Commentary on the Regulations on the Status and Transfer of Players

Edition 2021

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Note: this commentary does not represent the formal position of FIFA or its decision-making bodies on specific matters or any future case.

All regulatory references correspond to the August 2021 edition of the FIFA Regulations on the Status and Transfer of Players and October 2021 edition of the Procedural Rules Governing the Football Tribunal.

All references to FIFA and CAS decisions are up-to-date until 30 June 2021.

ABBREVIATIONS

ASP: Administrative Sanction Procedure

CAS: Court of Arbitration for Sport

CHF: Swiss Francs

DRC: Dispute Resolution Chamber

ECJ: European Court of Justice

EEA: European Economic Area

EU: European Union

EUR: Euros

(The) FA: The (English) Football Association

FFF: Fédération Française de Football

FIFA: Fédération Internationale de Football Association

FT: Football Tribunal

GBP: British Pounds

ILO: International Labour Organization

IMC: International Match Calendar

IFTC: International Futsal Transfer Certificate

ITC: International Transfer Certificate

LME: Limited Minor Exemption

PSC: Players' Status Chamber

Procedural Rules: Procedural Rules Governing the Football Tribunal

Regulations: FIFA Regulations on the Status and Transfer of Players

SCO: Swiss Code of Obligations

SCM: Sub-Committee on Minors appointed by the Players' Status Commitee

TFEU: Treaty on the Functioning of the European Union

TMS: FIFA Transfer Matching System

TPI: Third-party Influence on clubs

TPO: Third-party Ownership of players' economic rights

UEFA: Union of European Football Associations

INTRODUCTION

On 18 January 2007, FIFA published circular no. 1075, entitled "Commentary on the FIFA Regulations for the Status and Transfer of Players". This communication, which remains on the FIFA website, together with a copy of the commentary itself, provided member associations and other stakeholders with the following brief introduction to a document spanning some 150 pages:

> "In order to facilitate the access to and the understanding of these reviewed regulations for all parties of the football family that are concerned by them, i.e. member associations, clubs, players, licensed players' agents but also lawyers and other interested people, it was further decided to create the enclosed commentary on the transfer regulations. This commentary offers an overview of the regulations by commenting on each single provision, by giving general information and clarifications, by providing a short explanation of the administration and, most importantly, by also referring to the jurisprudence of the Dispute Resolution Chamber (DRC), the Players' Status Committee (PSC) and the Court of Arbitration for Sport (CAS)."

The "FIFA commentary" quickly became a reference text not only for legal professionals defending their clients' interests before the FIFA decision-making bodies, but also, as the circular foresaw, for member association officials and even CAS arbitrators themselves when ruling on appeals submitted to them.

At the time, FIFA also committed, through circular no. 1075, "*to update this commentary regularly, in particular with regard to changes in jurisprudence or decisions taken in leading cases for a specific topic of the regulations*". Almost 15 years have passed since we made that commitment and we would like to honour it, despite it being slightly overdue.

In our defence, since January 2007 FIFA's output in terms of regulations and resolutions has grown exponentially – both in quantity and complexity – year on year, as has CAS case law with regard to the Regulations on the Status and Transfer of Players. To put this in figures: in 2007, around 130 appeals were made to CAS against decisions of the FIFA decision-making bodies from a total of 449 decisions handed down. We ended 2020 with more than 600 appeals to CAS from a total of 2202 decisions handed down (and this number does not consider decisions regarding the international transfer of minors). We acknowledge that it has taken longer than it should have done to reissue the commentary. However, we should also acknowledge that, over all these years, the entire FIFA legal services team, together with the members of the decision-making bodies, have focused their efforts on providing exceptional

service and a dispute-resolution and enforcement system that is unique to football and unlike any other within the international labour market. A succesful dispute-resolution system which is based on an indisputable aspect: the necessary agreements between the representatives of the employers (clubs and leagues) and the representatives of the employees (the respective players' unions, FIFPRO at international level). That is the only way - social dialogue and agreements between the parties - to guarantee the proper protection and stability of football's labour market at domestic and international level.

This updated commentary is the result of the efforts and dedication of many FIFA staff over the last 18 months, together with the personal commitment made by every one of them to our organisation's values: transparency, hard work and a desire to make football truly global.

The commentary has already been tailored to encompass both the new FIFA Football Tribunal, approved at the 71st FIFA Congress on 21 May 2021, and the August 2021 edition of the Regulations. It is an essential tool for all those who work or are interested in the ever-complicated world of the Regulations. However, this commentary does not represent the formal position of FIFA, or its decision-making bodies on specific matters or any future proceedings.

FIFA is renewing its commitment to updating this commentary on an ongoing basis. We issue an open invitation to all of our member associations and stakeholders, as well as to those colleagues who regularly take cases to the FIFA decision-making bodies or CAS to play an active part in this process. We will endeavour to take into account all proposals, ideas, opinions and, of course, criticisms, in the next edition, which we are planning to issue in 2023. To that end, you are always welcome to email us at legal@fifa.com.

Yours faithfully,

Zurich, 8 September 2021

Dr. Emilio García Silvero

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Chapter I
Introductory provisions

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Article 1 - Scope

1. These regulations lay down global and binding rules concerning the status of players, their eligibility to participate in organised football, and their transfer between clubs belonging to different associations.

2. The transfer of players between clubs belonging to the same association is governed by specific regulations issued by the association concerned in accordance with article 1 paragraph 3 below, which must be approved by FIFA. Such regulations shall lay down rules for the settlement of disputes between clubs and players, in accordance with the principles stipulated in these regulations. Such regulations should also provide for a system to reward clubs affiliated to the relevant association investing in the training and education of young players. The use of an electronic domestic transfer system is a mandatory step for all national transfers of professional and amateur players (both male and female) within the scope of eleven-a-side football. A national transfer must be entered in the electronic domestic transfer system each time a player is to be registered with a new club within the same association. Any registration of a player for a new club without the use of the electronic domestic transfer system will be invalid.

3. a. The following provisions are binding at national level and must be included without modification in the association's regulations: articles 2-8, 10, 11, 12bis, 18, 18 paragraph 7 (unless more favourable conditions are available pursuant to national law), 18bis, 18ter, 18quater (unless more favourable conditions are available pursuant to national law), 19 and 19bis.

   b. Each association shall include in its regulations appropriate means to protect contractual stability, paying due respect to mandatory national law and collective bargaining agreements. In particular, the following principles must be considered:

   – **article 13:** the principle that contracts must be respected;
   – **article 14:** the principle that contracts may be terminated by either party without consequences where there is just cause;
   – **article 15:** the principle that contracts may be terminated by professionals with sporting just cause;
   – **article 16:** the principle that contracts cannot be terminated during the course of the season;
   – **article 17 paragraphs 1 and 2:** the principle that in the event of termination of contract without just cause, compensation shall be payable and that such compensation may be stipulated in the contract;

- **article 17 paragraphs 3-5:** the principle that in the event of termination of contract without just cause, sporting sanctions shall be imposed on the party in breach.

4. These regulations also govern the release of players to association teams in accordance with the provisions of Annexe 1. These provisions are binding for all associations and clubs.
5. These regulations also include rules concerning contracts between coaches and professional clubs or associations (cf. Annexe 2).

1.1. Purpose and scope

FIFA has a statutory objective *"to draw up regulations and provisions governing the game of football and related matters and to ensure their enforcement"*.[1] With this in mind, FIFA acts as a regulator alongside its commitment to improving and promoting football, organising its own competitions, promoting the development of women's football, and governing all forms of association football.[2]

The rules concerning the actors participating in organised football, and specifically the rules applicable to players, coaches, and clubs, are thus especially important. For example, which categories of players should be recognised in organised football? Under what conditions should they be authorised to participate in organised football? What is the nature of their relationship with their clubs? What kinds of relationships should clubs have with each other? What should happen if these relationships are disrupted? How can players move between clubs and become eligible to play for new clubs?

In a nutshell, these are the main issues the Regulations on the Status and Transfer of Players (**Regulations**) are designed to regulate, with a view to meeting the FIFA objectives stated above.

In addition, the Regulations also govern the relationship between member associations and clubs as far as the interaction between club football and international football is concerned. In this respect, they complement the international match calendar[3] by setting the rules for the release of players to representative teams.[4]

1 Article 2 (c), FIFA Statutes ("Statutes").
2 Article 2 (a), (b) and (d), Statutes.
3 Article 70, Statutes.
4 Annexe 1, FIFA Regulations on the Status and Transfer of Players ("Regulations").

a) TERRITORIAL DELIMITATION

FIFA is an association as defined by the Swiss Civil Code.[5] The FIFA Statutes and FIFA regulations are primarily designed to set out the rights and obligations of FIFA members and the regulatory framework that they must observe regarding organised football. In essence, FIFA is responsible for the regulatory framework that applies to football internationally, but it also has a duty to respect the autonomy of its member associations. Certain issues that are of a purely domestic nature are thus regulated and enforced by member associations.

Nevertheless, to create a level playing field and safeguard the regularity and (sporting) integrity of matches, certain issues and fundamental principles have to be regulated uniformly at global level, especially when it comes to international or intercontinental competitions. Such issues specifically include the status of players and their eligibility to participate in organised football, including registration requirements and the procedures that need to be followed. Moreover, it is of paramount importance that certain rules should be seen to be applied consistently and fairly all over the world, both to protect players and clubs, and to safeguard association football as a whole.

Within this context, FIFA must ensure that those rules that are applied internationally, and for which FIFA is primarily responsible, can be implemented and enforced uniformly and without exception all over the world. The Regulations have been drafted with this in mind. There are only two exceptions to this general approach, both of which can be viewed as concessions made to the European Union (**EU**) in order to comply with the principle of freedom of movement. These concessions were granted as part of the discussions and negotiations that led to the agreement between FIFA, UEFA, and the EU in March 2001 – an agreement that continues to form the basis of the current Regulations. The first of these exceptions relates to the provisions regarding the protection of minors. Here, a special exception was agreed that applies exclusively to countries in the EU and the European Economic Area (**EEA**).[6] The second exception concerns the entitlement to, and the calculation of, training compensation. In this case, special provisions were agreed in respect of players moving from one member association to another within the territory of the EU/EEA.[7]

b) THE "THREE-TIER" APPROACH

Taking the above into account, the first article of the Regulations establishes a "three-tier" approach to regulating organised football.

5 Article 1 paragraph 1, Statutes.
6 Article 19 paragraph 2 (b), Regulations.
7 Article 6 of Annexe 4, Regulations.

i) The "international tier"

Article 1 paragraph 1 stipulates that the Regulations lay down global and binding rules concerning the transfer of players between clubs affiliated to different member associations,[8] i.e. regarding international transfers. This is significant in that it guarantees that international transfers follow the same rules and principles everywhere in the world. The sporting integrity and equal treatment of all the parties directly involved in organised football, and particularly of players and clubs, are dependent on this fundamental principle. It ensures that clubs participating at all levels, from national competitions up to and including international and intercontinental competitions, can only employ players that are transferred from a club affiliated to a different member association under certain conditions and circumstances, which themselves apply equally to all clubs. All players subject to the Regulations must complete the same procedure to be registered with, and eligible to play for, a new club, following an international transfer.

In this regard, the introduction of the (International) Transfer Matching System (**TMS**) on 1 October 2010 represented a major step forward in monitoring compliance with the Regulations. This web-based system provides football authorities with more details on international player transfers than were previously available. This improves the transparency of individual transactions, which in turn improves the credibility and reputation of the football transfer system. Thanks to the automated and standardised processes introduced by TMS, the system allows greater oversight of the transfer system, and particularly compliance with registration periods. This increased oversight diminishes, or even excludes, any opportunity to circumvent the Regulations, thus helping to create the kind of level playing field required for organised football. At the same time, TMS has also significantly simplified the process associated with international player transfers.

ii) The "prescribed national tier"

Article 1 also imposes certain obligations on member associations with respect to their national transfer rules, leaving no discretion regarding the introduction of such rules.

First and foremost, each member association must implement regulations governing the transfer of players between its affiliated clubs. Article 1 paragraph 2 requires such national regulations to be approved by FIFA. In practice, FIFA will examine the national regulations submitted to ensure that the mandatory provisions and required principles – which will be discussed below – have been included. Subsequently, if required, the member association concerned is provided specific recommendations by FIFA to implement.

8 Article 1 paragraph 1, Regulations.

The freedom of member associations to draw up their own national regulations is limited in certain respects. They have no discretion regarding several articles of the Regulations, which are enumerated in article 1 paragraph 3 (a). These articles are binding at national level and must be included without modification in the national regulations. This ensures that specific football rules are harmonised at global level, allowing for a level playing field, safeguarding the regularity and (sporting) integrity of matches and competitions, and protecting minors.

The first category of these binding rules (articles 2-8 and article 11) set out specific rules regarding player registration, the status of players, and their eligibility to participate in organised football. Article 18, also included in the list of binding articles, and which establishes principles applicable to contracts between professional players and clubs, falls into the same category. As mentioned above, it is extremely important to ensure that rules relating to the status of players and the general conditions that must be met for them to be registered and become eligible to play for a specific club are harmonised at global level. The same applies to some fundamental aspects of contracts concluded between professional players and clubs. These aspects include their duration and other significant conditions that must be met for them to be deemed valid, the freedom of a club to approach a player while they are still under contract with another club. If different regulatory frameworks governing these matters applied at national level, a sporting advantage would exist for clubs affiliated to member associations with less stringent provisions over clubs affiliated to different member associations with stricter provisions.

Article 12bis ("overdue payables") is in the list of provisions that are binding at national level to address the persistent problem of clubs failing to respect their contractual financial obligations. All such financial obligations must be treated as of equal importance, irrespective of whether the creditor is of the same nationality as the debtor club or a foreigner. The prohibition on grace periods is also included in the provisions that are binding at national level for the same reason.

Loaning out professional players to other clubs and engaging professional players on a loan basis has a clear and direct impact on the regularity and (sporting) integrity of matches and competitions. Therefore, the provisions governing the loan of professional players (article 10) are included in the list of binding rules, to ensure that the mechanism governing the loan of professional players is harmonised globally.

Finally, the binding list also includes specific football rules, which must be applied consistently and fairly on a global basis. These provisions concern third-party influence on clubs (**TPI**) (article 18bis), third-party ownership of players' economic rights (**TPO**) (article 18ter), as well as specific protections for female players (article 18quater)[9] and minors (articles 19 and 19bis).

9 Circular no. 1743 of 14 December 2020.

In addition to the binding list, article 1 paragraph 2 provides that member associations must use an electronic domestic transfer system for all national transfers of professional and amateur players. This serves to ensure that reliable and complete player registration data is available in the form of an electronic passport. This information not only increases transparency and professionalism, but also, and more importantly, provides the basis for a more efficient and coherent distribution of training rewards to the clubs entitled to such compensation. Such electronic systems have been mandatory since 1 July 2020.[10]

iii) The "flexible national tier"

Thirdly, article 1 refers to certain principles that member associations must incorporate within their national regulations, with the autonomy to decide on the details within their national regulations.

Specifically, the Regulations require member associations to implement national rules for settling disputes between clubs and players, in accordance with the principles in the Regulations. Despite the autonomy described above, a national tribunal set up for this purpose within the framework of a member association and/or a collective bargaining agreement must comply with a series of minimum requirements, in order for it to be recognised by FIFA and its decision-making bodies.[11]

In addition, the national regulations must provide for a system to reward clubs for their investment in the training and education of young players that become professional. Member associations are not obliged to set up a similar system to those operated by FIFA (i.e. training compensation and the solidarity mechanism); at national level, simpler solutions that are in line with specific domestic circumstances will suffice. Examples include systems based on flat-rate payments being made to training clubs when a player signs their first professional contract with another club affiliated to the same member association, or joint funds to which all of the affiliated clubs must contribute when they engage a player for the first time as a professional. The proceeds of this fund can then be distributed to all training clubs periodically, for example, at the end of each season.

Finally, article 1 paragraph 3 (b) requires member associations to ensure contractual stability is protected in their national regulations. Taking into consideration the autonomy described above, member associations may incorporate this principle alongside specific features of existing national-level systems, such as mandatory requirements of national legislation in the country concerned and any existing collective bargaining agreements. The national regulations must consider several matters, including that contracts must be respected, that contracts may be terminated with just cause by either party (or, with sporting just cause, by a professional player), and that contracts cannot be terminated during a season. Member associations must

10 Circular no. 1679 of 1 July 2019.
11 Circular no. 1010 of 20 December 2005.

also consider that the unjustified termination of a contract will result in an obligation to pay compensation (the details of which may be included by the parties in the relevant contract), and that sporting sanctions may be imposed for terminating a contract without just cause.

iv) The "unwritten tier"

An unwritten fourth "tier" to the regulatory approach also exists. This fourth tier consists of all other areas in respect of which a member association may consider it appropriate to regulate to reflect local circumstances. The Regulations make no mention of this fourth tier, either because such matters are left for the parties themselves to agree on a contractual basis, or because they fall into the remit of competition organisers. Examples include: rules regarding holiday entitlements, use of standard employment contracts, insurance issues, quotas for foreign players, and competition or registration quotas for young players.

c) RELEASE OF PLAYERS TO REPRESENTATIVE TEAMS

The Regulations also govern the relationship between member associations and clubs when it comes to the obligation to release players to representative teams of a member association (colloquially known as 'national teams'). The rules, set out in annexe 1, govern the obligations for players, clubs, and member associations.

Article 1 paragraph 4 states that the provisions of annexe 1 are binding on all member associations and clubs. This means, in particular, that a member association may not stipulate in its national regulations that its affiliated clubs are obliged to release their registered players to its representative teams outside of the international windows listed in the international match calendar, in deviation from annexe 1.

d) COACHES

As from 1 January 2021, the Regulations also govern the employment relationship between coaches and member associations, or coaches and professional clubs. This provides a minimum regulatory framework for coaches which guarantees a higher degree of legal certainty in their employment relationship.[12]

12 Circular no. 1743 of 14 December 2020.

Chapter II
Status of Players

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Article 2 - Status of players: amateur and professional players

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Article 2 - Status of players: amateur and professional players

1. Players participating in organised football are either amateurs or professionals.
2. A professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs.

2.1. Purpose and scope

A consistent and uniform categorisation of players by their status, applied at a global level, is desirable for several reasons. Firstly, it helps to ensure the regularity and sporting integrity of competitions, in that it allows clear lines to be drawn with respect to what kinds of players can participate in specific competitions. In turn, this clear distinction allows quotas to be set for the number of players of a given status who can take part in competitions which, in principle, are only open to a different category of players. Categorising players by status makes it possible to establish which players should be subject to the provisions regarding the maintenance of contractual stability, and loan transfers, and the distinction between statuses also serves as an important criterion for determining how the relevant registration conditions should be applied. Finally, the distinction between professional and amateur players allows for a proper comparison of the degree of professionalisation achieved by different member associations.

The Regulations recognise just two categories of players: amateurs and professionals. It is important to recall that article 2 is binding at national level, which means member associations cannot modify these categories or create new ones that differ from those established by the Regulations.[13] Nevertheless, other status categories are regularly encountered at national level. Examples include: the so-called "*scholar*" status in England and the similar categories of "*aspirant*" or "*stagiaire*" in France, "*giovani di serie*" in Italy, or "*Vertragsamateure*" in Germany. However, none of these hybrid statuses will be recognised in any dispute brought before FIFA or the Court

13 CAS 2009/A/1895 Le Mans Union Club 72 c. Club Olympique de Bamako.

of Arbitration for Sport (**CAS**). As CAS has confirmed, there is no provision for additional categories in the Regulations: all players are either professionals or amateurs.[14]

a) PROFESSIONAL PLAYERS

For a player to qualify as a professional, two cumulative conditions must be met. A player must have concluded a written contract with their club, and must be paid more for their footballing activity than the expenses they effectively incur.[15] If either of these requirements is not met, a player is not a professional, and cannot therefore be treated as such.

Since the acquisition or maintenance of professional status is fundamentally important in relation to training compensation, the most enlightening case law is concentrated around this specific topic.

First and foremost, it must be emphasised that the deciding bodies consistently find that article 2 paragraph 2 is the only authoritative standard to be applied when assessing a player's status.[16] There are only amateur or professional players, and nothing in between.[17]

Furthermore, in assessing the status of a player, any contract must be measured against the article 2 paragraph 2 criteria only, irrespective of any designation or categorisation used within the contract, or by the member association concerned. Given that article 2 of the Regulations is binding at national level, any divergent national regulations are also considered irrelevant to a player's status.

This approach was reiterated by the Dispute Resolution Chamber (**DRC**) in a case regarding the status of a female player registered at an Italian club.[18] The DRC confirmed that, when assessing a player's status, the article 2 paragraph 2 criteria take precedence. In this specific case, the agreement between the player and club was drafted as an *"Agreement on reimbursement of costs*

14 CAS 2014/A/3610 CS Grevenmacher v/ Sport Clube Vila Real; CAS 2009/A/1781 FK Siad Most v. Clube Esportivo Bento Gonçalves; CAS 2006/A/1177 Aston Villa F.C. v. B.93 Copenhagen; CAS 2020/A/7029 Association Sportive Guidars FC v. CSKA Moscou & Lassana N'Diaye.

15 CAS 2016/A/4843 Hamzeh Salameh & Navit Mesan FC v. SAFA Sporting Club & FIFA; CAS 2015/A/4148 & 4149 & 4150 Sheffield Wednesday FC v. Louletano Desportos Clube & Internacional Clube de Almancil & Associação Académica de Coimbra; TAS 2009/A/1895 Le Mans Union Club 72 c. Club Olympique de Bamako; CAS 2008/A/1739 Club Atlético Boca Juniors c. Oscar Guido Trejo, Real Club Deportivo Mallorca SAD & FIFA.

16 CAS 2016/A/4843 Hamzeh Salameh & Navit Mesan FC v. SAFA Sporting Club & FIFA; CAS 2016/A/4603 SC Dinamo 1948 v. FC Internazionale Milano SpA; CAS 2016/A/4597 SC FC Steaua Bucuresti v. FC Internazionale Milano SpA; CAS 2015/A/4148 & 4149 & 4150 Sheffield Wednesday FC v. Louletano Desportos Clube & Internacional Clube de Almancil & Associação Académica de Coimbra; TAS 2009/A/1895 Le Mans Union Club 72 c. Club Olympique de Bamako; CAS 2006/A/1177 Aston Villa F.C. v. B.93 Copenhagen; CAS 2005/A/838 FC Girondins de Bordeaux v. Lyngby Boldklub & Lundtofte Boldklub.

17 CAS 2014/A/3610 CS Grevenmacher v. Sport Clube Vila Real; CAS 2006/A/1177 Aston Villa F.C. v. B.93 Copenhagen.

18 DRC decision of 22 November 2019, Williams.

for amateur sports activity" and explicitly excluded the establishment of an employment relationship between the parties. The DRC concluded that the circumstances under which the player was engaged met the article 2 paragraph 2 criteria, and that the player should therefore be considered a professional player.

Another important factor that can be extracted from the relevant jurisprudence is that the article 2 paragraph 2 criteria do not require a player to make a living from their footballing activity. A player can be deemed a professional for the purposes of the Regulations even if they need to pursue other work to earn a living. If the remuneration they receive from their club exceeds the expenses they effectively incur to provide their footballing services, they are a professional player.

It is impossible to set a global figure as to the amount a player must be paid to be deemed a professional. As such, when considering whether a player is a professional or an amateur, the specific circumstances of each individual case must be considered, including the circumstances in the country concerned, any non-financial benefits to which the player is entitled, and (at least according to one CAS Award) any liquidated damages clause that may be included in the contract signed between the player and their club.[19] In any event, a decision on whether a player is a professional or amateur must be based on a careful consideration of the actual content of the contract, particularly in respect of financial and other benefits.[20]

In a recent Award, CAS has held that the 'absolute' value of a contractually-agreed payment is not conclusive for the determination of the status of a player, as the Regulations do not stipulate a minimum wage (i.e. the global figure). A player can still be professional even if they earn an amount much lower than the average salary in their country, or an amateur even if their salary exceeds the minimum wage in that country. The only relevant factor is whether the amount received by the player exceeds the expenses effectively incurred; the expenses to be considered and compared are not those relating to the player's general cost of living, but those specifically and effectively incurred for their footballing activity. The status of the player referenced in the contract is irrelevant. [21]

Whether the amount received by the player exceeds the expenses effectively incurred is assessed on a case-by-case basis. For an English "Scholarship Agreement", CAS has previously found that monthly remuneration of approximately 400 British Pounds (**GBP**) exceeded the expenses effectively incurred by the player. Consequently, any player who signs a scholarship agreement including remuneration at or above this level acquires

19 CAS 2015/A/4148 & 4149 & 4150 Sheffield Wednesday FC v. Louletano Desportos Clube & Internacional Clube de Almancil & Associação Académica de Coimbra.

20 CAS 2010/A/2069 Galatasaray A.S. v. Aachener TSV Alemannia F.C.

21 CAS 2020/A/6796 Andriamirado Aro Hasina Andrianarimanana & Kaizer Chiefs FC v. Fosa Juniors & FIFA.

professional status. By contrast, in Belgium, a monthly remuneration of 400 Euros (**EUR**) was not considered to exceed the expenses effectively incurred by the player. However, in that specific case, the player was not receiving any additional benefits, such as accommodation or meals at the club's campus.[22] As a final example, under Portugal's system of "Sports Training Agreements", any player receiving a salary of EUR 250 per month plus food and accommodation is deemed a professional.[23]

b) AMATEUR PLAYERS

Any player who does not meet both criteria in article 2 paragraph 2 is deemed an amateur.

2.2. Relevant jurisprudence

CAS Awards

- CAS 2009/A/1781 FK Siad Most v. Clube Esportivo Bento Gonçalves: only amateur or professional status recognised
- CAS 2008/A/1739 Club Atlético Boca Juniors c. Oscar Guido Trejo, Real Club Deportivo Mallorca SAD & FIFA: conditions to be a professional are cumulative
- CAS 2006/A/1177 Aston Villa F.C. v. B.93 Copenhagen: definition is only authoritative standard
- CAS 2005/A/838 FC Girondins de Bordeaux v. Lyngby Boldklub & Lundtofte Boldklub: definition is only authoritative standard
- CAS 2020/A/6796 Andriamirado Aro Hasina Andrianamimanana & Kaizer Chiefs FC v. Fosa Juniors & FIFA
- CAS 2020/A/7029 AS Guidars FC v. CSKA Moscow & Lassana Ndiay

22 CAS 2014/A/3659,3660 and 3661 KSV Cercle Brugge v. Clube Linda-A-Velha, Club União Desportiva e Recreativa de Alges, Sport Club Paiense.

23 CAS 2015/A/4148 & 4149 & 4150 Sheffield Wednesday FC v. Louletano Desportos Clube & Internacional Clube de Almancil & Associação Académica de Coimbra.

Article 3 - Reacquisition of amateur status

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Article 3 - Reacquisition of amateur status

1. A player registered as a professional may not re-register as an amateur until at least 30 days after his last match as a professional.
2. No compensation is payable upon reacquisition of amateur status. If a player re-registers as a professional within 30 months of being reinstated as an amateur, his new club shall pay training compensation in accordance with article 20.

3.1. Purpose and scope

a) THE 30-DAY WAITING PERIOD

Paragraph 1 creates a clear regulatory framework for the reacquisition of amateur status. The regularity and sporting integrity of matches and competitions is dependent on the status of the players taking part in them. If a national championship is open to amateur players only, or where the number of amateur or professional players allowed to participate for an individual team is limited, the regulatory framework governing these matches must provide a simple and effective way of checking compliance with the rules concerned.

By the same token, players should not be able to gain an advantage by, for instance, giving up professional status to re-register themselves as amateurs and exploit the registration process and rules concerning amateur players, which are usually less stringent than for professionals.

Finally, the provisions regarding the maintenance of contractual stability are also relevant.[24] The waiting period serves to assist in identifying any attempt to terminate the contract without just cause by means of registering as an amateur player. The consequences of any such behaviour would then be considered vis-à-vis article 17 of the Regulations.

24 Articles 13-18, Regulations.

b) PAYMENT OF COMPENSATION

While a player holds amateur status, transfer compensation, compensation for breach of contract, or training compensation will never be an issue, irrespective of when, where, and how often a player moves between clubs. Compensation only needs to be considered when a player acquires professional status. Generally, no compensation is payable if and when a player reacquires amateur status. One exception is where the reacquisition of the amateur status leads to the unjustified, unilateral, and premature termination of an existing professional contract, in which case the player may be liable to pay compensation to their last professional club.

c) PAYMENT OF TRAINING COMPENSATION

The second sentence of article 3 paragraph 2 complements article 2 paragraph 2 (iii) of annexe 4.[25] It is designed to prevent abuse regarding the payment of training compensation, or any attempt to circumvent these provisions.

The fact that no training compensation is due if a professional player reacquires amateur status upon being transferred flows logically from the principle that training compensation is only payable where the player concerned *acquires or maintains* professional status. If the player lacks the ability required to play football at professional level, there is no requirement to compensate their training club(s) for the investment they have made in training the player.

However, if a player re-registers as a professional within 30 months of being registered as an amateur, their new club may be required to pay training compensation. This requirement cannot be circumvented simply by registering the player as an amateur and then re-registering them as a professional shortly afterwards. For further details please refer to the relevant chapter on training compensation.

3.2. Relevant jurisprudence

CAS Awards

– CAS 2015/A/4214 Nõmme JK Kalju v. FK Olimpic Sarajevo

25 *"Training compensation is not due if:* [...] *a professional reacquires amateur status on being transferred."*

Article 4 - Termination of activity

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Article 4 - Termination of activity

1. Professionals who end their careers upon expiry of their contracts and amateurs who terminate their activity shall remain registered at the association of their last club for a period of 30 months.
2. This period begins on the day the player made his last appearance for the club in an official match.

4.1. Purpose and scope

a) THE 30-MONTH PERIOD

This article creates a clear regulatory framework for the termination of football activity. The end of a career (for professionals) or footballing activity (for amateurs) should come from a definitive and permanent decision. To avoid unnecessary confusion, the Regulations assume that a decision to retire becomes permanent after 30 months. During this period, a player remains technically involved in organised football, being registered at the member association to which their last club is affiliated.

This registration becomes particularly relevant where a player decides to resume their professional career or amateur footballing activity with a new club after a significant break. If this occurs within the 30-month period, that player will still be registered at the member association to which their last club was affiliated. The fact this existing registration remains valid means that if the player joins a new club, this will constitute a national transfer or international transfer. For national transfers, the transfer must be entered into and processed by the electronic domestic transfer system before the player can be registered with their new club. For international transfers, the transfer must be processed through TMS. In particular, the new club's member association will have to request the player's international transfer certificate (**ITC**) from the member association with which the player is currently registered, and will have to receive this ITC before the player can be registered with their new club.

On the other hand, if the decision to return from retirement occurs after the expiry of the 30-month period, the player is no longer involved in organised football because their registration will have lapsed. Accordingly, their registration with their new club will be treated as a new (first) registration rather than a transfer. In such cases, there is no requirement to complete the registration process used to record transfers.

b) IMPACT ON TRAINING COMPENSATION

The 30-month period also may impact the requirement to pay training compensation. Given that a player remains registered at the member association to which their last club is affiliated for 30 months after retiring from football, a potential new club cannot avoid the requirement to pay training compensation by having a player de-register and then re-register immediately afterwards.

c) IMPACT ON CONTRACTUAL STABILITY

For the sake of completeness, it is obviously not permissible for a professional player to relieve themselves of their contractual obligations unilaterally and without the consent of their club simply by deciding to end their career and refusing to fulfil their existing contract. The consequences of any such behaviour would then be considered vis-à-vis article 17 of the Regulations.

d) START OF THE 30-MONTH PERIOD

The relevant period starts on the day on which the player makes their last appearance for their club in an official match as defined in the Regulations.[26]

26 Definition 5, Regulations.

Chapter III
Registration of players

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BACKGROUND

As set out in Chapter I, several provisions of the Regulations are binding at national level and must be included in the national regulations issued by member associations. In particular, all provisions concerning the registration of players fall into this category.

The rationale behind this approach is to create a level playing field around the world and to protect the sporting integrity of the various competitions. Organised football must be able to rely on a uniform framework of provisions that is binding for all participants, since results on the field of play can only be compared and evaluated if all those taking part do so under the same conditions. All clubs, wherever they are in the world, should register players according to the same rules. This is of particular importance when we consider continental and international championships, as well as national (league) championships, given that qualification for continental competition is usually based on the outcome of national championships. Equally, in an ever more globalised football world where competition for the best talent is increasingly fierce, uniform rules on how a player can be registered for a club serve, at least to a certain extent, to protect smaller clubs and, as far as possible, to ensure equal treatment of all players, irrespective of where they play football.

The fundamental principle is that the act of registering the player falls within the exclusive competence of the member association concerned; the member association to which the club that wishes to register the player is affiliated. This principle is clear within the Regulations. For international transfers, it is the member association to which the player's new club is affiliated that is responsible for confirming the player's registration date following receipt of the relevant ITC.[27] Where an ITC has been delivered, the member association to which the new club is affiliated must confirm receipt and complete the relevant player registration information in TMS.[28]

Member associations are thus responsible to draw up the rules governing the registration of players at national level. In doing so, they must consider the principles of the Regulations and those provisions that are binding at national level, as well as the appropriate measures to prevent abuse and protect the sporting integrity of their competitions.

Clubs must be affiliated to a member association (and, if applicable, an affiliated league) to be bound by the regulatory framework of organised football.

27 Article 5.2 paragraph 4 of Annexe 3, Regulations.
28 Article 8.2 paragraphs 5 and 8 (a) of Annexe 3, Regulations.

Finally, the Regulations do not set any rules on potential quotas for competitions (e.g. in relation to the registration of foreign players, players from a certain geographical area, or players of a certain age). Nor do they stipulate any principles or rules limiting the participation of players with a certain status (i.e. amateur or professional) in a specific competition. Member associations and competition organisers are therefore at liberty to include these kinds of provisions in their competition regulations, subject to their relevant national law.

Article 5 - Registration

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Article 5 - Registration

1. Each association must have an electronic player registration system, which must assign each player a FIFA ID when the player is first registered. A player must be registered at an association to play for a club as either a professional or an amateur in accordance with the provisions of article 2. Only electronically registered players identified with a FIFA ID are eligible to participate in organised football. By the act of registering, a player agrees to abide by the FIFA Statutes and regulations, the confederations and the associations.
2. A player may only be registered with a club for the purpose of playing organised football. As an exception to this rule, a player may have to be registered with a club for mere technical reasons to secure transparency in consecutive individual transactions (cf. Annexe 3).
3. A player may only be registered with one club at a time.
4. Players may be registered with a maximum of three clubs during one season. During this period, the player is only eligible to play official matches for two clubs, subject to the temporary exceptions below. As an exception to this rule, a player moving between two clubs belonging to associations with overlapping seasons (i.e. start of the season in summer/autumn as opposed to winter/spring) may be eligible to play in official matches for a third club during the relevant season, provided he has fully complied with his contractual obligations towards his previous clubs. Equally, the provisions relating to the registration periods (article 6) as well as to the minimum length of a contract (article 18 paragraph 2) must be respected.

   a) During the following period, players may be registered with a maximum of three clubs and are eligible to play official matches for three clubs during one season:

      a. for associations following a dual-year calendar: the 2019/20 and 2020/21 seasons; and

      b. for associations following a single-year calendar: the 2020 and 2021 seasons.
5. Under all circumstances, due consideration must be given to the sporting integrity of the competition. In particular, a player may not play official matches for more than two clubs competing in the same national championship or cup during the same season, subject to stricter individual competition regulations of member associations.

5.1. Purpose and scope

a) THE IMPORTANCE OF REGISTRATION

The principle underlying the entire registration system is that every player who wants to participate in organised football, be they amateur or professional, must be registered with a club. This registration is held by the member association with which the club is affiliated. Only once the registration process is concluded does a player become eligible to participate in organised football. Following an international transfer, a player is thus not eligible to participate in organised football until the member association to which their new club is affiliated has confirmed the player registration date in TMS.[29] A member association or league may naturally stipulate further eligibility conditions for participation in national championships.

Member associations are required to have an electronic player registration system in place to record all player registrations with affiliated clubs as defined in article 7 of the Regulations.[30] During the first registration of a player, the relevant member association must assign a unique FIFA ID to the player (through the FIFA Connect ID service). The assignment of a unique FIFA ID allows players participating in organised football to be accurately and reliably identified (when required). The FIFA ID shall remain unchanged and identical in every relevant member association's electronic player registration system throughout a player's career.

To ensure that the set of player data collected is uniform, the Regulations provide for a list of the minimum information that must be recorded in writing when registering a player.[31]

In summary, to be eligible to participate in organised football (and thus to play) for a specific club, a player must not only be registered with the member association to which that club is affiliated, but the registration must be done electronically, and the player must be identifiable by means of a

29 Article 8.2 paragraph 8 (a) of Annexe 3, Regulations.

30 Circular no. 1654 of 26 November 2018; Definition 18, Regulations. This is defined as "*an online electronic information system with the ability to record the registration (as defined herein) of all players at their association. The electronic player registration system must be linked with the FIFA Connect System through its automated programming interface ("API") in order to exchange information electronically. Through the FIFA Connect System API, the electronic player registration system must provide all registration information for all players from the age of 12 and, in particular, must assign each player a FIFA ID*".

31 Definition 17, Regulations. This is defined as "the start date of the registration; the full name of the player; date of birth, gender, nationality and status as an amateur or a professional; the type(s) of football the player will play (eleven-a-side football / futsal / beach soccer); the name of the club at the association where the player will play (including the FIFA ID of the club); the training categorisation of the club at the moment of the registration; the FIFA ID of the player; and the FIFA ID of the association".

FIFA ID. In registering, a player agrees to abide by the rules of organised football, specifically the FIFA Statutes and regulations, as well as those of the confederations and the member associations.

Finally, another key principle is that a player may only be registered with one club at a time, regardless of age level (i.e. a player may not be separately registered with a 'junior' club and a 'senior' club). This simple rule constitutes the basis for the sporting integrity of competitions. The only exception is that a player may be registered for a different eleven-a-side club and futsal club at the same time. The two clubs do not need to be affiliated to the same member association.[32]

b) THE PURPOSE OF REGISTRATION

A player may only be registered with a club for the purpose of playing organised football.[33] This follows logically from the fact that registration is the central requirement that allows a player to participate in organised football. Accordingly, a player should not be registered to represent a club for any other reason than to allow them to play football for that club. In particular, registration with the intent of obtaining unjustified (financial) benefits (e.g. to avoid payment of taxes or training compensation) and/or to circumvent applicable rules and regulations or laws is considered illegitimate. Therefore, this provision must be read in conjunction with the prohibition on bridge transfers in article 5bis of the Regulations.

There is only one exception to the fundamental principle described above, which is when a player needs to be registered with a club purely for technical reasons related to the use of TMS. Such a 'technical registration' - where there is no (immediate) purpose for the player to play organised football - might arise if, for instance, a player returns to their parent club following a loan and is immediately loaned out again, or permanently transferred, to a third club affiliated to a member association with an open registration period.

To provide transparency and ensure that the transfer is accurately reflected in TMS, the player's registration must revert to their parent club before it is transferred to the club to which they are being loaned or permanently transferred. Therefore, it must be possible to register the player with their parent club (and, indeed, it is a requirement to do so), even if there is no prospect of the player playing for their parent club and even if the registration period of the parent club's member association is closed. Naturally, for a transfer to occur after the 'technical registration', the registration period of the club to which the player is being loaned or permanently transferred must be open.

32 Article 4 paragraph 2 of Annexe 6, Regulations.
33 Definition 24, Regulations.

c) LIMITATIONS ON REGISTRATION

Article 5 paragraph 4 aims to strike the appropriate balance between the players' right to free movement and the need to protect both contractual stability and the legitimate interest in maintaining the sporting integrity of competitions. The CAS has confirmed its legitimacy in an Award preceding the entry into force of the most recent wording adopted in 2008.[34]

The general rule stipulates that a player can be registered for three clubs but only play in official matches for two clubs during one season. A 'technical registration' as described above is, in principle, not considered when assessing the maximum number of clubs with which a player can be registered in one season.

The meaning of "*official match*" was clarified in a 28 January 2015 decision of the Players' Status Committee (**PSC** – now Players' Status Chamber). The case concerned the registration of the player Hatem Ben Arfa following his transfer on 5 January 2015 from Newcastle United FC, affiliated to The (English) Football Association (**The FA**), to OGC Nice, affiliated to the French Football Federation (**FFF**). In the 2014/15 season, the player had participated in a match for the Newcastle United Under 21 team in the "U-21 Professional Development League", before being loaned to Hull City and participating in nine official matches for its first team. He subsequently transferred to Nice during the January registration period. The point to be clarified was whether the match played in the English "*U21 Professional Development League*" was an "*official match*".

In the decision, it was noted that the relevant provision was binding at national level and that the Definitions section of the Regulations was clear and did not leave any margin for discretion or interpretation. Any match played within the scope of a competition organised under the auspices of a member association or authorised by such a member association had to be considered an official match. CAS[35] ultimately dismissed the appeal on procedural grounds.

In a recent Award, the CAS clarified that friendly matches also fall within the definition of "*organised football*" in certain instances. The Panel held that friendly matches are not "*official matches*" in the sense of being played in the larger framework of a competitive structure, but are still within the auspices of "*organised football*" where such matches are not privately organised.[36]

d) THE EXCEPTION TO THE RULE

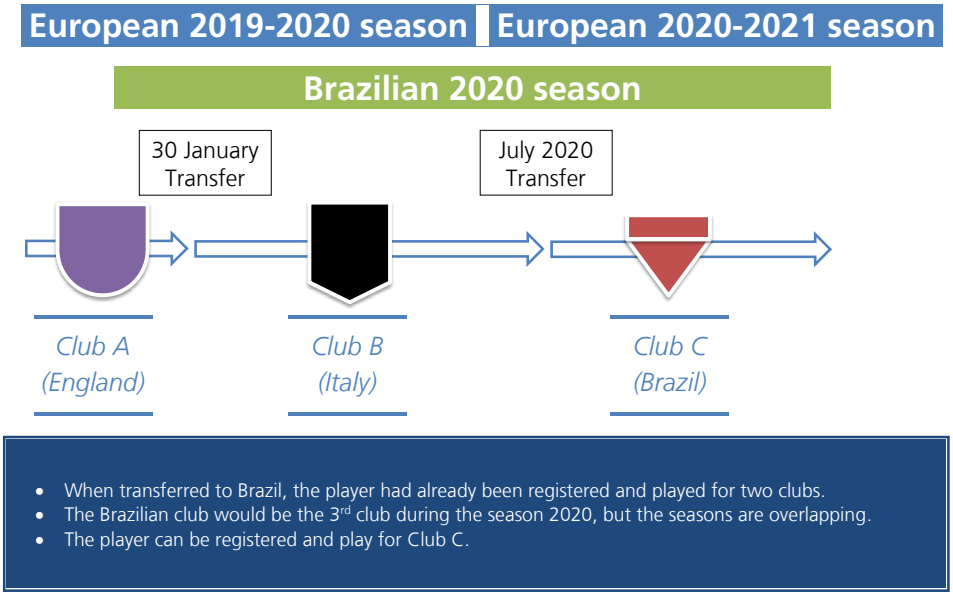
The exception established in article 5 paragraph 4 concerns solely whether a player should be considered eligible to play official matches for a third club during the relevant season. The *"relevant season"* is the playing season of the player's envisaged third club.[37]

34 CAS 2007/A/1272 Cork City FC v. FIFA.
35 TAS 2015/A/3930 Hatem Ben Arfa c. FIFA.
36 CAS 2019/A/6432 The FA v. FIFA.
37 Circular no. 1726 of 30 July 2020.

The CAS has set out that three cumulative requirements must be fulfilled for the exception to be applied.[38] As the exception is an exception to a clear rule, the requirements must be construed narrowly.

i. Overlapping seasons

For the exception to apply, at least two of the three clubs for which the player has been registered during the relevant season must be affiliated to member associations whose seasons overlap. The Regulations provide the example of seasons "*overlapping*" where a player is transferred (presumably in the same hemisphere) from a club affiliated to a member association whose season starts in winter/spring to a club affiliated to a member association whose season starts in summer/autumn. An example is provided in the below graphic:



ii. Compliance with registration periods

The registration periods set by member associations are similarly designed to contribute to the maintenance of contractual stability and to preserve and protect the sporting integrity of competitions. Bearing this in mind, there is no justification for jeopardising that equilibrium by allowing the exception to extend to transfers made outside of the registration periods (subject to the exceptions provided in article 6 paragraph 1).

38 CAS 2007/A/1272 Cork City FC v. FIFA.

iii. Requirement to respect the minimum term of a contract

This last prerequisite again focuses on the stability of contracts and the sporting integrity of competitions. To contribute to safeguarding these basic principles, players should be bound to their clubs for a minimum time span, which should start from the date on which the contract signed between the professional player and the club enters into force and extend until the end of the season.[39] In addition, the rule provides a certain level of legal and financial security for the player, as well as the minimum level of stability clubs need for planning purposes. These legitimate aims and objectives should not be jeopardised by the exception.

e) THE COVID-19 EXCEPTION

In June 2020, a temporary exception to the 'three registration, two clubs' rule was introduced to protect players losing their jobs because of the COVID-19 pandemic, and to protect clubs that were subject to pre-existing transfer agreements.

In short, players are temporarily eligible to play official matches for three clubs during one season. For member associations following a dual-year calendar, this was applied to the 2019/20 and 2020/21 seasons. For member associations following a single-year calendar, the 2020 season. In February 2021, the temporary exception was extended to the 2021 season for member associations following a single-year calendar.

f) IMPACT ON NATIONAL COMPETITIONS

Article 5 paragraph 5 limits a player from playing in official matches for more than two clubs competing in the same national championship, or same national cup, during the same season.

This serves to reinforce the fact that article 5 of the Regulations is binding at national level.[40] Nevertheless, member associations or competition organisers are still permitted to establish stricter eligibility rules in their competition regulations.

It is the responsibility of each member association to ensure that both its own national regulations and those elements of the Regulations that are binding at national level are uniformly respected and applied. This responsibility is particularly significant in respect of article 5 paragraph 4.[41]

39 Article 18 paragraph 2, Regulations.
40 Article 1 paragraph 3 (a), Regulations.
41 Circular no. 1726 of 30 July 2020.

5.2. Relevant jurisprudence

CAS Awards

- TAS 2015/A/3930 Hatem Ben Arfa c. FIFA
- CAS 2007/A/1272 Cork City FC v. FIFA
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Article 5bis - Bridge transfer

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Article 5bis - Bridge transfer

1. No club or player shall be involved in a bridge transfer.
2. It shall be presumed, unless established to the contrary, that if two consecutive transfers, national or international, of the same player occur within a period of 16 weeks, the parties (clubs and player) involved in those two transfers have participated in a bridge transfer.
3. The FIFA Disciplinary Committee, in accordance with the FIFA Disciplinary Code, will impose sanctions on any party subject to the FIFA Statutes and regulations involved in a bridge transfer.

5bis - 1. Purpose and scope

a) BACKGROUND

The unlawful practice of 'bridge transfers' are becoming more common and significantly affect the integrity and fairness of organised football. Therefore, the Regulations include a series of provisions designed to prevent and counter such activity. The message is clear: transfers, whether on a loan basis or permanent, should always be conducted for legitimate sporting reasons only.

A bridge transfer generally comprises two elements:

- A player is transferred, either nationally or internationally, (at least) twice within a (very) short period of time.
- The player does not (or very seldom) play for the club (or clubs) that are not the first or final club in the transfer history. These middle clubs are known as 'bridge clubs'.
- From the outset, the intention is always for the player to move from his first club to the final club, without the bridge club(s) obtaining any sporting benefit from the transfer(s).

Even prior to the entry into force of article 5bis, the FIFA Disciplinary Committee had already deemed the practice a breach of article 9.1 paragraph 2 of annexe 3 to the Regulations, which provides for the imposition of sanctions on clubs entering inaccurate or false data into the

system or misusing TMS *"for illegitimate purposes"*. Subsequently, CAS[42] too confirmed that bridge transfers should be forbidden and categorised them as *"unlawful practices"*; however, it deemed that the FIFA regulatory framework in force at the time did not provide an adequate legal basis to outlaw and punish bridge transfers.

b) REASONS FOR BRIDGE TRANSFERS

Bridge transfers are regularly performed with a view to defrauding another person or entity, or circumventing existing football rules or national laws. The most common reasons for bridge transfers are discussed below; this list is non-exhaustive.

i. Taxation

Several member associations, or even national or regional governments, place a football levy or governmental tax on football transfers for compensation. As such, although the objective of a transaction is for the player to move from the first club to the final club, the parties attempt to avoid paying applicable taxes by first transferring the player to a bridge club, affiliated to a member association where football transfers are not subject to any football levy or governmental tax (or they are significantly lower than if the transfer was made directly). The player is then (immediately or shortly thereafter) transferred (permanently or on loan) from the bridge club to the final club. Hence, it can be said that the sole purpose of transferring the player to club B is to allow the party or parties involved to avoid paying a football levy or governmental tax.

ii. Training compensation[43]

Another reason is to circumvent the requirement to pay training compensation, or to reduce the amount of training compensation payable.

The most common way is to involve a bridge club with training category IV. When a player is registered as a professional for the first time by a club with training category IV, there is no requirement to pay training compensation. For all other categories, subject to all the other relevant prerequisites having been met, training compensation would be due to all clubs involved in the player's training and education.[44]

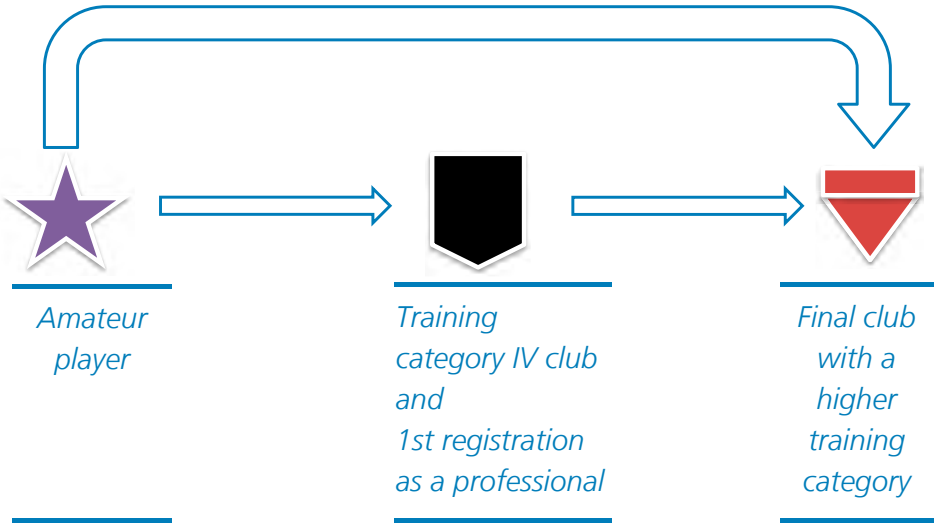
Shortly after the player's first registration as a professional, they are then immediately transferred to the final club as a professional. The final club therefore avoids paying training compensation to any training clubs, as the only club which would be due training compensation (if applicable) for the

42 CAS 2018/A/5637 Institución Atlética Sud América c. FIFA and CAS 2014/A/3536 Racing Club Asociación Civil v. FIFA.

43 Further information is found in the chapter on training compensation below.

44 Article 3 paragraph 1 of Annexe 4, Regulations.

subsequent transfer of a professional is the bridge club. In some cases, the final club pays a transfer fee to the bridge club which is still lower than the amount due as training compensation (either to the bridge club, or to the training clubs), in exchange for its participation in the scheme. A graphic describing this scheme is provided below:



iii. Third-party ownership of players' economic rights[45]

In this variation, the player is first transferred to the bridge club, and is then immediately transferred to the final club upon payment of a transfer fee.

The sole purpose of transferring the player to the bridge club is to allow the owner of the bridge club to take a share of the compensation payable in relation to the future transfer of the player away from the first club, simply by virtue of the fact that they own the bridge club and the player was briefly registered with it. Any previous club with which the player may have been registered is not considered a third party within the meaning of the Regulations,[46] meaning that only the bridge club is entitled to a share of the transfer compensation. This strategy can thus be used to circumvent the prohibition on TPO, which is hidden by the transfer to the bridge club.

c) THE REGULATORY FRAMEWORK

The regulatory framework established in the Regulations prohibits bridge transfers and creates the legal basis required to sanction clubs and players that make use of, or are involved in, such illegitimate practices. The objective is to ensure that transfers of players are carried out for legitimate sporting purposes only.

To achieve this objective, three interlinked elements were incorporated into the Regulations with effect from 1 March 2020:[47]

45 article 18ter, Regulations.
46 Definition 14, Regulations.
47 Circular no. 1709 dated 13 February 2020.

i. The definition

Point 24 of the Definitions section of the Regulations provides a definition: a bridge transfer consists of two consecutive and connected national or international transfers of the same player, with the registration of the player with the intermediate club undertaken to circumvent the application of relevant regulations or laws and/or defraud another person or entity. This is an essential element in view of the presumption incorporated into the Regulations that a bridge transfer has occurred unless proven otherwise.

ii. Legitimate purpose

Article 5 paragraph 2 explicitly describes the only legitimate reason for registering a player: to play organised football (i.e. for sporting reasons). There is only one exception to this principle, described above as a 'technical registration'. However, such 'technical registrations' cannot be abused and are treated for what they are, i.e. an exception to the general rule according to which a player may only be registered for the purpose of playing organised football.

iii. Regulatory presumption

To ensure the prohibition of bridge transfers is as effective as possible, a presumption has been established which reverses the usual burden of proof. If the same player is transferred twice within a period of 16 weeks, both the clubs and the player involved in the two transfers concerned are presumed to have participated in a bridge transfer. It is then up to the clubs and the player to rebut this presumption by providing convincing evidence to the contrary, when requested to do so by FIFA. In doing so, they must demonstrate that the act of registering the player with the bridge club was not intended to circumvent the application of relevant regulations or laws and/or to defraud another person or entity, and that such registration therefore was not to facilitate a bridge transfer.

If two consecutive and related transfers of the same player occur within a period of *more than* 16 weeks, it is still possible that the clubs and the player involved in these transfers could be deemed to have participated in a bridge transfer. However, the regulatory presumption that a bridge transfer has occurred will not apply,

Sanctions can be imposed in accordance with the FIFA Disciplinary Code on *any* party deemed to have been involved in a bridge transfer. Sanctions are thus not limited to players and clubs.

Article 6 - Registration periods

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Article 6 - Registration periods

1. Players may only be registered during one of the two annual registration periods fixed by the relevant association. Associations may fix different registration periods for their male and female competitions. As an exception to this rule, a professional whose contract has expired prior to the end of a registration period may be registered outside that registration period. Associations are authorised to register such professionals provided due consideration is given to the sporting integrity of the relevant competition. Where a contract has been terminated with just cause, FIFA may take provisional measures in order to avoid abuse, subject to article 22.

   a) As an exception to paragraph 1, a female player may be registered by an association outside of a registration period to temporarily replace a female player that has taken maternity leave. The period of the contract of the temporary replacement female player shall, unless otherwise mutually agreed, be from the date of registration until the day prior to the start of the first registration period after the return of the female player that has taken maternity leave.

   b) A female player may be registered by an association outside of a registration period upon completion of her maternity leave (cf. article 18 paragraph 7; and article 18quater) subject to her contractual status.

   c) Associations shall adapt their domestic rules accordingly. However, priority shall be given to ensuring that a female player that has returned from maternity leave is eligible to participate in domestic competitions, and the sporting integrity of the relevant competition.

   d) As a temporary exception to paragraph 1, a professional whose contract has expired or been terminated as a result of COVID-19 has the right to be registered by an association outside a registration period, regardless of the date of expiry or termination.

2. The first registration period shall begin on the first day of the season. This period may not exceed 12 weeks. The second registration period shall normally occur in the middle of the season and may not exceed four weeks. The two registration periods for the season shall be entered into TMS at least 12 months before they come into force (cf. Annexe 3, article 5.1 paragraph 1). All transfers, whether a national transfer or an international transfer, shall only occur within these registration periods, subject to the exceptions in Article 6. FIFA shall determine the dates for any association that fails to communicate them on time.

3. Players may only be registered – subject to the exception provided for in article 6 paragraph 1 – upon submission through the electronic player registration system of a valid application from the club to the relevant association during a registration period.

4. The provisions concerning registration periods do not apply to competitions in which only amateurs participate. The relevant association shall specify the periods when players may be registered for such competitions provided that due consideration is given to the sporting integrity of the relevant competition.

6.1. Purpose and scope

a) GENERAL REMARKS

Players must be registered at a member association to play for a club. Only then are they eligible to participate in organised football.[48] However, players may only register to play for a club during certain specified periods of time formally known as registration periods, or colloquially as "transfer windows".

These fixed registration periods represent one of several measures contained in the Regulations designed to strengthen the principle of contractual stability between clubs and professional players. Registration periods also play an important role in safeguarding the sporting integrity of competitions. However, limiting the periods during which players can be registered may impact their right to free movement (particularly pursuant to European law). The search for an appropriate and proper balance between these often divergent interests is a constant thread running through the Regulations.

Regarding registration periods, the European Court of Justice stated in *Lehtonen*[49] that "*the setting of deadlines for transfers of players may meet the objective of ensuring the regularity of sporting competitions*" and that "[l]*ate transfers might be liable to change substantially the sporting strength of one or other team in the course of the championship, thus calling into question the comparability of results between the teams taking part in that championship, and consequently the proper functioning of the championship as a whole.*"

In summary, the decision recognised that the obstacle to the freedom of movement of workers created by registration periods is objectively justified.

Similarly, the CAS has held, in relation to registration periods that there "*does not appear to be a violation of the principle of free movement of workers. The Sole Arbitrator also finds that there is, on a prima facie basis,*

48 Cf. article 5 paragraph 1, Regulations.
49 Case C-176/96, European Court reports 2000 Page I-02681.

no excessive formalism from the side of FIFA, as the deadline requires strict compliance in order to avoid unequal treatment."[50]

b) SETTING REGISTRATION PERIODS

i. Responsibility and communications

Responsibility for setting registration periods falls within the competence of each member association. If a member association fails to communicate them to FIFA in a timely manner, FIFA may decide to instead impose the registration periods. In setting its own registration periods, a member association may consider the particularities of its territory and competitions, such as the format of its national championships, the number of participating teams, any pertinent commercial considerations, and so on.

Member associations are required to enter their registration periods into TMS, together with the dates of their season, at least 12 months before they come into force. The dates can be amended or modified afterwards, but only under exceptional circumstances. Dates cannot be altered once a registration period has begun, subject to the temporary COVID-19 exceptions introduced in March 2020.

Registration periods apply to professionals and amateurs alike, and to competitions for both male and female footballers. Member associations may, however, set different registration periods (i.e. different dates) for their men's and women's professional competitions, as well as for competitions in which only amateur players (men and/or women) participate.[51] Even if the registration period dates for the different types of competitions (e.g. men's and women's professional competitions) are the same, member associations are still required to enter them separately in TMS. Failure to do so will result in the member association not being able to register a player where no registration period has been defined.

ii. Registration periods for professional players

There are two registration periods for professional players (and potentially different periods for men's football and women's football) per member association per season. The first shall begin on the first day of the defined football season for a maximum period of twelve (12) weeks. In theory, to ensure the sporting integrity of competitions is fully and properly protected, it should not be possible to alter the squads of the clubs participating in a competition once it has commenced. However, in practice, many member associations close their first registration period after the start of their national championship.

50 CAS 2017/A/5368 Adrien Sebastien Perruchet da Silva v. FIFA (order on provisional measures).

51 Article 5.1 paragraph 1 of Annexe 3, Regulations. For the sake of completness, if a league/competition has an overwhelming amount of participation from amateur players and only few players with employment contracts, the league/competition may be considered to be amateur as long as it maintains an amateur spirit.

The second registration period shall normally occur in the middle of the season and may not exceed four (4) weeks.

While the 2001 edition of the Regulations limited the grounds on which a player could be registered for a club during the second registration period to *"strictly sport-related reasons, such as technical adjustments to a team or the replacement of injured players, or* […] *exceptional circumstances"*, such restraint was abolished in the 2005 edition of the Regulations. Consequently, clubs and players may now make use of both registration periods in the same way.

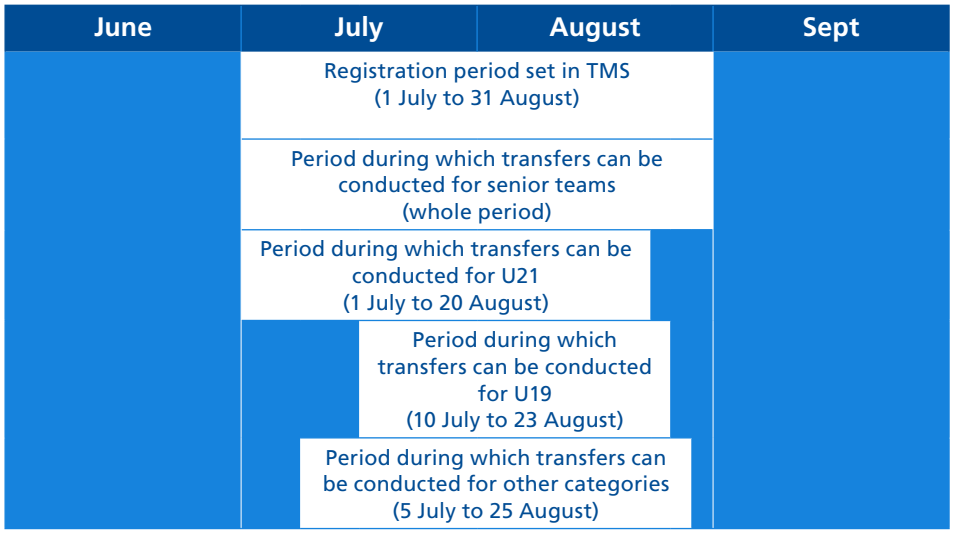
iii. Impact at national level

Article 6 is a binding provision at national level. Hence, and even though the transfer of players between clubs affiliated to the same member association is governed by national regulations, member associations may not provide for different registration periods at national level in respect of 'first registrations' or national transfers. The registration periods communicated via TMS are binding for national transfers and international transfers.

Although this was the practice and interpretation of the rule applied by FIFA since its inception, express wording was introduced to article 6 in January 2021 to avoid any further doubt.

Furthermore, it is not permissible for a member association to set different registration periods for individual competitions in the same category (i.e. men's football or women's football). Indeed, TMS makes it technically impossible to enter separate registration periods for individual competitions, as this would create an excessively high risk of the system being abused or circumvented.

This does not prevent a member association defining a specific limitation within a defined registration period in TMS. The below graphic provides a common example for a first registration period:



iv. Types of registration periods

A member association may establish separate registration periods for men's and women's professional football (although whatever periods it sets must apply to *all* men's and *all* women's competitions, respectively) or for competitions in which only amateurs (both male and female) participate.[52]

In this regard, players registered to participate in professional competitions, in which professionals (and amateurs) participate, are subject to the professional registration periods defined by the relevant member association, regardless of whether they are registered as an amateur or professional player.

On the other hand, there is nothing to prevent a member association from establishing the same registration periods for both men's and women's professional football or setting the same registration periods for these competitions as for competitions in which only amateurs take part.

If a member association does not enter registration periods for men's or women's professional football in TMS, the periods established for one gender will not apply automatically to the other. Failing to enter a registration period will result in the member association concerned being unable to register players.[53] Member associations must enter separate registration periods for men's and women's professional football in the system, even if those periods are identical.

v. Registration periods for competitions in which only amateurs participate

For competitions in which only amateur players participate, a less stringent regime applies, in that there is no requirement to set two registration periods (although that is the maximum number), and there is no time limit for such registration periods. A member association is free to set a single registration period which covers a full calendar year. There is also no differentiation between men's and women's amateur football; a registration period for competitions in which only amateurs participate applies to both categories.

If a member association does not enter registration periods for competitions in which only amateurs participate in TMS, the periods established for professional football will not apply automatically. Failing to enter a registration period will result in the member association concerned being unable to register players.[54] Member associations must enter registration periods for purely amateur competitions in the system, even if there is simply one registration period spanning the whole calendar year.

If a player is registered with a club to play in a competition in which only amateurs are eligible to take part, they will only be eligible to play for that same club in a professional competition in the same season if they were

52 By way of example, see Circular no. 1763 of 30 June 2021.
53 Circular no. 1763 of 30 June 2021.
54 Circular no. 1763 of 30 June 2021.

initially registered during one of the registration periods for professional players, or after the opening of the next registration period for professional players.[55] This rule is designed to prevent the system from being circumvented or abused, and to protect the sporting integrity of competitions.

c) COMPLIANCE WITH THE REGISTRATION PERIODS

i. The rule and the principles behind it

Registration periods are relevant to the registration of individual players. Accordingly, a player can be registered provided the registration period of the member association to which the engaging club is affiliated is open. In other words, a player may leave a club even if the registration period set by the member association to which that club is affiliated is closed, because only the period applicable to the engaging club is relevant.

Players may only be registered during a registration period set by the relevant member association. Two compulsory requirements must be satisfied for transfer to validly occur within a registration period deadline.

First, the engaging club must, depending on the circumstances, submit a valid application through the electronic player registration system to its member association and/or enter a transfer instruction in TMS while that member association's registration period is open.[56] Second, for international transfers and subject to the exceptions listed in article 6 paragraph 1, the member association of the club wishing to register the player must request the ITC from the member association at which the player was previously registered by latest the last day of the new member association's registration period. For national transfers, (and when a player is first registered with a member association to play for a club) the member association concerned must set out in its national regulations any additional conditions that have to be fulfilled for registration to be completed before its registration period closes. In doing so, it must consider that the provisions of the Regulations concerning the registration of players are binding at national level.

The process leading to the registration of a player following an international transfer of an eleven-a-side player must be carried out and managed via TMS. The administrative procedure governing the transfer of eleven-a-side players between member associations is accordingly described in annexe 3, which forms the regulatory basis for the use and function of the system.[57]

55 FIFA Circular no. 1693 of 24 September 2019.

56 In situations where an agreement is found outside the registration periods, clubs may decide to do so prior to the opening of the relevant registration period. This, in order for the transfer to be processed as soon as possible once the registration period opens.

57 TMS is not applicable to futsal players. Consequently, the administrative procedure governing their international transfer is carried out outside the system and regulated by Annexe 3a. It follows the same principles, with some minor divergences due to not being an electronic-based system.

In summary, the procedure is founded on the following basic model. If the player's transfer involves moving between member associations, the engaging club will insert a transfer instruction in TMS. The new member association will then proceed to request the player's ITC from the member association where the player was previously registered. The latter will then consult its affiliated club (i.e. the one the player is leaving) whether it objects to the transfer and to the ITC being issued. If there are no objections, the releasing member association will deliver the ITC. Once the ITC is received by the new member association, it can proceed to register the player for their new club.

1) Creating a transfer instruction

The administrative procedure governing the transfer of players between member associations, as provided in annexe 3 (eleven-a-side football) or annexe 3a (futsal), occurs. For further details on the administrative procedure which are not set out below, please review the relevant chapters of this commentary.

When using TMS for an international transfer of an eleven-a-side player, a variety of information and documents must be entered and uploaded by the club(s) involved. For international transfers with no transfer agreement (i.e. where the player is not subject to any contract) only the engaging club must submit specific information and upload certain documents relating to the transfer. For international transfers with a transfer agreement, both clubs must submit information and upload certain documents relating to the transfer independently of one another as soon as the agreement has been concluded.[58]

The engaging club will always have to provide certain compulsory data to be entered in TMS[59] and will also have to upload at least the mandatory documents required to evidence the information entered into the system.[60]

The procedure within TMS will only move to the stage of processing the ITC request once the club(s) has/have confirmed their instruction after all the compulsory data has been submitted and, as a bare minimum, all mandatory documents have been uploaded.[61] In addition, where a transfer agreement is in place, the information entered separately by the two clubs involved must match.[62]

58 Article 2 paragraphs 3-5 of Annexe 3, Regulations.
59 Article 4 paragraph 3 of Annexe 3, Regulations.
60 Article 4 paragraph 4 of Annexe 3, Regulations.
61 Article 4 paragraph 6 of Annexe 3, Regulations.
62 Article 2 paragraph 5 of Annexe 3, Regulations.

As far as the mandatory documents are concerned,[63] professional registrations must be accompanied by a copy of the contract the player has signed with their new club. If relevant, a copy of the transfer agreement must also be uploaded, together with a series of documents proving the player's identity, the expiry date of their previous contract (if any), and the reason for its termination.

For the transfer to be completed, both the compulsory data and the mandatory documents must be uploaded (to TMS for international transfers, and to the electronic registration system for national transfers).

2) Requesting the ITC

Once the compulsory data is entered into the system, the mandatory documents uploaded, the instruction confirmed and, for transfers involving transfer agreements, the relevant information is matched, the transfer can move to the next step in the procedure, namely the ITC request. When prompted by the system, the new member association must immediately request the ITC of the player via TMS from the releasing member association.[64]

At the very latest, the ITC must be requested by the new member association in TMS on the last day of its registration period (subject to potential validation exemptions, as set out below).[65]

If both requirements are satisfied within the registration period applicable to the new member association to which the engaging club is affiliated, the player is deemed to have been registered during a registration period in accordance with the Regulations. This means that even if the ITC is received after the closure of the pertinent registration period, and/or if the player is only formally registered with the new member association once the registration period has ended, they will still be allowed to register for their new club if the two key requirements are met.

The receipt of the ITC by the new member association and the proper registration of the player concerned for their new club are two separate steps and should be duly distinguished.[66]

In TMS, football has a tool at its disposal that allows compliance with registration periods to be ensured in a reliable, neutral, and objectively measurable way. Bearing in mind the importance of both registration periods and the equal treatment of all clubs and players in preserving the regularity and sporting integrity of the various competitions, strict adherence to the relevant provisions by all parties concerned is essential. In line with this principle, the

63 Article 8.2 paragraph 1 of Annexe 3, Regulations.
64 Article 8.2 paragraph 2 of Annexe 3, Regulations.
65 Article 8.1 paragraph 2 of Annexe 3, Regulations.
66 Article 5.2 paragraph 4, article 8.2 paragraphs 5 and 8 (a) of Annexe 3, Regulations.

PSC and CAS[67] have consistently adopted a very strict approach and have refused to accept any request for an ITC submitted after the closure of the registration period in question, even if it arrives just a few seconds late.

ii. Validation exceptions (ITC requests blocked by TMS)

If the engaging club complies with all its obligations on time and in full, but the releasing club either omits to enter its data and/or documents or fails to cooperate with the engaging club to resolve any discrepancies in the required data, a specific process exists to ensure that the engaging club is not disadvantaged.

Under such circumstances, it may be impossible to match the two datasets prior to the closure of the registration period concerned, and the member association to which the *engaging* club is affiliated will therefore be unable to request the ITC on time, which will lead to the transfer being blocked by TMS. If, after the registration period closes, the discrepancies are finally resolved, the member association to which the new club is affiliated can request the ITC outside of its registration period. In these circumstances, the member association may ask FIFA to intervene to override the "validation exception" (i.e. the error message blocking the transfer) in TMS.[68]

The FIFA general secretariat will assess such requests and inform the member association – through an administrative letter uploaded in the relevant transfer instruction – whether the circumstances are justified and allow for an override of the "validation exception". If an override occurs, the ITC request is "unlocked" allowing the former member association to provide its position.

As a general rule, an override of the "validation exception" will occur where the engaging club and new member association duly accomplished all the necessary and possible steps in TMS in view of registering the player within the relevant registration period. This occurs when:

(i) the engaging club has entered and approved its transfer instruction as well as uploaded all the mandatory documents correctly before the end of the registration period fixed its affiliated member association; and

(ii) the new member association requested the ITC in TMS after the end of the applicable registration period through no fault or negligence of its own.

If all these conditions are satisfied, it is possible that a validation exception might be authorised.

67 CAS 2017/A/5368 Adrien Sebastien Perruchet da Silva v. FIFA; CAS 2017/A/5063 DFB & FC Köln & Nikolas Terkelsen Nartey v. FIFA; CAS 2015/A/4202 Sepahan FC v. FIFA; CAS 2015/A/4001 S.D. Eibar S.A.D. v. FIFA; CAS 2013/A/3394 The FA & Sunderland AFC Ltd. v. FIFA; CAS 2012/A/2925 Clube de Regatas Flamengo v. FIFA; TAS 2011/A/2578 OGC Nice Côte d'Azur & Yannick Dos Santos Djalo v. FIFA; CAS 2011/A/2446-2447 Zamalek SC & Ahmed Hossam Hussein Abdelhamid ("Mido") v. FIFA; TAS 2011/A/2376 Sharjah Football Club LLC c. FIFA; CAS 2011/A/2369 Real Valladolid v. FIFA.

68 Article 6 paragraph 1 of Annexe 3, Regulations.

iii. Specific rules for registering minors[69]

Any international transfer of a minor player – defined as a player who has not yet reached the age of 18[70] - is subject to the approval of the PSC. Prior to the introduction of the Football Tribunal (**FT**), such approvals were made by a sub-committee on minors appointed by the former Players' Status Committee (**SCM**). Such approval is required whether the minor player is to be registered as a professional or an amateur at their new member association. The transfer application must be submitted to the PSC for approval by the member association to which the engaging club is affiliated. PSC approval must be obtained prior to any ITC request from a member association. The provisions relating to registration periods apply to the registration of any player and are therefore equally applicable to the registration of minors.

The requirement to obtain the approval of the PSC does not affect the obligation to enter all the compulsory data and upload all mandatory documents in TMS while the relevant member association's registration period remains open.[71] Submitting the necessary application to the PSC does not relieve the engaging club of its responsibility to carry out all its other duties and respect all applicable time limits.

Clubs may comply with their TMS-related obligations while waiting for approval from the PSC, following a recent amendment to TMS.[72] If approval from the PSC is notified to the member association concerned during the registration period in question, the member association to which the engaging club is affiliated to must request the ITC before the registration period closes. Any request submitted after the registration period closes will be rejected.

If, however, approval from the PSC is notified to the member association concerned only *after* the closure of the registration period in question, the member association will not be able to request the ITC during its registration period.

The member association may be entitled to request the 'validation exception' be overriden, provided that:

- a positive PSC decision was notified after the end of the registration period; and
- the engaging club has entered all compulsory data, uploaded all mandatory documents, and confirmed the relevant instruction in full and on time (i.e. before the end of the registration period).

69 Circular no. 1587 of 13 June 2017.
70 Definition 11, Regulations.
71 Article 4 paragraphs 2-3, article 8.2 paragraph 1 of Annexe 3, Regulations.
72 Circular no. 1763 of 30 June 2021.

d) THE EXCEPTIONS

The Regulations provide for three exceptions to the rule that players, regardless of whether they are amateurs or professionals, may only be registered during a registration period fixed by the relevant member association. The first relates to professionals whose contracts have expired (or been mutually terminated) prior to the end of a specific registration period. The second and third relate to maternity leave – either to allow for the temporary replacement of a female player whose maternity leave has commenced outside of a registration period, or for a female player whose maternity leave has finished outside of a registration period to be registered at a member association.

As article 6 is binding at national level, member associations may not provide for any further exceptions to the fundamental rule that players, whether professionals or amateurs, can only be registered during the registration periods set out in their national regulations.

i. Professionals whose contracts have expired (or been mutually terminated) prior to the end of a specific registration period

The first exception in article 6 paragraph 1 is designed to protect unemployed professional players against their being prevented from pursuing their careers and/or earning an income by playing football because of the restrictions associated with registration periods. The aim is to ensure that if, for example, a professional player's contract expires on 30 June and they are unable to find new employment when the registration period is open in July and August, but they eventually manage to find a club that wishes to sign them in September when the registration period is closed, they do not have to wait until the next registration period opens until they can earn an income.

Only a specific group of players may be registered outside of a registration period. First, the exception explicitly refers to professionals only. Therefore, amateurs cannot register for a new club outside of a registration period, even if they will turn professional after the registration. This distinction is made to reflect the fact that a professional is assumed to be relying on their earnings from football to make a living. If a professional cannot find new employment, they may struggle to support themselves. On the other hand, an amateur's livelihood does not depend on income earned from playing football. It may very well be that they rely on income from football at a later date – for example if they are about to turn professional – but as long as they are registered as an amateur, they cannot be said to be making their living from playing football.

Second, for the exception to apply, the professional's contract with their former club must have expired or been mutually terminated prior to the end of the registration period applicable to the engaging club.

The rationale underlying the exception is that the professional must have sought employment unsuccessfully during a period in which they would normally be allowed to register for a new club. This is clearly emphasised in the wording of the exception, which states that *"a professional whose contract has expired prior to the end of **a** registration period may be registered outside **that** registration period"*.[73]

The reason why an early termination of a professional's contract by mutual agreement *after* the end of a registration period (rather than before) does not entitle the player to make use of the exception should be self-evident: applying the exception in these circumstances would render the whole system of registration periods redundant, and have a direct impact on the sporting regularity (and integrity) of competitions.

A professional whose contract expires after the end of a registration period may use the exception to request to be registered outside a registration period if they are unable to find employment over the course of the next registration period (i.e. the one after their contract expired), because they will have unsuccessfully sought employment during a period in which they could otherwise have registered for a new club.[74]

Notwithstanding the above, member associations are not obliged to register a professional outside of an open registration period, even if the conditions for granting the exception are met, and no club may oblige the member association to which it is affiliated to do so. In practice, there are a variety of reasons for a member association to refuse to register a professional whose contract has expired prior to the end of its registration period outside of that registration period. The primary reason is to protect the sporting regularity (and integrity) of football competitions.

73 Example: a professional's contract expired on 31 July. After having faced difficulties in finding a new club, in October he finally finds a club interested in his services and he agrees to sign a new contract with them. The registration period fixed by the association of the envisaged new club ended on 31 August. The player's former contract had thus expired prior to the end of the registration period of the association of the prospective new club, and he can benefit from the exception. If the professional's previous contract had expired on 30 September, he would not have been able to rely on the exception, since at the time the registration period of the association of the envisaged new club ended, his contract with his former club was still valid.

74 Example: a professional's contract expires on 30 September. After having faced considerable difficulties in finding a new club, in February of the following year he finally finds a new club interested in his services and he agrees to sign a new contract with them. The registration periods of the association of the envisaged new club run from 15 June to 31 August and from 1 to 31 January. The contract with the player's former club expired after the end of the summer registration period of the association concerned. Therefore, the player would not have been able to rely on the exception so as to be registered for a club at that association between October and December. However, since in January of the following year, he was not able to find a new club either, he may rely on the exception in order to be registered for the new club in February, which is again outside the registration period.

ii. Temporary replacement of a female player that has taken maternity leave

The second exception in article 6 paragraph 1 (a) is designed to permit clubs to register a player to temporarily replace another player that has taken maternity leave. The exception may be utilised whether the maternity leave period commences before the end of the registration period, or after the end of the registration period.

This provides protection to clubs that lose a player to maternity leave just before the end or after the end of a registration period, in that they do not suffer any sporting disadvantage in a national championship by having one less squad member.

In a similar manner, the choice of the player that has taken maternity leave to have a child is protected by the player that is registered in her place being considered a "temporary replacement" player; priority is given to protect the employment of the player who gives birth, and the opportunity to exercise her right to return to work upon completion of her maternity leave.

The contract that may be offered to the "temporary replacement" player reflects this approach. It shall, unless otherwise mutually agreed, be from the date of her registration until the day prior to the start of the first registration period after the return of the female player that has taken maternity leave. This also provides her with some contractual certainty – especially if the maternity leave period of the player that she is replacing ends outside of a registration period - and permits her a full registration period to find a new club after her "temporary replacement" contract expires.

As provided in article 6 paragraph 1 (c), member associations shall adapt their national regulations accordingly. Such adaptation was to be completed by latest 1 July 2021.[75]

iii. Female player may be registered outside of a registration period upon completion of her maternity leave

For similar reasons, the third exception in article 6 paragraph 1 (b) is designed to protect the right to return to work upon completion of maternity leave. In such situations, the exception may be utilised by a player's previous club or a potential new club, subject to her contractual status.

Again, this rule must be adopted by member associations in their national regulations.

75 Circular no. 1743 of 14 December 2020.

iv. Temporary COVID-19 exception

In June 2020, a temporary exception to article 6 paragraph 1 was introduced to provide additional employment opportunities to players whose employment was directly impacted by the pandemic.

The phrase "*as a result of COVID-19*" refers to a situation where the pandemic causes:

a) the expiration of an employment agreement. This refers to cases where:

(i) an employment agreement end date is (e.g.) "*at the end of the season*" with no specific reference to any date, and the season has been prematurely completed or cancelled (e.g. through government intervention or decision of the competition organiser) prior to the completion of its match schedule. The player and the new club may utilise the exception; or

(ii) where the end date of a season is extended as a result of COVID-19, an existing employment agreement has been extended until the new end date of the season, and that agreement has expired. The player and the new club may utilise the exception;

(iii) where the end date of a season is extended as a result of COVID-19, the loan of a player is extended until the new end date of the season, and that loan has expired. The player and the parent club may utilise the exception.

b) the termination of an employment agreement. This refers to cases where:

(i) a party unilaterally terminates the employment agreement as a result of COVID-19. In the event of a unilateral termination which is not directly related to the pandemic, a professional may only be registered by a member association in accordance with article 6;

(ii) a player is on loan, the season has been prematurely completed or cancelled (e.g. through government intervention or decision of the competition organiser) prior to the completion of its match schedule, and this causes the termination of the loan (and therefore the employment agreement) between the player and the engaging club. The player and the parent club may utilise the exception.

For international transfers, certain types of ITC requests outside of a registration period will trigger a validation exception. In such cases, parties are required to upload proof that the previous employment agreement expired or was terminated as a result of COVID-19.

Each request is assessed on a *prima facie* case-by-case basis. As occurs with the normal article 6 paragraph 1 exception, registration is distinct from eligibility to be fielded in matches. It is the responsibility of each member association or competition organiser to ensure that the sporting integrity of its national championships is preserved.

e) PROVISIONAL MEASURES

The last sentence of article 6 paragraph 1 is intended to provide flexibility and protection for professionals who terminate their contracts with their clubs prematurely because of a serious breach of contractual obligations or other serious misconduct by their club. In other words, "*provisional measures*" are designed for situations in which players find themselves unemployed outside of a registration period through no fault of their own.

Where a player has terminated their contract with just cause, to avoid abuse, FIFA may authorise a member association to register the player outside of a registration period if, following the premature termination of their contract, they have been able to find a new club but would not ordinarily be allowed to register with that club. The provisional measures are intended to protect professionals that become unemployed because of their previous club's illegitimate behaviour, and who find themselves unable to earn an income because of the restrictions imposed by the set registration periods.

This mechanism is an option, not an obligation; member associations are not required to register a player outside of a registration period under these circumstances. Considerations and concerns regarding the sporting integrity of its competitions will again play a role in the decision to adopt this approach. Any provisional measures that may be granted by FIFA will always be dependent on the member association to which the engaging club is affiliated agreeing in principle to register the player outside of its registration periods.

For a provisional measure to be applied, there must have been just cause for the player to terminate their previous contract prematurely. It is not sufficient for the player to assert that they had just cause; they must demonstrate on a *prima facie* basis that they had just cause. Any decision made by FIFA to grant provisional measures has no bearing on any claim that may be later lodged before the DRC or competent national body.

While FIFA can take provisional measures in relation to a proposed international transfer, the fact that article 6 is binding at national level means that a similar procedure must be in place at national level for the eventuality that the player concerned finds new employment with a club affiliated to the same member association as their previous club.

The same provisional measures (and principles) are available to a player who finds themself unemployed between registration periods because their former club has terminated their contract without just cause, as opposed to the player terminating the contract. After all, this puts the player in the same situation as if they had terminated the contract themselves, again through no fault of their own.

6.2. Relevant jurisprudence

CAS Awards

- CAS 2017/A/5368 Adrien Sebastien Perruchet da Silva v. FIFA
- CAS 2017/A/5063 DFB & FC Köln & Nikolas Terkelsen Nartey v. FIFA
- CAS 2015/A/4202 Sepahan FC v. FIFA
- CAS 2015/A/4001 S.D. Eibar S.A.D. v. FIFA
- CAS 2013/A/3394 The FA & Sunderland AFC Ltd. v. FIFA

Article 7 - Player passport

7.1. Purpose and scope 64

Article 7 - Player passport

1. The registering association is obliged to provide the club with which the player is registered with a player passport containing the relevant details of the player. The player passport shall indicate the club(s) with which the player has been registered since the calendar year of his 12th birthday.

7.1. Purpose and scope

The *raison d'être* of the player passport is inextricably linked to the training reward regimes.

The importance of accurate data should be obvious. Subject to the pertinent preconditions being fulfilled, the engaging club is responsible for calculating and paying training compensation and/or the solidarity contribution, as the case may be, to the training club(s) on the basis of the player passport.

For international transfers, the player passport is uploaded by the member association of the player's former club to TMS when it creates an ITC in favour of the member association to which the engaging club is affiliated.

