.
6. On 4 November 2004, the FA's Disciplinary Commission imposed a seven-month ban on the Player commencing on 25 October 2004. The FIFA Disciplinary Committee adopted the sanction in order to obtain a worldwide effect by a decision dated 12 November 2004.
7. On 10 November 2004, the Player appealed against the Club's decision to terminate the Employment Contract. That appeal was, in the first instance, to the Board of Directors of the FAPL. A panel was appointed by the FAPL to consider the appeal. That panel met on 19 January 2005. At the hearing on 19 January 2005 the FAPL panel was informed of an agreement between the Club and the Player as to the method of resolution of the Player's appeal and the Club's claim for compensation.
8. In January 2005, the Player moved to Italy. He was originally registered with the Italian club AS Livorno, but played with Juventus FC, as soon as the suspension ceased to have effect. In July 2006, then, the Player was transferred to AC Fiorentina, club for which he is currently registered.
9. By joint letter dated 26 January 2005, the parties agreed to refer the "*triggering elements of [the] dispute*", that is, the issue of whether the Player had acted in breach of the Employment Contract with or without just cause or sporting just cause, to the Football Association Premier League Appeals Committee (hereinafter referred to as the "FAPLAC").
10. On 20 April 2005, the FAPLAC decided that the Player had committed a breach of the Employment Contract without just cause within the protected period against the Club.
11. On 29 April 2005, the Player lodged an appeal before the Court of Arbitration for Sport (hereinafter referred to as the "CAS") against the FAPLAC's decision. On 15 December 2005, a CAS panel dismissed the Player's appeal (award in the matter CAS 2005/A/876, hereinafter referred to as the "First CAS Award").
12. On 11 May 2006, the Club applied to FIFA for an award of compensation against the Player. In particular, the Club requested that the FIFA Dispute Resolution Chamber (hereinafter referred to as the "DRC") should award an amount of compensation in favour of the Club following the established breach of the Employment Contract committed by the Player without just cause.
13. On 26 October 2006, the DRC decided that it did not have jurisdiction to make a decision in the dispute between the Club and the Player and that the claim by the Club was therefore not admissible.
14. On 22 December 2006, the Club lodged a new appeal before the CAS seeking the

annulment of the DRC's decision. On 21 May 2007, a CAS panel upheld the Club's appeal, set aside the DRC's decision, and referred the matter back to the DRC, "*which does have jurisdiction to determine and impose the appropriate sporting sanction and/or order for compensation, if any, arising out of the dispute*" between the Club and the Player (award in the matter CAS 2006/A/1192, hereinafter referred to as the "Second CAS Award").

15. On 6 August 2007, the Club, on the basis of the Second CAS Award, filed with the DRC a "*Re-amended application for an award of compensation*", seeking damages, to be determined on the basis of various factors, "*including the wasted costs of acquiring the Player (£ 13,814,000), the cost of replacing the Player (£ 22,661,641), the unearned portion of signing bonus (£ 44,000) and other benefits received by the Player from the Club (£ 3,128,566.03) as well as from his new club, Juventus (unknown), the substantial legal costs that the Club has been forced to incur (£ 391,049.03) and the unquantifiable but undeniable cost in playing terms and in terms of the Club's commercial brand values*", but "*at least equivalent to the replacement cost of £ 22,661,641*".
16. On 14 September 2007, the Player submitted to the DRC a brief stating the "*Position of Player Mutu regarding Chelsea FC's petition for an award of compensation*", requesting its rejection, and asking FIFA to open an investigation against the Club for having used and/or dealt with unlicensed agents.
17. On 7 May 2008, following an exchange of new written submissions, the DRC issued a decision (hereinafter referred to as the "Decision") holding as follows:
  1. *The claim of Chelsea Football Club is partially accepted.*
  2. *The player, Mr Adrian Mutu, has to pay the amount of EUR 17,173,990 to Chelsea Football Club within 30 days of notification of the present decision.*
  3. *If this amount is not paid within the aforementioned time limit, a 5% interest rate per annum as of the expiry of the said time limit will apply and the matter will be submitted to the FIFA Disciplinary Committee for its consideration and decision.*
  4. *Any further request filed by Chelsea Football Club is rejected.*
  5. *Any counterclaim filed by Mr Adrian Mutu is rejected.*
  6. *Chelsea Football Club is directed to inform Mr Adrian Mutu directly and immediately of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received*".
18. In support of the Decision, the DRC preliminarily remarked that the dispute had to be decided in accordance with the 2001 edition of the Regulations for the Status and Transfer of Players (hereinafter referred to as the "Regulations").
19. The DRC, then, analysed "*all elements at its disposal in order to assess the amount of compensation due for contractual breach*", taking into account "*the objectives criteria established, in a non-exhaustive way, under art. 22 of the*

*Regulations, obviously adapted to the case at stake”.*

20. In such regard, the DRC “*preliminarily ascertained that it [was] no longer debated that the contract at stake was breached without just cause by Mr Adrian Mutu during the protected period*”. Then the DRC “*considered the first of the objective criteria provided for under art. 22 of the Regulations, i.e. remuneration and other benefits under the contract which has been breached*.”
- In this respect, it was ascertained that the amounts paid by Chelsea to Mr Mutu for the period of his employment, during which the player orderly provided his services to the English club, cannot be considered within the scope of the assessment of the amount of compensation due for breach of contract. In fact, the relevant remuneration constitutes to legitimate income of the player due in exchange of his services. In other words, it does not anyhow affect the damage subsequently caused by the player to the club.*
- Yet, the deciding authority was eager to emphasise that it is widely undisputed that within the criterion of remuneration and other benefits under the existing contract, the remaining value of the employment contract breached by the player must be taken into consideration for the calculation of the compensation payable by the player to his former club due to the unjustified breach of contract. This was confirmed also by the CAS in several of its decisions, even in the most controversial ones. In the case at stake, the remaining value of the contract in question can be established at GBP 8,550,000 (remaining duration from November 2004 until June 2008, 44 months or 190 weeks), i.e. EUR 10,858,500 (currency exchange at the time of this decision being taken)”.*
21. The DRC stressed that “*following the contents of art. 22 of the Regulations, another objective criterion to consider is the amount of unamortised costs of acquiring the services of the player*.”
- In this respect, it was noted that Chelsea paid the player’s former club, Parma AC, the transfer compensation of EUR 22,500,000. Taking into account the fact that the labour agreement in question was agreed to run for five years and that the breach occurred fifteen months into the contract, the unamortised costs of acquiring the services of the player would amount to EUR 16,500,000 (for the remaining 44 months of the contract, i.e. November 2004 until June 2008).*
- Applying the same parameters to the signing-on fee of GBP 330,000 paid by Chelsea to Mr Adrian Mutu, the DRC ascertained that the relevant unamortised amount is GBP 242,000, i.e. EUR 307,340 (currency exchange at the time of this decision being taken).*
- Likewise, the unamortised amount paid to the player’s agents can be calculated as EUR 366,650. In fact, the English club had paid the amount of EUR 500,000 as agents’ commission within the transaction of signing Mr Adrian Mutu”.*
22. As a result of the above, the DRC “*stated that the amount of compensation in favour of Chelsea calculated on the grounds of the aforementioned objective criteria would therefore total EUR 28,032,490*”.
23. Subsequently, the DRC “*recalled that within its competence to assess the amount*

*of compensation to be paid by a party (club or player) breaching an employment contract to its counterparty, as provided for by art. 22 of the Regulations, it had to consider also the specificity of sport.*

*The notion of the specificity of sport allows to assess the amount of compensation payable by a player to his former club in case of an unjustified breach of contract not only on the basis of a strict application of civil or common law, but also on the basis of considerations that players are an asset of a club in terms of their sporting value and also from an economic point of view. Therefore, the assessment of compensation that is higher than compensation calculated only on the basis the objective criteria listed in art. 22 of the Regulations is not, in every case, to be considered as a punitive measure, but may be the result of considerations based on the specificity of sport. In particular, taking into account the value attributed to the services of a player when assessing the compensation payable for an unjustified breach of contract by the player is in line with the notion of the specificity of sport. In other words, the notion of specificity of sport allows to assess the compensation payable to a club in case of an unjustified breach of contract by a player not only on the basis of the objective criteria. Such an understanding of the notion of the specificity of sport allows for the calculation of amounts of compensation that are appropriate, fair and acceptable for all stakeholders within the world of football, and which take into consideration the interests of both the players and the clubs”.*

24. *In this respect, the DRC “stated that the basis of the specificity of sport and the list of objective criteria contained in art. 22 of the Regulations, the DRC had established, inter alia, guidelines for the calculation of compensation payable for unjustified breach of contract, by a player. In particular, as a general rule, the compensation payable to the former club shall be the result of an addition of the amount of the fees and expenses paid or incurred by the former club, amortised over the term of the contract, plus the amount of the remuneration due to the player under the contract that was breached until the ordinary expiry of the former contract. Moreover, in case of breach of contract during the protected period, thus under circumstances like in the case at hand, this amount needs being increased accordingly subject to particular circumstances. By means of this formula for the calculation of the compensation, the DRC aims, on the one hand, at taking into account objective criteria such as the amount of the fees and expenses paid or incurred by the former club, the remuneration due to the player under the existing contract and the time remaining on the existing contract. On the other hand, the possibility to increase the relevant amount of compensation accordingly subject to particular circumstances allows the DRC to take into consideration the specificity of sport and other criteria that are not explicitly listed in art. 22 of the Regulations on a case-by-case basis. Obviously, in case it deems it necessary, the DRC is always free to deviate from these guidelines”.*
25. *Bearing in mind the above, the DRC “took note of Chelsea’s final compensation request of GBP 22,661,641 and declared that, in order not to go ultra petitem, the amount of compensation in any case may not exceed such amount (in the region of EUR 28.75 million at the time of this decision being taken)”.*