Each member association is only liable for information concerning registrations for clubs affiliated to that member association. If a player joins a club affiliated to a member association because of an international transfer and is then the subject of another international transfer, the player passport issued by the member association at the time of this later transfer will only include information from the period the player spent registered at that member association. Hence, the player's complete career history can only be definitively pieced together by referring to all the different player passports uploaded to TMS by all the member associations with which that player has been registered during their career. Clearly, this is not always an easy task, and can constitute a challenge for clubs.

The mandatory implementation, as from 1 July 2020, of an electronic registration system and an electronic domestic transfer system in each member association, together with the application of TMS to international transfers of amateurs,[76] will certainly have a major and positive impact in this regard. These measures were introduced in anticipation of the FIFA Clearing House becoming operational, and the evolution of the player passport system into an automated electronic player passport.

76 Circular no. 1679 of 1 July 2019.

Only a player passport issued and confirmed by a member association will be considered by the DRC and the PSC in case of a dispute. If such a dispute arises, it is the responsibility of the claimant club to provide all player passports from the relevant member associations involved and to enter them into TMS, thus ensuring that there is a complete record of the player's career history for evidential purposes.

As from 1 January 2021, the player passport must indicate the club(s) with which the player has been registered since the calendar year of their 12th birthday. This aligns with the principles applicable to training compensation and the solidarity mechanism, which both provide that the relevant entitlement arises as of the calendar year of the player's 12th birthday.[77] Prior to that date, the player passport was required to indicate the season of the relevant birthday, as opposed to calendar year. The amendment was made to simplify the calculation process and prepare for the automated distribution system introduced by the FIFA Clearing House.

A player passport should include precise registration dates (i.e. the start and end date of the player's registration with each individual club), the status the player held (amateur or professional), and the player's date of birth.

77 Article 3 paragraph 1 of Annexe 4, Regulations (training compensation); article 1 paragraph 1 of Annexe 5, Regulations (solidarity mechanism).

Article 8 - Application for registration

8.1. Purpose and scope 67

Article 8 - Application for registration

1. The application for registration of a professional must be submitted together with a copy of the player's contract. The relevant decision-making body has discretion to take account of any contractual amendments or additional agreements that have not been duly submitted to it.

8.1. Purpose and scope

A club wishing to register a player as a professional must submit the relevant application to its member association accompanied by a copy of the player's relevant contract.

This formal requirement is designed to ease the club's burden of proof if the player is involved in another transfer in the future and the club wishes to invoke the existence of a contractual dispute as grounds for refusing to issue the player's ITC. The only reason for a member association to reject an ITC request is if it is claimed that a valid contractual relationship still exists between the player and the club they wish to leave.[78]

78 Article 8.2 paragraph 7 of Annexe 3, Regulations.

Article 9 - International Transfer Certificate

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Article 9 - International Transfer Certificate

1. Players registered at one association may only be registered at a new association once the latter has received an International Transfer Certificate (hereinafter: ITC) from the former association. The ITC shall be issued free of charge without any conditions or time limit. Any provisions to the contrary shall be null and void. The association issuing the ITC shall lodge a copy with FIFA. The administrative procedures for issuing the ITC are contained in Annexe 3, article 8, and Annexe 3a of these regulations.
2. Associations are forbidden from requesting the issue of an ITC in order to allow a player to participate in trial matches.
3. The new association shall inform the association(s) of the club(s) that trained and educated the player between the ages of 12 and 23 (cf. article 7) in writing of the registration of the player as a professional after receipt of the ITC.
4. An ITC is not required for a player under the age of ten years.

9.1. Purpose and scope

a) GENERAL REMARKS

Player registration is of central importance for the functioning of organised football. The fact that players are registered with a member association to play for a specific club (indirectly and directly) binds them to the jurisdiction and disciplinary powers of the member associations, the confederations, and FIFA.

The fact a player transfers between clubs affiliated to the same member association (i.e. a national transfer) does not change the member association with which the player is registered, only the club for which they are registered and will be eligible to play. The member association will retain its jurisdiction and disciplinary powers over the player after the national transfer. It is therefore reasonable for this kind of transfer to be governed by national regulations issued by that member association.

When a player is transferred internationally, however, their registration also must be transferred between two member associations. Following the transfer, the player will no longer be registered with their former member association, which will lose its jurisdiction and disciplinary powers over the

player. The player will be registered with the new member association to represent their new club, rendering them eligible to play for their new club, and binding them to the jurisdiction and disciplinary powers of the member association to which their new club is affiliated.

The administrative procedure governing the transfer of players between member associations is provided in annexe 3 (eleven-a-side football) or annexe 3a (futsal). For further details on the administrative procedure, please review the relevant chapters in this commentary.

The ITC plays a substantial role in the handling of the transfer process. It is the key document for registering players following an international transfer.

In contrast to the relationship between a professional and a club, which is by contract, registration derives from the member association – player – club relationship since a player is registered with a member association to represent their club. This relationship applies equally to both amateurs and professionals.

Subject to two exceptions,[79] a player registered with a member association for an affiliated club may only be registered with a new member association for one of its affiliated clubs once an ITC has been issued by the former member association, and the new association has confirmed receipt of the ITC. When issuing the ITC for a transfer in eleven-a-side-football, the former member association must enter the date of the player's deregistration in TMS.[80] At the other end of the chain, the new member association has to confirm receipt of the ITC.[81] Only then will it be able to complete the relevant player registration information in TMS, which will render the player registered for their new club.[82]

It is rare for very young players to be transferred internationally, but in order to minimise the administrative burden associated with such transfers, the Regulations provide for an age limit beyond which an ITC is required. For many years, this threshold was set at the age of 12. However, since 1 March 2015,[83] an ITC must be requested and obtained for any player over the age of 10. This change was agreed in view of the increasing numbers of international transfers involving players under the age of 12, and to strengthen protection for minors.

79 Article 8.2 paragraph 8 (b) of Annexe 3, Regulations.
80 Article 8.2 paragraph 4(a) of Annexe 3, Regulations.
81 Article 8.2 paragraph 5 of Annexe 3, Regulations.
82 Article 8.2 paragraphs 5 and 8(a) of Annexe 3, Regulations.
83 Circular no. 1468 of 23 January 2015.

b) FORMAL REQUIREMENTS FOR THE ITC

i. Application to member associations

The prerequisite that an ITC should be issued with no conditions attached has been in the Regulations as early as 1991. Equally, the prohibition against a member association charging a fee for issuing an ITC was also included in the 1991 edition. The current wording was introduced in 2005 and has remained unchanged since.

Historically, transferring an ITC is a process predominantly involving member associations as it has always been the sole responsibility of a player's new member association to request and receive the ITC, and the sole responsibility of their former member association to issue it. This fundamental principle remains valid today.[84] In this context, the FIFA Disciplinary Committee has previously imposed sanctions on member associations demanding a fee (whether from the new member association, the player being transferred, or any of the clubs involved in the transfer) for the delivery of an ITC.

The reason is clear: a player should not be hindered in pursuing their career because of a financial obstacle associated with a mandatory administrative procedure. If there is no contractual obstacle to the international transfer of a player, the process required to complete the transfer should not be drawn out.

ii. Application to clubs

As confirmed by CAS on several occasions,[85] clubs may be sanctioned for breaching article 9 paragraph 1. However, the relevant Awards all concerned clubs who signed players without starting the ITC process in TMS, and subsequently fielded those players without any ITC ever having been issued.

In this respect, CAS emphasised the fact that *"*[t]*he procedure for the issuance of an ITC begins with a request by the club to which the player moves, which must be submitted by the club itself through the FIFA TMS."*[86] *"As a result,* […] *the Club can be held responsible for the failure to obtain an ITC before the amateur players concerned were registered / participated in organised football."*[87]

Another issue is whether clubs can also be sanctioned for violating article 9 paragraph 1 in connection with the formal requirements for the ITC. The use of TMS has made it possible for a club releasing a player to exert pressure on the prospective engaging club during transfer negotiations, as it may request the payment of a certain (significant) sum of money to commit to carrying out the relevant procedures in TMS as quickly as possible. If the

84 Article 8.1 paragraphs 1 and 2 of Annexe 3, Regulations.
85 CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA; CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA; CAS 2016/A/4785 Real Madrid Club de Fútbol v. FIFA.
86 CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA.
87 CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA.

player's former club fails to enter the required information in TMS, or if it does not cooperate to resolve any matching exceptions, the member association to which the engaging club is affiliated will not be able to request the ITC. Consequently, the engaging club might feel compelled to pay the sum requested by the releasing club – which could well be incorporated into the agreed transfer fee – so as not to jeopardise the transfer and in order to ensure the ITC is requested in a timely manner.

The FIFA Disciplinary Committee has considered this issue multiple times, and consistently held that such behaviour violates article 9 paragraph 1, insofar as it renders the delivery of the ITC conditional upon the payment of a fee (i.e. it is not free of charge).

In one noteworthy matter, the relevant transfer agreement contained a clause where the clubs had agreed to make issuing the ITC for the transfer of a specific player conditional upon the payment of a significant sum of money, which the engaging club had to pay before the releasing club would complete their counter-instruction in TMS. The Disciplinary Committee found that, by signing a transfer agreement containing a clause demanding payment in return for completing the counter-instruction, both clubs had violated article 9, which stipulates that the ITC shall be issued free of charge without any conditions. Both clubs were sanctioned by means of a fine. The decision emphasised that any behaviour that hinders and prejudices a player's footballing activity must not be tolerated. The decision also indicated that such behaviour constituted an abuse of TMS, since making the issuance of an ITC conditional would jeopardise the transparency of international transfers and thus damage the credibility of the entire transfer system.

This position has been consistently adopted by the Disciplinary Committee in such cases. What emerges most clearly is that TMS and the issuance of an ITC should not be used as a negotiation tool when discussing the conditions of a potential international transfer.

CAS, on the other hand, appears to take a different approach. In an early decision relating to this issue,[88] the Panel cited the fact that only member associations are entitled to deliver an ITC in concluding that article 9 is exclusively directed towards member associations and is therefore not applicable to an agreement between two clubs.

In another Award, CAS[89] again disagreed with the conclusions of the Disciplinary Committee and refrained from sanctioning a club for violating article 9. In this case, the Panel focused on the interpretation of the relevant contractual clause, rather than whether article 9 should apply to clubs. In short, it explained that the second sentence of article 9 paragraph 1 – i.e. that the ITC shall be issued free of charge without any conditions or time limit – refers to the imposition of conditions on the ITC. In the case at hand, the relevant clause was a condition precedent to the transfer itself, which is

88 CAS 2013/A/3413 Olympique des Alpes SA v. Jagiellonia-Bialystok SSA.
89 CAS 2018/A/5953 Sport Lisboa e Benfica – Futebol, SAD v. FIFA.

to say a condition that had to be met before any transfer could take place, as opposed to the issuance of the ITC.

In a recent Award, the Sole Arbitrator found that as an ITC is a necessary prerequisite for registration with a member association (which is in turn needed to participate in organised football) does not mean that article 9 paragraph 1 is breached when a player participates in organised football prior to obtaining an ITC.[90]

In another matter, the Disciplinary Committee found a club had violated article 9 paragraph 1 and fined it for having signed seven transfer agreements which made the issuance of the ITC conditional on a payment being made. That decision was confirmed by the Appeal Committee and overturned by CAS.[91]

Once again, the matter hinged on the misuse of TMS as a negotiation tool. The club had entered into seven transfer agreements by means of which they would release a player to a new club. All of these contracts stipulated either that the clubs signing the players would be ready to pay significant amounts of money (either the entirety of the stipulated transfer fee or a considerable part of it, intended as a first instalment) *"in order to obtain the International Transfer Certificate"*, or that permission to issue the pertinent ITC would only be given by the releasing club to its affiliate member association once the corresponding payment had been received. Other agreements provided that the ITC would be issued only after the payment of the transfer fee (or a significant part of it) and that if the up-front payment were not made, the transfer agreement would automatically cease to be effective. Finally, some of the relevant contracts explicitly stated that the releasing club would enter the counter-instruction into TMS, together with the required documents and data, only once payment had been made.

The CAS again focused on the interpretation of the contractual clauses. The Panel reasoned that the clauses concerned should be considered a (commercial) condition precedent, without which the transfer would not have been concluded. It pointed out that if the required payment (either the entirety or part of the transfer fee) were not made, either the transfer agreement itself would either cease to be effective, or the transfer would only be concluded when the transfer fee (or the first instalment of it) were paid up-front. In summary, the Panel did not perceive any intention on the part of the club to make the issuance of the ITC conditional, and therefore ruled that no breach of article 9 paragraph 1 had occurred.

These Awards suggest that, assuming the relevant clauses contained in transfer agreements are to be understood as constituting (commercial) conditions precedent, without which the transfer would not have been concluded, it cannot be assumed that any violation of the article 9 paragraph 1 of the Regulations has taken place.

90 CAS 2019/A/6301 Chelsea FC v. FIFA.
91 CAS 2019/A/6229 AZ NV v. FIFA.

iii. Loans involving professional players

The fact that the ITC must be issued without any time limit is of particular importance in relation to loans involving professional players.[92] When such transfer is performed, the two clubs concerned agree, with the consent of the player, to the temporary transfer of the registration of a player for a predetermined period. Under the circumstances, it is not possible for the member association to which the parent club is affiliated (and to which they will normally[93] return at the end of the loan), to deliver an ITC solely for the stipulated duration of the loan.

Rather, the former member association will have to issue an unconditional ITC without any time limit, just as it would if the player were joining the engaging club on a permanent basis. As with a permanent transfer, a copy of the relevant loan agreement must be uploaded to TMS.[94] In practical terms, a loan involving a professional is subject to the administrative procedures in article 8 of annexe 3 (eleven-a-side football) or article 5 of annexe 3a (futsal).

At the end of the agreed loan period, the same administrative procedures will need to be repeated. The ITC will not be automatically returned, and the player's registration with their parent club will not be reinstated automatically at the end of the loan. The return of a player to their parent club is treated as a new international transfer, and the member association to which the parent club is affiliated must request the ITC from the member association to which the club where the player has been on loan is affiliated.[95] Only when ITC has been received will the player be able to be registered and eligible to play for their parent club.

iv. Distribution of the ITC

Finally, the sentence in article 9 paragraph 1 requiring the member association issuing an ITC to lodge a copy with FIFA is only applicable to international transfers in futsal, since all international transfers in eleven-a-side football are managed using TMS and the ITC is now automatically available to FIFA in real time.

c) NO ITC REQUIRED FOR TRIAL MATCHES

The purpose of participating in a trial match is for a club to be able to assess a player's skills and character before deciding whether to offer that player a contract (professional) or register them (amateur).

For a player to be eligible to participate in organised football, they must be electronically registered with the relevant member association. Regarding

92 Article 10, Regulations.

93 At the end of the loan the two clubs and the player may, however, also agree on an extension of the loan, or to convert the loan in a permanent transfer. If applicable, these scenarios need to be properly reflected in TMS. In such a case, the registration of the player will not be affected and no ITC will therefore be required.

94 Article 8.3 paragraph 2, article 8.2 paragraph 1 of Annexe 3, Regulations.

95 Article 8.3 paragraph 1 of Annexe 3, Regulations.

participation in "*official matches*", this notion includes all matches played within the framework of organised football, such as national league championships, national cups, and international championships for clubs, but does not include friendly and trial matches that are not played within the auspices of a member association.[96]

In a recent Award, the Panel noted that privately organised friendly or trial matches between two clubs without the involvement of a third party (e.g. the relevant member association providing for a referee) do not fall within the definition of 'organised football' (and, as such, do not require a formal registration). However, matches played within the framework of an organised structure (e.g. subject to the sanctioning of a member association – for insurance, referees, or other reasons) are, in principle, 'organised football' (and thus require the player's registration).[97]

An ITC is supposed to be delivered as part of a set process leading to the player being registered with their new club affiliated to a new member association; it is clear from the outset that the player is moving to the new club with a view to playing for that club.

Accordingly, member associations must not request an ITC for the sole purpose of allowing the player to participate in trial matches for an affiliated club. Under these circumstances, the ITC would be useless, and issuing it would only create legal uncertainty concerning the player's registration (particularly the number of clubs with which they have been registered in a season), which would be the precise opposite of the transparency that TMS is supposed to provide.

Having said that, the risk of this situation arising in practice has considerably diminished since the implementation of TMS. Considering that one of the documents that must be uploaded to TMS in order to complete a transfer is a copy of the employment contract signed between the professional player and their new club, and that the ITC request procedure can only be initiated once, *inter alia*, the club has complied with its obligation to upload all the mandatory documents to TMS, a member association will in any case be unable to request an ITC for any professional player until such time as a contract has been agreed between the player and the club they are joining.

d) ITCS AND TRAINING REWARDS

In order to facilitate the process pertaining to the payment of training compensation and solidarity contributions, after receiving the relevant ITC, a member association registering a player is expected to inform the member association(s) to which the club(s) that trained the player between the ages of 12 and 23 are affiliated that the player concerned has been registered as a professional.

96 Definition 5, Regulations.
97 CAS 2019/A/6432 The FA v. FIFA.

9.2. Relevant jurisprudence

CAS Awards

- CAS 2013/A/3413 Olympique des Alpes SA v. Jagiellonia-Bialystok SSA
- CAS 2014/A/3793 Fútbol Club Barcelona v. Fédération Internationale de Football Association (FIFA)
- CAS 2016/A/4805 Club Atlético de Madrid SAD v. Fédération Internationale de Football Association (FIFA)
- CAS 2016/A/4785 Real Madrid Club de Fútbol v. FIFA
- CAS 2018/A/5953 Sport Lisboa e Benfica – Futebol, SAD v. FIFA
- CAS 2019/A/6229 AZ NV v. FIFA
- CAS 2019/A/6301 Chelsea FC v. FIFA
- CAS 2019/A/6432 The FA v. FIFA

Article 10 - Loan of professionals

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Article 10 - Loan of professionals

1. A professional may be loaned to another club on the basis of a written agreement between him and the clubs concerned. Any such loan is subject to the same rules as apply to the transfer of players, including the provisions on training compensation and the solidarity mechanism.
2. Subject to article 5 paragraph 4, the minimum loan period shall be the time between two registration periods.
3. The club that has accepted a player on a loan basis is not entitled to transfer him to a third club without the written authorisation of the club that released the player on loan and the player concerned.

10.1. Purpose and scope

a) GENERAL REMARKS

A loan is the transfer of the registration of a professional player from one club to another for a predetermined period. The main objective of the loan transfer system for professionals is to encourage the development and training of young professionals.

The title of the article 10 explicitly refers to professionals only. There is a good reason for this. In the event of a loan being agreed, the player's parent club will, with the player's consent, allow the player to be registered with, and play for, a different club for a predetermined period. The player will be obliged to return to their parent club following the expiry of the agreed loan period.[98] This obligation is based on the employment contract concluded between the parent club and the professional player, the effects of which are suspended for the duration of the loan, but will become effective again at the end of the loan period. An amateur player is, by definition, not bound to a club by a contract. Consequently, there is no legal basis for an amateur's club to 'authorise'them to be registered with another club for a certain period with an obligation to return.

Like a permanent transfer of a professional prior to the expiry of their contract with their current club, loaning a professional requires the agreement of both clubs concerned, as well as the consent of the player. The

98 However, if the contractual relationship between the player and their parent club is also to expire at the end of the loan period, the obligation to return will cease to apply.

relevant agreement between the two clubs must be in writing, and in the case of an international transfer involving eleven-a-side football, must be uploaded to TMS. The player's approval can be expressed either by their co-signing the loan agreement,[99] or indirectly by their signing an employment contract with the club they are joining on loan. Ideally, such contract should refer to the loan agreement. A written employment contract between the player and the club they are joining on loan is required even if the player has co-signed the loan agreement, unless the loan agreement incorporates all the essential terms[100] of the relationship between the player and their temporary new club.

The written loan agreement should define, in particular, its duration and financial conditions. During the agreed duration of the loan, the contractual obligations between the professional player and their parent club are deemed to be suspended unless otherwise agreed in writing. In practice, some obligations may continue to apply if, for example, the parent club agrees to continue paying the player's salary (or a portion of it) during the term of the loan agreement. Even if the player remains under an obligation to their parent club, the principle that they may only be registered with one club at a time still applies, as does the rule that only players registered with a member association for a specific club are eligible to play for that club. Therefore, for the agreed period of the loan, the professional will only be registered, and, by extension, only be able to play for, the club they join on loan.

The registration of a player for a club on a loan basis will be considered when assessing the relevant limits in article 5 paragraph 4, as will any official matches in which the player participates while on loan. However, purely "*technical registrations*" do not, in principle, count towards these limits. For further details, please review those sections in the commentary regarding article 5.

b) DURATION OF A LOAN

The minimum period of a loan is the period between two successive registration periods. Loan transfers of professionals are subject to the same rules as permanent transfers. Consequently, the administrative procedures to be followed for international transfers are equally applicable[101] and must be observed both when the player is first loaned and when they return to their parent club at the end of the loan. With this in mind, it is crucially important that the end date of any loan should fall within one of the registration periods set by the member association to which the parent club is affiliated.

From a practical point of view, the return of a player to their parent club after a loan is treated as if it were a new international transfer from the

99 Article 8.3 paragraph 2 of Annexe 3, Regulations.
100 CAS 2016/A/4709 Le Sporting Club de Bastia v. Christian Romaric.
101 Article 8.3 paragraph 1 of Annexe 3, Regulations.

club to which they were loaned to their parent club. Bearing in mind that a player may only be registered during a registration period set by a member association, and that the ITC must be requested by the member association to which the parent club is affiliated in TMS no later than on the last day of the relevant registration period, a player will only be able to be re-registered and re-join their parent club if the loan expires within a registration period set by member association to which the parent club is affiliated. Purely "*technical registrations*", as described in the commentary regarding article 5, are not impacted by this requirement.

The period between two successive registration periods (i.e. the minimum period for which a player can be loaned) is thus defined as the time between the registration period set by the member association to which the club that the player will join on loan is affiliated (i.e. at the start of the loan), and the next registration period set by the member association to which the *parent club* is affiliated (i.e. at the end of the loan).

RP parent club				RP parent club		
		RP engaging club				RP engaging club
			Loan minimum duration			

The minimum permitted duration of a loan causes an unwritten exception to arise regarding the established minimum duration of a contract concluded between a professional and a club. The length of the employment contract concluded between the professional and the club they are joining on loan must therefore be equivalent, as a minimum, to the time between these two registration periods. This differs from the minimum length of time for an employment agreement between a professional and a club provided in article 18.[102]

The Regulations do not set a maximum duration for a loan, because this is limited by the maximum duration of the contract signed between the player and their parent club. Given that a player cannot be loaned unless there is a valid employment relationship between the player and their parent club, it is impossible for a loan to be agreed beyond the remaining duration of the player's contract with their parent club.

102 Example: In a member association with a season starting in July and ending in June of the following year, the minimum length of a contract between the player A and the club B that he joins on loan, can be from July to December of a given year, in accordance with the term of the respective loan agreement, if club B and C (the player's club of origin) agree to have the player temporarily moving to club B for the first half of the season only.

c) LOANS AND TRAINING REWARDS

The provisions on training compensation and the solidarity mechanism are also applicable to loans. For full details, please refer to the relevant chapters in this commentary.

d) UNILATERAL TERMINATION OF THE CONTRACT BETWEEN THE PROFESSIONAL AND THE CLUB THEY JOIN ON LOAN BEFORE THE LOAN EXPIRES

i. Principle of contractual stability

A valid contract between a professional and a club they join on is governed by the same rules and principles that apply to professionals engaged on a permanent basis, and the provisions of the Regulations on the maintenance of contractual stability. If the contract is terminated unilaterally prior to its original expiry date, and if there is a dispute between the player and their loan club, the principles stipulated in articles 13 to 18 of the Regulations must be considered.[103]

In such circumstances, the player has no automatic right to return to their parent club prematurely, and the latter has no obligation to integrate the player before the expiry of the agreed loan period.

In the event the player is found to have terminated the contract with the club they joined on loan without just cause, issues of joint liability, or even of inducement to breach of contract could arise when the player re-joins their parent club. In practice, the parent club will be treated as the player's new club following any unjustified termination of the employment agreement with the club they joined on loan. Naturally, the fact that the effects of the contract between the player and their parent club are only suspended during the term of the loan, and that the player is therefore obliged to re-join their parent club after the end of the stipulated loan period, must also be considered.

The CAS has held[104] that the principle that the new club should be subject to strict liability is applicable even in the context of a loan. In this specific case, a player had signed a multi-year contract with a club. During the term of this agreement, the player joined another club on loan. However, the contract signed between the club to which the player was loaned and the player was then prematurely terminated by the player. CAS found that this termination was without just cause. At the end of the originally agreed loan period, the player returned to his parent club. In its ruling on liability for compensation, the Panel specifically referred to the fact that holding the new (parent) club jointly and severally liable not only made it more likely that any potential compensation will be paid, but also provided the parent club with a better

103 DRC decision of 11 April 2019, no. 04190658-E.
104 CAS 2016/A/4408 Raja Club v. Baniyas FC & Ismail Benlamalen.

position from which to take legal action against the player, whose debt it will have paid. As a result, CAS concluded that the player's parent club, as the player's new club following the breach of contract by the player, should be held jointly and severally liable for the compensation due to the club that the player had joined on loan, along with player himself.

ii. Calculation of compensation

Should a club that has engaged a player on a loan basis be found to have terminated the relevant loan contract without just cause, or to have seriously breached its contractual obligations such that the player has just cause to terminate the contract, compensation will become payable to the player and, subject to the circumstances, may be payable to the parent club.[105]

If the player is able re-join their parent club early (i.e. before the ordinary expiry of the agreed loan period), they are thus able to mitigate their damage as their parent club will have made certain salary payments, and the compensation due will be calculated accordingly based on article 17. If, on the other hand, the player only re-joins the parent club at the end of the originally stipulated term of the loan, mitigation will be impossible.[106]

Where the player's parent club agrees to allow them to return early following a breach of contract by the club they joined on loan, it may seek compensation from the latter club, since the parent club will have to make salary payments to the player that it would not have had to disburse if the loan had ended under normal circumstances. In such a situation, the decision-making body might, however, decide that the damage suffered by the parent club was mitigated, or even non-existent, since it had access to the player's services in return for the salary payments made to them.[107]

Should a player engaged by a club on a loan basis be found to have terminated the relevant contract without just cause, or to have seriously breached his contractual obligations such that the club has just cause to terminate the contract, compensation will become payable to the club. The amount of compensation due to the club will be calculated based on article 17 paragraph 1.[108]

105 Article 17 paragraph 1, Regulations.

106 For further details in this respect, please refer to the chapter discussing article 17 in this commentary.

107 Single Judge of Players' Status Committee decision of 11 July 2017, no. 07171602: the Single Judge rejected the respective claim based on the lack of a contractual provision rather than on the club having the player's services at disposal; Single Judge of Players' Status Committee decision of 6 March 2018, no. 03180237-E: entitlement to refund was accepted, since a respective clause had been inserted in the loan agreement, stipulating that in case of premature termination of the employment contract between the player and the club he joined on loan, the latter would have to reimburse the club of origin the salaries that club had to pay to the player as of the date of early termination until the original end of the agreed loan period.

108 DRC decision of 11 April 2019, no. 04190658-E.

10.2. Relevant jurisprudence

- CAS 2016/A/4408 Raja Club v. Baniyas FC & Ismail Benlamalen
- CAS 2016/A/4709 Le Sporting Club de Bastia v. Christian Romaric

Article 11 - Unregistered players

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Article 11 - Unregistered players

4. Any player not registered at an association who appears for a club in any official match shall be considered to have played illegitimately. Without prejudice to any measure required to rectify the sporting consequences of such an appearance, sanctions may also be imposed on the player and/or the club. The right to impose such sanctions lies in principle with the association or the organiser of the competition concerned.

11.1. Purpose and scope

If a player must be registered with a member association to play for a club, and only registered players are eligible to participate in organised football, it follows that any player who is not registered with a member association and is still fielded for a club in an official match[109] will have played illegitimately.

In most cases, the sporting consequences of fielding unregistered players are the club that fielded the ineligible player forfeiting the relevant match. There is also provision to impose additional sanctions on the player as well as the club that fielded them.

The member association or competition organiser has both the right and the duty to ensure that the sporting result is corrected and that any additional sanctions are imposed in accordance with the liability of the player and the club concerned. In order to comply with general principles of the law concerning the imposition of sanctions, and so as to create a proper legal and regulatory basis, member associations and competition organisers are advised to set out clear rules regarding the relevant procedure and the sanctions that may be imposed for such behaviour in the competition rules and the relevant disciplinary code.

109 Definition 5, Regulations.

Article 12 - Enforcement of disciplinary sanctions

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Article 12 - Enforcement of disciplinary sanctions

1. Any disciplinary sanction of up to four matches or up to three months that has been imposed on a player by the former association but not yet (entirely) served by the time of the transfer shall be enforced by the new association at which the player has been registered in order for the sanction to be served at domestic level. When issuing the ITC, the former association shall notify the new association via TMS of any such disciplinary sanction that has yet to be (entirely) served.
2. Any disciplinary sanction of more than four matches or more than three months that has not yet been (entirely) served by a player shall be enforced by the new association that has registered the player only if the FIFA Disciplinary Committee has extended the disciplinary sanction to have worldwide effect. Additionally, when issuing the ITC, the former association shall notify the new association via TMS of any such pending disciplinary sanction.

12.1. Purpose and scope

a) GENERAL REMARKS

The scope of this article is limited to disciplinary sanctions imposed on a player by a member association (or for the purposes of paragraph 2, a member association or confederation). Disciplinary sanctions that might be imposed on a player by their club for the violation of internal rules or guidelines, or for failure to respect contractual obligations, are a private matter for the club and its player.

Disciplinary sanctions may be imposed on a player by a member association for a variety of reasons. Most commonly, they are the result of the player having accumulated a certain number of yellow cards or a red card, or of other misconduct occurring within the scope of, or in connection with, the various national competitions in which the player participates for their club. Typically, then, disciplinary sanctions are thus related to the player's actual sporting activity. Other reasons for disciplinary action may include, *inter alia*, illegitimate betting, match manipulation and doping offences. Occasionally, sanctions might be imposed relating to the player's contractual relationship with their club. Some illustrative examples of cases where the Disciplinary

Committee has confirmed sanctions imposed by a club on a player in relation to contractual issues can be found in CAS jurisprudence.[110]

The imposition of disciplinary sanctions does not prevent a player from being transferred, either nationally or internationally. For an international transfer, the player will cease to be registered with the member association (or confederation, if applicable) that imposed the sanction, and therefore will not fall under its jurisdiction. However, bearing in mind the importance of sporting integrity as well as the purpose of disciplinary sanctions, which are to serve as a reminder that certain types of conduct will not be tolerated in football, both the member association concerned (or confederation, if applicable) and the football community have a legitimate interest in ensuring that any penalty is served in full, even following an international transfer.

b) DISCIPLINARY SANCTIONS (ORIGINALLY IMPOSED) FOR UP TO FOUR MATCHES OR UP TO THREE MONTHS

If a player has been issued a disciplinary sanction for up to four matches or three months imposed by their former member association, and part of that sanction is still outstanding at the time that they transfer internationally, the new member association where the player is registered is held responsible for ensuring that this sanction – or the remainder of it – is enforced at national level. The aim is to make sure the player serves their punishment in its entirety despite the international transfer.

Neither the new member association, nor the new club has any option to have the sanction reviewed or to request the circumstances surrounding its imposition be analysed and assessed. In other words, the Regulations require the new member association to proceed with the enforcement of the relevant disciplinary sanction without questioning its form or material effects.

To ensure that the new member association is aware of the existence of any disciplinary sanction that has not yet been served in full, the member association from which the player is being transferred has an obligation to notify the new member association of the relevant sanction. This is done via TMS as part of the administrative procedure governing the transfer of players between member associations; specifically, when the ITC is issued.

Given the scope of article 12 paragraph 1 only refers to member associations, disciplinary sanctions issued by a confederation which fall within the regulatory limits identified are not automatically enforced following an international transfer to a club affiliated to another confederation.

110 CAS 2014/A/3483 S.C.C. Fotbal Club CFR 1907 Cluj S.A. v. Mr Fernandino Sforzini & FIFA; CAS 2014/A/3582 S.C. Fotbal Club Otelul S.A. v. Zdenko Baotic & FIFA & Romanian Professional Football League.

c) DISCIPLINARY SANCTIONS (ORIGINALLY IMPOSED) FOR MORE THAN FOUR MATCHES OR THREE MONTHS

For more severe punishments imposed on a player by a member association (or a confederation, if applicable), this approach is not appropriate. In such cases, the impact of the sanction justifies a review of the process leading to it. However, to respect the autonomy of member associations (or a confederation, if applicable), and the respective judicial responsibility that derives from this autonomy, any investigation of the sanction applied must be limited to procedural issues, with a view to ensuring that the player's rights have been properly protected when imposing the sanction.

With the above in mind, if a player has been issued a disciplinary sanction of more than four matches or three months, and part of that sanction is still outstanding at the time that they transfer internationally, for the sanction to be enforced at the new member association the FIFA Disciplinary Committee must have extended the sanction to have worldwide effect. The relevant procedure is based on article 66 of the FIFA Disciplinary Code.[111] Under this provision, the member association that imposed the disciplinary sanction must submit a request in writing to extend the sanction. As part of this request, it will have to provide a copy of the disciplinary ruling and evidence that all of the procedural requirements identified in in article 66 have been met.

The FIFA Disciplinary Committee will approve a worldwide extension if the player has been cited properly, they have had the opportunity to state their case, the decision has been communicated properly to the player, the decision is compatible with FIFA regulations, and there is no conflict between extending the sanction and public order or accepted standards of behaviour.[112] The substance of the decision to impose the disciplinary sanction may not be reviewed.[113]

The member association to which the releasing club is affiliated must notify the new member association via TMS of any sanction extended by the FIFA Disciplinary Committee to have worldwide effectat the time the ITC is issued.[114]

111 For more details concerning the application of article 66 of the FIFA Disciplinary Code and the extension of a sanction to have worldwide effect, see for example: CAS 2006/A/1155 Everton Giovanella v. FIFA; CAS 2008/A/1590 Vukovic v. FIFA; CAS 2015/A/4184 Jobson Leandro Pereira de Oliveira v. FIFA.

112 Article 66 paragraph 5, FIFA Disciplinary Code.

113 Article 66 paragraph 8, FIFA Disciplinary Code.

114 Article 8.1 paragraph 4, article 8.2 paragraph 4(a) of Annexe 3, Regulations.

12.2. Relevant jurisprudence

- CAS 2006/A/1155 Everton Giovanella v. FIFA
- CAS 2008/A/1590 Vukovic v. FIFA
- CAS 2014/A/3483 S.C.C. Fotbal Club CFR 1907 Cluj S.A. v. Mr Fernandino Sforzini & FIFA
- CAS 2014/A/3582 S.C. Fotbal Club Otelul S.A. v. Zdenko Baotic & FIFA & Romanian Professional Football League
- CAS 2015/A/4184 Jobson Leandro Pereira de Oliveira v. FIFA

Article 12bis - Overdue payables

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Article 12bis - Overdue payables

1. Clubs are required to comply with their financial obligations towards players and other clubs as per the terms stipulated in the contracts signed with their professional players and in the transfer agreements.
2. Any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned in accordance with paragraph 4 below.
3. In order for a club to be considered to have overdue payables in the sense of the present article, the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s).
4. Within the scope of its respective jurisdiction (cf. article 22 to 24), the Football Tribunal may impose the following sanctions:
   a) a warning;
   b) a reprimand;
   c) a fine;
   d) a ban from registering any new players, either nationally or internationally, for one or two entire and consecutive registration periods.
5. The sanctions provided for in paragraph 4 above may be applied cumulatively.
6. A repeated offence will be considered as an aggravating circumstance and lead to a more severe penalty.
7. The terms of the present article are without prejudice to the application of further measures in accordance with article 17 in the event of unilateral termination of the contractual relationship.

12bis.1. Purpose and scope

a) GENERAL REMARKS

Technically speaking, article 12bis belongs in the section of the Regulations governing measures aimed at protecting contractual stability between professional players and clubs. It gives a player an alternate mechanism by which to claim outstanding remuneration from their club, or for clubs to claim outstanding amounts from other clubs.

As article 12bis has several cumulative requirements. If a claim does not fulfil all of the requirements, it will be treated as a standard claim for outstanding remuneration.

b) BACKGROUND

One of the unfortunate trends in the football transfer system is clubs failing to comply with their financial obligations, whether in relation to unpaid remuneration to players or coaches, or unpaid transfer compensation and training rewards to other clubs. The frustration felt by individuals being made to wait for their salaries and other financial benefits, and by clubs having to chase outstanding payments is entirely understandable. Moreover, complaints from clubs about their competitors gaining an unjustified competitive advantage by promising to make payments for which they lack the necessary financial means are becoming ever more vociferous.

An important first step to address this unacceptable situation was taken with the entry into force of article 12bis on 1 March 2015,[115] after which several further measures were adopted and implemented.

The aim of the article 12bis is to ensure that clubs comply with their contractual financial obligations. The provision is designed to serve as a deterrent for clubs that ignore their financial commitments.

c) EXTENT OF APPLICATION

As far as debtors are concerned, this provision is aimed exclusively at clubs. All parties are required to comply with their obligations. As for creditors, the provision may be cited by both creditor clubs and players. Although coaches cannot invoke article 12bis to claim outstanding remuneration, an identical provision governing coaches is found in annexe 2 to the Regulations.

115 Circular no. 1468 of 23 January 2015.

Article 12bis only covers outstanding financial obligations. Furthermore, it requires the outstanding financial obligations to be based on the terms of a contract signed between a club and a professional player, or between two clubs. With respect to transfer agreements, CAS has clarified that article 12bis applies whether the transfer agreement governs a permanent or loan transfer.[116] With respect to coaches, a separate but identical regime is found in annexe 2 of the Regulations, and discussed in that chapter of this commentary.

As such, article 12bis does not apply to outstanding financial obligations which are not based on a contractual agreement, such as the regulatory obligation to pay training compensation or solidarity mechanism.

Article 12bis can be applied without the interested party specifically requesting it.[117] In other words, subject to the relevant requirements being fulfilled, the DRC or PSC can decide based on article 12bis irrespective of any petition from the creditor club or player. In one interesting Award,[118] the Panel went as far as to say that "[it was] *in fact of the opinion that the First Respondent* [the creditor club] *does not even have the standing to request the imposition of disciplinary sanctions pursuant to art. 12bis*".

d) FORMAL REQUIREMENTS

The sum involved must have been overdue for at least 30 days. Once this period has elapsed, the creditor must proceed to provide the debtor club with written notice that it is in default. The only requirements pertaining to this notice are that the payment must be 30 days overdue before it can be issued, and that the notice must set a deadline of at least a further 10 days for the debtor club to comply with its financial obligations.[119] Only once notification and the extended deadline have been served on the debtor club will the creditor club or player be owed payables that are overdue within the meaning of the article. Effectively, therefore, the debt must ultimately be at least 40 days (30 days overdue plus 10 days days for compliance) overdue before an article 12bis claim can be lodged.

The burden of proving compliance with these formal requirements lies with the creditor. If the creditor provides documentary evidence that the default notice was properly sent, either physically or electronically, to a destination controlled by the debtor club (i.e. to a correct postal address, fax number or e-mail address), and the debtor club claims not to have received the notification, it will be down to the debtor club to establish that the default notice did not reach them.[120]

116 CAS 2016/A/4705 Al Jazira Football Sports Company v. Cardiff City Football Club & FIFA.
117 CAS 2015/A/4232 Al-Gharafa SC v. FC Steaua Bucaresti & FIFA.
118 CAS 2016/A/4718 & 4719 Club Atlético Mineiro v. Udinese Calcio & FIFA.
119 CAS 2015/A/4232 Al-Gharafa SC v. FC Steaua Bucaresti & FIFA.
120 CAS 2016/A/4718 & 4719 Club Atlético Mineiro v. Udinese Calcio & FIFA.

e) MATERIAL REQUIREMENTS

One of the goals of the provision is to ensure that players and clubs who are entitled to financial benefits based on a relevant contract will be able to obtain the amounts due to them from the debtor club as swiftly as possible and without unnecessary or unjustified delay. Such delays, for example because of obviously dilatory tactics and behaviour on behalf of a debtor club, will not be tolerated or accepted under any circumstances. If a club is accused of not having paid overdue payables due to a player or another club based on a contractual agreement, the debtor club will have to demonstrate that it has a clear and evident contractual justification for the non-payment of the relevant amount due. If it cannot do so, it will be instructed to pay the corresponding sum and the relevant disciplinary sanction will be imposed upon it.

When passing judgment, the DRC or PSC will limit its considerations to establishing whether:

(i) there was a contractual financial obligation;

(ii) such obligation was fulfilled by the agreed due date;

(iii) the creditor player or club has complied with the applicable formal requirements; and

(iv) the debtor club can provide a *prima facie* contractual basis to justify the delay in payment (or non-payment, as the case may be).

Typically, article 12bis is relied upon where a debtor club refuses even to respond to a demand for payment,[121] or where financial difficulties or liquidity problems are claimed. Supposed difficulty in executing a payment due to banking restrictions or governmental constraints are not accepted as a *prima facie* justification for late payment.[122]

On the other hand, a club may be able to provide evidence that it has agreed with the creditor player or club to delay the relevant payment, or that the payment has in fact already been made. By the same token, the debtor club may be able to avoid article 12bis being applied by submitting that the formal requirements of the claim have not been satisfied (e.g. by claiming not to have received the required default notice).

More specifically, disputes on whether a specific agreed payment is meant to be gross or net of taxes are never discussed within the scope of article 12bis, since such questions generally cannot be resolved following a *prima facie* assessment. The same goes for those rare occasions where, under the contract giving rise to the claim, the player is required to perform a certain activity before the payment is made, such as having to send an

121 DRC decision of 5 May 2020, Pereyra; DRC decision of 15 April 2020, no. 04202215; DRC decision of 19 May 2020, Sydykov.

122 DRC decision of 2 May 2019, no. OP 05190329-E; DRC decision of 17 June 2019, no. OP 06192393-E.

invoice for the amount owed. It should be clarified that making the payment conditional on an action by the player does not by any means imply that the relevant contractual clause will be recognised, or that not having performed the action concerned will preclude the player from receiving the relevant amount. It will be up to the DRC or PSC to reach a judgment on these factors. However, if such a defence by the debtor club is substantiated, the debtor club's submission and argument may prevent the matter from being considered pursuant to article 12bis.

f) CONSEQUENCES OF FAILURE TO MEET FINANCIAL OBLIGATIONS

Provided that both the formal and the material requirements mentioned above are met, the DRC or PSC will have the power to impose a range of disciplinary sanctions[123] on any club found to have overdue payables within the meaning of article 12bis. Before it decides on the most appropriate sanction, the DRC or PSC will have to be satisfied that:

(i) a contractually agreed payment remained outstanding for at least 30 days after its contractual due date;

(ii) the creditor (club or player) served the debtor club written notice that was in default;

(iii) an extended deadline of at least 10 days from the date of the default notice was granted to the debtor club in order for it to remedy the situation; and

(iv) the debtor club was unable to provide any evidence or substantiated indications which would, *prima facie,* justify the delay in payment.

As regards what sanction should be imposed, the DRC and PSC are granted a generous measure of discretion.[124] However, they are bound by several general principles. First, an exhaustive list of possible sanctions has been provided in the Regulations.

Secondly, a repeat offence will be considered an aggravating circumstance, and will result in a more severe penalty. If a club again fails to meet its contractual financial obligations despite already having been punished once, any subsequent failure will be considered an aggravated factor, and the disciplinary sanction will likely be harsher. Obviously, in determining the sanction to be applied, the DRC or PSC is also bound by the principle of proportionality.

123 Article 46 paragraph 3, Statutes.

124 Circular no. 1468 dated 23 January 2015; CAS 2015/A/4232 Al-Gharafa SC v. FC Steaua Bucaresti & FIFA.

When considering any challenge to the proportionality of a sanction, the principle established across CAS jurisprudence that sanctions imposed by FIFA can only be reviewed if they are *"evidently and grossly disproportionate to the offence"* has to be borne in mind.[125] In the same Award in which it emphasised this principle, CAS explained and confirmed that, in assessing which sanction(s) should be imposed in a given case, the DRC or PSC may consider several different factors, including the actual amount overdue, the specific circumstances of the case, the seriousness of the infringement and/or whether the party has been sanctioned before. This list is not exhaustive.

In another case, CAS referred to the wide margin of discretion granted to the DRC or PSC,[126] and considered that the imposition of a fine on a first-time offender was proportionate. In its assessment, the Panel specifically stated that, first, there was nothing to indicate that first-time offenders should be sanctioned exclusively with a warning or a reprimand, and secondly, the debtor club had previously escaped a penalty for a similar offence due to a formal technicality. CAS has further confirmed that the discretion of the DRC or PSC when issuing disciplinary sanctions must be borne in mind, and granted a degree of deference when examining their proportionality.[127]

In another matter, CAS[128] was asked to review the proportionality of a fine of 50,000 Swiss Francs (**CHF**) that had been imposed on a club that had a previous record of unpaid dues, albeit none of which were decided pursuant to article 12bis. This meant the club was a 'first-time offender' when the DRC made its decision. The club did not respond to the claim when it was granted the opportunity to do so. The Sole Arbitrator confirmed that a fine was an appropriate starting point when considering the sanction to impose. Moreover, bearing in mind the amount due and the length of time for which it had remained outstanding, he concluded that the amount of the original fine was proportionate.

In this respect, the well-established and consistent jurisprudence of the FIFA bodies provides that the absence of a response to the claim by the debtor club is an aggravating factor justifying a more severe sanction.[129] This is acknowledged by CAS.[130]

125 CAS 2018/A/5588 Kayserispor Külübu v. FIFA.
126 CAS 2015/A/4232 Al-Gharafa SC v. FC Steaua Bucaresti & FIFA.
127 CAS 2018/A/5838 Clube Atletico Mineiro v. Huachipato SADP & FIFA; CAS 2020/A/6877 Al Ahli Saudi Football Club v. FIFA & Club FC Nantes.
128 CAS 2016/A/4387 Delfino Pescara 1936 v. Royal Standard Liège & FIFA.
129 DRC decision of 12 June 2018, no. OP 06180840-E.
130 Cf. for example, CAS 2016/A/4675 Sporting Club Olhanense v. Gonzalo Mastriani & FIFA.

Several article 12bis cases have been appealed. CAS has previously considered fines corresponding to 36.1 % and 43.7 % respectively of the total outstanding amounts to be proportionate.[131] In a case where a fine of CHF 6,000 was imposed for an overdue amount of EUR 13,000 (46.15 % of the outstanding amount), CAS[132] also confirmed that the fine was proportionate, given that the debtor club had not responded to the claim, and because it was a repeat offender.

In another case, the PSC sanctioned the debtor club with a registration ban for a probation period of one year (in accordance with the Regulations in force at the time). The debtor club in that case had violated article 12bis seven times in the three years prior to the proceedings. The CAS upheld the sanction as proportionate,[133] concluding that as the debtor club was a *"repeat offender"*, the sanction imposed could hardly be considered disproportionate, particularly since an even more severe punishment could have been imposed.

In another case whereby the parties reached a settlement agreement following the FIFA decision, as a result of the settlement agreement the CAS[134] reduced the fine imposed.

g) RELATIONSHIP TO ARTICLE 17

The last paragraph of the article 12bis states that its terms are without prejudice to the application of further measures in accordance with article 17 in the event of unilateral termination of the contractual relationship. In other words, proceedings under article 12bis are completely separate from possible proceedings pursuant to article 17.

If a player decides to claim outstanding salaries or other remuneration due to them, but does not (yet) intend to terminate their contractual relationship with their club prematurely, they may invoke article 12bis. If a player decides to end their contract unilaterally, invoking just cause and claiming outstanding amounts (and, potentially, compensation), article 12bis will not apply to any claim lodged; rather, article 17 will apply.

131 CAS 2016/A/4718 & 4719 Club Atlético Mineiro v. Udinese Calcio & FIFA.
132 CAS 2016/A/4675 Sporting Club Olhanense v. Gonzalo Mastriani & FIFA.
133 CAS 2019/A/6315 Clube Atlético Mineiro v. F.C. Spartak Moscow & FIFA.
134 CAS 2019/A/6263 & 6264 Sport Club International v. Udinese Calcio S.p.A. & FIFA.

12bis.2. Relevant jurisprudence

DRC decisions

– DRC decision of 12 June 2018, no. OP 06180840-E

CAS Awards

– CAS 2015/A/4232 Al-Gharafa SC v. FC Steaua Bucaresti & FIFA
– CAS 2016/A/4387 Delfino Pescara 1936 v. Royal Standard Liège & FIFA
– CAS 2016/A/4675 Sporting Club Olhanense v. Gonzalo Mastriani & FIFA
– CAS 2016/A/4705 Al Jazira Football Sports Company v. Cardiff City Football Club & FIFA
– CAS 2016/A/4718 & 4719 Club Atlético Mineiro v. Udinese Calcio & FIFA
– CAS 2018/A/5588 Kayserispor Külübu v. FIFA
– CAS 2018/A/5838 Clube Atletico Mineiro v. Huachipato SADP & FIFA
– CAS 2019/A/6263 & 6264 Sport Club International v. Udinese Calcio S.p.A. & FIFA
– CAS 2019/A/6315 Clube Atlético Mineiro v. F.C. Spartak Moscow & FIFA
– CAS 2020/A/6877 Al Ahli Saudi Football Club v. FIFA & Club FC Nantes

Chapter IV
Maintenance of contractual stability between professionals and clubs

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BACKGROUND

The principle of contractual stability between professional players and clubs is one of the fundamental pillars underpinning the Regulations and a core objective of the football transfer system.

In 2001, the introduction of provisions regarding contractual stability into the Regulations was certainly perceived as revolutionary, as was the fundamental reform and revision of the entire football transfer system. However, many of the applicable rules simply reflect generally accepted principles of contract and employment law, such as:

- the principle that contracts must be respected (*"pacta sunt servanda"*);[135]
- the principle that a contract may be terminated with just cause without penalty of any kind;[136] and
- the principle that compensation should be paid whenever a contract is terminated without just cause.[137]

The Regulations also contain several other provisions designed to complement these principles, which establish particular rules that are specific and unique to football. These include:

- the principle that a contract may be terminated with sporting just cause;[138]
- the principle that a contract may not be unilaterally terminated during the season;[139]
- the principle that the player and their new club should be held jointly and severally liable for compensation payable by the player to their former club;[140]
- the principle that sporting sanctions can be imposed for terminating a contract without just cause;[141] and
- the principle that sporting sanctions can be imposed on a club if it induces a player to terminate a contract without just cause.[142]

Together, these principles provide a framework for ensuring contractual stability between professional players and clubs.

135 Article 13, Regulations.
136 Article 14, Regulations.
137 Article 17 paragraph 1, Regulations.
138 Article 15, Regulations.
139 Article 16, Regulations.
140 Article 17 paragraph 2, Regulations.
141 Article 17 paragraphs 3 and 4, Regulations.
142 Article 17 paragraph 4, Regulations.

The original wording of the provisions on contractual stability was significantly different from the current wording. However, the fundamental principles and substance have remained unchanged. The basis and structure of the current text were first implemented in the 2005 edition of the Regulations and, apart from some minor amendments, remained almost untouched until June 2018.[143]

143 Circular no. 1625 of 26 April 2018.

Article 13 - Respect of contract

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Article 13 - Respect of contract

1. A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement.

13.1. Purpose and scope

Article 13 reflects the fundamental principle of contractual stability and contract law, that contracts must be respected: *"pacta sunt servanda."*

A specific feature of football employment contracts is that they are always concluded for a predetermined period. The concept underlying all provisions designed to maintain contractual stability is based on this fundamental fact.

Like any other fixed-term contract, a contract between a professional player and a club will be terminated naturally when the term expires, after which both parties are usually considered free from any contractual obligations (presuming that all obligations have been met at that point) to each other unless they agree to continue their contractual relationship by signing a new contract.

The parties may, however, decide to terminate their contractual relationship prematurely by mutual agreement (i.e. prior to the expiry of the term of the contract). Such course of action is obviously permissible and is actually an essential precondition for any transfer of a professional player while they are still under contract, along with the agreement of the two clubs concerned, and the player's agreement to sign a contract with their new club. Where a player is transferred before the end of their contract, transfer compensation (normally in the form of a transfer fee) is usually paid. Any such transaction requires a tripartite agreement. In essence, the transfer compensation is paid in exchange for the player's former club to release the player from their duties and to accept the premature termination of the relevant contract binding the player to them. The transfer compensation is usually paid by the player's new club.

Article 14 - Terminating a contract with just cause

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Article 14 - Terminating a contract with just cause

1. A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.
2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause.

14.1. Purpose and scope

a) FUNDAMENTAL PRINCIPLE

Article 14 illustrates another key element on the maintenance of contractual stability between professional players and clubs. It is based on the principle of reciprocity: the same behaviour (or misbehaviour) shall, *mutatis mutandis*, lead to the same consequences, regardless of the party (player or club) responsible for it.

Article 14 states that a contract may be terminated by either party (club or player) without legal consequences of any kind, provided there is a just cause for the termination. The phrase *"without consequences of any kind"* applies to the party terminating the contract. However, for a party to have a just cause to terminate the contract, the other party must have ignored or failed to comply with its own contractual obligations. The fact that the party prematurely terminating the contract with just cause will not suffer any consequences does not imply that the counterparty will also be free from potential liability. In fact, the opposite is usually true. Under normal circumstances, and at the request of the party that ended the contractual relationship with just cause, the counterparty will be required to pay compensation and may also be subject to sporting sanctions.[144] In other words, if one party creates or provides a valid reason for the other party to terminate the contractual relationship early by committing a serious breach of contractual obligations, this will be regarded as equivalent to that party having itself terminated the contract without just cause.

144 Article 17 paragraphs 1, 3, and 4, Regulations.

b) WHAT IS JUST CAUSE?

Whether there is just cause for the early termination of a contract signed between a professional player and a club must be assessed in consideration of all the specific circumstances of the individual case.

The Regulations to do not provide a defined list of "*just causes*". It is impossible to capture all potential conduct that might be considered just cause for the premature and unilateral termination of a contract concluded between a professional player and a club. Over the years, jurisprudence has established several criteria that define, in abstract terms, which combinations of circumstances should be considered just causes. A contract may only be terminated prior to the expiry of the agreed term where there is a valid reason to do so.[145]

In several awards, CAS has drawn a parallel between the concept of "*just cause*" as defined in article 14 of the Regulations and the concept of "*good cause*" in article 337(2) of the Swiss Code of Obligations (**SCO**). Good cause (and thus just cause) to lawfully terminate an employment contract exists when the fundamental terms and conditions which formed the basis of the contractual arrangement are no longer respected by one of the parties.[146]

When required to assess whether a valid reason existed for a unilateral contract termination, the following principles should be applied, while considering the specific circumstances of each individual matter:[147]

– Only a sufficiently serious breach of contractual obligations by one party to the contract qualifies as just cause for the other party to terminate the contract.[148]

145 CAS 2006/A/1062 Da Nghe Football Club v. Ambroise Alain François Ndzana Etoga; CAS 2016/A/4846 Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League; CAS 2017/A/5465 Békéscsaba 1912 Futball v. George Koroudjiev; CAS 2018/A/5771 Al Warka FC v. Gaston Maximiliano Sangoy & FIFA / CAS 2018/A/5772 Gaston Maximiliano Sangoy v. Al Warka.

146 CAS 2019/A/6452 Sport Lisboa e Benfica Futebol SAD v. BIlal Ould-Chickh & FC Utrecht B.V. & FIFA, CAS 2019/A/6521 & 6526 Osmanlispor FK v. Patrick Cabral Lalau & Club Atletico Mineiro and Club Atletico Mineiro & Patrick Cabral Lalau v. Osmanlispor FK, CAS 2019/A/6626 Club Al Arabi SC v. Ashkan Dejagah, CAS 2020/A/6770 Sabah Football Association v. Igor Cerina, CAS 2020/A/7231 Nejmeh Club v. Issaka Abudu Diarra.

147 CAS 2019/A/6171 Josué Filipe Soares Pesqueira v. Osmanlispor FK & CAS 2019/A/6175 Osmanlispor FK v. Josué Filipe Soares Pesqueira & Akhisar Belediyespor FC & FIFA; CAS 2018/A/6029 Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Marvin Renato Emnes; CAS 2008/A/1517 Ionikos FC v. Juan Luchano Pajuelo Chavez, with reference to CAS 2006/A/1180 Galatasaray SK v. Frank Ribéry & Olympique de Marseille; CAS 2009/A/1932 Sporting Clube de Goa v. Eze Isiocha.

148 CAS 2006/A/1180 Galatasaray SK v. Frank Ribéry & Olympique de Marseille; CAS 2013/A/3091 FC Nantes & Player Bangoura v. Club Al Nasr & FIFA; CAS 2014/A/3706 Christophe Grondin v. Al-Faisaly Football Club; CAS 2018/A/6017 FC Lugano SA v. FC Internazionale Milano S.p.A.

– In principle, the breach is considered sufficiently serious when there are objective circumstances that would render it unreasonable to expect the employment relationship between the parties to continue, such as a serious breach of trust.[149]

– The termination of a contract should always be an action of last resort (an "*ultima ratio*" action).[150]

The principle that a party can only establish just cause to terminate an employment contract if it has previously warned the other party of its unacceptable conduct or attitude may apply in certain circumstances, and especially where a club attempts to terminate a contract with a player for alleged unauthorised absences from, or misbehaviour during, training sessions.[151]

In a 2018 Award,[152] the Panel noted that this principle is intended to ensure the defaulting party is given a chance to comply with its obligations and, if it accepts the claim is legitimate, to rectify the situation. It also referred to decisions made by the Swiss Federal Tribunal,[153] noting this principle is also reflected in Swiss law.

The parties to a contract may decide to include a list of what they consider to be just cause for the early termination of their contractual relationship within the contract concerned. Drawing up such a list might provide greater legal security, at least to a certain extent. However, if the contract is terminated prematurely on the basis of one of the agreed just causes and this gives rise to a dispute, for example if one of the parties contests the existence of a just cause despite the relevant circumstance having been stipulated in the contract, the DRC will scrutinise the specific circumstances of the matter at hand, including the grounds listed in the contract, in order to establish whether just cause exists. In doing so, it will consider jurisprudence, and it might conclude that the behaviour concerned does not in fact constitute just cause, even if it is explicitly listed as a just cause in the contract.[154] In principle, the intent of the parties must be respected and followed, but only

149 DRC decision of 25 October 2018, no. 10180471-E; DRC decision of 24 August 2018, no. 08180794-E; CAS 2019/A/6306 & CAS 2019/A/6316 Jean Philippe Mendy v. Baniyas Football Sports Club LLC & Baniyas Football Sports Club LLC v. Jean Philippe Mendy, Club NK Slaven Belupo & FIFA; CAS 2019/A/6171 Josué Filipe Soares Pesqueira v. Osmanlispor FK & CAS 2019/A/6175 Osmanlispor FK v. Josué Filipe Soares Pesqueira & Akhisar Belediyespor FC & FIFA; CAS 2017/A/5180 Club Antalyaspor v. Sammy Ndjock & Club Minnesota United; CAS 2017/A/5402 Club Al-Taawoun v. Darije Kalezic; CAS 2008/A/1517 Ionikos FC v. Juan Luchano Pajuelo Chavez, with reference to CAS 2006/A/1180 Galatasaray SK v. Frank Ribéry & Olympique de Marseille.

150 CAS 2014/A/3684 Leandro da Silva v. Sport Lisboa e Benfica and CAS 2014/A/3693 Sport Lisboa e Benfica v. Leandro da Silva; DRC decision of 19 June 2017, no. 06170253-E.

151 CAS 2016/A/4884 FC Ural Sverdlovsk v. Toto Tamuz.

152 CAS 2018/A/6029 Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Marvin Renato Emnes.

153 ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446.

154 CAS 2016/A/4846 Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League; DRC decision of 13 February 2020, Avdic.

within the limits of excessive self-commitment (as defined in Swiss Law).[155] In other words, there are limits to the validity of such clauses. These limits are reached when the stipulation becomes authoritative – that is, the conditions under which a contract is terminated are unilaterally influenced by the party that wishes to put an end to the contract.[156] If the definition of "just cause" agreed by the parties to the contract is deemed either void or unjustified, then the general principles for determining just cause will be applied.[157]

The Regulations establish two specific just causes ("abusive conduct" in article 14 paragraph 2 and "outstanding salaries" in article 14bis) and one specific case where termination will be deemed to without just cause ("pregnancy" in article 18quater paragraph 2). The first two are discussed below along with other types of just cause. The third is discussed in the specific section relating to article 18quater.

i) Abusive conduct

Article 14 paragraph 2 came into force on 1 June 2018,[158] and makes explicit reference to abusive conduct of a party *"aiming at forcing the counterparty to terminate or change the terms of the contract".* If established, such behaviour will entitle the counterparty to terminate the contract with just cause. This is a codification of a long-standing and existing jurisprudence.[159] That this is now expressly included in the Regulations shows the serious attitude taken towards such behaviour and the fact that it will not be tolerated.

The amendment has been deliberately drafted to reflect the fact that abusive conduct within the meaning of the Regulations can be displayed by a club as well as by a player. Equally, the wording grants the DRC relatively broad discretion in deciding what conduct ought to be considered *"abusive"*.

Paragraph 2 does not address all kinds of *"abusive conduct"*; rather, it confines itself to a specific behaviour aimed at forcing the counterparty – either the club or player, as the case may be – either to terminate the contractual relationship or to change the terms of the contract.

i. Examples of potentially abusive conduct by a club

Classic examples of such conduct include a club deciding for a prolonged period of time to separate a player from the rest of the team and/or making them train alone, potentially at anti-social

155 CAS 2017/A/5056 Ittihad FC v. James Troisi & Fédération Internationale de Football Association(FIFA) & CAS 2017/A/5069 James Troisi v. Ittihad FC.

156 CAS 2015/A/4042 Gabriel Fernando Atz v. PFC Chernomorets Burgas.

157 CAS 2006/A/1180 Galatasaray SK v. Frank Ribéry & Olympique de Marseille.

158 Circular no. 1625 of 26 April 2018.

159 CAS 2015/A/4286 Sebino Plaku v. Wroclawski Klub Sportowy Slask Wroclaw S.A; CAS 2014/A/3642 Erik Salkic v. Football Union of Russia (FUR) & Professional Football Club Arsenal; CAS 2013/A/3398 FC Petrolul Ploiesti v. Aleksandar Stojmirovic; DRC decision of 31 October 2019, Karadzhov; DRC decision of 15 November 2018, no. 11181952-E.

hours and without supervision by coaching staff. Other forms of abusive behaviour include not allowing the player to participate in any of the club's activities outside of training sessions and matches (e.g. public events, appearances on social media), reducing the time available for the player to make use for physiotherapy and medical services, or even ordering the player to vacate their apartment or depriving them of their car.

In accordance with available jurisprudence,[160] the key questions to consider when assessing whether separating a player from the first team constitutes abusive conduct include:

- Why was the player sent to the reserve team / youth team / training alone?
- When was the measure implemented? Was it imposed while (official) matches were being played?
- Was the player still being paid their full salary and remuneration?
- Was it a permanent or temporary measure?
- Were there adequate training facilities for the player to use when training?
- Did the contract between the club and the player expressly grant the club the right to drop the player to the reserve team?
- Did the contract between the club and the player expressly guarantee the player the right to only play and train for the first team?
- Was the player training alone or with a team?

From the jurisprudence, it can also be concluded that a club – the employer – is obliged to protect the player's (the employee's) personality rights. This concept is explained in further detail in the section regarding deregistration below.

Regarding training alone, in principle a player should train with their team and not be separated to receive individual training. However, if a player needs to recover from an injury, is required to improve their fitness levels, or has been absent from the team (with the consent of the club) for an extended period of time (e.g. participating for their representative team or for personal reasons), moving them temporarily to train with the reserves might be justified.[161] As CAS has made clear, however, one should not forget "that football is a team sport and that the majority of training would need to be as part of a team or squad and with a football".[162]

160 CAS 2015/A/4286 Sebino Plaku v. Wroclawski Klub Sportowy Slask Wroclaw S.A; CAS 2014/A/3642 Erik Salkic v. Football Union of Russia (FUR) & Professional Football Club Arsenal; CAS 2013/A/3398 FC Petrolul Ploiesti v. Aleksandar Stojmirovic; CAS 2018/A/6041 Theofanis Gekas v. Akhisar Belediye Gençlik.

161 CAS 2015/A/4286 Sebino Plaku v. Wroclawski Klub Sportowy Slask Wroclaw S.A..

162 CAS 2011/A/2428 I. v. CJSC FC Krylia Sovetov.

In a 2014 Award prior to the establishment of the provision,[163] the CAS stated that excluding a player from first-team training for a period of eight days was not sufficient grounds for the player to terminate their contract. In a 2013 Award,[164] it had been previously established that an exclusion of more than a month would entitle the player to terminate their contract with just cause.

In a 2018 Award,[165] the Panel stated that preventing a player from training with the first team was potentially a much harsher punishment than making a player play matches for the reserves while being allowed to train with the first team. The former would appear to imply a clearer separation from the first team, which could prove seriously damaging to the player's prospects. Unilateral changes to a player's employment status (unless they are made for organisational reasons or because of the player's own misbehaviour) are a valid reason for the player to terminate the employment contract unilaterally, since they are considered a serious infringement of the player's personality rights.

In a 2019 Award, the majority of the Panel[166] found that an *"admittedly rather short"* exclusion from group training with the main squad, which in this case lasted 32 days and was imposed for no particular reason, did constitute just cause for the player concerned to terminate his contract with his club. However, this conclusion was reached considering several other elements of the relationship between the player and the club. In particular, the player was also prevented from joining the main team group; for example, he was not allowed to eat with the rest of the squad. He no longer had access to his private room and *"unfair and groundless"* internal disciplinary proceedings had been initiated by the club against him. Furthermore, the club had not reacted to correspondence the player had sent them, *inter alia* proposing that they negotiate an amicable settlement. The Panel concluded that the player's trust in the club had been legitimately affected by the club's conduct to such an extent that, in good faith, he could no longer be reasonably expected to continue the employment relationship. Finally, the burden of proof in relation to abusive conduct by a club lies with the player.

In one of its first decisions based on article 14 paragraph 2,[167] the DRC had to assess whether a series of measures taken by a club against a player should be deemed abusive conduct that forced the player to terminate their contract. In this specific case, the

163 CAS 2014/A/3643 Club Promotora del Pachuca de C.V. v. Facundo Gabriel Coria & FIFA.

164 CAS 2013/A/3074 Club KS Lechia Gdańsk v. Bedi Buval.

165 CAS 2018/A/6029 Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Marvin Renato Emnes with reference to CAS 2016/A/4560 Al Arabi SC Kuwait v. Papa Khalifa Sankaré & Asteras Tripolis FC.

166 CAS 2019/A/6171 Josué Filipe Soares Pesqueira v. Osmanlispor FK & CAS 2019/A/6175 Osmanlispor FK v. Josué Filipe Soares Pesqueira & Akhisar Belediyespor FC & FIFA.

167 DRC decision of 17 January 2020, Gikiewicz.

player had been sent to train with the reserve team shortly after the beginning of the contractual relationship. Despite repeated attempts to find out how long this demotion from the first team would last, the player never received a clear answer from the club, leaving him in an uncertain situation. The club had also replaced the player's car, providing him with a much older vehicle than that used by one of his teammates. Over the period considered in the case, the player had also been asked to vacate his accommodation, which had initially been provided to him by the club.

The DRC concluded that considering all of the aforementioned behaviour, the fact that the player's salary had not been paid, as well as a number of statements by the club in the press suggesting an apparent lack of interest in the player, eventually culminating in an announcement by the coach that the player was not part of his plans, the club had engaged in abusive conduct designed to force the player to terminate the contract.

ii. Examples of potentially abusive conduct by a player

A player's conduct can also qualify as abusive within the meaning article 14 paragraph 2. One potential example might occur if a player wishes to leave their club prematurely to join a new club, but their current club refuses to release them. To force the club to agree to the transfer, the player might start refusing to train or to participate in matches, coming up with various excuses for their behaviour. Under such circumstances the club might have just cause to terminate the contract; after all, the player would appear to be in breach of their main contractual obligations. However, by terminating the contract, the club would be doing exactly what the player wants. While compensation might become payable to the club because of the termination, it would lose the player and their special skills.

Just as a player alleging abusive conduct by a club is responsible for proving that the misconduct took place, the burden of proof in respect of alleged abusive conduct by a player lies with the club.

ii) Outstanding salaries

This is the most common reason for a professional player to terminate a contract with a club. This will be discussed in further detail in the paragraphs covering article 14bis of the Regulations.

iii) Poor (sporting) performance

In line with the DRC's consistent jurisprudence,[168] in a 2016 Award[169] the Panel confirmed that poor (sporting) performance is not a just cause for a club to unilterally terminate a contract, even if it is included as such in the contract signed between a professional player and their club.[170]

This decision accords with a general approach of the DRC and PSC according to which the right of a party to terminate a contract with just cause cannot be recognised if the decision as to whether the relevant circumstance occurred depends on the subjective view of the party (i.e. in this case, the club) that decides to cite it as grounds for the premature termination of the contract.[171]

iv) Medical negligence

In a 2009 Award,[172] the player invoked breach of contract by the club in the form of medical negligence to justify his decision to terminate his contract early. The Panel concluded that the club's behaviour, and that of the club's medical staff, could not be qualified as a breach of contract, and that any breach was, in any case, not sufficiently serious to justify premature termination of the contract. Accordingly, the player was found to have terminated the contract without just cause.

v) Parties' stance during the contractual relationship

The importance of the parties' behaviour while the contractual relationship remains ongoing was neatly highlighted in a 2010 Award.[173] Throughout the duration of his contract, the player had repeatedly returned late to the club following periods of leave. The club attempted to cite this behaviour as grounds to terminate the contract. However, the club had not previously objected to the player's habit of returning late to the club. In this case, the Panel considered that the club was not entitled to terminate the contract with just cause because it had not previously complained about the player's behaviour – in short, it had abruptly changed its stance. This case can also be taken as an example of the requirement to warn the other party before terminating the contractual relationship, as well as of the principle that termination of the contract should only be used as a last resort (*ultima ratio*).

In a 2015 Award,[174] it was concluded that a player being injured did not interrupt the club's obligation to pay their salary. Considering this reasoning, and since the player was owed four months' salary when he terminated his contract, the Panel found that he had just cause to do so.[175]

168 DRC decision of 13 February 2020, Advic; DRC decision of 29 January 2020, Boskovic.
169 CAS 2016/A/4846 Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League.
170 CAS 2018/A/6041 Theofanis Gekas v. Akhisar Belediye Gençlik.
171 CAS 2015/A/4042 Gabriel Fernando Atz v. PFC Chernomorets Burgas.
172 CAS 2009/A/1856-1857 Fenerbahçe Spor Kulübü v. Stephen Appiah & Stephen Appiah v. Fenerbahçe Spor Kulübü.
173 CAS 2010/A/2049 Al Nasr Sports Club v. F. M.
174 CAS 2015/A/4003 Maccabi Haifa v. Anderson Conceicao Xavier & Clube de Regatas Vasco da Gama.
175 CAS 2009/A/1956 Club Tofta Itróttarfelag, B68 v. R.

vi) Deregistration or non-registration of a player

The issue of just cause may also occur in connection with players being deregistered or not registered to play for their clubs. Such situations often arise, for example, when a club has already used up its entire quota of foreign players but wishes to register another foreign player. As it has already used up its quota, the club proceeds to deregister a foreign player it wishes to replace with a new foreign player, without terminating the deregistered player's contract.

The jurisprudence provides that the player has just cause to terminate their contract in such case.

As previously mentioned, a club – as an employer – has the duty to protect the personality rights of the player – as an employee. The career development of a footballer may be prejudiced as a result of inactivity and thus, the club has a duty to allow its players to engage in the activity for which they have been in principle employed and are qualified for. The DRC has already confirmed that *"among a player's fundamental rights under an employment contract, is not only his right to a timely payment of his remuneration, but also his right to access training and to be given the* possibility to compete with his fellow team mates in the team's official matches" and that "by *"de-registering" a player, even for a limited time period, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, is violating one of his fundamental rights as a football player"* and that therefore *"the de-registration of a player could in principle constitute a breach of contract since it de facto prevents a player from being eligible to play for his club"*.

In line with the well-established approach of the DRC, a 2014 Award[176] confirmed that the deregistration of a player to participate in a national championship entitles the player to unilaterally terminate their contract with just cause, with no requirement to send a default notice to the club. The rationale for this is that players have a fundamental right to train and to be in a position to play official matches.[177] In order for a player to be eligible to participate in organised football, they must be registered to participate in championships for their club. If they are not registered, they will not be able to play competitive football, irrespective of their commitment, general attitude, or performance in training sessions. This is a violation of the player's fundamental rights.[178] Even stronger language was used in a 2015 Award,[179] where it was stated that deregistering the player constituted the *"factual termination of the employment contract."*

176 CAS 2014/A/3643 Club Promotora del Pachuca de C.V. v. Facundo Gabriel Coria & FIFA: in addition to referring to the general considerations, the Panel emphasised the particularities of the concrete case, i.e. the contract concerned explicitly mentioned that the player was engaged *"as member of the first team"*, and the quota of foreign players had already been utilised by the club in the first match of the national championship.

177 DRC decision of 19 April 2018, no. 04181696-e; DRC decision of 18 August 2016, no. 08161435-e.

178 On the same topic see also CAS 2013/A/3091 FC Nantes & Player Bangoura v. Club Al Nasr & FIFA.

179 CAS 2015/A/4122 Al Shaab FC v. Aymard Guirie.

In a 2018 Award,[180] the Panel confirmed once again that deregistering a player from participating in national championships is itself enough to justify premature termination of the contract.

A similar approach applies to the non-registration of a player. This often happens where a club does not undertake all the necessary due diligence to determine that a player it has signed is *eligible* to be registered to participate in a championship (e.g. due to a specific foreign player rule, or specific squad size limit)

Again, it is the club's responsibility to register the player on time. If the registration cannot be completed, the player will not be able to participate in organised football. Therefore, if it fails to act, the club is effectively blocking the player's access to competitive football. This is a violation of a footballer's fundamental rights, and gives the player concerned a just cause to terminate the contract.

One recent DRC case[181] concerned a highly unusual combination of circumstances in which the player was only registered to participate in his club's national cup competition. The player decided to terminate his contract unilaterally for this reason. The DRC stated that such a partial registration could not be accepted or recognised, since it would violate the player's fundamental right to at least the prospect of regular competitive football. Due to the knock-out structure of the competition, the club might be eliminated after one match, and the player would then have no opportunity to play for the rest of the season. With this in mind, the player was found to have had just cause to terminate the contract.

vii) Visas and work permits

Players who decide to terminate their contracts in the absence of a valid visa or work permit are also frequently involved in disputes. As per the established jurisprudence,[182] it is the club's responsibility to obtain these documents (on time). As a result, a player will be considered to have a just cause to terminate their contract if the required permits are not available in good time. However, a player is expected to cooperate in completing the processes associated with obtaining these documents. Moreover, considering the principle that terminating a contract should be a last resort, a warning should be sent to the club ahead of any move to put an end to the contractual relationship.

180 CAS 2018/A/5771 Al Warka FC v. Gaston Maximiliano Sangoy & FIFA / CAS 2018/A/5772 Gaston Maximiliano Sangoy v. Al Warka FC.

181 DRC decision of 31 October 2019, Bridge.

182 DRC decision of 4 June 2020, Traoré-FR; DRC decision of 25 February 2020, Elisee; DRC decision of 19 February 2020, Bukari; DRC decision of 15 November 2018, no. 11180788-E; CAS 2017/A/5164 FAT v. Victor Jacobus Hermans, with reference to CAS 2009/A/1838 Association Kauno futbolo ir beisbolo klubas v. Iurii Priganiuk; CAS 2017/A/5092 Club Hajer FC Al-Hasa v. Arsid Kruja; CAS 2015/A/4158 Qingdao Zhongneng FC v. Blaz Sliskovic (coach).

viii) Disciplinary sanctions

The early and unilateral termination of a contract by the club as a disciplinary sanction on the player is not generally considered as just cause *per se*. Such cases must be treated with caution. It should always be borne in mind that terminating a contract should always be a last resort (*ultima ratio* action). Consequently, the less stringent sanctions available to the club, such as warnings, proportionate fines, temporary suspensions, temporary demotion to the reserves (etc), should be exhausted before this step is considered.

ix) Players leaving without authorisation or failing to return after authorised leave

A club considering the option of terminating a contract with a player because they have left the club without authorisation, or because they have not returned after authorised leave, should also respect the *ultima ratio* principle; less stringent disciplinary measures should be considered and applied first. In addition, before terminating a contract in these circumstances, the club must request the player to return to the club and set a reasonable deadline by which they must do so.[183]

In one illustrative case,[184] CAS referred to Swiss law and explained that *"if the employee* [player] *fails to make contact with his employer* [club] *for an extended period of time, the employer can, in good faith, assume that he is no longer interested in keeping his position (decisions of the Swiss Federal Court of 14 March2002, 4 C.370/2001, consid. 2a; of 24 August 1999, 4 C.143/1999, consid. 2a)."* However, if a player is absent from training and from the club for a relatively short period of time, the club may not proceed to terminate the contract unilaterally on the basis that the player has failed to render their services in a timely manner unless the player has been warned about their behaviour first. Only if they remain absent following this warning can termination be considered.[185]

This Panel went on to state that a player's absence from their club is unjustified when its extended duration gives the club reasonable grounds to assume that the player has made a final decision not to return to the club. This conclusion may be drawn, in particular, if the club has prompted the player to resume their duties or to justify their absence (for example, by providing a medical certificate) and the player either ignores the club's instruction or fails to provide a convincing and valid explanation for their absence. Additionally, under such circumstances, the question may arise of whether the player has in fact terminated their own contract based on implied intent, as demonstrated by their unauthorised departure and/or absence.

183 DRC decision of 11 April 2019, no. 04190658-E.
184 CAS 2016/A/4408 Raja Club Athletic de Casablanca v. Baniyas Football Sports Club & Ismail Benlamalem.
185 ATF 121 V 277, consid. 3.a.

14.2. Relevant jurisprudence

DRC decisions

Definition of "just cause"

- DRC decision of 25 October 2018, no. 10180471-E
- DRC decision of 24 August 2018, no. 08180794-E

"Ultima ratio"

- DRC decision of 19 June 2017, no. 06170253-E
- DRC decision of 8 April 2021, Ramajo
- DRC decision of 8 April 2021, Ferreira de Oliveira
- DRC decision of 25 February 2021, Rubilio Castillo Alvarez
- DRC decision of 27 August 2020, Ebecilio
- DRC decision of 28 January 2021, 01211363-E
- DRC decision of 14 January 2021, Orazov
- DRC Judge decision of 9 December 2020, Fujii

Injury or illness not being just cause

- DRC decision of 8 May 2020, Rakic
- DRC decision of 9 April 2020, Akobeto
- DRC decision of 31 January 2020, Betila

Deregistration

- DRC decision of 19 April 2018, no. 04181696-e
- DRC decision of 18 August 2016, no. 08161435-e
- DRC decision of 26 May 2020, no. 05200017
- DRC decision of 31 October 2019, Bridge
- DRC decision of 14 January 2021, Godal

Termination due to overdue payables

- DRC decision of 15 February 2018, no. 02182231-E
- DRC decision of 4 October 2018, no. 10180116-FR
- DRC decision of 11 April 2019, no. 04192638-E

Importance of default notice

- DRC decision of 8 May 2020, Hassamo
- DRC decision of 1 February 2019, Samardzic
- DRC decision of 7 March 2019, no. 03191845
- DRC decision of 12 February 2020, Adama
- DRC decision of 20 February 2020, Nounkeu
- DRC decision of 11 March 2021, de Souza Dias
- DRC decision of 4 November 2020, Kruk
- DRC decision of 24 November 2020, Silva Perdomo-ES

CAS Awards

Definition of "just cause"

- CAS 2019/A/6171 Josué Filipe Soares Pesqueira v. Osmanlispor FK & CAS 2019/A/6175 Osmanlispor FK v. Josué Filipe Soares Pesqueira & Akhisar Belediyespor FC & FIFA
- CAS 2018/A/6029 Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Marvin Renato Emnes
- CAS 2008/A/1517 Ionikos FC v. Juan Luchano Pajuelo Chavez
- CAS 2006/A/1180 Galatasaray SK v. Frank Ribéry & Olympique de Marseille
- CAS 2009/A/1932 Sporting Clube de Goa v. Eze Isiocha
- CAS 2019/A/6452 Sport Lisboa e Benfica Futebol SAD v. BIlal Ould-Chickh & FC Utrecht B.V. & FIFA
- CAS 2019/A/6521 & 6526 Osmanlispor FK v. Patrick Cabral Lalau & Club Atletico Mineiro and Club Atletico Mineiro & Patrick Cabral Lalau v. Osmanlispor FK
- CAS 2019/A/6626 Club Al Arabi SC v. Ashkan Dejagah
- CAS 2020/A/6770 Sabah Football Association v. Igor Cerina
- CAS 2020/A/7231 Nejmeh Club v. Issaka Abudu Diarra

"Ultima ratio"

- CAS 2014/A/3684 Leandro da Silva v. Sport Lisboa e Benfica
- CAS 2014/A/3693 Sport Lisboa e Benfica v. Leandro da Silva

Poor performance not just cause

- CAS 2016/A/4846 Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League
- CAS 2018/A/6041 Theofanis Gekas v. Akhisar Belediye Gençlik

Stance of the parties during the contractual relationship

– CAS 2010/A/2049 Al Nasr Sports Club v. F. M.

Injury or illness not being just cause

– CAS 2015/A/4327 FC Dinamo Minsk v. Christian Udubuesi Obodo
– CAS 2015/A/4003 Maccabi Haifa v. Anderson Conceicao Xavier & Clube de Regatas Vasco da Gama

Deregistration

– CAS 2014/A/3643 Club Promotora del Pachuca de C.V. v. Facundo Gabriel Coria & FIFA
– CAS 2013/A/3091 FC Nantes & Player Bangoura v. Club Al Nasr & FIFA
– CAS 2015/A/4122 Al Shaab FC v. Aymard Guirie
– CAS 2018/A/5771 Al Warka FC v. Gaston Maximiliano Sangoy & FIFA / CAS 2018/A/5772 Gaston Maximiliano Sangoy v. Al Warka FC

Importance of default notice

– CAS 2015/A/3955 & 3956 Vitoria Sport Clube & Ouwo Moussa Maazou v. Etoile Sportive du Sahel (ESS) & FIFA

Work permits and visas

– CAS 2015/A/4158 Qingdao Zhongneng FC v. Blaz Sliskovic (coach)
– CAS 2017/A/5164 FAT v. Victor Jacobus Hermans

Not registering a player

– CAS 2016/A/4560 Al-Arabi SC Kuwait v. Papa Khalifa Sankaré & Asteras Tripolis FC

Abusive conduct by a party prior to the adoption of article 14 paragraph 2

– CAS 2015/A/4286 Sebino Plaku v. Wroclawski Klub Sportowy Slask Wroclaw S.A
– CAS 2014/A/3642 Erik Salkic v. Football Union of Russia (FUR) & Professional Football Club Arsenal
– CAS 2013/A/3398 FC Petrolul Ploiesti v. Aleksandar Stojmirovic
– CAS 2018/A/6041 Theofanis Gkekas v. Akhisar Belediye Gençlik

Article 14bis - Terminating a contract with just cause for outstanding salaries

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Article 14bis - Terminating a contract with just cause for outstanding salaries

1. In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.
2. For any salaries of a player which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered. Delayed payment of an amount which is equal to at least two months shall also be deemed a just cause for the player to terminate his contract, subject to him complying with the notice of termination as per paragraph 1 above.
3. Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in paragraphs 1 and 2 above. The terms of such an agreement shall prevail.

14bis.1. Purpose and scope

a) PRINCIPLES

The introduction of article 14bis in 2018 represents a reaction to the persistent malpractice of failing to make payments on time. The vast majority of employment-related disputes between clubs and professional players brought before the DRC relate to non or late payment of salary and other remuneration.[186] Equally, the most common reason for the premature unilateral termination of a contract by a player is not being paid (on time) by their club. This should not be a surprise considering an employer's obligation to provide payment is its main obligation towards the employee.[187]

186 DRC decision of 25 October 2018, no. 10180947-e; DRC decision of 14 September 2018, no. 09181685-e; DRC decision no. 05181023-fr of 17 May 2018, DRC decision no. 02191515-e of 1 February 2019.

187 CAS 2006/A/1180 Galatasaray SK v. Frank Ribéry & Olympique de Marseille.

Prior to the introduction of article 14bis, the DRC considered that two conditions must be met for a player to have just cause to terminate their contract due to outstanding remuneration: the outstanding amount cannot be negligible or totally subordinated, and, as a general rule, the player must have put the club in default;[188] that is, the club must have been informed of its failure to abide by its contractual obligations, been made aware that the player feels this behaviour is unacceptable, and been offered an opportunity to remedy the situation. [189]

With respect to the default notice, the jurisprudence prior to the introduction of article 14bis states that notification must have been issued for a player to have just cause.[190] However, under certain specific circumstances, the absence of a default notice has not been considered sufficient grounds for preventing a player from invoking just cause when terminating their contract. In other words, the duty to issue a reminder or a warning (default notice) is not absolute. There are circumstances in which reminders and notifications are not strictly necessary, for instance where it is clear that the other side does not intend to comply with its contractual obligations.[191] Despite the handful of decisions suggesting notification is not required, it is still strongly recommended that any player considering unilaterally terminating their contract for reasons other than those set out in article 14bis should also issue such a notice.

Article 14bis has shaped these principles into a specific rule, contrasting from article 14 paragraph 2 which leaves the definition of "*abusive conduct*" deliberately broad. The main objective behind this provision is to enhance legal security for players who are not paid (on time) by their clubs, and to

188 See, however, CAS 2017/A/5242 Esteghlal Football Club v. Pero Pejic: if the termination without prior warning derives from a respective clause in the contract, it is valid; or CAS 2017/A/5465 Békéscsaba 1912 Futball v. George Koroudjiev: The duty to issue a reminder or a warning, respectively, is not absolute, and there are circumstances where no reminder and no warning are necessary, for instance where it is clear that the other side does not intend to comply with its contractual obligations.

189 CAS 2006/A/1180 Galatasaray SK v. Frank Ribéry & Olympique de Marseille; CAS 2018/A/6029 Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Marvin Renato Emnes, with reference to CAS 2016/A/4884 FC Ural Sverdlovsk v. Toto Tamuz, CAS 2015/A/4327 FC Dinamo Minsk v. Christian Udubuesi Obodo, CAS 2013/A/3091 FC Nantes & Player Bangoura v. Club Al Nasr & FIFA and CAS 2013/A/3398 FC Petrolul Ploiesti v. Aleksandar Stojmirovic; CAS 2016/A/4403 Al Ittihad Football Club v. Marco Antonio de Mattos Filho.

190 DRC decision of 8 May 2020, Hassamo; DRC decision of 1 February 2019, Samardzic; DRC decision of 7 March 2019, no. 03191845; DRC decision of 12 February 2020, Adama; DRC decision of 20 February 2020, Nounkeu; CAS 2015/A/3955 & 3956 Vitoria Sport Clube & Ouwo Moussa Maazou c. Etoile Sportive du Sahel (ESS) & FIFA; CAS 2016/A/4403 Al Ittihad Football Club v. Marco Antonio de Mattos Filho.

191 CAS 2018/A/5955 Spas Delev v. PFC Beroe-Stara Zagora EAD & FIFA and CAS 2018/A/5981 Pogoń Szczecin Spółka Akcyjna v. FC Beroe-Stara Zagora EAD & FIFA; cf. also CAS 2017/A/5242 Esteghlal Football Club v. Pero Pejic: termination of contract by the player without prior warning - if it derives from a clause in the contract it is valid – *in casu*, the contractual clause at stake stated that if the payment is not executed within 45 days as of the due date, the player will have the right to terminate the contract with just cause. Consequently, he did not need to put the club in default; CAS 2017/A/5465 Békéscsaba 1912 Futball v. George Koroudjiev, CAS 2019/A6452 Sport Lisboa e Benfica Futebol SAD v. Bilal Ould-Chikh & FC Utrecht B.V. & FIFA, CAS 2019/A/6626 Club Al Arabi SC v. Ashkan Dejagah, CAS 2019/A/6521 & 6526 Osmanlispor FK v. Patrick Cabral Lalau & Club Atletico Mineiro & Patrick Cabral Lalau v. Osmanlispor FK.

set out their rights more effectively. In a recent Award, the CAS underlined that article 14bis, in practical terms, does not bring substantial differences with the established jurisprudence of the DRC and the CAS apart from the express requirement of a 15-day notice period.[192]

Article 14bis makes clear that if a club unlawfully fails to pay a player two monthly salary payments, the player will be deemed to have just cause to terminate their contract provided certain formal conditions are met.

Article 14bis refers to unpaid and outstanding salaries. However, this certainly does not imply that delayed payment of other forms of (frequent, non-conditional) remuneration cannot constitute a just cause for a player to terminate their contract prematurely. A player invoking other outstanding remuneration as just cause to terminate their contract may still have a strong case. The pertinent circumstances will have to be assessed against the general definition of what constitutes a just cause in accordance with the terms of article 14, along with the relevant general criteria set out in jurisprudence and described above. Particular attention should be paid factors such as whether the outstanding amount *is significant* (i.e. that it is neither negligible nor totally subordinated),[193] the extent of the delay, the general *attitude* of the parties in the specific case,[194] and other relevant factors.

b) DEFAULT NOTICES

Article 14bis requires the player to notify the club in writing that it is in default, and to grant the club a deadline of at least 15 days in which to comply fully with its financial obligations. This condition is in line with the established jurisprudence of the DRC and of CAS,[195] and aims to improve clarity and legal security, particularly in relation to the specific termination date of a contract.

Where both preconditions are met, the DRC has consistently concluded that the player had just cause to terminate their contract prematurely based on article 14bis.[196] Where the preconditions are not met, article 14bis does not apply; in such circumstances the DRC may nonetheless find that the termination was made with just cause within the scope of article 14, or consider that there was no just cause for the termination of the contract.[197]

192 CAS 2020/A/6727 Benjamin Acheampong v. Zamalek Sports Club.

193 DRC decision of 10 August 2018, no. 08181796-fr; DRC decision of 6 December 2018, no. 12181902-e.

194 DRC decision of 14 September 2018, no. 09180376-e, DRC decision of 14 September 2018, no. 09180035-e.

195 CAS 2018/A/6029 Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Marvin Renato Emnes; CAS 2016/A/4403 Al Ittihad Football Club v. Marco Antonio de Mattos Filho.

196 DRC decision of 28 February 2020, Sushkin; DRC decision of 1 February 2019, Samardzic; DRC decision of 7 March 2019, 03191845; DRC decision of 12 February 2020, Adama; DRC decision of 5 December 2019, 12190077.

197 DRC decision of 20 May 2020, Leal Rodrigues.

A frequent question posed to the DRC is if there is just cause where a player who has not received two monthly salary payments due and only grants the club a deadline of, for example, 10 days to comply fully with its financial obligations. Clearly, in such cases, the formal requirements of article 14bis would not have been met. However, there is nothing to stop the player justifying their unilateral termination of the contractbased on the general definition of just cause according to article 14 paragraph 1.[198]

This route could prove more difficult to use than article 14bis, and it would be down to the player to produce sufficient evidence to justify the termination of the contract, since the regulatory presumption in article 14bis that the club is at fault unless proven otherwise would not apply. Nevertheless, the player would still have the option of attempting to show that the breach by the club (non-payment of two salary payments) was sufficiently serious to justify the termination.[199]

c) REBUTTING THE REGULATORY PRESUMPTION

Although it certainly does provide greater legal certainty, article 14bis does not imply that the circumstances surrounding the termination of a contract can be viewed in black-and-white terms. According to this provision, for there to be just cause to terminate a contract, the club's failure to pay a player at least two monthly salary payments on time must be "*unlawful*". This means that the club can still rebut the presumption in the Regulations by providing convincing evidence that there was a valid reason for the non-payment.

d) SALARIES NOT PAID MONTHLY

Contracts under which the player's salary is not paid monthly are covered in paragraph 2. In such cases, clubs are considered to have missed two monthly payments if they are in arrears by the pro-rata amount corresponding to two months' salary. If the outstanding salary is equal to at least two months' salary, the player will be deemed to have just cause to terminate their contract. The player still must comply with all requirements regarding the default notice.

In a recent Award, the CAS has inferred that the two months, as referred to in article 14bis, must be calculated over the contractual period as opposed to the length of the sporting season. According to the Sole Arbitrator, if the latter was the case, the pro-rata basis would vary per season although the annual remuneration stays the same.[200]

198 DRC decision of 29 January 2020, Coria.

199 CAS 2015/A/4046 Lizio & Bolivar v. Al Arabi; CAS 2017/A/5242 Esteghlal Football Club v. Pero Pejic: if the termination without prior warning derives from a respective clause in the contract, it is valid; CAS 2018/A/5955 Spas Delev v. PFC Beroe-Stara Zagora EAD & FIFA and CAS 2018/A/5981 Pogoñ Szczecin Spóka Akcyjna v. FC Beroe-Stara Zagora EAD & FIFA: the duty to issue a reminder or a warning (default notice), respectively, is not absolute and there are circumstances where no reminder and no warning were deemed necessary.

200 CAS 2020/A/7093 Tractor Sazi Tabriz FC v. Anthony Christopher Stokes & Adana Demirspor KD.

e) ALTERNATIVE CLAUSES IN CONTRACTS

Clauses which provide an alternative method to dealing with issues relating to non-payment of salary that were present in contracts signed between a professional player before article 14bis entered into force can also be considered. Given the passage of time, this would appear extremely unlikely to be an issue in a dispute moving forward.

f) COLLECTIVE BARGAINING AGREEMENTS

The only codified exception to the "*two-month rule*" stipulates that collective bargaining agreements properly negotiated by employers' and employees' representatives at domestic level in accordance with national law may supersede the conditions provided in article 14bis.

For the avoidance of doubt, it should be clarified that the reference to national law relates to the negotiation of collective bargaining agreements. In other words, for the conditions contained in a collective bargaining agreement to be recognised, this agreement must have been concluded in accordance with the applicable provisions of the relevant national law regarding agreements of this kind.

14bis.2. Relevant jurisprudence

DRC decisions

- DRC decision of 28 February 2020, Sushkin
- DRC decision of 1 February 2019, Samardzic
- DRC decision of 7 March 2019, no. 03191845
- DRC decision of 12 February 2020, Adama
- DRC decision of 5 December 2019, no. 12190077
- DRC decision of 25 February 2020, Akaminko
- DRC decision of 20 May 2020, Leal Rodrigues
- DRC decision of 29 January 2020, Coria
- DRC decision of 12 August 2020, Ferreira dos Santos
- DRC decision of 12 June 2020, Jelic

CAS Awards

- CAS 2006/A/1180 Galatasaray SK v. Frank Ribéry & Olympique de Marseille
- CAS 2017/A/5242 Esteghlal Football Club v. Pero Pejic
- CAS 2017/A/5465 Békéscsaba 1912 Futball v. George Koroudjiev
- CAS 2006/A/1180 Galatasaray SK v. Frank Ribéry & Olympique de Marseille
- CAS 2015/A/4046 Lizio & Bolivar v. Al Arabi
- CAS 2018/A/6029 Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Marvin Renato Emnes
- CAS 2016/A/4884 FC Ural Sverdlovsk v. Toto Tamuz
- CAS 2015/A/4327 FC Dinamo Minsk v. Christian Udubuesi Obodo
- CAS 2013/A/3091 FC Nantes & Player Bangoura v. Club Al Nasr & FIFA
- CAS 2013/A/3398 FC Petrolul Ploiesti v. Aleksandar Stojmirovic
- CAS 2016/A/4403 Al Ittihad Football Club v. Marco Antonio de Mattos Filho
- CAS 2017/A/5242 Esteghlal Football Club v. Pero Pejic
- CAS 2018/A/5955 Spas Delev v. PFC Beroe-Stara Zagora EAD & FIFA
- CAS 2018/A/5981 Pogoń Szczecin Spółka Akcyjna v. FC Beroe-Stara Zagora EAD & FIFA
- CAS 2018/A/6029 Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Marvin Renato Emnes
- CAS 2019/A/6452 Sport Lisboa e Benfica Futebol SAD v. Bilal Ould-Chikh & FC Utrecht B.V. & FIFA
- CAS 2019/A/6626 Club Al Arabi SC v. Ashkan Dejagah
- CAS 2019/A/6521 & 6526 Osmanlispor FK v. Patrick Cabral Lalau & Club Atletico Mineiro & Patrick Cabral Lalau v. Osmanlispor FK
- CAS 2020/A/6727 Benjamin Acheampong v. Zamalek Sports Club
- CAS 2020/A/7093 Tractor Sazi Tabriz FC v. Anthony Christopher Stokes & Adana Demirspor KD

Article 15 - Terminating a contract with sporting just cause

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Article 15 - Terminating a contract with sporting just cause

1. An established professional who has, in the course of the season, appeared in fewer than ten per cent of the official matches in which his club has been involved may terminate his contract prematurely on the ground of sporting just cause. Due consideration shall be given to the player's circumstances in the appraisal of such cases. The existence of sporting just cause shall be established on a case-by-case basis. In such a case, sporting sanctions shall not be imposed, though compensation may be payable. A professional may only terminate his contract on this basis in the 15 days following the last official match of the season of the club with which he is registered.

15.1. Purpose and scope

a) GENERAL REMARKS

Even where a club complies fully with all their contractual obligations towards a player, it does not necessarily guarantee that any individual player will be fielded in official matches. After all, football is played eleven against eleven, and a club's squad regularly numbers at least 20 players.

If a club is fulfilling all its duties under its contract with the player, but the player is not being selected for official matches, this does not give the professional player concerned a pretext to invoke just cause to prematurely terminate their contractual relationship with the club. Nevertheless, it has been recognised that from a purely sporting point of view, it might seem appropriate for a player in such a position to be given the option of leaving their club prior to the ordinary expiry of their contract under facilitated terms.

As can clearly be deduced from the wording of article 15, only professional players, and not clubs, may invoke sporting just cause to terminate an existing contractual relationship prematurely.

b) PREREQUISITES

For a professional to rely on sporting just cause to justify the early termination of their contract, two mandatory conditions must be satisfied. Firstly, the

player must be an "*established professional*". Secondly, they must have appeared in fewer than ten per cent of the official matches in which their club has been involved during the season.

i) Definition of "established professional"

First, the player needs to be an *"established professional"*. The Regulations do not define this term, and a considerable margin of discretion is thus left to the DRC and CAS in this regard.

In two relatively recent matters, the DRC[201] referred primarily to four objective criteria when considering whether the player was an "*established professional*": the age of the player, their past performance, whether the player's training period had ended, and how experienced the player's teammates were,. The DRC also considered the subjective criterion of whether the player could have expected to be fielded regularly at the beginning of the season.

In the second case on appeal,[202] the Sole Arbitrator held that only a player with a legitimate expectation to be fielded regularly could potentially be considered an "*established professional*". Moreover, he noted that a player who had not yet completed their training period could not be considered an "*established professional*". As to when this period could be said to have been completed, the Sole Arbitrator referred to annexe 4, article 1 paragraph 1 on training compensation and deemed that, generally, a player could not be said to be fully trained until they had reached the age of 21. He then went on to state that the fact a player had completed their training was not sufficient for them to be considered established. Rather, the player had to have undergone further development beyond this training. Again referring to article 1 paragraph 1 of annexe 4, the Sole Arbitrator determined that, as a general presumption, a player's education should be considered complete at the age of 23. Based on these considerations, it can be concluded that a player can only be described as an *"established professional"* if they have completed both their training (around the age 21) and their further development beyond this training (around the age of 23).

The Sole Arbitrator attached particular importance to the subjective criterion of the extent to which the player could expect to be fielded regularly at the beginning of the season. It concluded that a player could only be legitimately considered established if they had a legitimate expectation to participate in official matches on a regular basis. If there is no such expectation, there is no need to consider any other criteria. If the player *does* have an expectation to be fielded regularly, their age and whether they have completed their training – both of which were also mentioned by the DRC – are also relevant, along with the question of whether the player can be said to have completed their development phase. This latter element was the only one to be introduced by CAS in its ruling.

201 DRC decision of 7 June 2018, no. 06181022-E.
202 CAS 2018/A/6017 FC Lugano SA v. FC Internazionale Milano S.p.A.

ii) Appearances in official matches

The second mandatory condition for a player to be able to claim sporting just cause is that they must have appeared in fewer than ten per cent of official matches involving their club during the season. For these purposes *"appeared"* means that the player was fielded and actively took part in the match. Official matches are defined as those played by the club within the framework of organised football, such as in national league championships, national cups, and international championships for clubs. Friendlies and trial matches are not considered official matches.

The DRC has taken a literal interpretation of article 15, concluding that the threshold of ten per cent should be calculated on the basis of the number of official matches in which the player has participated (i.e. the number of appearances) and not minutes played.[203] On the other hand, in the only Award on this issue thus far[204] the CAS took the view that the threshold should be calculated on the basis of minutes played.

In view of the clear wording of the provision concerned and the fact it grants professional players an extraordinary right to terminate their contracts prematurely despite there being no fault or negligence, let alone a breach of contract, on behalf of the club, a narrow and strict interpretation would appear to be appropriate and justified. This accords with the conclusion of the DRC in a more recent decision,[205] albeit one referring to the criteria for a player to be considered an established professional.

c) DATE OF TERMINATION

Besides the two material requirements mentioned above, a professional player may invoke a sporting just cause within 15 days following their club's last official match of the season. If the player fails to invoke sporting just cause in that time, and they nevertheless decide to leave the club after this period has expired, they risk suffering the consequences of terminating a contract without just cause unless they can demonstrate that they had another just cause for the early termination of the contract.

Any termination notice citing sporting just cause must be received by the club within the timeframe set by the Regulations.[206] As confirmed by CAS, if a player fails to abide by this formal requirement, any attempt to claim sporting just cause will be rejected.

In a recent Award,[207] CAS stated that to trigger article 15, the player must have given the club prior warning. Specifically, the Sole Arbitrator held that *"*[B]*y failing to notify* [the club] *of his alleged dissatisfaction, … the Player*

203 DRC decision of 10 August 2007, no. 871322.
204 CAS 2007/A/1369 Omonigho Temile v. FC Krylia Sovetov Samara.
205 DRC decision of 7 June 2018, no. 06181022-E.
206 CAS 2007/A/1369 Omonigho Temile v. FC Krylia Sovetov Samara.
207 CAS 2018/A/6017 FC Lugano SA v. FC Internazionale Milano S.p.A.

prevented [the club] *from possibly changing its course of action."* Since, the player had not warned the club, CAS did not consider the possibility of any sporting just cause any further. No such precondition, however, exists in article 15.

d) CONSEQUENCES OF TERMINATION

If it is confirmed that the player has sporting just cause, they will not suffer any sporting sanctions because of their decision to terminate their contract prematurely. However, compensation may still be payable. Bearing in mind that, as already explained, the club has not neglected, let alone breached its contractual obligations, and that the reasons for the early termination of the contract are of a purely sporting nature, the amount of compensation due should normally be assessed at a reasonably low level.

Claims of sporting just cause have mostly been rejected on the basis that at least one of the conditions mentioned in the relevant article has not been met.[208] So far, the DRC has only confirmed sporting just cause once, and no compensation was awarded in that case. The DRC explained the different conditions to recognise sporting just cause. It is a unique decisions considering the particularities of the case.[209]

15.2. Relevant jurisprudence

DRC decisions

- DRC decision no. 871322 of 10 August 2007
- DRC decision of 7 June 2018, no. 06181022-E
- DRC Decision of 30 November 2017, Player J. Humbert, France v. Club F91 Diddeleng, Luxembourg

CAS Awards

- CAS 2007/A/1369 Omonigho Temile v. FC Krylia Sovetov Samara
- CAS 2018/A/6017 FC Lugano SA v. FC Internazionale Milano S.p.A.

208 DRC decision of 10 August 2007, no. 871322 (appearance in more than ten per cent of the official matches); CAS 2007/A/1369 Omonigho Temile v. FC Krylia Sovetov Samara (notice of termination not sent on time to the club); DRC decision of 7 June 2018, no. 06181022-E (not an established professional); CAS 2018/A/6017 FC Lugano SA v. FC Internazionale Milano S.p.A.

209 DRC decision of 30 November 2017, Player J. Humbert, France v. Club F91 Diddeleng, Luxembourg.

Article 16 - Restriction on terminating a contract during the season

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Article 16 - Restriction on terminating a contract during the season

1. A contract cannot be unilaterally terminated during the course of a season.

16.1. Purpose and scope

One of the main aims of the provisions on the maintenance of contractual stability is to create a level of sporting and contractual certainty for both players and clubs.

On the one hand, clubs should be able to rely on the fact that, unless a premature termination of the contract is mutually agreed with the player, they will be able to count on the player's services for a certain period, and at least until the end of the season. This is also reflected in article 18 paragraph 2, which states that the minimum length of a contract between a professional player and a club shall be from its effective date until the end of the season. This stability is key for allowing clubs to making sport-related plans. If there is a high risk that the composition of a squad will vary significantly during a season, it becomes impossible for a coach to work on developing specific technical, strategic, and tactical programmes.

On the other hand, the sporting and contractual certainty this provision creates is also beneficial to players. As mentioned above, a certain degree of stability in the composition of a squad is important to ensure the proper sporting development of the team, which, in turn, benefits the personal development of individual players and their progress in their careers. At the same time, a professional player can also count on the fact that, unless a premature termination of the contract is mutually agreed with the club, they will have secure employment for a certain period, and at least until the end of the season, meaning the player has both sporting and financial security. The potential downside of this security for a player is that it might make it difficult for them to find a new club during the season, particularly if they are not considered a world-class talent. They would normally only be able to move during an open registration period, and since other clubs are often reluctant to sign a new player unless they are sure how to integrate them into their existing squad, it is less likely that a player will be able to find a new club in the mid-season registration period.

In view of the above, the Regulations establish that a contract concluded between a professional player and a club cannot be unilaterally terminated during a season. The only exception is when a contract is terminated with just cause or mutual agreement. Either party is entitled to terminate the contract unilaterally for just cause at any time, including during the course of a season. This exception is reflected in the fact that FIFA has the authority to take provisional measures to avoid abuse and to authorise the registration of a player outside a registration period where a contract has been terminated with just cause.[210]

On one occasion, CAS[211] has referred to the provision in the context of the specificity of sport. The Panel deemed that failure to comply with article 16 could be viewed as an aggravating circumstance when calculating the amount of compensation due.

16.2. Relevant jurisprudence

– CAS 2018/A/5607 SA Royal Sporting Club Anderlecht v. Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba / CAS 2018/A/5608 Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba v. SA Royal Sporting Club Anderlecht

210 Article 6 paragraph 1, Regulations.

211 CAS 2018/A/5607 SA Royal Sporting Club Anderlecht v. Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba / CAS 2018/A/5608 Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba v. SA Royal Sporting Club Anderlecht.

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Article 17 - Consequences of terminating a contract without just cause

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

1. In all cases, the party in breach shall pay compensation. Subject to the provisions of article 20 and Annexe 4 in relation to training compensation, and unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria. These criteria shall include, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, the fees and expenses paid or incurred by the former club (amortised over the term of the contract) and whether the contractual breach falls within a protected period. Bearing in mind the aforementioned principles, compensation due to a player shall be calculated as follows:

(i) in case the player did not sign any new contract following the termination of his previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated;

(ii) in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the player shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the rest value of the prematurely terminated contract.

(iii) Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in the points i. and ii. above. The terms of such an agreement shall prevail.

2. Entitlement to compensation cannot be assigned to a third party. If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. The amount may be stipulated in the contract or agreed between the parties.

3. In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period. This sanction shall be a four-month restriction on playing in official matches. In the case of aggravating circumstances, the restriction shall last six months. These sporting sanctions shall take effect immediately once the player has been notified of the relevant decision. The sporting sanctions shall remain suspended in the period between the last official match of the season and the first official match of the next season, in both cases including national cups and international championships for clubs. This suspension of the sporting sanctions shall, however, not be applicable if the player is an established member of the representative team of the association he is eligible to represent, and the association concerned is participating in the final competition of an international tournament in the period between the last match and the first match of the next season. Unilateral breach without just cause or sporting just cause after the protected period shall not result in sporting sanctions. Disciplinary measures may, however, be imposed outside the protected period for failure to give notice of termination within 15 days of the last official match of the season (including national cups) of the club with which the player is registered. The protected period starts again when, while renewing the contract, the duration of the previous contract is extended.

4. In addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exception and the provisional measures stipulated in article 6 paragraph 1of these regulations in order to register players at an earlier stage.

5. Any person subject to the FIFA Statutes and regulations who acts in a manner designed to induce a breach of contract between a professional and a club in order to facilitate the transfer of the player shall be sanctioned.

17.1. Purpose and scope

Article 17 governs the consequences when a contract is terminated, either by a professional player or the club, without just cause.

a) CONSEQUENCES OF TERMINATION WITHOUT JUST CAUSE

Two different consequences have been established in connection with the termination of contracts without just cause.

i) Payment of compensation

In almost all cases, the party in breach of the contract will be required to pay compensation.

The article refers to *"the party in breach"*, not the party that terminates the contract. This is an important distinction when it comes to understanding the scope of application of article 17. If one party seriously breaches its contractual obligations, this may lead to the counterparty having just cause to terminate the contract. Under these circumstances, the party that decides to terminate the contract unilaterally and prematurely will not suffer any consequences. Rather, it is the party that is in breach of its contractual obligations that will have to pay compensation to the party that terminated the contract with just cause.

This is the situation in the vast majority of the disputes brought before the DRC related to breach of contract; a player decides to terminate their contract unilaterally and prematurely on the basis of overdue payables and requests the outstanding amount(s) as well as compensation from their former club. If the player is found to have had just cause to terminate their contract, they will generally be awarded compensation based on article 17 paragraph 1.

This is a significant observation when we consider that, in its title and introductory sentence, article 17 refers to the consequences of terminating a contract <u>without</u> just cause. Moreover, based on established DRC jurisprudence and confirmed by CAS,[212] article 17 is also applied to all cases in which one party is found to have had just cause to terminate the contract due to a serious violation (breach) of contractual obligations by the other party. This approach can be understood in terms of the two sides of a coin: if one party acts in such a way as to provide the other party with just cause to terminate the contract, the party that provides the just cause should be treated as if it had itself terminated the contract without just cause. This principle applies equally to the other consequences stipulated in article 17, as well as the obligation to pay compensation.

212 CAS 2012/A/2910 Club Eskisehirspor v. Kris Boyd; CAS 2012/A/2775 Al-Gharafa S.C. v. Hakan Yakin & FC Luzern; CAS 2010/A/2202 Konyaspor Club Association v. J.; CAS 2012/A/3033 A. v. FC OFI Crete; CAS 2019/A/6171 Josué Filipe Soares Pesqueira v. Osmanlispor FK & CAS 2019/A/6175 Osmanlispor FK v. Josué Filipe Soares Pesqueira & Akhisar Belediyespor FC & FIFA.

Finally, payment (and calculation) of compensation for a breach of contract is subject to the provisions regarding training compensation. This means that if a club is ordered to pay compensation for breach of contract, this will not release it from its obligation to pay training compensation to the player's training clubs if the relevant preconditions are met. Similarly, if a player is ordered to pay compensation for breach of contract to their previous club, this will not preclude the club being entitled to training compensation provided the relevant preconditions are met. In this respect, besides possibly having to pay training compensation to the player's former club, the new club might also have to pay compensation for breach of contract by the player, given that the club would be held jointly and severally liable for such payment along with the player. However, if the club is found to have terminated the contract without just cause, or if a serious breach of its contractual obligations gives the player just cause to terminate their contract unilaterally and prematurely, the club will lose its entitlement to training compensation from the player's new club and will also have to compensate the player concerned.[213]

ii) Sporting sanctions

In addition to the obligation to pay compensation, sporting sanctions can be imposed on a club or player found to be in breach of contract during the so-called "*protected period*".[214] Again, it should be noted that the article refers to any player or any club found to be *"in breach of contract"*, as opposed to terminating the contract. Obviously, as a punishment for breach of contract, these sporting sanctions are specific to the football regulatory framework. Sporting sanctions that can be imposed are different for clubs and players.

iii) Player has no obligation or automatic right to remain employed by the club

When considering the consequences of terminating a contract, a player cannot be obliged to remain employed by the club with which the contractual relationship has been terminated under any circumstances (whether the termination was with just cause or without just cause). Nor can the club be obliged to (re)employ the player. If one party decides unilaterally to terminate a contract prematurely, the contractual relationship between the parties ends. In the event of a dispute, the party in breach will be liable to pay compensation and sporting sanctions may be imposed on it, but no request for reinstatement of employment can be made, or considered. This principle has been confirmed by CAS.[215]

213 Article 2 paragraph 2 (i) of Annexe 4, Regulations.

214 Definition 7, Regulations: *"A period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional."*

215 CAS 2008/A/1691 Wisla Kraków v. Fédération Internationale de Football Associations (FIFA), Empoli FC S.p.A & Adam Rafal Kokoszka; CAS 2006/A/1100 E. v. Club Gaziantepspor; CAS 2004/A/640 New Panionios Football Club v. Erol Bulut.

iv) Summary

The consequences of terminating a contract can be generally summarised as follows.

- If a *player* terminates a contract *with* just cause (article 14 and/or 14bis, in conjunction with article 17):
  - no sporting sanctions are applicable to the player;
  - sporting sanctions may be applicable to the club if the contractual breach occurred during the protected period;
  - compensation will be payable to the player.

- If a *player* terminates a contract *without* just cause during the protected period (article 17):
  - sporting sanctions may be applicable to the player;
  - compensation will be payable to the club.

- If a *player* terminates a contract *without* just cause after the protected period (article 17):
  - no sporting sanctions will be applicable to the player;
  - compensation will be payable to the club.

- If a *club* terminates a contract *with* just cause (article 14 and/or 14bis in conjunction with article 17):
  - no sporting sanctions will be applicable to the club;
  - sporting sanctions may be applicable to the player if the breach of contract was during the protected period;
  - compensation will payable to the club.

- If a *club* terminates a contract *without* just cause during the protected period (article 17):
  - sporting sanctions may be applicable to the club;
  - compensation will be payable to the player.

- If a *club* terminates a contract *without* just cause after the protected period (article 17):
  - no sporting sanctions will be applicable to the club;
  - compensation will be payable to the player.

- If a *player* terminates a contract *with* sporting just cause (article 15):
  - no sporting sanctions are applicable to the player;
  - no sporting sanctions are applicable to the club;
  - compensation may be payable to the club.

b) CALCULATING COMPENSATION

As already mentioned, if a party terminates a contract without just cause, or seriously breaches its contractual obligations to such an extent that the counterparty (either the club or the player) has just cause to terminate the contract, the party at fault must normally pay compensation.

The reciprocal obligation to compensate the counterparty in case of breach of contract is highly significant when it comes to protecting the essential principle of contractual stability. This obligation is important to establish rules that serve as a deterrent to breach of contract, but it also makes very clear that if a contract is breached despite these rules, the party concerned will have to suffer the appropriate consequences.

The Regulations include general and specific rules for the DRC or CAS to follow when calculating the amount of compensation that should be paid. These rules ensure that certain factors that are not consistent with the spirit of the March 2001 agreement are not considered.

The aim of compensating the damaged party should always be to arrive at an amount of compensation that adequately compensates for the damage suffered. The process of calculating compensation due for a contractual breach must not lead to the damaged party obtaining benefits or gain beyond the harm it sustained because of the unlawful behaviour of the other party.

i) Contractual compensation clauses

The first element considered by article 17 paragraph 1 is whether any existing contractual clauses establish in advance an amount due from the party at fault in the event of a breach of contract. Parties may include a compensation clause in their contract which establishes in advance the amount to be paid by each party in case of a contractual breach. It is a legal requirement in some countries for such a clause to be included in contracts between professional players and clubs.[216] On the other hand, (sports-related) legislation or collective bargaining agreements in other countries[217] prohibits the inclusion of such clauses in contracts, for example because they are not compatible with statutory employment law in the country concerned.

Contractual compensation clauses fall into two distinct categories.

1) "Liquidated damages" clauses

If the parties agree to incorporate a *"liquidated damages"* clause into their contract, they must aim to assess and estimate in advance the damage that might be caused if the contract were to be terminated early due to a serious breach of contract by one of the parties. The starting point for drafting this clause is therefore

216 E.g. Spain.
217 E.g. France.

an assumption that either: (i) one of the parties terminates the contract prematurely without just cause; or (ii) one of the parties violates its contractual obligations to such an extent that the other party has just cause to terminate the contractual relationship. A "*liquidated damages*" clause is used by the parties to establish, prior to signing the contract, the amount that will become due in compensation if such an event occurs.

The DRC and CAS are regularly called upon to establish the nature of a compensation clause. The primary means of determining its nature is to examine the precise wording. Any compensation clause that states that termination without just cause by the employee (i.e. the player) before the expiry date of the contract will render the employee liable to pay a set amount in damages will likely be a liquidated damages clause.[218]

The principles of reciprocity and proportionality also play an important role in relation to liquidated damages clauses. Both the DRC[219] and CAS[220] have repeatedly confirmed that any amount of compensation stipulated in a compensation clause must be proportionate. The approaches followed by the DRC and CAS are, however, different.

If the amount stipulated in the contract appears to be disproportionate, particularly when compared to the remuneration to which the professional player is entitled on the basis of the same contract, the DRC will render the clause non-applicable (i.e. invalid) and proceed to calculate the compensation due pursuant to the methods set out in article 17 of the Regulations. On the other hand, CAS often decides that the compensation to be paid, based on the relevant compensation clause, may be adjusted to a reasonable and appropriate level.[221] The same applies if the

218 CAS 2017/A/5242 Esteghlal Football Club v. Pero Pejic; CAS 2016/A/4826 Nilmar Honorato da Silva v. El Jaish FC & FIFA; CAS 2016/A/4550 & CAS 2016/A/4576 Darwin Zamir Andrade Marmolejo v. Club Deportivo La Equidad Seguros S.A. & FIFA and Ujpest 1885 FC v. FIFA; cf. also CAS 2013/A/3411 Al Gharafa & Bresciano v. Al Nasr & FIFA; CAS 2015/A/4262 Pape Malickou Diakhate & Gestion Service Ltd. v. Granada CF, Bursaspor Kulübü, Kayseri Erciyesspor & FIFA and CAS 2015/A/4264 Granada CF v. Pape Malickou Diakhate, Bursaspor Kulübü, Kayseri Erciyesspor & FIFA.

219 DRC decision of 12 January 2006, no. 16394; DRC decision of 21 February 2020, Malango; DRC decision of 11 April 2019, no. 04190658-E; DRC decision of 20 May 2020, Miramar.

220 CAS 2004/A/780 Christian Maicon Henning v. Prudentopolis & FIFA; CAS 2006/A/1082 Real Valladolid CF SAD c. Diego Daniel Barreto Caceres & Club Cerro Porteno / CAS 2006/A/1104 Diego Daniel Barreto Caceres c/Real Valladolid CF SAD.

221 CAS 2011/A/2656 Gastón Nicolás Fernández v. FIFA & Club Tigres de la UANL / CAS 2011/A/2657 Club Estudiantes de la Plata c FIFA & Club Tigres de la UANL / CAS 2011/A/2666 Club Tigres de la UANL v. Gastón Nicolás Fernández & Club Estudiantes de la Plata; CAS 2015/A/4262 Pape Malickou Diakhate & Gestion Service Ltd. v. Granada CF, Bursaspor Kulübü, Kayseri Erciyesspor & FIFA and CAS 2015/A/4264 Granada CF v. Pape Malickou Diakhate, Bursaspor Kulübü, Kayseri Erciyesspor & FIFA; CAS 2016/A/4843 Hamzeh Salameh & Nafit Meson FC v. SAFA Sporting Club & FIFA; CAS 2018/A/5607 SA Royal Sporting Club Anderlecht v. Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba / CAS 2018/A/5608 Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba v. SA Royal Sporting Club Anderlecht; CAS 2018/A/6017 FC Lugano SA v. FC Internazionale Milano S.p.A..

penalty is considered excessive.[222] Although proportionality must be assessed on a case-by-case basis, any clause that provides that the payable compensation will amount to the remaining value of the contract is proportionate by definition.[223] Moreover, liquidated damages should not automatically be deemed excessive simply because they exceed the actual damage suffered by the injured party, as such clauses generally contain an element of punishment for the party at fault.[224]

Regarding reciprocity – i.e. that the terms should be similar for both the professional player and the club – the DRC has usually considered that such clauses should indeed be reciprocal. If the relevant compensation clause is in favour of only one of the parties or is clearly more favourable to one of the two parties, it is likely that the clause in question will be deemed invalid and disregarded.[225]

In some Awards, the CAS has found that a clause that is not reciprocal should be disregarded.[226] In particular, CAS has concluded that if the clause is exclusively in favour of the club (i.e. it is not reciprocal because it does not grant similar rights to the player), it should not be taken into consideration when determining the amount of compensation payable.[227] However, in other cases, CAS has ruled that the compensation clause does not need to be reciprocal.[228]

In recent Awards, the CAS has held that the proportionality of a liquidated damage clause must be assessed individually and within the context of the specific circumstances of the case, and that such a clause does not necessarily have to be reciprocal to be valid.[229] If the reciprocal obligations set forth in the clause actually disproportionately favour one party over the other and gives undue control to a party over the other, then the clause is incompatible with general principles of contractual stability and, as such, must be deemed null and void.[230]

222 CAS 2020/A/6752 Club Atlético Independiente v. Fernando Amorebieta Mardaras.
223 CAS 2015/A/3999 & 4000 Diego de Souza v. Al Ittihad.
224 CAS 2010/A/2202 Konyaspor Club Association v. J.; CAS 2017/A/5304 PFC Lev.ki v. Dustley Roman Mulder.
225 DRC decision of 5 December 2019, Patino Lachica.
226 CAS 2014/A/3656 Olympiakos Volou FC v. Carlos Augusto Bertoldi & FIFA; CAS 2017/A/5366 Adanaspor v. Mbilla Etame Flavier.
227 CAS 2015/A/4124 Neftci PFK v. Emile Mpenza; CAS 2014/A/3684 & 3693 Leandro da Silva v. Benfica.
228 CAS 2013/A/3411 Al Gharafa & Bresciano v. Al Nasr & FIFA; CAS 2015/A/4067 Valeri Bozhinov v. Sporting de Portugal & 4068 Sporting de Portugal v. Valeri Bozhinov & Lev.ki Sofia; CAS 2015/A/3999 & 4000 Diego de Souza v. Al Ittihad; CAS 2015/A/4262 Pape Malickou Diakhate & Gestion Service Ltd. v. Granada CF, Bursaspor Kulübü, Kayseri Erciyesspor & FIFA and CAS 2015/A/4264 Granada CF v. Pape Malickou Diakhate, Bursaspor Kulübü, Kayseri Erciyesspor & FIFA; CAS 2017/A/5242 Esteghlal Football Club v. Pero Pejic.
229 CAS 2019/A/6533 & 6539 Club Al Arabi S.C. v. Sérgio Dutra Junior & Sérgio Dutra Junior v. Al Arabi S.C. & FIFA, CAS 2019/A/6626 Club Al Arabi S.C. v. Ashkan Dejagah.
230 CAS 2020/A/7011 Al Hilal Khartoum Club v. Mohamed El Hadi Boulaouida.

When deciding whether to recognise a liquidated damages clause, the key issues to consider are proportionality and balance, rather than reciprocity. In one illustrative Award, CAS[231] was asked to consider a clause according to which the club would be entitled to the full value of the contract in the event of a breach by the player, whereas if the club breached the contract, the player would only be entitled to the remainder of their salary for the current season. The CAS confirmed the DRC approach in concluding that the clause was invalid and could not be applied. It underlined that, although the player had agreed to the clause and there was no proof that the player was subject to any undue pressure to sign the contract, the clause implied a structure that disproportionately favoured the club and gave the club an easy way of terminating the contract at the end of the first year without suffering any real consequences, whereas the player did not have the same option. Since the clause was unbalanced and not consistent with the principle of contractual stability, CAS ruled it null and void. CAS has taken a similar approach on several other occasions.[232]

In a recent Award, the CAS analysed the proportionality of a penalty clause for premature termination of an agreement, eventually overturning the DRC decision. In that instance, the Panel referred to articles 161 and 163 SCO and referred to the following factors in its decision: (i) respect of contractual autonomy; (ii) contractual autonomy should not be disturbed light-heartedly; (iii) the judge can deviate from that if it considers the amount excessive; and (iv) the amount of penalty agreed can be lawfully dissociated from the quantification of damage suffered.[233]

2) "Buy-out" clauses

So-called *"buy-out"* clauses are another type of compensation clause. If a club and a professional player decide to include such a clause in their contract rather than agree a liquidated damages clause, they are not setting an amount of compensation to be paid by the party at fault if the contract is terminated unliterally due to a serious breach of contract. Rather, a buy-out clause confers a right on one of the parties to the contract to terminate the contractual relationship unilaterally and prematurely in return for the unconditional and complete payment of a predetermined sum stipulated in the contract.

231 CAS 2016/A/4605 Al-Arabi Sports Club Co. for Football v. Matthew Spiranovic.

232 CAS 2014/A/3707 Emirates Football Club Company v. Mr Hassan Tir and Raja Club and FIFA; CAS 2016/A/4875 Liaoning FC v. Erik Cosmin Bicfalvi.

233 CAS 2019/A/6521 & 6526 Osmanlispor FK v. Patrick Cabral Lalau & Club Atlético Mineiro and Patrick Cabral Lalau v. Osmanlispor FK.

In a seminal case, the CAS[234] defined a buy-out clause as a clause granting a right for parties to a contract to agree, when entering a contract, that at a certain (or indeed any) moment, one of the parties (normally, the player) may terminate the contract, by simply notifying the other party and paying them a stipulated amount. Termination by this method should be deemed to be based on the parties' (prior) consent, and subsequently the party terminating the contract should not be liable for any sporting sanctions. In that case, CAS neatly clarified the differences between a liquidated damages clause and a buy-out clause. It held that, in the specific matter at hand, as the clause did not grant the player the right to terminate the contract, it could not be described as a buy-out clause. CAS underlined that the wording of the clause, and specifically the use of the word "*damages*", did not indicate a buy-out clause. Equally, the player was unable to provide sufficient evidence to establish that the genuine and shared intention of the parties had been to insert a buy-out clause. CAS has gone on to confirm the various elements of the definition, as set out above, on several occasions.[235]

It can therefore be said that a party that chooses to terminate a contract early by paying the agreed amount (thus "buying themselves out" of the contract) is making use of a contractual right and does not need a valid reason (just cause) to terminate the contract. To exercise this right, the party concerned must be ready to pay the entirety of the agreed sum, with no reservations or objections. As, under these circumstances, the party concerned is making use of a contractual right, no sporting sanctions can be imposed on it for doing so, even if the contract is terminated during the protected period. Obviously, if the party terminating the contract were to contest the amount payable based on the agreed buy-out clause, their actions would have to be considered differently. Under these circumstances, the party concerned would not be making use of a contractual right, and it would have to prove that it had a valid reason to terminate the contractual relationship early.

ii) Absence of a contractual compensation clause

If the parties have not incorporated any specific provision regarding the compensation due in the event of the premature termination of the contract, compensation for the breach of contract will be calculated on the basis of article 17 of the Regulations. The same principle will apply where the DRC considers the compensation clause is not applicable (on the grounds that it is not reciprocal or is disproportionate or abusive) and deems it invalid.

234 CAS 2013/A/3411 Al Gharafa & Bresciano v. Al Nasr & FIFA.

235 CAS 2019/A/6337 Makism Maksimov v. FIFA & FC Trakai; CAS 2016/A/4576 Ujpest 1885 FC v. FIFA; CAS 2016/A/4550 Darwin Zamir Andrade Marmolejo v. Club Deportivo La Equidad & FIFA; with a narrow scope limited to the Spanish situation and the Real Decreto 1006, cf. also CAS 2010/A/2098 Sevilla FC v. RC Lens (player Keita) CAS 2019/A/6525 Sevilla FC v. AS Nancy Lorraine, CAS 2020/A/7128 Sporting Clube de Portugal v. K.SV Cercle Brugge.

1) The law of the country concerned

Article 17 does not establish an obligation for the DRC to apply the law of the country concerned, but that they simply must take it into consideration. These terms provide the DRC with a significant measure of discretion, which is regularly and consistently used. Of the thousands of decisions made regarding article 17 paragraph 1 over the years, almost none make any substantial reference to national law. It is an established fact that the DRC and PSC, based on applicable law clause in article 3 of the Procedural Rules Governing the Football Tribunal (**Procedural Rules**) (formerly article 25 paragraph 6 of the Regulations), assess the disputes brought before them on the basis of the Regulations, referring to the FIFA Statutes and other FIFA regulations where appropriate. General principles of (contract) law are also considered. Reference may be made to Swiss law only where gaps exist in the FIFA regulatory framework.

This overarching approach is to ensure equal treatment of all the parties involved in a dispute before the international bodies charged with resolving disputes in football, regardless of the member associations or countries in which they operate, and the nationalities of the entities and individuals involved. This fundamental principle helps to ensure comprehensible, clearly traceable jurisprudence, which also serves to improve legal security and certainty. The diversity of national laws represents a potential obstacle to the legitimate aims of equal treatment and consistency; the establishment of general principles that take precedence over national laws is an adequate and justified solution.

At least in principle, CAS has confirmed the legitimacy of this established practice,[236] including in relation to the criteria determining the validity of a contract concluded between a professional player and a club.[237] This should not come as a surprise, since the CAS Code of Sports-related Arbitration itself follows a similar regulatory approach.

CAS has explicitly confirmed on several occasions that when a DRC decision is appealed, it should be considered first according to the Regulations and then, on a subsidiary basis, according to Swiss law.[238] If the parties express a clear, voluntary decision to submit

236 CAS 2016/A/4471 Abel Aguilar Tapias v. Hércules de Alicante FC; TAS 2005/A/983 & 984 Club Atlético Peñarol v. Carlos Heber Buen Suárez, Christian Gabriel Rodríguez Barotti & Paris Saint Germain.

237 CAS 2016/A/4709 Le Sporting Club de Bastia v. Christian Romaric.

238 CAS 2019/A/6525 Sevilla FC v. AS Nancy Lorraine; CAS 2019/A/6175 Osmanlispor FK v. Josué Filipe Soares Pesqueira & Akhisar Belediyespor FC & FIFA; CAS 2018/A/5955 Spas Delev v. FC Beroe-Stara Zagora EAD & Fédération Internationale de Football Association & CAS 2018/A/5981 Pogon Szczecin Spolka Akeyjna v. FC Beroe-Stara Zagora EAD & Fédération Internationale de Football Association; CAS 2018/A/5659 Al Sharjah FC v. Leonardo Lima da Silva & FIFA; CAS 2016/A/4846 Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League.

an employment dispute to the DRC or PSC rather than national courts in the country concerned, the parties will be deemed to have decided that the dispute should be adjudicated in accordance with the FIFA Statutes and the Regulations. As stipulated in article 57 paragraph 2 of the FIFA Statutes, the applicability of Swiss law is limited. Specifically, Swiss law only applies where there is a gap in the FIFA regulations. Hence, if the FIFA regulations clearly regulate a given legal issue, there is no scope for that issue to be reconsidered based on Swiss law.[239] Similarly, the FIFA Statutes confirm this approach when they state that the provisions of the CAS Code of Sports-Related Arbitration apply to the relevant proceedings. According to the FIFA Statutes, CAS must apply FIFA regulations in the first instance and can apply Swiss law only in addition to these regulations.[240]

On 1 June 2018, several provisions in the Regulations entered into force explicitly stating that collective bargaining agreements properly negotiated between employers' and employees' representatives at domestic level in accordance with national law take precedence over certain provisions of the Regulations.[241] The precedence of collective bargaining agreements applies to a number of areas, including the way that compensation due to a player is calculated if their contract is terminated early by the club without just cause, or if the player terminates the contract with just cause as a result of a serious breach of contract by the club. It remains to be seen how these relatively new rules will impact the jurisprudence of the FT and CAS, particularly in terms of how they consider national law.

2) The specificity of sport

The term *"specificity of sport"* was included in the Regulations long before it found its way in the Treaty on the Functioning of the European Union (**TFEU**).[242] As with national law, the specificity of sport must be duly considered by the DRC when calculating compensation, but there is no requirement to apply it. This has been confirmed by CAS,[243] which has stated that the duty to consider the specificity of sport does not mean it has to be applied. Therefore, unless there are specific reasons to change the amount of compensation payable to a party based on the specificity of sport, the DRCis not obliged to do so.

239 CAS 2006/A/1180 Galatasaray SK v. Frank Ribéry & Olympique de Marseille.

240 Article 56 paragraph 2, Statutes.

241 Article 14bis paragraph 3, article 17 paragraphs 1 and 2, article 18 paragraph 6, Regulations.

242 Article 165 paragraph 1 of the Treaty on the Functioning of the European Union, C 83/120: *"the specific nature of sport"*.

243 CAS 2019/A/6306 & CAS 2019/A/6316 Jean Philippe Mendy v. Baniyas Football Sports Club LLC & Baniyas Football Sports Club LLC v. Jean Philippe Mendy, Club NK Slaven Belupo & FIFA.

The main effect of including this wording in article 17 is to allow the DRC to adjust its decisions to reflect specific principles that are applicable to sport in general (and to football in particular), or that protect the interests of the parties in view of the peculiar circumstances of the football industry.

CAS has confirmed this on various occasions. In one specific Award, it stated *"…[B]ased on* [the] *criterion* [of the specificity of sport]*, the judging body should* […] *assess the amount of compensation payable by a party keeping duly in mind that the dispute is taking place in the somehow special world of sport."* [244] The DRC has sometimes referred explicitly to the specificity of sport when adjusting the amount of compensation due (especially when compensation is owed by a player to a club) in the event of unjustified breaches of employment contracts.[245] However, the specificity of sport has only been cited as grounds for adjusting compensation payments in a handful of cases in recent years.

A similar approach has been adopted in various CAS Awards[246] in which the specificity of sport has been used to adjust a specific outcome because it did not seem justified. In an Award that confirmed a DRC decision, CAS found that the specificity of sport can justify a reduction in the compensation payable by a player to a club, especially if the player's salary at their former club is relatively low.[247] On the other hand, a Panel in another case justified an increase in the compensation due (to a player, in this instance) based on the specificity of sport; the player was awarded additional compensation equivalent to 10 % of the entire remuneration due under the contract, considering the (very) exceptional circumstances of the case, and in particular the severe unethical behaviour of the club who fired the player in light of his serious illness.[248]

244 CAS 2018/A/5607 SA Royal Sporting Club Anderlecht v. Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba / CAS 2018/A/5608 Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba v. SA Royal Sporting Club Anderlecht.

245 DRC decision no. 59738 of 15 May 2009; DRC decision of 10 April 2015, no. 04151519; DRC decision of 25 February 2020, Meleg.

246 CAS 2007/A/1298 Wigan Athletic FC v. Heart of Midlothian, CAS 2007/A/1299 Heart of Midlothian v. Webster & Wigan Athletic FC, CAS 2007/A/1300 Webster v. Heart of Midlothian; CAS 2007/A/1358 FC Pyunik Yerevan v. Carl Lombe, AFC Rapid Bucaresti & FIFA and CAS 2007/A/1359 FC Pyunik Yerevan v. Edel Apoula Edima Bete, AFC Rapid Bucaresti & FIFA; CAS 2008/A/1453 Elkin Soto Jaramillo & FSV Mainz 05 v. CD Once Caldas & FIFA; CAS 2008/A/1519 FC Shakhtar Donetsk (Ukraine) v. Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) & FIFA, CAS 2008/A/1520 Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) v. FC Shakhtar Donetsk (Ukraine) & FIFA; CAS 2009/A/1856-1857 Fenerbahçe Spor Kulübü v. Stephen Appiah & Stephen Appiah v. Fenerbahçe Spor Kulübü; TAS 2009/A/1960-1961 LOSC Lille v. Tony Mario Sylva & Trabzonspor; CAS 2010/A/2145-2147 Udinese Calcio v. Morgan de Sanctis & Sevilla FC; CAS 2008/A/1568 M.& Football Club Wil 1900 v. FIFA & Club PFC Naftex AC Bourgas; CAS 2008/A/1644 M. v. Chelsea Football Club Ltd; CAS 2018/A/5925 Ricardo Gabriel Alvarez v. Sunderland AFC.

247 CAS 2014/A/3568 Equidad Seguros v. Arias Naranjo & Sporting Clube de Portugal & FIFA.

248 CAS 2015/A/3871-82 Sergio Sebastián Ariosa Moreira v. Club Olimpia & Club Olimpia v. Sergio Sebastián Ariosa Moreira.

To prevent any misunderstanding, inviting the DRC or CAS to take due account of the specificity of sport is not the same as giving a justification for handing down rulings that do not comply with the Regulations, the FIFA Statutes and other FIFA regulations, general principles of (contract) law or, where applicable, Swiss law. First and foremost, the compensation payable in each individual case should be calculated exclusively in line with the other objective criteria provided for by the Regulations. Only once an amount of compensation has been established on this basis is the specificity of sport duly considered, along with any particularities or case-specific aspects which could justify an adjustment of the compensation calculated in accordance with the Regulations. Such factors might include (this list is not exhaustive): extraordinarily poor behaviour by the party at fault (particularly where it has a sporting effect); the time at which the contract was prematurely terminated in relation to the existing and applicable registration periods; the player's role in the squad (regardless of whether the player or the club is in breach of contract); the level of commitment shown by the player to the club prior to the early termination (again, regardless of whether it is the player or the club in breach of contract); the difference between the player's previous and current salaries, and various other factors. These factors, as is obvious, are all sporting factors specifically related to football.

In this regard, a recent Award[249] stated that:

> "The concept of specificity of sport only serves the purpose of verifying the solution reached otherwise prior to assessing the final amount of compensation. In other words, the specificity of sport is subordinated, as a possible correcting factor, to the other factors. In particular, according to CAS jurisprudence, this criterion 'is not meant to award additional amounts where the facts and circumstances of the case have been taken already sufficiently into account when calculating a specific damage head. Furthermore, the element of the specificity of sport may not be misused to undermine the purpose of article 17 para. 1, i.e. to determine the amount necessary to put the injured party in the position that the same party would have had if the contract was performed properly' …".[250]

249 CAS 2018/A/5607 SA Royal Sporting Club Anderlecht v. Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba / CAS 2018/A/5608 Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba v. SA Royal Sporting Club Anderlecht.

250 Cf. also CAS 2009/A/1880 & 1881 FC Sion v. FIFA & Al-Ahly Sporting Club and El Hadary v. FIFA & Al-Ahly Sporting Club; CAS 2013/A/3411 Al Gharafa & Bresciano v. Al Nasr & FIFA.

In the same Award, the Panel also stated that the behaviour of the parties in the case, and particularly of the party that failed to meet its contractual obligations, should also be considered when deciding whether compensation should be adjusted based on the specificity of sport.

3) Other objective criteria

The Regulations also establish that compensation for terminating a contract without just cause should also be calculated by considering "*any other objective criteria*", and provide a non-exhaustive list of such objective criteria.

The CAS jurisprudence has confirmed that the list is non-exhaustive[251] and that other objective factors can be considered, such as the loss of a possible transfer fee and the replacement cost for a player, provided there is a logical nexus between the breach and the loss claimed.[252]

The same objective criteria should be applied when assessing the compensation due, regardless of whether it is the player or the club that is responsible for the early termination of the contract. Having said that, the June 2018 amendment to article 17 paragraph 1[253] has slightly modified this principle. The detailed calculation principles established by this amendment limit the DRC's discretion in selecting the objective criteria it wishes to apply. This will be discussed further below.

I. Remuneration and other benefits due to the player under the existing contract and/or the new contract

The first factor to consider is the remuneration and other benefits due to the player under their existing contract and/or their new contract.

If a club prematurely terminates a contract without just cause, or seriously breaches its contractual obligations such that the player is provided with just cause to terminate the contractual relationship early, the method used to calculate the compensation due to the player can, in principle, be based on the traditional notion of damage in the strict economic sense; this is the way it is applied in the SCO, for example.[254] According to this definition of "*damage*", the player should be compensated by an amount corresponding to what they

251 CAS 2018/A/6037 & 6043 Bangkok United FC v. Mohanad Abdulraheeem Karrar and Mohanad Abdulraheeem Karrar v. Bangkok United FC.

252 CAS 2019/A/6463 & 6464 Saman Ghoddos v. SD Huesca & Östersunds FC & Amiens Sporting Club & FIFA, Östersunds FK Elitfotboll AB v. SD Huesca & FIFA & Saman Ghoddos & Amiens Sporting Club.

253 Circular no. 1625 dated 26 April 2018.

254 Article 337c, Swiss Code of Obligations.

would have earned up to the ordinary expiry of the term of their existing contract, minus what they earned under their new contract, or could have earned elsewhere, over the same period of time. Applying this interpretation takes both the objective criteria in the Regulations into account.

Readers will also be familiar with the principle of the *"positive interest"*. According to this principle, the injured party should be compensated for damage incurred because of the breach of the contract. Specifically, the amount of compensation granted should, in simple terms, put the injured party in the position they would have been in had the breach of contract not occurred. CAS has repeatedly referred to this principle, albeit primarily in relation to compensation payable by a player to a club.[255]

In its well-established and consistent jurisprudence relating to cases dealt with under the Regulations in force prior to 1 June 2018, the DRC consistently took as a starting point the residual value of the contract that was prematurely terminated. It then deducted any remuneration received by the player under any new contract they may have signed for the period following the termination of the previous contract, up to the expiry of the term of the previous contract.[256] As an exception to this general rule, no mitigation was applied, even if the player found new employment after the termination, in case the contract that was prematurely terminated contained a compensation clause granting the entire residual value of the contract to the player as compensation, [257]

255 CAS 2008/A/1519 FC Shakhtar Donetsk (Ukraine) v. Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) & FIFA, CAS 2008/A/1520 Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) v. FC Shakhtar Donetsk (Ukraine) & FIFA; CAS 2009/A/1880 & 1881 FC Sion v. FIFA & Al-Ahly Sporting Club and El Hadary v. FIFA & Al-Ahly Sporting Club; CAS 2012/A/2698 AS Denizlispor Kulübü Dernegi v. Wescley Pina Gonçalves; CAS 2013/A/3411 Al Gharafa & Bresciano v. Al Nasr & FIFA; CAS 2015/A/4046 Lizio & Bolivar v. Al Arabi; CAS 2016/A/4560 Al Arabi SC Kuwait v. Papa Khalifa Sankaré & Asteras Tripolis FC; CAS 2016/A/4843 Hamzeh Salameh & Nafit Meson FC v. SAFA Sporting Club & FIFA; CAS 2018/A/6029 Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Marvin Renato Emnes; CAS 2019/A/6171 Josué Filipe Soares Pesqueira v. Osmanlispor FK & CAS 2019/A/6175 Osmanlispor FK v. Josué Filipe Soares Pesqueira & Akhisar Belediyespor FC & FIFA; CAS 2019/A/6337 Makism Maksimov v. FIFA & FC Trakai, CAS 2019/A/6463 & 6464 Saman Ghoddos v. SD Huesca & Östersunds FC & Amiens Sporting Club & FIFA, Östersunds FK Elitfotboll AB v. SD Huesca & FIFA & Saman Ghoddos & Amiens Sporting Club, CAS 2020/A/7093 Tractor Sazi Tabriz FC v. Anthony Christopher Stokes & Adana Demirspor KD, CAS 2018/A/5925 Ricardo Gabriel Álvarez v. Sunderland AFC, CAS 2020/A/6727 Benjamin Acheampong v. Zamalek Sports Club, CAS 2020/A/6770 Sabah Football Association v. Igor Cerina, CAS 2020/A/7231 Nejmeh Club v. Issaka Abudu Diarra.

256 DRC decision of 17 May 2018, no. 05180936-E; DRC decision of 15 February 2018, no. 02182231-e.

257 CAS 2012/A/2910 Club Eskisehirspor v. Kris Boyd; CAS 2012/A/2775 Al-Gharafa S.C. v. Hakan Yakin & FC Luzern.

If, on the other hand, the player had been unable to find new employment, the residual value of the contract that had been prematurely terminated was usually awarded to the player as compensation.[258] On very few occasions, and especially where the period between the premature termination of a contract and its ordinary expiry date was particularly long, the DRC deemed it appropriate to reduce the amount of compensation due to the player (even if they had not found new employment by the time of the decision) on the basis that the player had several registration periods in which to sign for a new club. The rationale behind these rare exceptions lies in the principle that a player, just like any other injured party in a civil case, has a duty to mitigate their loss. This principle has been confirmed by CAS,[259] which stated that a player must act in good faith after the breach of contract by the club and must seek other employment. The duty to mitigate losses should not be considered satisfied if, for example, the player deliberately fails to look for a new club, if they unreasonably refuse to sign an employment contract that would satisfy this duty, or if, when faced with several different options, they deliberately opt to sign a contract with worse financial conditions without a valid reason. Nevertheless, it remains the club's responsibility to prove that the player intentionally failed to look for new employment opportunities or refused to sign other appropriate employment contracts. The duty to mitigate loss is generally the last factor considered when calculating compensation payable by the club to the player.

These general principles of DRC jurisprudence have been confirmed by CAS.[260] They now form the basis for the codified compensation payable to players by clubs provided in article 17 paragraph 1.

The principle of positive interest is more complex when calculating the compensation to be paid by players to clubs, since clubs have additional financial elements that must be considered. This renders the determination of compensation 'case-dependent'. Often CAS has concurred with the specific approach adopted by the DRC; however in certain cases, considering their particularities, it has considered other elements and modified the calculation accordingly. For this reason, although the present discussion will focus on DRC jurisprudence, a dedicated paragraph is set out further below.

258 DRC decision of 20 February 2020, Alonso.

259 CAS 2015/A/4206 & 4209 Hapoel Beer Sheva FC v. Ibrahim Abdul Razak.

260 CAS 2019/A/6306 & CAS 2019/A/6316 Jean Philippe Mendy v. Baniyas Football Sports Club LLC & Baniyas Football Sports Club LLC v. Jean Philippe Mendy, Club NK Slaven Belupo & FIFA; CAS 2019/A/6171 Josué Filipe Soares Pesqueira v. Osmanlispor FK & CAS 2019/A/6175 Osmanlispor FK v. Josué Filipe Soares Pesqueira & Akhisar Belediyespor FC & FIFA; CAS 2018/A/5771 Al Wakra FC v. Gastón Maximiliano Sangoy & FIFA & CAS 2018/A/5772 Gastón Maximiliano Sangoy v. Al Wakra FC.

In the context of the specificity of sport, the economic value attributed to a player's services is an essential factor that needs to be considered when assessing the amount of compensation payable to the player's former club. This approach has forced the DRC to find a way of determining this economic value as objectively as possible.

According to its established jurisprudence, if a player prematurely terminates their contract without just cause, or seriously breaches their contractual obligations such that their club can cite just cause to terminate the contract, the DRC generally takes the residual value of the contract as its starting point when calculating the compensation to be paid by the player to the club. Calculating the compensation due using this method is not aligned with the traditional notion of damage in the strict economic sense, since the club will not have paid this residual value to the player and will not have incurred any loss by doing so. However, the DRC starts from the premise that the residual value of the contract is a reliable basis on which to establish the economic value the player's services represented for the club.

Given it is starting from this position, the DRC then considers the remuneration due to the player under their new contract. This is for several reasons. First, article 17 paragraph 1 explicitly stipulates that the remuneration due to the player under the new employment contract should be considered when calculating the compensation due in the event of a breach of contract. Just as importantly, the remuneration that the new club is ready to pay the player is another reliable indicator of the value the club attributed to the player's services when they signed their new contract. The date on which the new contract was signed will usually be closer to the date on which the previous contract was terminated than to the date on which the terminated contract was originally signed. Consequently, the remuneration agreed in the new contract will probably be a better reflection of the current value attributed to the player's services, than the terminated contract.

Based on these two objective criteria, the DRC will assess the economic value of the player's services at the moment of the premature termination of the contract. To assess this value, it takes the residual value of the contract that was prematurely terminated, applies the value of the new contract to the period during which the prematurely terminated contract would have been valid, had it been allowed to expire at the end of its original term, and takes the average of these two figures. This is a balanced and adequate method by which to find a starting point when assessing the damage caused

to the club by the premature termination of the contract, bearing in mind the fact that the club will lose, or has already lost, the player's services.

The DRC has applied this approach consistently over a prolonged period, as can be seen in some of its earliest decisions.[261] CAS has deemed the DRC approach to be a reasonable method on several occasions.[262] Indeed, a calculation carried out using this method is sometimes sufficient to determine the amount payable by a player to their previous club with no need for any further deliberation.[263] However, a number of additional factors may also be taken into consideration, as discussed below.

II. Time remaining on the existing contract, up to a maximum of five years

The next objective criterion explicitly listed in the Regulations is the time remaining on the existing (i.e. prematurely terminated) contract, up to a maximum of five years.[264]

The time remaining on the player's existing contract is also linked to the already discussed objective criteria and plays a fundamental role when calculating the remaining value of the contract that has been breached.

The remaining term of a prematurely terminated contract also needs to be considered when addressing the fourth objective criterion mentioned in article 17 paragraph 1, namely the fees and expenses paid or incurred by the player's former club, amortised over the term of the contract.

III. Fees and expenses paid or incurred by the former club (amortised over the term of the contract)

The fourth objective criterion listed in article 17 paragraph 1 provides that if a club is unable to amortise the investment made in order to obtain the player's services in its entirety through no fault of its own, this constitutes financial loss in the economic sense.[265]

261 DRC decision of 15 May 2009, no. 59738; DRC decision of 2 November 2007, no. 117623; DRC decision of 16 April 2009, no. 49194; DRC decision of 10 December 2009, no. 129641.

262 CAS 2019/A/6337 Makism Maksimov v. FIFA & FC Trakai; CAS 2017/A/4935 FC Shakhtar Donetsk v. Olexander Vladimir Zinchenko, FC Ufa & FIFA.

263 DRC decision 18 June 2020, Cinari; DRC decision of 21 February 2020, Malango.

264 The maximum of five years is congruent with the maximum length of a contract between a professional player and a club as established by article 18 paragraph 2, Regulations.

265 Example: A club acquires the services of a player and agrees to pay CHF 500,000 as a transfer fee to their previous club. They sign a five-year contract. At the expiry of the term of the contract, the player will be free to leave and no transfer fee will become payable to the club anymore. If the player, however, prematurely terminates his contract with the club without just cause, for example, after three years, if we apply a linear amortisation, CHF 200,000 of the paid transfer fee will not have been amortised yet.

Article 17 paragraph 1 of the Regulations clearly and unambiguously states that fees and expenses paid by the former club should be amortised over the term of the contract, not merely over the protected period. Furthermore, the expenses paid or incurred by the former club have been invested with a view to that club concluding an employment contract with the professional player in question. The term of this contract may be longer than the protected period. If the relevant employment contract is signed in good faith, any club (and, obviously, the professional player, too) must be able to rely on the fundamental legal principle of *pacta sunt servanda*. In this respect, the way compensation for breach of contract is calculated and paid is itself key to maintaining contractual stability, as it is a mechanism for ensuring that clubs and professional players respect the contracts they have agreed. Accordingly, the club's expectation that it will be able to amortise the amount it has invested in a player's services over the entire period of the agreed employment contract, rather than over the protected period alone, must be protected. When it signs an employment contract with a professional player, the club is fully entitled to assume that the player will remain at the club for the entire duration of the relevant contract, and not just for the protected period. If a different approach were adopted in this regard, this would mean accepting a player's right to act unlawfully by disregarding the principle of *pacta sunt servanda* to the sole detriment of the club. Hence, the DRC is correct in its view that relevant fees and expenses should be amortised over the whole term of the initially agreed employment contract, and not just over the protected period.

According to the DRC jurisprudence,[266] the relevant amount should actually *add* to the value attributed to the player's services. To summarise, the compensation payable by the player to their previous club is calculated based on the average remuneration due to the player under their previous contract and their new contract over the remaining term of the contract that was prematurely terminated. Any non-amortised fees and expenses paid or incurred by the former club are then added to the value of the two contracts. Typically, "*fees*" for calculation purposes will include the transfer fee paid to acquire the player's services, as well as fees paid to agents in relation to the transfer concerned.[267]

266 DRC decision of 20 May 2020, Diaz; DRC decision of 17 January 2020, Ayala; DRC decision of 18 June 2020, da Silva Barbosa.

267 DRC decision of 17 January 2020, Ayala; CAS 2018/A/5607 SA Royal Sporting Club Anderlecht v. Matias Ezequiel Suarez & Club Atlético Belgrano de Cordoba, CAS 2018/A/5608 Matias Ezequiel Suarez & Club Atlético de Belgrano de Córdoba v. SA Royal Sporting Club Anderlecht.

On a few occasions, considering the particular circumstances of a case, the DRC has deviated from the general formula described above, based on the specificity of sport. In one example, based on the unique circumstances of the case, the DRC only took the non-amortised portion of the fees and expenses paid or incurred by the former club into account when calculating the amount of compensation payable by the player and excluded the remuneration component from the calculation.[268] It has employed this method particularly in cases where the club has unilaterally terminated its contract with the player with just cause, following a serious breach of contract by the player. The rationale for adopting this unusual approach was that the final figure under the standard calculation method did not appear appropriate or justified. In such situations, it has used the specificity of sport in accordance with CAS jurisprudence for the purpose *"…of verifying the solution reached otherwise prior to assessing the final amount of compensation. In other words, the specificity of sport is subordinated, as a possible correcting factor, to the other factors.".*[269]

IV. Breach of contract within the protected period

The "*protected period*" is defined in the Regulations as:

> "A period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional."[270]

The inclusion of compliance with the protected period in the list of criteria reflects the objective of contractual stability. With this aim in mind, the provisions are intended to provide for sanctions that are strong enough to act as an effective deterrent against any party tempted to breach a contract during the first part of its term, known as the protected period. Therefore, any party, be it a club or a professional player, considering terminating a contract during the protected period without just cause should be aware of two things.

268 DRC decision of 10 April 2015, 04151519.

269 CAS 2018/A/5607 SA Royal Sporting Club Anderlecht v. Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba / CAS 2018/A/5608 Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba v. SA Royal Sporting Club Anderlecht.

270 Definition 7, Regulations.

Firstly, in terminating the contract, it risks the imposition of sporting sanctions in addition to having to pay compensation. Secondly, the DRC will take due account of the fact that the contractual breach occurred within the protected period when calculating the compensation due, which may result in a higher compensation payment.

In this regard, a contract breached within the protected period will by definition affect the amount of compensation due, since the more time remaining on the terminated contract, the higher its residual value will be. Moreover, bearing in mind the objective of contractual stability, especially in respect of the protected period, a decision by a club or a professional player to terminate a contract during the protected period without a valid reason will be viewed in a particularly negative light. As indicated above, the DRC tends to take the parties' actual behaviour into account in the context of the specificity of sport, and terminating a contract during the protected period could justify the award of additional compensation to the damaged party based on the specificity of sport. Admittedly, so far at least, the DRC has never considered it appropriate to do so. In a recent Award, however, the CAS has taken into account the protected period in order to evaluate the seriousness of the employer's fault and increase the compensation payable.[271]

Players sometimes try to increase the amount of compensation due by citing Swiss law. The SCO provides that where an employment contract is terminated early by the employer without just cause, a decision-making body, *inter alia*, may order the employer to pay the employee compensation. The amount due can be assessed entirely at its discretion, and taking all pertinent circumstances duly into consideration, additional compensation may be payable. However, such additional compensation cannot exceed the equivalent of six months' salary.[272]

While, in consideration of all the pertinent circumstances, such additional compensation would not appear to be justifiable if a contract is breached after the protected period expires, there might be a case for awarding it if a contract is terminated prematurely during the protected period. Obviously, it would be up to the professional player to claim an additional amount, and they would also need to make a case to prove their entitlement to any additional payment. To date, the DRC has never granted any supplementary compensation based on such considerations.

271 CAS 2018/A/5925 Ricardo Gabriel Álvarez v. Sunderland AFC.
272 Article 337c paragraph 3, Swiss Code of Obligations.

The introduction of the "*additional compensation*" in the specific provisions relating to compensation payable to players in article 17 paragraph 12 (ii) may reduce the likelihood of those SCO provisions being cited in future.

4) Calculating the compensation to be paid to a club: CAS case law

CAS jurisprudence on the calculation of compensation due to a club in the event of a breach of contract regularly stresses a wide margin of discretion when applying article 17.[273] By the same token, it is commonly agreed that the list of criteria in article 17 is not exhaustive. Consequently, the way article 17 is applied remains highly dependent on the individual Panel hearing the case.

The development of CAS jurisprudence in this area has been influenced by two leading cases, "*Webster*"[274] and "*Matuzalem*"[275]. The Awards are a perfect example of how different Panels can take significantly different views of similar circumstances. In these cases, they differed in the way they calculated the compensation payable by a player to his former club following an unjustified early termination of the contractual relationship by the player (in both cases, after the end of the protected period). The approach adopted in "*Matuzalem*" has gone on to gain precedential value in more recent disputes.[276]

I. "Webster"

The Panel deemed that the estimated transfer value of the player could not be taken into consideration as a component of the overall damage incurred. It considered that doing so would result in the unjustified enrichment of the club and would have a punitive effect on the player. Moreover, the Panel did not see any *"economic, moral or legal justification for a club to be able to claim the market value of a player as lost profit."*

273 CAS 2009/A/1880 & 1881 FC Sion v. FIFA & Al-Ahly Sporting Club and El Hadary v. FIFA & Al-Ahly Sporting Club; CAS 2008/A/1519 FC Shakhtar Donetsk (Ukraine) v. Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) & FIFA, CAS 2008/A/1520 Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) v. FC Shakhtar Donetsk (Ukraine) & FIFA; CAS 2010/A/2145-2147 Udinese Calcio v. Morgan de Sanctis & Sevilla FC; CAS 2017/A/5366 Adanaspor v. Mbilla Etame Flavier; CAS 2017/A/4935 FC Shakhtar Donetsk v. Olexander Vladimir Zinchenko, FC Ufa & FIFA; CAS 2006/A/1100 E. v. Club Gaziantepspor; CAS 2018/A/5607 SA Royal Sporting Club Anderlecht v. Matias Ezequiel Suarez & Club Atlético Belgrano de Cordoba and CAS 2018/A/5608 Matias Ezequiel Suarez & Club Atlético de Belgrano de Córdoba v. SA Royal Sporting Club Anderlecht.

274 CAS 2007/A/1298 Wigan Athletic FC v. Heart of Midlothian, CAS 2007/A/1299 Heart of Midlothian v. Webster & Wigan Athletic FC, CAS 2007/A/1300 Webster v. Heart of Midlothian.

275 CAS 2008/A/1519 FC Shakhtar Donetsk (Ukraine) v. Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) & FIFA, CAS 2008/A/1520 Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) v. FC Shakhtar Donetsk (Ukraine) & FIFA.

276 The "Webster" approach was, however, also confirmed at least on one occasion in CAS 2017/A/5366 Adanaspor v. Mbilla Etame Flavier, where the Panel equally emphasised that there should be a case-by-case appreciation of each individual affair.

As regards the player's remuneration, the Panel was reluctant to consider the remuneration and other benefits due to the player under his new contract. In their view, taking these amounts into consideration would be to focus on the player's future financial situation rather than on the content of the employment contract that had been breached, and this could have a punitive effect. The remuneration still due to the player at the time of the unjustified early termination of the contract (i.e. what he would have been paid had the original contract been allowed to run until the expiry date) was considered the most appropriate criterion for calculating the compensation due to the player's former club: "[…], *just as the Player would be entitled in principle to the outstanding remuneration due until expiry of the term of the contract in case of unilateral termination by the club (…), the club should be entitled to receive an equivalent amount in case of termination by the Player.*"

In summary, the compensation payable by the player to his former club for the early termination of the contract without just cause was based on the residual value of the contract that was prematurely terminated, not the value of the contract that Webster went on to sign after the termination.

II. "Matuzalem"

This Award marks the beginning of a reasonably consistent trend in CAS jurisprudence based on the principle of "*positive interest*". According to this principle, the compensation paid should be sufficient to put the injured party in the position they would have been in had the contract been performed properly and if no breach of the contract had occurred. In other words, the payment should cover the damage suffered by the injured party because of the breach or premature termination of the contract.

Contrary to "*Webster*", the player's transfer value was considered since, according to the Panel, it reflected the economic realities of the world of football. The Panel reasoned that the services provided by a player were traded on the market. This meant an economic value was attributed to them, and this value was worthy of legal protection. At the same time, the Panel explained that *"the amount of the transfer fee is likely to represent the value in exchange of which the transferring club was willing to waive its rights as employer and to renounce to the services of the player."* However, the burden of evidencing a claimed transfer value lies with the club that has incurred the damage. Only if this value has been appropriately evidenced can the amount be taken into consideration when calculating the compensation payable by the player.

The Panel held that both remuneration due under the terminated contract and remuneration under the player's new contract should be considered when assessing the amount of compensation due. It reasoned that the latter contract could provide an indication not only of the value that the new club attached to the player's services, but possibly also of the market value of his services, because it provided some evidence of the value attributed to the player's services by a third party. In fact, the Panel ultimately established the value of the player's services based solely on his remuneration under his new contract.

The residual value of the contract that was prematurely terminated was also taken into consideration when calculating the total compensation due. However, in stark contrast to previous DRC jurisprudence and "*Webster*", it was not used to establish the value assigned to the player's services. Rather, it was viewed as an expense saved by the player's club. Consequently, the residual value of the terminated contract was *deducted* from the compensation awarded to the club. The Panel also considered the fees and expenses paid or incurred by the former club, amortised over the term of the contract untill the date of the termination. This approach aligns with more recent DRC jurisprudence.

III. Awards after "Webster" and "Matuzalem"

The recent decisions handed down by CAS tend to confirm the "*Matuzalem*" approach. In particular, the use of "*positive interest*" and the principles that a player's transfer value can be a component of damage when calculating the compensation payable to the former club, that the value of the player's services should be assessed on the basis of the remuneration due under the new contract rather than under the former contract, and that the residual value of the prematurely terminated contract should be deducted from the compensation due as saved expenses, have been regularly followed.

On the other hand, the large discretion when calculating the compensation due, and that the list of objective criteria in article 17 paragraph 1 is not exhaustive, is also frequently emphasised. In this context, Awards regularly mention the deterrent effect provided by the threat of an extremely high compensation payment that cannot be determined in advance;[277] in their view, this threat serves to safeguard contractual stability.

277 CAS 2008/A/1519 FC Shakhtar Donetsk (Ukraine) v. Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) & FIFA, CAS 2008/A/1520 Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) v. FC Shakhtar Donetsk (Ukraine) & FIFA.

"El Hadary"[278]

In"*El Hadary*", the Panel clearly followed the "*Matuzalem*" approach. It was guided by the principle of positive interest. The value of the player on the transfer market was considered since there was concrete evidence of the player's market value in the form of the transfer fee that their new club had been willing to pay. Therefore, there was no reason for the Panel not to consider it as a component of damage incurred. According to the Panel, the player's former club lost the opportunity to obtain a transfer fee solely because of his unjustified departure.

As regards the remuneration and other benefits due to the player under the breached contract and/or his new contract, the value of the player's services was assessed based on the amounts in the new contract, and the residual value of the prematurely terminated contract was deducted from the compensation due as saved expenses.

"Appiah"[279]

In"*Appiah*", in calculating the amount of compensation payable by the player to their former club due to breach of contract by the player, the Panel again referred to "*Matuzalem*". However, the specific circumstances of the case, and specifically the fact the player terminated his contract at a time when he was seriously injured and his footballing career looked likely to be over (which, fortunately, was ultimately not the case), led the Panel to the conclusion that the money saved by the player's former club because of the early termination of the contract should be accorded particular emphasis. According to the Panel, this approach was *"consistent with the principle of the so-called positive interest".*

In its Award, the Panel stated that the club had lost the value of Appiah's services as result of early and unilateral termination of the contract by the player. In principle, this loss was (part of) the damage suffered by Appiah's former club. However, given that, due to his serious medical condition, the player would not have been able to render his services for the club until after the terminated contract had expired (because he would not have been fit to play by the end of its term), the Panel concluded that the player's former club could not be awarded any compensation for loss of his services. Moreover, the Panel pointed out that the early termination

278 CAS 2009/A/1880 & 1881 FC Sion v. FIFA & Al-Ahly Sporting Club and El Hadary v. FIFA & Al-Ahly Sporting Club.

279 CAS 2009/A/1856-1857 Fenerbahçe Spor Kulübü v. Stephen Appiah & Stephen Appiah v. Fenerbahçe Spor Kulübü.

of the contract had allowed the player's former club to save expenses, specifically the remaining salary payments and other benefits due to the player under the contract that had been terminated. On the other hand, the fees and expenses incurred by the former club, amortised over the term of the contract, were accepted as a component of the damage incurred. In view of the above, the Panel concluded that no compensation was due to the player's former club, since the expense it had saved due to the termination of the contract exceeded the damage caused to the club by the player's unjustified early termination of the contractual relationship.[280]

"Zarate"[281]

In"*Zarate*", it was found that the player did not have just cause to terminate his contract, but no compensation was awarded to the club since, according to the Panel, the termination of the contract *"did not cause any direct or indirect damage"*. In this case, the fact that the player's former club had already received a loan fee for the player was considered. Furthermore, the former club recognised that the club's coach *"did not like the player"* and therefore, the "*real interest of* [the former club] *in the fulfilment of the contract was very low"*. In this respect, the Panel expressed the view that the fact the player was not training properly or playing regularly had obviously led to a fall in his market value. As far as the loss of a possible transfer fee was concerned, the Panel ruled that, given the player would have been out of contract and free to join another club from December 2013 onwards, it was very unlikely that the former club would have been able to transfer the player between July 2013 and December 2013 *"at a reasonable price"*. The Panel then considered the salary payments the former club saved because of the early termination of the contract, and finally concluded that no compensation was due to the club.

"Maazou"[282]

In "*Maazou*", CAS rejected the former club's entitlement to compensation following the early termination of a contract by a player without just cause on the basis that the club

280 CAS 2014/A/3626 Carmelo Enrique Valencia Chaverra v. Ulsan Hyundai Football Club, with similar considerations: the player had just cause to prematurely terminate his contract, but no compensation was due to him since both parties had suffered an "equal damage". The "prejudice" deriving from the contract's termination matched the "benefit" it produced to each of the parties.

281 CAS 2015/A/4552 & 4553 CA Velez / Mauro Zarate v. Lazio SpA.

282 CAS 2015/A/3955 & 3956 Vitoria Sport Clube & Ouwo Moussa Maazou v. Etoile Sportive du Sahel (ESS) & FIFA.

itself bore a significant measure of responsibility for the termination. In this instance, CAS gave significant importance to the fact the club admitted not having paid the player the equivalent of two-and-a-half months' salary, and that they had informed him he would no longer be considered part of the squad.

"Sylva"[283]

In "*Sylva*", the principle of positive interest was reaffirmed, and reference was made to the player's salaries under his new and old (breached) contracts. At the same time, however, the Panel noted that the remuneration due to the player was only an *indication* of the value attributed to his services.

An important particularity of this case was that, following the breach of contract, the player's former club and the club wishing to sign him had drafted a transfer agreement, and had agreed in principle on specific transfer compensation. However, the player neither signed the relevant agreement, nor participated in the pertinent negotiations, meaning that it never came to fruition.

The Panel stated that a transfer fee constituted a reliable indication of the value a player's former club assigns to the player's services. It went on to compare the matter with one in which two clubs are in advanced negotiations for a possible transfer of a specific player, and the negotiations collapse due solely to a breach of contract by the player. Thus, the Panel came to the view that such a transfer agreement gave a decisive indication of the player's value, which should be given full consideration. Accordingly, it set the amount of compensation payable by the player at the same amount as the transfer fee included in the draft agreement.

In summary, while referring to and confirming the "*Matuzalem*" approach, the Panel chose a different way of calculating the compensation due. This reflected the particularities of the case, and specifically the presence of specific and reliable evidence as to the value the player's former club attributed to his services and, by extension, to the damage it suffered because of losing these services.

"*De Sanctis*"[284] and replacement costs

"*De Sanctis*" marked the first time that a Panel agreed to consider the costs associated with replacing a player as a component of damage incurred when calculating the

283 TAS 2009/A/1960-1961 LOSC Lille v. Tony Mario Sylva & Trabzonspor.
284 CAS 2010/A/2145-2147 Udinese Calcio v. Morgan de Sanctis & Sevilla FC.

compensation payable by a player to their former club for breach of contract. This criterion had been considered in other rulings,[285] but until this Award, it had never been explicitly considered for calculating compensation.

In addition to considering the replacement cost associated with the player concerned, and while referring to existing CAS jurisprudence, the Panel also reaffirmed the large measure of discretion accorded to it when calculating the compensation due and confirmed the positive interest approach to doing so. It also agreed that the player's transfer value could be considered a head of damage.

However, in contrast to previous decisions, and in view of the limited evidence provided by the parties, the Panel decided it was not appropriate to calculate the compensation due based on the value attributed to the player's services. Rather, it preferred to base its assessment on the replacement cost to the player's former club. In doing so, it explained that it did not seek to depart from the principles of "*Matuzalem*", but that it felt there was more than one permissible method for calculating compensation.

To establish the replacement cost to the club, the Panel acknowledged that the former club had engaged two new goalkeepers: a youngster returning from a loan and an experienced player. In the Panel's eyes, these transfers had been concluded specifically because of the breach of contract by the player – a conclusion likely made easier by the fact the player was a goalkeeper. At the same time, the Panel also took the loss of the transfer fee the club might have obtained for the young goalkeeper (whom it was forced to recalled from a loan) into consideration, as well as the fee the club had had to pay to transfer the young goalkeeper back from his loan, and the salaries of the two new goalkeepers.