26. The DRC, *“once the objective criteria along with the relevant figures were thus established, and the central role of the specificity of sport having been recalled, [...] went on to consider the specificities of the case at stake.*

*To this end, and without wishing/being able to enter into the substance of the breach of contract that occurred in this case, since, as already repeatedly emphasised, the relevant issue has been extensively dealt with by the competent bodies in a conclusive manner, the member[s] of the Chamber were unanimous in defining this case as exceptionally unique.*

*In this regard, the Chamber underlined the massive financial investment made by Chelsea in order to secure the services of Mr Mutu, in terms of transfer compensation paid to the player's former club, signing-on fee and agents' commission. Equally, the deciding authority recalled the remaining value of the relevant contract concluded between Mr Mutu and Chelsea in terms of salary and other benefits due to the player under the said contract until its ordinary expiration.*

*Another issue that should not be disregarded, it was noted, is the enormous damage suffered by Chelsea in terms of image, on account of the fact that one of its most popular players was tested positive to cocaine, with all the consequences related to social responsibility such as fans in general and grassroots in particular.*

*Notwithstanding the above, whilst confirming once again that from the legal point of view the contract at stake was breached by Mr Mutu, the members could not help pointing out that Chelsea de facto notified the termination letter to the player with immediate effect.*

*By doing so, the English club complied with a general legal principle and was able to mitigate the financial loss that they could have incurred if they had to keep paying the Romanian player after the termination date.*

*According to the Chamber this is confirmed by the fact that the player was willing to continue his contractual relationship with the club.*

*It is this very last consideration that made the Chamber wonder whether or not, under the exceptional circumstances surrounding this case, the remaining value of the contract [...] should be taken into account among the criteria to assess the compensation for breach of contract.*

*In this regard, while referring to the longstanding jurisprudence whereby this deciding body has always applied the criteria to assess the compensation for breach of contract provided for in the applicable Regulations and given the necessary consideration to the specificity of sport, the Chamber concluded that, in the specific case at hand, by handing out the termination notice with immediate effect to the player Mutu at the end of October 2004, Chelsea had indeed mitigated the damage it suffered as far as the remaining value of the contract that was breach[ed] is concerned.*

*In light of the above, and after an extensive deliberation, the members of the Chamber came to the unanimous conclusion that, in view of the specific circumstances of the case at hand, the remaining value of the contract at stake, i.e. the contract concluded between Mr Adrian Mutu and Chelsea on 12 August*



*2003, shall not be taken into account among the criteria to assess the compensation for breach of contract due to Chelsea by Mr Adrian Mutu.*

27. The DRC therefore decided that “*Mr Adrian Mutu has to pay the amount of EUR 17,173,990 to Chelsea Football Club for having breached the contract signed on 12 August 2003*”, such amount corresponding to the sum of EUR 16,500,000 (unamortised portion of the transfer fee paid by the Club to the Former Club), plus EUR 307,340 (unamortised portion of the sign-on fee paid by the Club to Player) plus EUR 366,650 (unamortised portion of the fee paid by the Club to Agent).
28. Finally, with regard to “*the player’s request to open an investigation against the club for having used and/or dealt with an unlicensed agent, in violation of the FIFA Players’ Agents Regulations, the Chamber concluded that from the documentation at its disposal no such violation emerged*”. The DRC, therefore, decided to “*refrain from referring the case of the alleged violation of the FIFA Players’ Agents Regulations to the competent FIFA authorities*”.
29. The Decision was notified to the parties on 13 August 2008.

## **2. THE ARBITRAL PROCEEDINGS**

### **2.1 The CAS Proceedings**

30. On 2 September 2008, the Player filed a statement of appeal with CAS, pursuant to the Code of Sports-related Arbitration (hereinafter referred to as the “Code”), against the Club to challenge the Decision. In his statement of appeal, the Player appointed Mr Jean-Jacques Bertrand as arbitrator.
31. On 11 September 2008, the Player filed his appeal brief, with 8 exhibits. In such submissions, the Player confirmed his requests for relief against the Decision. The appeal brief was transmitted to the Respondent by the CAS Court Office under cover letter dated 15 September 2008.
32. In a letter to the CAS Court Office dated 12 September 2008, the Respondent appointed Mr Dirk-Reiner Martens as arbitrator.
33. On 22 September 2008, the Player filed with the CAS Court Office a submission to the International Council of Arbitration for Sport (hereinafter referred to as the “ICAS”) challenging the appointment of Mr Dirk-Reiner Martens as arbitrator.
34. In a letter dated 2 October 2008, the Respondent indicated to the CAS that it maintained its decision to appoint Mr Dirk-Reiner Martens as arbitrator. Such position was confirmed also in a letter dated 9 October 2008.
35. On 3 October 2008, FIFA filed a letter with CAS informing that “*FIFA renounces its right to intervene in the present arbitration proceeding*”.

36. On 16 October 2008, within the deadline set by the CAS Court Office on the basis of the parties' agreement, the Club filed its answer to the appeal, asking its dismissal. The Respondent's answer had attached 9 annexes and 85 exhibits.
37. On 13 January 2009, the ICAS Board dismissed the challenge brought by the Appellant against the appointment of Mr Dirk-Reiner Martens as arbitrator.
38. By communication dated 14 January 2009, the CAS Court Office informed the parties, on behalf of the President of the CAS Appeals Arbitration Division, that the Panel had been constituted as follows: Prof. Luigi Fumagalli, President of the Panel; Mr Jean-Jacques Bertrand, arbitrator appointed by the Appellant; Mr Dirk-Reiner Martens, arbitrator appointed by the Respondent.
39. In a letter dated 23 January 2009, the CAS Court Office informed the parties that the Panel had decided to allow a second round of written submissions. As a result of the above and on the basis of the parties' agreement on the applicable calendar:
  - i. the Appellant filed his "*Additional Submissions*", dated 25 February 2009, with two bundles including 36 exhibits;
  - ii. the Respondent filed its "*Answer to the Appellant's Additional Submissions*", dated 6 April 2009, with 6 exhibits attached.
40. On 24 April 2009, the CAS Court Office, on behalf of the President of the Panel, issued an order of procedure (hereinafter referred to as the "Order of Procedure"), which was accepted and countersigned by the parties.
41. A hearing was held in Lausanne on 7 May 2009 on the basis of the notice given to the parties in the letters of the CAS Court Office dated 12 and 16 February 2009. The hearing was attended
  - i. for the Appellant: by Prof. Vaughan Lowe QC, Mr Guglielmo Verdirame, Mr Stephen Sutton, Mr Gianpaolo Monteneri, Mr Paolo Rodella and Mr Michele Colucci, counsel;
  - ii. for the Respondent: by Mr Adam Lewis QC, Mr Stephen Sampson, Mr Peter Limbert, Mr Brian Kennelly and Mr Stephan Netzle, counsel.
42. At the conclusion of the hearing, the parties, after making submissions in support of their respective cases, confirmed that they had no objections in respect of their right to be heard and to be treated equally in the arbitration proceedings. The Appellant, however, confirmed his objection to the regularity of the constitution of the Panel in light of his challenge against the appointment of Mr Dirk-Reiner Martens as arbitrator.

## 2.2 The Position of the Parties

### (a) The Position of the Appellant

43. In his statement of appeal (§ 30 above), the Appellant requested the CAS:

- “1. to set aside the challenged DRC decision;
2. to establish that no compensation is due by the Appellant to the Respondent or that the compensation is equal to zero;
3. to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;
4. to establish that the costs of the arbitration procedure shall be borne by the Respondent

*Subsidiarily, only in the event the above is rejected*

1. to set aside the challenged DRC decision;
2. to establish that for the calculation of any possible compensation due by the Appellant to the Respondent not more than the period of seven months in which he was suspended shall be taken into account;
3. to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;
4. to establish that the costs of the arbitration procedure shall be borne by the Respondent”.

44. The relief so sought was confirmed in the appeal brief dated 11 September 2008.

45. In the “Additional Submissions of the Appellant” (§ 39(i) above), the Player specified the following “Conclusion and Relief”:

*“The Appellant respectfully asks that this Tribunal find that:*

- i. *the determination of compensation in this case is governed by English law;*
- ii. *two of the heads of loss awarded by the DRC in its Decision on Compensation (transfer fee and agent’s fee) are irrecoverable under English law on one or more grounds; and*
- iii. *the remaining head of loss awarded by the DRC in its Decision on Compensation (signing-on fee) was wrongly awarded as the Club failed to show a loss in connection to it.*

*Accordingly, the Appellant respectfully invites the Tribunal to rule that:*

- i. *the DRC Decision on Compensation is set aside;*
- ii. *Without prejudice to the declaratory remedy already granted to the Respondent in proceedings below, the Respondent is entitled to no remedy in damages.*

- iii. *(Alternatively to it: The Respondent is entitled to nominal damages on a measure not greater than the total costs awarded against the Appellant in proceedings below).*

*In the alternative [...], the Appellant respectfully ask[s] that this Tribunal find that:*

- i. *the interpretation and application of Article 22 of the FIFA Regulations to the facts of this case breaches Article 38 of the Association Agreement between the EEC and Romania; and/or that*
- ii. *the interpretation and application of Article 22 of the FIFA Regulations to the facts of this case entails a breach [of] Article 81 of the EC Treaty; and/or that*
- iii. *the interpretation and application of Article 22 of the FIFA Regulations to the facts of this case entails a breach of Article 82 of the EC Treaty.*