Besides replacing the criterion of the value attributed to a player's services with that of replacement cost, the Panel also considered other heads of damage in line with previous CAS jurisprudence. It deducted the residual value of the contract that was prematurely terminated from the replacement costs as saved expenses. Finally, it added the equivalent of six months' salary to the compensation that the player had to pay, citing the specificity of sport.

285 CAS 2008/A/1519 FC Shakhtar Donetsk (Ukraine) v. Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) & FIFA, CAS 2008/A/1520 Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) v. FC Shakhtar Donetsk (Ukraine) & FIFA; CAS 2009/A/1856-1857 Fenerbahçe Spor Kulübü v. Stephen Appiah & Stephen Appiah v. Fenerbahçe Spor Kulübü.

In another Award[286] in which replacement costs were considered to calculate the compensation, the Panel drew a comparison between the unjustified termination of the contract by the player and the circumstances in which the former club had acquired the services of another player. In a nutshell, it acknowledged that the salaries of the two players being compared were similar, and that they both played in similar positions. Moreover, the termination of the contract by the player and the transfer of the new player had occurred during the same registration period. The Panel also considered other heads of damage in line with the previous CAS jurisprudence. In particular, the unamortised portion of the fee paid to the player's agent was added to the compensation payable. Moreover, the expenses saved by the former club, and specifically the residual value of the contract that was prematurely terminated, were deducted from the compensation. Finally, some additional compensation was awarded based on the specificity of sport.

In a recent Award, the Panel took into account the value that the parties gave to the services of the Player at the time of the termination of the Contract and for its remaining duration, estimated on the basis of the average remuneration plus the amount of training compensation otherwise payable to the club, which is to be considered as amount of investment lost. In this context, the Panel observed that the value of the services of a player is only partially reflected in the remuneration paid to the player.[287]

IV. Conclusions

While certain elements and principles do recur, thus providing the basis for established jurisprudence, the various decisions all took new factors into account that had not been considered in previous judgments. It must therefore be concluded that each case has its own characteristics, and that different Panels may adopt different approaches to the cases before them.

This general conclusion is reinforced by a more recent Award[288] in which the Panel underlined that, in terms of the method used to calculate the compensation due to a club by a player for breach of contract, each case should be dealt with on its own merits. Specifically, each Panel should be free to find the appropriate method for the matter at hand,

286 CAS 2018/A/5607 SA Royal Sporting Club Anderlecht v. Matias Ezequiel Suarez & Club Atlético Belgrano de Cordoba and CAS 2018/A/5608 Matias Ezequiel Suarez & Club Atlético de Belgrano de Córdoba v. SA Royal Sporting Club Anderlecht.

287 CAS 2020/A/7029 Association Sportive Guidars FC v. CSKA Moscou & Lassana N'Diaye.

288 CAS 2017/A/4935 FC Shakhtar Donetsk v. Olexander Vladimir Zinchenko, FC Ufa & FIFA.

while always applying article 17.[289] In other words, there is no preferred method, be it "*Webster*", "*Matuzalem*", or the DRC approach, which is essentially based on the average of the remuneration due to a player under their new and old (terminated) contracts.

In that case, the Panel deemed that there was no requirement to refer to the principle of positive interest, as there was sufficient information to apply the criteria set forth in article 17 with no need to find additional objective criteria or to speculate as to the replacement cost of an U19 player, for example. As regards the "*Webster*" method, the Panel in this specific case dismissed it altogether, on the basis it tended to disadvantage players.

In principle, the Panel agreed with the DRC method of examining the financial terms of the contract that was breached and comparing them to financial conditions of the player's contract with their new club, although it did make a minor adjustment in this regard. It also deemed that, in the case at hand, the methodology applied by the DRC had been reasonable and in line with article 17.

Finally, the Panel refused to adjust the compensation based on the specificity of sport. It rejected any argument for increasing it based on the investment made in the player's training. In fact, the player's former club (the injured party) had already been rewarded for its work in this regard through the training compensation and solidarity contribution mechanisms.

V. Other aspects of interest

The fact that a player's former club has received a loan fee for loaning out the player is a mitigating factor and should be considered when calculating the amount of compensation payable by a player following a breach of contract.[290]

iii) Compensation due to a player: the calculation method as from 1 June 2018

As stated above, compensation due to a player from a club that breaches a contract is now specifically regulated by an amendment to article 17 paragraph 1 that came into force on 1 June 2018. As with the new article 14bis, when it comes to calculating the amount of compensation due to a player, the amendment explicitly provides that provisions within a collective bargaining agreement properly negotiated by employers' and employees'

289 Cf. also CAS 2017/A/5366 Adanaspor v. Mbilla Etame Flavier.

290 TAS 2015/A/3916 Foolad Sepahan FRC v. Wydad AC & TAS 2015/A/3917 Ibrahima Touré v. Wydad AC; CAS 2015/A/4552 & 4553 CA Velez / Mauro Zarate v. Lazio SpA.

representatives at domestic level in accordance with national law take precedence over the Regulations.[291]

This *lex specialis* for calculating compensation due to a player commences by stating that compensation due to a player should be calculated "*bearing in mind the aforementioned principles*". This is a direct reference to those criteria in the first sub-paragraph of article 17 paragraph 1.

In summary, the following steps should occur:

1. The parties may agree a liquidated damages clause in advance in the contract. Particular attention should be paid to the fact that, in the event of a dispute, clauses of this nature may be declared invalid (e.g. due to issues of reciprocity, proportionality and unbalanced terms).
2. If no such agreement is concluded, or where the relevant clause is declared non-applicable, compensation will be calculated based on the objective criteria included in article 17 paragraph 1. In the event the player is entitled to compensation, the *lex specialis* will be applied.
3. Where the *lex specialis* is applied, a collective bargaining agreement negotiated between employers' and employees' representatives in accordance with the applicable national law will take precedence when calculating the compensation due to a player, to the extent its terms deviate from the *lex specialis*.

The purpose of the *lex specialis* is to increase legal security and ensure consistency. It codifies existing DRC jurisprudence while introducing a genuinely new and significant element in the shape of "*additional compensation*" due to a player under certain conditions.

When calculating the compensation due to a player if their contract is terminated unilaterally and without just cause by the club (or with just cause by the player), the Regulations make a distinction between whether the player has signed a new contract or remains unemployed.

a. Player remains unemployed

Where a player has been unable to find new employment following the early termination of their previous contract, either without just cause by the club, or with just cause by the player, the player is entitled to compensation equal to the residual value of the contract that was prematurely terminated. This is confirmation of the long-standing jurisprudence of the DRC, as described above.[292] Indeed, in its initial jurisprudence on the new provision, the DRC has confirmed its previous line on such issues.[293]

291 For the avoidance of doubt, the reference to national law relates to the negotiation of the collective bargaining agreement. In other words, for the conditions contained in a collective bargaining agreement to be recognised, the latter must have been concluded in accordance with the provisions of national law applicable to the negotiation of this kind of agreement.

292 DRC decision of 24 August 2018, no. 08180110-E; DRC decision of 11 April 2019, no. 04192638-E; DRC decision of 6 December 2018, no. 12180908-ES.

293 DRC decision of 13 February 2020, Advic; DRC decision of 27 August 2020, Jelic.

The decisive date when determining whether a player has, or has not, found new employment is the day on which the DRC hands down its decision.

b. Player has signed a new contract

The alternate position is where a player who succeeds in finding new employment following the breach of contract and associated early termination of their previous contract. Here, too, the decisive date for establishing whether the player has found such employment is the day on which the DRC hands down its decision.

Mitigated and additional compensation

The wording of article 17 confirms the established jurisprudence of the DRC, described above, that the compensation due to the player should be calculated based on the residual value of the contract that was terminated early, minus the value of any new contract for the period during which the terminated contract would have been in force had it been allowed to run its full term. Compensation paid according to this procedure is known as "*mitigated compensation*".

The new element of the *lex specialis* follows. It states that the mitigated compensation will be increased by at least three monthly salary payments (known as "*additional compensation*"). However, the "*additional compensation*" will only be granted if the early termination of the contract was due to overdue payables.

The term "*overdue payables*" here is not synonymous with the technical term used in the context of article 12bis. Article 12bis explicitly states that its terms are without prejudice to the application of further measures in accordance with article 17 in the event of unilateral termination of the contractual relationship. In other words, proceedings under article 12bis are completely separate from potential proceedings in accordance with article 17. If a player decides to claim their outstanding salary but does not intend to terminate their contractual relationship with their club because of the overdue amount, they will invoke article 12bis. If a player decides unilaterally to terminate their contract citing just cause and to claim outstanding amounts (and, potentially, compensation) on that basis, article 17 applies.

In its jurisprudence to date, the DRC has regularly awarded automatic "additional compensation" amounting to three monthly salary payments where players have terminated their contracts prematurely with just cause due to overdue

payables.[294] In one case,[295] the DRC was faced with a situation in which the player's contract stipulated that his salary would vary over the term of the contract and it was therefore unclear which amount should be used to calculate the additional compensation due. It established that it was the salary at the time the contract was terminated that should be used, and the player was granted three automatic additional monthly salary payments based on this figure.

Egregious circumstances justifying an increase in additional compensation

Where egregious circumstances exist in cases where the early termination of the contract was due to overdue payables, the DRC may decide to increase the "*additional compensation*" up to a maximum of the equivalent of six monthly salary payments. "*Egregious circumstances*" is a new term in the Regulations and has no specific definition. Much like "*abusive conduct*" in article 14 paragraph 2, it is designed to be deliberately broad.

Egregious circumstances might be cited, for example, if, in addition to not being paid in accordance with their contract, a player were:

- forced to train alone;
- banned from the training facilities and/or evicted from their accommodation;
- deprived of their passport by the club; or
- refused an exit visa to leave the country in which their club is based.

Equally, a track record of illegal behaviour or violations of previous contracts might also prompt the DRC to consider whether a club's behaviour qualified as "*egregious circumstances*".

In a November 2018 decision,[296] the DRC considered the confiscation of a player's passport to be an example of an egregious circumstance, and therefore increased the additional compensation to the maximum amount. In a May 2019 decision,[297] the DRC awarded the maximum additional compensation to a player because it considered the fact the

294 DRC decision of 11 April 2019, 04191403-E; DRC decision of 11 April 2019, 04190046-E; DRC decision of 11 April 2019, 04191794-E.

295 DRC decision of 11 April 2019, 04191403-E.

296 DRC decision of 15 November 2018, no. 11181176-E.

297 DRC decision of 9 May 2019, no. 05192103.

club had promised to register the player by the end of the registration period at the latest, but ultimately failed to do so, to be an egregious circumstance. In that case, the DRC decided that the player had been seriously deceived as in practical terms, the failure to register the player deprived him of any prospect whatsoever of accessing competitive football, thus violating one of his fundamental rights as a footballer.

In a June 2020 decision, a player was awarded the maximum additional compensation after he legitimately terminated his contract unilaterally due to overdue payables. In this case, the DRC considered the fact that he had been excluded from the team and forced to train alone qualified as an egregious circumstance.[298]

Similarly, in an April 2020 decision, the DRC awarded a player additional compensation of one month salary on the basis that the club had caused him undue stress by deliberately excluding him from the club's training camp abroad and forcing him to remain in the country where the club was based. Moreover, he was granted just 15 days of holiday, while his teammates were permitted 30 days of leave. On top of that, the player had been made to vacate his apartment, since the club failed to pay the rent on the property as they had agreed to do in their contract with the player.[299]

Limit on total compensation

In its last sentence, the *lex specialis* specifies that the total compensation will in any case be limited to the residual value of the prematurely terminated contract.[300] This is in line with the principle of equal treatment, in the sense that a player that did not find a new employment contract and a player that did find a new employment contract are both able to receive the maximum amount of compensation corresponding to the residual value of the relevant contract.

298 DRC decision of 4 June 2020, Malik.

299 DRC decision of 23 April 2020, Batna.

300 Example: Player X signs a 12-month contract with club A. The agreed monthly salary amounts to 10,000. The player prematurely terminates the contract with just cause after 6 months for overdue payables. The player is able to find new employment with club B during 5 of the relevant 6 months, with a monthly salary of 5,000. The "Mitigated Compensation" would be 35,000 (residual value of the old contract, 60,000, minus remuneration received under new contract, 25,000). Theoretically the guaranteed "additional compensation" would be 30,000 (three monthly salaries), which would lead to a total compensation of 65,000. Since the overall compensation may never exceed the rest value of the prematurely terminated contract, the player will, however, only be entitled to 60,000 in compensation.

c) JOINT AND SEVERAL LIABILITY

Article 17 paragraph 2 establishes the financial responsibilities of a player's new club in the event the player is ordered to pay compensation to their former club for breach of contract. It also includes a prohibition against any attempt to assign an entitlement to compensation to a third party.

i) Entitlement to compensation

An entitlement to compensation for breach of contract cannot be assigned to a third party. In other words, the entitlement to compensation for a breach of contract is exclusively in favour of the party that has suffered because of the breach.

Only a player or a club deemed to be entitled to compensation for a breach of contract following unilateral termination of a contract is entitled to lodge a claim before the DRC; they are the only parties with the necessary standing to sue.

ii) Joint and several liability of the player and his new club

Whenever a professional player must pay compensation to a club for a breach of contract, the player's new club will be jointly and severally liable to pay that compensation.

Article 17 paragraph 2 is aimed at avoiding any debate or evidentiary difficulties regarding any potential involvement of the new club in the breach of contract. It makes clear that the new club will be held liable, together with the player, to pay the compensation due to the player's former club, regardless of whether the club provided any inducement to the player to breach their contract, and without considering its good or bad faith. Equally, this provision gives the player's former club that was damaged because of the breach of contract, a stronger additional guarantee that the compensation the player is required to pay *will in fact* be paid. It also contributes to contractual stability and assists the player's former club in repairing the damage it has suffered.

Paragraph 2 is accordingly interpreted as providing the new club with standing to be sued; a presumption is created that the new club must be involved in a matter (whether *ex officio* or upon request).

Paragraph 2 is primarily designed to benefit players. However, it also considers that a club that is willing and ready to sign a player after they have left their previous club prior to the ordinary expiry of their contract (without reaching any mutual agreement), and potentially without having had any valid reason to leave, may acquire the player's services even if it did not induce the player to break their previous contract

in any way. Hence, while paragraph 2 relieves the financial and sporting burden on the player on the one hand, it also helps to prevent the unjust enrichment of the new club, which would otherwise profit from the breach of contract committed by the player.

1) The general rule

According to the consistent jurisprudence of the DRC,[301] the joint and several liability of the professional player and their new club is automatic. The new club will automatically be responsible, together with the player, for paying compensation to the player's former club, regardless of any involvement in, or inducement to, the breach of contract. This means that the joint and several liability is not dependent on any fault, guilt, or negligence on the part of the new club.

The strict liability imposed on new clubs by the DRC in such situations has been confirmed by CAS on various occasions.[302] It has been deemed applicable even if the player joined the new club only after a considerable period following the contractual breach.[303]

When determining which club is to be regarded as the player's new club for these purposes, the approach has consistently been to identify the club with which the player was first registered following the breach of contract.[304]

In an interesting Award,[305] CAS considered that the joint and several liability should apply even to loans, and that a parent club may be considered a "*new club*". In this case, a player had signed a multi-year contract with his club. During the term of that agreement, the player joined another club on loan. However, the loan contract signed between the latter club and the player was then prematurely terminated by the player, without just cause. At the end of the originally agreed loan period, the player returned to his parent club. In its ruling, the Panel referred, in particular, to the fact that the joint and several liability of the new club not only makes it more likely that any potential compensation will in fact be paid than it would be if only the player were liable, but also

301 DRC decision of 20 May 2020, Diaz; DRC decision of 18 June 2020, Cinari; DRC decision of 18 June 2020, da Silva Barbosa; DRC decision of 25 February 2020, Meleg.

302 CAS 2006/A/1075 Al Dhafra v. Zakaria & FC Istres; CAS 2006/A/1141 Moises Moura Pinheiro v. FIFA & PFC Krilya Sovetov; CAS 2007/A/1298 Wigan Athletic FC v. Heart of Midlothian, CAS 2007/A/1299 Heart of Midlothian v. Webster & Wigan Athletic FC, CAS 2007/A/1300 Webster v. Heart of Midlothian; CAS 2015/A/4111 Birmingham City FC v. Club Atlético Boca Juniors, CAS 2015/A/4116 Club Atlético Boca Juniors v. Birmingham City FC; CAS 2016/A/4408 Raja Club v. Baniyas FC & Ismail Benlamalen; CAS 2018/A/5693 & 5694 Riga FC and FC Partizan v. Cedric Kouame and FIFA.

303 CAS 2013/A/3149 Avai FC v. FIFA and Bursaspor and Marcelo Rodrigues.

304 CAS 2013/A/3149 Avai FC v. FIFA and Bursaspor and Marcelo Rodrigues.

305 CAS 2016/A/4408 Raja Club v. Baniyas FC & Ismail Benlamalen.

provides the player's new club with a better starting point from which to take action against the player, whose debt it will have paid on the player's behalf. In light of these considerations, CAS concluded that the player's parent club, as his new club following the breach of contract, should be held jointly and severally liable for the compensation due to the club that the player had joined on loan, along with the player himself.

The primary debtor for the payment of the compensation due because of the breach of contract is, and remains, the professional player. This is reflected in a recent CAS Award.[306] In this case, the DRC had ordered a player to pay compensation for breach of contract to his previous club. The player's new club was deemed jointly and severally liable for the payment of the compensation. Only the player (and not the new club) appealed the DRC decision, which led to the DRC decision becoming final and binding on the new club. The player's appeal was partially upheld at CAS, which considerably reduced the amount of compensation due. The new club then paid the compensation as stipulated in the Award. The player's former club tried to enforce the higher compensation payment handed down by the DRC against the new club. The FIFA Disciplinary Committee accepted the former club's enforcement request and sanctioned the new club for failing to comply with the DRC decision, as opposed to that made by CAS.

The player's new club then appealed this decision of the Disciplinary Committee to CAS. In the Award concerning the appeal, CAS overturned the Disciplinary Committee decision, and held that even if the new club had not appealed the original DRC decision, its liability was inseparably tied to that of the player. Accordingly, since the club had paid compensation as per the CAS Award, it was deemed to have complied with its obligations.

2) Exceptions

"Mutu"

A dispute involving the famous player Adrian Mutu, which became known as the "*Mutu saga*", occupied decision-making bodies at various levels and in several countries for more than a decade as they considered the matter from a wide variety of different angles. It is significant in respect of joint and several liability because CAS deemed that his case was an exception to the rule that the new club should automatically be held jointly and severally liable for payment of compensation due by a player to his previous club because of a breach of contract.[307]

306 CAS 2019/A/6233 Al Shorta Sports Club v. FIFA & Dalian Yifang FC.

307 CAS 2013/A/3365 Juventus FC v. Chelsea FC and CAS 2013/A/3366 A.S. Livorno Calcio S.p.A. v. Chelsea FC.

In 2003, after he tested positive for cocaine following doping control, Mutu was dismissed by his then-club, Chelsea FC of England. It was ruled that the decision to terminate his contract prematurely and unilaterally on the part of the English club had been made with just cause. Chelsea FC went on to seek and obtain a decision instructing the player to pay them compensation for breach of contract. Once the relevant judgment had become final and binding, the English club invoked the joint and several liability of the player's new club following the termination of the contract. The new club's liability was confirmed by the DRC.

The matter was appealed at CAS. In its judgment, the Panel acknowledged the objectives and motivation behind article 17 paragraph 2. Specifically, CAS recognised that it serves a legitimate purpose and that there is usually no need for the new club to be at fault or to have acted negligently for it to apply. It also pointed out that the provision on joint and several liability was a deterrent to any club that might be tempted to induce a player to breach their contract. However, in the eyes of the Panel, this deterrent had no purpose in a case like Mutu's, where a player is dismissed by their former club and is left with no option but to find a new one. Consequently, the Panel found that the joint and several liability of the new club should not apply where the club (employer) decides to dismiss a player with immediate effect, where that player has no intention of leaving the club to sign with another club, and where the new club has not committed any fault and/or was not involved in the termination of the employment relationship between the former club and the player. The Panel also noted that if the former club had attached any value to the player (in this case, Mutu), it would have considered transferring him to another club.

For the sake of good order, this Award was based on the 2001 edition of the Regulations, and the provisions concerning the joint and several liability of players and their new clubs in respect of compensation for breach of contract were drafted differently.[308] However, the Panel's reasoning would still seem to be applicable to the current wording; indeed, a more recent Award ("*Aziz Abdul*"), which will be discussed below,[309] makes explicit reference to it. On the other hand, it should be emphasised that the "Mutu" approach is not applicable if a player terminates their contract without just cause to join a new club.[310]

308 While under the current wording the joint and several liability of the new club for the payment of compensation due by the professional player to his previous club arises together with the decision obliging the professional player to pay compensation, the 2001 edition of the Regulations stated that the professional player would have to pay the due compensation within one month. If the player was registered for a new club and had not paid the due compensation within the mentioned one-month time limit, then the new club was deemed jointly responsible for the payment of the relevant compensation.

309 CAS 2017/A/4977 Smouha SC v. Ismaily SC & Aziz Abdul & Club Asante Kotoko FC & FIFA.

310 CAS 2015/A/4111 Birmingham City FC v. Club Atlético Boca Juniors, CAS 2015/A/4116 Club Atlético Boca Juniors v. Birmingham City FC; CAS 2016/A/4408 Raja Club v. Baniyas FC & Ismail Benlamalen.

"Diarra"

A further exception was made by the DRC in a dispute involving FC Lokomotiv Moscow and Lassana Diarra.[311]

Diarra signed a four-year contract with Lokomotiv in August 2013, but the relationship between the parties was characterised by a series of destabilising incidents, the first of which took place early in the contractual relationship. The situation deteriorated over time, and in August 2014 the Russian club decided to unilaterally to terminate the contract, particularly in view of several unauthorised absences on Diarra's part. The DRC found that the club had just cause to terminate the contract and instructed the player to pay compensation for breach of contract.

With respect to the application of the joint and several liability of the new club, the DRC noted that, following the termination of the contract by the club, the player did not find a new club and remained unemployed at the time of the DRC decision. Therefore, in principle, article 17 paragraph 2 could not be applied. Furthermore, the DRC stated that *"considering the time which elapsed between the date of the termination of the contract and the date on which the present decision was passed, and while taking into account the principle of legal certainty, according to which, after the passing of a decision, all parties to a dispute should be aware of the consequences of their behaviour,* [...] *since as at the time this decision is made there is no club with which the player has registered, article 17 paragraph 2 of the Regulations should also not apply in future, should the player find a new club."*

Although an appeal was lodged against the relevant decision, CAS did not have to express its views on this issue within the scope of those proceedings.[312]

"Aziz Abdul"

In an Award concerning the player Aziz Abdul,[313] CAS considered that truly exceptional circumstances were at play, justifying its decision not to apply the principle of automatic joint and several liability.

The player was under contract with the club Asante Kotoko ("*Kotoko*"). The latter negotiated a potential transfer of the player to Ismaily SC ("*Ismaily*"). During these transfer negotiations, the player signed a contract with Ismaily. At the same time, Kotoko negotiated a potential deal to transfer him to Smouha SC ("*Smouha*") and, ultimately, signed a full transfer agreement with Smouha. The player then went on to sign a contract with Smouha, and Smouha paid the agreed transfer fee to Kotoko.

311 DRC decision of 10 April 2015, no. 04151519.

312 CAS 2015/A/4094 Lassana Diarra v. FC Lokomotiv Moscow.

313 CAS 2017/A/4977 Smouha SC v. Ismaily SC & Aziz Abdul & Club Asante Kotoko FC & FIFA.

In view of these facts, Ismaily lodged a claim against the player for breach of contract. The DRC partially accepted the claim and found that the player had concluded a valid contract with Ismaily, which he had indeed gone on to breach. Consequently, he was instructed to pay compensation and Smouha, as the player's new club, was jointly and severally liable for the amount due.

When this ruling was appealed, the Panel was asked to address the question of the joint and several liability of the new club. In this respect, it agreed with principles established in jurisprudence, namely that joint and several liability should apply automatically, that this mechanism serves a legitimate purpose, and that there is no requirement for the new club to be at fault for it to apply. In support of this, it recalled the reasons justifying the automatic application of article 17 paragraph 2, and specifically to the fact it gives the club that suffers damage an additional guarantee that the compensation will be paid; that the player is relieved of a financial burden; that it prevents the unjust enrichment of the new club; that it helps to provide contractual stability; and, last but not least, that it avoids evidentiary difficulties associated with an attempt to establish the new club's involvement in the breach. The Panel also pointed out that the automatic joint and several liability stipulated in article 17 paragraph 2 is not illegal *per se*, as confirmed by the Swiss Federal Tribunal.[314]

At the same time, however, it acknowledged that exceptions had been made in the past, referencing "*Mutu*" and "*Diarra*". The Panel deemed that the application of article 17 paragraph 2 required the presence of at least one of the justifications mentioned in the previous paragraph. It found that Kotoko had not suffered any damage, since it had received the agreed transfer fee from Smouha. Ultimately, the player did not have to pay anything, since he succeeded in a separate appeal against the DRC decision. Finally, Smouha did not profit from the breach of contract, since it paid a transfer fee, and consequently, there was no unjust enrichment.

Based on all the above, the Panel concluded that truly exceptional circumstances were at play, and this justified the decision not to apply the principle of automatic joint and several liability.

314 SFT in 4A_32/2016; also in CAS 2018/A/5693 & 5694 Riga FC and FC Partizan v. Cedric Kouame and FIFA.

d) SPORTING SANCTIONS

I. General remarks

Article 17 paragraph 4 gives the DRC the power to impose sporting sanctions. The option to apply sporting sanctions further strengthens the relationship between a professional player and their club and serves as an additional deterrent for clubs and players who may be considering terminating a contract unilaterally or deliberately failing to comply with their contractual obligations.[315]

II. The protected period

The definition of the *"protected period"* is repeated here:

> "A period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional."

The duration of the protected period varies depending on the age of the player when the contract is concluded (as distinct from when the contract enters into force). This distinction was included because older players tend to sign shorter contracts.

The protected period starts with the execution of the contract. In this regard, if a contract is signed for a duration equal to or shorter than the relevant protected period under the Regulations, its entire term will be "protected".

The imposition of sporting sanctions only needs to be considered if the breach occurs during the protected period of the contract. In summary, if the contract is terminated, either by the professional player or by the club, without just cause during the protected period, or if the professional player or the club seriously breaches their contractual obligations to the extent that the counterparty has just cause to terminate the contractual relationship during the protected period, then the party at fault will be obliged to pay compensation, and additional sporting sanctions may be applied. If, however, the breach of contract occurs after the protected period has elapsed, sporting sanctions will, in principle, not be applied.

315 CAS 2019/A/6463 & 6464 Saman Ghoddos v. SD Huesca & Östersunds FC & Amiens Sporting Club & FIFA, Östersunds FK Elitfotboll AB v. SD Huesca & FIFA & Saman Ghoddos & Amiens Sporting Club.

If an existing contract is renewed, the protected period restarts. If a player and a club decide to prolong their contractual relationship by extending a valid contract, rather than waiting for it to expire and drawing up a new one, the renewed contract will, in principle, be treated as if they had signed a new contract rather than extending the old one. Contract extensions usually bring with them amendments to various terms of the existing contract, often including improved financial conditions for the player. However, time is the key factor to be considered and thus, amendments to an existing contract do not affect the protected period unless they affect the term of the contract.

The early termination of a contract without just cause, or a severe and unjustified breach of contractual obligations, is in principle an illegitimate act that will lead to consequences, regardless of whether this act takes place during or after the protected period. It is only *the nature* of these consequences that differs depending on whether the act takes place during the protected period or afterwards.

III. Discretionary nature of sporting sanctions

Despite the wording of the Regulations, the DRC's consistent jurisprudence suggests it has a certain margin of discretion in this regard. It interprets the Regulations as granting it the *power* to impose sporting sanctions, rather than placing it under an obligation to do so. Indeed, the DRC has regularly decided not to impose sporting sanctions on both players and clubs, even where breaches of contract have occurred during the protected period.[316]

CAS has repeatedly and consistently confirmed this approach.[317] For sporting sanctions to be imposed, the specific circumstances surrounding the behaviour of the party in breach must justify sporting sanctions.[318] In other words, a flexible, case-by-case approach is legitimate.[319]

In one significant Award,[320] CAS confirmed that the imposition of sporting sanctions was not mandatory, but stated that only specific circumstances could justify a decision not to apply sporting sanctions. If such sanctions were imposed, the party against which those sanctions were directed would need to demonstrate that these specific circumstances were at play to challenge the sanctions.

316 DRC decision of 20 May 2020, Diaz; DRC decision of 25 February 2020, Capemba; DRC decision of 25 February 2020, Meleg.

317 CAS 2007/A/1358 FC Pyunik Yerevan v. Carl Lombe, AFC Rapid Bucaresti & FIFA and CAS 2007/A/1359 FC Pyunik Yerevan v. Edel Apoula Edima Bete, AFC Rapid Bucaresti & FIFA; CAS 2014/A/3568 Equidad Seguros v. Arias Naranjo & Sporting Clube de Portugal & FIFA; CAS 2014/A/3765 Mersin Idmanyurdu Spor Kulübü v. Mr David Bicik & FIFA; CAS 2017/A/5011 Eskisehirspor Külübu v. Sebastian Perurena & FIFA.

318 CAS 2014/A/3460 Rogério de Jesus Abreu v. SFK Pierikos & FIFA.

319 CAS 2016/A/4550 & CAS 2016/A/4576 Darwin Zamir Andrade Marmolejo v. Club Deportivo La Equidad Seguros S.A. & FIFA and Ujpest 1885 FC v. FIFA; CAS 2017/A/4935 FC Shakhtar Donetsk v. Olexander Vladimir Zinchenko, FC Ufa & FIFA.

320 CAS 2014/A/3754 Mettalurg Donetsk FC v. FIFA & Marin Anicic.

With respect to the imposition of sporting sanctions on clubs, the concept of "repeat offenders" has gained particular importance. Over time, the DRC began to observe that purely financial sanctions were not proving a sufficient deterrent for certain clubs. This meant urgent action had to be taken with a view to applying stricter sporting sanctions against these clubs. As a result, the DRC has established jurisprudence according to which sporting sanctions are regularly applied against clubs found to have terminated a contract without just cause or having seriously breached contractual obligations such that a player has just cause to terminate their contract, at least four times in the two years preceding the DRC decision concerned.[321]

CAS has supported this approach,[322] finding that a repeat offence should be viewed as a decisive and extremely serious aggravating factor in any wrongdoing.[323] The fact that clubs (and players) sometimes benefit from lenient approach of the DRC does not imply that sporting sanctions should not be applied in some cases, and four previous instances of unjustified breach of contract are sufficient to qualify as an "aggravating circumstance" allowing sporting sanctions to be imposed. Furthermore, a decision to award only limited financial compensation for breach of contract does not preclude the application of sporting sanctions.[324]

Bearing in mind the above, the discretion relating to the application of sporting sanctions is limited to deciding whether to impose them. If sporting sanctions are imposed, the DRC cannot impose a penalty below that established in the Regulations, for example by deciding to suspend a player for only three months or to limit a registration ban on a club to just one registration period.[325]

CAS has confirmed this on several occasions.[326] In particular, it has stated that there is no discretion as to the severity of the sanctions imposed.[327] Equally, it has found that article 17 of the Regulations contains no provision for reducing the stipulated sporting sanctions.[328]

CAS has also confirmed that decisions as to whether sporting sanctions should be imposed are made at the DRC's discretion, and they have the power to impose them regardless of any requests from the parties to the dispute.

321 DRC decision of 12 February 2020, de Jesus; DRC decision of 27 February 2020, Fortunato; DRC decision of 15 February 2018, no. 02182231-E.

322 CAS 2014/A/3765 Mersin Idmanyurdu Spor Kulübü v. Mr David Bicik & FIFA; CAS 2014/A/3740 PFC CSKA Sofia v. Nilson Antonio de Veiga Barros & FIFA; CAS 2015/A/4220 Club Samsuspor v. Aminu Umar & FIFA; CAS 2017/A/5056 Ittihad FC v. James Troisi & FIFA.

323 CAS 2017/A/5011 Eskisehirspor Külübu v. Sebastian Perurena & FIFA; cf. also CAS 2017/A/5068 Balikesirspor FC v. Josip Tadic & FIFA.

324 CAS 2014/A/3797 Khazar Lankaran Football Club v. FIFA.

325 DRC decision of 27 August 2009, no. 89733; DRC decision of 16 April 2009, no. 49194; DRC decision of 10 August 2007, no. 871322.

326 CAS 2017/A/5011 Eskisehirspor Külübu v. Sebastian Perurena & FIFA.

327 CAS 2014/A/3765 Mersin Idmanyurdu Spor Kulübü v. Mr David Bicik & FIFA.

328 CAS 2011/A/2656 Gastón Nicolás Fernández v. FIFA & Club Tigres de la UANL, CAS 2011/A/2657 Club Estudiantes de la Plata c. FIFA & Club Tigres de la UANL, CAS 2011/A/2666 Club Tigres de la UANL v. Gastón Nicolás Fernández & Club Estudiantes de la Plata.

IV. Sporting sanctions against a player

The sporting sanction to be imposed on a player in the event of breach of contract during the protected period consists of a four-month ban on playing in official matches, extending to six months where there are "*aggravating circumstances*". To this day, the DRC has only deemed it appropriate to impose the more severe sporting sanction on a player once.[329] In that case, the player had first breached his contract with one club, then gone on to breach his contract with the club he joined after leaving that club (i.e. he had breached two consecutive contracts). Moreover, both breaches took place within the protected periods of the contracts concerned and were separated by less than 18 months. In the subsequent appeal proceedings, CAS confirmed that aggravating circumstances existed, and that the player should be suspended for six months.[330]

Sporting sanctions take effect immediately once the player has been notified of the relevant decision(s). However, the sporting sanction is suspended during the period between the last official match of the previous season and the first official match of the new season (i.e. the period in which the player's club has no competitive matches to play). This is to prevent the player from lessening their punishment by sitting out their ban (or part of it) when their team is not competing.

The suspension of the sporting sanction does not apply if the player is an established member of the representative team of the member association they are eligible to represent, and if that member association is participating in the finals of an international tournament in the period between the two club seasons. The reason for this rule should be obvious: if a player is not able to play for their representative team in a final competition due to the imposition of a sporting sanction as per article 17 paragraph 3, the period during which the competition takes place should count against the duration of the sporting sanction. As such, if the member association concerned is not taking part in a final tournament during the break between two seasons, the sporting sanction against the individual player will, as per the general rule, be suspended in the period between the last official match of the season and the first official match of the following season. This means that the close season will not count against the ban the player is required to serve, but, on the other hand, the player will be allowed to play for their representative teams in any individual official matches (as well as any friendlies) that may be arranged during that period.

The last issue to be clarified is the definition of *"an established member of the[ir] representative team"*. A player can only be considered "*established*" if they have been regularly called up by their representative team for the qualifying matches for the relevant international tournament, and if they could objectively be expected to be called up for the finals, were it not for the sporting sanction imposed on them under article 17 paragraph 3.

329 DRC decision of 2 November 2007, no. 117923.
330 CAS 2008/A/1448 S. & Zamalek SC v. PAOK FC & FIFA.

V. Sporting sanctions against a club

The sporting sanction that can be imposed on a club found to be in breach of contract consists of a ban on registering any new players, either nationally or internationally, for two entire and consecutive registration periods.

The imposition of a registration ban represents a severe punishment for the club, since it has a direct impact on its competitiveness in national and international club competitions. Indeed, this measure is perceived to be so stringent that, contrary to the equivalent rule applicable to players, there is no requirement to impose even more severe sanctions where are aggravating circumstances are at play.

This sporting sanction takes effect at the beginning of the first registration period following the notification of the decision, as set by the member association to which the club is affiliated. Only *entire* registration periods count against the duration of the sporting sanction. This means that if a club is notified of the relevant decision while a registration period is open, the club will still be able to register players during that registration period, and the sporting sanction will take effect as of the next full registration period. If the effect of the sporting sanction is suspended (for example because of an appeal) during an open registration period, the club concerned will be able to register players during the remainder of that registration period. However, if the suspension is ultimately lifted, that registration period will not count against the duration of the sporting sanction.

The rationale is that, in principle, a club only needs access to an open registration period for one day to benefit from that registration period. That one day is potentially enough to register players, and thus to render the sporting sanction *de facto* ineffective. Consequently, applying a registration ban to portions of a registration period would undermine the effect of the sanction concerned.

As regards the end of a sporting sanction imposed on a club, the club may register new players, either nationally or internationally, from the next registration period after the sanction expires. This explicit rule was added to prevent abuse. On the one hand, it prevents the club from registering professional players who are out of contract prior to the last registration period affected by the sporting sanction. On the other, it also stops the club circumventing their punishment by registering a player before the first registration period after their ban opens. This means the club will be unable to sign a player who terminates their previous contract with just cause and is authorised to register with a new club while the relevant registration period is closed.

e) INDUCEMENT TO BREACH OF CONTRACT BY THE NEW CLUB

Article 17 paragraph 4 of the Regulations explicitly states that sporting sanctions should be imposed on any club found to have induced a breach of contract. Clearly, such behaviour is neither permitted nor acceptable under any circumstances. There is no doubt that the premature termination of an existing contract without just cause undermines the principle of contractual stability, and the same can certainly be said of a club approaching a professional player and inducing them to breach an existing contract.

Inducement to a breach of contract is regarded as accessory to the actual breach. This fundamental principle leads to two main conclusions. Firstly, where there is no claim for breach of contract against a professional player, there cannot be a claim for inducement to such a breach against any club. In other words, it is not possible to pursue an action against the club for inducement to breach of contract without acting against the player for their *actual* breach of contract. Secondly, and as explicitly stated in the Regulations, the relevant sporting sanction may only be imposed on the new club that induced a breach of contract if the player concerned terminates their contract without just cause during the protected period. After all, it would not be appropriate to punish the instigator more severely than the party who committed the breach. As already explained, sporting sanctions against a player for prematurely terminating their contract without just cause may only be imposed if the breach occurs during the protected period.

The relevant wording contains a regulatory presumption which leads to the reversal of the burden of proof. Unless proven otherwise, it is presumed that any club that signs a professional player who has terminated their contract without just cause has induced that professional player to commit a breach of contract. In other words, it is not down to the former club to prove the inducement took place; rather, it falls to the new club to provide evidence that, despite having signed the professional player, it did not induce the latter to breach of contract.[331] This mechanism places an additional burden on any potential new club, with the aim of making them reconsider any plans to induce a player to breach a contract.

In the very first case concerning this matter before CAS,[332] the club's argument that no inducement had taken place was not considered sufficient to prove they had not induced the player to breach their contract. A Panel reached the same conclusion in a more recent matter.[333] In this case, the Panel remarked that the new club failed to provide any conclusive evidence that it did not induce the player unilaterally to terminate their previous

331 DRC decision of 27 August 2009, no. 89733; DRC decision of 16 April 2009, no. 49194; DRC decision of 15 May 2009, no. 59674; DRC decision of 4 April 2007, no. 47932C; DRC decision of 30 November 2007, no. 117294; DRC decision of 18 June 2020, Cinari; DRC decision of 18 June 2020, da Silva Barbosa.

332 TAS 2005/A/916 AS Roma c. FIFA.

333 CAS 2016/A/4550 & CAS 2016/A/4576 Darwin Zamir Andrade Marmolejo v. Club Deportivo La Equidad Seguros S.A. & FIFA and Ujpest 1885 FC v. FIFA.

contract. In its view, *"The circumstances surrounding the termination of the Employment Contract by the Player…"* in fact actively demonstrated *"…the involvement of* [the new club] *from the very beginning."* This conclusion was based on a detailed analysis of the sequence of events preceding the player's signing of their contract with the new club.

However, this is not to say that the regulatory presumption cannot be rebutted. The potential to do so has also been confirmed by CAS.[334] In that case, the Panel considered the timeline in the run-up to the conclusion of the employment contract between the player and his new club and concluded that, under the circumstances, the new club could not have known about the agreement between the player and his previous club at the time at which they signed their own employment contract with the player. What happened after the new club and the player signed their employment contract was considered irrelevant in assessing whether any inducement took place.

In another significant Award,[335] while fully confirming the decision of the DRC, CAS underlined that the presumption does indeed cover *any* club. In this matter, following the unjustified early termination of his previous contract, the player concerned concluded a series of new employment contracts with several different clubs, but only actually registered with one of them. The only club with which the player was formally registered was finally sanctioned by the DRC for inducement to breach of contract. In this respect, the Panel agreed that article 17 paragraph 4 had to be applied to *"the first and only club with whom the Player's transfer was fully implemented and executed".*

Finally, any decision to impose sporting sanctions against a club found to have induced a professional player to breach their existing contract is always *in addition* to the new club being jointly and severally liable for any compensation payable by the professional player to their former club for the unjustified early termination of their contract.

f) INDUCEMENT TO BREACH OF CONTRACT BY ANY OTHER PERSON

Inducing a player or a club to breach an existing valid contract is against the very principle and spirit of contractual stability and cannot be tolerated. This principle applies not only to clubs, but also to any other person subject to the FIFA Statutes and regulations. Consequently, sanctions will be imposed on any such person if they act in a manner designed to induce a breach of contract between a professional and a club to facilitate the transfer of the player concerned.

334 CAS 2015/A/3953 & 3954 Stade Brestois 29 & John Jairo Culma v. Hapoel Kiryat Shmona FC & FIFA.

335 CAS 2016/A/4550 & CAS 2016/A/4576 Darwin Zamir Andrade Marmolejo v. Club Deportivo La Equidad Seguros S.A. & FIFA and Ujpest 1885 FC v. FIFA.

In practice, article 17 paragraph 5 has only ever been applied once, in relation to a former licenced agent found to have contributed to one of his players breaching his contract. The case was heard in February 2006, and the agent's licence was suspended for six months. An appeal was lodged with CAS, but it was later withdrawn.

Contrary to the provision concerning clubs inducing a player to a breach of contract, there is no regulatory presumption reversing the burden of proof in relation to cases involving individuals. This means that it falls to the former club to prove the illegitimate involvement of the person concerned, rather than the latter being required to prove they have done no wrong.

17.2. Relevant jurisprudence

DRC decisions

Proportionality of liquidated damages clauses

- DRC decision of 26 November 2004, no. 114796
- DRC decision of 12 January 2006, no. 16394
- DRC decision of 21 February 2020, Malango
- DRC decision of 11 April 2019, no. 04190658
- DRC decision of 20 May 2020, Miramar
- DRC decision of 10 December 2020, Cueva Bravo
- DRC decision of 28 January 2021 Anangono Leon
- DRC decision of 28 April 2021, Rodrigues da Silva
- DRC decision of 29 March 2018, 03180370_E

Reciprocity of compensation clauses

- DRC decision of 5 December 2019, Patino Lachica
- DRC decision of 11 March 2021, Gomes de Sousa
- DRC decision of 25 March 2021, Pesic
- DRC decision of 9 February 2017,02171238_E (CAS2017/A/5242)
- DRC decision of 13 July 2017, 07170126_E (CAS 2017/A/5366)

Calculating compensation due by a player to a club

- DRC decision of 18 June 2020, Cinari
- DRC decision of 21 February 2020, Malango
- DRC decision of 20 May 2020, Diaz
- DRC decision of 17 January 2020, Ayala
- DRC decision of 18 June 2020, da Silva Barbosa
- DRC decision of 25 March 2021, Khacef
- DRC decision of 28 April 2021, Henriquez

Egregious circumstances

- DRC decision of 15 November 2018, no. 11181176-E
- DRC decision of 9 May 2019, no. 05192103
- DRC decision of 4 June 2020, Malik
- DRC decision of 23 April 2020, Batna
- DRC decision of 18 February 2021 , De Paula (2)
- DRC decision of 9 May 2019, no. 05192103_E

Joint and several liability

- DRC decision of 10 April 2015, no. 04151519

Repeat offenders

- DRC decision of 12 February 2020, de Jesus
- DRC decision of 27 February 2020, Fortunato
- DRC decision of 15 February 2018, no. 02182231-E

Inducement to breach of contract by new club

- DRC decision of 18 June 2020, Cinari
- DRC decision of 18 June 2020, da Silva Barbosa
- DRC decision of 25 March 2021, Khacef

CAS Awards

Consequences of article 17 also applicable to termination with just cause in the event of breach of contract by the other party

- CAS 2012/A/2910 Club Eskisehirspor v. Kris Boyd
- CAS 2012/A/2775 Al-Gharafa SC v. Hakan Yakin & FC Luzern
- CAS 2010/A/2202 Konyaspor Club Association v. J.; CAS 2012/A/3033 A. v. FC OFI Crete

Examples of liquidated damages clauses

- CAS 2017/A/5242 Esteghlal Football Club v. Pero Pejic
- CAS 2016/A/4826 Nilmar Honorato da Silva v. El Jaish FC & FIFA
- CAS 2016/A/4550 & CAS 2016/A/4576 Darwin Zamir Andrade Marmolejo v. Club Deportivo La Equidad Seguros S.A. & FIFA and Ujpest 1885 FC v. FIFA
- CAS 2013/A/3411 Al-Gharafa & Bresciano v. Al Nasr & FIFA

Calculation of compensation

- CAS 2008/A/1519 FC Shakhtar Donetsk (Ukraine) v. Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) & FIFA
- CAS 2008/A/1520 Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) v. FC Shakhtar Donetsk (Ukraine) & FIFA
- CAS 2009/A/1880 & 1881 FC Sion v. FIFA & Al-Ahly Sporting Club and El Hadary v. FIFA & Al-Ahly Sporting Club
- CAS 2012/A/2698 AS Denizlispor Kulübü Dernegi v. Wescley Pina Gonçalves
- CAS 2013/A/3411 Al Gharafa & Bresciano v. Al Nasr & FIFA
- CAS 2015/A/4046 Lizio & Bolivar v. Al Arabi
- CAS 2016/A/4560 Al Arabi SC Kuwait v. Papa Khalifa Sankaré & Asteras Tripolis FC
- CAS 2016/A/4843 Hamzeh Salameh & Nafit Meson FC v. SAFA Sporting Club & FIFA
- CAS 2018/A/6029 Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Marvin Renato Emnes
- CAS 2019/A/6171 Josué Filipe Soares Pesqueira v. Osmanlispor FK & CAS 2019/A/6175 Osmanlispor FK v. Josué Filipe Soares Pesqueira & Akhisar Belediyespor FC & FIFA
- CAS 2019/A/6337 Makism Maksimov v. FIFA & FC Trakai

- CAS 2019/A/6463 & 6464 Saman Ghoddos v. SD Huesca & Östersunds FC & Amiens Sporting Club & FIFA, Östersunds FK Elitfotboll AB v. SD Huesca & FIFA & Saman Ghoddos & Amiens Sporting Club
- CAS 2020/A/7093 Tractor Sazi Tabriz FC v. Anthony Christopher Stokes & Adana Demirspor KD
- CAS 2018/A/5925 Ricardo Gabriel Álvarez v. Sunderland AFC
- CAS 2020/A/6727 Benjamin Acheampong v. Zamalek Sports Club
- CAS 2020/A/6770 Sabah Football Association v. Igor Cerina
- CAS 2020/A/7231 Nejmeh Club v. Issaka Abudu Diarra

Proportionality of liquidated damages clauses

- CAS 2011/A/2656 Gastón Nicolás Fernández v. FIFA & Club Tigres de la UANL / CAS 2011/A/2657 Club Estudiantes de la Plata c FIFA & Club Tigres de la UANL / CAS 2011/A/2666 Club Tigres de la UANL v. Gastón Nicolás Fernández & Club Estudiantes de la Plata
- CAS 2015/A/4262 Pape Malickou Diakhate & Gestion Service Ltd. v. Granada CF, Bursaspor Kulübü, Kayseri Erciyesspor & FIFA and CAS 2015/A/4264 Granada CF v. Pape Malickou Diakhate, Bursaspor Kulübü, Kayseri Erciyesspor & FIFA
- CAS 2015/A/3999 & 4000 Diego de Souza v. Al Ittihad
- CAS 2020/A/6752 Club Atlético Independiente Fernando Amorebieta Mardaras v.
- CAS 2019/A/6521 & 6526 Osmanlispor FK v. Patrick Cabral Lalau & Club Atlético Mineiro and Patrick Cabral Lalau v. Osmanlispor FK

Reciprocity of compensation clauses

- CAS 2016/A/4605 Al-Arabi Sports Club Co. for Football v. Matthew Spiranovic
- CAS 2014/A/3656 Olympiakos Volou FC v. Carlos Augusto Bertoldi & FIFA
- CAS 2017/A/5366 Adanaspor v. Mbilla Etame Flavier
- CAS 2015/A/4124 Neftci PFK v. Emile Mpenza
- CAS 2014/A/3684 & 3693 Leandro da Silva v. Benfica
- CAS 2015/A/4067 Valeri Bozhinov v. Sporting de Portugal & 4068 Sporting de Portugal v. Valeri Bozhinov & Lev.ki Sofia
- CAS 2015/A/3999 & 4000 Diego de Souza v. Al Ittihad
- CAS 2015/A/4262 Pape Malickou Diakhate & Gestion Service Ltd. v. Granada CF, Bursaspor Kulübü, Kayseri Erciyesspor & FIFA and CAS 2015/A/4264 Granada CF v. Pape Malickou Diakhate, Bursaspor Kulübü, Kayseri Erciyesspor & FIFA

- CAS 2017/A/5242 Esteghlal Football Club v. Pero Pejic
- CAS 2019/A/6533 & 6539 Club Al Arabi S.C. v. Sérgio Dutra Junior & Sérgio Dutra Junior v. Al Arabi S.C. & FIFA
- CAS 2019/A/6626 Club Al Arabi S.C. v. Ashkan Dejagah
- CAS 2020/A/7011 Al Hilal Khartoum Club v. Mohamed El Hadi Boulaouida

"Buy-out" clauses

- CAS 2013/A/3411 Al-Gharafa & Bresciano v. Al Nasr & FIFA
- CAS 2019/A/6525 Sevilla FC v. AS Nancy Lorraine
- CAS 2020/A/7128 Sporting Clube de Portugal v. K.SV Cercle Brugge

Specificity of sport

- CAS 2018/A/5607 SA Royal Sporting Club Anderlecht v. Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba / CAS 2018/A/5608 Matías Ezequiel Suárez & Club Atlético Belgrano de Córdoba v. SA Royal Sporting Club Anderlecht
- CAS 2018/A/5925 Ricardo Gabriel Álvarez v. Sunderland AFC

Calculating compensation due by a player to a club

- CAS 2007/A/1298 Wigan Athletic FC v. Heart of Midlothian, CAS 2007/A/1299 Heart of Midlothian v. Webster & Wigan Athletic FC, CAS 2007/A/1300 Webster v. Heart of Midlothian
- CAS 2008/A/1519 FC Shakhtar Donetsk (Ukraine) v. Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) & FIFA, CAS 2008/A/1520 Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) v. FC Shakhtar Donetsk (Ukraine) & FIFA
- CAS 2009/A/1880 & 1881 FC Sion v. FIFA & Al-Ahly Sporting Club and El Hadary v. FIFA & Al-Ahly Sporting Club
- CAS 2009/A/1856-1857 Fenerbahçe Spor Kulübü v. Stephen Appiah & Stephen Appiah v. Fenerbahçe Spor Kulübü
- TAS 2009/A/1960-1961 LOSC Lille v. Tony Mario Sylva & Trabzonspor
- CAS 2010/A/2145-2147 Udinese Calcio v. Morgan de Sanctis & Sevilla FC
- CAS 2017/A/4935 FC Shakhtar Donetsk v. Olexander Vladimir Zinchenko, FC Ufa & FIFA
- CAS 2019/A/6463 & 6464 Saman Ghoddos v. SD Huesca & Östersunds FC & Amiens Sporting Club & FIFA, Östersunds FK Elitfotboll AB v. SD Huesca & FIFA & Saman Ghoddos & Amiens Sporting Club
- CAS 2020/A/7029 Association Sportive Guidars FC v. CSKA Moscou & Lassana N'Diaye

Joint and several liability

- CAS 2013/A/3365 Juventus FC v. Chelsea FC and CAS 2013/A/3366 A.S. Livorno Calcio S.p.A. v. Chelsea FC
- CAS 2017/A/4977 Smouha SC v. Ismaily SC & Aziz Abdul & Club Asante Kotoko FC & FIFA

Sporting sanctions

- CAS 2007/A/1358 FC Pyunik Yerevan v. Carl Lombe, AFC Rapid Bucaresti & FIFA and CAS 2007/A/1359 FC Pyunik Yerevan v. Edel Apoula Edima Bete, AFC Rapid Bucaresti & FIFA
- CAS 2017/A/5011 Eskisehirspor Kulübü v. Sebastian Perurena & FIFA
- CAS 2019/A/6463 & 6464 Saman Ghoddos v. SD Huesca & Östersunds FC & Amiens Sporting Club & FIFA, Östersunds FK Elitfotboll AB v. SD Huesca & FIFA & Saman Ghoddos & Amiens Sporting Club

Repeat offenders

- CAS 2017/A/5011 Eskisehirspor Kulübü v. Sebastian Perurena & FIFA
- CAS 2017/A/5068 Balikesirspor FC v. Josip Tadic & FIFA

Inducement to breach of contract by new club

- CAS 2016/A/4550 & CAS 2016/A/4576 Darwin Zamir Andrade Marmolejo v. Club Deportivo La Equidad Seguros S.A. & FIFA and Ujpest 1885 FC v. FIFA

Article 18 - Special provisions relating to contracts between professionals and clubs

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Article 18 - Special provisions relating to contracts between professionals and clubs

1. If an intermediary is involved in the negotiation of a contract, he shall be named in that contract.
2. The minimum length of a contract shall be from its effective date until the end of the season, while the maximum length of a contract shall be five years. Contracts of any other length shall only be permitted if consistent with national laws. Players under the age of 18 may not sign a professional contract for a term longer than three years. Any clause referring to a longer period shall not be recognised.
3. A club intending to conclude a contract with a professional must inform the player's current club in writing before entering into negotiations with him. A professional shall only be free to conclude a contract with another club if his contract with his present club has expired or is due to expire within six months. Any breach of this provision shall be subject to appropriate sanctions.
4. The validity of a contract may not be made subject to a successful medical examination and/or the grant of a work permit.
5. If a professional enters into more than one contract covering the same period, the provisions set forth in Chapter IV shall apply.
6. Contractual clauses granting the club additional time to pay to the professional amounts that have fallen due under the terms of the contract (so-called "grace periods") shall not be recognised. Grace periods contained in collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law shall, however, be legally binding and recognised. Contracts existing at the time of this provision coming into force shall not be affected by this prohibition.
7. Female players are entitled to maternity leave during the term of their contract, paid at the equivalent of two thirds of their contracted salary. Where more beneficial conditions are provided in the applicable national law in the country of their club's domicile or an applicable collective bargaining agreement, these beneficial conditions shall prevail.

18.1. Purpose and scope

To complement and complete the rules designed to maintain contractual stability between professional players and clubs, article 18 sets out several principles and norms in relation to contracts concluded between professional players and clubs.

a) INVOLVEMENT OF INTERMEDIARIES

With a view to improving transparency, as well as to make sure that relevant football authorities have as much detail as possible available to them in the event of a complaint or dispute, if an intermediary is involved in the negotiation of a contract between a professional and a club, the intermediary must be named in the contract.

This complements the Regulations on Working with Intermediaries which requires that clubs or players must ensure that any transfer agreement or employment contract concluded with the services of an intermediary bears the name and signature of such intermediary.[336]

This specific detail concerning the negotiation and conclusion of a contract is also reflected by the obligations imposed on clubs when creating instructions in TMS. The system requires them to enter the name of the intermediary or intermediaries used by the club, as well as those of any intermediary or intermediaries involved on behalf of the player.

b) PERMITTED DURATION OF A CONTRACT

As mentioned earlier, a specific feature of contracts signed between professionals and clubs is that they are always concluded for a predetermined period. To provide a certain degree of uniformity and harmonisation, the Regulations include several rules as to the maximum and minimum lengths of these contracts.

i) General rule

Article 18 paragraph 2 states that the minimum length of a contract between a player and their club should correspond to the period from the date on which the contract comes into effect until the end of the current season.

Excessively short contracts must be avoided for several reasons. Firstly, outlawing short contracts provides legal and economic certainty for individual players, as they can be safe in the knowledge that they will be employed at least until the end of the current national championship. At the same time, it provides clubs with the certainty they need to plan the sporting

336 Article 6 paragraph 2, Regulations on Working with Intermediaries.

development of their team(s). It also helps to protect the sporting integrity of competitions since, together with the registration periods, it limits clubs' ability to make changes to their squads during competitions. Finally, aligning the end of a contract with the end of the national championship will make it easier for players who are out of contract to find and register with a new club, since the expiry of their previous contract will normally coincide with the opening of a new registration period.

Article 18 paragraph 2 does not apply to contracts between professionals and clubs they join on loan. Employment contracts based on the loan of a player, by definition, only cover the duration of the loan. Given that the minimum loan period is the time between two successive registration periods, the minimum duration of a contract between a player and a club they join on loan should also be equivalent to the time between two consecutive registration periods.[337] In this respect, it should be emphasised that the end of the loan (and of the relevant employment contract concluded between the player and the new club) should coincide with an open registration period for the player's *parent club*. This is because loans are subject to the same rules and administrative procedures as apply to permanent transfers, which means the player must be registered for their parent club before they can play again after returning from a loan. If the loan expires when the parent club's registration period is closed, the player would have to wait until their parent club's next registration period opened before they could be registered.

Article 18 refers to the end of the season in general, rather than the end of any specific club's season. This wording prevents clubs from tying the validity of the contract to the duration of their participation in, for example, an end-of-season play-off played using a knock-out format. In other words, if a club does not qualify or is knocked out at the beginning of an end-of-season play-off, this does not bring forward the expiry of the player's contract, even though the club's season has effectively ended at this point. Allowing the club to bring the expiry date forward would undermine the legal and economic certainty the rules are designed to provide.

The maximum length of a contract is five years. This balances the interests of clubs and players. On the one hand, a player should not be bound to a club for an excessive period. Even given the requirement to maintain contractual stability, a player should still have the flexibility to react to development and career opportunities open to them. Bearing in mind the average duration of a professional footballer's career, five years represents an incredibly significant slice of a relatively small cake. Asking a player to commit to the same club for longer than this would appear disproportionate and would not allow the player adequate scope to react to changes in their own personal circumstances. On the other hand, a long-term contract of up

337 Example: The minimum length of a contract between the player A and the club B that he joins on loan, can be from July to December of a given year, in accordance with the term of the respective loan agreement, if club B and C (the parent club) agree to have the player temporarily moving to club B for the first half of the season only.

to five years offers the player a high level of legal and economic security, as well as continuity in terms of their own professional development. At the same time, this length of time permits clubs to undertake effective squad planning and management.

Contracts longer than five years are only permitted where the applicable national law permits fixed-term employment agreements to be executed for such periods.[338] In recent years, contracts lasting longer than five years have been a rarity.

In the event of a breach of contract, any compensation due will be calculated partly based on the time remaining on the contract that was breached, but only up to a maximum of five years. Clubs and players agreeing to longer-term deals should therefore be aware that any remaining term beyond five years will not be consideredin such cases.

ii) Players under the age of 18[339]

Greater importance is attached to enabling young players to react to their own circumstances and the career opportunities open to them, while continuing to respect the spirit of contractual stability. An excessively long tie to a specific club would therefore seem even more disproportionate in relation to a young player than to an established professional.

For this reason, and as an exception to the general rule, players under the age of 18 may not sign a professional contract for a term longer than three years. Any clause referring to a longer period will not be recognised. However, if a young player signs a contract for more than three years, this will not result in the entire contract becoming ineffective. Rather, the clause referring to the duration of the contract will be deemed ineffective to the extent by which it exceeds the permitted maximum length. In other words, any contract with a term of more than three years will have its term automatically reduced to the permissible three-year term,[340] and it will be deemed to have terminated ordinarily after that three-year term. Obviously, at that point in time, the player may then go on to accept the original term before it was reduced, either explicitly or *de facto,* by signing a contract extension.

338 CAS 2007/A/1272 Cork City FC v. FIFA (Healy).

339 As to the binding effect of the provision at national level: CAS 2005/A/835 PSV N.V. Eindhoven v. Fédération Internationale de Football Association (FIFA) & Federação Portuguesa de Futebol (FPF); CAS 2005/A/942 PSV N.V. Eindhoven v. Leandro do Bonfim & Fédération Internationale de Football Association (FIFA).

340 CAS 2016/A/4495 Hakan Calhanoglu v. Trabzonspor FC and FIFA & CAS 2016/A/4535 Trabzonspor FC v Hakan Calhanoglu; CAS 2008/A/1739 Club Atlético Boca Juniors v. Oscar Guido Trejo, Real Club Deportivo Mallorca & FIFA; CAS 2007/A/1248 Oriente Petrolero v. Vitoria de Bahia.

c) APPROACHING A PLAYER UNDER CONTRACT AND SIGNING PERIODS

i) Approaching a player to enter negotiations

The contractual relationship between a professional player and their club deserves protection. The principles and measures provided for in article 14 to 17 are primarily intended to address situations in which the contractual relationship concerned has already been disrupted to the point of the premature termination of the contract. Their aim is to protect the interests of the damaged party (through compensation), at the same time as ensuring that the fundamental principle of maintaining contractual stability is upheld by all the parties concerned by means of an appropriate deterrent (sporting sanctions).

The role of a player's potential new club is significant to the entire regulatory framework. This can be seen in the joint and several liability of the player and their new club for the payment of any compensation due by the player to their former club, as well as in the system of sporting sanctions applicable to any club found to have induced a player to breach their previous contract during the protected period. In addition, the Regulations also look to prevent the conduct of any new club becoming the reason for disruption to a contract. Therefore, any club intending to conclude a contract with a professional player must inform the player's current club in writing before entering any kind of negotiations with the player. To be clear, this duty applies only if the player is still under a valid contract with a club, and it applies to the end of the player's contract with their current club.

Receiving notification from another club that it wishes to enter negotiations with a player can have several effects on that player and their current club. On the one hand, knowing that another club is interested in the player's services will likely prompt the player's current club to decide on its own position in relation to that player. If they decide they wish to retain the player's services, they will not grant the other club permission to negotiate. If, in addition, the player's contract is about to expire, the player's current club will almost certainly intensify its efforts to agree a new contract with the player concerned. Of course, if the player becomes aware that another club is interested in them, this may improve their position when negotiating a new contract with their current club. If, on the other hand, the player's current club is at least open to the possibility of allowing them to leave before their contract expires, they will not object to the interested club starting negotiations with the player. At the same time, they will likely begin separate negotiations with the interested club regarding an acceptable transfer fee. However, if the player's existing contract is about to expire, the negotiating power of the current club will be extremely limited, because the player will be able to leave the club freely once they are out of contract.

Article 18 paragraph 3 can also provide a certain level of protection for a club looking to sign a player. Following the procedure set out in the Regulations means that if the player's current club does not object to negotiations with

the player, the potential new club cannot be accused of attempting to induce the player to breach their existing contract. Of course, if the player's current club *does* object to the proposed negotiations and the player nevertheless signs a contract with the new club, the question of whether the new club is guilty of inducement to breach of contract will be back on the table.

Under normal circumstances, if the player's current club objects to negotiations being started, the potential new club should cease its approach. If it proceeds with an approach regardless and the player goes on to sign a contract with them, the new club may be considered as having induced a breach of contract. In this respect, it should be emphasised that it is not strictly necessary for an interested club actively to obtain a green light from the player's current club before starting negotiations – it is merely required to inform the club of its intention in writing, not to obtain approval. However, as mentioned above, starting negotiations with a player without the permission of their current club can prove a risky strategy.

Given the explanation above, the reason why article 18 paragraph 3 does not play a central role in contractual disputes becomes clear. If an interested club enters contract negotiations with a player who is still under contract to another club without informing that club in advance, the player's current club is highly likely to lodge a complaint. This will often prove sufficient to convince the interested club to refrain from any further action, and that will be the end of the story. If, however, the interested club pursues its negotiations, one of two things will happen: either they will agree a contract with the player, or the negotiations will break down without agreement. The first of these scenarios will almost inevitably lead to a dispute as to whether the previous contract was terminated without just cause, and the consequences set out in article 17 will take centre stage, thus reducing the relevance of article 18 paragraph 3. If, on the other hand, no contract is ultimately signed between the player and the interested club, the player will stay with their current club and normal service will resume.

Finally, if an interested club fails to comply with article 18 paragraph 3 and does not inform the player's current club in writing before entering negotiations with the player, this will not have any impact on the validity of the new contract.[341] Equally, the lack of a written notification sent to the player's current club will not alter the fact that the player has signed two contracts covering the same period.[342] However, failure to provide written notification may give rise to disciplinary consequences for the parties concerned.

341 CAS 2016/A/4495 Hakan Calhanoglu v. Trabzonspor FC; FIFA & CAS 2016/A/4535 Trabzonspor FC v. Hakan Calhanoglu.

342 CAS 2016/A/4495 Hakan Calhanoglu v. Trabzonspor FC ; FIFA & CAS 2016/A/4535 Trabzonspor FC v. Hakan Calhanoglu, in relation to a possible violation of article 18 paragraph 5 by the player.

ii) Period in which a new contract can be signed

If their contract with their last club has expired, a professional player is obviously at liberty to sign a contract with another club. However, a player under contract is only permitted to conclude a contract with another club if the player's current contract is due to expire within six months. Failure to observe this threshold will not affect the validity of any new contract, however it may give rise to disciplinary consequences for the parties concerned.

As so often, the Regulations aim to find a balance between the interests of the player and those of the club. In principle, a player who decides to sign a new contract that will affect neither the validity and term of the existing contract, nor their compliance with their contractual obligations (as they will continue to render their services to their current club until the ordinary expiry of their current contract), should be able to do so at any time whenever such opportunity arises. On the other hand, it is not difficult to imagine that signing such a contract could have an impact on the player's performance and, in extreme cases, might even affect the sporting integrity of a competition.

A player's club deserves some protection in this situation. It is important to minimise the risk that transfer negotiations could impact a player's focus, performance, and commitment to their current club, as well as posing a risk to the sporting integrity of a given competition. This is why the Regulations limit the signing period to the last six months of a contract.

d) MEDICAL EXAMINATIONS AND WORK PERMITS

Article 18 paragraph 4 states that the validity of an employment contract cannot be made conditional upon the completion of (administrative) formalities. It requires clubs to ensure that certain administrative formalities are completed before a contract is signed with a player. It is a club's responsibility as an employer to take all the administration action required to register the player, as well as to allow the player to comply properly with their contractual obligations to render services to the club.

i) Medical examinations

Clubs have a specific obligation to organise a medical examination before signing a contract with a player. If a club fails to abide by this fundamental principle, and instead decides to sign the contract before it receives confirmation that the player is fit and healthy, it does so at its own risk. A contract signed under these circumstances will be considered valid and binding, and the club will not be permitted to terminate it unilaterally if the player goes on to fail a medical. A contract terminated in this way is considered to have been terminated without just cause.

According to CAS,[343] any clause in a contract requiring that a player pass a medical examination before an employment contract enters into force is invalid. However, this clause being declared null and void does not affect the validity of the contract as a whole; the duties of the parties towards each other under the employment contract remain valid and binding. The effect of article 18 paragraph 4 is to render any *condition precedent* regarding the medical examination invalid, rather than the entire contract in which that condition is included.[344]

A club wishing to employ a player has to exercise due diligence and carry out all relevant medical examinations prior to entering into an employment contract with that player.[345] It is, and has always been, the hiring club's duty to satisfy itself that the player they intend to contract is in good physical condition.[346] It is for the club taking on the player, not the club releasing them, to assess whether the player is fit to play football.[347]

A medical is crucial for a club trying to decide whether to sign a player. Hence it would appear perfectly justified to oblige clubs to perform the required medical examinations before signing a contract with a player. Article 18 paragraph 4 is mandatory and cannot be contractually amended or circumvented.[348] These clear rules ensure a high degree of legal certainty at the same time as promoting contractual stability in employment contracts and thus preventing disruption during the football season.

Whether a player passes a medical or not is (to some extent at least) a subjective decision, and one over which a club could exert undue influence.[349] In one illustrative decision,[350] the DRC was asked to consider a situation where a player had received an offer from a club (referred to as a letter of invitation) which, according to him, contained all the *essentialia negotii* of an employment contract. The player then travelled to the country in which the club was based and underwent a medical examination. After seeing the results of this examination, the club decided not to sign a contract with him. The player tried to invoke article 18 paragraph 4, arguing that the offer was a valid and binding employment contract and, by not signing the final document following the medical examination, the club had breached the contract without just cause. The club, for its part, contested the assertion that it had concluded an employment contract with the player, arguing that it had merely invited the player to undergo a medical examination. Had the outcome of this examination been positive, final negotiations with the player would have taken place. As the outcome of the medical examination

343 CAS 2008/A/1593 Kuwait Sporting Club v. Z. & FIFA, CAS 2018/A/6037 & 6043 Bangkok United FC v. Mohanad Abdulraheem Karrar & Mohanad Abdulraheem Karrar v. Bangkok United FC.

344 CAS 2016/A/4495 Hakan Calhanoglu v. Trabzonspor FC and FIFA & CAS 2016/A/4535 Trabzonspor FC v Hakan Calhanoglu.

345 DRC decision of 31 January 2020, Betila.

346 CAS 2008/A/1593 Kuwait Sporting Club v. Z. & FIFA.

347 CAS 2013/A/3314 Villareal CF SAD v. SS Lazio Roma SpA.

348 DRC decision of 19 February 2015, no. 02151450; DRC decision of 15 February 2008, no. 28195.

349 CAS 2016/A/4489 Beijing Renhe FC v. Marcin Robak.

350 DRC decision of 18 June 2018, no. 11180693.

was not to their satisfaction, the club believed it had valid grounds for its decision not to enter negotiations with the player. The DRC accepted the club's line of argument, which appeared to be both logical and genuine. The medical examination is of utmost importance when a club is deciding whether to employ a player. Consequently, it would appear legitimate to invite a player for medical tests first, and only then to decide whether to conclude a contract with them.

The example above shows the importance of the wording of any invitation letter or similar correspondence sent to a player by an interested club. The relevant communication should make it clear that it by no means constitutes a contractual offer, and that any contract negotiations will be subject to certain conditions (in the case described above, passing a medical).

ii) Pre-Contracts

The issue of pre-contracts often arises in disputes involving article 18 paragraph 4.

The DRC, regardless of the title of an agreement indicating it is an offer or a pre-contract, will analyse the content of the agreement and in particular, whether it contains the essential elements of an employment agreement.

In a 2016 Award,[351] CAS concluded that it was perfectly acceptable to make a "draft contract" or "pre-contract" subject to a successful medical examination, because a final employment contract was different from a "pre-contract".

In that case, the Panel referred to CAS jurisprudence[352] and noted the notion of a "pre-contract" is well-known in legal practice as effectively a "promise to contract", and defined it as a reciprocal commitment between at least two parties to enter a contract at a later date. Unlike in a final contract, the parties to a "pre-contract" have not agreed on the essential elements of the contract, or if they have, the "pre-contract" does not represent a final agreement: *"However, good practice requires from the parties to expressly mention that the document is not the final contract and that it does not represent the definitive agreement between the parties."*.

The Panel in the same case then went on to state that *"*[W]*hereas it is clear why definite employment contracts cannot be made subject to a successful medical examination* […]*, the Panel fails to see why a "pre-contract" cannot be made subject to such condition. Indeed, specifically in the matter at hand, the Panel finds that it was not unreasonable for the Player and the Club to want some kind of certainty in the form of a "pre-contract" before having the Player come over to China to subject himself to a medical examination."*

351 CAS 2016/A/4489 Beijing Renhe FC v. Marcin Robak.
352 CAS 2008/A/1589 MKE Ankaragücü Spor Külübü v. J..

CAS also went on to emphasise the importance of a medical examination in a club's decision as to whether to employ an individual player. In their view, the importance of the medical examination justified a distinction between a "pre-contract" and a final employment contract.

This Award shows the importance of the precise wording chosen by the parties when drafting their agreement. To avoid any risk of abuse and possible circumvention of article 18 paragraph 4 to the detriment of a player, any assumption that an agreement is a "pre-contract", as opposed to a final contract, should be made with appropriate caution, and only where factual evidence indicates that the parties genuinely intended to conduct further negotiations after the player had undergone the medical examination and before the "final contract" was concluded. Otherwise, making the agreement contingent upon a successful medical is likely to be deemed unacceptable on the basis that the agreement could be interpreted as a final contract as opposed to a pre-contract.

In a decision from early 2020,[353] the DRC referred to this Award and adopted its reasoning. It confirmed that a medical examination is a crucial element for a club when deciding whether to contract a professional footballer, and that the importance of the medical examination justifies different conditions being attached to a "draft employment contract", as opposed to a final employment contract.

In two recent Awards, the CAS analysed whether an invitation letter should be considered as a pre-contract or a contract. The Panel concluded that a letter can be considered a contract if it contains the *essentialia negotii* of contract, such as a reference to the identity of the parties, the mutual acceptance of the terms and conditions, the performance of each party, the amount of remuneration and the terms of the contractual relationship.[354]

As article 18 paragraph 4 is qualified as a "special" provision, its scope should be interpreted narrowly.[355] As such, it is limited to contracts between professional players and clubs. It is therefore legitimate to make transfer agreements (whether permanent or loan) between *clubs*, subject to a player passing a medical examination.

iii) Work permits

Similarly to a medical examinations, obtaining a valid work permit – and, although it is not explicitly mentioned, a visa[356] – is considered an

353 DRC decision of 29 January 2020, Mendonca.

354 CAS 2018/A/6037 & 6043 Bangkok United FC v. Mohanad Abdulraheem Karrar & Mohanad Abdulraheem Karrar v. Bangkok United FC., CAS 2019/A/6521 & 6526 Osmanlispor FK v. Patrick Cabral Lalau & Club Atletico Mineiro, Patrick Cabral Lalau v. Osmanlispor FK.

355 Single Judge Players' Status Committee decision of 19 March 2013, no. 03131648; CAS 2013/A/3314 Villarreal CF SAD v. SS Lazio Roma S.p.A.; CAS 2016/A/4664 Club Real Betis Balompié S.A.D. v. William Lanes de Lima.

356 CAS 2017/A/5092 Club Hajer FC Al-Hasa v. Arsid Kruja; CAS 2017/A/5164 Football Association of Thailand (FAT) v. Victor Jacobus Hermans, with reference to CAS 2009/A/1838 Association Kauno futbolo ir beisbolo klubas v. Iurii Priganiuk.

administrative formality that a club is required to complete prior to signing a contract with a player. The signing club is obliged to take all necessary administrative action to ensure a work permit and/or visa is granted to the player, thus allowing them to render their services to the club.[357] This action must be taken before the contract is signed. This principle is consistent with Swiss law, according to which it is the employer's responsibility to apply for a work permit for a potential employee and/or to liaise with the competent authority to obtain or renew a work permit for any employee whose activity must be authorised.[358]

If the parties sign the contract without having confirmed that any work permit or visa will be granted, and if the competent authorities then refuse to grant the necessary authorisations, the contract will be considered valid and binding, and if it is terminated by the club because of the state authorities refusal, the termination will be deemed to have been without just cause. Any provision to the contrary included in the contract (e.g. a clause making the issue of a work permit or visa a condition precedent) will be deemed invalid; the contract as a whole will remain valid.

If they do not have a valid work permit or visa, the player will not be able to render their services as a professional footballer in accordance with their contract without breaking national law. It is therefore appropriate and justified to require clubs, in their capacities as employers, to ensure this does not happen. A club must procure the work permit and any other required authorisations in a timely manner. If it does not comply with this duty, it should not be able to benefit from the situation to the detriment of the player. If an employer (club) does not take the necessary action to provide its employee (player) with a work permit or visa, and if this prevents the employee from entering the country in which they are employed and/or prevents them from starting work, this could be seen as an unjustified breach of contract by the employer.[359]

It is understood that the player, for their part, must provide such assistance as can reasonably be expected from them to facilitate the relevant administrative processes:

> "[The] player must put himself at the club's disposal and supply the prospective club with all necessary information and documentation in order to facilitate these tasks. However, it can hardly be expected that the initiative for collecting the required documentation must come from the player who is not [a] national of the host country and is presumably not aware of the formal requirements."[360]

357 For example, CAS 2017/A/5092 Club Hajer FC Al-Hasa v. Arsid Kruja.

358 Reference to ATF 114 II 279 consid. 2d/bb; decision of the Swiss Federal Court of 14 December 2000, 4C.306/2000 in CAS 2009/A/1838 Association Kauno futbolo ir beisbolo klubas v. Iurii Priganiuk.

359 CAS 2017/A/5092 Club Hajer FC Al-Hasa v. Arsid Kruja.

360 CAS 2017/A/5092 Club Hajer FC Al-Hasa v. Arsid Kruja.

In contrast to the requirement for a medical examination, the lack of a valid work permit at the beginning of the contractual relationship might lead the player (rather than the club) to terminate the contract. In this situation, a club's failure to obtain a work permit for the player in a timely manner may be considered just cause for the player to terminate the contract.[361]

The provisions of article 18 paragraph 4 are mandatory and cannot be contractually amended or circumvented.[362]

e) SIGNING MULTIPLE CONTRACTS

As we have seen, other provisions on the maintenance of contractual stability continue to apply even if a professional player enters more than one contract covering the same period. To understand the logic behind this, we must return to two fundamental principles of the Regulations.

Firstly, a specific feature of contracts signed between professional players and clubs is that they are always concluded for a predetermined period.

Secondly, if a party (club or player) decides unilaterally to terminate a contract, the contractual relationship between them and the other party will – unless they later decide to resume it by mutual agreement – be deemed to be finished, irrespective of which party was responsible for the early termination of the contract. In the event of a dispute, the party at fault will be liable to pay compensation and sporting sanctions might be imposed on it.

If a professional player signs more than one contract for a specific period, they will only be able to honour one of them; they will have to decide which club they will play for during the period concerned. This means they will inevitably have to breach the contract signed with the other club. *De facto*, they will be terminating the latter contract, potentially before execution even begins, and the provisions in articles 13-17 will apply. This self-evident conclusion has been confirmed by CAS.[363]

It is therefore logical that the sanctions provided for in case of an unjustified breach of contract should also apply to this situation; reference to article 18 paragraph 5 is only required where it cannot be established which contract was signed first, or if the player decides to honour the first of the two contracts.

In a relatively old Award,[364] CAS held that the signing of two contracts for the same period is not permitted. It emphasised that a player is not entitled to sign a second contract to "insure" himself against the risk that the first club might breach the first contract. By signing the two contracts, the player

361 DRC decision of 24 August 2018, no. 08181021-E.

362 Cf. for example, DRC decision of 6 May 2010, no. 510836.

363 CAS 2015/A/4206 Hapoel Beer Sheva FC v. Ibrahim Abdul Razak & CAS 2015/A/4209 Ibrahim Abdul Razak v. Hapoel Beer Sheva FC.

364 CAS 2009/A/1909 RCD Mallorca SAD & A. v. Fédération Internationale de Football Association (FIFA) & UMM Salal SC.

is in any case in breach of one of them. In this case, the player ultimately opted to honour the first contract, thus breaching the second.

The same interpretation was confirmed by CAS in a more recent dispute[365] where the player had signed a contract with a first club and, prior to the start date of that contract, signed a contract with a second club. He honoured this second contract, without ever complying with any of the terms of the contract concluded with the first club.

If a player enters more than one contract covering the same period and does so before the first contract enters into force, the DRC considers such behaviour particularly reprehensible. This explains why sporting sanctions are regularly applied. CAS supports this approach.[366]

f) GRACE PERIODS

In certain parts of the world, it is common to come across contracts granting the club additional time in which to pay the player the amounts due to them under the terms of the contract. Clauses of this kind are commonly known as "*grace periods*". For instance, the parties may agree that the player's monthly salary should be paid at the end of every calendar month, however, the club is entitled to delay the payment by a maximum of 30 days.

Prior to the introduction of article 18 paragraph 6, which explicitly outlaws "*grace periods*", the DRC had accepted a grace period of 90 days and did not consider it *per se* disproportionate or contrary to the principles of the Regulations.

In an old Award[367] (based on the 2001 edition of the Regulations), the Panel questioned the legitimacy of a clause according to which a player could only act before the DRC if the club were at least 90 days in arrears with its payments. CAS deemed that such a clause would disadvantage the player considerably since, while the player had to render their contractual obligations to the club immediately when they fell due, the contract granted the club a long payment period without any corresponding consideration. In the eyes of the Panel, this situation appeared one-sided and represented seriously prejudicial treatment of the player, which did not seem to be in accordance with the autonomy granted to the parties in the Regulations.

In a 2015 Award, CAS[368] concurred with a previous DRC decision, and found that a grace period was not contrary to the Regulations *per se*. However, the Panel stated that the grace period should not exceed a "*period which is considered acceptable*".

365 CAS 2016/A/4495 Hakan Calhanoglu v. Trabzonspor FC; FIFA & CAS 2016/A/4535 Trabzonspor FC v. Hakan Calhanoglu.

366 CAS 2016/A/4495 Hakan Calhanoglu v. Trabzonspor FC; FIFA & CAS 2016/A/4535 Trabzonspor FC v. Hakan Calhanoglu.

367 CAS 2006/A/1180 Galatasaray SK v. Frank Ribéry & Olympique de Marseille.

368 CAS 2015/A/3993 Patrick Nkenda v. AEL Limassol.

Grace periods of 30[369] and 90[370] days have also been accepted by CAS in other cases, however always before art. 18 para. 6 was introduced in the Regulations.

Article 18 paragraph 6 of the Regulations, which came into force on 1 June 2018,[371] is clear: grace periods are now expressly prohibited.

The provision prevents a club being granted additional time to pay the player amounts that are due in accordance with the payment schedule specified in their employment contract. Contractual clauses that grant additional time in this way are invalid. However, the remaining clauses of the contract will remain unaffected, even if this one clause is not recognised. This sends a clear message that timely compliance with financial obligations by all clubs is a priority. If a club seeks to delay payments due to a player, that behaviour will be challenged and dealt with effectively.

The reference in the provision to "*contractual clauses*" means "clauses contained in the pertinent employment contract signed between the player and their club". Nevertheless, article 18 paragraph 6 does not prevent the parties from agreeing a new date for a specific payment after that payment falls due. In other words, the club and the player remain at liberty to sign a (settlement) agreement setting out when an overdue sum will be paid.

The ban on grace periods does not have any retroactive effect, meaning that if such a clause was inserted in an employment contract signed prior to 1 June 2018, the validity of the clause is not affected by the amendment that came into force on that date.

Grace periods stipulated in a collective bargaining agreement properly negotiated at domestic level by employers' and employees' representatives supersede article 18 paragraph 6, provided the agreement is line with national legislation.

In one of its first decisions on the new article 18 paragraph 6, the DRC set aside a contractual clause which provided for a grace period of 60 days (plus 15 days of default notice) in favour of a club. The DRC clarified that because the contract had been executed after 1 June 2018, the exception within article 18 paragraph 6 did not apply. Accordingly, the DRC found that the player had just cause to terminate the contract considering the club's failure to comply with its payment obligations.[372]

369 CAS 2015/A/4055 Victor Javier Añino Bermudez v. Club Elagzispor Kulübü.
370 CAS 2015/A/4039 Nashat Akram v. Dalian Aerbin FC, albeit by majority of the Panel.
371 Circular no. 1625 of 26 April 2018.
372 DRC decision of 8 October 2020, Mieczyslaw Stachowiak.

g) MATERNITY LEAVE

Article 18 paragraph 7 was introduced in the specific amendment package regarding women's football which entered into force on 1 January 2021. Although professionalism in women's football has grown exponentially in the last decade, the Regulations had not been adapted to consider specific labour matters for female professional players. In this respect, the specific amendment package was introduced with the following objectives:

- protecting the right to work of female players before, during, and after childbirth;
- providing female players that are pregnant or who have given birth with a safe and inclusive work environment; and
- ensuring the maintenance of contractual stability.

In this respect, article 18 paragraph 7 provides that female players are entitled to maternity leave during the term of their contract, paid at the equivalent of two thirds of their contracted salary. Maternity leave is defined as *"a minimum period of 14 weeks' paid absence granted to a female player due to her pregnancy, of which a minimum of eight weeks must occur after the birth of the child"*.[373]

In this respect, the minimum period of 14 weeks and reduced salary amount is based on recommendations made by the International Labour Organization (**ILO**).[374] Although the ILO recommendations were silent on the minimum number of weeks to be taken after childbirth, the period of 8 weeks falls within their general guidelines (which refer generally to 6 weeks).

Considering the definition, a period of the maternity leave may occur prior to childbirth. Article 18quater paragraph 4 (c), which was also introduced in the specific amendment package and is discussed below, states that a female player has the right to independently determine the commencement date of her maternity leave, taking into consideration these minimum periods.[375]

The FIFA standards are a minimum standard and must be implemented in national regulations[376] by latest 30 June 2021.[377] The second half of paragraph 7 provides that where more favourable conditions for female players in relation to maternity leave exist in the applicable national law in the country of their club's domicile or in an applicable collective bargaining agreement, these beneficial conditions will supersede article 18 paragraph 7.

Further details of the specific amendment package for female players are discussed below in section regarding article 18quater.

373 Definition 30, Regulations.
374 Article 4, International Labour Organization Maternity Protection Convention No. 183.
375 Article 18quater paragraph 4 (c), Regulations.
376 Article 1 paragraph 3 (a), Regulations.
377 Circular no. 1743 of 14 December 2020.

18.2. Relevant jurisprudence

DRC decisions

Due diligence to carry out medical examination before concluding contract

– DRC decision of 31 January 2020, Betila

Mandatory nature of article 18 paragraph 4

– DRC decision of 19 February 2015, no. 02151450

CAS Awards

Permitted maximum length of a contract for a minor player

– CAS 2016/A/4495 Hakan Calhanoglu v. Trabzonspor FC and FIFA & CAS 2016/A/4535 Trabzonspor FC v. Hakan Calhanoglu

Termination of contract after unsuccessful medical examination

– CAS 2008/A/1593 Kuwait Sporting Club v. Z. & FIFA

Due diligence to carry out medical examination before concluding contract

– CAS 2008/A/1593 Kuwait Sporting Club v. Z. & FIFA

Medical examinations and "pre-contracts"

– CAS 2008/A/1589 MKE Ankaragücü Spor Külübü v. J
– CAS 2016/A/4489 Beijing Renhe FC v. Marcin Robak
– CAS 2018/A/6037 & 6043 Bangkok United FC v. Mohanad Abdulraheem Karrar & Mohanad Abdulraheem Karrar v. Bangkok United FC
– CAS 2019/A/6521 & 6526 Osmanlispor FK v. Patrick Cabral Lalau & Club Atletico Mineiro, Patrick Cabral Lalau v. Osmanlispor FK

Club's obligation to take all administrative measures, including procuring work permit/visa, so as for player to be able to render his services

– CAS 2017/A/5092 Club Hajer FC Al-Hasa v. Arsid Kruja

Chapter V
Third-party influence and ownership of players' economic rights

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BACKGROUND

As the governing body of association football, FIFA has the statutory objective to "promote integrity, ethics and fair play with a view to preventing all methods or practices, such as corruption, doping or match manipulation, which might jeopardise the integrity of matches, competitions, players, officials and member associations or give rise to abuse of association football".[378]

To ensure that this objective is accomplished, FIFA has made a conscious effort to eradicate those activities and practices that pose an imminent threat to association football's integrity and are liable to tarnish its reputation and hinder the preservation of football's essential values.

In recent decades, the game of football has grown quickly, resulting in a steady increase in the transfer compensation negotiated between clubs and in higher salaries being paid to players. That growth has attracted greater investment in the game of football, in particular via sponsors and media companies.

Against this backdrop, some clubs started to open their doors to investment from stakeholders outside the world of football. While some of this investment went towards the development of clubs, the funding focused, to a considerable extent, on financing the signing of players. Through such arrangements, clubs gained access to money that was not previously available to them in order to acquire players and thereby sustain their competitiveness while, in principle, minimising their financial risk. However, in actual fact, by getting involved in this type of transaction, clubs took on substantial (financial) risks vis-à-vis the investors.

The proliferation of this type of businesses was detrimental in terms of, among others, the autonomy of clubs to determine their policies and their independence in the decision-making process regarding the recruitment and transfer of players. The prevailing interests of third-party investors also seemed at odds with the principle of contractual stability.

Contractual relations between players and clubs must be governed by a regulatory system that is tailored to the specific needs of football, strikes the right balance between their respective interests, and preserves the regularity of sporting competition.

The transfer of players in general is an area that is likely to give rise to conflicts of interest. Such practices also create the risk of interference with clubs' freedom and independence in recruitment and transfer-related matters, compromising football's integrity and reputation, as well as its essential values.

378 Article 2 (g), Statutes.

Moreover, the specificity of sport, which has been expressly recognised by the European Commission as a legitimate objective, requires that the outcome of matches remain uncertain and that the competitive balance between clubs taking part in the same competitions be preserved. In addition, this specificity also refers to the governance structure of sport, a pyramid structure of governing bodies spanning from from grassroots to elite level, organised solidarity mechanisms between the different levels and operators, the organisation of sport on a national basis, and the principle of a single federation per sport.

Therefore, in line with the need to respect and protect the specificity of sport, clubs must remain independent and autonomous in order to freely make any decisions that they deem appropriate in relation to their sporting needs. Accordingly, any influence on clubs (from other clubs or from parties outside football), either directly or by means of owning a percentage of a player's economic rights, is considered contrary to the defence of the specificity of sport.

As a consequence of all the above, FIFA decided to exercise its regulatory power by firstly amending the Regulations in order to include article 18bis (which entered into force on 1 January 2008). Initially, article 18bis was to draw a very clear line between, on the one hand, the legitimate involvement of third parties in football, and on the other, third-party investment with the purpose of gaining the ability to directly influence a club's independence, its policies in employment and transfer-related matters, or even the performance of its teams.

Subsequently, the evolution of the football transfer system, the improved overview provided by TMS, and the further growth of football as a business made FIFA aware of the fact that the prohibited influence on clubs could also come directly from other clubs, and not only from parties outside football.

Consequently, FIFA decided in 2015 to amend the wording of article 18bis in order to reflect this. At the same time, FIFA introduced article 18ter of the Regulations, which aims to prevent the phenomenon of speculative investment by third-parties in exchange for a percentage of a player's economic rights.

Article 18bis - Third-party influence on clubs

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Article 18ter - Third-party ownership of players' economic rights

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Article 18bis - Third-party influence on clubs

1. No club shall enter into a contract which enables the counter club/counter clubs, and vice versa, or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams.
2. The FIFA Disciplinary Committee may impose disciplinary measures on clubs that do not observe the obligations set out in this article.

Article 18ter - Third-party ownership of players' economic rights

1. No club or player shall enter into an agreement with a third party whereby a third party is being entitled to participate, either in full or in part, in compensation payable in relation to the future transfer of a player from one club to another, or is being assigned any rights in relation to a future transfer or transfer compensation.
2. The interdiction as per paragraph 1 comes into force on 1 May 2015.
3. Agreements covered by paragraph 1 which predate 1 May 2015 may continue to be in place until their contractual expiration. However, their duration may not be extended.
4. The validity of any agreement covered by paragraph 1 signed between one January 2015 and 30 April 2015 may not have a contractual duration of more than one year beyond the effective date.
5. By the end of April 2015, all existing agreements covered by paragraph 1 need to be recorded within the Transfer Matching System (TMS). All clubs that have signed such agreements are required to upload them in their entirety, including possible annexes or amendments, in TMS, specifying the details of the third party concerned, the full name of the player as well as the duration of the agreement.
6. The FIFA Disciplinary Committee may impose disciplinary measures on clubs or players that do not observe the obligations set out in this article.

1. General Remarks

In September 2020, FIFA published its first-ever "*Manual on TPI and TPO in football agreements*"; this should be read in conjunction with this commentary, and is available to download on legal.fifa.com.

The manual features a thorough exploration of the scope of article 18bis and 18ter of the Regulations, the regulatory framework, and FIFA and CAS case law relating to TPI and TPO, including a comprehensive statistical analysis.

The manual also includes dedicated sections containing practical recommendations for stakeholders (particularly clubs) when they negotiate employment and transfer agreements, in order to avoid violations of the Regulations.

Chapter VI
Special provisions relating to female players

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Article 18quater - Special provisions relating to female players

1. The validity of a contract may not be made subject to a player being or becoming pregnant during its term, being on maternity leave, or utilising rights related to maternity in general.
2. If a club unilaterally terminates a contract on the grounds of a player being or becoming pregnant, being on maternity leave, or utilising rights related to maternity in general, the club will be deemed to have terminated the contract without just cause.
   a) It shall be presumed, unless proven to the contrary, that the unilateral termination of a contract by a club during a pregnancy or maternity leave occurred as a result of a player being or becoming pregnant.
3. Where a contract has been terminated on the grounds of the player being or becoming pregnant, as an exception to article 17 paragraph 1:
   a) compensation due to a player shall be calculated as follows:
      i. in case the player did not sign any new contract following the termination of her previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated;
      ii. in case the player signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early;
      iii. in either case described above, the player shall be entitled to additional compensation corresponding to six monthly salaries of the prematurely terminated contract;
      iv. collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated above. The terms of such an agreement shall prevail;
   b) in addition to the obligation to pay compensation, sporting sanctions shall be imposed on any club found to have unilaterally terminated a contract on the grounds of a player being or becoming pregnant, being on maternity leave, or utilising rights related to maternity in general. The club shall be banned from registering any new female players, either nationally or internationally, for two entire and consecutive registration periods. The club shall be able to register

new players, either nationally or internationally, only as of the next registration period following the complete serving of the relevant sporting sanction. In particular, it may not make use of the exception and the provisional measures stipulated in article 6 paragraph 1 a) of these regulations in order to register players at an earlier stage;

c) the sanction provided for in b) above may be applied cumulatively with a fine.

4. Where a player becomes pregnant, she has the right, during the term of her contract, to:

a) continue providing sporting services to her club (i.e. playing and training), following confirmation from her treating practitioner and an independent medical professional (chosen by consensus between the player and her club) that it is safe for her to do so. In such cases, her club has an obligation to respect the decision and formalise a plan for her continued sporting participation in a safe manner, prioritising her health and that of the unborn child;

b) provide employment services to her club in an alternate manner, should her treating practitioner deem that it is not safe for her to continue sporting services, or should she choose not to exercise her right to continue providing sporting services. In such cases, her club has an obligation to respect the decision and work with the player to formalise a plan for her alternate employment. The player shall be entitled to receive her full remuneration, until such time that she utilises maternity leave;

c) independently determine the commencement date of her maternity leave, taking into consideration the minimum periods provided (cf. Definitions). Any club that pressures or forces a player to take maternity leave at a specific time shall be sanctioned by the FIFA Disciplinary Committee;

d) return to football activity after the completion of her maternity leave, following confirmation from her treating practitioner and an independent medical professional (chosen by consensus between the player and her club) that it is safe for her to do so. In such cases, her club has an obligation to respect the decision, reintegrate her into footballing activity (cf. article 6 paragraph 1 b)), and provide adequate ongoing medical support. The player shall be entitled to receive her full remuneration following her return to football activity.

5. A player shall be provided the opportunity to breastfeed an infant and/or express breast milk whilst providing sporting services to her club. Clubs shall provide suitable facilities in accordance with applicable national legislation in the country of a club's domicile or a collective bargaining agreement.

18quater.1. Purpose and scope

Similar to article 18 paragraph 7 discussed above, article 18quater was introduced in the specific amendment package regarding women's football which entered into force on 1 January 2021.

While article 18 paragraph 7 is a general clause regarding the maternity leave entitlement, article 18quater specifically establishes provisions which govern the employment relationship between professional female players and clubs. It introduces three broad categories of provisions:

- contractual protections;
- *lex specialis* regarding the termination of contracts; and
- employment rights relating to pregnancy or maternity.

Having been introduced on 1 January 2021, no jurisprudence exists at the time of writing.

a) CONTRACTUAL PROTECTIONS

Article 18quater paragraph 1 provides that the validity of a contract may not be made subject to a player being or becoming pregnant during the term of a contract, being on maternity leave during a contract, or utilising rights relating to maternity (cf. article 18quater paragraphs 4 and 5) in general.

This provision is intended to operate in a similar manner to article 18 paragraph 4. If an employment contact contains a *pre-condition* or *condition precedent* regarding its validity, and such clause relates to one of these matters, it will be considered invalid, and disregarded. The intention is clear: a player's employment should not be conditioned in any way relating to pregnancy.

b) *LEX SPECIALIS* REGARDING THE TERMINATION OF CONTRACTS

Article 18quater paragraphs 2 and 3 introduce a *lex specialis* regarding the termination of a player being or becoming pregnant, being on maternity leave, or utilising rights relating to maternity (cf. article 18quater paragraphs 4 and 5) in general.

As discussed above, paragraph 2 provides a third category of "*just cause*" in the Regulations. If a club unilaterally terminates a contract on the grounds of a player being or becoming pregnant, being on maternity leave, or utilising rights relating to maternity (cf. article 18quater paragraphs 4 and 5) in general, the club will be deemed to have terminated the contract without just cause.

Paragraph 2 (a) provides protections for female players in this regard. It is presumed, unless proven to the contrary by their club, that the unilateral termination of a contract by a club during a pregnancy or maternity leave occurred because of a player being or becoming pregnant. This also formed part of the general recommendations made by the ILO. This means that the club must provide evidence to demonstrate that the termination of the contract during this period was for some other form of just cause.

Paragraph 3 provides specific rules regarding the calculation of compensation to be paid to a player should she be terminated on the grounds of being or becoming pregnant; the first sentence refers to it acting as "*an exception to article 17 paragraph 1*". In this respect, however, it generally follows the exact same structure as that described above in the general discussion regarding compensation payable to a player. The only exceptions are that the "*additional compensation*" element in article 18quater paragraph 3 (a) (iii) provides for a mandatory six monthly salary payment, regardless of whether the player was able to mitigate her damage or not; and the total compensation payable to the player will not be limited to the residual value of the prematurely terminated contract.

In addition, the club shall receive an automatic sporting sanction of a ban on registering female players for two entire and consecutive registration periods. The Regulations also provide the possibility for the DRC to fine the club, in addition to the sporting sanctions.

The intention here is also clear: termination of employment on the grounds of a player being or becoming pregnant is deemed as one of the serious just causes within the FIFA regulatory framework. The damaged player must be compensated accordingly, and in addition to the payment of substantial compensation, the relevant club must be proportionately sanctioned.

c) EMPLOYMENT RIGHTS RELATING TO PREGNANCY OR MATERNITY

Article 18quater paragraphs 4 and 5 provide for several specific employment rights relating to a player becoming pregnant. In this respect, the objective is to protect the right to work and right to <u>return to work</u> of the player herself.

Paragraphs 4 (a) and (b) govern when a female player discovers that she has become pregnant. She has the right to continue to provide sporting services to her club (i.e. playing and training) following confirmation from her treating practitioner and an independent medical professional (chosen by consensus between the player and her club) that it is safe for her to do so. Similarly, she has the right to provide "*employment services to her club in an alternate manner*" should her treating practitioner deem that it is not safe for her to continue providing sporting services, or she chooses not to exercise her right to continue providing sporting services. In either case, her club is obliged to respect her decision and formalise a plan, either for her continued sporting participation in a safe manner, or for her alternate employment.

Paragraph 4 (b), in a similar manner, may also be applied at a time after the player has continued to provide sporting services while pregnant, and reaches a point in her pregnancy where it is not safe for her to continue in such manner, or she chooses to not exercise that right any further.

In either case that paragraph 4 (b) applies, the player is entitled to her full remuneration, until she utilises her maternity leave rights. While the Regulations do not define the phrase "*employment services…in an alternate manner*", it is envisioned that these will likely be sporting in nature (e.g. in a coaching or other technical capacity); however, there is nothing to prevent other services (e.g. administrative) being agreed upon.

Paragraph 4 (c) specifically provides a player with the right to independently determine the commencement date of her maternity leave. It forewarns clubs that any attempt to pressure or force a player to take maternity leave at a specific time shall be disciplined.

Paragraph 4 (d) discusses when the maternity leave is completed. A player has a right to return to football activity, following medical clearance from her treating practitioner and independent medical professional. The club has an obligation to reintegrate the player and provide adequate ongoing medical support. Following her return to football activity, the player's remuneration must immediately return to her full contractual entitlement, as opposed to the reduced entitlement she was paid while on maternity leave.

Paragraph 5 provides a player that has delivered a child and returned to provide football activity with a right to a safe work environment. In this respect, while providing sporting services to her club, the club must provide suitable facilities within which the player may breastfeed an infant and/or express breast milk. These facilities must comply with those found in applicable national legislation in the country of the club's domicile, or a collective bargaining agreement.

Chapter VII
International transfers involving minors

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BACKGROUND

The protection of minors was included as one of core objectives of the Regulations following the March 2001 agreement. The training and education of young players is essential for the development and improvement of football. In this context, the fact that clubs want to invest in creating a culture of training and developing young talent should be welcomed.

At the same time, training opportunities and prospects for advancement in football may vary between players depending, amongst other things, on how developed football is in their member association, what status it enjoys, and the financial means and infrastructure available.

Progressive globalisation and ever-increasing competition between clubs all over the world has led to the search for talent becoming ever more competitive. Despite the risks associated with engaging young players whose sporting potential is difficult to predict with any certainty, and given the number and variety of events that could occur in a young player's life before they turn professional, the age below which clubs are reluctant to recruit players is steadily decreasing. On the other hand, young players and their families are susceptible to the promise of a lucrative and glamourous professional career abroad and the chance for their child to follow in the footsteps of football's biggest stars. Captivated by this prospect, they often forget that only an exceedingly small number of young players ever make it to the top, let alone turn professional, and that many talented young players are left by the footballing wayside.

Living in a foreign country can be particularly challenging for a young child. Without their family, and removed from their home environment, a young player may become heavily dependent on their club. In addition, the self-imposed pressure to achieve their objectives at any price, often combined with the weight of their family's expectation, puts these children in a highly vulnerable position. It is no surprise, then, that the trend of more and more young children leaving their homes and families in the hope of finding employment with football clubs abroad is a constant concern, not least because so few of them will eventually pursue a career in professional football.

The primary objective of article 19 is to protect the welfare of young players against exploitation and mistreatment. They aim to ensure that minors are provided with a stable environment for training in order that they may achieve their potential. At the same time, they recognise the importance of education and of the family unit, particularly for the many young players who do not turn professional. On the other hand, however, minors should be given the opportunity to make the most of the sporting opportunities available to them.

There is a tension between the need to protect the welfare and general well-being of young players and the interests of training clubs in their countries of origin,[379] and the desire of young players to avail themselves of opportunities on the other. Article 19 is drafted with a view to striking a balance between enhancing the development of football globally and ensuring players are free to make the most of their own career opportunities.

The Regulations focus on protecting the many children who move internationally (particularly to Europe) to play football where they may not know the local language or culture. These young players have often been encouraged to move abroad (with or without their family) by unscrupulous individuals with promises of lucrative careers, and are then left to fend for themselves when they do not meet the standards demanded by professional clubs, or alternatively the move abroad was not predicated on the scouting of any club at all. These young children may lack the means to return to their country of origin and must find ways to survive. They are clearly the victims of abuse and exploitation.

Of course, there are cases in which a minor player moves internationally and is not abused or otherwise negatively affected by the experience. This may be the case, for instance, if the child is able to convince a club of their talent and skills to the point the club decides to register them as a player. However, experience suggests that these are exceptional circumstances, and in most cases, moving abroad before the age of 18 is unlikely to benefit a player.

379 The financial interests of the training clubs are to a certain extent protected by the the training rewards regimes. On the other hand, a training club would of course also wish for a talented young player to remain with them as long as possible in order to be able to personally benefit from their services.

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Article 19 - Protection of minors

1. International transfers of players are only permitted if the player is over the age of 18.
2. The following five exceptions to this rule apply:
   a) The player's parents move to the country in which the new club is located for reasons not linked to football.
   b) The player is aged between 16 and 18 and:
      i. the transfer takes place within the territory of the European Union (EU) or European Economic Area (EEA); or
      ii. the transfer takes place between two associations within the same country.

      The new club must fulfil the following minimum obligations:
      iii. It shall provide the player with an adequate football education and/or training in line with the highest national standards (cf. Annexe 4, article 4).
      iv. It shall guarantee the player an academic and/or school and/or vocational education and/or training, in addition to his football education and/or training, which will allow the player to pursue a career other than football should he cease to play professional football.
      v. It shall make all necessary arrangements to ensure that the player is looked after in the best possible way (optimum living standards with a host family or in club accommodation, appointment of a mentor at the club, etc.).
      vi. It shall, on registration of such a player, provide the relevant association with proof that it is complying with the aforementioned obligations.
   c) The player lives no further than 50km from a national border and the club with which the player wishes to be registered in the neighbouring association is also within 50km of that border. The maximum distance between the player's domicile and the club's headquarters shall be 100km.In such cases, the player must continue to live at home and the two associations concerned must give their explicit consent.
   d) The player flees his country of origin for humanitarian reasons, specifically related to his life or freedom being threatened on account of race, religion, nationality, belonging to a particular social group, or political opinion, without his parents and is therefore at least temporarily permitted to reside in the country of arrival.

e) The player is a student and moves without his parents to another country temporarily for academic reasons in order to undertake an exchange programme. The duration of the player's registration for the new club until he turns 18 or until the end of the academic or school programme cannot exceed one year. The player's new club may only be a purely amateur club without a professional team or without a legal, financial or de facto link to a professional club.

3. The provisions of this article shall also apply to any player who has never previously been registered with a club, is not a national of the country where the association at which he wishes to be registered for the first time is domiciled, and has not lived continuously for at least the last five years in said country.

4. Where a minor player is at least ten (10) years old, the Players' Status Chamber of the Football Tribunal must approve:

a) their international transfer according to paragraph 2; or

b) their first registration according to paragraph 3;

c) their first registration, where the minor player is not a national of the country where the association at which he wishes to be registered is domiciled, and has lived continuously for the last five years in that country.

5. Approval pursuant to paragraph 4 is required prior to any request for an ITC and/or a first registration by an association.

6. Where a minor player is under ten years old, it is the responsibility of the association that intends to register the player – as per the request of its affiliated club – to verify and ensure that the circumstances of the player fall, beyond all doubt, under one of the exceptions provided for in paragraph 2, 3, or 4 c). Such verification shall be made prior to any registration.

7. An association may apply to the Players' Status Chamber of the Football Tribunal for a limited minor exemption ("LME").

a) An LME, if granted, relieves an association, under specific terms and conditions and solely for amateur minor players who are to be registered with purely amateur clubs, from the application obligations set out in paragraph 4.

b) In such a case, prior to any request for an ITC and/or a first registration, the association concerned is required to verify and ensure that the circumstances of the player fall, beyond all doubt, under one of the exceptions provided for in paragraph 2, 3, or 4 c).

8. The procedures for applying to the Players' Status Chamber of the Football Tribunal for the matters described in this article are contained in the Procedural Rules Governing the Football Tribunal.

19.1. Purpose and scope

a) GENERAL REMARKS

Specific provisions relating to international transfers involving minors were first introduced into the Regulations in September 2001, at which point the enduring presumption against international transfers involving players under the age of 18 was implemented. When the provision was first introduced in 2001, a player under the age of 18 could move between two clubs affiliated to different member associations (i.e. move as part of an international transfer) only:

a) if the player's family had moved to the country in which the new club was located for reasons not linked to football, or;

b) within the territory of the European Union (**EU**) or European Economic Area (**EEA**) and, for players aged between the minimum working age in their new training club's country and the age of 18, only if suitable arrangements for their sporting training and academic education were made by the new training club. For this purpose, a code of conduct[380] was to be established and enforced by the football authorities.

At this point in time already, the same principles also applied to the first registration of players under the age of 18 that held a nationality other than that of the country in which they wished to be registered. In 2005, a further exception was introduced in the Regulations for those players who live no further than 50 kilometres from a national border, and wish to be registered for a club located within 50 kilometres of the other side of the border, affiliated to a neighbouring member association.

In October 2009,[381] amendments to the Regulations defined who was to be considered a minor, and established the SCM to assess and decide on all applications for approval of an international transfer involving a minor, or approval of a first registration of a minor in a country where the minor is not a national. This measure shifted the responsibility for ensuring compliance with the provisions regarding the protection of minors from member associations to FIFA. From a practical point of view, the procedure for applying to the SCM for a first registration of a foreign minor, or an international transfer involving a minor, was now managed through TMS. Finally, an additional provision was included to ensure that club and private academies reported all minor players participating in their activities to the relevant member association.

380 This code of conduct never materialised.
381 Circular no. 1190 of 20 May 2009.

Based on the established jurisprudence of the SCM, the so-called "*five-year rule*" was formally included in the Regulations in 2016.[382] On 1 March 2020, two further exceptions were explicitly incorporated into article 19; one concerning unaccompanied refugee players, and another relating to exchange students.[383] Like the five-year rule, these exceptions are based on the existing practice of the SCM, which had actually been applying these exceptions on an unwritten basis for a considerable period of time.

On 1 October 2021, the FT was introduced. As a result, competence to determine applications for approval of an international transfer involving a minor was assigned to the PSC, and the SCM was abolished.

b) SCOPE OF APPLICATION

i. General rule and exceptions

The framework is based on a clear rule incorporating several exceptions.

International transfers are only permitted if the player involved is 18 or older. The Regulations define a minor as a player who has not yet reached the age of 18.[384] The term "*minor*" is thus exclusively linked to a specific age and does not incorporate any national legislation that may confer majority upon an individual at a younger age. By way of example, even if national law states that an individual is deemed to have reached the age of majority at the age of 16, a 17-year-old player from that country will continue to be considered a minor for the purposes of the Regulations, and will be subject to the pertinent provisions regarding minors.

ii. Application

Article 19 applies equally to amateur and professional players, female and male players, and all forms of association football. Applying the provision solely to professional players would render the entire system highly vulnerable to being circumvented. Indeed, it would be quite easy under such circumstances for a club (and, by extension, a member association) to register a minor player as an amateur following an international transfer and subsequently, after a certain period of time had elapsed, and once the transfer was no longer attracting attention, to re-register them as a professional.

In 2008, this was confirmed by CAS in one of its earliest Awards on the protection of minors.[385] It emphasised that article 19 concerned both transfers and registrations of players, concepts that apply equally to amateurs and professionals. In addition, it found that if only professional players were

382 Circular no. 1542 of 1 June 2016.
383 Circular no. 1709 of 13 February 2020.
384 Definition 11, Regulations.
385 CAS 2008/A/1485 FC Midtjylland A/S v. FIFA.

subject to article 19, amateur players would be exposed to a greater risk of abuse and mistreatment than professional players, which was not consistent with the aim of the Regulations.

iii. When the provision takes effect

Article 19 prohibits the international transfer of players under the age of 18, as well as the first registration of non-national minor, unless one of the exceptions or the five-year rule applies. In all cases, the trigger element is the (proposed) registration of the minor player with a member association for a club. This registration is required in order for a player to be able to play for a club and participate in organised football. However, this raises the question of how the provisions apply to a minor player who is only *training* with a club, or is only participating in non-organised football as part of a trial, and therefore does not need to be registered.

This question was addressed in the case of two minor players who trained for a club (with several interruptions) and participated in several tournaments.

Organised football

The club concerned did not contest that the players had trained and participated in the tournaments. However, it claimed the players had never been registered because they had only been on trial, and that the tournaments were not part of "*organised football*".

The Disciplinary Committee and Appeal Committee both found that the two players had joined the club, partaken in extended trials, and represented the club in tournaments played within the scope of organised football. In their view, this constituted a first registration within the meaning of article 19 paragraph 3. Since the club had not obtained prior approval from the SCM, and none of the exceptions in article 19 paragraph 2 applied to either of the two minors, the club was sanctioned for violating article 19 paragraphs 3 and 4, as well as for failing to comply with the procedural obligations set out in annexe 2.

In the subsequent CAS appeal,[386] the Sole Arbitrator did not agree with the FIFA committees. First, he referred to the definition of organised football, which is *"association football organised under the auspices of FIFA, the confederations and the associations, or authorised by them"*.[387] This definition means that only clubs affiliated to a FIFA member association are part of "*organised football*". Based on the evidence available, the Sole Arbitrator was satisfied that the tournaments in which the two players had participated were neither organised nor authorised by a member association, by a confederation, or by FIFA.

386 CAS 2016/A/4785 Real Madrid Club de Futbol v. FIFA.
387 Definition 6, Regulations.

Furthermore, the Sole Arbitrator stated that *"…[N]o convincing evidence has been submitted to demonstrate that the organizer of the mentioned tournaments had violated an obligation to request the relevant authorizations and that consequently they have been object of disciplinary sanctions by the competent national or international bodies."* As such, the Sole Arbitrator concluded that the tournaments could not be deemed "*organised football*" as per the Regulations.

It is difficult to align this ruling with the intention of the Regulations. If clubs are permitted to recruit foreign minors to train them for a considerable period of time, and field them in tournaments outside the definition of "organised football" without having to register them, it is quite possible that (very) young players could end up moving away from their countries of origin, and potentially also from their families, without the established control mechanisms of the Regulations being in place to protect their welfare and general well-being.

Provisional registration pending approval

Another interesting and important aspect of that same Award was the clear statement that a player cannot be provisionally registered without the prior authorisation of the SCM and the receipt of the corresponding ITC. Allowing provisional registrations without this procedure would open the door to possible abuse and jeopardise contractual stability. Such a course of action constitutes a clear violation of article 19 paragraph 4, as well as annexe 2.

The Award emphasised that there is no rule in the Regulations granting a club the right to obtain a provisional regional authorisation in anticipation and in place of approval from FIFA. The Regulations explicitly require that clubs must obtain the approval of the SCM (now the PSC) prior to the request for the ITC and/or the first registration. Based on the applicable regulatory regime, the expectation of a future positive response from FIFA does not relieve a club of its duty to obtain the necessary authorisations prior to registering the player.

Registration with a member association

Equally, the Sole Arbitrator unambiguously confirmed that the term *"association"* in article 5 paragraph 1 exclusively refers to member associations. Any regional associations that may exist within the governance structure of a member association cannot be considered "associations" as per article 5 paragraph 1. However, since the Regulations do not specify *how* a player must be registered, a simple record of the player's details, sent by the regional association to the member association, would imply that the player was registered with the relevant member association.

Pursuant to the Regulations, it is the member of FIFA that retains responsibility for, and actual control of, the registration procedures for minor players. This was also confirmed in a different Award from 2014.[388]

These conclusions have lost much of their relevance in recent times, since article 5 paragraph 1 now requires each member association to have an electronic player registration system[389], and this system must assign each player a FIFA ID[390] when the player is first registered. These amendments, combined with the fact that only electronically registered players with a FIFA ID are eligible to participate in organised football, have further formalised the registration process and rendered the question of *how* players should be registered moot.

Trials

In the same Award, the Sole Arbitrator did not consider the fact that the two players remained with the club for a relatively long period of time on a continuous basis to constitute a "*first registration*" within the meaning of the Regulations. The Sole Arbitrator explained that *"[S]uch a concept of a registration 'de facto' is not sustained by the current rules.* [...]. *If FIFA came to consider [it] appropriate to put limits on the period of trial that a club can ask or offer a young player to do, a respective rule would have to be issued."* Consequently, it cannot be used to find a violation of the provisions on the protection of minors.[391]

In a more recent Award,[392] the CAS held the opposite - the registration of a minor player with a member association is not (always) necessary to conclude that a violation of article 19 paragraph 1 or 3 has occurred. In that instance, the Sole Arbitrator stated that *"[T]he* [club] *had the duty to comply with the substantive principles of Article 19 Regulations even for those players that were never registered with the FA but only as* [club] *academy players ..."*.

iv. The need for strict application

To achieve their intended objectives, the measures to protect minors and combat abuse require robust rules, which must be implemented in a consistent and strict manner. This essential requirement has been communicated consistently from their introduction.[393]

388 CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA.
389 Definition 18, Regulations.
390 Definition 20, Regulations.
391 See also CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA.
392 CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA.
393 Circular no. 801 of 28 March 2002.

The jurisprudence of the SCM regarding compliance with article 19 is extremely strict. Applying the relevant provisions in a strict, coherent, and scrupulous manner is the only way to prevent measures designed to protect minor players being compromised. A narrow interpretation and stringent application is required to frustrate any attempt to circumvent the Regulations.

Experience gained over the years has demonstrated that some unscrupulous clubs and individuals are prepared to go to incredible lengths to circumvent the rules on the protection of minors. For instance, a glance at previous cases throws up examples of intermediaries who have legally adopted talented young players purely to make use of the exception granted when a child's parents move countries for reasons not linked to football. Other players have forged their passports, while some clubs have employed one of the minor's parents as a gardener or secretary in an attempt to bypass the Regulations. In fact, these are arguably some of the least ingenious tactics that have been used.

While the relevant jurisprudence in specific cases may seem harsh, the only way to avoid the sort of mistreatment and abuse of young footballers is by applying article 19 in a rigorous and systematic manner. There is no way of adopting a more lenient *modus operandi* at the same time as providing the necessary level of protection for the children concerned. This consistent application provides security for clubs and players and respects the legal principles of equal treatment and good faith.

This strict interpretation has been confirmed by CAS on several occasions.[394] Notably, in one specific case, the Panel explained that it *"…sees the need to apply the protection of minors strictly. Opening up the door to exceptions beyond those carefully drafted and included in the present text would unavoidably lead to cases of circumvention of the rationale for this provision."*[395] In another matter,[396] the Panel confirmed that article 19 needed to be applied in a *"strict, rigorous and consistent manner"* and, hence, that *"Article 19 para. 2 of the Regulations has to receive a strict construction."*

The clarity with which different Panels have determined that article 19 should be applied rigorously and in line with the approach constantly taken by FIFA has only been rarely challenged.[397]

394 CAS 2005/A/955 Cadiz C.F. SAD v. FIFA and Associacion Paraguaya de Futbol and CAS 2005/A/956 Carlos Javier Acuna Caballero v. FIFA and Associacion Paraguaya de Futbol; CAS 2008/A/1485 FC Midtjylland A/S v. FIFA; CAS 2011/A/2354 E. v. FIFA; CAS 2011/A/2494 FC Girondins Bordeaux v. FIFA; CAS 2012/A/2787 Villareal CF v. FIFA; CAS 2014/A/3611 Real Madrid FC v. Fédération Internationale de Football Association (FIFA); CAS 2015/A/4312 John Kenneth Hilton v. FIFA; CAS 2017/A/5244 Oscar Bobb & Associação Juvenil Escola de Futebol Hernâni Gonçalves v. FIFA, TAS 2020/A/7150 Ryoga Fujita v. FIFA, CAS 2020/A/7503 R.N.C. v. FIFA.

395 CAS 2011/A/2354 E. v. FIFA.

396 CAS 2013/A/3140 A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol & FIFA.

397 CAS 2015/A/4178 Zohran Ludovic Bassong & RSC Anderlecht v. FIFA. In TAS 2020/A/7116 Jerome Ow. c. FIFA and TAS 2020/A/7374 Isaac Korankye Obeng c. FIFA, the Sole Arbitrators pointed out that the application of the provision needs to be rigorous but also reasonable taking into account the specific circumstances of the case.

CAS has repeatedly underlined the importance and proportionality of article 19. It has confirmed that the strict approach adopted by FIFA is appropriate and justified, and that it does not contravene any principles of law or public order or impinge upon any fundamental rights.

It has been acknowledged that article 19 does not violate any mandatory principles of public policy (under Swiss or any other national or international law). This is because it pursues a legitimate aim (the protection of minors) and is proportionate to that aim because it provides for reasonable exceptions.[398]

In another matter,[399] the Panel determined that article 19 was not in breach of any provision, principle or rule of EU law, mandatory or otherwise. Equally, it did not contradict the EU Charter of Fundamental Rights or violate any mandatory principles of public policy. Another Panel[400] went on to endorse this conclusion, reaffirming that the provisions on the protection of minors did not contravene EU law or any international treaties on the protection of human rights.

In a more recent Award,[401] the CAS stated that article 19 proved *"an individual's freedom of movement and the right to work does not override the specific interest of protecting minors from the social dangers inherent in their international transfers in football"*. While the EU recognises freedom of movement and the right to work, these rights are not absolute, particularly where minors are involved and/or are likely to be directly affected by their parents' relocation between EU member states.

c) EXHAUSTIVE LIST OF EXCEPTIONS

While FIFA have always defended the position that the list is indeed exhaustive, others have argued that the list should not be deemed exhaustive and have called for a more flexible approach to addressing exceptional circumstances and more discretion for the SCM.

Those calling for greater flexibility tend to take the view that if a club feels the specific circumstances concerning a minor are not consistent with any of the codified exceptions, it should still have the option of applying to register the player. According to this view, the PSC should then have ultimate discretion to determine whether to accept such an application on a case-by-case basis.

There are various reasons for not adopting this more flexible approach, not least that the latest amendments, which came into force on 1 March 2020, codified two additional unwritten exceptions that FIFA had been applying regularly. It is notable that most CAS Awards that appear to indicate other exceptions are permissible refer to situations which are now covered by the Regulations.

398 CAS 2005/A/955 Cadiz C.F. SAD v. FIFA and Associacion Paraguaya de Futbol and CAS 2005/A/956 Carlos Javier Acuna Caballero v. FIFA and Associacion Paraguaya de Futbol.

399 CAS 2008/A/1485 FC Midtjylland A/S v. FIFA.

400 TAS 2012/A/2862 FC Girondins de Bordeaux c. FIFA.

401 CAS 2014/A/3813 Real Federación Española de Futbol v. FIFA.

The first reason is that allowing additional exceptions would reduce legal security. This is never a good thing, and certainly cannot be permitted in such a sensitive area as the protection of minors; the youngest and most vulnerable participants should benefit from the most stringent possible safeguards. It is of the utmost importance that clubs, players, and member associations think very carefully in advance about whether an initial application to register a foreign minor player, or an application to transfer a minor internationally, will be granted or not. Let us imagine that a club genuinely believes that the particular circumstances of a case would qualify as'exceptional circumstances'and that the player should be registered despite their situation not being covered by any of the codified exceptions. If it is decided by FIFA and subsequently the CAS that no'exceptional circumstances'exist, what is the outcome for the minor player? They would be unable to register with the club and would therefore find themselves in exactly the kind of limbo that the provisions are designed to prevent. Only clear rules, applied in a consistent manner, can prevent this kind of undesirable situation. Consequently, the list of exceptions contained in the Regulations must be treated as exhaustive.

In addition, the need for a strict application is widely acknowledged. The notion that the list of exceptions is exhaustive flows logically from this acknowledgement. Permitting any additional exceptions would go against the principle that the relevant provisions must be applied strictly.

Finally, one should also consider the risks inherent in a more flexible approach. Additional flexibility could open the proverbial floodgates, to the general detriment of minors. Moreover, it might push clubs and unscrupulous individuals into inappropriate conduct by giving them an incentive to deceive the PSC by inventing their own 'exceptional circumstances', at the expense of minor players. Finally, an increase in the discretionary powers would, as previously mentioned, create uncertainty as to whether a minor can be transferred internationally. This is a price we cannot afford to pay – too much is at stake. The danger of a return to the situation that existed prior to the introduction of the provisions in September 2001 must be avoided by all necessary means.

Existing CAS jurisprudence is less clear. In some cases, CAS seems to concur that the list of exceptions is exhaustive. In one matter,[402] the Panel stated that the rationale for article 19 was to prevent *"some forms of transfers akin to a 'trade of minor players' and not to stop voluntary transactions"*. However, it saw *"the need to apply the protection of minors strictly. Opening up the door to exceptions beyond those carefully drafted and included in the present text* [of the Regulations] *would unavoidably lead to cases of circumvention of the rationale for this provision"*.

402 CAS 2011/A/2354 E. v. FIFA.

In another case,[403] the Panel noted that the list of exceptions is exhaustive: *"Exceptions are permitted and are exhaustively listed in the remaining paragraph of the provisions"*. In this respect, it confirmed that its jurisdiction was limited to the application of the Regulations: *"… Article 19 and its exceptions are clear, and there is nothing else for the Panel but to apply them since this Panel does not have the task to legislate, but to apply the rules"*.

Another Panel ruled similarly that article 19 was to be applied in a *"strict, rigorous and consistent manner"* and, congruously, that *"there can be no other exceptions to the principle of Article 19 of the Regulations other than those carefully drafted* [in the Regulations]. […] *Article 19 para. 2 of the Regulations has to receive a strict construction"*[404]. The same approach was reaffirmed in a recent Award.[405]

In a 2005 Award,[406] the Panel was less explicit but nevertheless confirmed its role was not to *"revise the content of the applicable rules but only to apply them."* This meant that it was the duty of the minor player and their proposed new club to take the requirements of the Regulations into consideration and to apply them, however strict they might appear. Furthermore, the Panel in this case explicitly referred to FIFA Circular no. 801 and that article 19 must be applied strictly to protect minors.

In a 2012 Award, a different Panel was more ambiguous.[407] Although it stated that the exceptions were not exhaustive, it also stated that article 19 did not provide any margin of discretion. In this regard, the Panel specified that *"An exemption from the general principle prohibiting international transfers for players aged under eighteen must indeed be granted when the conditions to do so are fulfilled. A contrario, exemption must be refused when the conditions are not fulfilled."* In this case, the Panel did not interpret a new exception; rather, it took a broad, rather than a literal, interpretation of the exception provided for in article 19 paragraph 2 (b).

In another early Award,[408] the Panel concluded that the exceptions were not exhaustive. At the same time, however, it recognised that the exceptions that were not explicitly codified were based on previous FIFA jurisprudence, and they both concerned students. The exception for exchange students has since been incorporated into the Regulations.

The only Award to have unconditionally concluded that the list of exceptions is not exhaustive is one of those that did not consider that article 19 had to be applied strictly.[409] It stated that the situation of the minor player in

403 CAS 2015/A/4312 John Kenneth Hilton v. FIFA.
404 CAS 2013/A/3140 A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol & FIFA.
405 CAS 2017/A/5244 Oscar Bobb & Associação Juvenil Escola de Futebol Hernâni Gonçalves v. FIFA.
406 CAS 2005/A/955 Cadiz C.F. SAD v. FIFA and Associacion Paraguaya de Futbol and CAS 2005/A/956 Carlos Javier Acuna Caballero v. FIFA and Associacion Paraguaya de Futbol.
407 CAS 2012/A/2862 FC Girondins de Bordeaux v. FIFA.
408 CAS 2008/A/1485 FC Midtjylland A/S v. FIFA.
409 CAS 2015/A/4178 Zohran Ludovic Bassong & RSC Anderlecht v. FIFA.

question did not fit within any of the exceptions and, in particular, that the possibility that the player's mother had moved to the country in which the minor's proposed new club was based for reasons at least partly motivated by football could not be entirely excluded. However, the Panel expressed the opinion that the goal of the relevant exception was to combat the risk of the child being socially, culturally, economically and/or educationally uprooted, and to prevent a minor player's sporting and footballing abilities being exploited to the detriment of their well-being and personal development. The Panel concluded that the risk of this occurring was "*non-existent*".

The Panel made specific reference to the fact that the player was studying sport and physical education in his new country and earning good grades. The financial circumstances of the player's family were also sufficiently secure that the risk of the player being commercially exploited by their family could be excluded. Having considered all the relevant circumstances, the Panel concluded that making an additional exception to the general prohibition against international transfers of minor players was permissible in this case. This decision, at the time of writing, is effectively a 'once-off'.

d) THE INDIVIDUAL EXCEPTIONS

As already mentioned, article 19 paragraph 1 prohibits the international transfer of players below the age of 18. This prohibition is founded on the fact that while international transfers might be favourable to some young players' sporting careers, they are likely to be contrary to their best interests as children. The need to ensure minors develop healthily must prevail over purely sporting interests.[410] The importance of protecting minors cannot be overstated, and the provisions of the Regulations must be applied in a non-discriminatory manner, irrespective of the quality of training and overall education provided by an individual club.[411]

However, to provide some measure of flexibility for both clubs and players, and while continuing to bear in mind the principal aim of protecting minor players from abuse and mistreatment, paragraph 2 provides for five exceptions. Where the relevant conditions are met, these exceptions allow players to be transferred internationally before they reach the age of 18.

Whenever a club submits an application for approval of an international transfer involving a minor, or for the first registration of a foreign minor player, the member association to which the club is affiliated is required to upload certain documents to TMS. In order to assist with this task, FIFA recently published its "*Guide to submitting a minor application*", which contains, among other information, a comprehensive summary of the types of applications permitted and the relevant documents required for each of them.

410 CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA.
411 CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA.

i. Parents move countries for reasons not linked to football[412]

1) Basic principle

The first exception has been included in the Regulations since 2001. The reasons behind it are obvious. If the parents of a minor player move to a new country for reasons that have nothing to do with football, and the player follows them, the player should be able to (continue to) play football in their new home country. The most common situation is where the player's mother or father is offered an attractive job opportunity abroad, leading the entire family to relocate. Other reasons for relocating seen in cases include reuniting with other family members, cultural considerations, or specific circumstances relating to the health of a family member.

There is significant potential to abuse this exception. The first attempts to do so were relatively crude and easy to identify. Clubs would offer a player's parent a job on their premises, for example as a gardener, facility manager, or secretary, to give them a reason to relocate. Such tactics were of course predictable and failed to deceive the SCM.

This led some clubs to take their creativity to a new level by arranging jobs for the minor player's parents outside the club structure. The simple version of this ruse would see the player's mother or father obtain employment with one of the club's sponsors, while more elaborate variations would involve the parent's job being less obviously connected with the club. This was the exact situation CAS was asked to consider in its first case in this area; this was a case decided before the existence of the SCM, where FIFA would only intervene in the context of an ITC dispute.[413]

A Paraguayan minor player (16 years old) that was registered with a Paraguayan club left the country for Spain with his mother and younger brother, having previously taken part in an Under-20 international tournament, and having signed a representation agreement with a football agent. Immediately after his arrival in Spain, he signed an employment contract with a Spanish club. Shortly after, his mother signed an employment contract with a restaurant in Spain. The Paraguayan Football Association refused to issue the ITC to the Spanish Football Federation due to the player's age. At the request of its club, the Spanish Football Federation asked FIFA to intervene. Specifically, the club argued that the minor player's mother had found herself in a difficult financial situation in Paraguay and had decided to move to Spain since doing so would

412 Article 19 paragraph 2 (a), Regulations.

413 CAS 2005/A/955 Cádiz C.F. SAD v. FIFA and Asociación Paraguaya de Futbol & CAS 2005/A/956 Carlos Javier Acuna Caballero v. FIFA and Asociación Paraguaya de Futbol.

be favourable to her (and her partner's) job search. The mother also explained that she wanted her son to continue his footballing activity in Spain and had therefore looked for a Spanish club with which he could do so.

The Single Judge of the Players' Status Committee, who was competent according to the rules in force at the time, rejected the application, concluding that *"the mother [had] followed the player after the Spanish club had expressed their special interest in the player"*. For the exception to apply, the exact opposite should be the case: the minor player should follow their parents to a new country, whose move was for reasons not linked to their child's footballing activities. In particular, the Single Judge referred to the fact that the mother's employment contract with the restaurant did not provide for any salary. Furthermore, the evidence presented clearly showed that the player's only occupation in Spain would be playing football.

CAS rejected the appeal of the club and the player. In doing so the Panel deemed there was clear evidence that the player's move to Spain with his mother was linked to his footballing activity.

The Panel also made clear that superficial, negligently assembled and/or questionable evidence is not sufficient to prove the case for an exception. Clubs need to provide clear and convincing documentary evidence to demonstrate that the family's move to the country concerned was not made for reasons linked to the child's football activities.

For the sake of good order and clarity, the requirement that there should be no link to football for the exception to apply refers to the minor player's activity, not to that of their parents. If, for example, a minor player's mother or father works as a professional player or football coach and they decide to pursue an attractive job opportunity abroad, the family's move to the new country will of course be linked to football, but the link will be associated with the parent, not the minor player, who will be merely following their parent(s) abroad. The exception would therefore apply in this situation.

2) Burden of proof and standard of proof

In line with the general principle that a party claiming a right on the basis of a supposed fact should carry the burden of proof, different Panels have made clear that it is for the party invoking a specific exception to provide convincing (documentary) evidence that the relevant conditions are met.[414] While this principle applies generally to all the exceptions, in the context of the first exception, it is for

414 CAS 2019/A/6301 Chelsea FC v. FIFA; CAS 2017/A/5244 Oscar Bobb & Associação Juvenil Escola de Futebol Hernâni Gonçalves v. FIFA; CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA; CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA; CAS 2011/A/2494 FC Girondins Bordeaux v. FIFA.

the proposed new club, the minor player, and/or the member association concerned to prove that the minor player's parents did not move to the country in question for reasons linked to football.

In this regard, a Panel[415] has stated that *"the party requesting for a registration has the burden of proof, and has to establish that the conditions set in this provision have been met."* Accordingly, the player bears the burden of proving that football is *"not the reason, or one of the reasons, for the move of his parents to the country in which the new club is located."*

An Award from 2015[416] emphasised that the *"Appellant's argumentation is based on facts that remained unproved"* and recalled that statements must be corroborated by documentary evidence. In this respect, the Panel noted that *"no evidence was provided by the Appellant to corroborate the* [Appellant's] *allegations and as mere statements by an interested party they have not sufficient weight to convince the Panel to the required standard of proof of the occurrence of these facts."* As a result, it deemed that the relevant allegations could not be taken into consideration to *"determine the true intention of the Player's Mother when moving to the Netherlands."*

As regards the applicable standard of proof, as neither the Regulations nor the Procedural Rules provide for a standard of proof, the CAS has established that the paragraph 2 (a) exception may only be granted if its conditions are established to the "*comfortable satisfaction*" of the PSC.[417]. In other words, the PSC will grant the request only if it is "*comfortably satisfied*" that the move of the player's parent(s) was not motivated by the football activity of their child.

3) Requirement that the reasons for the parents' move should not be linked to football

It is essential for the PSC (and previously SCM) and CAS to examine every individual case carefully before deciding whether the international transfer or first registration of the minor player concerned can be approved. Nevertheless, it must be recognised that it is not always easy to distinguish between genuine and constructed facts, even after careful consideration of the evidence.

415 CAS 2013/A/3140 A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol & FIFA.

416 CAS 2015/A/4312 John Kenneth Hilton v. FIFA.

417 CAS 2019/A/6301 Chelsea FC v. FIFA, TAS 2020/A/7116 Jerome Ow c. FIFA, TAS 2020/A/7150 Ryoga Fujita v. FIFA, TAS 2020/A/7374 Isaac Korankye Obeng, and CAS 2020/A/7503 R.N.C. v. FIFA (on one occasion, CAS however considered that the standard of proof to be employed regarding the exception in article 19 paragraph 2(a) shall be a high one and the respective exception may be granted only if its conditions are established "*beyond reasonable doubt*"; CAS 2017/A/5244 Oscar Bobb & Associação Escola de Futebol Hernâni Gonçalves v. FIFA).

CAS has set the evidential bar relatively high. In a first illustrative decision dating from 2011,[418] the Panel recognised that the fact a player's parents moved abroad for reasons not entirely disconnected from football, or that were in some way linked to football, was sufficient grounds to reject an application based on the first exception. In other words, for the application to be approved, it must be clearly established that the parents of the minor player settled in the new country for reasons that were *in no way* related to football. The Panel found that the parents' decision to move to the new country was not motivated by professional considerations connected to their own careers. In particular, the father's professional qualifications were not recognised in the new country (France, in this instance), and the player's mother was unemployed at the time of the relocation. On the other hand, there was significant evidence to suggest that the new club was genuinely interested in the minor player involved and vice-versa, and that contact with the club had been established prior to the move. This all served to corroborate the view that the minor's footballing activities were a (not to say the only) factor behind the relocation. This Award established a principle that, in cases of doubt, approval should not be granted.

This approach was subsequently softened somewhat by the findings of a different Panel in 2013.[419] In this particular matter, the SCM rejected the pertinent application on the basis that *"… the reasons explained by the player's father and his professional activity, as well as considering the short time frame between the registration process of the player by the Spanish club, the player's family residence in Spain and the player's aptitude test, especially considering the club's category, [suggest that…] doubts still persist that the move of player's parents did not occur for reasons linked to football."*

The subsequent appeal was upheld by CAS. The Panel confirmed that *"It is not sufficient to establish that the parents do not seek, as primary or main objective, to achieve the footballing activities of their child abroad* […], *the move of the family must not be linked to football […]"*. Accordingly, it was for the player to provide convincing evidence that football is *"not the reason, or one of the reasons, for the move of his parents to the country in which the new club is located."*

The Panel found several factors mitigated against approving the international transfer:

– the period between the player's arrival in the new country and him joining the club was very short;

418 CAS 2011/A/2494 FC Girondins Bordeaux v. FIFA.
419 CAS 2013/A/3140 A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol & FIFA.

- there was evidence that the player had *"played football quite seriously and participated in numerous football matches, as a player of a team"* before moving to the new country;
- the player had participated in football matches in a league in his country of origin, playing for a club that had a partnership agreement with the proposed new club; and
- a declaration appeared on the player's school's website stating that he had moved to the new country: *"I got accepted to the football club called Atlético de Madrid"*.

However, the Panel found that other factors suggested the transfer should be approved:

- the player's family was multicultural and multilingual, so the Panel could *"easily understand"* why the family wanted to move to the new country;
- the wealth and privilege of the player's family excluded the possibility that they would *"depend on the professional evolution of the Player"* to support themselves;
- the player's family had made significant preparations for moving to the new country (including starting their visa applications) approximately one year prior to any link between the player and the proposed new club being established;
- there was no evidence that the proposed new club had shown any particular interest in the minor player. In fact, there had never been any invitation from the club to the family and the player to relocate. Moreover, the club had stated that they did not consider the player to be especially talented, and they did not support his appeal against the SCM decision to reject the transfer application. Under the circumstances, this made it seem unlikely that the family was moving for reasons linked to football;
- the fact that the minor player had been involved in football in his country of origin was deemed not necessarily relevant to the case since, in the Panel's opinion, it was normal for a player who wanted to play football in a foreign country to have played before in their country of origin; and
- the matches the player had played with the proposed new club's partner club in his home country took place *after* the family received their visas for the new country.

The Panel subsequently concluded that the player was free to join the new club, as he and his family had been able to demonstrate that their move was not linked to football.

In making this decision, the Panel highlighted that the facts of the case were *"truly exceptional"* and that the decision was a

very particular one, based on the extraordinary and specific circumstances of the matter at hand. Hence, the Award should certainly not be regarded as setting any precedent.

Two Awards from 2015 demonstrated the different approaches undertaken by the CAS on this point. In the first case,[420] the minor player in question had first moved to Belgium from Canada with his grandmother, with parental authority being transferred from his parents to his grandmother by notarial deed. The initial request to approve the international transfer from Canada to Belgium was rejected by the SCM, which referred to its established jurisprudence and stated that the fact parental authority over a minor player is delegated to a relative in another country does not allow the player to qualify for an exception.

Approximately one year later, the player's mother moved to Belgium, for reasons allegedly including a desire to recover her Belgian citizenship. The player's father remained in Canada. A second request for approval of an international transfer, this time to a different Belgian club, was again rejected by the SCM. It expressed serious doubts about the contention that the mother's move to Belgium was not linked to football. In particular, the competent body referred to the mother's application to reacquire her Belgian citizenship, as part of which she had stated in a letter that her objective in reclaiming her citizenship was *"to conform to the FIFA requirement for the Player to be accompanied by at least one direct parent (mother or father) [in order] to obtain the authorisation of his international transfer as a minor."*

The player and the proposed new club both appealed to CAS. In its considerations, the Panel acknowledged that, at the very least, the possibility that the player's mother had moved to Belgium for football-related reasons could not be excluded. However, it went on to explain that, in its view, the list of exceptions provided for by the Regulations was not exhaustive, and since the risk of the minor player being socially, culturally, economically, and educationally uprooted and/or of his sporting and footballing abilities being exploited to the detriment of his well-being and personal development was non-existent, the request for the international transfer should be granted. Like the 2013 Award cited above, the fact that the minor player's family was rich enough for the risk of the player being commercially exploited by his family to be excluded played a significant role in the decision.

420 CAS 2015/A/4178 Zohran Ludovic Bassong & RSC Anderlecht v. FIFA.

The second 2015 Award,[421] passed in the knowledge of the first Award, disagreed with this approach and reconfirmed the established jurisprudence. In this case, the player appealed to CAS. In its decision, the SCM found that it could not be established beyond doubt that the player's mother had relocated for reasons that were not linked to football. Rather, it appeared that the minor player's footballing career was in fact the primary reason behind his mother's decision to emigrate.

Besides acknowledging that the list of exceptions contained in article 19 was exhaustive, the Panel agreed in principle that the reasons for the mother's move to a new country had to be completely unrelated to football for the exception to apply. However, it specified that in cases where a minor player moves with their family to a new country, the decision to relocate is often motivated by a mixture of factors. Whether the relevant exception could be applied had to be assessed according to the relative importance of football-related reasons as opposed any other reasons at play. On this basis and considering all the specific circumstances, the Panel was convinced that *"The decision of part of the Hilton's family* (…) *to move to the Netherlands was mainly motivated by the football activity of the Player and the Player's football activity played a major and significant role in the decision to move."* Consequently, the appeal was rejected.

The Panel, contrary to previous decisions, did not consider the multicultural nature of the minor player's family[422] and the fact they were very financially secure[423] to be convincing arguments in favour of applying the exception. FIFA does not consider these appropriate arguments for allowing the international transfer or first registration of a minor, and they are not considerations that are examined by the PSC (previously the SCM) when deciding cases.

The basic principle that the player's parents must move for reasons not linked to football or at least not linked primarily to football,[424] was again confirmed in recent Awards where CAS stated that:

> "[i]t could simply not be excluded that the mother's move to Portugal was heavily influenced by the fact that her son already had realistic prospect of joining FC Porto and to continue his training and his football activity with a prominent club."[425]

421 CAS 2015/A/4312 John Kenneth Hilton v. FIFA.

422 CAS 2013/A/3140 A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol & FIFA.

423 CAS 2013/A/3140 A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol & FIFA and CAS 2015/A/4178 Zohran Ludovic Bassong & RSC Anderlecht v. FIFA.

424 TAS 2020/A/7116 Jerome Ow c. FIFA; TAS 2020/A/7374 Isaac Korankye Obeng c. FIFA; CAS 2020/A/7150 Ryoga Fujita v. FIFA.

425 CAS 2017/A/5244 Oscar Bobb & Hernâni Gonçalves v. FIFA.

> "Numerous circumstances have been noted in the above paragraph suggesting that the reasons for the move were linked to football, and they cannot be ruled out without sound evidence to allow one to reliably interpret that the reasons for the move had nothing to do with football." In other words, "it is more likely that the Player's move was due to reasons linked to football than being driven by the Father's business venture. Accordingly, the Appellant cannot be deemed to have shown that the reasons for the move are due to reasons not linked to football".[426]

> "the Player's submission that his move to Hungary was completely unrelated to football is not sustainable. The Sole Arbitrator was firmly convinced that if football activity was not the only reason for the Player's move to Hungary, it was certainly the main reason that presided over this intention".[427]

In another recent award,[428] the Sole Arbitrator emphasised that when making the decision to move the player's parents must have "*at no time (…) taken into account football or a football project of the minor as a factor*" does "*not mean that, having decided to leave their country of residence and move to another country for personal reasons, whatever they may be, when finalising and making such decision the parents might take into account and consider one circumstance or another linked to football*". In the Sole Arbitrator's view, the player's parents"*having already made the decision to move their residence for reasons not linked to football, 192.a) of the FIFA Regulations in no way prevents them, for example, when narrowing down the exact location they will be moving to, from taking into account any factor or circumstance that might be linked to football, provided the specific weight of each factor has not been significant or influenced the decision to change their place of residence, and this is purely incidental".* In summary,"*what needs to be shown to the court of arbitration's comfortable satisfaction is that the family decided to move for reasons not linked to football, and without the minor's Parents having made the decision to promote or continue their child's football career".*

426 TAS 2020/A/7150 Ryoga Fujita v. FIFA.
427 CAS 2020/A/7503 R.N.C v. FIFA.
428 CAS 2020/A/7116 Jerome Ow v. FIFA.

4) Chronology of the parents' move

The SCM (and subsequently CAS) have emphasised the importance of the chronology of the parents' move when assessing the reasons for their relocation and the extent to which they are linked to football. Notably, in the 2013 Award referred to above,[429] when asked to approve the international transfer of a minor player, the Panel considered the timing of the player's family's move to the new country (in this instance, Spain) as a factor in its positive decision. Specifically, it deemed that the fact the family had started preparing to move approximately one year prior to any contact between the minor player and the proposed new club mitigated against the possibility that the move was linked to the player's footballing activity.

The chronology of events ahead of a move to a new country was also a key issue in the second 2015 Award referred to above,[430] in which the Panel concluded that the argument that the minor player's mother had been considering moving to the new country long before the player's intention to join his proposed new club became apparent was not supported by any evidence beyond personal statements. Consequently, it ruled that this argument could not be used to suggest there was no link between the reasons for the move and the player's footballing activities.

The chronology of events was also a key factor in recent Awards on this topic.[431]

5) Summary

In summary, it can be stated that for the exception under article 19 paragraph 2 (a) to apply, the reasons behind a decision by a minor player's parents to move to a new country must not be at all linked to football, or, where a variety of reasons are at play, the motivation must not be predominantly or mainly linked to football. The burden of proving compliance with this requirement lies with the party invoking the exception. The chronology of the events relating to the move to the new country plays an important role in determining whether this burden of proof is met or not.

429 CAS 2013/A/3140 A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol & FIFA.

430 CAS 2015/A/4312 John Kenneth Hilton v. FIFA.

431 CAS 2017/A/5244 Oscar Bobb & Associação Juvenil Escola de Futebol Hernâni Gonçalves v. FIFA, CAS 2020/A/7503 R.N.C. v. FIFA; CAS 2020/A/7150 Ryoga Fujita v. FIFA.

6) Minor players moving with their parents for humanitarian reasons

The situation of minor players emigrating with their parents for humanitarian reasons represents a special case. If the family of the minor player is forced to move to another country on humanitarian grounds, for example because their lives or freedom are threatened on account of their race, religion, nationality, membership of a particular social group or their political opinions (i.e. mainly the reasons provided in the 1951 *United Nations Convention Relating to the Status of Refugees* and the *1967 Protocol Relating to the Status of Refugees*), they are covered by exception in article 19 paragraph 2 (a). Unlike with unaccompanied minor players who are refugees, who are covered by the exception in article 19 paragraph 2 (d), there is no need for a specific additional exception for families moving together for humanitarian reasons. However, given the particularities of emigration under these circumstances, and to ensure that both the minor player and their family are appropriately protected within the world of football, a specific procedure has been incorporated into TMS for managing such situations.

When a member association applies for a minor player moving with their parents for humanitarian reasons via TMS, the player's former member association (assuming the minor player was previously registered) will not have access to the information contained in the application. The former member association will not be invited to submit comments or be notified of the SCM decision. This secrecy is imposed as a security measure, as there is a risk the transfer might reveal the player's whereabouts to the authorities in their country of origin.[432]

Families moving under these conditions are often not expected to return to their country of origin in the foreseeable future, because their lives or freedom would be threatened. For their children (who may be very young), being able to play football offers a welcome distraction, as well as an opportunity to help them integrate faster and more thoroughly into their new environment. They should therefore not be precluded from playing organised football.

To make use of the humanitarian exception, the minor player and their family must have permission, at least temporarily, to reside in their host country. Furthermore, the relevant national authority must have granted the minor player or their parents refugee or *"protected"* status, or have allowed them to submit an application for asylum in the host country.[433]

432 Circular no. 1635 of 8 June 2018, last paragraph on page 2.

433 "*Guide to submitting a minor application*", available on the FIFA website.

7) Definition of the term "parents"

A literal interpretation of the exception requires *both* the minor player's parents to move to the country in which the proposed new club is domiciled. This gives rise to several questions. For instance, does the term "*parents*" refer exclusively to biological parents? What happens if only one parent moves to a new country, taking the minor player with them?

Based on the consistent SCM jurisprudence, the general rule is that delegating parental authority (custody) over a minor player to a relative or any other third party will not lead to the exception applying.

CAS[434] confirmed this position in a case involving a minor player who had moved from Bosnia and Herzegovina to Germany for non-footballing reasons. In this case, the player had emigrated to enrol in a three-year professional training programme with a view to learning German, training as an office clerk, and finally taking up a post as a manager in an airport. The player stayed with his aunt while in Germany.

The Panel noted that the exception for minor players emigrating for reasons not linked to football could not be applied unless the minor player's parents had also relocated to the new country. It thus held that the fact that a minor player lived with a close relative in the country in which the proposed new club was based was not sufficient to justify the application of the exception.

At the same time, however, the Panel stated that the term *"parents" "could conceivably cover situations beyond the natural parents."* In this respect, the sub-committee has assessed a range of conceivable situations, with the aim of covering three basic scenarios:

- both of the biological (natural) parents move internationally;
- only one of the biological parents moves internationally; or
- neither of the biological parents move internationally.

Both of the biological parents move internationally
This is the situation governed by the exception.

Only one of the biological parents moves internationally
In cases where only one of the player's biological parents has emigrated with the player and the other parent is still alive, the SCM has approved such applications, provided that the parent moving with the minor player has custody over the player, for example based on a divorce decree or other ruling by a competent state authority. Failing that, the parent who has not moved must have consented to the player's

434 CAS 2011/A/2354 E. v. FIFA.

emigration. Obviously, to apply, all other requirements related to the exception must be met.

The SCM has recognised the need to take the realities of marriage into account, and to recognise that a married couple can remain married despite being based in different countries. It has acknowledged that legal separations, *de facto* separations, and separations for reasons to do with employment, amongst others, are not uncommon, and that minor players should not be negatively impacted solely because of such circumstances.

Naturally, if one of the minor player's parents is deceased at the time of the move, and the remaining parent moves with the minor for reasons not linked to football, this will trigger the exception if all the other relevant conditions are met.

Neither of the biological parents moves internationally

To address this circumstance, a distinction must be drawn between whether the biological parents are still alive. If they are both alive but living in different countries, the player could well move internationally to live with their other parent. For the exception to apply in these circumstances, the minor player must be moving to live with the parent who holds legal custody (based on a divorce decree or any other judgment by a competent state authority). Failing that, the two parents must give permission for the minor to move from one parent to the other. Furthermore, the parent with whom the player is to live in the new country must be resident there for employment or other reasons not linked to football, or because they have always lived in that country.

Another situation in which neither of the player's biological parents moves internationally despite both being alive is where the player is registered with a club in a neighbouring country based on the cross-border transfer exception in article 19 paragraph 2 (c). Players in this situation commute across an international border to their club while living with their parents in their home country. If they later decide they want to join a club in their home country, this will require an international transfer. Similarly, it is relatively common for a minor player to be registered in another country based on the exception in article 19 paragraph 2 (b) or the exchange student exception in article 19 paragraph 2 (e), and for them to be living in that country without their parents. If a player in this situation later decides they wish to register with a club in their home country, an international transfer will have to take place. The minor player will (continue to) live with their parents after they join their new club.

Alternatively, it may be that parental authority over a minor player has been removed from the player's parents for some reason and awarded to a third party (a legal guardian) by a competent state authority. In this situation, the SCM has found that the third party is a "*parent*" within the meaning of the Regulations. It is important to emphasise that in this situation, authority over the minor is delegated against the parents' will, or at least without their explicit agreement. If the appointed legal guardian goes on to move to another country for reasons not linked to football and the player joins them, the exception may become applicable, subject to the other requirements being met. The same principles apply if the appointed legal guardian is already residing in the new country and the minor player moves internationally to join them.

Finally, if both player's biological parents have passed away and the state has awarded authority over the player to a third party, any transfer will be treated as if parental authority had been withdrawn from the player's biological parents by the state. The third party will be considered a "*parent*" within the meaning of the Regulations.

ii. Transfers within the EU/EEA or the same country[435]

While all other exceptions apply globally, the second exception in the Regulations refers to a specific geographical area. The relevant regulatory framework is only applicable to minor players moving internationally within the territory of the EU/EEA, or within the same country.[436] Players between 16 and 18 years of age can transfer internationally, subject to certain mandatory conditions being met.

1) The original application of the EU/EEA exception

The EU/EEA exception was included in the Regulations so as not to contravene the principle of free movement of workers. The original text explicitly referred to both the minimum working age in the country where a player's training club was based and to the age of 18. In the 2005 edition of the Regulations, the language was amended to encourage a more uniform approach. Given that the minimum working age in most EU countries is 16, it was decided to refer explicitly to that age limit.

The exception is triggered if a player aged between 16 and 18 moves internationally between two clubs within the territory of the EU/EEA, irrespective of the player's nationality. In particular, the minor player does not need to be a national or citizen of an EU/EEA member state.

435 Article 19 paragraph 2 (b), Regulations.

436 By way of example, the member associations domiciled on the territory of the United Kingdom (England, Scotland, Wales, Northern Ireland).

2) The extended application within the EU/EEA

As the exception was included in the Regulations with a view to complying with the principle of free movement of workers within the EU/EEA, FIFA has consistently deemed that minor players moving to or from a country that has a bilateral agreement with the EU on the free movement of workers equivalent to the TFEU, or who are moving from or to a EU/EEA country, should also benefit from the exception.[437]

In 2008, a Danish club tried to justify the registrations of several Nigerian minor players based on the EU/EEA exception. As part of its case, it invoked the *Cotonou Agreement*, a treaty between the EU and countries in Africa, the Caribbean, and the Pacific (which expired in February 2020). The club argued the treaty allowed Nigerian citizens resident in Denmark to be treated as if they were Danish citizens, and that the EU/EEA exception should be interpreted to allow non-European players from a country that is a party to such a bilateral agreement with the EU to benefit from the exception. The club claimed that any other interpretation would amount to discrimination based on nationality.

CAS[438] rejected the argument primarily on the basis that the minor players were students, not workers, meaning that they could not benefit from the mandatory provisions of the *Cotonou Agreement*. The Panel found that the relevant rule only applied to *workers* legally employed in Denmark and did not extend to students.

The European Court of Justice (**ECJ***)* ruling in *Kolpak* in 2003 is also of interest in this regard.[439] Maroš Kolpak was a Slovak handball player who was legally resident and working in Germany. He had been playing for the German second-tier handball side TSV Ostringen since 1997. At the time, the German Handball Association had a rule (Rule 15) that prohibited its member clubs from registering more than two non-EU citizens on its playing staff. At that time, Slovakia was not yet a member of the EU (it joined in May 2004). However, Slovakia did have an association agreement with the EU. In 2000, Kolpak was released by his club because it had used up its quota of two non-EU players. Kolpak challenged the German Handball Association in court, claiming that Rule 15 placed an illegal restriction on his freedom of movement as a worker by treating him differently from German citizens. In its decision on the matter, the ECJ declared, *inter alia*, that if an individual was a citizen of a country with an applicable association agreement with the EU, and was working lawfully within an EU country, that individual had the same right to work as an EU citizen, and this right could not be restricted.

437 Essentially, this only applies to Switzerland at present.
438 CAS 2008/A/1485 FC Midtjylland A/S v. FIFA.
439 Deutscher Handballbund eV v. Maros Kolpak. Case C-438/00; European Court Reports 2003 I-04135.

Both the *Cotonou Agreement* example and the *Kolpak* ruling show that agreements granting the right to free movement as a worker apply solely to people who are already working lawfully within an EU country; that is, to people legally employed in the EU. Neither the association agreement between the EU and Slovakia nor the *Cotonou Agreement* granted the citizens of the signatory countries the right to work in the EU based on the free movement of workers. Consequently, even if a minor player's home country has a relevant agreement with the EU, the player cannot invoke that agreement to gain access to the European labour market; they can only cite it to assert a right to equal treatment once they are *already working legally* in the EU.

The burden of proving than any existing agreement between a specific country (or group of countries) and the EU includes provisions on the free movement of workers equivalent to those contained in TFEU lies with the player, club, and/or member association invoking the exception.

Though this extended application of the EU/EEA exception is quite limited in scope, CAS has widened it a little further. The first step in this direction was when CAS was asked to consider the case of a minor player residing in Argentina who held both Argentinean and Italian nationality. He had left Argentina with his mother and two brothers to settle in Bordeaux, France. The FFF applied to approve the minor's international transfer based on article 19 paragraph 2 (a) (parents moving abroad for reasons not linked to football), so that the player could be registered for FC Girondins de Bordeaux.

The SCM rejected the request since [*"it could not] be established clearly and beyond doubt that the parent of the player had settled in France for reasons that were in no way related to football."* CAS dismissed the appeal lodged by the club.[440] At the same time, however, the Panel expressed its hope that the player would *"maintain his motivation and talent until he reaches the age required to allow his club to obtain the necessary authorisations. Considering the applicable rules and in particular those that apply to European players, it would further appear that this age is not far away."*. At that time, the player was a couple of months shy of his sixteenth birthday.

Once the player reached the age of 16, the FFF submitted a new application, this time based on the EU/EEA exception. The SCM acknowledged that the mandatory minimum requirements imposed on the proposed new club had all been fulfilled. However, it rejected the request based on a literal interpretation of the provision, ruling that the international transfer concerned a minor player moving from a country outside the EU/EEA (i.e. Argentina)

440 CAS 2011/A/2494 FC Girondins de Bordeaux v. FIFA.

to a country inside the EU. Therefore, the transfer was not taking place "*within the territory*" of the EU/EEA as required by the exception. The SCM also highlighted that the nationality of the minor player was irrelevant to the application (or otherwise) of the exception.

FC Girondins de Bordeaux again appealed to CAS, and this time the appeal succeeded.[441] While confirming that, if article 19 paragraph 2 (b) was interpreted literally, the nationality of a minor player invoking the EU/EEA exception was not relevant and therefore *"only the question of the territory in which the international transfer occurs should be reviewed"*, the Panel nevertheless deemed that EU nationals should be able to benefit from the pertinent exception, regardless of whether the transfer took place within the territory of the EU/EEA or not. To justify this conclusion, it recalled that the exception had been included in the Regulations *"to observe the principle of free circulation of workers with[in] the EU/EEA"*. The intention was thus to *"prevent potential infringements of the free circulation of workers within the EU/EEA which could have been caused by the strict application of prohibiting international transfers of players aged under 18"*. In view of the above, the Panel found that minor players aged between 16 and 18 who were nationals of an EU/EEA member state but lived outside of the EU/EEA could invoke the EU/EEA exception to justify their international transfer to a member association domiciled in the EU/EEA.

This Award led to a change in the SCM approach in such matters to align with the CAS. In 2016, the CAS had another opportunity to consider the issue in detail and confirmed the amended approach of FIFA.[442]

This 2016 case involved a 16-year-old player living in Argentina who held dual Argentinean/Italian nationality.[443] He was registered for Atlético Vélez Sarsfield. Following various discussions, the player and his parents decided to move to England so that the minor player could join Manchester City FC, having established contact with the English club some time beforehand. On the day of the player's sixteenth birthday, he entered an employment contract with Manchester City. The FA then applied for approval of the minor's international transfer based on the EU/EEA exception. In support of its request, it referred to the previous Award, among others.

The SCM approved the request. Atlético Vélez Sarsfield appealed the decision before CAS, which dismissed the appeal. The Panel recalled, in particular, that *"the statutes and regulations of an*

441 CAS 2012/A/2862 FC Girondins de Bordeaux v. FIFA.

442 CAS 2016/A/4903 Club Atlético Vélez Sarsfield v. The FA, Manchester City FC & FIFA.

443 He obtained the Italian nationality a couple of days after the envisaged new club had already informed the Argentinean club of the player's intention to move to England, and just a couple of days prior to his 16th birthday.

association shall be interpreted and construed according to the principles applicable to the interpretation of the law rather than to contracts." Furthermore, and with reference to CAS 2010/A/2071, it confirmed that *"*[T]*he interpretation of the statutes and rules of a sport association has to be rather objective and always to start with the wording of the rule, which falls to be interpreted. The adjudicating body -in this instance the Panel -will have to consider the meaning of the rule, looking at the language used, and the appropriate grammar and syntax. In its search, the adjudicating body will have further to identify the intentions (objectively construed) of the association which drafted the rule, and such body may also take account of any relevant historical background which illuminates its derivation, as well as the entirely regulatory context in which the particular rule is located[…]."* Accordingly, it agreed with the previous Award that applying the EU/EEA exception beyond the scope implied by a literal interpretation of the provision concerned was justifiable in principle.

The Panel went on to explain that the aim of article 19 paragraph 2 (b) was to prevent violations of the principle of free movement of workers within the EU/EEA. In this respect, it found that if a provision of the Regulations allowed certain young footballers with an EU nationality to be transferred from one club (and member association) within the EU/EEA to another EU/EEA club, a young footballer who was an EU national but who was registered with a member association outside the EU/EEA should also be able to transfer to another club affiliated to the member association based in an EU/EEA country. The right to free movement of workers implies not merely the right for EU nationals to move freely within the EU, but also the right for EU nationals to reside freely on EU territory. A different approach *"would clearly constitute a violation of the principle of free movement of workers, particularly because no justification for such diversified approach is given."*

The Panel concluded that *"in order to prevent inconsistencies between different rights of EU/EEA citizens deriving merely from their residence,* [the Panel] *finds sufficient legal justification to the interpretation of Article 19 (2) (b)* […] *as being also applicable to transfers of players with an EU passport from clubs based in non-EU/EEA countries to clubs based in EU/EEA countries."*

3) The same country exception

In November 2020, the FIFA Council decided to amend the exception in article 19 paragraph 2 (b) to prevent the situation where a minor player between the age of 16-18, effectively the age of a worker in most industrialised countries, is unable to move clubs within a country due to there being more than one member association domiciled in that country.

The issue become apparent after the decision of the United Kingdom to leave the EU, given that the football associations of England, Scotland, Wales, and Northern Ireland are all domiciled in the United Kingdom.

As per the EU/EEA exception, several additional criteria must be satisfied for the exception to apply. The nationality of the minor player is irrelevant; the only relevant factor is that the member association at which they wish to be registered is domiciled in the same country as the member association at which they are currently registered.

4) The individual conditions

The individual conditions that must be satisfied for the EU/EEA exception or the same country exception to apply concern the minimum obligations that the minor player's proposed new club must fulfil. They relate not just to the player's football education and development, but also to their schooling and academic education, and to their environment more generally; the player must be properly looked after and their accommodation must be safeguarded as far as possible. These conditions are all aimed at protecting the welfare of young players against exploitation and mistreatment. Three of these obligations are substantive in nature, while the other is procedural.[444]

Adequate football education and/or training[445]
A club must provide the player with an adequate football education and/or training in line with the highest standards applicable in its country.

The PSC (previously SCM) assesses compliance in different ways for male and female players.

- for male players, a club will be deemed to satisfy the requirement to provide the best possible facilities only if it belongs to the highest training compensation category[446] for the member association to which it is affiliated. An explicit reference to this requirement was included in the provision in March 2020[447] to enhance transparency;
- as training compensation does not apply to female players, the club must provide a statement from the member association to which it is affiliated confirming that the club operates *"in line with the highest national standards"* of women's football education in the country concerned. This principle also applies to male and female futsal players.

444 CAS 2011/A/2354 E. v. FIFA.
445 Article 19 paragraph 2 (b)(i), Regulations.
446 Article 4 of Annexe 4, Regulations.
447 Circular no. 1709 of 13 February 2020.

Furthermore, the amount of time spent training each week is of fundamental importance, as is exactly *how* this time is spent. For this reason, clubs are required to submit a detailed weekly training schedule for the player, including the days and durations of their training sessions. In contrast to the requirement regarding the player's academic and/or school education, the PSC has not set a minimum number of training hours per week that must be exceeded. Rather, it assesses the relevant information on a case-by-case basis as part of its overall assessment of the application, and then decides whether the amount of time spent training will be sufficient and appropriate.

Academic and/or vocational education and training[448]

Not every talented player will go on to have a successful professional career. Any number of obstacles may arise. Injuries can destroy dreams overnight, while many players will do so because of chance events, or because they just lose interest in pursuing a professional career.

However their professional football journey comes to an end, young players must not be faced with the prospect of financial or emotional ruin, and should be able to choose a different career path. Pursuing dual education (in football and in academic or vocational subjects) is always advantageous, given that even players who reach the very top cannot physically play professional football forever. Having a solid education and/or vocational training will leave them better prepared to face the future away from football, whenever that future arrives.

For this reason, clubs looking to sign a minor player under the EU/EEA exception or same country exception must guarantee to provide not just a footballing education, but also an academic and/or vocational education. To verify compliance with this obligation, a club wishing to register a minor player must provide documentary evidence that the player will be enrolled in a suitable school or academic institution, along with confirmation of the qualification the player will receive upon completion of the course, the date on which the player would be expected to graduate from the course, and a signed weekly timetable for the player that indicates when their classes are and how long each of these classes lasts.[449]

Under normal circumstances, the PSC will not set any minimum requirement as to the level of qualification that a minor player must achieve, but the club must demonstrate that

448 Article 19 paragraph 2 (b)(ii), Regulations.

449 "*Guide to submitting a minor application*", available on the FIFA website.

the player will receive a specific and recognised educational qualification that will enable them to pursue another career outside of football in the future. Generally, the PSC expects a player to be in classes for a minimum of eight hours per week.

Care, supervision and accommodation[450]

A young player who leaves their family and moves to a new country to play football will be faced with numerous challenges, including dealing with an unfamiliar environment, the absence of their family, friends, and other people they trust (and to whom they would otherwise be able to turn in case of problems or difficulties), and the need to adapt to a new culture and, potentially, language. Having solid structures in place in their new life will help them adapt to their new circumstances.

Given the situation in which young players find themselves, it is of utmost importance that they should have someone to take care of them and make sure that they are looked after in an adequate manner. The best possible living conditions must be ensured, regardless of whether the minor lives with a host family or in club accommodation, and they must have access to a reliable, long-term point of contact at all times, such as a mentor appointed by the club.

Any club intending to register a minor player under this exception is obliged to make all the necessary arrangements in this respect. In order to satisfy the PSC that it has complied with its relevant duties, it must present documentary evidence that it will provide the player with accommodation (e.g. with a trusted host family or at the club's campus) and indicate the name of the person responsible for the player.[451]

Requirement to present proof of compliance with obligations to the member association[452]

From a formal point of view, once the international transfer of the minor player (or the first registration of the foreign minor player) is approved by the PSC and the member association proceeds to register the player with its affiliated club, the club must provide the member association with proof that it is complying with these obligations. This procedural element ensures that the respective conditions are complied with in practice, and not merely on paper.

450 Article 19 paragraph 2 (b)(iii), Regulations.

451 "*Guide to submitting a minor application*", available on the FIFA website.

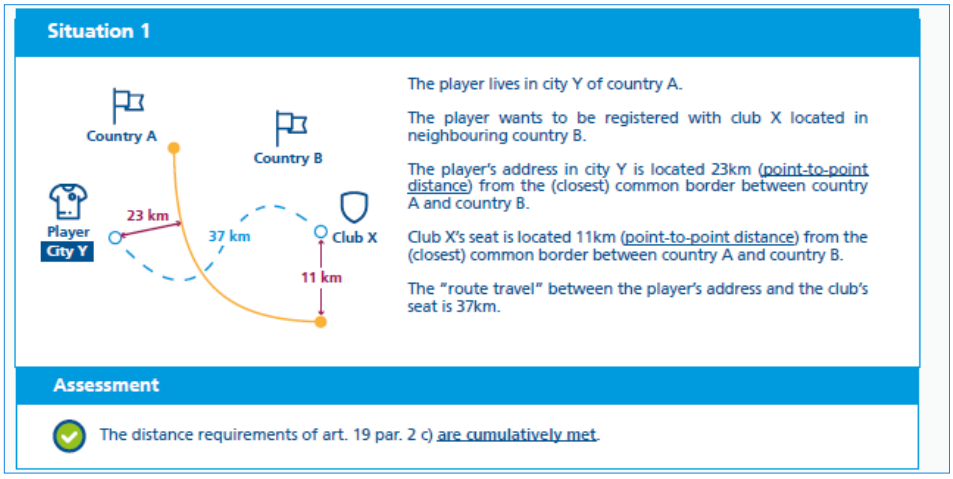
452 Article 19 paragraph 2 (b)(iv), Regulations.

iii. Cross-border transfers[453]

This third exception has been part of the Regulations since 1 July 2005. It covers the situation in which a minor player who lives close to an international border wants to play football on one side of the border while living on the other side of it. It would seem unduly harsh to prevent a player who lives near an international border from registering with the member association of the neighbouring country, particularly given that their local club could well be on the other side of the border to their home.

For this exception to be applicable, the minor player must continue to live at home. Obviously, stipulating that the player must live at home reduces, not to say eliminates, any risk of their being uprooted because of the transfer, because the minor remains with their parents in their family environment.

Both member associations involved in the transfer must give their explicit consent to the move prior to an application being made. Furthermore, the exception includes several requirements as to the distances associated with the transfer. Firstly, the player must not live more than 50km from the national border concerned, and the club with which the player wishes to register must not be located more than 50km from that border. At the same time, the distance between the player's home and the club's headquarters may not exceed 100km. All these requirements must be satisfied for the transfer to be approved. The below graphic sets out how this works in practice:



As specified in the "Guide to submitting a minor application", the distance between the minor player's home and the club's headquarters is measured in terms of the route actually travelled, while the distances between the minor player's home, the club's headquarters, and the closest point of the relevant international border are measured "as the crow flies". These principles are established in the SCM jurisprudence.

453 Article 19 paragraph 2 (c), Regulations.

The exception applies only if the minor's parents are not moving internationally. As with the approach taken when parents emigrate for reasons not linked to football, the player's parents will not be deemed to be moving internationally provided the player continues to live with one of their parents and the parent concerned holds legal custody of the minor. The same applies where a player is living with a third party (a legal guardian) who has been awarded parental authority by the state, either because both the player's parents have passed away, or because parental authority has been removed from the player's parents.