*Accordingly, the Appellant respectfully invites the Tribunal to rule that:*

- i. *the DRC Decision on Compensation is set aside; and*
- ii. *Without prejudice to the declaratory remedy already granted to the Respondent in proceedings below, the Respondent is entitled to no remedy in damages.*

*In the alternative [...], the Appellant respectfully ask[s] that this Tribunal find that:*

- i. *the DRC erred in the interpretation and application of Article 22 of the FIFA Regulations to the facts of this case for failing to give due respect to national law and to other relevant objective criteria, as well as for failing to take into account all relevant facts and circumstances.*

*Accordingly, the Appellant respectfully invites the Tribunal to rule that:*

- i. *the DRC Decision is set aside; and*
- ii. *The Respondent is entitled to damages no greater than those quantifiable with reference to the seven-month ban from the game”.*

46. In its submissions in this arbitration, the Appellant criticizes the Decision, which he asks the Panel to set aside in its entirety. Indeed, the Appellant's "main case" is that English law is the applicable law for the determination of the compensation, that none of the heads of loss awarded by the DRC are recoverable under English law, and that the award should be for no damages at all, or alternatively for nominal damages only. In the "alternative", the Appellant submits that the DRC's application of Article 22 of the Regulations breached EC law and no damages are therefore owed. In any case, the Appellant submits that, should the Panel proceed on the basis of Article 22 of the Regulations, the proper application of the criteria established therein would lead to a different quantification of damages.

47. With respect to the law to be applied by the Panel in solving the dispute, the Appellant submits that the issue of compensation is to be determined exclusively by principles of English law, as a result of the choice of law expressed in unequivocal terms by the parties in Article 21 of the Employment Contract: no relevance should be given to the criteria set forth in Article 22 of the Regulations. The Appellant, in such respect, emphasizes that, “[b]y submitting the dispute to arbitration, the parties did not [...] give their consent to a variation of the applicable law to the effect that the criteria in Article 22 of the FIFA Regulations would supersede English law on compensation for breach of an employment contract”.
48. The Appellant’s position on English law is the following:
- i. *“it is extremely rare in English law for an employer to be awarded damages against an employee for breach of contract” and “an employment relationship is treated differently from other contractual relationships”*: for instance, a contractual clause can be treated as an unenforceable penalty clause when it does not represent a *“genuine pre-estimate of loss”* and is *“oppressive”*;
  - ii. *“[t]he object of an award of damages for breach of contract is to place the claimant in the same situation as if the contract had been performed”*. In such respect, damages can be sought on two different bases:
    - the *“performance or expectation measure”*, consisting of the gains lost by the innocent party because of the breach (also known as *“loss of bargain”*), and
    - the *“reliance measure”*, made of expenses incurred by the innocent party for the performance of the contract but wasted because of the breach,with the indication that *“[a] claimant who recovers for the loss of bargain cannot, as a general rule, combine a claim for reliance loss with one for loss of expectation, so to recover twice in respect of the same loss”*;
  - iii. *“a causal connection must be proven between the breach of contract and the loss. The claimant may recover damages for a loss only where the breach of contract was the ‘effective’ or ‘dominant’ cause of that loss”*;
  - iv. *“the claimant cannot recover damages for any part of his loss consequent upon the defendant’s breach of contract which the claimant could have avoided by taking reasonable steps. [...] if the claimant [...] avoids or mitigates his loss, he cannot recover for such avoided loss. [...] loss or expense incurred in the course of taking reasonable steps to mitigate the loss resulting from the defendant’s breach may be recovered by the claimant”* (rule on mitigation);
  - v. *“[t]he innocent party [...] has discretion as to the choice of remedies: he can either treat the contract as continuing (‘affirmation’) or he can bring it to*

*an end ('acceptance of the termination'). The rules on mitigation do not affect this choice" and "the length of the period given to the innocent party in order to make up his mind will depend upon the facts of the case";*

- vi. *"the aggrieved party is only entitled to recover such part of the loss actually resulting as was at the time of the contract reasonably foreseeable as liable to result from the breach" (rule on remoteness).*
49. The Appellant submits that none of the heads of loss awarded to the Club by the DRC are recoverable under English law:
- i. the unamortised cost of the transfer fee paid by the Club is not recoverable on the ground of remoteness, absence of a dominant or effective causal connection, and the Club's failure to mitigate;
  - ii. with respect to the signing-on fee, only two (of the five) instalments had been paid: as a result, the Club suffered no loss in respect of sums of money that it had not yet disbursed;
  - iii. the agent's fee is irrecoverable because it is remote;
  - iv. in any case, *"if a head of loss is held to be recoverable, account should be taken of the procedurally unfair dismissal of the Player and of the substantial impact that this had on the measure of the loss suffered by the Club"*.
50. At the same time, the Appellant criticizes the Decision from the point of view of EC law and submits that the Decision lacks a proper legal basis.
51. In a first perspective, it is the Player's case that *"the application of Article 22 of the FIFA Regulations to the facts of this case as decided by the DRC breaches the principle of non-discrimination"* set by Article 38 of the Agreement establishing an association between the European Economic Communities and their Member States, of one part, and Romania, of the other part, of 1 February 1993 (hereinafter referred to as the "Association Agreement").
52. In such respect, the Appellant underlines that the chapter of the Regulations concerning the *"maintenance of contractual stability"*, which includes Article 22, is not binding at national level, but applies exclusively to cases of transfers from one national association to another: the duty to protect contractual stability at national level rests with the national football associations.
53. As a result, in the Appellant's opinion, the Player, *"by virtue of having a nationality different from that of the Respondent [...], has been subjected to the FIFA Regulations and not to those of the FA, which accord different treatment to British nationals or to players who are transferred at domestic level, at least with regard to the payment of compensation and the criteria which are applied to determine it in case of breach of contract"*. In other words, *"the Player was*

*subject to different rules on compensation and to different treatment from that which would have applied to the proper national comparator (i.e. a UK national transferring to a UK club)".*

54. In a second perspective, the Appellant submits that the rules on compensation for breach of contract can have an anti-competitive effect: *"[i]n this case, by imposing an in terrorem level of compensation on players, Article 22 of the FIFA Regulations, as interpreted and applied in the present case, distorts and restricts competition by ensuring that the wealthiest clubs maintain a firm grip on the top players in the crucial market of international transfers".* As a result, in the Appellant's opinion, Article 81 of the EC Treaty is breached. But not only. The Player submits in fact that if the Decision is correct, then FIFA would have abused its dominant position in the market by preventing effective competition, contrary to Article 82 of the EC Treaty. The restrictions caused by the Regulations are, in the Appellant's opinion, not legitimate and disproportionate to the objectives they pursue: the Player submits, in fact, that *"the criteria through which compensation is calculated [...] would [...] result in the amount of compensation being paid by players who terminate their contracts to be manifestly excessive and would inevitably affect the market"*.
55. At the same time, the Player underlines that the payment of compensation calculated on the basis of a transfer fee, determined by the clubs involved in the transfer and not by the player, would affect the freedom of movement of players and hinder their career.
56. In addition, the FIFA dispute resolution, disciplinary and arbitration system would be contrary to EU law, since it is *"hybrid"* in nature and may discriminate those who refer to its jurisdiction and infringe EU competition rules where it passes disproportionate sanctions.
57. In any case, the Appellant submits that the DRC, in its Decision, *"took into consideration several criteria [...]. The application of these criteria [...] do[es] not find any legal basis in any regulations or laws and create a distorted effect with respect to its result"*. The Appellant's criticisms to the criteria applied by the DRC can be summarized as follows:
  - i. with respect to the *"remaining value of the employment contract"*, *"the DRC has given a distorted interpretation of the FIFA Regulations by taking the remaining value of the employment contract as a criterion by itself"*, while Article 22.1 of the Regulation refers to *"the remuneration under the old and the new contract"* to give *"an indication on whether the player in question has terminated an employment relationship because attracted by a better financial offer from a third club"*. In addition, *"the remaining value of the contract is an expense that the Respondent has saved, since it did not pay any longer a salary to the Appellant. The remaining value of the employment contract is hence an amount that has to be deducted from any potential damage, but for sure not added"*;

- ii. with respect to the “*unamortized costs for acquiring the Appellant*”, the Player underlines that “*both the transfer compensation paid to AC Parma as well as the fees paid to the agents are situation[s] in which the Appellant was not directly involved*”. As a consequence, “*any amount paid as transfer compensation or paid to agents shall be disregarded*”;
  - iii. with respect to the “*signing on fee paid to the Appellant*”, the Player submits that this is “*a lump sum that a club gives to a player in order to convince him to sign an employment contract. [...] Once the player has signed the employment contract the signing on fee has been fully deserved and its reimbursement cannot be requested*”;
  - iv. with respect to “*the specificity of sport and the DRC guidelines*”, the Appellant notes that “*the considerations developed by the DRC give the impression of conferring to this deciding body a full arbitrary power*” to adopt a “*punitive and deterrent measure*” on the basis of a chapter of the Regulations whose “*scope [...] is limited to those situations in which a player runs away from the club with which he registered, but is for sure not applicable to a situation in which a player [...] wishes the contractual situation to be maintained in force*”. As a result, “*the DRC went [...] clearly beyond its competence*”. In addition, the Player criticizes the application of guidelines for the calculation of compensation whose existence was “*kept as secret and disclosed in a decision*”.
58. The Appellant, then, states his position with respect to the assessment of the damages pursuant to Article 22 of the Regulations and submits that, even though “*the party in breach of the contract owes compensation for the damage caused*”, the “*damage must be directly related to the breach*” and that “*reduction factors shall be taken into account*”: due respect to national law is to be paid also within the framework of Article 22 of the Regulations so that “*the Player’s submissions under English law can [...] be brought [...] with the effect at least of significantly reducing the level of damages*”. In such context, the Appellant submits that he did not breach the Employment Contract to join another club and that the Respondent shares co-responsibility in the termination of the Employment Contract and the financial consequences of such termination, because it:
- i. made illegal private doping controls targeting the Appellant;
  - ii. let the Appellant without any assistance while he was going through a difficult personal and family situation;
  - iii. held a meeting with the Appellant without informing him that he was attending a disciplinary hearing;
  - iv. unlawfully attempted to interfere and obstruct the Appellant’s possibility to find a new club;
  - v. opted for the immediate termination of the Employment Contract and by



doing so caused more damage.

59. In the calculation of the damages, in addition, account should be taken also of the fact that by terminating the Employment Contract, the Appellant had the advantage of avoiding the payment of the remuneration to a player that was not playing.
60. On the other hand, the Appellant submits that, in the event he would be found responsible to pay damages, compensation should be limited, by taking into account that the prohibited substance for which he was sanctioned was not taken to improve his sporting performances, that he was ineligible to play only for a limited period (during which the Club could have saved his remuneration) and that at the end of such period his sporting value had regained the level it had before the suspension.
61. In summary, “[t]aking into account all relevant factors on the basis of objective criteria, the fair and reasonable measure of compensation in this case is to [be] determined with the reference to the seven-month suspension, that is the actual period of time during which [...] Chelsea FC would have been deprived of the Player’s services as result of his breach”.
62. Finally, the Appellant criticizes as “not founded” the elements submitted by the Club before the DRC (but not applied by the DRC) in order to determine the amount of damages sought:
  - i. Mr Shawn Wright Phillips was not signed as replacing player;
  - ii. the salaries and bonuses paid to the Player while employed with the Club cannot be considered as “costs wasted”, but remuneration for services rendered, and
  - iii. the salaries earned by the Player from the new club have nothing to do with the damages suffered by the Respondent.

**(b) The Position of the Respondent**

63. The answer dated 16 October 2008 filed by the Club (§ 36 above) contained the following “*Conclusion and Relief*”:

*“The Player is not, for the reasons set out above, entitled to any of the relief which he seeks or any other relief.*

*Accordingly, the Club invites the CAS to dismiss the Player’s Appeal, and to order him to pay the Club its costs of the Appeal”.*

64. The “*Conclusion and Relief*” so sought was confirmed by the Club in the “*Answer to the Appellant’s Additional Submissions*”.

65. The Club, in substance, seeks in this arbitration compensation for breach of contract in the amount awarded in the Decision, namely EUR 17,173,990. It is, however, the Club's position that a correct assessment of compensation, on the basis of the relevant criteria, would comfortably lead to a measure exceeding the amount granted by the DRC. Consequently, the Club refers in its submissions in this arbitration also to the criteria for the quantification of the compensation that it had invoked before the DRC, but that the DRC did not accept, in order to ensure that it recovers the amount awarded by the DRC.
66. For the purposes so stated, the Club challenges the Appellant's submissions and states its case regarding the rules to be applied for the determination of compensation to be awarded, the criteria to be followed to these ends, as identified taking into account the Regulations and English law, and the EC law issues raised by the Player.
67. With respect to the applicable law, it is the Respondent's position that the Club and the Player expressly agreed (Article 21 of the Employment Contract) that their contractual relationship would be governed by English law. The Club submits that this choice of law is entirely consistent with, and fully enforceable pursuant to, Article 187 of the Swiss Private International Law Act (hereinafter referred to as the "PIL") and Article R58 of the Code.
68. The Respondent underlines, however, that both such provisions (Article 187 of the PIL and Article R58 of the Code) stress the importance of deciding a dispute in accordance with the rules and regulations chosen by the parties. This position is shared by English law, which mandates the application of the "tailor-made" clauses agreed by the parties with respect to the remedies available to the innocent party following the other party's breach. In such context, the parties have agreed to adopt the Regulations, together with a mechanism for their application, which are a set of private rules, "consensually incorporated by reference" into an English law contract: "[t]hey are not an alternative legal system but a set of contractual terms which the parties explicitly agreed by way of reference". In fact, by Article 18 of the Employment Contract, the Player and the Club agreed that the Regulations would apply to the substantive as well as the procedural aspects of any dispute between them. The Respondent finds comfort to such conclusion in §§ 44-46 of the Second CAS Award, which read as follows:
- "44. The employment contract was a contract between a club member of the FA, which in turn is a member of FIFA, and a professional player, and is, therefore, subject to the rules of FIFA, which are applicable to any dispute arising out of the breach of that contract by one of the parties.*
- 45. In any event, the employment contract provides at Clause 3.1.9 that the Player must observe the "Rules", which include the FIFA regulations according to the definition of the "Rules" contained in Clause 1.1 of the contract. [...]*
- 46. Accordingly, Chelsea was entitled to direct its appeal at Mr Mutu in order to require him to accept the FIFA jurisdiction to rule on the issue of sanction and of compensation".*

69. With respect to the quantification of damages, i.e. *“the only issue that [...] falls to be decided”* in this arbitration, the Respondent states its case and challenges, as *“misconceived”*, the Player’s criticisms of the approach taken by the DRC in the Decision and the Player’s arguments as to the proper approach to be taken.
70. Under the first perspective, it is the Club’s case that the compensation is to be quantified pursuant to Article 22 of the Regulations and the *“contractually agreed”* factors therein contained, to be considered taking into account the national law concerned and the specificity of sport, i.e. the factual context of the breach, including its wider sporting ramifications.
71. In respect of the criteria set forth by Article 22 of the Regulations, the Club refers to the *“[d]ecided DRC and CAS authorities”* and underlines, *inter alia*, that unamortised costs of acquisition of the player are always recoverable, *“as a minimum”*: when they were not awarded, it has been because no such costs have been found to exist. The Club, then, applies such criteria to the present case as follows:
- i. the breach took place in the so-called “Protected Period” and during the season: in such circumstances *“the damage is greater and so compensation should be greater, and the normal measure should not be reduced”*;
  - ii. the Club is entitled, as the Decision confirmed, to recover the unamortised costs of acquisition of the Player. The Club, however, underlines that its calculations of the unamortised costs (totalling EUR 19,382,414 and GBP 276,404) slightly differ from those made by the DRC (that arrived at a figure of EUR 17,173,990), because the DRC took into account different costs, applied a different amortisement formula and applied a different exchange rate. More specifically, the Club includes in its acquisition costs, to be amortised over the term of the Employment Contract, also the payments of the solidarity contributions due under the Regulations (EUR 1,012,500), of the *“transfer levy [...] to the Football League”* (GBP 362,397), and the fees paid to its agents (EUR 1,700,000);
  - iii. the market value of the Player was EUR 20,000,000: *“[i]f nothing else, this value offers comfort that”* the sum *“awarded [by the DRC] was justifiable on a second basis as well as on the basis of unamortised costs”*;
  - iv. the Club’s cost of replacing the Player was EUR 22,661,641, and the Club invited the DRC to add a substantial sum by way of compensation to the amount of unamortised costs *“to reflect the major expenditure reasonably incurred by the Club in replacing the Player as a consequence of his unilateral breach of the [Employment] Contract”*. Again, *“this value offers comfort that”* the sum *“awarded [by the DRC] was justifiable on a third basis as well as on the basis of unamortised costs and the basis of the loss of market value”*;
  - v. *“while the DRC did not ultimately award the residual value of the contract*

[...], CAS can take comfort from these other bases of calculation in reaching the conclusion that the award made was the minimum appropriate”;

- vi. among the other objective factors relevant to the case, the Club refers to the amount of GBP 567,772.61 in “unrecovered costs incurred in the proceedings in this matter since 2005”, plus CHF 133,500 in “costs awards made by the CAS in the First and Second CAS Appeals that the Player has so far ignored”. In their respect, “CAS is asked either to add these to the compensation award, or to make a separate order for costs”.
72. In other words, “however one sets about assessing loss in the circumstances of this case, one arrives at a figure equal to or in excess of EUR 17,173,990”.
  73. The Club, in this connection, submits that the Decision “would not be materially different whether it applied the contractually agreed measure”, i.e. the criteria set in the Regulations, “or the measure under the default provisions of English law absent such an express agreement”.
  74. As to the rule on “remoteness” under English law, the Club submits that
    - i. “it is clear that when considering the effect of a unilateral and fundamental breach by a player during the protected period, loss of the unamortised acquisition costs is likely to happen in the ‘ordinary course of thing[s]’”;
    - ii. “it is a fundamental principle of remoteness that what must be foreseeable is the head of loss and not necessarily the detail, still less the degree”;
    - iii. “the level of the transfer fee (while high) was not so high as to be beyond reasonable foreseeability”, and “[t]he Player does not deny that he was aware that a very substantial transfer fee was paid by the Club before he signed the [Employment] Contract”;
    - iv. “the fact that the Player was not a party to the contract [...] under which the transfer fee was paid is entirely irrelevant”.
  75. As to the rules on “causation” and “mitigation” under English law, the Respondent submits that “the duty to mitigate damages only arises after the decision to accept the repudiation as discharging the contract is made”, and that “the amount awarded by the DRC was not a penalty because it reflected a genuine pre-estimate of the damage suffered by the Club”.
  76. Under the second perspective, the Club states its position with respect to the Player’s criticisms of the approach taken by the DRC to quantify the damages to be paid, *inter alia* as follows:
    - i. the remaining value of the Employment Contract was not awarded by the DRC;