Finally, cases have arisen where the minor player's parents move internationally to a new country (for reasons not linked to football), settle within 50km of an international border, and the player wishes to be registered with a club in the neighbouring country. In such cases, the player must meet the conditions provided in both the "parents move for reasons not linked to football" exception and "cross-border transfer" exception.

iv. Unaccompanied refugees and exchange students

The last two exceptions were introduced into the Regulations on 1 March 2020, having codified existing unwritten exceptions found in the SCM jurisprudence. For either of these exceptions to apply, the minor player's international move must not be linked to football in any way.

Fundamentally, the jurisprudence underlying these exceptions represents a reaction to widespread and, in the case of refugee players, sad, realities in the world at large. FIFA has had to factor these realities into its thinking on the protection of minors more and more frequently in recently years.

Unaccompanied refugees[454]

Unfortunately, global events regularly force children to leave their countries without their parents and emigrate by themselves. Often, there is no realistic prospect of their returning home in the foreseeable future, since their lives or freedom would be threatened if they did so. For these young people, being able to play football offers a welcome distraction, as well as a way of integrating faster and more deeply into a new environment. They should not be precluded from participating in the game, and international transfers of minor players are therefore permitted under these circumstances, albeit under strict conditions.

The minor player concerned must have emigrated to another country without their parents[455] on humanitarian grounds; the player's life or freedom must be threatened on account of their race, religion, nationality, belonging to a specific social group, or belief in specific

454 Article 19 paragraph 2 (d), Regulations.

455 For a move for humanitarian reasons with their parents, the exception "*parents' move for reasons not linked to football*" may apply.

political views. To rely on this exception, the minor player must also have been granted permission to reside in the country to which they have emigrated, at least on a temporary basis. Specifically, this means the relevant national authority must have granted them refugee or *"protected"* status or, alternatively, must have allowed them to begin the process of applying for asylum.[456] Finally, for the player to be registered in their new country, their guardian in the country of arrival must consent to their being registered with the new club.[457]

If a member association uses TMS to submit such an application, the former member association (assuming the minor player was previously registered) will not have access to the information contained in the application. This is to reduce any security risk to the player or their family; concealing these details reduces the likelihood of the authorities in the player's country of origin becoming aware of their whereabouts.[458]

Exchange students[459]

It is a common and widespread practice for young people to go abroad for part of their education, either to complete a portion of their studies in another country or to learn or deepen their knowledge of a foreign language. It stands to reason that if a student on such a programme enjoys playing football in their free time, they may well wish to continue doing so in their new surroundings, and in principle there is no reason to stop them. However, students on exchanges can only be registered under strict conditions.

First, the minor player must clearly have moved abroad, unaccompanied by their parents, for academic reasons. Second, given that playing football is a purely leisure activity for the player concerned, the player's proposed new club must be a "*purely amateur club*" as defined in the Regulations.

Besides these two central requirements, bearing in mind that the minor player is a student and on an educational exchange, their stay in the country concerned must be temporary. It is assumed that the player will return to their home country immediately after the completion of their studies abroad. Accordingly, the maximum duration of the minor player's registration for the new club is limited and may not last longer than one year under any circumstances. For the exception to be applicable, the duration of the minor player's academic study programme abroad (and, by extension, the duration of their proposed registration) must be less than one year. If the

456 "*Guide to submitting a minor application*", available on the FIFA website.
457 Circular no. 1709 of 13 February 2020.
458 Circular no. 1635 of 8 June 2018, last paragraph on page 2.
459 Article 19 paragraph 2 (e), Regulations.

relevant programme of academic study abroad lasts longer than a year, there should be less than a year of the programme remaining when the player is registered for their club, and the registration for football purposes should reflect the remaining duration of their studies. The exception can also be applied if the duration of the minor player's academic study programme abroad is longer than a year, but the player will reach the age of 18 within one year. This is because once the player turns 18, they are no longer considered a minor, and no longer require approval to register with a club.

As per FIFA Circular no. 1709,[460] the minor player must be supervised throughout their academic programme by host parents. The host parents must provide the player with accommodation. Moreover, both the minor player's parents *and* the host parents must consent to the player being registered with the new club. These requirements are reflected in the list of required documentation in the "*Guide to submitting a minor application*".

v. Applications for first registration[461]

To prevent any attempt to circumvent the provisions on the protection of minors, it is essential that the rule, the exceptions, and all the other principles of article 19 should also apply to the first time a minor is registered as a player in a country where they are not a national. This fundamental principle has been confirmed by CAS.[462]

In an international transfer, the player's registration is transferred between two different member associations. Consequently, if the minor player has never been registered with any member association and wishes to be registered for the first time in a country where they are not a national, this registration will not constitute an international transfer. Interested parties could thus be tempted to conceal a player's previous registration to disguise an international transfer as a first registration, thus potentially circumventing the ban on international transfers involving players under 18. Extending the relevant provisions to the first time a non-national minor player is registered outside their country of origin removes this risk.

vi. The five-year rule[463]

Besides the five exceptions enumerated in article 19 paragraph 2, there is one more set of circumstances under which a minor player can be registered for a club outside their country of origin, known as the "*five-year rule*". The rule is only applicable to the first time a player is registered (i.e. provided that the player has never previously been registered for a club with *any* member association). In this regard, it is worth remembering that if a period

460 Circular no. 1709 of 13 February 2020.
461 Article 19 paragraph 3, Regulations.
462 CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA.
463 Article 19 paragraphs 3 and 4, Regulations.

of 30 months elapses between a player's last appearance for their previous club in an official match and the player being re-registered, the player's registration as a footballer will be considered to have lapsed, and the new registration will be treated as a first registration.

The rule was formally incorporated into article 19 on 1 June 2016,[464] having previously been an unwritten exception applied in the SCM jurisprudence.

This rule states that a foreign minor player who has never previously been registered with a club, and who has lived (i.e. been physically present) for at least the last five years in the country where the member association at which they wish to be registered is domiciled, should be treated as a "national" of that country, both from a sporting point of view and in relation to the provisions on the protection of minors. An uninterrupted presence of at least 5 years in any one country constitutes a significant period of a young player's life. This period refers to the five years directly prior to the registration.

Nevertheless, if a member association wishes to rely on this rule to register a foreign minor player for one of its clubs, the PSC will assess the specific circumstances and decide whether to authorise the first registration.

e) PSC (PREVIOUSLY SCM) APPROVAL

As previously mentioned, until September 2009, member associations intending to register a minor player for one of their affiliated clubs were responsible for ensuring compliance with article 19. In an effort to improve monitoring and exert more control over the way the rules protecting minors were implemented, and in particular to ensure that the exceptions were being applied consistently and correctly, the SCM was created on 1 October 2009. The creation of the SCM thus shifted responsibility for adjudicating on such cases from the associations to FIFA.

On 1 October 2021, the SCM was abolished and its competence absolved into the newly-constituted PSC of the FT. The PSC has the authority to assess and decide on all proposed international transfers of minor players and first registrations of foreign minor players.

If a member association wishes to register a minor player (either as a first registration of a foreign minor or following their international transfer) for one of its affiliated clubs, it must obtain the approval of the PSC to do so. To obtain this approval, it must submit the relevant application at the request of its member club. Approval must be received prior to any request for the player's ITC and/or the first registration of the foreign minor player involved.

The procedure for applying to the PSC is set out in the Procedural Rules.

464 Circular no. 1542 of 1 June 2016.

To ensure that the principles of due process, and in particular, the right of audience, are respected, the PSC grants the member association with which the player was previously registered (if there is one) the opportunity to submit its position on the proposed transfer. As explained above, cases in which a minor player moves for humanitarian reasons are an exception to this general rule.

An ITC is not required to register a player under the age of 10. If a member association intends to register a player below that age at the request of one of its clubs, the member association will not be required to apply to the PSC. Nevertheless, the club and member association concerned will be under an even greater obligation to ensure that the player does qualify for an international transfer pursuant to the Regulations. This must be verified by the member association before the player is registered. This was clarified in FIFA Circular no. 1468 and finally incorporated in the Regulations on 1 March 2020.[465]

CAS[466] has previously declined to sanction a club for violating the provisions on the protection of minors. In that specific case, the club registered players under the age of 12 (then the age threshold for transferring minor players) without providing evidence that the conditions for one of the exceptions were met. This case was heard prior to the issue of FIFA Circular no. 1468 or the amendment on 1 March 2020 and has subsequently been superseded.

f) THE LIMITED MINOR EXEMPTION

In 2009, just prior to the introduction of the SCM, it was decided to introduce a provision allowing a member association, under specific circumstances, to be exempted from the requirement to refer all applications for the international transfer of a minor player, or the first registration of a foreign minor player, to the SCM. As was pointed out in the relevant circular,[467] exceptions to this requirement would only ever be applicable to amateur minor players looking to register with purely amateur clubs. This is known as the limited minor exemption (**LME**).

The main reason for introducing the LME provision was the high number of first registrations of foreign minor players and international transfers of minor players being completed at amateur level. The aim of the LME was to ease the administrative burden on member associations; to avoid excessively long processing times for applications involving purely recreational players; to reduce congestion in TMS; and, to prevent the SCM decision-making proces from collapsing under its caseload. Moreover, while it is undoubtedly important to ensure that a minor has an appropriate and stable environment in which to develop, an amateur minor player who wants to play for a purely amateur club should not be prevented from doing so by an excessive administrative burden.

465 Circular no. 1709 of 13 February 2020.

466 CAS 2016/A/4785 Real Madrid Club de Futbol v. FIFA; CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA, and CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA both provided a different opinion.

467 Circular no. 1209 of 30 October 2009.

The LME has now been codified in article 19 paragraph 7, which both describes the option open to member associations and specifies their responsibilities. Incorporating LMEs into the Regulations was an important step towards improving both transparency and legal security.

Provided the relevant conditions are met, an association may request an LME by lodging a written request to the PSC via TMS. The likelihood of the application being accepted is connected to the amount of work associated with applications involving minors, and the number of such applications to be covered under the LME. Member associations should focus on these aspects when explaining the reasons for their LME request. They should also provide information as to the structure of their leagues, and in particular, the significance and number of the strictly amateur leagues within their remit. Finally, member associations must also indicate the number of purely amateur clubs which are affiliated.[468]

The grant of an LME relieves the member association of the obligation to make a formal application for approval through TMS to the PSC. LMEs will only ever apply to minor players registering with purely amateur clubs as defined in the Regulations. All other applications involving minor players will still need to be submitted to the PSC. In accordance with article 19bis paragraph 6, LMEs do not apply to minor players joining an academy if that academy has a link to any professional club.

If granted, the LME is normally valid for a period of two years. When it expires, the member association is free to request an extension. Again, the request must be submitted in writing through TMS, together with all relevant supporting documents. The PSC will then reassess the situation and decide on the extension request. The member association will lose its LME unless it explicitly applies to extend it and the PSC approves the request.

A member association granted an LME is required to submit reports to FIFA via TMS at regular intervals, normally every six months. The reports must be in a predefined format and should provide clear information about the number of minor players the member association has registered during the reporting period and the clubs with which these players have been registered. Member associations are also requested to include information on any planned domestic and international transfers involving minor players as part of the report. Finally, the report must include details of the precise exception (including the five-year rule, if applicable) under which each of the minor players concerned was registered under the LME. In addition to these standard minimum requirements, the PSC may decide to demand additional information depending on the specific circumstances of the member association in question. The PSC ruling on the original LME request will set out any additional conditions associated with the LME.[469]

468 Circular no. 1576 of 10 March 2017.
469 Circular no. 1576 of 10 March 2017.

If an LME is granted, it will be the member association's responsibility to verify and ensure, prior to any request for an ITC for a minor player and/or first registration of a foreign minor player, that the player concerned does indeed qualify for one of the exceptions or falls under the five-year rule, subject to which of those provisions the LME permits the member association to rely upon when registering amateur minor players.

To ensure that an LME is used appropriately, the Regulatory Enforcement Department checks the compliance of published reports received. The main reason for these checks is to detect and prevent the illegitimate use of LMEs as a vehicle for circumventing the provisions on the protection of minors, for example with a view to a minor player being registered with a professional club. The focus is on any subsequent transfers of a minor player registered under an LME from a purely amateur club to a professional club, or to a club with a legal, financial or *de facto* link to a professional club.[470]

Member associations have the right to determine the exact documentary evidence they require from their affiliated clubs when assessing requests to register minor players under an LME.

That having been said, the member association concerned, along with its affiliated club, will always be held responsible for proving that any subsequent transfer of a minor player mentioned in an LME report to a professional club, or to a club with a legal, financial or *de facto* link to a professional club, is fully compliant with the requirements of article 19. If, while analysing such a subsequent transfer, it discovers that the conditions under which the player was first registered were not actually fulfilled at the time (for example the player was registered with a professional club rather than a purely amateur club), the member association must reject the request for the subsequent transfer of the minor player and deregister them. It should also consider imposing sanctions on its affiliated club and/or reporting the incident to FIFA.[471]

g) SANCTIONS

i. General points

The Disciplinary Committee will impose sanctions for any violations of the provisions on the protection of minors. Thus far, sanctions have only ever been imposed on the proposed new club and its member association. Since the applicable rules and regulatory provisions do not impose any obligation on minor players, they cannot be subject to any sanction for violating the provisions on the protection of minors.

470 Circular no. 1576 of 10 March 2017.
471 Circular no. 1576 of 10 March 2017.

Sanctions may be appropriate for a variety of infractions, including without limitation:

- registering a minor player without requesting the pertinent ITC;
- requesting and issuing an ITC without the prior approval of the PSC (previously SCM);
- registering a foreign minor player for the first time without the prior approval of the PSC;
- a member association agreeing to register a minor player under the age of ten without ensuring the player qualifies for one of the exceptions or the five-year rule;
- breaching the terms of an LME. Examples include registering a minor player under the LME without PSC approval, and/or if the player does not qualify for any of the exceptions or the five-year rule; registering a minor player for a club that is not a purely amateur club; not complying with the duty to submit requested reports on time, or failing to abide by specific terms and conditions of the LME as per the decision of the PSC or the findings underlying the decision; failing to register minor players before allowing them to participate in organised football, or failing to comply with procedural obligations as per the Procedural Rules.

The burden of proof in establishing a disciplinary infringement lies with FIFA. The standard of proof[472] in accordance with article 35 paragraph 3 of the FIFA Disciplinary Code, is to "*the comfortable satisfaction of the competent judicial body*".

Some violations concern the substantive conditions pertaining to the protection of minors, while others refer to procedural duties.[473] Violation of the substantive requirements associated with the general prohibition against international transfers and first registrations of (foreign) minor players should be treated as a serious offence. In contrast, failure to comply with procedural rules when transferring a minor player, or registering them for the first time, is generally viewed less harshly, since the procedural obligations are intended merely as a tool to ensure compliance with the substantive requirements. This is not to say procedural violations should not be punished, but the sanction imposed should be less severe than for a violation of the substance of the Regulations.

In a 2016 Award,[474] the Panel confirmed that a club could be sanctioned for failing to request the approval of the SCM (on time), even if approval would clearly have been granted had the request been submitted in a timely manner.

472 CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA; CAS 2019/A/6301 Chelsea FC v. FIFA.
473 As regards this distinction, CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA.
474 CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA.

Even though a member association is obliged to request (and obtain) an ITC for any player above the age of 10, prior to registering them for one of its affiliated clubs, a club can also be held responsible failing to obtain an ITC before the player concerned is registered and participates in organised football. The member association requests the ITC once it receives a valid application for registration from the player's proposed new club. This application should include a request to apply for the player's ITC.[475] This interpretation of the procedures was advanced by CAS as early as 2014,[476] where the Panel explained that the onus was on the registering club to initiate the procedure of obtaining an ITC by submitting a request to the relevant member association using TMS.

Where two clubs are separate legal entities but have a close relationship (the Regulations refer to an "uncharacteristically" close relationship) as far as their dealings with minor players are concerned, they can be deemed to be acting as a unit. This might be appropriate, for example, if a professional club has a'farm team' or 'feeder club' and the players are transferred between the professional club and the farm team free of charge, with the most talented players staying with the professional club and it having first pick of which players it wants in its squad. According to CAS,[477] in situations like these, the professional club can be held liable for infringements of article 19 committed by the feeder club. In the same 2016 Award as above, the Panel explained that if the professional club were to look to bypass the mandatory procedure concerning the registration of (foreign) minor players by feeding the minor player to its farm team, it could not then benefit from the training provided to the player by the junior by claiming the full amount of training rewards due in connection with the player's transfer.

In the same Award, the Panel confirmed that it was a club's duty to ensure that no minor player was registered with them in violation of the substantive requirements of article 19. In addition, it held that the minor player did not necessarily have to have been registered with the member association concerned for their proposed new club for article 19 to have been breached. Rather, the fact that the player had participated in organised football[478] for that club despite not meeting the criteria for any of the exceptions was enough to constitute a violation of the Regulations. In this regard, the fact that a minor player had been allowed to participate in organised football for a club without being registered, thus breaching the terms of article 5 paragraph 1, could be perceived as an aggravating factor, although breaches of that provision are distinct from infringements of the substantive requirements of article 19.

475 CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA.

476 CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA.

477 CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA.

478 Definition 6, Regulations: *"association football organised under the auspices of FIFA, the confederations and the associations, or authorised by them."*

However, this reasoning (and, along with it, the fundamental approach the SCM and CAS had taken up to that point), was questioned in 2019 by the Sole Arbitrator in *CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA*. Until this case, the chain of events was generally used to assess whether any substantive provisions pertaining to the protection of minors had been breached. If it was determined that the minor player concerned had played organised football for a given club, they ought to have been registered with that club. If they were not registered, they had not completed the required registration procedure in the Regulations, meaning the SCM could not approve an application for the minor player in question. On this basis, it could be concluded that a substantive violation had occurred.

Starting from the distinction between the substantive and procedural conditions of article 19, the Sole Arbitrator took the view that a club was obliged to comply with the relevant substantive rules not only if the player was to play in organised football matches, but also if a reciprocal and sufficiently stable commitment was in place between the minor player and their club. In other words, the Sole Arbitrator deemed that a club's behaviour could be ruled illegitimate not merely based on a minor player's participation in organised football, but also if it had entered a stable commitment with the minor player. If that commitment was reciprocal and stable enough to imply that the club had entered a substantial relationship with the player, the club had to demonstrate that it had respected the substantive elements of the provisions on the protection of minors in doing so. In the words of the Sole Arbitrator, the club has a duty to self-assess before entering a relationship with a minor player.

Finally, any disciplinary sanction imposed for failure to comply with, the provisions on the protection of minors must abide by the principles of proportionality and adequacy. In this regard, a Panel held in 2014[479] that if a club tried to repair the situation by retrospectively seeking approval from the SCM for international transfers and/or the first registrations of (foreign) minor players, such attempt should be considered an important mitigating factor. The same Panel also emphasised that breaches of the substantive provisions of article 19 were deemed to be of the utmost gravity and should therefore attract particularly severe sanctions.

When assessing the proportionality of a sanction, according to CAS,[480] in the absence of specific principles in the FIFA Disciplinary Code, the following criteria should be considered:

- the nature of the offence;
- the seriousness of the loss or damage caused;
- the extent of the relevant party's culpability;

479 CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA.
480 CAS 2014/A/3813 Real Federación Española de Futbol v. FIFA.

- the offender's previous and subsequent conduct in terms of rectifying and/or preventing similar situations;
- the applicable case law; and
- any other relevant circumstances.

Various Awards[481] provide that a registration ban is an appropriate sanction where the provisions on the protections of minors are breached because of a systematic approach, pursued over an extended period, involving multiple players, and encompassing breaches of multiple provisions. In the words of one Panel,[482] the competent decision-making body should look to send *"a strong signal not only to* [the club concerned] *but to other potential violators of this provision, that it will be taking protection of minors seriously, as it should. A ´lighter´ sanction, a reprimand for example, might have imposed 'reputation costs' on* [the club]. *Similar sanctions however, are hardly ever dissuasive enough."*

ii. Responsibility of the new member association

It is the duty of the member association to which the minor player's proposed new club is affiliated to apply to approve the international transfer or the first registration of a (foreign) minor player to the PSC. This approval must be obtained prior to any ITC request from a member association and/or a first registration.

In a 2014 Award,[483] CAS further specified the extent of the new member association's responsibilities. The Panel held that article 19 was the backbone of the provisions on the protection of minors, and therefore had to be complied with by all clubs and member associations alike. Article 19 was (and is) binding at national level and must be included in the regulations of all member associations. Furthermore, CAS noted that the member association, as the body in charge of managing and developing football in its country by virtue of its status as a FIFA member, was obliged to ensure full compliance with article 19 by its affiliated clubs.

A member association cannot avoid being held liable for any violation of article 19, even if an affiliated club is responsible for breaching the rules. It is worth bearing in mind that a member association can effectively ratify a player's registration simply by failing to take action to prevent it.

Finally, as far as the proportionality of the sanction is concerned, the Panel stated that member associations assume a supervisory role in respect of FIFA rules, and that this duty is stipulated in general and abstract terms in the Regulations. Consequently, any failure to comply with the provisions on the protection of minors should be seen as a particularly serious offence.

481 CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA; CAS 2016/A/4785 Real Madrid Club de Futbol v. FIFA; CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA.

482 CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA.

483 CAS 2014/A/3813 Real Federación Española de Futbol v. FIFA.

19.2. Relevant jurisprudence

CAS Awards

Strict application of the provisions on the protection of minors

- CAS 2005/A/955 Cádiz C.F. SAD v. FIFA and Asociación Paraguaya de Fútbol and CAS 2005/A/956 Carlos Javier Acuna Caballero v. FIFA and Asociación Paraguaya de Fútbol
- CAS 2011/A/2354 E. v. FIFA
- CAS 2014/A/3611 Real Madrid FC v. Fédération Internationale de Football Association (FIFA)
- CAS 2015/A/4312 John Kenneth Hilton v. FIFA
- CAS 2017/A/5244 Oscar Bobb & Associação Juvenil Escola de Futebol Hernâni Gonçalves v. FIFA
- TAS 2020/A/7116 Jerome Ow c. FIFA
- CAS 2020/A/7150 Ryoga Fujita v. FIFA
- TAS 2020/A/7374 Isaac Korankye Obeng c. FIFA
- CAS 2020/A/7503 R.N.C. v. FIFA

Exhaustive list of exceptions

- CAS 2011/A/2354 E. v. FIFA
- CAS 2015/A/4312 John Kenneth Hilton v. FIFA
- CAS 2013/A/3140 A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol & FIFA
- CAS 2017/A/5244 Oscar Bobb & Associação Juvenil Escola de Futebol Hernâni Gonçalves v. FIFA

Legitimacy of the provisions on the protection of minors

- CAS 2005/A/955 Cádiz C.F. SAD v. FIFA and Asociación Paraguaya de Fútbol and CAS 2005/A/956 Carlos Javier Acuna Caballero v. FIFA and Asociación Paraguaya de Fútbol
- CAS 2008/A/1485 FC Midtjylland A/S v. FIFA
- CAS 2014/A/3813 Real Federación Española de Fútbol v. FIFA

Parents move for reasons not linked to football

- CAS 2011/A/2354 E. v. FIFA
- CAS 2011/A/2494 FC Girondins Bordeaux v. FIFA
- CAS 2013/A/3140 A. v. Atlético Madrid & RFEF & FIFA
- CAS 2015/A/4178 Zohran Ludovic Bassong & RSC Anderlecht v. FIFA
- CAS 2015/A/4312 John Kenneth Hilton v. FIFA
- CAS 2017/A/5244 Oscar Bobb & Associação Juvenil Escola de Futebol Hernâni Gonçalves v. FIFA
- TAS 2020/A/7116 Jerome Ow c. FIFA
- CAS 2020/A/7150 Ryoga Fujita v. FIFA
- TAS 2020/A/7374 Isaac Korankye Obeng c. FIFA
- CAS 2020/A/7503 R.N.C. v. FIFA

Extended application of EU/EEA exception

- CAS 2011/A/2494 FC Girondins Bordeaux v. FIFA
- CAS 2012/A/2862 FC Girondins de Bordeaux v. FIFA
- CAS 2016/A/4903 Club Atlético Vélez Sarsfield v. The FA, Manchester City FC & FIFA

Disciplinary aspects

- CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA
- CAS 2014/A/3813 Real Federación Española de Fútbol v. FIFA
- CAS 2016/A/4785 Real Madrid Club de Fútbol v. FIFA
- CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA
- CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA

Article 19bis - Registration and reporting of minors at academies

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Article 19bis - Registration and reporting of minors at academies

1. Clubs that operate an academy with legal, financial or de facto links to the club are obliged to report all minors who attend the academy to the association upon whose territory the academy operates.
2. Each association is obliged to ensure that all academies without legal, financial or de facto links to a club:
   a) run a club that participates in the relevant national championships; all players shall be reported to the association upon whose territory the academy operates, or registered with the club itself; or
   b) report all minors who attend the academy for the purpose of training to the association upon whose territory the academy operates.
3. Each association shall keep a register comprising the names and dates of birth of the minors who have been reported to it by the clubs or academies.
4. Through the act of reporting, academies and players undertake to practise football in accordance with the FIFA Statutes, and to respect and promote the ethical principles of organised football.
5. Any violations of this provision will be sanctioned by the Disciplinary Committee in accordance with the FIFA Disciplinary Code.
6. Article 19 shall also apply to the reporting of all minor players who are not nationals of the country in which they wish to be reported.

19bis.1. Purpose and scope

a) GENERAL REMARKS

Article 19bis, which was introduced in October 2009,[484] concerns minor players who join a football academy (which may or may not be linked to a club) without necessarily being registered for a club.

This amendment was designed to react to the practice of clubs regularly enrolling (very) young players from abroad in their academies without registering them. In some cases, this was done to bypass the existing strict provisions on the protection of minors.

484 Circular no. 1190 of 20 May 2009.

As they were not registered, these young players were not able to participate in organised football. However, by recruiting these players to their academies, clubs could secure their talent, train, and develop them, and even field them in certain matches they organised themselves (and which, therefore, did not fall within organised football) without violating article 19. The players could then be officially registered when they reached 18, with no need for additional approval.

It should be obvious that these players require the same range of protection as minor players transferring internationally or being registered for the first time. In fact, the position of these players would appear to be even more vulnerable, since not being part of the squad that will participate in organised football puts them in a less favourable position from a sporting perspective than their registered peers and makes their path to the professional career they are dreaming of even more arduous and uncertain. These academy players are therefore at greater risk of mistreatment and exploitation. CAS has acknowledged this risk and the need for adequate measures to combat it.[485]

b) OBLIGATION TO REPORT MINORS TO MEMBER ASSOCIATIONS

All minor players attending an academy must be reported to the member association in the territory where the academy operates, whether that academy is linked to a club or not. Furthermore, article 19 applies when reporting the presence of foreign minor players at an academy.

As CAS has confirmed,[486] the requirements of article 19bis are different from those of article 19, since article 19bis potentially covers both minor players joining academies without being registered for the club (the main target of the provision) and minor players who are enrolled in the academy *and* registered for the club.[487]

The requirement to report minor players attending a club's academy is to be *"considered as a further and different obligation to registering a player, in particular in order to protect those minors that train and/or play with an academy, but are not registered."*[488]

PSC approval is not required when reporting a foreign minor player attending an academy to the member association concerned. The jurisdiction of the PSC is limited to assessing international transfers or first registrations of (foreign) minor players. Accordingly, it is *always* the responsibility of the member association concerned to verify whether the circumstances of the minor player fall under one of the applicable exceptions or the five-year rule. This duty must be carried out irrespective of any LME that may have been granted to the member association.

485 CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA; in CAS 2016/A/4785 Real Madrid Club de Futbol v. FIFA.

486 CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA.

487 Obviously, there are also minor players only registered for the club. However, these are not embraced by the scope of article 19bis, and their situation is to be assessed solely in light of article 19.

488 CAS 2016/A/4785 Real Madrid Club de Futbol v. FIFA, confirming the findings in CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA.

i. The minor player's nationality

The obligation to report minor players attending an academy to a member association is independent of the player's nationality. All minor players, both nationals of the country in which the academy is located and foreigners, must be reported. If the minor player is a foreigner, then the same requirements apply as for an international transfer or first registration of a foreign minor player. In principle, a foreign player under 18 may only attend an academy if their circumstances satisfy one of the exceptions or the five-year rule.

ii. Addressee of the obligation

The addressee of the obligation varies depending on whether the academy is operated by a club, and whether the academy concerned has a legal, financial, or *de facto* link to a club.

If a club operates the academy directly, it is the club's duty to report all minors attending the academy to the member association upon whose territory the academy operates. In this regard, and since several big (mainly European) clubs operate academies in foreign countries, minor players must be reported to the member association *where the academy operates*, not the one to which the club is affiliated.[489]

Article 19bis does not specify exactly how a club must report minors. However, CAS[490] has clarified that a club that only registers its academy players at a regional association (as opposed to a member association) will not be deemed to have met the reporting obligations. The relevant information must be submitted to a member association. Moreover, it should be noted that the club's obligation to report minor players attending its academy to the relevant member association is not associated with any age limit. *All* players under the age of 18 must be reported.[491]

Alongside the traditional academies linked to clubs, private academies are now a reality of modern football. These private institutions do not have any legal, financial, or *de facto* links to any club affiliated to a member association, which means they are outside the framework of association football.[492] The lack of an affiliation to a member association removes them from the jurisdiction of FIFA. Consequently, they are not bound by the Regulations and they cannot be obliged to report their minor players to a member association.

However, as the world governing body of football, FIFA nevertheless has a responsibility towards young players attending academies of this kind. The Regulations thus impose a responsibility on member associations to ensure that all academies operating on their territory without legal, financial, or *de facto* links to a club either:

489 Example: Club A affiliated to the association X operates an academy in country Y. Club A is obliged to report all minors attending the academy to the association Y.

490 CAS 2016/A/4785 Real Madrid Club de Futbol v. FIFA.

491 CAS 2016/A/4785 Real Madrid Club de Futbol v. FIFA.

492 Definition 16, Statutes.

– run a club that participates in the relevant national championship. Doing so will move the private academy within the scope of article 19bis, because the academy will no longer be operating outside the structures of association football, and the club concerned will have to report all minor players attending the academy to the member association upon whose territory it operates. It goes without saying that the players can also be registered with the academy's club;

or

– report all minor players training at the academy to the member association upon whose territory the academy operates. Obviously, since the academy does not fall within the framework of organised football in this instance, it will not be easy for a member association to comply with this requirement, because it will have no means of forcing the academy to report its players.

c) WHAT IS AN ACADEMY?

The fact that young players are training together in an organised way, or as part of a loose structure, is not sufficient for them to be deemed members of an academy, or for the reporting obligations to apply. According to CAS, *"the word 'academy' implies a purpose, i.e. and organisational structure that systematically combs a large reservoir of youth players for talent spotting for the club and tries to attract and tie the young players to the club."*[493]

The definition of an academy in the Regulations[494] reflects this. In summary, for an entity to be considered an academy, its purpose must be to provide players with long-term training. Furthermore, an academy must provide training facilities and infrastructure appropriate to achieving this objective. More specifically, when determining whether a specific entity is an academy within the meaning of the Regulations, the following criteria must be met.

– The entity concerned must be an organisation or an independent legal entity. Therefore, any organisation (in the broadest sense of the term) or entity – regardless of its legal structure – can potentially qualify as an academy.

– The relevant organisation or entity must have a primary, long-term objective to provide players with long-term training through the provision of the necessary training facilities and infrastructure. Hence, to be considered an academy, the organisation or entity must provide its players with the infrastructure, facilities, or personnel required, with the aim of training the players and developing their skills over an extended period.

493 CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA.

494 Definition 12, Regulations: *"an organisation or an independent legal entity whose primary, long-term objective is to provide players with long-term training through the provision of the necessary training facilities and infrastructure. This shall primarily include, but not be limited to, football training centres, football camps, football schools, etc."*

It is important to clarify the distinction between an academy and a youth team. Unlike an academy, a youth team is an integral part of a club and comprises a fixed squad of players who will represent that club in competitions forming part of organised football. Accordingly, youth team players will normally be registered for that club with the relevant member association.

d) TRIALS

A 2016 Award illustrates many of the key factors at play when a minor player is on 'trial' at a club.[495] In this specific case, the Sole Arbitrator did not consider the fact that two minor players had remained with a club for a relatively long period of time and on a continuous basis was sufficient to rule that the players had actually completed their first registrations with the club, as defined by the Regulations. The Sole Arbitrator explained that *"*[s]*uch a concept of a registration 'de facto' is not sustained by the current rules. […]*[496] *If FIFA came to consider [it] appropriate to put limits on the period of trial that a club can ask or offer a young player to do, a respective rule would have to be issued"*.

Given this, it is thus appropriate to report foreign minor players to the relevant member association if they join a club and take part in training sessions over a prolonged period without being registered for the club, and without participating in matches within the scope of organised football. There is no question that players in this situation should benefit from the relevant safeguards provided to foreign minor players who formally join an academy, or who are registered for a club in a foreign country.

e) MINIMUM DETAILS TO BE PROVIDED

Member associations are required to keep a register including, at a minimum, the names and dates of birth of all the minors who have been reported to them by the clubs or academies. This represents the minimum level of detail clubs or academies must provide.

f) THE EFFECT OF REPORTING

In reporting minor players to their member associations, academies and players undertake to practice football in accordance with the FIFA Statutes, and to respect and promote the ethical principles of organised football. This provision of the Regulations (which is very much in line with the commitments made when a player is registered with a member association for a club) ensures that the academies and their minor players are placed under the jurisdiction of football's relevant decision-making bodies, even if they are not officially registered. This is essential for the proper functioning of organised football.

495 CAS 2016/A/4785 Real Madrid Club de Futbol v. FIFA.
496 also CAS 2019/A/6301 Chelsea Football Club Limited v. FIFA.

19bis.2. Relevant jurisprudence

CAS Awards

- CAS 2014/A/3793 Fútbol Club Barcelona v. FIFA
- CAS 2016/A/4785 Real Madrid Club de Fútbol v. FIFA
- CAS 2016/A/4805 Club Atlético de Madrid SAD v. FIFA
- CAS 2019/A/6301 Chelsea FC v. FIFA

Chapter VIII
Training compensation and Solidarity mechanism

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BACKGROUND

There is a long-standing and general acknowledgement by all stakeholders within football that clubs that invest in training and educating young players should be rewarded. This view is endorsed by both the European Commission and the ECJ. This formed a pillar of the March 2001 agreement and was confirmed in the ECJ decision in *Bernard* in 2010.[497]

497 Olympique Lyonnais SASP v. Olivier Bernard and Newcastle UFC, Case C-325/08, European Court Reports 2010 I-02177: opinion of Advocate General Sharpston, point 47, and the references contained therein; ECJ judgement, point 39 and the pertinent reference to the Bosman ruling.

Article 20 - Training compensation

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Article 20 - Training compensation

1. Training compensation shall be paid to a player's training club(s): (1) when a player is registered for the first time as a professional, and (2) each time a professional is transferred until the end of the calendar year of his 23rd birthday. The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player's contract. The provisions concerning training compensation are set out in Annexe 4 of these regulations. The principles of training compensation shall not apply to women's football.

20.1. Purpose and scope

The training compensation system established a framework whereby clubs that invest in training and educating young players are rewarded whenever a player that they trained becomes a professional, thus encouraging clubs to invest in youth development. Clubs that do not invest in training and educating young players are made to reimburse the clubs who train the players that become professional (defined as "*training clubs*"), as in principle they are profitting from the training and education provided by those training clubs.

Article 20 does no more than summarise the main principles of the system; the technical details are set out in annexe 4. Accordingly, this part of the commentary will analyse the individual principles concerned in detail, with reference to the various specific provisions of annexe 4.

20.2. Non applicability to women's football

The last sentence of article 20 came into force on 1 January 2018. It concerns the non-application of the training compensation system to women's football.[498]

498 Circular no. 1603 of 24 November 2017.

This non-application is based primarily on a decision by the DRC in 2011[499] in which it was concluded that the existing training compensation system, which was designed with the budgets, costs, and expenses of men's football in mind, should not be applied to women's football because the economic and sporting situation of women's football is currently completely different to that of the men's game.[500] Although the DRC recognised the progress of women's football, it noted that the level of professionalism at the time also had to be taken into consideration, and that "*the award of the training compensation for the transfer of female players could possibly even hinder the further development of women's football and render the previous efforts to have been made in vain*."[501]

Notwithstanding this, in 2019 the Professional Women's Football Taskforce, a working group made up of representatives from FIFA and professional football stakeholders, began examining the question of whether a training compensation system should be applied in women's football. Following several rounds of consultation, in mid-2021 it was provisionally decided that a system should be applied. At the time of writing, the principles governing that system, reflecting the budgets, costs, expenses, and sporting development of women's football, are being developed and negotiated.

No similar amendment was included regarding solidarity mechanism. For the avoidance of doubt, the principles of the solidarity mechanism *do* apply to women's football.

20.3. Relevant jurisprudence

DRC decisions

- DRC decision of 7 April 2011, no. 411375
- DRC decision of 5 November 2015, no. 11150999

CAS Awards

- CAS 2016/A/4598 WFC Spartak Subotica v. FC Barcelona

499 DRC decision of 7 April 2011, no. 411375.
500 DRC decision of 7 April 2011, no. 411375; DRC Decision of 5 November 2015, no. 11150999.
501 DRC decision of 7 April 2011, no. 411375.

ANNEXE 4, Article 1 - Objective

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ANNEXE 4, Article 1 - Objective

1. A player's training and education takes place between the ages of 12 and 23. Training compensation shall be payable, as a general rule, up to the age of 23 for training incurred up to the age of 21, unless it is evident that a player has already terminated his training period before the age of 21. In the latter case, training compensation shall be payable until the end of the calendar year in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between the age of 12 and the age when it is established that the player actually completed his training.
2. The obligation to pay training compensation is without prejudice to any obligation to pay compensation for breach of contract.

1.1. Purpose and scope

a) TRAINING PERIOD

In principle, a player's training and education takes place between the ages of 12 and 23. The Regulations establish that training compensation is generally payable in respect of players up to the age of 23. However, only the clubs that trained the player up to (and including) the calendar year of their 21st birthday are entitled to receive training compensation.

Although article 20 refers to the player's age, it is interpreted as referring to the calendar year (for training compensation triggered as from 1 January 2021) or season (for training compensation triggered prior to that date) in which the player celebrates the relevant birthday. This approach is also reflected in the jurisprudence of the DRC and CAS.[502]

An entitlement to receive training compensation arises only if the event that triggers the entitlement occurs before the end of the calendar year in which the player reaches his 23rd birthday. However, training compensation can only be claimed for training of the player during the calendar years of their 12th and 21st birthdays (i.e. for a maximum of ten years). If, for example, a club has trained a player during the calendar years in which they celebrated their 18th to 22nd birthdays and, prior to the calendar year of their 23rd birthday, the

502 DRC decision of 19 September 2019, no. 09192966-E; DRC decision of 26 September 2019, no. 09191934-E; TAS 2014/A/3652 KRC Genk c. LOSC Lille Métropole.

player transfers internationally to another club as a professional, the training club will only be entitled to receive training compensation for four calendar years (i.e. those of the 18th, 19th, 20th, and 21st birthdays). The calendar year of the player's 22nd birthday will not be considered, because the entitlement to receive training compensation only extends to the calendar year of their 21st birthday.[503]

If a player has clearly finished their training period before they turn 21, the calendar years to be taken into consideration for the purposes of training compensation will be those between the player's 12th birthday and the calendar year in which they completed their training period. The club that is liable to pay training compensation must prove that the player completed their training early. The use of the term *"evident"* in the Regulations indicates that the player can only be considered to have completed their training if there is absolutely no room for doubt. In particular, the fact that a player has signed a first professional contract alone does not automatically indicate that they have completed their training. Other, more persuasive indications that a young player has completed their training might include: having played regularly in official matches for their training club's first team; having been called up for the "A" representative team of their member association or, at the very least, the Under-21 representative team; having been loaned (in return for transfer compensation) to a club at the same level as their training club or above; having reached a certain age threshold; or having previously been transferred as a professional player in return for significant transfer compensation. In this respect, the DRC will not generally agree that a player is fully trained unless a combination of relevant circumstances applies simultaneously; meeting just one of the criteria is not usually considered sufficient evidence.[504]

Except for shortening the training period for which compensation is due, this does not alter the other principles of the training compensation system in any way.

503 DRC Decision of 19 September 2019, no. 09192966-E; DRC Decision of 22 June 2019, no. 06190545-E.

504 In the majority of decisions, the early termination of the training period was not assumed: DRC Decision of 19 September 2019, no. 09192966-E, ; CAS 2003/O/527 Hamburger Sport-Verein v. Odense Boldklub; CAS 2004/A/594 Hapoel Beer-Sheva v. Real Racing Club Santander; CAS 2006/A/1029 Maccabi Haifa F.C. v. Real Racing Santander; CAS 2011/A/2682 Udinese Calcio S.p.A. v. Helsingborgs IF; CAS 2014/A/3518 Zamalek Sporting Club v. Accra Hearts of Oak Sporting Club; CAS 2014/A/3553 FC Karpaty Lviv v. FC Zestafoni (player Daushvili); CAS 2017/A/5090 Olympique des Alpes SA c. Genoa Cricket & Football Club; CAS 2018/A/5513 Sport Club Internacional v. Hellas Verona Football Club S.p.A.; CAS 2019/A/6096 FC Lugano SA v. FC Internationale Milano S.p.A.; CAS 2019/A/6625 FC Girondins de Bordeaux v. Athletico Paranaense. One of the few DRC decisions where the termination of training was proven was Decision 3121474 of 12 March 2012.

b) TRAINING COMPENSATION AND CONTRACTUAL STABILITY BETWEEN PROFESSIONALS AND CLUBS

Compensation for breach of contract, which is paid to compensate losses suffered by a party because of the violation of contractual obligations, must be treated independently from training compensation. Accordingly, the Regulations stipulate that the obligation to pay training compensation is without prejudice to any obligation to pay compensation for breach of contract.

Hence, if a professional prematurely terminates their contract with their club without just cause, and thus becomes liable to pay compensation based on article 17 of the Regulations, any subsequent move to a new club before the end of the calendar year in which they turn 23 will entitle their training club to training compensation, provided all the other relevant criteria are met. The professional will be liable to pay the compensation for breach of contract, while their new club will be liable to pay the training compensation.

1.2. Relevant jurisprudence

DRC decisions

- DRC decision of 12 March 2012, no. 3121474 (early termination assumed)
- DRC decision of 22 June 2019, no. 06190545-E
- DRC decision of 19 September 2019, no. 09192966-E (early termination not assumed)

CAS Awards

- CAS 2019/A/6096 FC Lugano SA v. FC Internazionale Milano S.p.A.
- CAS 2018/A/5513 Sport Club Internacional v. Hellas Verona Football Club S.p.A.
- CAS 2019/A/6625 FC Girondins de Bordeaux v. Athletico Paranaense (confidential)

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ANNEXE 4, Article 2 - Payment of training compensation

1. Training compensation is due when:
   a) a player is registered for the first time as a professional; or
   b) a professional is transferred between clubs of two different associations (whether during or at the end of his contract)

   before the end of the calendar year of his 23rd birthday.
2. Training compensation is not due if:
   a) the former club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs); or
   b) the player is transferred to a category 4 club; or
   c) a professional reacquires amateur status on being transferred.

1.1. Purpose and scope

a) EVENTS TRIGGERING AN ENTITLEMENT TO TRAINING COMPENSATION

In simple terms, training compensation is due if either of the following situations occurs:

- A player is registered for the first time as a professional before the end of the calendar year of their 23rd birthday (and their training clubs are affiliated to a different member association then that of his current club); or
- A professional is transferred between clubs affiliated to different member associations (whether during or at the end of his contract) before the end of the calendar year of their 23rd birthday.

i) First registration as a professional

Where the player's first registration as a professional is with the same club where they have trained their whole career (i.e. they are simply promoted through the ranks from an amateur youth player until they earn a professional contract), no training compensation is payable. However, if this professional player goes on to transfer from their training club to a club affiliated to a different member association before the end of the calendar year of their 23rd birthday, their training club will be entitled to training compensation for the period they were trained, both as an amateur and as a professional (subject to the relevant limits).[505]

Alternatively, it may be that a player becomes a professional following a national transfer. Bearing in mind that the Regulations only govern the transfer of players between clubs affiliated to different member associations, this scenario will only trigger training compensation if one of the player's training clubs is affiliated to a different member association. For a training club to be able to claim training compensation pursuant to the Regulations in the case of a first registration of the player as a professional, that registration must have been for a club affiliated to a different member association from the one to which the training club is affiliated.[506] For training clubs affiliated to the same member association as the club which first registered a player as a professional, any entitlement to compensation will depend on the national regulations, as opposed to the Regulations.

It is thus important to establish exactly when a player acquires professional status to determine if training compensation is payable. Both the DRC and CAS have had the opportunity to address this matter on several occasions. In doing so, they have consistently referred to the article 2 paragraph 2 criteria, which are binding at national level, and explained that the relevant provision is the only authoritative standard to be applied when determining the professional status of a player. For more information, please see the relevant part of the commentary regarding the status of a player.

ii) International transfer as a professional

The second circumstance in which training compensation might become due, subject to all the relevant conditions being fulfilled, is when a professional player is transferred between clubs affiliated to two different member associations.

The obligation to pay training compensation arises regardless of whether the transfer takes place during or at the end of the player's contract. This means that if a professional player is transferred internationally before the end of the calendar year of their 23rd birthday, and if that transfer involves transfer compensation payable to their former club, training compensation will also be due.

505 CAS 2005/A/891 Bayer 04 Leverkusen Fußball GmbH v. FC St. Gallen and CAS 2005/A/894 FC St. Gallen 1879 v. Bayer 04 Leverkusen Fußball GmbH.

506 DRC decision of 23 October 2019, no. 10190558-FR.

According to case law,[507] unless expressly indicated in the relevant transfer agreement that training compensation will be paid in addition to transfer compensation, it is presumed that any agreed transfer compensation includes the training compensation that was due.

iii) Age limit

The entitlement to training compensation only arises if the trigger event occurs before the end of the calendar year in which the player reaches their 23rd birthday. Any trigger event that occurs after this calendar year does not give rise to any entitlement to training compensation.

b) EVENTS PRECLUDING ANY ENTITLEMENT TO TRAINING COMPENSATION

The Regulations list three specific events after which no training compensation is due.

i) Club terminates the contract with the player without just cause

The first is where the player's former club terminates the player's contract without just cause.[508] This prevents a club that fails to respect its contractual obligations from profiting from its behaviour. Alternatively, a club that does not show any interest in the player's services, as evidenced by its failure to respect its contractual obligations, should not be entitled to any training compensation. In line with jurisprudence related to article 17 of the Regulations, if a player terminates their contract with their former club with just cause, this situation should be treated as if the club had terminated the contract without just cause. This means that if a player terminates their contract with just cause due to his former club having seriously and repeatedly violated its contractual obligations, the club concerned will lose any entitlement to training compensation in relation to that player.

Similarly, if it is established that a player terminated their employment contract without just cause, then training compensation is due to the former club. In this context, given that unilateral termination of a contract by a player without just cause is usually established by the DRC, the question of whether training compensation is due depends on the outcome of the dispute on the contractual termination. Thus, it is quite common for the DRC to deal simultaneously with a contractual dispute and a claim for training compensation.[509]

507 DRC decision of 26 September 2019, no. 09191934-E; CAS 2004/A/785 Strømsgodset IF Toppfotball v. Liebherr GAK.

508 DRC decision of 16 October 2014, no. 1014311.

509 DRC decision of 13 November 2020, TMS 4125, GD Santa Cruz Alvarenga, Portugal v. Santani, Paraguay. The DRC decision concerning the contractual dispute, 18-02123 GD Santa Cruz Alvarenga v. Pitta Saldicar, was decided on the same day.

Any misconduct on the part of a player's latest club does not affect the rights enjoyed by any of their previous clubs. However, given that when a professional is transferred, training compensation is only payable to their last club prior to that transfer, the relevance of this part of the provision is limited to loans involving professional players. In practice, if the player is registered with a club as a professional, the player's previous clubs will not usually be entitled to training compensation in any event.

ii) Transfer to a Category IV club

The second scenario is when a player is transferred to a category IV club, a club on the lowest rung of the club ladder as far as training compensation is concerned. The majority of clubs in this category are purely amateur clubs. Over the years, this has proved a tempting vehicle for those attempting to circumvent the system, as set out in those parts of the commentary covering 'bridge transfers'.

In the existing jurisprudence on such scenarios,[510] the following factors have been considered as evidence of attempts to game the system:

- the player only stayed with the category IV club for a short period of time;
- the player did not turn out for the category IV club before they joined the higher category club;
- the player had already signed a contract/taken part in training sessions with higher category club before they were transferred to the category IV;
- a young, talented player is transferred to a lower-level club for no obvious reason;
- the compensation paid by the higher category club to the category IV club is significant, and potentially even higher than the amount of training compensation it would have had to pay as part of a direct transfer.

If it is ruled that an attempt has been made to circumvent the system, the matter will be treated as if the player had moved directly from their former club to the higher category club affiliated to the new member association, which will be made to pay the pertinent amount of training compensation.[511]

510 DRC decision of 30 October 2019, no. 10192730-E; CAS 2016/A/4597 SC FC Steaua Bucuresti v. FC Internazionale Milano SpA;CAS 2016/A/4603 SC Dinamo 1948 v. FC Internazionale Milano SpA; and CAS 2019/A/6639 Hellas Verona FC v. Latvian Football Federation & JFC Skonto.

511 CAS 2011/A/2544 FK Ventspils v. FC Stefan del Mare.

iii) Player reacquires amateur status on being transferred

Lastly, no training compensation is due if a professional reacquires amateur status on being transferred. This flows from the principle that training compensation should only apply if the player acquires or holds professional status. If a player does not exhibit the skills required to play professional football, the investment in their training should not be compensated. Extending the requirement to pay compensation to amateur players would result in an unjustified and burdensome expense for the amateur game, which would in turn risk ruining the grass-roots football that is crucial for the game's development.

However, if a player re-registers as a professional within 30 months of being registered as an amateur, their new club will be required to pay training compensation.[512] This provision is designed to prevent attempts to circumvent the system. It should not be possible to avoid training compensation simply by registering the player as an amateur and then re-registering them as a professional shortly afterwards. By specifying that training compensation should be paid under these circumstances in accordance with article 20, the Regulations makes clear that all the relevant requirements concerning any entitlement to training compensation must be met if the player later regains professional status. This means that the re-registration as a professional player must occur before the end of the calendar year in which the player celebrates their 23rd birthday.

In the recent jurisprudence of the DRC, only the club(s) with which the player was registered as an amateur directly prior to their 're-registration' as a professional is (are) entitled to training compensation. A club that has trained and educated an amateur who is able to reacquire professional status – by latest the calendar year of his 21st birthday - should be rewarded accordingly. This scenario is comparable to that of a player registered for the first time as professional. As a result, the DRC recognises that article 2 paragraph 1 (a) of annexe 4 applies. This recognition concurs with the *ratio legis* of the training rewards system.

On the other hand, there does not seem to exist a logical basis to compensate the club where the player was last registered as a professional before they reacquired amateur status. In strict application of article 20 of the Regulations (to which article 3 paragraph 2 refers), the DRC has rejected claims from such clubs, given that this scenario is neither the subsequent transfer of a professional, nor has the club contributed to the player (re)acquiring professional status and subsequently their (second) first registration as a professional.

512 Article 3 paragraph 2, Regulations.

1.2. Relevant jurisprudence

Acquisition of professional status

CAS Awards

- CAS 2014/A/3659, 3660 and 3661 KSV Cercle Brugge v. Clube Linda-A-Velha, Club Uniao Desportiva e Recreativa de Alges, Sport Club Paiense
- TAS 2015/A/4060 Club Jorge Wilstermann v. Argentinos Juniors
- CAS 2015/A/4148 & 4149 & 4150 Sheffield Wednesday FC v. Louletano Desportos Clube & Internacional Clube de Almancil & Associação Académica de Coimbra
- CAS 2020/A/7029 Association Sportive Guidars FC v. CSKA Moscow & Lassana N'Diaye

Circumvention of the rules on training compensation

DRC decisions

- DRC Decision of 30 October 2019, no. 10192730-E

Training compensation is not due if the former club terminates the player's contract without just cause

DRC Decisions

- DRC Decision of 16 October 2014, no. 1014311
- DRC Decision of 13 November 2020, TMS 4125 GD Santa Cruz Alvarenga, Portugal v. Santani, Paraguay

CAS Awards

- CAS 2009/A/1757 MTK Budapest v. FC Internazionale Milano S.p.A. (Filkor)
- CAS 2011/A/2544 FK Ventspils v. FC Stefan del Mare
- CAS 2014/A/3553 FC Karpaty Lviv v. FC Zestafoni (Daushvili)
- CAS 2016/A/4597 SC FC Steaua Bucuresti v. FC Internazionale Milano SpA
- CAS 2016/A/4603 SC Dinamo 1948 v. FC Internazionale Milano SpA
- CAS 2019/A/6639 Hellas Verona FC v. Latvian Football Federation & JFC Skonto

ANNEXE 4, Article 3 - Responsibility to pay training compensation

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ANNEXE 4, Article 3 - Responsibility to pay training compensation

1. On registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the players' career history as provided in the player passport) and that has contributed to his training starting from the calendar year of his 12th birthday. The amount payable is calculated on a pro rata basis according to the period of training that the player spent with each club. In the case of subsequent transfers of the professional, training compensation will only be owed to his former club for the time he was effectively trained by that club.
2. In both of the above cases, the deadline for payment of training compensation is 30 days following the registration of the professional with the new association.
3. An association is entitled to receive the training compensation which in principle would be due to one of its affiliated clubs, if it can provide evidence that the club in question – with which the professional was registered and trained – has in the meantime ceased to participate in organised football and/or no longer exists due to, in particular, bankruptcy, liquidation, dissolution or loss of affiliation. This compensation shall be reserved for youth football development programmes in the association(s) in question.

1.1. Purpose and scope

a) TWO DIFFERENT SCENARIOS

It is the responsibility of the new club (the club with which the player is registered following a transfer) to pay training compensation. The extent of this obligation varies depending on whether the new club is registering the player for the first time as a professional, or if they join the new club following an international transfer as a professional player. The key principle is that, subject to all the relevant conditions being met, any club that trained a player between the calendar year of his 12th and 21st birthday is only entitled to receive training compensation once, if at all.

i) First registration as a professional

When a player registers as a professional for the first time prior to the end of the calendar year of their 23rd birthday, the club with which the player is registered is responsible for paying training compensation to every club with which the player was previously registered, starting from the club(s) they were registered at in the calendar year of their 12th birthday. The Regulations tacitly assume that if a player was registered with a given club, they will have received training and education from them. In other words, a training club does not have to provide evidence that it actually *did* train the player. The only other criterion applied by the DRC besides the registration requirement is the physical presence of the player at the club. If the new club can provide evidence showing that, despite the player being registered with a given club during their training period, the club in question did not actually provide the player with any training, then no training compensation will be awarded for that period of the player's career.

The amount payable in training compensation is calculated on a *pro rata* basis according to the period the player spent with each training club.[513] For many years the DRC applied a calculation that measured time to the nearest month. If a player had been registered with one club for 10 days of a specific month and spent the remaining 20 days with another training club, the latter club would be awarded the share of training compensation for the entire month, and the club with which the player spent 10 days would get nothing. However, in recent times, the DRC commenced calculating the amount of training compensation due to the nearest day, and both clubs in that scenario would receive training compensation.

ii) International transfer as a professional

On the other hand, if a professional transfers internationally prior to the end of the calendar year of their 23rd birthday, training compensation will only be owed to the releasing club for the time it was responsible for training the player. This feature of the system is encapsulated in the phrase *"the first registration (of a player as a professional) breaks the chain"*.

The principle of "*the first registration breaks the chain*" is applied in a strict manner. This is reflected in the fact that if an amateur player is transferred nationally (i.e. between clubs affiliated to the same member association) and acquires professional status at their new club, the chain is considered to have been broken. If the player then goes on to be transferred *internationally* to a third club, as a professional player, before the end of the calendar year of their 23rd birthday, only the player's last club prior to the

513 Example: At the beginning of the season of his 19th birthday a player is transferred internationally from club A to club B, where he signs his first professional contract. Prior to that move, the player had been trained two seasons by club Z (seasons of his 12th and 13th birthday), two seasons by club X (seasons of his 14th and 15th birthday) and three seasons by club A (seasons of his 16th, 17th and 18th birthday). Club B will be responsible for the payment of training compensation to the clubs Z, X and A for the respective periods of training.

international transfer will be entitled to claim training compensation – none of their previous training clubs will be entitled to training compensation from this second transfer.[514] This is because the national transfer will not trigger the application of the provisions on training compensation as per the Regulations; any compensation arising from the national transfer will be governed by the national regulations issued by the member association concerned.

In this regard, national regulations should include provisions rewarding clubs for investing in the training and education of young players; the principle that the first registration breaks the chain is based on the presumption that member associations will have such a system in place. The amounts provided by national schemes may differ markedly from those payable under the Regulations.

As described above, where a player signs their first professional contract with a club where they were already registered as an amateur, the fact that the player is now a professional, rather than amateur, does not break the chain. Based on the existing jurisprudence,[515] the club is free to claim training compensation for the *entire* period over which they trained the player. Limiting the entitlement to the player's time with the club as a professional would be at odds with the fundamental idea that the training club should be refunded for its investment in training and developing a young player, particularly given clubs who promote amateurs from their own youth teams to their professional squads do not receive any payment for doing so. Historically, the fact that the training club will be able to make use of the player's services once they turn professional, and that this may generate a certain (additional) income for the club depending on their performance, has not been considered appropriate recompense for the investment made in their training and education.

iii) The importance of career history data and player passports

The importance of accurate data concerning a player's career history when determining entitlements to training compensation is paramount. The player passport is key to providing this data, especially when a player is registered as a professional for the first time. With this in mind, the club intending to sign the player as a professional needs to know the precise details of the player's career history. The situation is much simpler if a professional player is transferred internationally, since in that case the only club that might be entitled to training compensation would be the club releasing the player.

514 CAS 2007/A/1320 and 1321 Feyenoord Rotterdam v. Clube de Regatas do Flamengo.

515 CAS 2005/A/891 Bayer 04 Leverkusen Fußball GmbH v. FC St. Gallen and CAS 2005/A/894 FC St. Gallen 1879 v. Bayer 04 Leverkusen Fußball GmbH.

The player passport must be issued by the member association to which the player's former club is affiliated, and must be attached to the ITC. In addition, to facilitate the process of paying the applicable training compensation, the member association registering the player is expected to inform all the member associations to which the club(s) that trained the player between the ages of 12 and 23 are affiliated in writing that the player has registered as a professional. This notification should be sent once the registering member association receives the ITC.

The requirement to use electronic systems for registrations and national transfers, together with the application of TMS to international transfers involving amateurs[516] will certainly have a major positive impact in this regard. From a practical perspective, only the official player passport, as issued and confirmed by the relevant member association, will be considered by the DRC in the event of any dispute.

In addition, existing jurisprudence emphasises the importance of data entered into TMS. In one example, according to TMS, the club concerned was a category 3 club at the time. However, the club's member association later admitted that it had made an error when entering data into TMS, and that the club was actually a category 4 club at the time it registered the player. Unfortunately, the DRC had awarded training compensation based on the club's category in TMS. In the subsequent appeal, CAS confirmed the DRC decision, emphasising that the rules regarding TMS were clear and had to be applied. It noted that *"allowing [clubs] to question each and every aspect [of the information] contained in TMS would lead to chaos and an unworkable system"*.[517]

b) TEMPORAL CONSIDERATIONS

Training compensation must be paid by the player's new club within 30 days of the player being registered with the member association to which the new club is affiliated. This deadline is significant in two respects. First, in the event of late payment, and where it is requested to intervene by the creditor club, the DRC generally awards interest on outstanding payments starting from the thirty-first day following the player's registration with the new club.[518] Since the latest possible due date is the thirtieth day after the player's registration, the new club is considered in default from the thirty-first day following registration. Second, the two-year time limit in which any claim must be lodged with the DRC also begins on the thirty-first day following the player's registration with the new club.[519]

516 Circular no. 1679 of 1 July 2019.

517 TAS 2015/A/4060 Club Jorge Wilstermann v. Argentinos Juniors.

518 DRC decision of 9 September 2019, no. 09192304-ES; DRC decision of 26 September 2019, no. 09193176-ES.

519 DRC decision of 19 September 2019, no. 09192966-E; DRC decision of 25 September 2019, no. 09192370-E; DRC decision of 25 September 2019, no. 09192372-E; DRC decision of 26 September 2019, no. 09193176-ES.

c) ENTITLEMENT OF MEMBER ASSOCIATIONS

The last paragraph of the article addresses situations where a player's training club has ceased to participate in organised football, or no longer exists, at the time the player turns professional. This situation can arise because of bankruptcy, liquidation, dissolution, or loss of affiliation to the relevant member association. The aim of this provision is to preserve the spirit of training compensation as a reward for clubs that invest in training and educating young players. The underlying principle is that if a club that contributed to a player's training, education and development is no longer in existence, the relevant member association's grassroots activities should still benefit from the investment made by its affiliated training club.

With this aim in mind, the entitlement in such cases shifts to the member association to which the training club was affiliated, but under one strict condition: the training compensation must be ring-fenced for youth football development programmes run by the member association concerned.

The member association concerned must provide documentary evidence that: (i) the player's training club has indeed ceased to participate in organised football or no longer exists; and (ii) at the time when the player was registered with that training club, the club was affiliated to the member association concerned and regularly participating in national competitions. In addition, it must also produce a player passport confirming the relevant period of registration, just as any club would have to do in connection with a transfer.

Finally, this paragraph is also significant in that a training club does not have the standing to sue for training compensation unless it is duly affiliated to a member association and participating regularly in competitions at the time of its claim. For a club to be entitled to training compensation, it must have met these same requirements during the period it spent training the player concerned. By the same token, this means that private academies and similar entities that are not affiliated to a member association cannot claim training compensation.

1.2. Relevant jurisprudence

CAS Awards

Subsequent transfer as a professional

– CAS 2007/A/1320 and 1321 Feyenoord Rotterdam v. Clube de Regatas do Flamengo

First professional contract with training club

– CAS 2005/A/891 Bayer 04 Leverkusen Fußball GmbH v. FC St. Gallen and CAS 2005/A/894 FC St. Gallen 1879 v. Bayer 04 Leverkusen Fußball GmbH

ANNEXE 4, Article 4 - Training costs

1.1. Purpose and scope 302

ANNEXE 4, Article 4 - Training costs

1. In order to calculate the compensation due for training and education costs, associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio of players who need to be trained to produce one professional player.
2. The training costs, which are established on a confederation basis for each category of club, as well as the categorisation of clubs for each association, are published on the FIFA website (www.FIFA.com). They are updated at the end of every calendar year. Associations are required to keep the data regarding the training category of their clubs inserted in TMS up to date at all times (cf. Annexe 3, article 5..1 paragraph 2).

1.1. Purpose and scope

a) CATEGORISATION OF CLUBS

To calculate the compensation due in respect of training and education costs, member associations are instructed to divide their affiliated clubs into a maximum of four categories depending on the financial investment they make in training players.

The 2001 edition of the Regulations contained an explicit description of the various categories. The same terms were also set out in FIFA Circular no. 769 of 24 August 2001, which was then reproduced without modification in FIFA Circular no. 799 of 19 March 2002, and with slight modifications in FIFA Circular no. 1249 of 6 December 2010. The categories were as follows:

> *Category 1 (top level, e.g. high-quality training centre):*
>
> *All clubs in the top division of a member association's national league that invest a similar amount on average in the training of players.*

Category 2 (still professional, but at a lower level):

If the member association concerned also includes category 1 clubs, all clubs in the second tier of national football will be considered category 2. If the member association does not include any category 1 clubs, all the clubs in the top tier of the national championship fall into category 2.

Category 3:

If the member association concerned also includes category 1 clubs, all clubs in the third tier of national football will be considered category 3. Otherwise, clubs in the second tier of the national championship are considered category 3.

Category 4:

If the member association concerned also includes category 1 clubs, all clubs in the fourth tier or lower are considered category 4. In other countries, all clubs in the third tier of football or below are considered category 4. In addition, all clubs in countries where football is played exclusively on an amateur basis fall into category 4.

These categories have not been explicitly included in the Regulations since the September 2005 edition. Nevertheless, the criteria governing the categorisation of clubs have not changed. The conditions attached to these categories mean that some member associations have no clubs in some of these categories. Each member association is notified of the categories it can use when categorising its affiliated clubs for the purposes of training compensation on an annual basis.

b) CRITERIA FOR CALCULATING TRAINING COSTS

Training costs are set for each category of clubs. The figure calculated corresponds to the amount needed to train one player for one year, multiplied by an average "*player factor*", which represents the average number of players the club needs to train to produce one professional player. In *Bernard*, the ECJ explicitly recognised that when calculating training costs and training compensation, the costs clubs incur in training *both* future professional players and those who will never play professionally must be considered.[520] In other words, the ECJ accepted the application of the player factor in its ruling.

520 Olympique Lyonnais SASP v. Olivier Bernard and Newcastle UFC, Case C-325/08, European Court Reports 2010 I-02177.

Accordingly, the player factor for each given category is obtained by dividing the average number of players being trained by a club in that category (i.e. the number of players between 12 and 21 who are being trained by a club, who have not yet completed their training, and who are registered for that club), by the average number of those players offered a professional contract each year.

c) CALCULATING ACTUAL TRAINING COSTS PER CATEGORY

In FIFA Circular no. 826 of 31 October 2002, stakeholders were notified that it had been decided that FIFA would set indicative amounts of training costs per category for each confederation, which could be reviewed by the DRC in individual cases. These amounts were fixed based on the available data, with weight attached to the information and data received from the member associations on the basis of FIFA Circular no. 799. However, the clarifications gained during the consultation process with all stakeholders played a major role in the decision.

In summary, at the end of this process, member associations and other stakeholders were provided with confirmation of the categories into which their affiliated clubs would fall, as well as indicative figures for annual training costs per confederation and per category of clubs.

The following table sets out the applicable amounts.

Confederation	Category I	Category II	Category III	Category IV
AFC		USD 40,000	USD 10,000	USD 2,000
CAF		USD 30,000	USD 10,000	USD 2,000
CONCACAF		USD 40,000	USD 10,000	USD 2,000
CONMEBOL	USD 50,000	USD 30,000	USD 10,000	USD 2,000
OFC		USD 30,000	USD 10,000	USD 2,000
UEFA	EUR 90,000	EUR 60,000	EUR 30,000	EUR 10,000

Member associations are required to enter data regarding the training categories of their member clubs in TMS, and to always keep it up to date. This is essential for transparency and ensuring that training clubs and clubs employing young players as professionals can calculate the amount of compensation due.

ANNEXE 4, Article 5 - Calculation of training compensation

1.1. Purpose and scope 306

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1.2. Relevant jurisprudence 311

ANNEXE 4, Article 5 - Calculation of training compensation

1. As a general rule, to calculate the training compensation due to a player's former club(s), it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself.
2. Accordingly, the first time a player registers as a professional, the training compensation payable is calculated by taking the training costs of the new club multiplied by the number of years of training, in principle from the calendar year of the player's 12th birthday to the calendar year of his 21st birthday. In the case of subsequent transfers, training compensation is calculated based on the training costs of the new club multiplied by the number of years of training with the former club.
3. To ensure that training compensation for very young players is not set at unreasonably high levels, the training costs for players for the calendar years of their 12th to 15th birthdays (i.e. four calendar years) shall be based on the training and education costs of category 4 clubs.
4. The Dispute Resolution Chamber may review disputes concerning the amount of training compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review.

1.1. Purpose and scope

a) GENERAL RULE

The general rule provides that the basis for calculating the training compensation due should be the training costs that would have been incurred by the new club had it trained the player itself, rather than acquiring their services from the training club. The aim of this provision is to ensure that clubs are not incentivised simply to recruit young players, rather than training and educating these players themselves. This ensures that clubs with more financial clout will also continue to invest in training and developing young players.

Training compensation is generally calculated by taking the training costs the new club would have incurred according to its category and multiplying this figure by the number of years of training it would have provided. In principle, this multiplier corresponds to the period between the calendar year of the player's 12th birthday and his 21st birthday. The phrase "*in principle*" here indicates that a club is free to demonstrate that an individual player's training was completed before the end of the calendar year of their 21st birthday. Where this can be demonstrated, the calendar years between the player's 12th birthday and the calendar year in which their training period was effectively completed will be considered.

The category that should be applied to the training club is dependent on timing. Generally speaking, the category used for calculation purposes is the one the club is in when the player registers with the new club.[521]

As mentioned above, for the first time a player registers as a professional, the amount payable is calculated on a *pro rata* basis according to the period the player effectively spent with each training club.[522] If a player goes on to be involved in an international transfer as a professional, compensation is calculated by taking the new club's training costs and multiplying them by the number of years (or months) of training provided by the player's previous club.[523]

b) OVERLAPPING SEASONS

The amendment to the method of calculating training compensation, now based on the "*calendar year*" of training as opposed to the "*season*" of training, renders this section moot for all training compensation that is triggered as from 1 January 2021.

For training compensation that is triggered prior to 1 January 2021, an added complication arises when trying to calculate the amount due if the clubs concerned are affiliated to different member associations whose seasons overlap (e.g. when one season runs from March to October and the other from August to May).

The best way to illustrate how this situation is dealt with is by working through two examples. It should be remembered that for the purposes of calculating training compensation, an entire 12-month period is considered.

521 DRC decision of 19 September 2019, no. 09192966; DRC decision of 22 June 2019, no. 06190545; TAS 2012/A/3009 Arsenal FC v. Central Español FC.

522 DRC decision of 26 September 2019, no. 09190902-E; DRC decision of 8 November 2019, no. 11193766-E; DRC decision of 25 September 2019, no. 09192370; DRC decision of 25 September 2019, no. 09192372.

523 DRC decision of 21 November 2019, no. 11194351-E; DRC decision of 26 July 2019, no. 07191275-E; DRC decision of 23 October 2019, no. 10192755-E.

Example 1:

- Club A is based in Ecuador. The season in Ecuador runs from 1 January to 31 December
- Club B is based in Portugal. The Portuguese season runs from 1 July to 30 June of the following year
- Club C is based in Serbia. The season in Serbia runs from 1 July to 30 June of the following year
- Club C is in UEFA category III. Its training costs are EUR 30,000 per season
- Fred was born on **12 October 1999**
- Fred was registered with Ecuador Club A as an amateur from 1 January 2011 to 31 December 2015; Portuguese Club B as an amateur from 1 January 2016 to 30 June 2018; Serbia Club C on 1 July 2018 as a professional.

In this example, Fred signed his first professional contract before the end of the season of his 23rd birthday. There is also an international dimension since both training clubs are affiliated to member associations other than the member association to which Club C is affiliated. This means training compensation is due to both Club A and Club B. The next step is to establish the periods in respect of which these two clubs are entitled to compensation.

Because the player was transferred between two clubs whose seasons overlap (in moving from Ecuador to Portugal), the season of the player's sixteenth birthday was stretched to 18 months (January 2015 to June 2016). With a view to adopting a pragmatic approach that properly takes this situation into account, DRC jurisprudence suggests that the amount of training compensation due for that season (EUR 30,000 from club C, a Cat. III UEFA member) should be distributed on a *pro rata* basis between the two clubs concerned, i.e. two thirds to the Ecuadorian club and one third to the Portuguese club (the amount due to club C will have to be calculated taking into account the specific rules in article 6 of annexe 4).[524]

Example 2:

- The same facts except Fred was born on **12 March 1999**.

Again, he signed his first professional contract before the end of the season of his 23rd birthday. There is also the same international dimension and entitlement to training compensation.

In this case, the transfer between two member associations whose seasons overlap (from Ecuador to Portugal), has led to the season of his 17th birthday shrinking to 6 months (January to June 2016). Based on the same pragmatic approach mentioned in the first example, and for the sake of consistency,

524 DRC decision of 25 September 2019, no. 09192370-E.

the DRC interprets this situation in favour of the Portuguese club, meaning it receives full training compensation for the season of the player's 17th birthday despite only training him for 6 months.[525]

c) SPECIFIC PROVISION FOR YOUNG PLAYERS

The main deviation from the general rule on how training compensation is calculated refers to the first four calendar years of the training period (i.e. for the 12th to 15th birthdays). It is assumed the investment a club has to make to train a player in these years is lower than for subsequent years.

With this in mind, and to ensure that training compensation for young players is not set at unreasonably high levels, training provided to players in this age group is always compensated at category 4 training costs, independent of the new club's actual category. The costs referred to here are those set for the new club's confederation. Training compensation for training provided during the calendar years of a player's 12th to 15th birthday is calculated by taking the annual training costs of a category 4 club in the new club's confederation and multiplying them by the number of years of training (up to a maximum of four).[526]

d) OPTION TO ADJUST CLEARLY DISPROPORTIONATE AMOUNTS

The DRC can review whether training compensation calculated based on the Regulations is disproportionate in a specific case. Should it deem so, the DRC is entitled to adjust it to reflect the particularities of the case concerned.

There are two arguments that might be made in disputes of this nature. It could be that the training club feels the training compensation payable based on the indicative amounts is not high enough. On the other hand, the player's new club may argue that the training compensation payable based on the indicative amounts is disproportionately high. In line with the general principle applied to most disputes, the burden of proof lies with the party claiming a right based on an alleged fact.

In this respect, given the wording of the provision ("*clearly disproportionate*"), only if evidence is provided to prove unequivocally that the amount calculated based on indicative average training costs is clearly disproportionate will the DRC proceed to adjust the training compensation due. Moreover, only economic aspects will be taken into consideration. Neither the player's talent, their importance to the club, the fact they may have played in matches for the first team, nor any other non-economic factors will be considered in assessing whether the training compensation payable as per the indicative training costs ought to be considered clearly disproportionate in a specific

525 DRC decision of 22 June 2019, no. 06190545-E.

526 DRC decision of 21 November 2019, no. 11194351-E; DRC decision of 25 September 2019, no. 09192370-E; DRC decision of 26 September 2019, no. 09193176-ES.

case. This approach has been confirmed by CAS,[527] although neither the DRC[528] nor CAS have ever actually adjusted the compensation due on the grounds that it was clearly disproportionate.

e) RE-CATEGORISATION OF CLUBS

In recent times, the DRC has recategorised clubs, in the context of specific claims, on the basis of article 5 paragraph 4 of annexe 4.[529]

f) WAIVING THE RIGHT TO TRAINING COMPENSATION

A recurrent issue is whether a club may renounce its right to training compensation or sign a binding waiver of this right in favour of the new club. It is quite common, for example, for training clubs to give up their entitlement in exchange for a share of future transfer compensation generated by the player.

The DRC[530] has repeatedly confirmed that this is permitted. However, it has made any waiver subject to several conditions. First and foremost, the waiver must be explicit. In this respect, CAS has affirmed that any statement by a club to the effect that one of its players is a "*free player*" should be taken to refer to the fact the player is out of contract, not to any entitlement to training compensation.[531]

Secondly, only the party entitled to training compensation (i.e. the relevant training club) can waive it. In other words, if a player's last training club waives its right to training compensation, this waiver is applicable to that training club only, and not to any other club that may have trained the player during his career.

Finally, a unilateral declaration by a training club constitutes a valid waiver. CAS has confirmed the DRC approach in this regard.[532]

527 CAS 2004/A/560 AC Venezia v. Club Atlético Mineiro & AS Roma; CAS 2009/A/1908 Parma FC S.p.A. v. Manchester United FC; CAS 2014/A/3518 Zamalek Sporting Club v. Accra Hearts of Oak Sporting Club; CAS 2015/A/3981 CD Nacional v CA Cerro.

528 DRC decision of August 2019, no. 08193815; DRC decision of 19 June 2020 Danubio FC, Uruguay v. Extremadura UD; DRC decision of 29 June 2020 Danubio FC v. Extremadura UD.

529 According to the information in the TMS, the new club was a Category 4 club. However, given that the FIFA circular provided that clubs in the country of the new club are either Category 3 or 4, and given that the new club obtained the league title in the season prior to the player's registration, the DRC decided to re-categorise the new club into Category 3, on the basis that not granting any training compensation to the training clubs would be disproportionately low.

530 DRC decision of 8 November 2019, no. 11193766-E – specific waiver not valid; DRC decision of 23 October 2019, no. 10192775-E – specific waiver not valid; DRC decision of 23 October 2019, no. 10192893-E – specific waiver not valid.

531 CAS 2009/A/1919 Club Salernitana Calcio 1919 S.p.A. v. Club Atlético River Plate & Brian Cesar Costa; TAS 2012/A/3009 Arsenal FC v. Central Español FC.

532 CAS 2017/A/5277 FK Sarajevo v. KVC Westerlo.

1.2. Relevant jurisprudence

Training compensation clearly disproportionate

DRC decisions

- DRC Decision of August 2019, no. 08193815
- DRC Decision of 19 June 2020, Danubio FC v. Extremadura UD
- DRC Decision of 29 June 2020, Danubio FC v. Extremadura UD
- DRC Decision of 10 December 2019, Club Alem de Villa Nueva v. FK Liepaja

CAS Awards

- CAS 2004/A/560 AC Venezia v. Club Atlético Mineiro & AS Roma
- CAS 2009/A/1908 Parma FC S.p.A. v. Manchester United FC
- CAS 2015/A/3981 CD Nacional v. CA Cerro

Overlapping seasons

- TAS 2012/A/3009 Arsenal FC v. Central Español FC

Recategorisation

- Decision of 10 December 2019, Club Atlético 9 de Julio v. FK Liepaja
- Decision of 10 December 2019, Club Lautaro Roncedo v. FK Liepaja
- Decision of 10 December 2019, Club Alem de Villa Nueva v. FK Liepaja
- Decision of 10 December 2019, Club Deportivo Argentino v. FK Liepaja
- Decision of 10 December 2019, Club Atlético Ricardo Gutiérrez v. FK Liepaja
- Decision of 10 December 2019, Club Lautaro Roncedo v. FK Liepaja
- Decision of 10 December 2019, Banda Norte v. FK Liepaja
- Decision of 14 February 2020, Canon Yaounde v. SC Rheindorf Altach
- Decision of 2 July 2020, FC Kairat v. FC Noah

ANNEXE 4, Article 6 - Special provisions for the EU/EEA

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1.2. Relevant jurisprudence 319

ANNEXE 4, Article 6 - Special provisions for the EU/EEA

1. For players moving from one association to another inside the territory of the EU/EEA, the amount of training compensation payable shall be established based on the following:
   a) If the player moves from a lower to a higher category club, the calculation shall be based on the average training costs of the two clubs.
   b) If the player moves from a higher to a lower category, the calculation shall be based on the training costs of the lower-category club.
2. Inside the EU/EEA, the final calendar year of training may occur before the calendar year of the player's 21st birthday if it is established that the player completed his training before that time.
3. If the former club does not offer the player a contract, no training compensation is payable unless the former club can justify that it is entitled to such compensation. The former club must offer the player a contract in writing via registered post at least 60 days before the expiry of his current contract, subject to the temporary exception below. Such an offer shall furthermore be at least of an equivalent value to the current contract. This provision is without prejudice to the right to training compensation of the player's previous club(s).
   i. The contract offer may be made by electronic mail, provided that the former club obtains confirmation from the player that he has received a copy of said offer and can provide such confirmation in case of any dispute.

1.1. Purpose and scope

These provisions are designed to reflect specific circumstances pertaining to certain aspects of EU law, most notably the principle of freedom of movement for workers. They apply exclusively to players moving between member associations within the territory of the EU/EEA. The player's nationality is irrelevant.[533] The relevant jurisprudence shows that a strict approach is taken.[534]

533 CAS 2009/A/1810-1811 SV Wilhelmshaven v. Club Atlético Excursionistas & Club Atlético River Plate; CAS 2013/A/3119 Dundee United FC v. Velez Sarsfield.

534 DRC decision of 21 November 2019, no. 11194351-E; DRC decision of 31 October 2019, no. 10194062-E; CAS 2010/A/2069 Galatasaray A.S. v. Aachener TSV Alemannia F.C.

In order to properly understand the inclusion of article 6 of annexe 4, it helps to interpret the training compensation rules regarding players moving between member associations within the territory of the EU/EEA from a player's perspective rather than the club's perspective. In particular, the idea that a new club would still have to compensate the old club, or old clubs, for registering a player even though that player is without a contract, could make the new club decide against registering that player. In other words, it becomes more difficult for that player to provide work/services, and this could raise issues with respect to article 45 of the TFEU.

a) CALCULATION OF TRAINING COMPENSATION

The calculation of training compensation deviates significantly from the general rule. If a player moves from a club in a lower category to one in a higher category within the EU/EEA, the training compensation due will be calculated based on the average of the training costs of the two clubs. Since this method of calculating the training compensation applicable to international transfers of players within the EU/EEA reduces the amount of compensation payable, it reduces any potential obstacle to a player's freedom of movement.

On the other hand, if a player transfer internationally from a club in a higher category to a lower-category, within the territory of the EU/EEA, the general rule applies and training compensation will be assessed on the basis of the lower-category club's training costs.

The rules regarding the calculation of compensation in respect of the first four years of a young player's training also apply to international transfers within the EU/EEA. Any other interpretation would run counter to the aim of this provision, which, as already mentioned, is to facilitate free movement.

b) TRAINING PERIOD COMPLETED EARLY

The second paragraph concerns the early completion of a player's training. Essentially, it reiterates the principle already set out in article 1 paragraph 1 of annexe 4.

c) INTEREST IN A PLAYER'S SERVICES

Paragraph 3 ensures that any potential hindrance to the free movement of players between clubs affiliated to different member associations inside the territory of the EU/EEA should be reduced, not only using specific calculation methods, but also via mechanisms to ensure that only clubs genuinely interested in a player's services retain their entitlement to training compensation.

i) The general rule: contract offer

To achieve this aim, if a player's former club fails to offer the player a contract, no training compensation is payable. The intention is clear: either a club shows genuine interest in the player's services by offering them a contract, or the club loses its entitlement to training compensation.

In a very unusual case from 2008, the question arose as to whether a club's decision to invoke a unilateral option to extend an existing contract with a player could be considered equivalent to making him a contract offer. While the CAS did not reach a definite conclusion on this point, it appeared to indicate that such action should probably not be considered equivalent to offering the player a new contract.[535]

In addition, for any offer to meet these criteria, the terms on offer should be of at least equivalent value to the current contract. Besides posing various questions relating to how one can establish an "*equivalent value*" in such circumstances, this raises the issue of whether the requirement to offer a contract only applies to professional players moving internationally to a new club, or if it also applies to amateurs who will be registering as professionals for the first time when they join their new club.

ii) Applicability to amateurs and professionals

The answer to the latter question is that the requirement does indeed apply to amateurs. Indeed, given the aim of the provision is to limit any potential obstacles to free movement of players, the requirement to offer a contract must apply to any player whose transfer triggers training compensation.

As a *lex specialis* to this rule, if the player was already a professional at his previous club and, therefore, already had a contract with that club, the offer must be at least of equivalent value to the existing contract.[536]

If a club and a player terminate their contractual relationship by means of a mutual agreement and the player moves to another club within the territory of the EU/EEA, his former club will not be entitled to receive training compensation. In such situations, the DRC understands that the former club was not interested in retaining the services of the player which, as stated above, is an essential criteria for establishing the right to training compensation following a player moving between member associations within the territory of the EU/EEA.

535 CAS 2008/A/1533 Anorthosis Famagusta FC v. PAE Panathinaikos FC.

536 CAS 2006/A/1152 ADO Den Haag v. Newcastle United FC (Krul); CAS 2008/A/1521 VfB Admira Wacker Modling v. A.C. Pistoiese S.p.A.

iii) Formal conditions

There are also several formal requirements to be observed. Specifically, the contract offer made to the player by their club (prior to any transfer) must be made in writing via registered post, subject to the new electronic temporary exception introduced during the COVID-19 pandemic.[537]

In this respect, the jurisprudence has clarified that the requirement for the offer to be sent to the player via registered mail is not a precondition for the offer to be considered valid; rather, it is a condition for proving that the offer was made in the first place.[538] In other words, the requirement is there to help the training club provide documentary evidence of the player having received the offer. However, there is nothing in the Regulations to prevent the contract offer being made another way, provided that the dispatch and receipt of the offer can be verified if required. For example, a player might confirm receipt of the offer in writing following a meeting with the relevant staff at the club concerned, or the offer might be sent to the player's personal e-mail address.[539]

Moreover, the offer must have been submitted to the player at least 60 days before the expiry of his current contract. Naturally, this is another *lex specialis,* and is applicable only to professionals who already had a professional contract with their previous club before they were transferred. Furthermore, in contrast to the formal requirement to use registered post, this deadline is a condition of the validity of the offer. If a training club misses the deadline, any offer it might make later will not protect its entitlement to training compensation.[540]

Returning briefly to the requirement for the offer to be of at least an equivalent value to the current contract, the existing jurisprudence[541] provides few reference points for establishing consolidated and standardised benchmarks. Matters are dealt with on a case-by-case basis, considering the specific circumstances.

iv) Proving genuine interest in a player's services in the absence of a contract offer

It might be that a training club is not (yet) in a position to offer a contract to a player prior to his being transferred, for example if applicable national legislation does not permit players to sign a professional contract prior to a certain age, or if the club is a purely amateur club, or if a club is prohibited by sporting regulations from placing its players under contract. To address circumstances of this kind, the Regulations stipulate that a club that fails to offer a player a contract can submit other evidence to demonstrate that it

537 CAS 2014/A/3710 Bologna FC 1909 S.p.A. v. FC Barcelona.

538 CAS 2010/A/2316 Stoke City FC v. Brescia Calcio.

539 CAS 2017/A/5103 Valletta FC v. Apollon Limassol: with reference to Swiss law, the Sole Arbitrator considered that *"an offer is deemed to be made 'in writing' when it is signed with the original signature of the party or the parties that are contractually bound by the document."*

540 CAS 2010/A/2316 Stoke City FC v. Brescia Calcio.

541 CAS 2010/A/2316 Stoke City FC v. Brescia Calcio.

had a genuine interest in the player's services and is therefore entitled to training compensation.