- ii. the costs of acquisition of the Player remained (in part) unamortised because of the breach, and it was foreseeable that the breach of contract by the Player would lead to a proportion of the fees paid for him being unamortised;
  - ii. the Club did not include the signing-on fee in its calculation of unamortised costs: “[w]hile the DRC did include the whole of the signing on fee in unamortised costs, it also failed to include other amounts that were considerably greater than the amount of the signing on fee”;
  - iii. the DRC did not base its award on any aspect of the specificity of sport;
  - iv. the DRC guidelines “are no more than non-binding guidance, which reflect the jurisprudence of the DRC”.
77. Under the third perspective, the Club criticizes the arguments advanced by the Player with respect to the “proper approach” to be taken to the quantification of compensation. More specifically, the Club denies that “there is any place for ‘reduction factors’ such as the seriousness of the infraction, degree of Player’s fault, or the actions of the Club”. In addition, “there is no room for some *ex aequo et bono* decision not to award full compensation”.
78. The Club’s submissions can be summarized as follows:
- i. as to the Player’s argument that the Club is “not an innocent party”, the Respondent denies that such allegation is a basis for the reduction of the compensation;
  - ii. as to the “supposed ‘excessive reaction’ of the Club and lack of ‘compliance with the obligation of avoiding and/or reducing the damage’”, the Club emphasizes that, as a matter of English law, “[t]he employer is not required to mitigate its loss before it elects to terminate the contract, but rather after it has elected to do so”. In addition, the Club notes that the DRC has taken into consideration the fact that the Club had elected to terminate the Employment Contract, and has therefore reduced the compensation. Finally, the Club describes as “unrealistic” the suggestion that it should have affirmed the Employment Contract in order to retain the Player and to transfer his registration at the next transfer window, because the Player had to agree to the transfer, and a willing purchaser had to be found;
  - iii. as to the “supposed ‘simultaneous responsibility’ of the Club” and the “supposed ‘illicit actions’ of the Club”, the Club emphasizes that it acted properly to defend its rights, strictly following the FA rules and its policies against doping practices;
  - iv. as to the fact that the Player did not breach the Employment Contract to move to another club, the Club submits that this circumstance does not affect the losses it suffered as a result of the breach;

- v. as to the Club's compliance with English employment law, the Respondent alleges that it is *res iudicata* that the Player breached the Employment Contract and that the Club was entitled to terminate the Employment Contract: the Player would have been dismissed all the same;
  - vi. as to the DRC's failure to place the Player on an "equal footing" with the Club, the Club refers to the provisions contemplating the Clubs' right to recover the unamortised acquisition costs and to the fact that the new club, as a beneficiary of the Player's breach, bears joint liability with the Player, and "[t]his greatly reduces the alleged risk of injustice claimed by the Player";
  - vi. as to the submission that the appropriate measure of compensation should be by reference to the seven-month suspension, the Respondent submits that by this claim the Player seeks to re-open the argument that the Club was obliged to mitigate the damages by not exercising its election, consequent upon the breach, to terminate the Employment Contract.
79. Finally, the Respondent challenges the EC law issues raised by the Appellant. The Respondent, indeed, answers to such argument under several points of view.
80. First, the Club submits that the raising by the Appellant of the EC law issues constitutes "*an abuse of the process of CAS*" because
- i. it is late, as no reasonable early notice has been given to the Club and FIFA of the Player's attempt to strike down the entire system created under the Regulations,
  - ii. it is doing injustice to the parties to this litigation, as based on assertion only, since the Player has failed to define any relevant market and give any particulars of the alleged abuse of FIFA's dominant position,
  - iii. it is doing injustice to the parties outside this litigation, by bringing a "*collateral attack*" to the Regulations, which were the product of detailed negotiations between the EU Commission and FIFA, with the involvement of the Member States, in proceedings where neither FIFA nor the EU Commission is a party.
81. Second, the Club submits that the Appellant's argument based on unlawful discrimination on the ground of nationality is "*misconceived*", because
- i. "*there can be no question of discrimination because a purely domestic 'move between clubs' and a 'move between clubs belonging to different national associations' are materially different and may properly be regulated in different ways*";
  - ii. "*there is no difference in treatment on the ground of nationality*", since the Regulations apply without regard to nationality, and,

iii. in any case, *“there is no sufficiently material difference in treatment”* depending on whether a dispute is governed by English law or under the Regulations, since under the Regulations, due respect is to be paid to the domestic law.

82. Third, the Respondent challenges the Player’s argument under Article 81 and 82 of the EC Treaty, by submitting, *inter alia*, that *“there is nothing anti-competitive in an employee being required to pay damages by way of ‘compensation’ to his employer for a fundamental and unilateral breach of contract which has caused the employer foreseeable loss”*. The Club adds that *“it is imperative to the integrity of football that it operates within a system that promotes the maintenance of contractual stability by penalising players who breach their contracts”*: indeed, a club that paid a substantial fee to a former club to secure the services of a player may suffer very severe financial consequences if that player unilaterally breaches his contract. This risk, in the Respondent’s opinion, is an aspect of the specificity of sport, which makes football *“anomalous”* in relation to other industries.

### 3. LEGAL ANALYSIS

#### 3.1 Jurisdiction

83. CAS has jurisdiction to decide the present dispute between the parties. The jurisdiction of CAS, which is not disputed by either party, is based *in casu* on Article R47 of the Code and on Articles 62 and 63 of the FIFA Statutes, in their version in force when the appeal was filed (hereinafter referred to as the *“FIFA Statutes”*), which confirmed the corresponding provisions set out in the version of the Statutes in force at the time the Decision was issued.

84. More specifically, the provisions of the FIFA Statutes that are relevant to that effect in these proceedings are the following:

i. Article 62 [*“Court of Arbitration for Sport (CAS)”*]:

*“1. FIFA recognises the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, Members, Confederations, Leagues, clubs, Players, Officials and licensed match agents and players’ agents.*

*2. 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”.*

ii. Article 63 [*“Jurisdiction of CAS”*]:

*“1. Appeals 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.*

2. *Recourse may only be made to CAS after all other internal channels have been exhausted.*
3. *CAS, however, does not deal with appeals arising from:*
  - (a) *violations of the Laws of the Game;*
  - (b) *suspensions of up to four matches or up to three months (with the exception of doping decisions);*
  - (c) *decisions against which an appeal to an independent and duly constituted arbitration tribunal recognised under the rules of an Association or Confederation may be made.*
4. *The appeal shall not have a suspensive effect. The appropriate FIFA body or, alternatively, CAS may order the appeal to have a suspensive effect. [...]"*

### **3.2 Appeal proceedings**

85. As these proceedings involve an appeal against a decision in a dispute relating to a contract, issued by a federation (FIFA), whose statutes provide for an appeal to the CAS, they are considered and treated as appeal arbitration proceedings in a non-disciplinary case, in the meaning and for the purposes of the Code.

### **3.3 Admissibility**

86. The statement of appeal was filed by the Player within the deadline set down in the FIFA Statutes and the Decision. No further recourse against the Decision is available within the structure of FIFA. Accordingly, the appeal is admissible.

### **3.4 Scope of the Panel's review**

87. According to Article R57 of the Code, the Panel has full power to review the facts and the law of the case. Furthermore, the Panel may issue a new decision which replaces the decision challenged, or may annul the decision and refer the case back to the previous instance.

### **3.5 Applicable law**

88. The question of what law is applicable in the present arbitration is to be decided by the Panel in accordance with the provisions of Chapter 12 of the PIL, the arbitration bodies appointed on the basis of the Code being international arbitral tribunals having their seat in Switzerland within the meaning of Article 176 of the PIL.
89. Pursuant to Article 187.1 of the PIL,



*“The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the law with which the case is most closely connected”.*

90. Article 187.1 of the PIL constitutes the entire conflict-of-law system applicable to arbitral tribunals, which have their seat in Switzerland: the other specific conflict-of-laws rules contained in Swiss private international law are not applicable to the determination of the applicable substantive law in Swiss international arbitration proceedings (Kaufmann-Kohler & Stucki, *International Arbitration in Switzerland*, Zurich 2004, p. 116; Rigozzi, *L'arbitrage international en matière de sport*, Basle 2005, § 1166 *et seq.*).
91. Two points should be underlined with respect to Article 187.1 of the PIL:
  - i. it recognizes the traditional principle of the freedom of the parties to choose the law that the arbitral tribunal has to apply to the merits of the dispute;
  - ii. its wording, to the extent it states that the parties may choose the “*rules of law*” to be applied, does not limit the parties’ choice to the designation of a particular national law. It is in fact generally agreed that the parties may choose to subject the dispute to a system of rules which is not the law of a State and that such a choice is consistent with Article 187 of the PIL (Dutoit, *Droit international privé suisse*, Basle 2005, p. 657; Lalive, Poudret & Reymond, *Le Droit de l’Arbitrage interne et International en Suisse*, Lausanne 1989, p. 392 *et seq.*; Karrer, in Honsell/Vogt/Schnyder (publ.) *Kommentar zum schweizerischen Privatrecht, Internationales Privatrecht*, Basle 1996, Art. 187, § 69 *et seq.*; see also CAS 2005/A/983 & 984, Peñarol v/ Bueno, Rodriguez & PSG, § 64 *et seq.*). It is in addition agreed that the parties may designate the relevant statutes, rules or regulations of a sporting governing body as the applicable “*rules of law*” for the purposes of Article 187.1 of the PIL (Rigozzi, *L’arbitrage international en matière de sport*, Basle 2005, § 1178 *et seq.*).
92. This far-reaching freedom of the choice of law in favour of the parties, based on Article 187.1 of the PIL, is confirmed by Article R58 of the Code. The application of this provision follows from the fact that the parties submitted the case to the CAS. Article R27 of the Code stipulates in fact that the Code applies whenever the parties have agreed to refer a sports-related dispute to the CAS.
93. Pursuant to Article R58 of the Code, the Panel is required to 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”*.
94. In the present case, the question is which “*rules of law*”, if any, were chosen by

the parties: i.e., whether the parties choose the application of a given State law and the role in such context of the “applicable regulations” for the purposes of Article R58 of the Code. The issue is in fact debated between the parties: on one side, the Appellant submits that English law finds exclusive application as a result of a choice made by the parties; on the other side the Respondent agrees that English law applies, but submits that the parties incorporated, by way of reference, into the Employment Contract, the Regulations, which therefore fall to be applicable as contractual content.

95. In solving this question the Panel has to consider the following provisions:

- i. Article 21 [*“Jurisdiction and Law”*] of the Employment Contract, under which

*“This contract shall be governed by and construed in accordance with English law and the parties submit to the non exclusive jurisdiction of the English Courts”*

- ii. Article 18 [*“Specificity of Football”*] of the Employment Contract, which provides that

*“The parties hereto confirm and acknowledge that this contract[,] the rights and obligations undertaken by the parties hereto and the fixed term period thereof reflect the special relationship and characteristics involved in the employment of football players and the participation by the parties in the game of football pursuant to the Rules and the parties accordingly agree that all matters of dispute in relation to the rights and obligations of the parties hereto and otherwise pursuant to the Rules including as to termination of this contract and any compensation payable in respect of termination or breach thereof shall be submitted to and the parties hereto accept the jurisdiction and all appropriate determinations of such tribunal panel or other body (including pursuant to any appeal therefrom) pursuant to the provisions of and in accordance with the procedures and practices under this contract and the Rules”*

- iii. Article 3.1.9 [*“Duties and Obligations of the Player”*] of the Employment Contract, specifying that

*“The Player agrees [...] to observe the Rules [...]”*

- iv. the definition of “Rules” in the Employment Contract, as follows

*“‘the Rules’ shall mean the statutes and regulations of FIFA and UEFA the FA Rules the League Rules the Code of Practice and the Club Rules”*

- v. Article 62.2 [*“Court of Arbitration for Sport (CAS)”*] of the FIFA Statutes:

*“... CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law”.*

96. In light of the foregoing, the Panel remarks that it is common ground between the parties that the Employment Contract is governed by English law, and that therefore English law has to be applied to determine the damages due as a consequence of the breach of such contract. Its Article 21, in fact, contains a choice-of-law provision which is fully enforceable pursuant to Article 187.1 of the PIL and Article R58 of the Code.
97. At the same time, the Panel finds that, in order to determine the damages due as a consequence of the breach of the Employment Contract, also the Regulations fall to be applied. The Panel is led to this conclusion by several factors:
- i. the parties referred in the Employment Contract to the Regulations, being part of the “*Rules*” that
    - the Player agreed to comply with (Article 3.1.9),
    - match “*the special relationship and characteristics involved in the employment of football players*” (Article 18, first part), and
    - determine “*all matters of dispute [...] including as to [...] any compensation payable in respect of [...] breach*” which the parties agreed to submit to the peculiar dispute resolution mechanisms referred to in Article 18, second part;
  - ii. the appeal is directed against a decision issued by the DRC, and is based on Article 62.2 of the FIFA Statutes, mandating the application of the “*various regulations of FIFA*”;
  - iii. the applicability of the Regulations to the contractual dispute between the Club and the Player has been endorsed by two CAS panels, in the First CAS Award (at page 9: “[...] *this matter shall be decided in accordance with FIFA Regulations and with English law [...]*”) and in the Second CAS Award (at § 39: “[...] *the Panel holds that the 2001 FIFA Regulations are applicable to decide on this dispute*”).
98. In light of the foregoing, the Panel concludes that this dispute has to be determined on the basis of English law and the Regulations.
99. The provisions set in the Regulations which appear to be relevant in this arbitration are the following:
- i. Article 21.1:
    - “(a) *In the case of all contracts signed up to the player’s 28<sup>th</sup> birthday: if there is unilateral breach without just cause or sporting just cause during the first 3 years, sports sanctions shall be applied and compensation payable. [...]*”

ii. Article 22:

*“Unless specifically provided for in the contract, and without prejudice to the provisions on training compensation laid down in Art. 13 ff, compensation for breach of contract (whether by the player or the club), shall be calculated with due respect to the national law applicable, the specificity of sport, and all objective criteria which may be relevant to the case, such as:*

- (1) Remuneration and other benefits under the existing contract and/or the new contract,*
- (2) Length of time remaining on the existing contract (up to a maximum of 5 years),*
- (3) Amount of any fee or expense paid or incurred by the former club, amortised over the length of the contract,*
- (4) Whether the breach occurs during the periods defined in Art. 21.1”.*

100. In this context, the Panel does not find it necessary to examine in general terms whether the Regulations, to the extent they define the financial consequences of the breach of a contract, are contrary to EC rules prohibiting discrimination on the ground of nationality or anticompetitive practices, so that their application has to be immediately discarded, without further consideration. Even though a CAS panel is not only allowed, but also obliged to deal with the issues involving the application of EC law, as confirmed by the Swiss Federal Court (ATF 132 III 399) and CAS jurisprudence (CAS 98/200, AEK Athens and SK Slavia Prague v/ UEFA), this Panel finds it more proper to consider the EC law issues raised by the Appellant (§ 50-56 above) *in concreto*, while examining the application to this dispute of the relevant provisions of the Regulations.

101. In the same context, the Panel can leave the question open as to whether the Regulations apply as “*governing rules*” or as “*contractual content*”. In fact, the Panel underlines that the concurrent application of English law and the Regulations with respect to compensation for breach of contract is allowed not only on the basis of the relevant conflict of law provisions (§§ 89, 93 above), but also by each of those sets of rules. Actually:

- i. English law allows the parties to a contract to specify in their contract the remedy available to the innocent party following the breach of the other party;
- ii. Article 22 of the Regulations mandates “*due respect to the national law applicable*” in the calculation of compensation for breach of contract.

### 3.6 The merits of the dispute

102. The Appellant in this arbitration is challenging under several perspectives the Decision that ordered him to pay the Respondent the amount of EUR 17,173,990:

criticism against the Decision is based on English law, EC law and the Regulations. The Respondent, on the other hand, is asking that the measure of the compensation awarded by the DRC be confirmed.

103. The Panel emphasizes that, in its evaluation of the merits of the dispute, it is bound in at least two relevant directions:
104. In a first direction, the Panel notes that it is bound to observe the limits of the parties' motions. Even though, according to Article R57 of the Code, the Panel has full power to review the facts and the law of the case, the arbitral nature of CAS proceedings obliges the Panel to decide all claims submitted, but at the same time prevents the Panel from granting more than what the parties are actually asking for.
105. In a second direction, then, the Panel is bound to observe the decisions passed between the parties that have a *res iudicata* status, decisions which include the First CAS Award and the Second CAS Award. As a result, and for instance, this Panel cannot review, because it is finally settled, the question whether the Player's admitted use of cocaine constituted a unilateral breach without just cause of the Employment Contract, that in such context it was immaterial whether the Player wished the Employment Contract to continue notwithstanding his breach, that the Club is entitled to seek compensation for the Player's breach, and that the DRC had jurisdiction to hear the Club's claim for compensation.
106. In such framework the question that has to be examined in this arbitration relates to the measure of the damages, if any, that the Player has to pay the Club as a result of his breach of the Employment Contract.
107. Argument, in fact, is made in this arbitration with respect to the quantification of damages made by the DRC following the final finding that the Player had breached the Employment Contract. More specifically, the parties disagree with respect to the criteria that have to be observed in such exercise.
108. The DRC, actually, awarded compensation in favour of the Club, in the mentioned amount of EUR 17,173,990, on the basis of Article 22 of the Regulations. Under such provision, the following elements have to be taken into account:
  - i. the national law applicable;
  - ii. the specificity of sport;
  - iii. other objective criteria, which include
    - the remuneration and other benefits under the existing contract and/or the new contract,
    - the length of time remaining on the existing contract,
    - the amount of any fee or expenses paid or incurred by the former club, amortised over the length of the contract, and

- whether the breach occurred in the so-called Protected Period.