While the DRC has repeatedly protected the rights of clubs that cannot offer players contracts due to mandatory national regulations or legislation,[542] recent jurisprudence indicates that such clubs must still show they have taken a proactive stance to justify these rights. Specifically, the fact that a club is prohibited from offering the player a contract because of applicable national legislation does not exempt it from its obligation to justify its entitlement to training compensation. In the absence of any offer, the club must demonstrate that it had a *"genuine and bona fide interest in retaining the services of the player"* in order to be entitled to training compensation.[543] Even beyond the circumstances described above, the need for a training club to demonstrate a *"genuine and bona fide interest in retaining the services of the player"* is the decisive element in determining its entitlement to training compensation where there is no contract offer consider.

In a case from 2006,[544] when asked to analyse what might be considered as a justification for an entitlement to training compensation despite the absence of a contract offer, the CAS concluded that the training club had to show *"a bona fide and genuine interest in retaining him for the future."* In this specific case, the training club was assumed to have shown this interest, since it was able to provide evidence of regular meetings with the player concerning plans for his future career. It submitted a number of different development plans, which showed the club had been following a clear strategy it hoped would culminate in the player being offered, and signing, a professional contract with them. Consequently, the player's new club was told to pay training compensation to the training club despite the absence of a contract offer.[545] In a 2017 case, where the club had not offered the player an actual contract, the Panel deemed that the club's genuine and *bona fide* interest in the player had been demonstrated by prolonged negotiations with the player's agent.[546]

On the other hand, a contract offer made solely for the purpose of collecting training compensation, and which is not founded on a genuine interest in retaining the player's services, will not protect the right to training compensation.[547] This was set out in a 2014 case in which the training club provided no evidence whatsoever to support its entitlement. It should be highlighted that the burden to prove the genuine and *bona fide* interest lies with the training club claiming an entitlement to training compensation.[548]

542 DRC decision of 26 September 2019, 09190902-E.

543 DRC decision of February 2016, no. 0216140-E; DRC decision of 30 November 2017, no. 11170863-E; CAS 2018/A/5733 Koninklijke Racing Club Genk (KRC Genk) v. Manchester United Football Club; CAS 2016/A/4721 Royal Standard de Liège v. FC Porto (player C.).

544 CAS 2006/A/1152 ADO Den Haag v/Newcastle United FC.

545 CAS 2009/A/1757 MTK Budapest v. FC Internazionale Milano S.p.A. (Filkor); CAS 2011/A/2682 Udinese Calcio S.p.A. v/ Helsingborgs IF; CAS 2012/A/2890 FC Nitra v. FC Banik Ostrava.

546 CAS 2017/A/5103 Valletta FC v. Apollon Limassol.

547 CAS 2016/A/4720 Royal Standard de Liege v. FC Porto; CAS 2014/A/3710 Bologna v. Barcelona, where the Panel deemed that no convincing evidence was provided to prove that the offer for the renewal of the contract had been made in bad faith.

548 CAS 2014/A/3497 SK Slavia Praha v. Genoa Cricket and Football Club.

d) HOW A LACK OF INTEREST IN THE PLAYER'S SERVICES IMPACTS HIS PREVIOUS CLUBS

One scenario that frequently arises is where a young player is first registered with, and trained by, a club as an amateur and transfers to a new club as an amateur affiliated to the same member association. Next, the player transfers internationally, but maintains amateur status with their new club. Finally, they transfer internationally again, prior to the calendar year of their 23rd birthday, where they are registered as a professional for the first time. All four clubs involved are within the EU. The question is: does the fourth club need to pay training compensation? If so, to which club(s)?

The basic requirements for paying training compensation are met. The player is registered for the first time as a professional before the end of the calendar year of their 23rd birthday. We also have the required international dimension. Finally, we can establish that, since the transfer represents the player's first registration as a professional, the chain is not broken. In principle, then, all previous clubs would be entitled to training compensation.

As the final transfer took place inside the territory of the EU, if the most recent former club did not show a genuine and *bona fide* interest in retaining the player's services, it is not entitled to training compensation. However, the absence of a contract offer or genuine interest in the player's services by the most recent former club does not impact the right to training compensation of the first two clubs where the player was registered as an amateur. The fact that the player leaves a club to join a new one without changing amateur status is a clear indication that the player has not yet reached the level of skill and training needed to be offered a contract.

This was recently confirmed by the DRC in a matter involving four Portuguese training clubs and a player that signed a first professional contract with an Icelandic club. As the most recent training club in Portugal before the player signed his first professional contract did not make a contract offer, it was not entitled to training compensation, but the three previous training clubs were found to be entitled.[549]

e) IMPACT OF BREXIT

Following the United Kingdom's withdrawal from the EU and considering that it also no longer forms part of the EEA, as from 1 January 2021 article 6 of annexe 4 no longer applies to the registration or transfer of players that would ordinarily trigger payment of training compensation, whether to or from clubs affiliated to The FA, the Scottish Football Association, the Irish Football Association, or the Football Association of Wales.

549 DRC Decision of 27 July 2002, Electrico FC, Portuga v. Throttur Reykjavik, Iceland; Decision of 27 July 2002, Louletano DC, Portuga v. Throttur Reykjavik, Iceland; Decision of 27 July 2002, SU Sintrense, Portuga v. Throttur Reykjavik, Iceland; and Decision of 19 August 2020, Mem Martins SC, Portuga v. Throttur Reykjavik, Iceland.

Article. 6 of annexe 4 remains applicable to the registration or transfer of players to or from clubs affiliated to one of the four British Association that occurred until the end of December 2020.

1.2. Relevant jurisprudence

Applicable to amateurs and professionals

CAS Awards

- CAS 2006/A/1152 ADO Den Haag v. Newcastle United FC (Krul)
- CAS 2008/A/1521 VfB Admira Wacker Modling v. AC Pistoiese S.p.A.
- CAS 2009/A/1757 MTK Budapest v. FC Internazionale Milano S.p.A. (Filkor)

Genuine interest in a player

DRC decisions

- DRC Decision of February 2016, no. 0216140-E
- DRC Decision of 30 November 2017, no. 11170863-E

No obligation for other former clubs to offer contract

- DRC Decision of 27 July 2002, Electrico FC, Portuga v. Throttur Reykjavik, Iceland
- DRC Decision of 27 July 2002, Louletano DC, Portuga v. Throttur Reykjavik, Iceland
- DRC Decision of 27 July 2002, SU Sintrense, Portuga v. Throttur Reykjavik, Iceland
- DRC Decision of 19 August 2020, Mem Martins SC, Portuga v. Throttur Reykjavik, Iceland

CAS Awards

- CAS 2006/A/1152 ADO Den Haag v. Newcastle United FC (Krul)
- CAS 2011/A/2682 Udinese Calcio S.p.A. v. Helsingborgs IF
- CAS 2018/A/5733 Koninklijke Racing Club Genk (KRC Genk) v. Manchester United Football Club
- CAS 2016/A/4721 Royal Standard de Liège v. FC Porto (player C.)

ANNEXE 4, Article 7 - Disciplinary measures

1.1. Purpose and scope 321

ANNEXE 4, Article 7 - Disciplinary measures

1. The FIFA Disciplinary Committee may impose disciplinary measures on clubs or players that do not observe the obligations set out in this annexe.

1.1. Purpose and scope

This provision is a catch all to ensure the rules on training compensation are properly and effectively applied, if necessary by deploying sporting sanctions.

Article 10, paragraph 1 - Loan of professionals

10.1. Purpose and scope 323

a) Professional player is loaned from the releasing club to the engaging club 323

b) Professional returns from a loan to the releasing (parent) club 324

c) Player moves permanently to a third club when the loan expires 324

i) The player is permanently transferred to a third club after spending some time with their parent club (the releasing club) upon returning from the loan 324

ii) The player is permanently transferred to a third club immediately after expiry of the loan 327

iii) The player is permanently transferred to a third club affiliated to the same member association as the parent club, after having been loaned to a club affiliated to another member association 327

d) The professional stays with the engaging club after the expiry of the loan 328

10.2. Relevant jurisprudence 329

Article 10, paragraph 1 - Loan of professionals

1. A professional may be loaned to another club on the basis of a written agreement between him and the clubs concerned. Any such loan is subject to the same rules as apply to the transfer of players, including the provisions on training compensation and the solidarity mechanism.

10.1. Purpose and scope

A loan of a professional player is characterised, *inter alia*, by the player's registration moving temporarily from their parent club (the "releasing club") to the club where they are to be registered on loan (the "engaging club"), for a predetermined period. At the end of the loan, the player might ultimately return to their parent club, return to the club with which they have been on loan (either because the loan is extended or because it is converted into a permanent transfer), or move on to a third club.

The consistent jurisprudence of the DRC and of CAS, to which reference will be made below, has defined a framework according to which the loan of a player does not break the training compensation chain. The period between two permanent transfers involving a player is viewed as one self-contained period with respect to the application of training compensation, irrespective of whether the player was loaned during that period. There are very few exceptions to this view in the jurisprudence.

a) PROFESSIONAL PLAYER IS LOANED FROM THE RELEASING CLUB TO THE ENGAGING CLUB

If, while having a valid contract with the releasing (parent) club, a professional player is transferred internationally on loan between the releasing club and an engaging club before the end of the calendar year of their 23rd birthday, in principle, all the basic conditions for the application of the training compensation system are met.

If any training compensation is payable, only the releasing club will be entitled to it, as only professional players can be loaned. Consequently, the training compensation chain will have been broken when the player signed his professional contract with his parent club.

The loan of a professional player is subject to a written loan agreement between the two clubs involved. In a traditional loan agreement, the

relevant contract will provide for the payment of a loan fee by the engaging club to the releasing club, in return for the right to register the player for a temporary period. In this traditional scenario, any potential training compensation would normally be included in the loan fee, analogously to the established jurisprudence with respect to training compensation and transfer fees.

Hypothetically, training compensation may become payable, but in practice it should not be paid, since this would be contrary to the original spirit and aim of the vast majority of loans, i.e. the development of young players. One of the main reasons why players are sent out on loan is to allow them to develop their skills and participate in competitive football when they do not yet have the skills required to make it into their parent club's first team.

b) PROFESSIONAL RETURNS FROM A LOAN TO THE RELEASING (PARENT) CLUB

If a player returns to their parent club before the end of the calendar year of their 23rd birthday, and they have been on loan with a club affiliated to a different member association, all the basic conditions for the training compensation system to apply are met.

Neither the DRC nor CAS has ever had to address such a request. Indeed, it would not seem appropriate for training compensation to apply. There will generally be a loan agreement between the releasing and the engaging club setting out the financial terms of the loan, which will also cover the player's return to the parent club at the end of agreed loan period. Again, imposing training compensation when a player returns from a loan would pose a major threat to the loan system, since clubs would become reluctant to loan out players for training and development purposes if they had to pay compensation when the player returned to them.

c) PLAYER MOVES PERMANENTLY TO A THIRD CLUB WHEN THE LOAN EXPIRES

Two different scenarios arise.

i) The player is permanently transferred to a third club after spending some time with their parent club (the releasing club) upon returning from the loan

Let us assume that, at the age of 18, player A signs a three-year contract with club X (the parent club). After the first year, they are transferred on loan to club Y (engaging club), which is affiliated to a different member association. This loan lasts for a year and, as explained above, does not trigger any entitlement to training compensation. When that loan expires, the player returns to club X. Again, no training compensation is payable in relation to this move. They spends another season at club X until their contract expires,

before moving on a permanent basis to club Z, which is affiliated to a third member association.

The move to club Z closes the circle; the self-contained period between two permanent transfers (in this case the one to club X and the one to club Z) is now complete.

There is no doubt that the training compensation conditions are met. Since the move to club Z is a permanent transfer, none of the circumstances that might mitigate against paying training compensation for loan transfers do not apply. Consequently, club Z *will* have to pay training compensation.

Club X, the player's last club prior to the permanent transfer, will be entitled to training compensation for the last year the player was registered with them prior to his move to club Z. But can club X also claim training compensation for the year of training they provided to the player before they left on loan to club Y?

In answering this question, we need to be mindful of the basic principle of the training compensation regime: to ensure that the investment made by a club in training, educating, and developing young players is rewarded. Club X did not receive any reward in relation to any of the loan moves in which the player was involved. Nor did it receive any recompense for training provided prior to the loan. Failing to recognise club X's entitlement to have this investment rewarded as part of a permanent transfer following a loan would run counter to the fundamental aim of the training compensation regime, because it would deprive club X of the opportunity to recoup its investment in training a young player over a certain period.

Consequently, and contrary to the general principle, the transfer of a professional player on a loan basis does not break the chain for the purposes of training compensation. This conclusion is also reflected in DRC jurisprudence,[550] and the (almost) fully consistent jurisprudence of CAS.[551]

On the same basis, it is only logical that club Y, to which the player was previously loaned, and which has yet to receive any training compensation, should be entitled to training compensation from club Z for the period the player was registered with them. This seems even more appropriate if we remember that, very often, the whole point of loaning a player is to encourage their training and development. The approach taken in this situation represents an exception to the principle that when a professional player is transferred, only the player's last club prior to the transfer is

550 DRC decision of 22 September 2019, no. 09190767-E; DRC decision of 14 October 2019, no. 10194441-E; DRC decision of 21 November 2019, no. 11194495-E; DRC decision of 12 April 2019, no. 04191559-E; DRC decision of 22 July 2019, no. 07191442-E; DRC decision of 15 October 2019, no. 10193153-E.

551 CAS 2004/A/594 Hapoel Beer Sheva F.C. v. Real Racing Club de Santander SAD in conjunction with 2006/A/1029 Maccabi Haifa FC v. Real Racing Club Santander; CAS 2013/A/3119 Dundee United FC v. Velez Sarsfield; CAS 2014/A/3710 Bologna FC 1909 S.p.A. v. FC Barcelona; CAS 2017/A/5090 Olympique des Alpes SA v. Genoa Cricket & Football Club; CAS 2018/A/5513 Sport Club Internacional v. Hellas Verona Football Club S.p.A.; different opinion in CAS 2012/A/2908 Panionios GSS FC v. Paraná Clube.

entitled to training compensation. The jurisprudence of the DRC[552] and CAS[553] supports this exception.

The flip side is that the player's parent club (releasing club), club X in our example, is not entitled to training compensation for the period during which the player was on loan. This is because during the loan period the player was not registered with their parent club and did not receive training from it.[554]

In a recent award,[555] CAS was asked to confirm this practice. The Panel ruled that the new club (i.e. club Z) as opposed to the parent club (i.e. club X) was liable to pay training compensation to the club where the player was loaned (i.e. club Y).

In one specific case, CAS has established an exception to this practice, ruling that "*a club which is loaned a player, and thus effectively trains that player, is in principle entitled to training compensation corresponding to the period it provided training to the player, unless the loaning club can demonstrate that it bore the costs for the player's training for the duration of the loan.*"[556]

A relatively new practice has recently added a further layer of complexity. In contrast to a traditional loan, where the engaging club pays a loan fee to the releasing (parent) club in return for benefiting from the player's services for a predetermined period of time, it is now common to see loan contracts under which the releasing club (club X) pays a fee *to* the engaging club (club Y) in recognition of the way the engaging club supports the player's development by giving them the chance to play regular competitive football.

If, following the expiry of the loan, the player is permanently transferred to a third club (club Z), as described above, club Y will normally be able to claim training compensation from club Z for the training provided to the player during the loan period. However, in a recent decision, the DRC denied such an entitlement.[557] It justified its findings on the basis that club Y had already been compensated in advance for the investment made in training the player, by means of the fee it had received from club X. Consequently, it had no entitlement to any further training compensation.

552 DRC decision of 22 September 2019, no. 09190767-E; DRC decision of 14 October 2019, no. 10194441-E; DRC decision of 21 November 2019, no. 11194495-E; DRC decision of 12 April 2019, no. 04191559-E; DRC decision of 22 July 2019, no. 07191442-E; DRC Decision of 15 October 2019, no. 10193153-E; DRC Decision of 23 November 2005, no. 1151015.

553 CAS 2004/A/594 Hapoel Beer Sheva F.C. v. Real Racing Club de Santander SAD in conjunction with 2006/A/1029 Maccabi Haifa FC v. Real Racing Club Santander; CAS 2015/A/4335 Genoa Cricket and Football Club v. NK Lokomotiva Zagreb; CAS 2016/A/4541 FC Kuban v. FC Dacia; CAS 2016/A/4543 FC Kuban v. FC Gagauzyia; different opinion in CAS 2016/A/4823 Delfino Pescara 1936 v. FK Red Star; CAS 2020/A/7381 Genoa Cricket and Football Club v. Club Atlético San Martin de San Juan.

554 DRC Decision of 21 November 2019, no. 11194351-E; cf. already CAS 2004/A/594 Hapoel Beer Sheva F.C. v. Real Racing Club de Santander SAD in conjunction with 2006/A/1029 Maccabi Haifa FC v. Real Racing Club Santander; CAS 2004/A/785 Strømsgodset IF Toppfotball v. Liebherr GAK; CAS 2014/A/3710 Bologna FC 1909 S.p.A. v. FC Barcelona.

555 CAS 2020/A/7381 Genoa Cricket and Football Club v. Club Atlético San Martin de San Juan.

556 CAS 2008/A/1705 Grasshopper v. Alianza Lima and CAS 2013/A/3119 Dundee United FC v. Club Atletico Vélez Sarsfield.

557 DRC decision of 3 October 2019, no. 10193416-E.

ii) The player is permanently transferred to a third club immediately after expiry of the loan

Let us go back to our example. At the age of 18, player A signs a three-year contract with club X (the releasing/parent club). After the first year, he is transferred on loan to club Y (engaging club), which is affiliated to a different member association, for one year. As explained above, this move will not trigger any entitlement to training compensation. On the expiry of the loan period, however, this time the player does not return to club X (his parent club) but is permanently transferred to a third club (Z). Does club Z have to pay training compensation, and if so, to which club(s)?

The permanent transfer to club Z closes the circle: the self-contained period between two permanent transfers (i.e. the one to club X and the one to club Z) is now completed. The implications for training compensation do not change.

Since club X has not been reimbursed for its investment in training and developing the player up to this point, it will be entitled to training compensation from club Z for the period prior to the player being loaned to club Y.[558] Equally, club Y will be entitled to training compensation from club Z, either because, *de facto*, it was the player's last club, or because it has yet to be reimbursed for the investment it has made in training the player.

iii) The player is permanently transferred to a third club affiliated to the same member association as the parent club, after having been loaned to a club affiliated to another member association

If, after the expiry of the loan period, the player returns to club X (his parent club) and is then transferred to club W, which is affiliated to the same member association as club X (after the expiry of their contract with club X), no training compensation will be due to club X under the Regulations, as the move to club W occurred between clubs affiliated to the same member association.

However, will club W have to pay training compensation to club Y, a club affiliated to a different member association than club X and club W, with which the player was on loan for one year from club X?

The answer is no. Because the transfer from club X (parent club) to club W (third club) lacks international dimension, club Y won't be entitled to receive any training compensation even if they are affiliated to a different member association that club X and club W. Given that the DRC considers that a loan does not break the chain of entitlement to receive training compensation, as a result a loan club is only entitlted to receive training compensation when the parent club is also entitled.

558 DRC decision of August 2009, no. 891179; CAS 2004/A/560 AC Venezia v. Club Atlético Mineiro & AS Roma; CAS 2017/A/5090 Olympique des Alpes SA v. Genoa Cricket & Football Club.

d) THE PROFESSIONAL STAYS WITH THE ENGAGING CLUB AFTER THE EXPIRY OF THE LOAN

The first way a professional player might end up staying with an engaging club following the expiry of an agreed loan period is if it is agreed simply to extend the loan. Doing so would not have any impact as regards the application of the training compensation regime; given the considerations discussed above, training compensation would not be applicable in this situation.

The second possibility is that the releasing and engaging clubs might agree to transfer the player permanently to the engaging club after the expiry of the loan period.

A contractual agreement will be concluded between the two clubs (with the consent of the professional player) which will contain the terms of the transfer compensation (if any) that the engaging club will have to pay to the releasing club. Under normal circumstances, no further training compensation will be due, as the agreed transfer fee also includes training compensation.

Should there be no transfer compensation or should the clubs explicitly have excluded training compensation from the transfer compensation, then the engaging club will have to pay training compensation to the releasing club in accordance with the applicable principles described in this section.

10.2. Relevant jurisprudence

Loan does not break chain/is not the player's last club

DRC decisions

- DRC Decision of 22 September 2019, no. 09190767-E
- DRC Decision of 14 October 2019, no. 10194441-E
- DRC Decision of 21 November 2019, no. 11194495-E
- DRC Decision of 12 April 2019, no. 04191559-E
- DRC Decision of 22 July 2019, no. 07191442-E
- DRC Decision of 15 October 2019, no. 10193153-E

CAS Awards

- CAS 2020/A/7381 Genoa Cricket and Football Club v. Club Atlético San Martin de San Juan
- CAS 2018/A/5513 Sport Club Internacional v. Hellas Verona Football Club S.p.A.
- CAS 2017/A/5090 Olympique des Alpes SA v. Genoa Cricket & Football Club
- CAS 2016/A/4543 FC Kuban v. FC Gagauzyia
- CAS 2016/A/4541 FC Kuban v. FC Dacia
- CAS 2015/A/4335 Genoa Cricket and Football Club v. NK Lokomotiva Zagreb
- CAS 2013/A/3119 Dundee United FC v. Velez Sarsfield
- CAS 2008/A/1705 Grasshopper v. Alianza Lima

Article 21 - Solidarity mechanism

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Article 21 - Solidarity mechanism

1. If a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club (solidarity contribution). The provisions concerning solidarity contributions are set out in Annexe 5 of these regulations.

21.1. Purpose and scope

The solidarity mechanism is based on a different principle to training compensation, specifically the notion of solidarity within the football community. The March 2001 agreement includes a clear distinction between the need to compensate clubs for the investment they make in training young players and the notion of solidarity in football.

The Regulations deal with the solidarity mechanism in article 21 and annexe 5. Article 21 merely sets out the main principles of the scheme, while the detailed provisions concerning the solidarity contribution are contained in the technical annexe.

21.2. Structural differences in comparison to the training compensation system

Unlike training compensation, which is payable only once, and in relation to a specific player, if the solidarity mechanism applies, it will apply to all the clubs that have trained and educated the individual player concerned. The key feature of the solidarity contribution is that, in principle, it is payable in connection with *every* international transfer involving transfer compensation over the course of a player's career.

It is easier to understand the distinction between the two mechanisms if we return to the fundamental aim behind the training compensation system. Training compensation is supposed to reimburse the investment made by clubs in training and developing young players. On the other hand, the

solidarity mechanism is designed to strengthen the notion of solidarity within the football community.

Apart from this philosophical difference, there are other structural distinctions between the training compensation system and the solidarity mechanism. Firstly, the right to claim a solidarity contribution is not linked to a specific age limit. Even if a professional player is transferred at the age of 34, for example, the clubs that trained that player will be entitled to a solidarity contribution provided all the associated conditions are met.

There is broad agreement between football stakeholders that a player's training and education takes place between the ages of 12 and 23. In the last section of the commentary we saw that, for training compensation purposes, only the calendar years between the player's 12th and 21st birthdays are taken into consideration. On the other hand, clubs are entitled to solidarity payments for the player's entire training and education between the ages of 12 and 23.

Another significant distinction between training compensation and the solidarity mechanism is in the way money is distributed to the training clubs. Specifically, as far as training compensation is concerned, the amount payable is calculated based on pre-set estimated training costs, which are published in the relevant FIFA circular. However, solidarity contributions are calculated as a percentage of an agreed transfer compensation. This means that, unlike a training compensation payment, solidarity contributions are proportional to the transfer compensation paid for the player. This proportional element is consistent with the general aim of the solidarity contribution, namely, to foster a level of solidarity between the members of the football community.

The last fundamental structural difference lies in the fact that the solidarity mechanism only applies if a professional player moves before their contract expires (in contrast, training compensation can be payable if a professional player moves at the end of his contract).

ANNEXE 5, Article 1 - Solidarity contribution

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ANNEXE 5, Article 1 - Solidarity contribution

1. If a professional moves during the course of a contract, 5 % of any compensation paid within the scope of this transfer, not including training compensation paid to his former club, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the club(s) involved in his training and education over the years. This solidarity contribution reflects the number of years (calculated pro rata if less than one year) he was registered with the relevant club(s) between the calendar years of his 12th and 23rd birthdays, as follows:

- Calendar year of 12th birthday: 5 % of 5 % of any compensation
- Calendar year of 13th birthday: 5 % of 5 % of any compensation
- Calendar year of 14th birthday: 5 % of 5 % of any compensation
- Calendar year of 15th birthday: 5 % of 5 % of any compensation
- Calendar year of 16th birthday: 10 % of 5 % of any compensation
- Calendar year of 17th birthday: 10 % of 5 % of any compensation
- Calendar year of 18th birthday: 10 % of 5 % of any compensation
- Calendar year of 19th birthday: 10 % of 5 % of any compensation
- Calendar year of 20th birthday: 10 % of 5 % of any compensation
- Calendar year of 21st birthday: 10 % of 5 % of any compensation
- Calendar year of 22nd birthday: 10 % of 5 % of any compensation
- Calendar year of 23rd birthday: 10 % of 5 % of any compensation

2. A training club is entitled to receive (a proportion of) the 5 % solidarity contribution in the following cases:

a) a professional player is transferred, either on a definitive or loan basis, between clubs affiliated to different associations;

b) a professional player is transferred, either on a definitive or loan basis, between clubs affiliated to the same association, provided that the training club is affiliated to a different association.

1.1. Purpose and scope

a) THE SUBSTANCE OF THE SOLIDARITY CONTRIBUTION

The solidarity contribution corresponds to 5 % of any compensation, not including training compensation, paid by the new club to a professional player's former club for the transfer of the registration of the player. The solidarity contribution is thus inextricably linked to the transfer compensation agreed between the professional player's new and former clubs. Since the *Bosman* ruling, no transfer compensation will be due if a professional player is transferred at the end of their contract with their previous club. Hence, the most basic precondition for applying the solidarity mechanism is that a professional player must move between two clubs affiliated to different member associations while they are still under contract.

Payment of the full transfer compensation directly to the professional's former club does not always occur. For instance, it may be that part of the transfer fee goes not to the club releasing the player, but to another company or third party. This is common if the player's economic rights are owned by a third party, although such TPO arrangements are now banned. Equally, it might be that national regulations dictate that part of the transfer compensation should be paid to the member association which the former cub is affiliated to, either directly or via the releasing club.

The CAS[559] has consistently held that this "additional" compensation paid in connection with the transfer must also be considered when calculating the 5 % solidarity contribution, despite the fact it is not paid to the releasing club. Moreover, in a move designed to stop clubs reducing solidarity payments by re-categorising transfer compensation as some other kind of payment, article 1 of annexe 5 was amended to make clear that any compensation paid "*within the scope of* [a] *transfer*" is subject to the solidarity mechanism, regardless of whether it is described as part of the transfer fee or not.

The only compensation which is not subject to the 5 % solidarity contribution is training compensation. As already discussed, training compensation may be payable together with the transfer fee if a player moves while still under contract. This is a consequence of the fact that training compensation is designed to allow a club that has trained and developed a player to recover its training costs if it is not benefitting directly from the player's services. With this aim in mind, it would not be appropriate to reduce the training compensation payment.

559 CAS 2019/A/6196 Corinthians v. Flamengo. In this case, the agreed total transfer fee of EUR 8m was paid by the player's new club. EUR 5m went to the player's former club, and the rest (EUR 3m), to a previous club with which the player had been registered. The EUR 3m payment was made by the player's new club to the third club, on behalf of the club the player left as part of the transfer.

b) THE SOLIDARITY MECHANISM AND "BUY-OUT" CLAUSES

An interesting question is whether the solidarity mechanism should apply to so-called "buy-out" clauses.[560] If a player's employment contract contains a clause according to which they are free to leave the club at any time in return for paying the club a predetermined amount of money, and if they choose to exercise this right, should solidarity payments be deducted from the sum paid by the player to buy out their contact?

The standard argument against applying the solidarity contribution to buy-out clauses is that a player buying themselves out of their contract is not being transferred internationally within the meaning of the provisions governing the solidarity mechanism. Those making this argument often take the view that any compensation should be paid not by the club, but by the player exercising the clause.

On the other hand, it could also be argued that if a player leaves a club while still under contract, this implies that their buy-out clause will have to be met anyway for them to register with their new club. Moreover, in the majority of cases (though by no means always) it is actually the player's new club, and not the player, that pays the relevant sum to the former club on the player's behalf. Consequently, it would not appear justified to exclude such compensation from the solidarity mechanism. Indeed, not applying the solidarity mechanism to buy-out clauses would give clubs an easy way to torpedo efforts to foster solidarity within the football community.

In the eyes of the DRC, the second argument is the correct one. It would certainly appear to reflect the intention behind the provisions of the Regulations, and to safeguard the important principle underlying the solidarity mechanism. In its jurisprudence,[561] the DRC has consistently concluded that the solidarity contribution is due whenever a player moves between two clubs after triggering their buy-out clause. Specifically, the sum stipulated in the buy-out clause is considered as an offer by the releasing club to release the player for transfer in return for the payment of the amount concerned. If the player or another club accepts this offer by unconditionally paying the amount stipulated and the player then transfers between clubs, this payment effectively constitutes a transfer fee, and solidarity payments should be deducted from the transfer compensation paid.

In a 2011 Award,[562] the Panel considered that the key elements of a transfer between two clubs for the purposes of the solidarity mechanism were: (i) the consent of the releasing club to the early termination of its contract with the player; (ii) the willingness and consent of the new club to secure

560 A clause granting a right for parties to a contract to agree, while entering into a contract, that at a certain (or at any) moment one of the parties (normally, the player) may terminate the contract, by simple notice and by paying a stipulated amount. Such termination will be deemed to be based on the parties' (prior) consent and the party terminating the contract will not be liable for any sporting sanctions (cf. CAS 2013/A/3411 Al Gharafa & Bresciano v. Al Nasr & FIFA).

561 DRC decision of 24 April 2015, no. 04151496.

562 CAS 2011/A/2356 SS Lazio v. Vélez Sarsfield & FIFA.

the player's services for itself; (iii) the consent of the player to move from one club to another; and (iv) the price or value of the transaction. The Panel was satisfied that all these conditions were fulfilled. In relation to the first criterion, it considered that by including a buy-out clause in its employment contract with the player, the club had effectively given its consent in advance to release the player from his contractual obligations in return for the payment of the specified amount. In view of these factors, the original decision was confirmed, and a solidarity contribution was awarded to the training club.

A few years later, a different Panel reached a different conclusion, despite considering the exact same question based on the very same clause of the same contract. The Panel's reasoning was that exercising the relevant compensation clause did not trigger solidarity payments because it could not be established from the wording of the clause that the player's club had consented to release him. In other words, the second Panel did not consider the clause contained in the contract between the player and the former club to be a buy-out clause in the first place.

An earlier Award is often touted as questioning the applicability of the solidarity mechanism to buy-out clauses.[563] The matter in question concerned whether a contractually agreed "sell-on clause"[564] could be applied in relation to a buy-out clause. In other words, the question was not linked to the solidarity mechanism but rather to whether one of the player's previous clubs ought to have received a cut of the amount of the buy-out clause on the basis of a contractual agreement that it would receive a sell-on fee if the player was transferred. The respective Panel concluded the previous club could not claim part of the amount paid to exercise a buy-out clause as a sell-on fee. However, as it did not consider the solidarity mechanism as such, this does not necessarily imply that payments under the solidarity mechanism should not be deducted from a payment made to buy out a player's contract.

In a 2016 Award,[565] a CAS Panel disagreed with this conclusion and ruled that a sell-on clause agreed between two clubs as part of a transfer contract should apply if the player concerned subsequently triggered their buy-out clause to join a third club. Specifically, the Panel held that a sell-on clause ought to entitle the relevant former club to benefit from the player being sold on to a third club. Hence, the sell-on clause should apply to any circumstances that might allow the selling club to benefit from the player's transfer, unless the sell-on agreement specifically limited the circumstances in which the selling club could claim a sell-on fee, or there are clear indications that the parties intended something different. If the wording of the relevant sell-on clause refers only to a "*transfer*" in general terms, it should not matter whether

563 CAS 2010/A/2098 Sevilla FC v. RC Lens (Keita).

564 A clause included in a transfer agreement according to which the releasing club will participate with a certain predetermined percentage in the compensation received by the engaging club in case of a subsequent transfer of the player to a third club.

565 CAS 2019/A/6525 Sevilla FC v. AS Nancy Lorraine.

any subsequent transfer to a third club occurs based on a transfer fee or not. If the club that releases the player to the third club receives some sort of payment to compensate them for the loss of the player's services, the sell-on clause should apply.

A last consideration is whether the solidarity contribution should be paid by the player's new club on top of the amount stipulated in the buy-out clause. Both the DRC and CAS have previously confirmed that it should be.[566] This is also in line with the existing jurisprudence on contractual clauses included in transfer agreements, according to which the new club has to pay both the entire stipulated transfer fee and the solidarity contribution on top of it. For a buy-out clause to be properly exercised, the agreed sum must be paid unconditionally, with no deductions of any kind. It would therefore run counter to the essence of such a clause if the amount due to be paid by the new club as a solidarity contribution were deducted from the amount stipulated in the buy-out clause.

c) SETTLEMENT AGREEMENT FOR A NON-FINANCIAL MOVE

In a recent award,[567] CAS was asked whether solidarity contributions are due following a settlement agreement signed between two clubs relating to the (non-financial) transfer of player. The events were as follows: a player unilaterally terminated his employment contract with the former club. Nearly two months later, he signed an employment contract and registered with his new club. Nine months later, the former club and the new club signed a settlement agreement, according to which the new club"*recognises there is a value to the Player's registration"* and is"*prepared to pay an indemnity to* [the former club] *to reflect the transfer fee"* As such, the new club commit*ted* itself to pay the amount *of EUR* 22 5 million to the former club.

In this context, the CAS firstly recalled that solidarity is due if the player "*moves*" to a new club while his employment contract is still in force. It held that the concept of "*movement*" of a player from one club to another is not restricted by the necessity that such movement takes place in accordance with a "*typical*" transfer. Due to the fact that the player *"moved"* out of his contract when this was still in force (through a unilateral termination) and, consequently, "*moved*" to Atlético, this situation must be construed as falling within the scope of annexe 5.

In addition, the term "*compensation*" was not meant to be construed narrowly as merely encompassing a "*transfer fee" stricto sensu* but, rather, as encompassing any amount paid by the new club to the old club as a result of the player's move from the latter to the former. Therefore, the indemnity stipulated in the settlement agreement, shall be considered as a "*compensation*" and thus, solidarity contribution was due.

566 DRC decision of 22 July 2010, no. 7101224; CAS 2015/A/4188 AS Monaco v. Sevilla FC.

567 CAS 2020/A/7291 Club Atlético de Madrid SAD & Sporting Clube de Portugal - Futebol SAD v. Clube Futebol Benfica.

d) APPLYING THE SOLIDARITY MECHANISM TO COMPENSATION DUE FOR BREACH OF CONTRACT

The solidarity mechanism does not apply to any compensation payable by a player (and their new club, who is jointly and severally liable) for breach of contract. This can be deduced from the key features of a transfer between clubs for the purposes of the solidarity mechanism, as described above.[568] In the event of an unjustified breach of contract, at least two of these criteria for a valid transfer (specifically, the consent of the club of origin to the early termination of its contract with the player and the need for there to be a price or value associated with the transaction) are not fulfilled. As a result, an unjustified breach of contract cannot be deemed a transfer between clubs for the purposes of the solidarity mechanism. This was confirmed by the DRC as early as 2005.[569]

e) THE GENERAL RULE: 5 % TO BE DEDUCTED FROM THE COMPENSATION PAID BY THE NEW CLUB

As per the Regulations, the 5 % solidarity contribution must be deducted from the total amount of any transfer compensation paid by the new club. The solidarity mechanism does not impose any additional financial burden on the new club. The solidarity contribution is deducted from the amount of compensation agreed between the two clubs (so it should never be paid to the former club in the first place) and is then distributed to the clubs entitled to receive it.[570]

f) NEW CLUB'S RESPONSIBILITY TO PAY THE SOLIDARITY CONTRIBUTION

It is the new club's responsibility to deduct the 5 % solidarity contribution from the agreed transfer compensation and to distribute it to the clubs involved in the professional player's training and education over the calendar years (for solidarity mechanism triggered as from 1 January 2021) or season (for solidarity mechanism triggered prior to that date) between the player's 12th and 23rd birthdays.

This poses the question of what would happen if the new club forgot to deduct the 5 % solidarity contribution and instead paid 100 % of the agreed transfer fee to the former club? And what would happen if a contractual clause inserted in the transfer agreement placed the player's former club under an obligation to distribute the solidarity contribution? Colloquially, cases like this are known as "100 minus 5" cases.

568 CAS 2011/A/2356 SS Lazio v. Vélez Sarsfield & FIFA.

569 DRC decision of 23 June 2005, no. 65178.

570 Example: Player X is trained by club A between the seasons of his 12th and his 17th birthday. Subsequently the player is trained by club B between the seasons of his 18th and 21st birthday. Finally, the player is trained by club C during the seasons of his 22nd and 23rd birthday. At the age of 29, player X moves internationally and prior to the expiry of his contract from club D to club E. The two clubs agree on a compensation amounting to 1m. Club E will pay 1m, 95 % of it to club D and 5 % to the clubs A, B and C, which contributed to the training of the player during the relevant period of time.

In most cases like these, the training clubs that believe they are entitled to (part of) the relevant solidarity contribution will approach the new club to claim it. The new club will refer them to the player's former club, either because it has forgotten to deduct the 5 % contribution, or because there is a contractual agreement that the former club is responsible for paying the contribution. Either way, the new club can be expected to argue that the former club should pay the solidarity contribution. But what happens if the former club refuses to do so?

According to consistent jurisprudence,[571] under such circumstances and in strict application of the Regulations, it is the new club that will be required to pay the solidarity contribution to the training clubs concerned. In turn and upon request of the new club only, the former club will be obliged to refund the relevant amount to the new club.

The former club may be required to reimburse the new club either in the context of a proceedings initiated by the training club(s) in front of the DRC against the new club for solidarity contribution upon request of the new club (for reasons of procedural economy) or later on, in a separate proceedings initiated by the new club in front of the PSC.

There are two problems with requiring the former club to pay the relevant solidarity contribution to the training club(s) of the player. First, there is no contractual relationship between the training club(s) and the player's former club (the one that released the player for transfer to the new club) in this situation. Even if there is a contractual agreement on the payment of the contribution, any commitment made by the former club is towards the new club only, and any such agreement is therefore only effective *inter partes*. Secondly, the training club(s) have no entitlement under the Regulations to a solidarity payment from the former club; they can only enforce their entitlement against the new club. At the same time, the new club has two ways of getting its money back from the former club, either based on the contractual agreement between them, or by invoking unjust enrichment.

571 DRC decision of March 2014, no. 03142763a (contractual clause); DRC decision of August 2009, no. 89898 (omission); DRC decision of 27 April 2006, no. 4618 (contractual clause); CAS 2015/A/4105 PFC CSKA Moscow v. FIFA & Football Club Midtjylland A/S with reference to CAS 2012/A/2707 AS Nancy-Lorraine v. FC Dynamo Kyiv, CAS 2009/A/1773 Borussia Vfl 1900 Mönchengladbach v. Club de Fútbol América S.A. de C.V. (Asociación Atlética Argentinos Juniors/Argentina) & CAS 2009/A/1774 Borussia Vfl1900 Mönchengladbach v. Club de Fútbol América S.A. de C.V. (Club Atlético Independiente/Argentina) as well as CAS 2008/A/1544 RCD Mallorca v. Al Arabi; CAS 2014/A/3723 Al Ittihad FC v. Fluminense FC.

g) OPTION TO AGREE ON THE PAYMENT OF A SOLIDARITY CONTRIBUTION IN ADDITION TO TRANSFER COMPENSATION

A similar question arises in relation to whether, contrary to the general rule established in the Regulations, the two clubs may reach a contractual agreement stating that the solidarity contribution will be paid by the new club in addition to the agreed transfer compensation. Such arrangements, colloquially referred to as "100 plus 5" cases, have been controversial for a long time.

From the very beginning, the DRC adopted an approach that was strictly linked to the wording of the Regulations.[572] It considered that the solidarity contribution must be always deducted from the agreed transfer compensation and did not leave any discretion to the parties involved in the transfer. Consequently, the DRC consistently concluded that such agreements (or relevant clauses in such agreements) were invalid. Its reasoning was because an agreement establishing that the solidarity contribution would be paid by the new club on top of the transfer fee would constitute an agreement to the detriment of a third party – i.e. the training club(s).

This comes down to arithmetic. If two clubs agree on a transfer fee of EUR 1m and stipulate in their transfer agreement that the new club will pay the 5 % solidarity contribution on top of that EUR 1m, the total compensation agreed between the clubs is actually EUR 1m plus EUR 50,000 (EUR 1,050,000). This in turn would mean that one of the training clubs would effectively be done out of its share of the additional EUR 50,000, because its solidarity payment would be based on the transfer fee of EUR 1m.

In a 2006 Award,[573] the Panel concluded that contractual agreements establishing a "100 plus 5" situation were admissible. This decision was based on the 2001 edition of the Regulations, which did not include the verb "deduct" in the wording of the pertinent provision of the Regulations – deductions were only mentioned in a subsequent FIFA circular. On this basis, CAS overturned the DRC decision that the provision concerned was mandatory.

However, even in that early Award, the Panel emphasised that any reference to the solidarity contribution not being included in the transfer fee must be clearly stated in the transfer agreement concerned, a view reiterated and confirmed in subsequent Awards.[574] In particular, later Awards noted that describing the transfer fee as "*net*" would not suffice, since this description could only be interpreted in the context of tax law.

572 DRC decision of October 2008, no. 108250; DRC decision of 26 January 2011, no. 111492.

573 CAS 2006/A/1018 C.A. River Plate v. Hamburger S.V.

574 CAS 2008/A/1544 RCD Mallorca v. Al Arabi ("net" not sufficient); CAS 2009/A/1773 & 1774 Borussia Mönchengladbach v. Asociación Atlética Argentinos Juniors (clause not clear enough and furthermore, no evidence that the issue of the solidarity contribution being paid on top of the transfer fee was discussed); CAS 2006/A/1158 & 1160 & 1161 F. C. Internazionale Milano S.p.A. v. Valencia Club de Futbol SAD.

While the DRC has maintained its reasoning over time, CAS did not follow this reasoning for several years. Specifically, CAS mentioned that neither the relevant provisions of the Regulations nor those of Swiss law forbade clubs that were parties to a transfer agreement from stipulating which of them should carry the financial burden of the solidarity contribution. Along the same lines, it indicated that, while the new club had to pay the solidarity contribution, the former and the new club were free to agree to shift the actual financial burden of doing so.[575] Insisting that "100 plus 5" contractual clauses were admissible, another Panel confirmed that the clubs party to the transfer agreement could not change the principles affecting third parties, meaning that the contribution had to be 5 % of any compensation paid, and the new club had to pay it.[576] However, none of these cases ever invoked an arithmetical argument.

The turnaround in CAS decisions came in the first Award to consider that "100 plus 5" arrangements were to the detriment of a third party.[577] In this 2014 Award, the Panel established that clauses in a transfer agreement providing that the new club should pay the solidarity contribution on top of the stipulated transfer fee should be recognised if they clearly referred to the solidarity mechanism. On the other hand, it stated that training clubs could simply claim their share of the solidarity contribution based on the total actually paid (i.e. the transfer fee plus 5%). In other words, for the purposes of the solidarity mechanism, the agreed transfer compensation, net of any solidarity contribution, is 95% of the transfer fee, not 100%, and the amounts due to training clubs should rise accordingly.[578] Subsequent Awards confirmed the precedent set by this ruling,[579] which was later reflected by the DRC.[580]

In summary, clauses in a transfer agreement providing for the solidarity contribution to be paid by the new club on top of the stipulated transfer fee are permissible. However, the pertinent clause must clearly indicate that the amount paid as the transfer compensation is net of any solidarity contribution.[581] At the same time, training clubs can claim their solidarity payments based on the total amount paid, which amounts to the transfer fee plus 5 %.

575 CAS 2008/A/1544 RCD Mallorca v. Al Arabi; CAS 2009/A/1773 & 1774 Borussia Mönchengladbach v/ Asociación Atlética Argentinos Juniors; CAS 2013/A/3403 and 3405 SASP Stade Rennais FC v. Al Nasr FC.

576 CAS 2012/A/2707 AS Nancy-Lorraine v. FC Dynamo Kyiv.

577 CAS 2014/A/3713 Desportivo Brasil Participacoes LTDA. v. Clube de Regatas Vasco de Gama & Guangzhou Evergrande and CAS 2014/A/3713 Desportivo Brasil Participacoes LTDA. v. Madureira Esporte Club & Guangzhou Evergrande.

578 Example: The former club A and the new club B agree on a transfer compensation amounting to 1m, net of any solidarity contribution. Club B will thus pay 1m to club A, this being 95 % of the actually agreed compensation for the purposes of calculating the solidarity contribution. The basis for calculating the entire solidarity contribution will be 100% (i.e. 1,052,631), meaning that the amount of the solidarity contribution relating to the pertinent transfer will be 52,631, and not 50,000.

579 CAS 2015/A/4137 Lyon v. AS Roma; CAS 2016/A/4518 & 4519 FC Porto v. Hellas Verona FC & River Plate (4518) / Cerro Porteño (4519); CAS 2015/A/4131 Al Nassr FC v. Clube de Regatas do Flamengo & Player Hernane Vidal de Souza.

580 DRC decision of 26 August 2019, no. 08192031-E; DRC decision of 26 August 2019, no. 08192030-E.

581 CAS 2016/A/ 4518 & 4519 FC Porto v. Hellas Verona FC & River Plate (4518) / Cerro Porteño (4519).

h) ENTITLEMENT TO SOLIDARITY CONTRIBUTIONS

All clubs involved in training and educating a player between the calendar years (for solidarity mechanism triggered as from 1 January 2021) or season (for solidarity mechanism triggered prior to that date) of their 12th and 23rd birthdays are entitled to solidarity contributions.

The Regulations set out exactly how the payment is broken down. As with training compensation, the first four calendar years (or seasons) of training (i.e. the ones of the player's 12th to 15th birthdays) attract a smaller share of the 5 % (5 % of the 5 %) than subsequent calendar years (or seasons) of training (10 % of the 5 %). Again, this is to reflect the fact that the costs associated with training during these early years are generally lower than they are in later years.

If one of the clubs involved trained the player for less than one entire calendar year, the solidarity contribution due to that club will be calculated on a *pro rata* basis. As with training compensation, for many years the DRC chose to apply a calculation model that calculated solidarity contributions to the nearest month and made no provision for smaller units like weeks or days. In recent years, the DRC has shifted to calculate solidarity contribution to the nearest day.

Since 1 July 2020, a training club has been entitled to receive (a proportion of) the 5 % solidarity contribution in two different situations.

i) A professional player transfers between clubs affiliated to different member associations.

When a professional player is transferred internationally between two clubs, while still under contract and in return for transfer compensation, the solidarity mechanism will apply, and the training clubs with which the player was registered in the relevant period will benefit. This is the scenario for which the Regulations were originally written.

Take, for example, the Argentinian player Gonzalo Higuaín. Higuaín was trained by the Argentinian club, CA River Plate. In 2013, Higuaín was transferred for a fee from the Spanish club, Real Madrid, to the Italian club, S.C.C. Napoli. Given that Higuaín transferred between clubs affiliated to different member associations, the training club, CA River Plate, was entitled to solidarity contribution.

ii) A professional player transfers between clubs affiliated to the same member association, provided that the training club is affiliated to a different member association

This provision entered the Regulations on 1 July 2020.

Prior to this date, the DRC considered that as the Regulations only govern the transfer of players between clubs affiliated to different member associations, and they explicitly instruct member associations to issue specific regulations

governing national transfers, the solidarity mechanism could not be applied to national transfers. This reasoning was subsequently confirmed by CAS.[582]

As from 1 July 2020, and as part of the ongoing reform of the football transfer system, subject to the conditions of article 1 paragraph 1 of annexe 5 being fulfilled, the national transfer of a professional player will trigger an entitlement to a solidarity contribution for all training clubs that contributed to the player's training and development during the relevant period, provided they are affiliated to a different member association from the two clubs directly involved in the transfer.[583] This amendment enhances the solidarity principle, a key objective of the Regulations.

For this scenario, the example of Gonzalo Higuaín will be used again. In 2016, Higuaín was transferred for a fee from the Italian club, S.C.C. Napoli, to another Italian club, Juventus F.C. At the time the transfer took place, the training club, CA River Plate, was not entitled to receive a solidarity contribution from Juventus F.C. because the transfer took place between two clubs affiliated to the same member association. However, had the transfer taken place after 1 July 2020, CA River Plate would have been entitled to solidarity contribution.

i) DISTRIBUTING THE SOLIDARITY CONTRIBUTION IF THE PLAYER IS NOT YET 23 YEARS OLD AT THE TIME OF THE TRANSFER

If a professional player is not yet 23 when they are transferred while still under contract, the portion of the solidarity contribution for the period of their current age until the end of the calendar year of their 23rd birthday will not be immediately payable. If, for example, the player moves at the beginning of the calendar year of their 22nd birthday, a solidarity contribution would normally be payable for the full calendar year of the 22nd and 23rd birthdays, but it would not have to be distributed immediately. Who should receive this portion of the solidarity payment: the player's new club, or their former club?

Per the principles of the solidarity mechanism described in the Regulations, the new club commits to pay a certain amount as a solidarity contribution, and the solidarity mechanism only affects the way this amount is distributed. Based on this fundamental principle, the solidarity mechanism should not allow the new club to pay less in transfer compensation or solidarity mechanism than what it had originally committed to pay. The new club should not benefit financially from the fact that some of the 5 % solidarity contribution does not need to be distributed at this point: if it committed to pay EUR 1m, it should pay EUR 1m.

582 CAS 2007/A/1307 Asociación Atlética Argentinos Juniors v. Villareal C.F. SAD; CAS 2007/A/1287 Danubio FC v. FIFA & Internazionale Milano.

583 Example: A Bolivian club that trained an Ecuadorian player during the pertinent period of time, would be entitled to the solidarity payment in case the player returns on an international transfer to Ecuador and is subsequently transferred within Ecuador.

j) PROCEDURE IF THE FORMER CLUB IS ALSO A TRAINING CLUB

A similar approach applies if the player's former club also happens to be a training club.

The solidarity mechanism should not result in the new club paying less than it had originally agreed to pay. It should also be highlighted that there is no distinction in the Regulations between the former club (which is directly involved in the transfer) and other training clubs; all training clubs are treated the same way, regardless of whether they are parties to the transfer itself. If the pertinent conditions are met, *all* the training clubs should benefit from the solidarity contribution. In other words, the releasing club should also receive its share of the solidarity contribution, if it contributed to the player's training and education over the relevant period.

Considering the above, if the releasing club is also a training club, it should receive 95 % of the agreed transfer fee plus its portion of the solidarity contribution.[584]

k) EXCHANGE OF PROFESSIONAL PLAYERS ("SWAP DEALS")

Sometimes, the transfer compensation received in exchange for a player is not the payment of a transfer fee; two clubs may decide instead to exchange or "swap" two or more professional players. It is unlikely that a club will agree to such a deal unless it feels the values of the two players involved are broadly similar.

In order to preserve the spirit and substance of the solidarity mechanism, the DRC has confirmed that a solidarity contribution must be paid when the registration of professionals are exchanged in this way.[585] Specifically, it has emphasised that the services of the players involved in such arrangements have a financial value for the clubs concerned, and that it should not be possible to deny the training clubs' rights to solidarity contributions by means of exchanging players. Applying a different approach would open the floodgates to all sorts of attempts to circumvent the Regulations.

CAS has confirmed this position.[586] In a 2016 Award, it pointed out that the Regulations refer to "*compensation*" without specifying its nature. Moreover, Swiss law supports the notion that an exchange of goods (in the present case, rights to the players' respective registrations) fundamentally involves two sales contracts. In this case, the right to register one player constitutes the consideration in return for which the other club transfers the right to register its player. Moreover, from an economic point of view, CAS has concluded there is no basis on which to conclude that the rights

584 DRC decision of June 2008, no. 3881052.

585 DRC decisions of August 2012, no. 812019 and 812020; DRC decisions of 9 January 2009, no. 19442a and 19442b; DRC decision of 7 May 2008, no. 58351b; DRC decision of 12 January 2007, no. 17630.

586 CAS 2016/A/4821 Stoke City FC v. Pepsi Football Academy.

being exchanged when players swap clubs are devoid of value, meaning that there is a value associated with the deal. Finally, CAS has explained that where registration rights are exchanged, and no additional compensation is provided by either party to the transaction, these two players must be deemed to be of exactly equal value.[587]

The next question is how the value attributed to the services of the respective players should be determined. In one specific case, the concrete circumstances surrounding the transaction assisted the DRC in this respect.[588] Two clubs had agreed on an exchange involving two players. However, while one player was to be transferred at the beginning of the year, the other one was not scheduled to move in the other direction until six months later. To remove the financial risk associated with an injury to the second player during that six months, the clubs took out an insurance policy. Of course, this policy put a value on the player's services for insurance purposes and, as one might expect, the DRC considered that the value of the insurance policy was in line with the value the clubs attached to the player's services. Furthermore, since the clubs had agreed on a straight swap, with no additional compensation involved, it was reasonable to assume that the value attributed to the services of both players involved in the deal was equal. The DRC then went on to calculate the solidarity contribution on the assumption that the value of the insurance policy was a fair reflection of the value of both players.

However, such helpful evidence is not always available. The only sensible course of action (and adopted in DRC jurisprudence) in such cases is to refer to previous transfer fees paid for the players concerned during their careers. At the very least, the last transfer fee paid for a player gives some indication of the value attributed to their services by a club at a given moment in time.[589]

CAS has considered that, in the case of an exchange of registration rights with no additional compensation provided by either club, the transfer compensation must be the same for both players. In this context, having established that the players had value at the time of the exchange, and that this value had to be the same for each, CAS used the average transfer compensation associated with the preceding transfers of the two players to determine the value to assign to the transfer compensation. In this respect, CAS concluded that, in absence of additional information being available when the players are exchanged, *"the FIFA DRC valuation methodology, while appearing potentially simple, appears to adequately meet the aims of the solidarity provisions of the FIFA Regulations."* In other words, in the absence of a better alternative, it would correct to calculate the solidarity contribution based on the value attributed to the player's services when they were transferred in the past.[590]

587 CAS 2012/A/2929 Skeid Fotball v. Toulouse FC.
588 DRC decision of 12 January 2007, no. 17630.
589 DRC decision of 7 June 2018, no. 06181269; DRC decision of 17 August 2012, no. 812019.
590 CAS 2016/A/4821 Stoke City FC v. Pepsi Football Academy.

Finally, and for the avoidance of doubt, if players are exchanged, the training clubs of *both* players will benefit from the solidarity contribution.

l) THE SOLIDARITY MECHANISM AND LOANS

Where a professional player is loaned in return for the payment of a loan fee, 5 % of that loan fee will be deducted as a solidarity contribution.[591] This means that solidarity contribution has to be deducted from the loan fee by the engaging club and distributed to the training clubs.

As an aside, this also means that if a professional player is loaned for a fee with the option of a permanent transfer at the end of the loan, and if that permanent transfer would require an additional transfer fee to be paid, the respective training clubs will receive a second solidarity contribution if the permanent transfer comes to fruition, based on the transfer fee.

1.2. Relevant jurisprudence

DRC decisions

Buy-out clauses

– DRC decision of 24 April 2015, no. 04151496

Compensation for breach of contract

– DRC decision of 23 June 2005, no. 65178

"100 plus 5" cases

– DRC decision of 26 August 2019, no. 08192031-E
– DRC decision of 26 August 2019, no. 08192030-E

Exchange of players

– DRC decisions of August 2012, no. 812020
– DRC decision of 7 June 2018, no. 06181269
– DRC decision of 17 August 2012, no. 812019
– DRC decision of 12 January 2007, no. 17630

591 DRC decision of 16 March 2016, no. 0316367; DRC decision of 15 June 2017, no. 06171997.

CAS Awards

Buy-out clause

- CAS 2011/A/2356 SS Lazio v. Vélez Sarsfield & FIFA (Zárate)
- CAS 2015/A/4188 AS Monaco v. Sevilla FC (Kondogbia)

Settlement Agreement

- CAS 2020/A/7291 Club Atlético de Madrid SAD & Sporting Clube de Portugal - Futebol SAD v. Clube Futebol Benfica

Transfer fee net of solidarity contribution

- CAS 2006/A/1158 & 1160 & 1161 F. C. Internazionale Milano S.p.A. v. Valencia Club de Futbol SAD
- CAS 2008/A/1544 RCD Mallorca v. Al Arabi
- CAS 2009/A/1773 & 1774 Borussia Mönchengladbach v. Asociación Atlética Argentinos Juniors

"100 + 5" cases

- CAS 2014/A/3713 Desportivo Brasil Participacoes LTDA. v. Clube de Regatas Vasco de Gama & Guangzhou Evergrande and CAS 2014/A/3713 Desportivo Brasil Participacoes LTDA. v. Madureira Esporte Club & Guangzhou Evergrande
- CAS 2015/A/4137 Lyon v. AS Roma; CAS 2016/A/4518 & 4519 FC Porto v. Hellas Verona FC & River Plate (4518) / Cerro Porteño (4519)
- CAS 2015/A/4131 Al Nassr FC v. Clube de Regatas do Flamengo & Hernane Vidal de Souza

Exchange of players

- CAS 2016/A/4821 Stoke City FC v. Pepsi Football Academy

ANNEXE 5, Article 2 - Payment procedure

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ANNEXE 5, Article 2 - Payment procedure

1. The new club shall pay the solidarity contribution to the training club(s) pursuant to the above provisions no later than 30 days after the player's registration or, in case of contingent payments, 30 days after the date of such payments.
2. It is the responsibility of the new club to calculate the amount of the solidarity contribution and to distribute it in accordance with the player's career history as provided in the player passport. The player shall, if necessary, assist the new club in discharging this obligation.
3. An association is entitled to receive the proportion of solidarity contribution which in principle would be due to one of its affiliated clubs, if it can provide evidence that the club in question – which was involved in the professional's training and education – has in the meantime ceased to participate in organised football and/or no longer exists due to, in particular, bankruptcy, liquidation, dissolution or loss of affiliation. This solidarity contribution shall be reserved for youth football development programmes in the association(s) in question.
4. The Disciplinary Committee may impose disciplinary measures on clubs that do not observe the obligations set out in this annexe.

1.1. Purpose and scope

a) TEMPORAL ASPECTS

As mentioned above, it is the new club's responsibility to pay the solidarity contribution to the training clubs. As a rule, it must pay no later than 30 days after the player's registration with the new club. This specific deadline is significant in two ways. First, in the event of late payment, and where it is requested to intervene by a creditor club, the DRC generally awards interest on outstanding compensation payments starting from the thirty-first day following the player's registration with the new club.[592] Since the latest possible due date is the thirtieth day after the player's registration with

592 DRC decision of 7 June 2018, no. 06180751-E.

the new club, the new club is in default from the thirty-first day following registration. Second, the two-year time limit in which any claim must be lodged with the DRC also begins on the thirty-first day following the player's registration with the new club.

Transfer agreements frequently provide for the agreed transfer compensation to be paid in instalments. In practice, it is also common for terms to be inserted requiring the player's new club to make additional payments to the releasing club when certain conditions are met (such as if the player scores a certain number of goals for the new club). It would not seem justifiable to oblige a club to pay the solidarity contribution before the principal fee becomes due (assuming the transfer fee is paid in instalments), let alone before it is clear whether any contingent payments will have to be made.

Therefore, contrary to the general rule, the 30-day deadline for the payment of solidarity contributions in connection with contingent payments (usually deemed to include instalments[593]) is measured from the date on which any contingent payment is made. If the new club is late paying an instalment or an additional payment in connection with a *transfer*, this will not change the date on which the solidarity contribution is due.

In other words, despite the wording of the provision referring to the date of the payment, the relevant deadline is measured from the date the instalment is due and/or the due date of the additional fee, not the date on which these payments are actually made. Similarly, interest on late solidarity contribution payments is charged from the thirty-first day after the due date for the relevant instalment or additional payment, and the two-year period within which claims can be lodged with the DRC starts at the same time.

b) ACCURATE CAREER HISTORY DATA AND THE PLAYER PASSPORT

It is the new club's responsibility to calculate the amount of the solidarity contribution due to the respective clubs, and then to distribute it in accordance with the player's career history as set out in the player passport. Contrary to the principles on training compensation, the player is obliged to assist their new club in discharging this obligation as required. This duty is imposed because training clubs have an entitlement to solidarity payments regardless of the player's age at the time of the transfer. This means a player may find themselves joining a new club many years after they left their last training club, and the player may therefore have to confirm relevant dates from early in their youth career. However, the requirement to introduce electronic systems for registration and national transfers ought to reduce the need for such assistance from the player in future.

593 DRC decision of 16 April 2009, no. 49982; DRC decision of 8 June 2007, no. 67579; CAS 2014/A/3723 Al Ittihad FC v. Fluminense FC.

As with the training compensation scheme, the importance of accurate data concerning a player's career history need hardly be emphasised. The player passport plays a central role in determining which clubs are entitled to solidarity payments.

The player passport must be issued by the member association to which the player's former club is affiliated, and must be attached to an ITC. Furthermore, in order to facilitate the process of *paying* the solidarity contribution, once it has received the relevant ITC, the member association registering *the* player is expected to inform the member association(s) of the player's training club(s) in writing that it has registered the player as a professional.

The requirement to introduce electronic systems for registration and national transfers, together with the extension of TMS to cover international transfers involving amateurs will certainly have a major positive impact. From a practical perspective, it is important to emphasise that only the official player passport, as issued and confirmed by the relevant member association, will be considered in the event of any dispute.

c) MEMBER ASSOCIATION ENTITLEMENT TO SOLIDARITY PAYMENTS

As they do in respect of training compensation payments, the Regulations permit a member association to claim a solidarity contribution which would have ordinarily been owed to one of its former affiliated clubs that has ceased to participate in organised football or no longer exists.

The aim of the provision is to preserve the spirit of the solidarity mechanism and the notion of solidarity within the football community. It is designed to ensure that the clubs benefitting from the talents of professional players trained and developed by other clubs recognise the work these clubs have done. If a club that contributed to the player's training, education and development is no longer in existence, then the relevant member association's grassroots activities should still be able to benefit from the solidarity shown to that club.

The same conditions regarding the solidarity contributions received by member associations apply as they do with any training compensation that a member association may receive in such circumstances.

At the same time, a member association will be unable to claim a solidarity contribution which would have ordinarily been owed to one of its affiliated clubs if that club was not affiliated at the time of the pertinent training and education.[594]

594 DRC decision of 20 May 2020, TMS 3963.

d) DISCIPLINARY MEASURES

The goal of this provision is to ensure the rules on solidarity payments are properly and effectively applied, including by imposing sporting sanctions, which experience suggests are the most effective form of punishment in most circumstances.

1.2. Relevant jurisprudence

DRC decision of 20 May 2020, TMS 3963.

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Jurisdiction

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Article 22 - Competence of FIFA

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Article 22 - Competence of FIFA

1. Without prejudice to the right of any player, coach, association, or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

   a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;

   b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs;

   c) employment-related disputes between a club or an association and a coach of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of coaches and clubs;

   d) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to different associations;

   e) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to the same association provided that the transfer of a player at the basis of the dispute occurs between clubs belonging to different associations;

   f) disputes between clubs belonging to different associations that do not fall within the cases provided for in a), d) and e).

2. FIFA is competent to decide regulatory applications made pursuant to these regulations or any other FIFA regulations.

22.1. Purpose and scope

The FIFA dispute resolution system is one of the most important outcomes of the March 2001 agreement.

The dispute resolution system provides stakeholders with effective tools for settling contractual and regulatory disputes within the football community, without having to seek redress before civil courts. However, as far as employment-related disputes between clubs and players (with an international dimension), or between clubs or member associations and coaches (with an international dimension), those parties have the option of taking employment-related disputes to civil (state) courts. This preamble to the provision was included to satisfy requests made by the European Commission, and to respect constitutional rights applicable in some jurisdictions.

The Regulations sets out rules pertaining to both: (i) FIFA's competence to deal with disputes with an international dimension between players and clubs, between coaches and clubs or member associations, and between clubs; and (ii) the competences of the different chambers of the FT.

The dispute resolution system is completed by the recognition of CAS as the body of appeal.[595] All final decisions passed by the FT, subject to certain conditions, can be appealed before CAS.

a) RELATIONSHIP TO CIVIL COURTS

i) Employment-related disputes between a player and a club

Disputes between stakeholders within the football community should, in principle, be settled within the structures of sporting decision-making bodies; recourse to ordinary courts of law for matters relating to football is usually prohibited, in accordance with the FIFA Statutes.[596] Instead, provision is made for an arbitration procedure in such cases.[597] In this respect, FIFA is obliged by article 5 of the FIFA Statutes to provide the institutional means required to resolve any dispute that may arise between member associations, confederations, clubs, officials and players.[598] However, this prohibition against recourse to civil courts is not applied to all disputes. In accordance with article 59 paragraph 2 of the FIFA Statutes, all exceptions to the general prohibition must be explicitly stated in the relevant FIFA regulations.

The Regulations expressly establish that FIFA competence to hear certain types of dispute is without prejudice to the right of any player or club to seek redress before a civil court for employment-related matters.

595 Article 56, Statutes.
596 Article 59 paragraph 2, Statutes.
597 Article 59 paragraph 3, Statutes.
598 Article 5 paragraph 2, Statutes.

The DRC unambiguously recognises the right to bring certain cases before ordinary courts, and refrains from accepting jurisdiction where the parties to a dispute have explicitly chosen to have employment-related cases heard by a civil court.[599] CAS has confirmed this approach and has acknowledged that a club and a player may agree in their contract to refer any employment-related disputes to state employment tribunals. If the parties in a case opt for it to be heard before a state court, this decision must be respected.[600] In addition to a clear and explicit statement in a contract confirming that the parties wish any dispute to be heard before a civil court, any reference in the contract to specific national legislation establishing the competence of national employment tribunals can also be deemed to imply that employment-related cases will be heard outside of football's decision-making structures.[601]

Where a clear and exclusive jurisdiction clause has been agreed upon by the parties, the case will still be heard by the DRC provided that the international dimension is present and both parties agree (even tacitly) that the DRC adjudicates.[602] A challenge to the competence of the DRC *in principle* must be invoked by the respondent, otherwise it is deemed that the jurisdiction of the DRC is accepted by both parties.

Where no international dimension exists, even if the parties agree upon a jurisdiction clause in favour of the DRC, it will not be competent to hear the dispute. In an interesting 2014 Award, CAS explained that if a contractual clause provided for the case to be held before alternative fora, the party that commenced proceedings in the case should be entitled to select the forum before which it will be heard.[603] Finally, CAS has also held that the fact that national law forbids employment-related disputes from going to arbitration does not necessarily mean that the FIFA decision-making bodies cannot adjudicate on such disputes.[604] As was pointed out in the Award, when determining whether a dispute is subject to arbitration in Switzerland, the applicable law is Swiss law, and specifically the Federal Act on Private International Law, which provides that any dispute with a monetary value is arbitrable.[605]

599 DRC decision of 25 October 2018, no. 10181394-E; DRC decision of 14 June 2019, Gómez.

600 CAS 2014/A/3690 Wisla Krakow S.A. v. Tsvetan Genkov; CAS 2015/A/4103 Franco Zuculini v. Club Real Zaragoza SAD & FIFA; CAS 2017/A/5111 Debreceni Vasutas Sport Club (DV.C) v. Nenad Novakovic; CAS 2018/A/5624 Dominique Cuperly v. Al Jazira (*in casu*, choice of forum in a settlement agreement).

601 CAS 2015/A/3896 Elias Trindade v. Atletico de Madrid; CAS 2019/A/6621 Club Atlético Osasuna v. Alvaro Fernández Llorente and AS Monaco FC. In both awards, the respective contracts referred to the Royal Decree 1006/1985.

602 DRC decision of 9 February 2017, no. 02171603.

603 CAS 2014/A/3690 Wisla Krakow S.A. v. Tsvetan Genkov; CAS 2016 A 4568 Wisla Krakow v. Milan Jovanic & FIFA; CAS 2017/A/5111 Debreceni Vasutas Sport Club (DV.C) v. Nenad Novakovic.

604 CAS 2015/A/3896 Elias Trindade v. Atlético de Madrid.

605 CAS 2015/A/4152 Cerro Porteño v. Roberto Antonio Nanni & FIFA.

ii) Employment-related disputes between a coach and a club or an association

The preamble to article 22 also directly references the ability of clubs or member associations and coaches to refer an employment-related dispute to a civil court, because employees should not be precluded from taking disputes of this kind to an employment tribunal. Their constitutional and personal rights must be respected. The inclusion of coaches and member associations in the preamble only occurred on 1 January 2021. In any event, the existing jurisprudence[606] prior to that date confirmed the right of a coach to seek redress before a civil court in employment-related disputes, despite the Regulations being silent.

b) THE COMPETENCE OF FIFA IN GENERAL

FIFA is a private association in accordance with the Swiss Civil Code.[607] As such and based on the very liberal and flexible legal framework applicable to private associations in Switzerland, it is free to set its own objectives, scope of operations and competences, among other things. Hence, if it decides to introduce and implement a private dispute resolution system, it can set the limits of that system's competence by defining the types of disputes that should, and should not, fall within the scope of that system.

First and foremost, FIFA competence is focused on disputes with an international dimension. Moreover, as well as defining the parties that have standing to appear in front of the decision-making bodies, article 22 also provides an exhaustive enumeration of the types of disputes FIFA is competent to hear. It is important to emphasise that the scope of FIFA jurisdiction is not open to the parties' discretion; it derives from the FIFA Statutes and the Regulations, and not from private agreements between parties.[608] For example, it is not possible for a club to conclude a contract for the supply of footballs with a private company, and then to nominate FIFA as the competent forum to rule on any disputes that may arise from such a contract, as disputes of this kind would not fall within those enumerated within article 22.

The jurisdiction of the FT is strictly limited to direct and indirect members of FIFA. It cannot simply be extended to third parties, even if these third parties request it. Similarly, decisions passed by the DRC or PSC can only be securely enforced against direct and indirect members of FIFA; they cannot be enforced against third parties. Accordingly, FIFA has jurisdiction over a limited range of parties, specifically those exhaustively enumerated in the Procedural Rules.

606 Single Judge Players' Status Committee decision of 29 October 2019; Teixeira; Bureau of the Players' Status Committee decision of 25 September 2019, Quinteros-ES; CAS 2018/A/5624 Dominique Cuperly v. Club Al Jazira.

607 Article 1 paragraph 1, Statutes.

608 DRC decision of 13 October 2015, no. 1016908-E.

This was confirmed by CAS in 2016, when it was asked to rule on a case regarding FIFA competence to hear a dispute involving an agent following the entry into force of the Regulations on Working with Intermediaries.[609] In particular, the Award stated that FIFA, as a Swiss association, had the power to determine whether it should assume jurisdiction over disputes.

c) DISPUTES FIFA IS COMPETENT TO HEAR

The full and exhaustive list of the disputes that FIFA is competent to hear is in article 22.

i) Disputes between clubs and players regarding the maintenance of contractual stability

Employment-related disputes between a club and a player do not usually fall within the competence of FIFA unless they have an international dimension. A dispute is deemed to have an international dimension whenever the player concerned is of a different nationality from the country where the member association that holds their registration is based, or, in other words, whenever the player is a foreigner in the country of the member association where they are registered. This means that, for example, an employment-related dispute between a Brazilian player and a Brazilian club will not normally fall within FIFA jurisdiction.

This definition has been confirmed in cases involving dual nationality. In particular, CAS has stated that the most crucial aspect to be borne in mind when considering any "foreign element" is *"the player's nationality for the purpose of football"*.[610] This approach has also been confirmed by the Swiss Federal Tribunal.[611] In a 2016 Award, CAS acknowledged that a dispute between a player and a club should generally be assumed to have an international dimension according to the Regulations, unless the parties share the same nationality.[612]

This conclusion was further strengthened in a separate case,[613] which stated that *"…the international dimension is related to the national status of the parties and not to the national status of the dispute."* In the same Award, the Panel went on to note that a clear distinction had to be made between holding a residence permit in a given country and being a *citizen* of the country concerned. Common sense dictates it would be unjustified to conclude that a case lacked an international dimension because a player was resident in the country where their club was based. After all, it stands to reason that if a footballer is registered with a certain club, they are likely to be resident in the country where that club plays its football.

609 CAS 2016/A/4477 Joan Antonio Soares de Freitas v. Al Shabab FC.

610 CAS 2010/A/2255 René Salomon Olembe-Olembe v. Kayserispor Kulübü Dernegli; see also CAS 2010/A/1996 Omer Riza v. Trabzonspor Kulübü Dernegi & Turkish Football Federation (TFF).

611 ATF 4A_404/2010 at 4.3.3.2.

612 CAS 2016/A/4441 Jhonny van Beukering v. Pelita Bandung Raya FC & FIFA.

613 CAS 2016/A/4846 Amazulu FC v. Jacob Pinehas Nambandi & FIFA & National Soccer League South Africa; CAS 2014/A/3682 Lamontville Golden Arrows Football FC v. Kurt Kowarz & Fédération Internationale de Football Association (FIFA).

In summary, the jurisprudence establishes that a dispute involving a club and a player that share the same nationality should not be deemed to have an international dimension. Consequently, FIFA is not usually competent to hear such a dispute. If the player holds dual nationality, and if one of their nationalities is that of the country in which the club is based, then the dispute will only be deemed to have an international dimension (and, by extension be within FIFA competence) if the player is registered by their club to participate in the relevant championship under their other nationality (i.e a Brazilian/Italian player participating for a Brazilian club is registered to participate as an Italian). The same principle applies to coaches (albeit coaches are not registered in the same manner as players).[614] Considering the advantages associated with the player being registered under the same nationality as the club (e.g. not being subject to quotas for foreign players or restrictions on work permits, visas etc.), it is difficult to imagine a situation in which a player who could qualify as a home player would choose to register with a club as a foreigner.

In a recent Award, the Sole Arbitrator stated when assessing sporting nationality: *"[i]t is decisive to establish, first, under which nationality a players actually signs the contract, and subsequently under which nationality he registers with the club concerned".*[615]

Notwithstanding the above, article 22 paragraph 1 (a) somewhat extends FIFA jurisdiction and, in so doing, appears to contradict the general rule. Disputes between clubs and players in relation to the maintenance of contractual stability always fall within FIFA competence where they involve a request for an ITC and a claim by an interested party in relation to that ITC request. The issuance of the ITC and the fact that the new club is affiliated to a different member association creates the international dimension. Under such circumstances, FIFA becomes competent to deal with the relevant contractual dispute, regardless of whether there is a recognised independent arbitration tribunal in the country concerned.

Whenever a player moves between two clubs affiliated to different member associations, although we commonly talk about a player being transferred, it would be more accurate to refer to the player's *registration* being transferred. A player's registration is certified by means of the ITC. Players registered with a club affiliated to one member association may only be registered for a club affiliated to a different member association once the new club's member association receives an ITC from the former club's member association.

According to the Regulations, there is only one valid reason to refuse to issue an ITC: when there is a contractual dispute between the former club and the player (for example, if the contract between the former club and the player has not expired, or if they have not agreed to the early termination of the contract).

614 Single Judge of the Players' Status Committee decision of 23 March 2021, Coach Bodog; Single Judge of the Players' Status Committee of decision 25 of August 2020, Coach Lawrence.

615 CAS 2020/A/6933 Emilio Yamin Faure v. Al Salam Zgharta Club & FIFA.

If the member association to which the player's former club is affiliated refuses to issue the ITC, the member association requesting the ITC may ask FIFA to register the player. The PSC will then have to decide whether the player can be registered for the new club even though there is an ongoing contractual dispute between the player and their former club. Decisions in such cases are made without prejudice to any decision the DRC may make in relation to the underlying contractual dispute between the player and their former club.

Clearly, decisions of this kind have an international impact, which is why only FIFA has the power to implement provisional measures when issuing international clearance for a player to register with a new club. This is also one of the reasons why FIFA competence extends to some employment-related disputes in which the player and the club concerned share the same nationality. If a player wishes to transfer internationally (i.e. to a club affiliated to another member association) and this leads to a contractual dispute between the player and the club they wish to leave, it is not logical for the international decision-making body to decide on the registration of a player, and then a separate national body decides on the substance of the contractual dispute between the player and their former club. At the same time, the player's proposed new club cannot fall within the jurisdiction of the member association to which the former club belongs, because member associations only have jurisdiction over their own members or affiliates. The fact a foreign club is involved in the dispute because it is attempting to register the player provides the international dimension. This is especially important given that the prospective new club will be held jointly and severally liable for any compensation the player is required to pay their former club if the player is found to have breached their contract without just cause, and given that sporting sanctions may be imposed on the new club if it is found to have induced the player to commit a breach of contract.

The DRC[616] has taken the view that FIFA has jurisdiction under article 22 paragraph 1 (a) over disputes between clubs and players relating to the maintenance of contractual stability whenever the player's former club lodges a relevant claim against the player and/or their new club. If the player shares a nationality with their former club and makes a claim against their former club, but the player's new club cannot be affected by the judgment, there is no international dimension to the case. The DRC view is even clearer where the player terminates the contractual relationship with their former club. In this situation, the DRC has concluded that there is no relationship between the contractual dispute and the ITC request, and that FIFA is therefore not competent to deal with the relevant contractual dispute.

616 DRC decision of 9 November 2017, no. 11171143-FR.

To conclude, article 22 paragraph 1 (a) requires the contractual dispute between the player and their former club to be linked to an ITC request.[617] Therefore, if an employment dispute with no international dimension arises between a player and a club (e.g. if both parties are, for instance, Brazilian), and the player only decides to transfer internationally to a club affiliated to a different member association *after* the original dispute arises, their proposed international transfer cannot be cited as the reason for the underlying contractual dispute. Hence, there is no international dimension to the original contractual dispute, and the relevant national decision-making authority is competent to deal with it.

ii) Employment-related disputes between a club and a player with an international dimension

Generally, FIFA is competent to hear employment-related disputes between a club and a player with an international dimension. The same definition of international dimension described above applies to cases heard pursuant to article 22 paragraph 1 (b).

As far as the definition of an "*employment-related dispute*" is concerned, in a 2019 Award,[618] the Sole Arbitrator considered that the DRC was competent to deal with a settlement agreement concluded between the parties following a decision by the national dispute resolution chamber of the member association to which the club was affiliated. In their reasoning, the Sole Arbitrator found that disputes of this nature had to be viewed as "*employment-related*" for the purposes of determining FIFA jurisdiction. In this Award, the crucial point for the Sole Arbitrator was the existence of a jurisdictional clause in favour of FIFA.

The fact that disputes of this kind, which is to say disputes between a player and a club arising from an agreement on monies owed and remuneration from a previous employment relationship, should qualify as "*employment-related*" is also confirmed by the consistent jurisprudence of the DRC.[619] It is widely accepted that if such disputes have an international dimension (as this one did), they can be heard by the DRC. In a recent Award, the sole arbitrator pointed out that the notion of employment-related dispute includes by all means a wider range of disputes than just simply those arising out of employment agreements.[620]

617 DRC decision of 20 February 2020, Rodrigues; DRC decision of 16 August 2019, no. 08191586-E; DRC decision of 30 November 2017, no. 11171392-E; CAS 2009/A/1880 FC Sion v. Fédération Internationale de Football Association (FIFA) & Al-Ahly Sporting Club and CAS 2009/A/1881 E. v. Fédération Internationale de Football Association (FIFA) & Al-Ahly Sporting Club.

618 CAS 2019/A/6160 Cristóbal Màrquez Crespo v. FC Karpaty Lviv & FIFA.

619 DRC decision of 15 April 2020, no. OP 04202215; DRC decision of 3 October 2019, Gikiewicz (overdue payables); DRC decision of 11 July 2019, no. OP 07190859-E; DRC decision of 17 June 2019, no. OP 06192393-E.

620 CAS 2019/A/6312 Ailton José Almeida v. Al Jazira Football Sports Company & FIFA.

Image rights agreements

In practice, the contractual relationship between a professional player and their club may incorporate an agreement separate from the employment agreement relating to the player's image rights. This has led to repeated questions as to whether FIFA is competent to hear disputes between a player and a club regarding agreements of this kind.

The short answer is no: a dispute between a player and a club over an image rights contract is not employment-related, so FIFA does not have jurisdiction to consider it.[621] However, the longer answer is a bit more complicated. Under certain circumstances, an image rights agreement may be considered an integral part of the employment contract concluded between the parties, and that any dispute surrounding it can therefore be treated as an employment-related dispute between the professional player and the club. In other words, if the specifics of the relationship between a club and a player make it reasonable to assume that the image rights agreement was intended to complement the player's terms of employment, rather than being a genuinely separate agreement regulating the player's image rights, the image rights agreement can be considered as part of an employment dispute.

Some important indications that an image rights agreement should be considered part of an employment contract are set out below.

- The parties to the employment contract and the image rights agreement are the same (i.e. the professional player and the club). Conversely, the fact that an image rights agreement is concluded with a third party normally suggests it is not part of the employment relationship between the player and the club.[622]
- Both contracts involve similar remuneration. However, if the employment contract entitles the player to very low remuneration and the image rights agreement is much more lucrative for the player, this can also be interpreted as a sign that the image rights agreement is actually a supplementary agreement to the employment contract.[623]
- The image rights agreement provides for the payment of a signing-on fee or bonuses (e.g. performance, appearances). These kinds of bonuses would normally be expected to be included in a professional player's employment contract.[624]

621 DRC decision of 6 December 2018, no. 12181902-E.

622 CAS 2014/A/3579 Anorthosis Famagusta FC v. Emmanuel Perrone; TAS 2018/A/5653 Nelson Ezequiel González v. Club Deportivo Sport Loreto.

623 TAS 2018/A/5653 Nelson Ezequiel González c. Club Deportivo Sport Loreto; CAS 2014/A/3579 Anorthosis Famagusta FC v. Emmanuel Perrone.

624 CAS 2015/A/3923 Fabio Rochemback v Dalian Aerbin; CAS 2015/A/4039 Nashat Akram v. Dalian Aerbin Football Club.

- The durations of the image rights agreement and the employment contract are the same.
- There is a provision stating that termination of the employment contract will entail the termination of the image rights agreement (i.e. that the two contracts are interdependent).

Image rights agreements are assessed on a case-by-case basis, considering the particularities and specific circumstances of each individual dispute. Therefore, it is quite possible for the indicators mentioned above to be interpreted differently in different cases. For example, in a 2015 Award, CAS found that an image rights agreement concluded between a professional player and a private company should be viewed as part of the player's employment relationship.[625] In his reasoning, the Sole Arbitrator explained that the initial financial offer made to the player referred to the total amount of remuneration, including the figures set out in the employment contract and in the image rights agreement. Moreover, the player's signing-on fee was included in the image rights agreement, not the contract, and while the company agreed to pay image rights fees, the right to use the player's portrait was assigned to the club. Finally, the image rights agreement contained a clause stating that if the company failed to pay the amounts due properly and on time, the club would take full responsibility for payment.

In another 2015 Award, CAS considered that an image rights agreement was part of the employment relationship, despite the fact it had been formally concluded between a third-party company and the professional player.[626] In particular, CAS emphasised that although the image rights contract named the company concerned, it was only ever signed by the player and the club. Furthermore, according to a clause in the image rights agreement, the club would be responsible for the payment of the relevant fees if the company failed to pay them.

In 2018, CAS was asked to consider another image rights agreement and whether it was part of an employment relationship between the club and the player.[627] Again, CAS held that it was, since it had been executed between the parties to the employment contract (i.e. the professional player and the club), the individual who signed the contract on behalf of the private company involved was also the club's president at the time, and the amounts due to the player under the image rights agreement were almost ten times higher than those set out in the employment contract.