109. In its Decision the DRC discussed the various criteria mentioned in Article 22 of the Regulations, but eventually quantified the damages by calculating only the amount of the unamortised costs of acquiring the services of the Player: it added EUR 16,500,000 (unamortised portion of the transfer fee paid to the Former Club), EUR 307,340 (unamortised portion of the sign-on fee), and EUR 366,650 (unamortised portion of the fee to the Agent), and therefore set the total amount at EUR 17,173,990 (equal to EUR 16,500,000 + EUR 307,340 + EUR 366,650). The DRC, in fact, decided not to take into account for the determination of the damages the amounts already paid by the Club to the Player (being the consideration for the services rendered) or the remaining value of the Employment Contract. At the same time, the DRC considered that no modification of the amount so determined had to be made on the basis of the “*specificity of sport*”.
110. The first (and foremost) question that this Panel has to analyse, in light of the parties’ requests, is therefore whether the quantification of damages, as granted by the Decision, finds a sufficient legal basis in the applicable rules, i.e in the Regulations and in English law.
111. The Panel, indeed, finds that the determination of the amount of the compensation that a player breaching an employment contract has to pay can be based on the unamortised acquisition costs, and that such operation is fully consistent with Article 22 of the Regulations and with English law.
112. Under the first point of view, the Panel notes that the award of compensation on the basis of the unamortised acquisition costs is not only explicitly provided by Article 22 of the Regulations, but also consistently upheld in the CAS jurisprudence (CAS 2003/O/482, Ortéga; CAS 2008/A/1519 & 1520, Matuzalem; principle found to be “*reasonable*” also in CAS 2007/A/1298, 1299 & 1299, Webster, even though the Panel found that such criterion could not be applied because the player had remained with the club in question for a period longer than the initially agreed contractual term – in other words, because the acquisition cost had already been amortised over the initial term of the contract).
113. Under the second point of view, the Panel agrees with the Respondent’s submission that the award of compensation on the basis of the unamortised acquisition costs is consistent with English law, which allows compensation for the costs incurred by the innocent party in reliance on the promised performance, but wasted because of the other party’s breach of contract. In this dispute, the Club is seeking compensation for the costs it incurred, but were wasted because of the Player’s breach of the Employment Contract. Such costs include the transfer fee paid to the Former Club as well as all other related costs incurred by the Club in order to secure the Player’s services. Had the Employment Contract continued until the ordinary expiration of its term, the Club would have enjoyed the services of the Player and have been in a position to amortise such costs over the entire contract term; or, had the Employment Contract not been terminated because of the Player’s breach (on this point see also § 116 below), the Club could, in the

alternative, have transferred the Player for a fee, voluntarily setting-off the unamortised portion of the acquisition costs.

114. Such conclusion is not, in the Panel's opinion, precluded by the English law rules on remoteness, causation and mitigation of damages.
115. As to remoteness, the Panel notes that the loss suffered by the Club, i.e. the impossibility to amortise over the contract term the acquisition costs or to transfer the Player for a fee, was not an unusual type of loss: on the basis of Article 22 of the Regulations, the DRC practice and the CAS jurisprudence, in fact, said loss was (or could have been) at the time of conclusion of the Employment Contract in the reasonable contemplation of the parties not an unlikely result of the breach. In addition, it is to be noted that for a damage not to be too remote, the parties need have contemplated the "head" of damage, and not the "extent" of that loss. And it is a standard practice that transfer fees are paid: actually, the Player did not deny his knowledge of the fact that the Club had paid the Former Club a substantial amount of money for his transfer. In this context, the fact that the Player was not party to the Transfer Contract and had therefore not determined the amount of the transfer fee, or the other expenses incurred by the Club in connection with the acquisition of the Player (on which compensation is calculated), is entirely irrelevant.
116. As to causation and mitigation of damages, the Panel remarks that, contrary to the Appellant's submissions, the damages were caused by the Player's breach leading to the termination of the Employment Contract, and that the Club's claim for compensation of its "reliance expenditures" is not precluded by the Club's choice to terminate the Employment Contract for the Player's breach. The Panel, in fact, acknowledges that the English rules on mitigation do not apply to the innocent party's choice between the different remedies available to him following the other party's breach of contract, i.e. between termination or affirmation of the contract. The duty to mitigate damages only arises after the decision to terminate the contract (by accepting its repudiation), or to treat it as still binding, is made. As a result, the Club – as confirmed in the final First CAS Award – had the right to terminate the Employment Contract because of the Player's breach without just cause and still keep the right to compensation for the costs incurred relying on the Player's promised performance. In the same way, the Club was not required to try to transfer (for a fee) the Player before exercising its right to terminate the Employment Contract: indeed, a transfer of the Player would have been subject to finding a willing purchaser, to an agreement on the transfer conditions and to obtaining the Player's consent; in addition, as pointed out by the Respondent at the hearing, such attempt could have been construed as an implied affirmation of the Employment Contract, thereby depriving the Club of the option to terminate it.
117. Even though, in light of the above, the Panel confirms the DRC decision to determine compensation on the basis of the unamortised compensation costs, the Panel does not agree with the actual calculation made by the DRC.
118. The Panel in this respect notes that the DRC, while considering the amount of the fees and expenses paid or incurred by the Club, amortised over the length of the

Employment Contract, assumed that the Employment Contract was for a term of 5 years, corresponding to 60 months, and that the termination occurred when 44 months of the contract term had remained. As a result, the DRC calculated the unamortised portion of the relevant expenditures (see § 109 above) by dividing their total amount by 60 and multiplying the result by 44, as follows:

- as to the transfer fee, the DRC determined its amount as EUR 22,500,00 and made the following calculation:

$$22,500,000 : 60 = 375,000$$

$$375,000 \times 44 = 16,500,000$$

- as to the sign-on fee, the DRC determined the amount paid as GBP 330,000 and made the following calculation:

$$330,000 : 60 = 5,500$$

$$5,500 \times 44 = 242,000$$

- as to the Agent's fee, the DRC determined the amount paid as EUR 500,000 and made the following (rounded) calculation:

$$500,000 : 60 = 8,333$$

$$8,333 \times 44 = 366,652.$$

119. Indeed, contrary to the DRC findings, the Panel notes that the Employment Contract had a term starting on 11 August 2003 and expiring on 30 June 2008: it therefore was to have lasted 58.5 months, and not 60 months. The unamortised portion of the relevant expenditure therefore has to be calculated by dividing its total amount by 58.5 (not by 60) and multiplying the result by 44. In addition, the Panel finds that the DRC did not consider, in its calculations, the correct amounts of the acquisition costs sustained by the Club.

120. As a result of the above, the calculations made by the DRC with respect to those costs considered in the Decision must be revised as follows:

- i. as to the *transfer fee paid to the Former Club*, the Panel finds that the amount of EUR 22,500,000 has to be divided by 58.5, resulting in EUR 384,615 to be multiplied by 44. The non-amortised portion of the transfer fee therefore amounts to EUR 16,923,060;
- ii. as to the *fee paid to the Agent*, the DRC applied its amortisation formula to the entire amount indicated in the Employment Contract, i.e. EUR 500,000. The Club, however, submits – and the Panel agrees – that, as a result of the early termination of the Employment Contract, the Agent was paid only EUR 200,000. Such amount has to be divided by 58.5, resulting in EUR 3,419 to be multiplied by 44. The non-amortised portion of the fee paid to the Agent therefore amounts to EUR 150,436;
- iii. as to the *sign-on fee*, the DRC applied its amortisation formula to the entire amount indicated in the Employment Contract, i.e. GBP 330,000. The Club,



however, submits – and the Panel agrees – that, as a result of the early termination of the Employment Contract, the sign-on fee was paid only in the amount of GBP 132,000, corresponding to two annual instalments. Such amount has to be divided by 58.5, resulting in GBP 2,256 to be multiplied by 44. The non-amortised portion of the sign-on fee paid therefore amounts to GBP 99,264.

121. In addition to the above, the Panel finds that also additional items of the acquisition costs have to be considered in the determination of the compensation on the basis of their unamortised portion, as sustained by the Club and recoverable according to the CAS case law (CAS 2003/O/482, Ortega; TAS 2005/A/902& 903, Mexès):
  - i. the Club paid EUR 1,012,500 as *solidarity contribution* due under the Regulations. Such amount has to be divided by 58.5, resulting in EUR 17,308 to be multiplied by 44. The non-amortised portion of the solidarity contribution payments therefore amounts to EUR 761,552;
  - ii. the Club paid GBP 362,397 as *transfer levy*. Such amount has to be divided by 58.5, resulting in GBP 6,195 to be multiplied by 44. The non-amortised portion of the transfer levy therefore amounts to GBP 272,580;
  - iii. the Club paid EUR 1,700,000 as *fees to its agents*. Such amount has to be divided by 58.5, resulting in EUR 29,060 to be multiplied by 44. The non-amortised portion of the fees paid by the Club to its agents therefore amounts to EUR 1,278,640.
122. The Panel notes that the unamortised portion of all acquisitions costs, as determined above (§§ 120-121), totalling EUR 19,113,688 and GBP 371,844, exceeds the amount set by DRC, i.e. EUR 17,173,990. As a result, taking into account the relief requested by the Club, which seeks compensation in the amount already awarded by the DRC, there is no need to consider the other criteria indicated in Article 21 of the Regulations, and the damages to be paid by the Player, even if determined as a result of calculations different from those made by the DRC, have to be confirmed in the amount of EUR 17,173,990.
123. The amount so determined cannot be cancelled or reduced on the basis of the Appellant's submissions.
124. The Appellant, in fact, invokes in this arbitration several reasons for which, in his opinion, no compensation has to be paid.
125. Under a first perspective, in fact, the Appellant challenges the criteria, set by the Regulations and applied by the DRC in the Decision to award compensation, as contrary, under several points of view, to EC rules.
126. The Panel preliminarily notes, in this respect, that the Appellant's submission under EC law, even if upheld, would in any case not lead to an award discharging him of any obligation to pay damages to the Club. The effect of an award finding

the Regulations, or the procedures whereby they are applied at the FIFA level, to be contrary to EC law would in fact lead only to the conclusion that damages cannot be assessed on the basis of the Regulations, and would leave the question open for the determination of the damages on the basis of English law only. And in this respect the Panel has already confirmed that the determination of compensation on the basis of the wasted acquisition costs is fully consistent with English law. In other words, should the FIFA dispute resolution system be found contrary to EC rules, the obligation of the Player to pay damages, as determined in the proper forum, would remain unaffected. In the same way, even should the Player's submissions be accepted, the amount of compensation to be paid, determined on the basis of English law only, and not pursuant to the Regulations, would remain the same.

127. In any case, the Panel does not agree with the Appellant and finds that the Regulations, as applied in the dispute between the Club and the Player on the basis of the FIFA dispute resolution system, are not running against EC law.
128. First: the Panel does not find that the application of the Regulations to the Player for the determination of the damages payable as a result of his breach of contract constitute a discriminatory measure based on nationality, prohibited by Article 38 of the Association Agreement. Indeed, the Regulations do not consider the nationality of the player involved as the element triggering their application to the exclusion of domestic rules: the Regulations, in fact, according to their Preamble, consider in general terms "*the status and eligibility of players, as well as [...] the rules applicable whenever players move between clubs belonging to different national associations*", irrespective of the players' nationality. The Regulations would have applied also to an English player moving abroad following a breach of his contract with an English team.
129. Second: the Panel does not agree with the Appellant's submission that the Regulations, to the extent they impose the payment of damages for breach of contract, set the procedure for the FIFA adjudication in that respect and link the determination of such damages to the unamortised portion of the acquisition costs, are contrary to the EC rules prohibiting anti-competitive practices.
130. The Panel, in fact, finds that the obligation imposed by FIFA on clubs and players to pay damages in the event of breach of contract is not the result of a decision of an undertaking which may affect trade between Member States and which has as its object or effect the prevention, restriction or distortion of competition within the common market, or an abuse by one undertaking of a dominant position within the common market, or in a substantial part of it, affecting trade between Member States. Indeed, the Regulations confirm only the binding force of employment contracts, according to the principle "*pacta sunt servanda*", well known in all domestic legal systems, and set the substantive and procedural rules determining the consequences of the breach of such contracts in a manner consistent with domestic law. The obligation to pay compensation, in other words, is the counterpart of the binding force of the contract, and does not imply an unlawful restriction of competition. The circumstance, then, that substantial acquisition costs imply the payment of large compensations in the event of breach

by the players is, in this context, only the result of the application of general rules, allowing for compensation of wasted expenditures: the larger the damage, the greater the compensation.

131. Finally, the Player cannot invoke the EC rules on the freedom of movement within the common market to avoid payment of compensation. Such rules, in fact, do not apply to the Player, who, at the time of the breach, was not a EU citizen and the Association Agreement does not provide a freedom of movement within the EC for Rumanian citizens. In addition, the movement of players within the common market is not prevented: players are free to move, but remain obliged to compensate the damage they cause, in a measure, set in the Regulations, consistent with the general principle of contract law and proportional to the damage caused.
132. The Appellant, in order to have the Decision entirely set aside, invokes some principles of English law, under which a contractual clause can be treated as an unenforceable penalty clause when it does not represent a "*genuine pre-estimate of loss*" and is "*oppressive*".
133. Contrary to such submission, the Panel finds that the reference in the Regulations to the determination of the compensation on the basis of the unamortised acquisition costs is not oppressive, to the extent it reflects *in casu* the principles of English, which allow compensation for the actual costs incurred by the innocent party in reliance on the promised performance, but wasted because of the other party's breach of contract.
134. The Appellant, finally, invokes additional grounds justifying, in his opinion, the reduction of the amount of the compensation to be paid. The Appellant, in fact, submits that he did not breach the Employment Contract to join another club, and that the Respondent shares co-responsibility in the termination of the Employment Contract and the financial consequences of such termination, because it made illegal private doping controls targeting the Appellant, let the Appellant without any assistance while he was going through a difficult personal and family situation, held a meeting with the Appellant without informing him that he was attending a disciplinary hearing, unlawfully attempted to interfere and obstruct the Appellant's possibility to find a new club, opted for the immediate termination of the Employment Contract and by doing so caused more damage.
135. The Panel does not agree with the Appellant and notes that any and all issues relating to the circumstances concerning the termination of the Employment Agreement had no impact on the extent of the damage sustained by the Club and have been finally settled, as a result of the First CAS Award: the Player was found responsible of breach of contract (§ 105 above); the Appellant, therefore, cannot maintain now – even for the limited purposes of the quantification of the damages – that the Respondent shares co-responsibility in the termination of the Employment Contract, or that the termination of the Employment Contract "caused more damages" (on the point also § 116 above). In the same way, no relevance has to be given to an alleged unlawful attempt of the Club to obstruct the Appellant's possibility to find a new club. Such behaviour, if duly proved,

would provide the Player with a separate cause of action against the Club, to be pursued in the appropriate forum, but in any case would not affect the Player's obligation to face the financial consequences of his breach.

136. The Appellant submits also that in the calculation of the damages account should taken of the fact that by terminating the Employment Contract, the Appellant had the advantage of avoiding the payment of the remuneration to a player that was not playing.
137. The Panel does not agree with the Appellant's submission and notes that the issue has already been taken into proper account by the DRC, that on one side acknowledged the remaining value of the Employment Contract (calculated by reference to the outstanding salary payable until the expiration of its term), on the other side decided not to add it to the compensation payable, because it considered that the Club, by terminating the Employment Contract, had mitigated its damage and avoided the payment of the salary otherwise due under the contract. In other words, the amount of the salary unpaid as a result of the termination of the Employment Contract has already been deducted by the DRC from the compensation payable, and cannot be deducted a second time.
138. The Panel therefore is bound to confirm the amount of damages awarded by the DRC on the basis of the "*amount of any fee or expense paid or incurred by the former club, amortised over the length of the contract*" (Article 22(3) of the Regulations). No reduction is allowed on the basis of the other relevant criteria set in the Regulations: the measure of damages awarded by the DRC is consistent with the national law applicable; the breach occurred in the Protected Period, with nearly four years remaining on the existing contract.
139. With reference to the specificity of sport, then, the Panel notes that, in its respect, it has to take into consideration the specific nature and needs of sport when assessing the circumstances of the dispute at stake, so to arrive to a solution which takes into account not only the interest of players and clubs, but, more broadly, those of the whole football community (CAS 2007/A/1298, 1299 & 1299, Webster; CAS 2007/A/1358, Pyunik; CAS 2007/A/1359, Pyunik; CAS 2008/A/1568 Mica; CAS 2008/A/1519 & 1520, Matuzalem). In this context, the Panel finds that the specificity of sport does not allow a reduction of the compensation as determined by the DRC: much to the contrary, the breach of the Player caused substantial damages to the Club, that, on top of the wasted acquisition costs, also lost the sporting benefit of the Player's services.
140. In summary, the measure of compensation awarded by the DRC has to be confirmed.

### 3.7 Conclusion

141. The Panel holds that the appeal brought by the Player is to be dismissed and the measure of damages, including interest thereupon (starting 30 days after the notification of the Decision), as awarded by the DRC, is to be confirmed. All other prayers for relief submitted by the parties are to be dismissed.

## 4. COSTS

142. Article R64.4 of the Code provides that:

*“At the end of the proceedings, the Court Office shall determine the final amount of the cost of arbitration, which shall include the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties”.*

143. Article R64.5 of the Code provides that:

*“The arbitral award shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the award shall grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the outcome of the proceedings, as well as the conduct and the financial resources of the parties”.*

144. Having taken into account the outcome of the arbitration, the Panel is of the view that the Appellant should bear the costs of the arbitration, as calculated by the CAS Court Office. At the same time, and for the same reason, taking into account also the conduct and financial resources of the parties, the Panel finds it to be fair that the Appellant pays a contribution, determined in the amount of CHF 50,000 (fifty thousand Swiss Francs) to the Respondent, towards the expenses incurred by him in connection with these arbitration proceedings.

**ON THESE GROUNDS**

The Court of Arbitration for Sport rules that:

1. The appeal filed by the Mr Adrian Mutu against the decision issued on 7 May 2008 by the Dispute Resolution Chamber of the FIFA Players' Status Committee is dismissed.
2. Mr Adrian Mutu is ordered to pay to Chelsea Football Club Limited the amount of EUR 17,173,990, plus interest of 5% p.a. starting on 12 September 2008 until the effective date of payment.
3. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne by Mr Adrian Mutu.
4. Mr Adrian Mutu is ordered to pay CHF 50,000 (fifty thousand Swiss Francs) to Chelsea Football Club Limited as a contribution towards the legal and other costs incurred in connection with these arbitration proceedings.
5. All other prayers for relief are dismissed.

Lausanne, 31 July 2009

**THE COURT OF ARBITRATION FOR SPORT**



**Luigi Fumagalli**

President of the Panel



**Jean-Jacques Bertrand**

Arbitrator



**Dirk-Reiner Martens**

Arbitrator

The first part of the document discusses the importance of maintaining accurate records of all transactions. It emphasizes that every entry should be supported by a valid receipt or invoice. This ensures transparency and allows for easy verification of the data.

In the second section, the author outlines the various methods used to collect and analyze the data. This includes both primary and secondary data collection techniques. The analysis focuses on identifying trends and patterns over time, which is crucial for making informed decisions.

The third part of the report details the challenges encountered during the data collection process. These include issues related to data quality, such as missing values and inconsistencies. The author provides strategies to address these challenges, such as data cleaning and validation procedures.

Finally, the document concludes with a summary of the findings and recommendations. It highlights the key insights gained from the analysis and suggests areas for future research. The author stresses the need for continuous monitoring and evaluation to ensure the long-term success of the project.