625 CAS 2015/A/3923 Fabio Rochemback v. Dalian Aerbin.
626 CAS 2015/A/4039 Nashat Akram v. Dalian Aerbin Football Club.
627 TAS 2018/A/5653 Nelson Ezequiel González c. Club Deportivo Sport Loreto.

National arbitration tribunal

Article 22 paragraph 1 (b) also places some limits on FIFA jurisdiction, even where there is an international dimension to the dispute. Although the substance has not changed, the precise wording has been amended over time. In particular, the requirement that any decision to nominate a national arbitration tribunal to hear any dispute must be explicit and in writing was only formally incorporated into the text relatively recently, despite this requirement flowing from the jurisprudence.[628]

If an independent arbitration tribunal has been set up at national level, either on the basis of the statutes and regulations of the relevant member association or as a result of a collective bargaining agreement, the professional player and the club may decide to bring any potential employment-related disputes before the relevant national body, even if the player is of a different nationality to the club. Any such decision must be made explicitly and in writing.

To summarise, the general rule is that FIFA is competent to hear employment-related disputes between clubs and players with an international dimension. National decision-making bodies may be asked to hear such cases, but they will not have jurisdiction unless the club and the player have incorporated a written, explicit, and exclusive arbitration clause nominating the national body to deal with any potential dispute.[629] On the basis of article 22 paragraph 1 (b), the rule is that FIFA is competent to hear such cases, and cases heard by national bodies are the exception to that rule, not the other way round.[630] Moreover, if the jurisdiction clause in favour of the national body is not exclusive, and particularly if it actually mentions FIFA (e.g. FIFA, the FT, or the DRC), FIFA remains competent to hear any possible dispute.[631]

The written choice of forum should be directly included in the contract signed between the professional player and their club, or in a collective bargaining agreement applicable to the parties. In the latter case, the player's individual employment contract will generally have to refer explicitly to the collective bargaining agreement concerned, and to declare that agreement an integral part of the contractual relationship between the parties.[632]

628 CAS 2016/A/4568 Wisla Krakow v. Milan Jovanic & FIFA; CAS 2015/A/4333 MKS Cracovia v. Bojan Puzigaca & FIFA; CAS 2018/A/5659 Al Sharjah FC v. Leonardo Lima & FIFA; CAS 2008/A/1518 Ionikos FC v. Marco Paulo Rebelo Lopes; CAS 2012/A/2970 Barcelona SC v. Marcelo Alejandro Delgado & FIFA; CAS 2014/A/3684 & 3693 Leandro da Silva v. Sport Lisboa and Benfica.

629 CAS 2016 A 4568 Wisla Krakow v. Milan Jovanic & FIFA, CAS 2018/A/5925 Ricardo Gabriel Álvarez v. Sunderland AFC.

630 CAS 2015/A/4333 MKS Cracovia v. Bojan Puzigaca & FIFA.

631 CAS 2014/A/3579 Anorthosis Famagusta FC v. Emmanuel Perrone.

632 DRC decision of 30 November 2017, no. 11172079-E; CAS 2018/A/5628 Hellas Verona FC v. Rade Krunic & FK Borac Čačak.

In one interesting Award, CAS ruled that, despite a collective bargaining agreement being in place, the relevant national dispute resolution body was not competent to hear the case at hand, and awarded jurisdiction to the DRC. Although the individual employment contract at issue made explicit reference to a collective bargaining agreement, and despite that collective bargaining agreement containing an arbitration clause in favour of the national dispute resolution body, CAS did not deem this sufficient to establish the competence of the national body. This was because the collective bargaining agreement also required the *arbitration clause* to be explicitly mentioned in the individual employment contract, and this requirement had not been fulfilled.[633]

Even if all the relevant formalities to nominate a national body to hear a dispute have been observed, FIFA imposes two further preconditions before it will decline to hear a case.

1. Equal representation of players and clubs

The national body must consist of equal numbers of club and player representatives, as well as an independent chairperson. This principle of equal representation of players and clubs is an essential requirement for any national dispute resolution body. It is also in line with the way civil employment tribunals are organised in several countries, with employee and employer representatives equally represented.

The chairperson and deputy chairperson should be chosen by agreement between the player and club representatives on the body concerned.

The FIFA National Dispute Resolution Chamber Standard Regulations were drafted with the objective to assist member associations create national dispute resolution chambers in line with the principles of the DRC and, in particular, the principle of equal representation of players and clubs. They provide that the player representatives should be elected or appointed either following a proposal by a player association affiliated to FIFPro, or, if there is no such association in the country concerned, based on a selection process agreed by FIFA and FIFPro.[634] The club representatives, for their part should be elected or appointed following a proposal from the clubs or leagues.[635]

633 CAS 2014/A/3684 & 3693 Leandro da Silva v. Benfica.
634 Article 3 paragraph 1 (b), National Dispute Resolution Chamber (NDRC) Standard Regulations.
635 Article 3 paragraph 1 (c), National Dispute Resolution Chamber (NDRC) Standard Regulations.

For the avoidance of doubt, it should be noted that the player and club representatives sitting in a national dispute resolution body are not there to defend the interests of the two parties to the dispute. Rather, they are expected to serve as independent judges who are familiar with the specific needs and requirements of the groups that appointed them, and the environment in which these groups operate. This background knowledge should allow them to assess the various disputes before them in the light of the circumstances faced by players and clubs more generally.

Jurisprudence in this area is particularly rich.[636] A series of Awards that confirmed the approach taken by the DRC addressed a common practice in Romania whereby fines imposed by clubs on players were then confirmed by the Romanian national disciplinary committee. In considering these cases, CAS first established that the matters concerned did qualify as employment-related and that, consequently, the national body hearing them had to comply with the principle of equal representation of players and clubs. The Romanian league's disciplinary committee failed to meet this requirement, which meant that its decisions in the relevant cases could not be recognised by FIFA.[637]

In a different case, CAS confirmed the DRC decision not to recognise a national dispute resolution chamber on the grounds that the chairman had not been nominated by the club and player representatives, meaning that equal representation of players and clubs was not guaranteed.[638]

In a third matter, and again confirming the DRC decision, CAS found that the principle of equal representation of players and clubs had not been respected because the members of the national dispute resolution body had been elected by the board of the respective member association, and the membership of that member association was made up exclusively of its affiliated clubs.[639]

Finally, another Award stated that since the chairman of the national dispute resolution chamber had not been chosen by consensus between the player and club representatives, FIFA was competent to deal with an employment-related dispute

636 DRC decision of 7 March 2019, no. 03191173-E (requirement met); DRC decision of 7 March 2019, no. 03191325-ES (requirement not met).

637 CAS 2014/A/3483 S.C.C. Fotbal Club CFR 1907 Cluj S.A. v. Mr Fernandino Sforzini & FIFA; CAS 2014/A/3582 S.C. Fotbal Club Otelul S.A. v. Zdenko Baotic & FIFA & Romanian Professional Football League; CAS 2014/A/3854 AFC Astra v. Nikola Mikelini & FIFA; CAS 2014/A/3864 AFC Astra v. Laionel da Silva Ramalho & FIFA.

638 CAS 2012/A/2970 Barcelona Sporting Club v. Player Delgado & FIFA.

639 CAS 2014/A/3690 Wisla Krakow S.A. v. Tsvetan Genkov.

that had arisen between a professional player (who was a foreigner in the country concerned) and his club, despite a clear arbitration clause in favour of the national body having been included in the relevant contract.[640]

2. The national body must be independent and guarantee fair proceedings

The second mandatory precondition concerns the way the national dispute resolution body operates, which is more difficult to assess. As far as the formal requirements in this respect are concerned, FIFA Circular no. 1010 of 20 December 2005 is relevant. In this circular, FIFA set out the criteria that must be fulfilled for an arbitration tribunal to qualify as independent and duly constituted. If the national body concerned fulfils all these requirements, it can be assumed to guarantee fair proceedings.

First, the principle of parity must apply when constituting the arbitration tribunal. The parties must be granted the right to an independent and impartial tribunal and the principle of a fair hearing must also be observed, particularly as far as rights to be heard are concerned. The parties must be given the opportunity to present their cases, to view the relevant files (especially any submissions by the other party in the case) and to reply to the arguments and claims made by the opposing side. Accordingly, this means that the right to contentious proceedings must also be granted. Finally, the parties have a right to equal treatment by the arbitration tribunal. In summary, the national body concerned must respect fundamental principles of procedural law – nothing more, and nothing less.

Obviously, establishing whether a national dispute resolution body fulfils these criteria is far from easy for the DRC, particularly given that proceedings before the DRC are conducted exclusively in writing. Furthermore, what looks good on paper does not necessarily work in practice when the rules are applied to a specific case. Therefore, the DRC tries to base its decisions on the way the national decision-making body concerned conducts its proceedings.

Indeed, some CAS jurisprudence, including a 2014 Award, supports the idea that the way in which proceedings are conducted in practice should be considered when deciding whether a national dispute resolution body should be permitted to hear a particular case.[641]

640 CAS 2016/A/4846 Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League.
641 CAS 2014/A/3483 S.C.C. Fotbal Club CFR 1907 Cluj S.A. v. Mr Fernandino Sforzini & FIFA.

If the national decision-making body does not comply with both conditions, it will not be recognised by FIFA. However, the assessment of whether the relevant requirements are met, and, by extension, whether FIFA is prepared to consider a specific national dispute resolution body a legitimate independent arbitration tribunal, is not an abstract one. The structures and function of the national dispute resolution body concerned are assessed on a case-by-case basis solely in connection with the specific employment-related dispute brought before FIFA. This dispute will involve a player and a club, and one of the parties will have questioned the DRC's right to adjudicate the case. In assessing the competence of the national body, the question of whether the body concerned is properly constituted and operates in line with the requirements stipulated in article 22 paragraph 1 (b) (and FIFA Circular no. 1010) is particularly important. If the DRC feels the national body concerned fulfils the criteria to hear the case, it will decline to hear the case, and the case will be heard by the national body.[642] It is down to the party disputing the jurisdiction of the DRC to provide sufficient evidence that the national body complies with all relevant criteria.[643]

In summary, if an employment-related dispute between a club and a player with an international dimension is brought before FIFA, FIFA is generally considered competent to hear the case. However, if one of the parties to the dispute in question contests FIFA jurisdiction in favour of a national dispute resolution body, the DRC will first establish that such a body exists (in several member associations, such bodies may be referred to in the national statutes or other document, but have never been constituted). It will then go on to check whether there is a clause in the relevant contract – potentially in the form of an explicit reference to an applicable collective bargaining agreement – conferring competence to hear such disputes upon the national body. The relevant clause must be explicit, exclusive, and in writing. If this is not the case, the DRC will confirm that the case will be heard before the DRC. Otherwise, the DRC will proceed to examine whether the national body respects the principle of equal representation of players and clubs and whether it can be considered an independent arbitration tribunal that guarantees fair proceedings. It is for the party contesting FIFA competence to provide evidence that the national body

642 DRC decision of 7 March 2019, no. 03191173-E; DRC decision of 7 March 2019, no. 03191325-ES; DRC decision of 18 June 2020, da Silva Barbosa.

643 DRC decision of 23 April 2020, Pavicevic.

does indeed meet these requirements. If the national body does meet all the pertinent conditions, FIFA will decline jurisdiction over the case; otherwise, it will move to consider the substance of the individual matter regardless of any arbitration clause in favour of the national body.[644]

On the other hand, if FIFA jurisdiction is not contested despite the existence of a national body, and despite an arbitration clause in favour of the latter having been included in the contract from which the dispute arises, FIFA will accept jurisdiction without any further deliberation. It will not consider whether the choice of forum was clear and specific enough, or whether the national body complies with the minimum procedural requirements. If one party invites FIFA to adjudicate on the dispute, and the other party does not contest FIFA jurisdiction, the parties are considered to have concluded a tacit agreement by action implying intention, which supersedes any previous written one. As CAS has confirmed, this approach is also legitimate where the respondent refuses to respond to the claim made against it.[645]

This gives rise to another logical question. If proceedings are started before the national dispute resolution body based on an arbitration clause contained in the contract signed between the player and the club, and the counterparty objects to the national body's jurisdiction, can the counterparty refer the matter to the DRC? In this situation, the DRC will apply a similar approach to the one described above for cases in which its jurisdiction is challenged. It will first examine if there is an explicit, exclusive, and written arbitration clause in favour of the national body in the relevant contract. If this is not the case, the DRC will accept jurisdiction. Otherwise, it will go on to analyse whether the national arbitration body is independent and satisfies the minimum procedural conditions. If the national body meets all the relevant requirements, the DRC will decline jurisdiction; otherwise, it will accept jurisdiction over the case concerned. The

644 CAS 2012/A/2983 ARIS Football Club v. Márcio Amoroso dos Santos & Fédération Internationale de Football Association (FIFA); CAS 2012/A/2970 Barcelona SC v. Marcelo Alejandro Delgado & FIFA; CAS 2020/A/7050 Mashinsazi Tabriz Cultural and Sports Club v. Jai Quitongo. In what seems to be so far an isolated finding, the Sole Arbitrator in CAS 2020/A/7144 was of the opinion that the burden of proving that the NDRC in question does not respect the minimum standard lies on the claimant before the FIFA DRC, as this is the party seeking to deviate from the jurisdictional clause inserted in the contract.

645 CAS 2015/A/4083 Honefoss Ballklub v. Heiner Mora Mora & Belen; CAS 2014/A/3656 Olympiakos Volou FC v. Carlos Augusto Bertoldi & FIFA,

same reasoning applies for cases of *lis pendens*.[646] CAS has confirmed this *modus operandi*.[647]

In a separate case, CAS also specified that a *res iudicata* situation could only be deemed to have occurred if the national body that had previously ruled on a case met the minimum procedural requirements for hearing that case.[648] If the national body concerned is deemed not to guarantee fair proceedings, its rulings do not have to be considered binding.

That having been said, if both parties recognise the jurisdiction of the national body by failing to contest it, FIFA will recognise any decision passed by the national body, even if that body does not comply with the procedural standards. In other words, a party that has recognised (or failed to contest) a national body's competence to hear a specific case – either by lodging its claim with the national body or merely by submitting a response to the substance of the claim without contesting the national body's jurisdiction– will not be allowed to claim that the national body concerned does not meet the minimum standards provided for by article 22 paragraph 1 (b) (and FIFA Circular no. 1010), or to ask the DRC to reconsider the case on that basis.

For the sake of completeness, the DRC will not serve as a body of appeal in respect of any decision made by a national body, nor will it enforce any decision made by a national dispute resolution body.[649]

The final considerations concern the practice known as "*forum shopping*" – a party taking the same matter to multiple fora in the hope of obtaining the result that suits its purposes. The relevant jurisprudence[650] is designed to prevent such behaviour, which is viewed as illegitimate. A party should not be able to game the system by having multiple fora hear the same argument in the hope one of them will hand down the judgment it wants. For example, a party should not be

646 *Lis pendens* is a legal principle which generally refers to a lawsuit that has been already filed before a different court, but concerns the same parties (*eadem personae*), the same object (*eadem res*) and the same cause (*eadem causa petendi*); in those instances, the court seized first would in principle retain jurisdiction to hear the dispute.

647 CAS 2010/A/2289 S.C. Sporting Club S.A. Vaslui v. Marko Ljubinkovic; CAS 2008/A/1518 Ionikos FC v. Marco Paulo Rebelo Lopes; CAS 2007/A/1012 Altamira Fútbol Club S.A. de C.V. v. Federación Mexicana de Fútbol, Jairo Manfredo Martínez Puerto & FIFA; CAS 2014/A/3690 Wisla Krakow S.A. Tsvetan Genkov; CAS 2016/A/4846 Amazulu FC v. Jacob Pinehas Nambandi & FIFA & National Soccer League South Africa; CAS 2018/A/5659 Al Sharjah Football Club v. Leonardo Lima da Silva & FIFA.

648 CAS 2014/A/3483 S.C.C. Fotbal Club CFR 1907 Cluj S.A. v. Mr Fernandino Sforzini & FIFA.

649 It may be possible for the FIFA Disciplinary Committee to do so in very limited circumstances, as set out in article 15 of the FIFA Disciplinary Code.

650 DRC decision of 12 February 2020, Stancu; DRC decision of 4 October 2018, no. 10181141-FR; CAS 2007/A/1301 Ituano Sociedade de Futebol Ltda v. Silvino João de Carvalho, Buyuksehir Belediyesi Ankaraspor & FIFA.

allowed to ask a national body to confirm that a contract has been breached without just cause, and then, having obtained a favourable decision at national level, ask the DRC to set the compensation payable in the case. The principle that a party that has chosen to have a case heard under one competent jurisdiction cannot then have recourse to another[651] (known colloquially as "*forum shopping*") is consistently applied.

Ordinary jurisdiction of CAS

In a recent Award, the Sole Arbitrator analysed a choice of forum clause in favour of CAS and concluded that "*despite the rather restrictive and clear wording of heading and lit. B) of Article 22 Regulations, the validity of an arbitration clause in favour of CAS to hear employment-related dispute of an international dimension is premised on Article 57 and 59 FIFA Statutes, which, as provisions of superior legislative force, prevail over Article 22 Regulations. A choice in favour of CAS excludes the competence of FIFA deciding bodies.*"[652]

iii) Employment-related disputes with an international dimension between a club or a member association and a coach

As a general rule, FIFA is also competent to hear employment-related disputes between a club or a member association and a coach, provided the case has an international dimension. Unlike with players, coaches may sign employment agreements with either a member association or a club.

The fundamental aspects of article 22 paragraph 1 (c) (e.g. "*international dimension*",[653] "*employment-related*"[654], competence of national dispute resolution bodies[655]) are the same as for employment-related disputes between a club and a player with an international dimension described above.

In addition, there is no provision to extend FIFA jurisdiction to national disputes in respect of coaches like article 22 paragraph 1 (a). The reason FIFA jurisdiction can sometimes be extended in relation to employment-related disputes between players and clubs is linked to the transfer of the relevant player's registration. When coaches move clubs, they do not have to register in the same way as a player, meaning that a coach's registration does not need to be transferred. There is no ITC for coaches. As a result, there is no basis on which the dispute, despite seemingly being domestic, has an international element (i.e. the issuance of an ITC), nor is there joint and several liability for their new club.

651 "*Electa una via, non datur recursus ad alteram*".

652 CAS 2019/A/6312 Ailton José Almeida v. Al Jazira Football Sports Company & FIFA

653 As an example of how the contractual relationship between a coach and an association qualifies, cf. CAS 2010/A/2108 Jamaican Football Federation v. FIFA & Velibor Milutinovic.

654 Single Judge Players' Status Committee decision of 25 May 2020, Benzarti.

655 CAS 2014/A/3682 Lamontville Golden Arrows Football v. Kurt Kowarz & FIFA; Single Judge Players' Status Committee decision of 2016, 0116679_E; CAS 2013/A/3172 Sporting Club Barcelona v. Benito Floro Sanz & FIFA; CAS 2011/A/2597 Anorthosis Famagusta FC v. Heinz Peter Vollmann.

On 1 January 2021, the Regulations incorporated a specific annexe relating to coaches and a definition of the phrase "*coach*". Previously, coaches were only mentioned once in the Regulations, in article 22 paragraph 1 (c). The previous jurisprudence defining who is and who is not a coach has thus been superseded by this definition. For a full discussion on this and other matters relating to coaches, please review the chapter covering annexe 2.

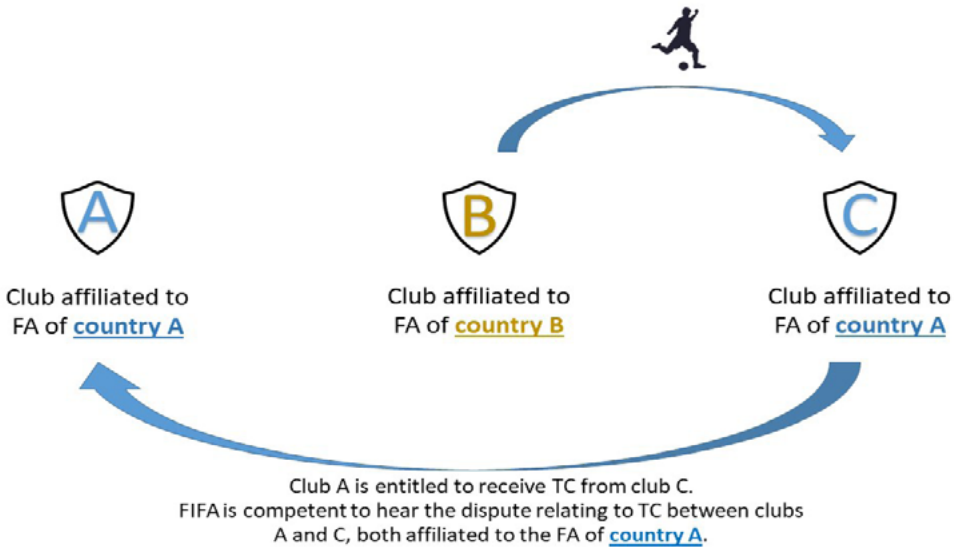
iv) Disputes relating to training compensation and the solidarity mechanism

An entitlement to training compensation and/or a solidarity contribution is based exclusively on the Regulations. Hence it follows that any dispute arising between clubs in connection with either issue can only be resolved by FIFA.

As far as jurisdiction is concerned, whether the dispute has an international dimension is again a key factor. As a general rule, FIFA can only hear disputes relating to training compensation and the solidarity mechanism if the clubs are affiliated to different member associations.

However, there are some exceptions to this general rule. The first is that FIFA is competent to hear disputes concerning the solidarity mechanism between clubs affiliated to the same member association, provided the transfer which triggered the solidarity contribution involved two clubs affiliated to different member associations (this trigger provides the international dimension in such disputes).

As of 1 July 2020, a second exception to the general rule has been included in the Regulations. FIFA is competent to hear disputes relating to training compensation between clubs affiliated to the same member association, provided that the transfer which triggered the training compensation involved two clubs affiliated to different member associations. The rationale here is the same as that described above in relation to the solidarity mechanism. The below graphic describes this process:



v) Other disputes between clubs affiliated to different member associations

Besides disputes between clubs relating to training compensation and the solidarity mechanism, FIFA is also competent to hear other disputes arising between clubs affiliated to different member associations. Once again, the international dimension is the key element in determining jurisdiction. The dispute concerned must also fall within the general scope of the Regulations for FIFA to hear it. In practice, this means the dispute must be related to international transfers. The most common matters of this kind are claims relating to the execution of transfer agreements.

A dispute between two clubs that are affiliated to different member associations but cooperate based on a partnership agreement (for example, if club A sends a delegation of its coaching staff to club B to train club B's staff, and club B pays a fee for this training) does not fall under FIFA jurisdiction. Although the dispute would have an international dimension by virtue of the fact the two clubs were affiliated to different member associations, the case is outside the scope of the Regulations.[656]

656 CAS 2011/A/2449 K.F.C. Germinal Beerschot Antwerpen NV v. FIFA & Club Atletico Chacarita Juniors, where the Panel extended the scope of the Regulations to cover a "consulting agreement" concluded between the clubs. This was because, *in casu*, the dispute surrounding the "consulting agreement" *"… has to do, even prima facie, with a transfer"*; CAS 2011/A/2539 Borussia VfL v. Boca Juniors & FIFA, where the Panel concluded in favour of FIFA's competence because there was a clear reference to "transfer" (albeit not for a specific player) and the Regulations in the "cooperation agreement"; CAS 2016/A/4581 Apollon Football v. Partizan FC & FIFA, where the Panel, similarly to CAS 2011/A/2539 Borussia VfL v. Boca Juniors & FIFA, concluded in favour of FIFA's competence, because it was *"satisfied"* that the agreement at stake was *"at least a partially transfer-related agreement"*.

22.2. Relevant jurisprudence

DRC and/or PSC decisions

Civil courts

– DRC decision of 25 October 2018, no. 10181394-E

– DRC decision of 14 June 2019, Gómez

Competence on maintenance of contractual stability – link to ITC request

– DRC decision of 20 February 2020, Rodrigues

– DRC decision of 16 August 2019, no. 08191586-E

– DRC decision of 30 November 2017, no. 11171392-E

Compliance with the principle of equal representation

– DRC decision of 7 March 2019, no. 03191173-E (requirement met)

– DRC decision of 7 March 2019, no. 03191325-ES (requirement not met)

"Forum shopping"

– DRC decision of 12 February 2020, Stancu

– DRC decision of 4 October 2018, no. 10181141-FR

Competence of national dispute resolution bodies in relation to coaches

– Single Judge Players' Status Committee decision of 25 May 2020, Benzarti

Competence limited to coaches and assistant coaches

– Single Judge Players' Status Committee decision of 24 July 2019, Reguera

– Single Judge Players' Status Committee decision of 24 July 2019, Ruiz de Lara

– Single Judge Players' Status Committee decision of 24 July 2019, Maldonado

CAS Awards

Civil courts

– CAS 2014/A/3690 Wisla Krakow S.A. v. Tsvetan Genkov

– CAS 2015/A/4103 Franco Zuculini v. Club Real Zaragoza SAD & FIFA

– CAS 2018/A/5624 Dominique Cuperly v. Al Jazira

– CAS 2017/A/5111 Debreceni Vasutas Sport Club (DV.C) v. Nenad Novakovic

Arbitrability

- CAS 2015/A/3896 Elias Mendes Trindade v. Atlético de Madrid
- CAS 2015/A/4152 Cerro Porteño v. Roberto Antonio Nanni & FIFA
- CAS 2019/A/6621 Club Atlético Osasuna v. Alvaro Fernández Llorente and AS Monaco FC

International dimension

- CAS 2010/A/2255 René Salomon Olembe Limbe v. Kayserispor Kulübü Dernegi
- CAS 2010/A/1996 Omer Riza v. Trabzonspor Kulübü Dernegi & Turkish Football Federation (TFF)
- CAS 2016/A/4846 Amazulu FC v. Jacob Pinehas Nambandi & FIFA & National Soccer League South Africa
- CAS 2016/A/4441 Jhonny van Beukering v. Pelita Bandung Raya FC & FIFA
- CAS 2020/A/6791 Diego Alonso Estrada Valverde c. Comunicaciones Fútbol Club S.A. & FIFA
- CAS 2020/A/6933 Emilio Yamin Faure v. Al Salam Zgharta Club & FIFA

Competence on maintenance of contractual stability – link to ITC request

- CAS 2009/A/1880 FC Sion v. Fédération Internationale de Football Association (FIFA) & Al-Ahly Sporting Club & CAS 2009/A/1881 E. v. Fédération Internationale de Football Association (FIFA) & Al-Ahly Sporting Club

Explicit and specific written arbitration clause

- CAS 2016/A/4568 Wisla Krakow v. Milan Jovanic & FIFA
- CAS 2015/A/4333 MKS Cracovia SSA v. Bojan Puzigaca & FIFA
- CAS 2018/A/5659 Al Sharjah FC v. Leonardo Lima da Silva & FIFA
- CAS 2014/A/3684 Leandro da Silva v. Sport Lisboa and Benfica & CAS 2014/A/3693 Sport Lisboa e Benfica v. Leandro da Silva
- CAS 2018/A/5925 Ricardo Gabriel Álvarez v. Sunderland AFC
- CAS 2019/A/6312 Ailton José Almeida v. Al Jazira Football Sports Company & FIFA

Compliance with the principle of equal representation

- CAS 2014/A/3483 S.C.S. Fotbal Club CFR 1907 Cluj S.A. v. Mr Fernandino Sforzini & FIFA
- CAS 2014/A/3582 S.C. Fotbal Club Otelul S.A. v. Zdenko Baotic & FIFA & Romanian Professional Football League

- CAS 2014/A/3854 AFC Astra v. Nikola Michellini & FIFA
- CAS 2014/A/3864 AFC Astra v. Laionel da Silva Ramalho & FIFA
- CAS 2012/A/2970 Barcelona Sporting Club v. Marcelo Alejandro Delgado & FIFA
- CAS 2014/A/3690 Wisla Krakow S.A. v. Tsvetan Genkov
- CAS 2016/A/4846 Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League South Africa

National body guaranteeing fair proceedings

- CAS 2014/A/3483 S.C.S. Fotbal Club CFR 1907 Cluj S.A. v. Mr Fernandino Sforzini & FIFA

Assessment of the legitimacy of a national dispute resolution body

- CAS 2012/A/2983 ARIS Football Club v. Márcio Amoroso dos Santos & Fédération Internationale de Football Association (FIFA)

Competence of national dispute resolution body contested within relevant proceedings

- CAS 2010/A/2289 S.C. Sporting Club S.A. Vaslui v. Marko Ljubinkovic
- CAS 2008/A/1518 Ionikos FC v. Marco Paulo Rebelo Lopes
- CAS 2007/A/1012 Altamira Fútbol Club S.A. de C.V. v. Federación Mexicana de Fútbol, Jairo Manfredo Martínez Puerto & FIFA
- CAS 2014/A/3690 Wisla Krakow S.A. v. Tsvetan Genkov
- CAS 2016/A/4846 Amazulu FC v. Jacob Pinehas Nambandi & FIFA & National Soccer League South Africa
- CAS 2020/A/7050 Mashinsazi Tabriz Cultural and Sports Club v. Jai Quitongo
- CAS 2020/A/7144 Raja Club Athletic v. Léma Mabidi

"Forum shopping"

- CAS 2007/A/1301 Ituano Sociedade de Futebol Ltda v. Silvino João de Carvalho, Buyuksehir Beledivesi Ankaraspor & FIFA

Competence limited to coaches and assistant coaches

- CAS 2009/A/2000 Eduardo Julio Urtasun v. FIFA
- CAS 2016/A/4878 Anthony Garzitto v. Al-Hilal SC & FIFA
- CAS 2016/O/4538

Article 23 - Football Tribunal

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Article 23 - Football Tribunal

1. The Dispute Resolution Chamber of the Football Tribunal shall adjudicate on any of the cases described in article 22 paragraphs 1 a), b), d), and e).
2. The Players' Status Chamber of the Football Tribunal shall adjudicate on any of the cases described in article 22 paragraphs 1 c) and f), and 2.
3. The Football Tribunal shall not hear any case subject to these regulations if more than two years have elapsed since the event giving rise to the dispute. Application of this time limit shall be examined *ex officio* in each individual case.
4. The procedures for lodging claims in relation to the disputes described in article 22 are contained in the Procedural Rules Governing the Football Tribunal.

23.1. Purpose and scope

a) INTRODUCTION

Prior to 1 October 2021, the dispute resolution system provided two decision-making bodies: (i) the Players' Status Committee; and (ii) the Dispute Resolution Chamber.

On 1 October 2021, the FT began operations. Composed of three chambers (the DRC, PSC, and Agents Chamber), it consolidates all previous FIFA decision-making bodies into a single, unified body.

Single judges are utilised to decide matters within the DRC and PSC. The use of single judges allows for greater flexibility, meaning that the DRC or PSC can work much more quickly than if a panel of judges were required, and urgent matters can be resolved much faster.

b) COMPETENCE

Once it has been established that FIFA has jurisdiction, the next question is which chamber of the FT should hear the case If a party requests that a dispute be heard by the wrong chamber. In such cases, the FIFA general secretariat will simply direct the dispute to the correct chamber *ex officio*. In cases where, on the basis of the parties and facts of the case, it is uncertain

which chamber has jurisdiction to decide a matter, the chairperson of the FT will decide the correct chamber.[657]

c) DISPUTE RESOLUTION CHAMBER

i) Role and activity

This body is unique in an international sporting organisation and is designed to ensure that employment-related disputes between professional players and clubs are dealt with and adjudicated upon by a body which respects the principle of equal representation of players (employees) and clubs (employers).

In line with this principle of equal representation, the Chamber consists of equal numbers of club and player representatives and is presided over by an independent chair and deputies, appointed by the FIFA Council for a term of four years.[658] Candidates must pass an eligibility test carried out by the Review Committee.[659]

For the avoidance of doubt, the player and club representatives are not appointed to defend the respective interests of "their" parties. Rather, they serve as independent judges who are familiar with the specific needs, requirements, and circumstances of employment-related disputes in football. This allows them to assess disputes with a keen awareness of the situations faced by clubs and players.

A DRC meeting is generally held biweekly. A single judge may adjudicate cases where the relief requested is lower than USD 200,000 (or its equivalent in another currency). For all other matter, or where the matter is legally complex, at least three judges shall adjudicate (one club and one player representative as well as the chair or deputy chair).[660]

The parties to a dispute are informed in advance of the composition of the DRC that will deal with their case.

ii) Jurisdiction

The main competence of the DRC is to decide employment-related disputes with an international dimension between clubs and professional players, and disputes between clubs and players relating to the maintenance of contractual stability following an ITC request. Disputes concerning the issuance of an ITC (i.e. from one member association to another) do not fall within the jurisdiction of the DRC; they are dealt with by the PSC.

657 Article 2 paragraph 2, Procedural Rules Governing the Football Tribunal ("Procedural Rules").
658 Article 35 paragraph 5, Statutes; article 4, Procedural Rules.
659 Article 39 paragraph 5, Statutes.
660 Article 24 paragraph 1, Procedural Rules.

The DRC also adjudicates on disputes relating to training compensation and the solidarity mechanism. This competence was allocated to the DRC because such disputes concern the system used to reward clubs for investing in the training and education of young players, and thus affect individual players' careers as well as the clubs involved.

iii) Appeals

Any decision passed by the DRC may be appealed before CAS.

d) PLAYERS' STATUS CHAMBER

i) Role and activity

The Players' Status Committee was historically a FIFA standing committee; over the last years it had a legislative and policy function (i.e. drafting and amending regulations), as well as a decision-making function (i.e. deciding certain disputes and regulatory applications, as well as overseeing the work of the DRC).

The introduction of the FT resulted in the consolidation of the legislative and policy functions of the Players' Status Committee into the Football Stakeholders Committee, and the decision-making function of the Players' Status Committee being rebranded as the PSC of the FT.

The PSC is comprised of a chairperson, deputy chairperson, and number of members as decided by the FIFA Council, appointed at the proposal of member associations, FIFPRO, clubs, and leagues, for a term of four years.[661] Candidates must pass an eligibility test carried out by the Review Committee.[662]

When deciding disputes within its jurisdiction, a single judge of the PSC will generally decide. Where a matter is legally complex, at least three judges shall adjudicate.[663] When deciding regulatory applications within its jurisdiction, generally a single judge will adjudicate the case. In a complex matter or where exceptional circumstances exist, at least three judges will adjudicate.[664]

661 Article 35 paragraph 5, Statutes; article 4 Procedural Rules.
662 Article 39 paragraph 5, Statutes.
663 Article 24 paragrah 2, Procedural Rules.
664 Article 29 paragraph 4, Procedural Rules.

ii) Jurisdiction

The PSC is competent to adjudicate on:

- employment-related disputes between a club or a member association and a coach, where the dispute has an international dimension;
- disputes between clubs affiliated to different member associations that are not related to the maintenance of contractual stability, training compensation or the solidarity mechanism;
- all other disputes arising from the application of the Regulations unless they fall within the competence of the DRC;
- any regulatory applications where the Regulations or other FIFA regulations provide it with competence.

iii) Appeals

Any decision passed by the PSC may be appealed before CAS.

e) STATUTE OF LIMITATIONS

Article 23 paragraph 3 sets out the statute of limitations for lodging claims. In other words, by failing to file a claim within the prescribed deadline, a party forfeits its (substantive) rights.

The applicability of the relevant time limit is examined by the DRC or PSC *ex officio* in each individual case. There is no need for the Respondent to invoke the fact the statute of limitations has expired to have a case declared time-barred, although it will usually do so anyway. In cases where the claim is obviously time-barred, the FIFA general secretariat may refer the case directly to the chairperson of the relevant chamber for an expedited decision. In such cases, the chairperson may decide the matter or order the FIFA general secretariat to continue the procedure.[665]

If the DRC or PSC concludes that more than two years have elapsed since the event giving rise to the dispute, it will be precluded from considering the matter.

If the two-year deadline is found to have elapsed, the claim will be deemed inadmissible, rather than rejected outright.[666]

665 Article 19, Procedural Rules.
666 DRC decision of 30 October 2019, Chansa.

The two-year deadline is applied to individual payments, rather than to the contractual relationship. This means that if a player claims several outstanding monthly salary payments, the claim for each payment will be analysed individually (i.e. the date that payment was contractually due) to see whether it is prescribed or not.[667] The same goes for any payment due in instalments; the due date of each individual instalment will be considered separately to establish whether it falls within the statute of limitations.[668] This approach is applied consistently and without exception in the jurisprudence.[669]

In a recent Award, the sole arbitrator analysed the issue of salaries paid by the club in a non-coherent manner. In this case, the sole arbitrator considered that in the absence of either a statement from the debtor, a receipt from the creditor, or indeed an immediate objection from the debtor, Article 87 SCO applies: *"Where no valid debt redemption statement has been made and the receipt does not indicate how the payment has been allocated, it is allocated to whichever debt is due or, if several are due, to the debt that first gave rise to enforcement proceedings against the debtor or, in the absence of such proceedings, to the debt that fell due first"*.[670]

When it comes to claims relating to the unilateral termination of a contract without just cause and corresponding requests for compensation (in addition to any outstanding amounts due under the contract), the two-year time limit is automatically measured from the day on which the contractual relationship was terminated.

Regarding claims for training compensation, the new club must pay training compensation within 30 days of the player being registered with their affiliated member association. Since the last possible due date is the thirtieth day after the player registers with the new club, the club will be in default from the thirty-first day onwards. Accordingly, the two-year time limit for lodging any claim with FIFA also starts as of the thirty-first day following the player's registration with the new club.[671]

667 Example: The contract between the player A and the club X is signed on 1 August 2017. The player lodges a claim against the club on 10 November 2019 and demands the payment of allegedly outstanding salary for the months of September to December 2017, which became due at the end of each month. Despite the claim having been submitted more than two years after the signing of the contract, some of the payments covered under the claim will not be considered time barred. However, the claims for the monthly salary payments due on 30 September 2017 and 30 October 2017 respectively will not be heard.

668 Example: On 1 July 2017 club A and club B sign a transfer agreement concerning player X and stipulate that the transfer fee of €9m shall be paid in three equal instalments of €3m each, falling due on 31 August 2017, 31 January 2018 and 30 June 2018, respectively. On 10 November 2019, club A lodges a claim alleging that club B has not made any payments. Despite the claim having been submitted more than two years after the signing of the transfer agreement, only the instalment due on 31 August 2017 will be considered time-barred.

669 DRC decision of 21 February 2020, Mendes da Graca; DRC decision of 12 June 2020, Konaté.

670 CAS 2018/A/6045 Manuel Henrique Tavares Fernandes v. FC Lokomotiv Moscow.

671 CAS 2016/A/4428 Udinese Calcio S.p.A. v. Santos Futebol Clube & FIFA.

The same approach applies to claims for solidarity contributions. However, if a transfer agreement provides for the agreed transfer fee to be paid in instalments, or in the event additional payments from a player's new club to the club from which they were transferred are made subject to the fulfilment of a specific condition (such as the player appearing in a certain number of matches), the 30-day deadline for the payment of the solidarity contribution starts the day after these contingent payments are due to be paid. As one would expect, if the new club is late paying an instalment or contingent payment, this will not change the date by which the player's former club must pay the solidarity contribution. In other words, despite the wording of the provision referring to the date of the *payment*, the relevant deadline is measured from the *due date* for that payment, regardless of whether the payment is actually received on the due date. The two-year time limit for lodging any claim with FIFA will also start on the thirty-first day following the due date of the instalment or contingent payment concerned.

Finally, the two-year time limit will only be respected if a complete claim in line with the requirements of the Procedural Rules[672] is submitted to FIFA within this timeframe. Any exchanges between the parties, specifically including attempts to reach an amicable settlement, default notices, warnings, notices that a claim will be submitted if the payment is not received by a specific date, or any other similar communications between the parties outside of a formal procedure and investigation based on a relevant claim, in principle will not stop the clock on the deadline.

One exception is noted in the jurisprudence - where a party acknowledges or admits a debt. Such instances have been recognised by CAS as a valid grounds on which a claim should be ruled admissible in spite of the (original) event giving rise to the dispute having occurred more than two years prior to the claim being lodged.[673]

In this respect, however, the interpretation of CAS of the event giving rise to the dispute is not uniform. In two recent Awards,[674] both cases concerned sporting succession; also in both cases, the relevant clubs ceased to be affiliated to their member association and thus FIFA declined to further intervene (consequently rendering the claims inadmissible). In the first case, the Sole Arbitrator held that the event giving rise to the dispute, the non-payment of salaries, was not interrupted by the filing of the previous claim against the predecessor club on account of the fact that such previous claim had been ruled inadmissible (i.e. not decided on the merits). The DRC decision was hence confirmed. On the contrary, in the second case the Panel overturned the DRC decision and ruled the claim filed by the player against the successor club was barred by the statute of limitations as the event giving rise to the dispute was the establishment of the successor club.

672 Article 19, Procedural Rules.

673 CAS 2012/A/2919 FC Seoul v. Newcastle Jets FC.

674 CAS 2020/A/7154 ARIS FC v. Ikechukwu John Kingsley Ibeh & FIFA; CAS 2020/A/6971 Mihaita Plesan v. FC Nizhny Novgorod & FIFA.

f) PROCEDURAL RULES GOVERNING THE FOOTBALL TRIBUNAL

Article 23 paragraph 4 provides that the detailed procedures for resolving disputes arising from the application of the Regulations is outlined in the Procedural Rules. Prior to 1 October 2021, various procedural matters for disputes and applications were split across the Regulations, its annexes, and the former procedural rules. With the introduction of the FT, all procedural matters were consolidated into the Procedural Rules.

This section very briefly sets out some key elements of the Procedural Rules.

i) Procedural costs

Details relating to the costs of proceedings are set out in article 25 of the Procedural Rules.

Procedures are free of charge when at least one of the parties is an individual (i.e. player, coach, football agent, or match agent); they are payable in all other types of disputes. The ceiling for procedural costs is set at USD 25,000. The figure for specific cases is calculated based on the amount in dispute. Compared to other dispute resolution proceedings, including those in front of CAS, this approach can fairly be described as moderate.

The allocation of costs must be explained in the relevant decision. In allocating these costs, the relevant Chamber must abide by the principle that, under normal circumstances, procedural costs should be paid by the unsuccessful party in the case, and that the degree of each party's success (or otherwise) in the case should be reflected in the allocation of costs.

Finally, if a party chooses not to request the grounds for a decision once the terms of the decision are published, it does not have to pay any procedural costs it may have been ordered to pay. Contrary to a common but inaccurate understanding of the dispute resolution mechanism, this does not mean that grounds will only be issued in return for a fee. The costs associated with proceedings are fully accrued by the time the judgment is released; otherwise, they could not be allocated between the parties in the judgment. Costs normally must be paid by the relevant party (or parties) as soon as the decision in the case becomes final and binding. However, parties can relieve themselves of the obligation to pay costs by choosing not to request the grounds for the decision.

ii) Applicable law

The FT, in its application and adjudication of law, applies "*the FIFA Statutes and FIFA regulations, whilst taking into account all relevant arrangements, laws, and/or collective bargaining agreements that exist at national level, as well as the specificity of sport.*"[675]

675 Article 3, Procedural Rules.

However, "take into account" does not necessarily mean "apply". The DRC and PSC have significant discretion in this regard, and they make full use of it. Indeed, if we examine the hundreds of decisions handed down since September 2001, we find hardly any significant references to national law. It is well established that the disputes and applications brought to the attention of the DRC and PSC are assessed on the basis of the Regulations, referring to the FIFA Statutes and other FIFA regulations as necessary and appropriate. They also consider general principles of (contract) law as part of their deliberations, and refer to Swiss law if another source of law is required to help them reach a decision.

This approach is guided by the desire to ensure equal treatment for all the parties involved in disputes, irrespective of the country or countries in which they operate, or their nationalities. This encourages consistent, comprehensible, and traceable jurisprudence, which also helps to enhance legal certainty. The diversity of national laws can present an obstacle to this legitimate aim. Hence, it is justified to draw up general principles that take precedence over national law.

CAS has repeatedly confirmed that this is fundamentally legitimate,[676] including in relation to the criteria for establishing the validity of a contract between a professional player and a club.[677] This should not come as a surprise, since CAS itself follows a similar approach, probably for very similar reasons to those mentioned above. On this specific issue, CAS has repeatedly confirmed that where a DRC decision is appealed, the applicable laws are the Regulations and, subsidiarily, Swiss law.[678]

Finally the FIFA Statutes state that the provisions of the CAS Code of Sports-related Arbitration shall apply to any CAS appeal, and that CAS shall primarily apply the various FIFA regulations and subsidiarily, Swiss law.

The approach described above is invariably applied if the parties do not agree to submit their case to a law other than Swiss law. If, however, the parties do choose a different applicable law, CAS jurisprudence is less uniform.

676 TAS 2005/A/983 & 984 Club Atlético Peñarol v. Carlos Heber Buen Suárez, Christian Gabriel Rodríguez Barotti & Paris Saint Germain; CAS 2016/A/4471 Abel Aguilar Tapias v. Hércules de Alicante FC.

677 CAS 2016/A/4709 Le Sporting Club de Bastia v. Christian Romaric.

678 CAS 2016/A/4846 Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League; CAS 2019/A/6525 Sevilla FC v. AS Nancy Lorraine, with an noteworthy specification: "[T]*he FIFA rules and regulations apply primarily, with Swiss law applying subsidiarily*", however, *"while the interpretation of the Contract is to be conducted according to FIFA Regulations and, if the case, Swiss law, the Panel shall have to verify whether Spanish law, and mainly the Real Decreto, has any impact on the determination of the dispute between the Parties"*; CAS 2019/A/6175 Osmanlispor FK v. Josué Filipe Soares Pesqueira & Akhisar Belediyespor FC & FIFA; CAS 2018/A/5659 Al Sharjah FC v. Leonardo Lima da Silva & FIFA.

One recent Award provides a summary of the predominant approach in such cases.[679] In this case, the Panel was asked to decide whether the premature termination of a contract by a player was justified. Although the appellants agreed that the case should be considered primarily based on FIFA regulations, they argued that Bulgarian law should be applied subsidiarily, as there was a clear choice of law in the contract at stake.

The CAS made particular reference to the relevant provisions, specifically article R58 of the Code of Sports-Related Arbitration, which establishes the applicable law in appeal procedures before CAS; the relevant references in the Regulations and Procedural Rules, which establish the applicable material law in procedures before the DRC or PSC; and article 57 paragraph 2 of the FIFA Statutes. At the same time, it reviewed the voluminous CAS jurisprudence, and found that inconsistencies in the jurisprudence and vague wording in FIFA regulations left significant room for interpretation. The Panel then followed the procedure set out below to determine when the national law chosen by the parties ought to apply.

The key question answer in such situations is whether the facts of the matter at hand are addressed in the FIFA regulations. If they are, the next step is to determine whether the FIFA rules are "complete". If so, then there is no need to refer to Swiss law; if not, recourse to Swiss law will be required to fill the gaps in the FIFA rules. The law chosen by the parties only applies if the facts of the matter at hand are not addressed in the FIFA regulations, and if the parties have explicitly chosen a law other than Swiss law.

The logic behind this line of thinking is twofold. First, the provisions mentioned above establish a hierarchy between the FIFA rules and any choice of law by the parties. FIFA regulations take precedence; this helps to harmonise the system for all players and clubs worldwide, especially as far as contractual stability and the conditions for a transfer are concerned. Second, if the FT were to apply national laws, it would be forced to deal with regulatory diversity, and the objective of harmonised procedures would not be achievable. The fact that CAS is dealing with an appeal against a decision of FIFA, rather than by a state court, must also be considered.

Lastly, the FT may consider the "specificity of sport". First and foremost, this allows the DRC or PSC to adjust judgments and outcomes that run contrary to the basic specific principles applicable to sport and football, or which do not properly protect the interests of the parties in the light of the specific circumstances of the football industry.

679 CAS 2018/A/5955 Spas Delev v. FC Beroe-Stara Zagora EAD & FIFA and CAS 2018/A/5981 Pogon Szczecin Spolka Akeyjna v. FC Beroe-Stara Zagora EAD & FIFA.

A similar approach has been adopted in various CAS Awards,[680] with the specificity of sport being used to adjust the outcome of a case on the basis that the original outcome did not appear justified. In other words, the specificity of sport can be used alongside other criteria to correct judgements. In another judgement, CAS found that the specificity of sport could justify a reduction in compensation payable by a player to a club, in particular if the player's salary at their new club was relatively low.[681]

In 2015, another Panel used the specificity of sport to grant a player additional compensation equivalent to 10 % of their entire contractual remuneration, considering the unethical behaviour shown by the player's club.[682]

On another occasion in a 2012 Award,[683] the specificity of sport was cited as an "aggravating factor". In this case, the Panel considered that the fact a player had been registered by his club in violation of the provisions on the protection of minors did not grant him a direct right to compensation. However, since the club had signed a contract with the player for three seasons and then breached the employment contract after only 17 months, knowing full well that the player's family had relocated with the player, the Panel ruled that the club's behaviour should be considered an aggravating factor that justified an increase in the compensation due to the player. This adjustment was explained in terms of the specificity of sport.

680 CAS 2007/A/1298 Wigan Athletic FC v. Heart of Midlothian, CAS 2007/A/1299 Heart of Midlothian v. Webster & Wigan Athletic FC, CAS 2007/A/1300 Webster v. Heart of Midlothian; CAS 2007/A/1358 and 1359 FC Pyunik Yerevan v. L., AFC Rapid Bucaresti & FIFA and FC Pyunik Yerevan v. E., AFC Rapid Bucaresti & FIFA; CAS 2008/A/1453 Elkin Soto Jaramillo & FSV Mainz 05 v. CD Once Caldas & FIFA; CAS 2008/A/1519 FC Shakhtar Donetsk (Ukraine) v. Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) & FIFA, CAS 2008/A/1520 Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) v. FC Shakhtar Donetsk (Ukraine) & FIFA; TAS 2009/A/1960-1961 LOSC Lille v. Tony Mario Sylva & Trabzonspor; CAS 2015/A/4042 Gabriel Fernando Atz v. PFC Chernomorets Burgas; CAS 2015/A/4177 Hapoel Haifa FC & Ali Khatib v. Football Club Jabal Al Mukabber; CAS 2016/A/4843 Hamzeh Salameh & Nafit Mesan FC v. SAFA Sporting Club & FIFA.

681 CAS 2014/A/3568 Equidad Seguros v Arias Naranjo & Sporting Clube de Portugal & FIFA.

682 CAS 2015/A/3871 and 3872 Sergio Sebastián Ariosa Moreira v. Club Olimpia and Club Olimpia v. Sergio Sebastián Ariosa Moreira.

683 CAS 2012/A/3033 A. v. FC OFI Crete.

23.2. Relevant jurisprudence

CAS Awards

Applicable material law

- TAS 2005/A/983 & 984 Club Atlético Peñarol v. Carlos Heber Buen Suárez, Christian Gabriel Rodríguez Barotti & Paris Saint Germain
- CAS 2016/A/4471 Abel Aguilar Tapias v. Hércules de Alicante FC
- CAS 2007/A/1298 Wigan Athletic FC v. Heart of Midlothian
- CAS 2007/A/1299 Heart of Midlothian v. Webster & Wigan Athletic FC
- CAS 2007/A/1300 Webster v. Heart of Midlothian
- CAS 2007/A/1358 and 1359 FC Pyunik Yerevan v. L., AFC Rapid Bucaresti & FIFA and FC Pyunik Yerevan v. E., AFC Rapid Bucaresti & FIFA
- CAS 2008/A/1453 Elkin Soto Jaramillo & FSV Mainz 05 v. CD Once Caldas & FIFA
- CAS 2008/A/1519 FC Shakhtar Donetsk (Ukraine) v. Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) & FIFA
- CAS 2008/A/1520 Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) v. FC Shakhtar Donetsk (Ukraine) & FIFA
- TAS 2009/A/1960-1961 LOSC Lille v. Tony Mario Sylva & Trabzonspor; CAS 2015/A/4042 Gabriel Fernando Atz v. PFC Chernomorets Burgas
- CAS 2015/A/4177 Hapoel Haifa FC & Ali Khatib v. Football Club Jabal Al Mukabber (although in the end the compensation was not modified, the reasoning behind it was changed to include the specificity of sport as a correcting factor)
- CAS 2016/A/4843 Hamzeh Salameh & Nafit Mesan FC v. SAFA Sporting Club & FIFA
- CAS 2016/A/4709 Le Sporting Club de Bastia v. Christian Romaric
- CAS 2016/A/4846 Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League
- CAS 2018/A/5659 Al Sharjah FC v. Leonardo Lima da Silva & FIFA
- CAS 2018/A/5955 Spas Delev v. FC Beroe-Stara Zagora EAD & FIFA and CAS 2018/A/5981 Pogon Szczecin Spolka Akeyjna v. FC Beroe-Stara Zagora EAD & FIFA
- CAS 2019/A/6175 Osmanlispor FK v. Josué Filipe Soares Pesqueira & Akhisar Belediyespor FC & FIFA

The statute of limitations

- CAS 2018/A/6045 Manuel Henrique Tavares Fernandes v. FC Lokomotiv Moscow
- CAS 2020/A/7154 Aris FC v. Ikechukwu John Kingsley Ibeh & FIFA
- CAS 2020/A/7290 Aris FC v. Oriol Lozano Farran & FIFA
- CAS 2020/A/6971 Mihaita Plesan v. FC Nizhny Novgorod & FIFA

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Article 24 - Consequences for failure to pay relevant amounts in due time

1. When:

a) the Football Tribunal orders a party (a club or a player) to pay another party (a club or a player), the consequences of the failure to pay the relevant amounts in due time shall be included in the decision;

b) parties to a dispute accept (or do not reject) a proposal made by the FIFA general secretariat pursuant to the Procedural Rules Governing the Football Tribunal, the consequences of the failure to pay the relevant amounts in due time shall be included in the confirmation letter.

2. Such consequences shall be the following:

a) Against a club: a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods, subject to paragraph 7 below;

b) Against a player: a restriction on playing in official matches up until the due amounts are paid. The overall maximum duration of the restriction, shall be of six months on playing in official matches, subject to paragraph 7 below.

3. Such consequences may be excluded where the Football Tribunal has:

a) imposed a sporting sanction on the basis of article 12bis, 17 or 18quater in the same case; or

b) been informed that the debtor club was subject to an insolvency-related event pursuant to the relevant national law and is legally unable to comply with an order.

4. Where such consequences are applied, the debtor must pay the full amount due (including all applicable interest) to the creditor within 45 days of notification of the decision.

5. The 45-day time limit shall commence from notification of the decision or confirmation letter.

c) The time limit is paused by a valid request for the grounds of the decision. Following notification of the grounds of the decision, the time limit shall recommence.

d) The time limit is also paused by an appeal to the Court of Arbitration for Sport.

6. The debtor shall make full payment (including all applicable interest) to the bank account provided by the creditor, as set out in the decision or confirmation letter.

7. Where the debtor fails to make full payment (including all applicable interest) within the time limit, and the decision has become final and binding:

   a) the creditor may request that FIFA enforce the consequences;

   b) upon receipt of such request, FIFA shall inform the debtor that the consequences shall apply;

   c) the consequences shall apply immediately upon notification by FIFA, including, for the avoidance of doubt, if they are applied during an open registration period. In such cases, the remainder of that registration period shall be the first"entire" registration period for the purposes of paragraph 2 a);

   d) the consequences may only be lifted in accordance with paragraph 8 below.

8. Where the consequences are enforced, the debtor must provide proof of payment to FIFA of the full amount (including all applicable interest), in order for them to be lifted.

   a) Upon receipt of the proof of payment, FIFA shall immediately request that the creditor confirm receipt of full payment (including all applicable interest) within five days.

   b) Upon receipt of confirmation from the creditor, or after expiry of the time limit in the case of no response, FIFA shall notify the parties that the consequences are lifted.

   c) The consequences shall be lifted immediately upon notification by FIFA.

   d) Notwithstanding the above, where full payment (including all applicable interest) has not been made, the consequences shall remain in force until their complete serving.

Article 25 - Implementation of decisions and confirmation letters

1. The sporting successor of a debtor shall be considered the debtor and be subject to any decision or confirmation letter issued by the Football Tribunal. The criteria to assess whether an entity is the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned.
2. Where a debtor is instructed to pay a creditor a sum of money (outstanding amounts or compensation) by the Football Tribunal:
   a) payment is made when the debtor pays the full amount instructed (including any applicable interest) to the creditor;
   b) payment is not deemed to have been made where the debtor makes any unilateral deduction from the full amount instructed (including any applicable interest).
3. The following actions do not contravene a registration ban described in article 12bis, 17, 18quater, or 24:
   a) the return from loan of a professional, solely where the loan agreement expires naturally;
   b) he extension of the loan of a professional, beyond the natural expiry of the loan agreement;
   c) the definitive engagement of a professional who was temporarily registered for the club directly prior to the registration ban being imposed;
   d) the registration of a professional who was already registered with the club as an amateur directly prior to the registration ban being imposed.

25.1. Purpose and scope

a) GENERAL REMARKS

Along with the need for an efficient and reliable dispute resolution system through which parties can obtain decisions on disputes, an equally efficient and adequate means for enforcing these judgments is also crucial to any well-functioning dispute resolution mechanism. Article 24 (formerly article 24bis) is designed to complement the existing enforcement process via the FIFA Disciplinary Committee and to tackle any dilatory tactics parties might employ in order to avoid paying money owed to another party. The implementation of article 24 also provided procedural efficiency, avoiding the need for a creditor to commence a second procedure before the FIFA Disciplinary Committee. Article 25 (formerly article 24ter) complements and clarifies some of the concepts relating to enforcement of financial decisions made by the DRC or PSC.

Article 24 was introduced (as article 24bis) on 1 June 2018,[684] and article 25 (as article 24ter) on 1 January 2021.[685]

Article 24 grants the FT the power to decide on the consequences any club or player will suffer if they fail to comply with a financial decision issued by the tribunal. Its main objective is to ensure that decisions are complied with quickly and without unnecessary delays.

Under article 24, the FT (i.e. the DRC or PSC) are expected to decide on both the substance of the (contractual) dispute before them and, at the same time, on the consequences associated with failure to comply with the financials provisions in the decision. Equally, where the FIFA general secretariat provides a 'proposal' in an effort to settle a case, if such proposal is accepted (or not rejected), the confirmation letter confirming the settlement shall contain the consequences associated with failure to comply with the settlement. In such cases, the confirmation letter is considered a final and binding decision made pursuant to the Regulations.[686]

In other words, the consequences of failing to pay a monetary amount due will be set out as part of the decision on the substance of the dispute (whether following the parties being heard or following acceptance of a settlement).

Article 24 when first enacted was only applicable in cases involving players and/or clubs. On 1 January 2021, a carbon copy of article 24 was incorporated into annexe 2 to apply in cases involving clubs or member associations and coaches.

684 Circular no. 1625 of 26 April 2018.
685 Circular no. 1743 of 14 December 2020.
686 Article 20 pararaph 4, Procedural Rules.

Moreover, the article is aimed at ensuring compliance with monetary awards, rather than at pursuing a punitive remedy for non-compliance. To underline this, any consequences imposed for non-compliance will be lifted immediately once the due amounts are paid in full, even if the sanction in question has not yet been fully served at that point.

b) CONSEQUENCES FOR THE PARTIES

It is mandatory for the FT or FIFA general secretariat to include the consequences for failure to pay the relevant amounts in due time within a decision or confirmation letter.[687] The consequences may only be excluded where:

a) a direct sporting sanction has been imposed in the same case against the party to whom the consequences would apply;[688] or

b) the FIFA decision-making body has been informed, prior to the issuing of its decision, that a debtor club was subject to an insolvency-related event pursuant to the relevant national law and is legally unable to comply with an order by that body to pay a sum of money. [689]

In the first scenario, there is no need to apply a consequence for failure to comply with the decision; the party has already been directly sanctioned in the decision, and such sanction is not lifted even where payment compliance is achieved. The execution of such sanction will be carried out by the FIFA Disciplinary Committee.

In the second scenario, if a party is legally unable to comply with an order by the FT, then it is inappropriate for FIFA to specify such consequences. The burden for the debtor club to meet is quite high. The insolvency-related event (e.g. bankruptcy proceedings, entering into administration, appointment of a liquidator) must have occurred prior to the issuing of the decision, and proof of such matter must have been provided to the relevant body. As a result of such event, the debtor club must be legally restricted from settling its debts. If the debtor club fails to comply with the financial decision in such circumstances (which is likely), the creditor may seek to enforce the decision before the FIFA Disciplinary Committee.

i) Consequences for clubs

If a club fails to respect a financial decision, it will be subject to a ban from registering any new players, either nationally or internationally. This ban will remain in place until full payment of due amounts (including all applicable interest) is made. Consistent with the principle of proportionality, the maximum duration of the registration ban cannot exceed three entire and consecutive registration periods.

687 Article 24 paragraphs 1 (a) and (b), Regulations.

688 Article 24 paragraph 3 (a), Regulations.

689 This provision was inserted following cases which addressed this specific issue. See, for example, DRC decision of 16 August 2019, Hamilton; DRC decision of 16 August 2019, Habib Daf; DRC decision of 3 October 2019, Medic.

On 1 January 2021, these consequences were made subject to express rules in paragraph 7. In the previous iteration of article 24, the phrase "*entire and consecutive*" was interpreted to mean that any consequences imposed upon a debtor club which failed to comply with a monetary decision had to commence at the start of a registration period – even if the failure to comply fell 1 or 2 days into an open registration period. This led to the unfortunate situation where debtor clubs which had failed to comply with a financial decision could avoid suffering the consequences while continuing to register players during an open registration period. This was obviously against the intention of the rule.

To address this, paragraph 7 was introduced, which expressly sets out the procedure for consequences to be applied.[690] In short, following notification to FIFA by a creditor (club or player) that it has not received full payment (including all applicable interest), FIFA shall inform the debtor (club or player) that the consequences shall apply. The new paragraph 7 expressly provides that the consequences shall "*apply immediately upon notification by FIFA, including for the avoidance of doubt, if they are applied during an open registration period*". In such cases for a debtor club, the "*remainder of that registration period shall be the first "entire" registration period for the purposes of paragraph 2 a)*". In this sense, it was decided that the immediacy and impact of the registration ban outweighed any 'discount' that a debtor club may receive in the consequences applying immediately.

Paragraph 8 was also introduced on 1 January 2021 to expressly set out the procedure for when consequences could be lifted.[691] A debtor that has had consequences applied against it must provide proof of payment to FIFA of the full amount (including all applicable interest) to the creditor. Payment is not deemed to have been made where the debtor makes any unilateral deduction from the full amount instructed (including any applicable interest).[692] This means that the amount as written in a decision or confirmation letter must be paid in full by the debtor to the creditor; whether bank fees, or for taxation obligations, or any other reason.

Upon receipt of the proof of payment of the full amount (including any applicable interest), FIFA shall immediately request that the creditor confirm receipt within five days. Only after receipt of confirmation by the creditor, or in case of no response, will the consequences be lifted by FIFA.[693]

690 Article 24 paragraph 7, Regulations.
691 Article 24 paragraph 8, Regulations.
692 Article 25 paragraph 2 (b), Regulations.
693 Article 24 paragraph 8 (b), Regulations.

ii) Consequences for players

If a player fails to respect the decision in question, they will be suspended from playing in official matches. Bearing in mind the principle of proportionality, the total maximum duration of the restriction on participation in official matches is six months.

The same requirements set out above relating to paragraphs 7 and 8 apply equally to consequences ordered against players.

iii) Further enforcement

For the sake of good order, if the debtor fails to comply with the monetary decision even after the maximum period for the consequences has elapsed, the creditor can refer the matter to the FIFA Disciplinary Committee to enforce sanctions for failure to comply with a decision.[694]

The consequences described above have been consistently applied to all employment-related disputes between clubs and players, and disputes between clubs, since 1 June 2018, as well as to disputes relating to training compensation and the solidarity mechanism where the player was registered with the new club involved

c) TEMPORAL ASPECTS

Where the consequences are applied to a monetary decision, the debtor must pay the full amount due (including all applicable interest) to the creditor within 45 days of notification of the decision.[695]

This clock commences immediately upon notification of the (terms of the) decision or confirmation letter. It is only paused by a valid request for the grounds of decision. Upon notification of the grounds, the time limit shall recommence. The time limit is subsequently paused again by any appeal to the CAS. [696]

The inclusion of this specific rule within the Regulations is designed to provide legal certainty and prevent parties (in particular repeat offender clubs) from taking advantage of procedural elements to delay the proper enforcement of the consequences.

694 Article 15, FIFA Disciplinary Code.
695 Article 24 paragraph 4, Regulations.
696 Article 24 paragraph 4, Regulations.

Full payment (including all applicable interest) must be made within the 45 day time limit to the bank account provided by the creditor, as set out in the decision or confirmation letter.[697] On 1 January 2021, FIFA introduced a new mandatory document to be submitted in the context of a claim – the Bank Account Registration Form – which requires a claimant (or counterclaimant) to provide their bank details as part of the dispute.[698] If a claimant (or counterclaimant) is successful, and ordered to receive a sum of money, their bank details will be included in the decision. This ensures that the clock commences immediately upon notification of the (terms of the) decision, and there is no confusion as to where the amount ordered should be paid.

Prior to 1 January 2021, the clock only commenced when the creditor notified their bank account details to the debtor – which often led to disputes as to exactly when such notification occurred.

d) APPEAL TO CAS

i) Challenges to consequences

The first question that should be addressed is whether the consequences for failure to comply can be challenged at the time they are imposed (i.e. after 45 days have lapsed and full payment (including all applicable interest) has not been made).

In this regard, it should be borne in mind that any such consequences are an automatic ancillary element of the decision on the substance of the case at hand. At the time such consequences are implemented, the decision concerned will already have become final and binding, without any further possibility for appeal.

In view of the above, there are no circumstances in which a party can specifically challenge the consequences provided in a decision when they are implemented. The only means for a party to challenge any consequences for failure to comply with a monetary decision is to challenge the decision *before* it becomes final and binding, even if the party concerned only objects to the potential consequences, and not the financial orders made.

Although several Awards relating to article 24 of the Regulations have been issued, they have yet to analyse this issue directly, and only rather analyse it from the perspective of FIFA's standing to be sued.[699]

697 Article 24 paragraph 6, Regulations.

698 Articles 18 and 27, Procedural Rules.

699 CAS 2019/A/6508 Cruzeiro E.C. v. Independiente del Valle & FIFA; CAS 2019/A/6422 Cruzeiro E.C. v. Ramon Dario Abila & FIFA; TAS 2020/A/6851 Asociacion Deportivo Cali c. Club Santiago Wanderers & FIFA; CAS 2020/A/6694 Bursaspor KD v. Henri Gregoire Saivet.

e) IMPLEMENTATION OF DECISIONS

Article 25 (formerly article 24ter) complements and clarifies some of the concepts relating to enforcement of financial decisions made by the DRC or PSC. In particular, it does three things:

i) explicitly states that the sporting successor of a debtor shall be considered the same entity as a debtor, and subject to any decision or confirmation letter issued. The criteria to assess in a dispute before the FT whether an entity is the sporting successor or another entity are now identical to those set out in the FIFA Disciplinary Code;[700]

ii) explicitly defines when payment of a sum of money (as ordered by the FT) is considered to have been made.[701] Payment is made only when the full amount instructed (including any applicable interest) has been issued to and received by the creditor. It is not deemed to have been made where any unilateral deduction from the amount instructed (including any applicable interest) has been made by the debtor. This includes, *inter alia*, where a debtor unilaterally decides to deduct any taxes that it believes may be owed pursuant to national law;

iii) sets out the actions of a club which do not contravene a registration ban (i.e. a ban on registering new players, colloquially known as a 'transfer ban'). Four specific types of registration are still permitted, notwithstanding the application of the ban.[702]

25.2. Relevant jurisprudence

CAS Awards

- CAS 2019/A/6508 Cruzeiro E.C. v. Independiente del Valle & FIFA
- CAS 2019/A/6422 Cruzeiro E.C. v. Ramon Dario Abila & FIFA
- TAS 2020/A/6851 Asociacion Deportivo Cali c. Club Santiago Wanderers & FIFA
- CAS 2020/A/6694 Bursaspor KD v. Henri Gregoire Saivet

700 Article 25 paragraph 1, Regulations.
701 Article 25 paragraph 2, Regulations.
702 Article 25 paragraph 3, Regulations.

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Article 26 - Transitional measures

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Article 26 - Transitional measures

1. Any case that has been brought to FIFA before these regulations come into force shall be assessed according to the previous regulations.
   a) Any case that has been brought to FIFA for which a decision is still pending as at 1 October 2021 from the Players' Status Committee, Dispute Resolution Chamber, or any of their sub-committees, shall be decided by the relevant chamber of the Football Tribunal in accordance with the Procedural Rules Governing the Football Tribunal.
   b) The transitory provisions of the Procedural Rules Governing the Football Tribunal shall apply to those cases.
2. As a general rule, all other cases shall be assessed according to these regulations with the exception of the following:
   a) disputes regarding training compensation;
   b) disputes regarding the solidarity mechanism;

   Any cases not subject to this general rule shall be assessed according to the regulations that were in force when the contract at the centre of the dispute was signed, or when the disputed facts arose.
3. Member associations shall amend their regulations in accordance with article 1 to ensure that they comply with these regulations and shall submit them to FIFA for approval. Notwithstanding the foregoing, each member association shall implement article 1 paragraph 3 a).

26.1. Purpose and scope

Like any codified set of rules, the Regulations also contain a series of provisions aimed at regulating the transitional periods between their different editions. These transitional provisions are essential to establish which version of the Regulations applies to a specific situation.

When the 2001 edition of the Regulations came into force, the pertinent transitional rules were initially kept fairly basic; they merely stated what regulations would be applicable to contracts concluded between professional players and clubs before 1 September 2001 (i.e. the date when the 2001 edition of the Regulations came into force). The 2005 edition devoted more time to issues around transition, including dedicating an entire article for the first time. Nevertheless, the 2005 provisions were limited to establishing a general rule, which soon proved insufficient to cover the entire scope of

the Regulations. The article was later modified by means of a circular, and the amendments contained in this circular were then incorporated into the Regulations in the 2008 edition. This 2008 wording remained unaltered until 2021, when specific transitory clauses were included to cover the distribution of cases following the introduction of the FT, and to remove a reference to labour disputes occurring before 1 September 2001.

The main reason for the additional clarification to the general rule was to cover specific aspects of the training rewards regimes. These require a different approach from the standard principle that the latest version of any codified set of rules should apply to any case to be considered after this latest version comes into force.

a) THE GENERAL RULE

The general principle is simple: the edition of the Regulations applicable to a specific case or matter depends on when that case or matter was referred to FIFA, irrespective of, in the case of contractual disputes, the date of when the contract is signed. If the case or matter has been brought to FIFA before the current edition of the Regulations came into force and is yet to be decided, it should be assessed in accordance with the previous version of the Regulations (that is, the one in force at the time the claim was lodged). All cases or matters submitted to FIFA after the current edition of the Regulations came into force should be assessed according to the current version of the Regulations.

In a case from 2015, CAS had an opportunity to express its opinion on this general rule in relation to a dispute on overdue payables and the application of article 12bis (which came into force on 1 March 2015).[703] It confirmed that the edition of the Regulations applicable to a dispute heard before the DRC depended solely on article 26 of the Regulations and, by extension, on when the dispute had been referred to FIFA. Since, *in casu*, the relevant claim had been lodged after 1 March 2015, the new article 12bis was applicable, irrespective of the time the events at issue in the dispute took place.

On the other hand, the Procedural Rules apply immediately to all cases or matters that commenced prior to their coming into force. Where a change in the Procedural Rules may have an impact on a party in such case, the FIFA general secretariat must always interpret the Procedural Rules in the most favourable way for a party.[704]

703 CAS 2015/A/4310 Al Hilal Saudi Club v. Abdou Kader Mangane.
704 Article 31, Procedural Rules.

b) DISPUTES REGARDING TRAINING REWARDS

The training reward regimes pursue specific objectives. They both aim at rewarding clubs that have invested in training and developing young players. When a professional player is transferred, it is the player's new club that is responsible for paying training compensation and solidarity contributions as appropriate.

These regimes relate to entitlements of training clubs arising from the Regulations, not contractual agreements. Consequently, it is possible that an amendment to the Regulations could have the effect of retrospectively depriving a training club of a right to training compensation or a solidarity contribution that arose when the player concerned originally transferred.

It was with this in mind that the first exception to the general rule was incorporated into the Regulations. According to this exception, disputes regarding training compensation and the solidarity mechanism are assessed according to the version of the Regulations in force when the disputed facts arose (i.e. at the time the player was registered with their new club, which triggers the payment of the relevant training reward), irrespective of the edition of the Regulations in force when the matter is actually brought to FIFA.

CAS had the opportunity to confirm this exceptional approach. The Panel emphasised, in particular, that the DRC had to assess the dispute according to the Regulations that were applicable on the basis of the exception in article 26, irrespective of when the player concerned had actually been trained.[705]

c) OBLIGATIONS OF THE MEMBER ASSOCIATIONS

Article 26 paragraph 3 reminds member associations of their obligations not only to draw up and issue their own national regulations on the status and transfer of players, but to amend them accordingly when FIFA introduces certain changes to the Regulations. This ensures they continue to comply with the Regulations, and especially with those provisions which are binding at national level.

Member associations are obliged to submit pertinent amendments to their national regulations to FIFA for approval. For further details on the approach applied by FIFA when reviewing national regulations, please see the section regarding article 1 paragraph 2 of the Regulations.

705 CAS 2014/A/3652 KRC Genk v. Lille Metropole; CAS 2016/A/4418 Centro Recretativo Unión Cultura v. UD Almería.

26.2. Relevant jurisprudence

CAS Awards

- CAS 2014/A/3652 KRC Genk v. Lille Metropole
- CAS 2015/A/4310 Al Hilal Saudi Club v. Abdou Kader Mangane
- CAS 2016/A/4418 Centro Recretativo Unión Cultura v. UD Almería

Article 27 - Matters not provided for

27.1. Purpose and scope 409

Article 27 - Matters not provided for

1. Any matters not provided for in these regulations and cases of force majeure shall be decided by the FIFA Council whose decisions are final.

27.1. Purpose and scope

This is the classic "catch-all" article, included in the Regulations to ensure that any matter relating to the topics covered in the Regulations which is not specifically regulated may be decided by a FIFA body, or where a case of *force majeure* occurs. This provision accords with the FIFA Statutes, which similarly empower the FIFA Council to deal with all matters that do not fall within the sphere of responsibility of another body.

This general clause was utilised for the first time by the FIFA Council in March 2020 as a result of the global COVID-19 pandemic. The manner of its utilisation is addressed in the "*COVID-19 Football Regulatory Issues: FAQs*" document.

Article 28 - Official languages

28.1. Purpose and scope 411

Article 28 Official languages

1. In the case of any discrepancy in the interpretation of the English, French, Spanish or German texts of these regulations, the English text shall be authoritative.

28.1. Purpose and scope

English, Spanish, French and German are the official languages of FIFA.[706] Accordingly, all FIFA regulations are published in these languages. Despite every care being taken to ensure the quality of translations, the possibility of discrepancies between translations of specific terms in the Regulations cannot be completely ruled out.

In the event of any such discrepancies, the English version of the Regulations shall prevail over the others.

706 Article 9 paragraph 1, Statutes.

Article 29 - Enforcement

29.1. Purpose and scope 413

Article 29 - Enforcement

1. These regulations were approved by the Bureau of the FIFA Council on 31 August 2021 and come into force immediately.
2. Temporary amendments approved by the FIFA Council as a result of the COVID-19 pandemic will be periodically reviewed and removed accordingly.

29.1. Purpose and scope

This last provision provides information concerning the date on which the current version of the Regulations was approved and when it enters into force. The latter date is of particular importance, because it determines the edition of the Regulations to be applied to a specific case or matter (which as described above, is assessed on the basis of the filing date of the claim or application).

ANNEXE 1
Release of players to association teams

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BACKGROUND

Both club and international football play important roles within association football. Both contribute attract the attention of fans and the public at large, and each branch has its own unique attractions.

It is an honour and a great opportunity for a player to participate for the representative teams of their member association. This adds value to their career and provides an experience that cannot be replicated in club football. Their club also benefits from the exposure of having its players participating on the international stage.

On the other hand, players that are selected and participate for representative teams, particularly at "A" level ('senior international football'), are generally employed by clubs as professionals. Clubs paying their wages are would expect that their employees are not providing their special skills to any other comparable organisation (i.e. not having to 'share' them with their member association). Given the increasing number of matches that clubs must play over the course of a season, international matches place additional physical burden on players. A player might return to their club fatigued, given they may have to travel long distances within short periods of time, or worse, may be injured while on international duty. In the worst-case scenario, a representative team's calendar may clash with that of the player's club, meaning that the player concerned could miss important games for their club.

We see, then, that there is a balance to be struck. This is also true at an organisational level. Member associations want to be able to field a full-strength team in their matches and be given as long as possible to prepare for international matches, while confederations, member associations, leagues and other organisations charged with organising club competitions want as many days as possible available to schedule matches. Last, but by no means least, it is also imperative to consider the interests, health, fitness, and general well-being of the players concerned.

Given this situation, all parties involved need to work together when it comes to releasing players to play for their respective representative teams. Annexe 1 is aimed at facilitating this collaboration by coordinating the procedures required and helping to balance all the above interests and requirements.

Release of players and the international match calendar

Annexe 1 addresses the process for member associations to call up a player, the obligations for clubs to release players and for players to accept a call up, and describes the consequences in the event the parties involved in this process fail to comply with their obligations, of if a player returns late to their club. It also covers the question of insurance coverage, drawing a

distinction between illness and accident insurance, and insurance covering payment of a player's salary in case they are injured on international duty.

The key tool in this respect is the international match calendar (**IMC**). The IMC is compiled by the FIFA Council after consultation with the confederations, and is binding upon confederations, member associations and leagues. Member associations, leagues, and representatives of clubs and players are also consulted as part of the drafting process. The IMC is published for four or eight years for men's football, four years for women's football, or five years for futsal. The FIFA Council may make temporary amendments to the IMC when the circumstances so warrant (for instance, as occurred during the COVID-19 pandemic), following the same aforementioned consultation process.

The main objective of the IMC is to avoid, as far as possible, any date clashes between club football competitions and international football matches and tournaments, by setting fixed periods in which international football should be played. Member associations, leagues, and other competition organisers can still schedule club competition matches during the periods reserved for representative team football. However, they must consider that their affiliated clubs might not have their best players available, since they may have to join their representative teams and could miss games while away on national duty.

The IMC is the basis used to establish whether a player must be released to their representative team by their club, when they must leave their club to join up with the national squad, and how long they are required to stay with the representative team before returning to their club.

Although the IMC is designed to cater for the necessities and requirements of representative team football played at "A" international level, its application extends to the release of players to youth representative teams of a member association. This is clearly shown by the wording used in annexe 1, which refers to the release of players to the representative teams of a member association in general. Similarly, when referring to international windows, the pertinent provisions specify that they are reserved *"for representative **teams'** activities"* (author's emphasis), without any distinction being made as to the level of these teams or the types of activities (e.g. matches or training camps). Where a rule is intended to apply to "A" international level only, this is explicitly stated in the Regulations.

Binding effect of Annexe 1

Annexe 1 is binding for all member associations and clubs. This means that a member association may not deviate from the provisions of annexe 1 by stipulating in their national regulations or standard playing contract for club competitions that its affiliated clubs are obliged to release their registered players to its representative teams *outside of* the international windows listed in the IMC.

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ANNEXE 1, Article 1 - Principles for men's football

1. Clubs are obliged to release their registered players to the representative teams of the country for which the player is eligible to play on the basis of his nationality if they are called up by the association concerned. Any agreement between a player and a club to the contrary is prohibited.
2. The release of players under the terms of paragraph 1 of this article is mandatory for all international windows listed in the international match calendar (cf. paragraphs 3 and 4 below) as well as for the final competitions of the FIFA World Cup™, the FIFA Confederations Cup and the championships for "A" representative teams of the confederations, subject to the relevant association being a member of the organising confederation.
3. After consultation with the relevant stakeholders, FIFA publishes the international match calendar for the period of four or eight years. It will include all international windows for the relevant period (cf. paragraph 4 below). Following the publication of the international match calendar only the final competitions of the FIFA World Cup™, the FIFA Confederations Cup and the championships for "A" representative teams of the confederations will be added.
4. An international window is defined as a period of nine days starting on a Monday morning and ending on Tuesday night the following week (subject to the temporary exceptions below), which is reserved for representative teams' activities. During any international window a maximum of two matches may be played by each representative team (subject to the temporary exceptions below), irrespective of whether these matches are qualifying matches for an international tournament or friendlies. The pertinent matches can be scheduled any day as from Wednesday during the international window, provided that a minimum of two full calendar days are left between two matches (e.g. Thursday/Sunday or Saturday/Tuesday).

   i. During the international windows scheduled for September 2021, for associations affiliated to UEFA:

      a) the international window is extended by one day; and

      b) maximum of three matches may be played by each representative team.

   ii. During the international windows scheduled for September 2021 and October 2021, for associations affiliated to CONMEBOL:

      a) the international window are extended by two days; and

      b) maximum of three matches may be played by each representative team.

iii. During the international windows scheduled for September 2021, October 2021, January 2022, and March 2022, for associations affiliated to CONCACAF:

a) the international window are extended by one day; and

b) maximum of three matches may be played by each representative team.

5. Representative teams shall play the two matches (subject to the temporary exceptions set out in paragraph 4 of this article) within an international window on the territory of the same confederation, with the only exception of inter-continental play-off matches. If at least one of the two matches is a friendly, they can be played in two different confederations only if the distance between the venues does not exceed a total of five flight hours, according to the official schedule of the airline, and two time-zones.

6. It is not compulsory to release players outside an international window or outside the final competitions (as per paragraph 2 above) included in the international match calendar. It is not compulsory to release the same player for more than one "A" representative team final competition per year. Exceptions to this rule can be established by the FIFA Council for the FIFA Confederations Cup only.

7. For international windows, players must be released and start the travel to join their representative team no later than Monday morning and must start the travel back to their club no later than the next Wednesday morning following the end of the international window, subject to the temporary exception below. For a final competition in the sense of paragraphs 2 and 3 above, players must be released and start the travel to their representative team no later than Monday morning the week preceding the week when the relevant final competition starts and must be released by the association in the morning of the day after the last match of their team in the tournament.

a) During the international windows that have been extended in accordance with paragraph 4 (i), (ii), and (iii), players must start the travel back to their club no later than the morning following the end of the international window.

8. The clubs and associations concerned may agree a longer period of release or different arrangements with regard to paragraph 7 above.

9. Players complying with a call-up from their association under the terms of this article shall resume duty with their clubs no later than 24 hours after the end of the period for which they had to be released. This period shall be extended to 48 hours if the representative teams' activities concerned took place in a different confederation to the one in which the player's club is registered. Clubs shall be informed in writing of a player's outbound and return schedule ten days before the start of the release period. Associations shall ensure that players are able to return to their clubs on time after the match.

10. If a player does not resume duty with his club by the deadline stipulated in this article, at request of his club, the Players' Status Chamber of the Football Tribunal may decide that the next time the player is called up by his association the period of release shall be shortened as follows:

a) international window: by two days;

b) final competition of an international tournament: by five days.

11. In the event of a repeated violation of these provisions, at the request of his club, the Players' Status Chamber of the Football Tribunal may decide to:

a) issue a fine;

b) further reduce the period of release;

c) ban the association from calling up the player(s) for subsequent representative-team activities.

1.1. Purpose and scope

a) OBLIGATION TO RELEASE PLAYERS

Article 1, as its title suggests, refers specifically to male eleven-a-side football. The same principles set out in article 1 apply equally to article 1bis (female eleven-a-side football) and article 1ter (futsal), unless explicitly stated otherwise.

To ensure that member associations can, in principle, count on being able to field their best players for their representative teams, clubs are obliged to release their registered players to the representative team(s) of the member association those players are eligible to represent,[707] if they are called up.

Any agreement between a player and a club that would prevent a player from answering a call-up from their member association is prohibited. However, the obligation for clubs to release players is not absolute. Their mandatory duty to release their players covers: (i) the "*international windows*"; and (ii) specified final competitions of international championships identified in the Regulations. To be binding on clubs and member associations, the dates of the international windows and international championships must be included in the IMC by the FIFA Council.

707 As regards the eligibility of a player to play for a specific representative team, see articles 5 to 9 of the Regulations Governing the Application of the FIFA Statutes

i. International window

An international window is defined as a period of nine days, starting on a Monday morning and ending on the Tuesday night of the following week. These windows are reserved for the activities of representative teams. Contrary to the provisions in place until 31 July 2014, which obliged clubs to release their players solely for international matches, the current wording of the relevant provision allows a member association to call up players for other activities, such as training camps, without having to play any matches.

Without prejudice to any temporary amendments to the IMC that the FIFA Council may approve, the first match played in an international window may not be scheduled before the Wednesday of the window concerned. This is to allow representative teams to prepare properly ahead of the match.

To protect players' health, reduce the risk of injuries, and allow them sufficient time to recover and regenerate between matches, factoring in their return to their club to participate in club competition matches, a specific representative team may play a maximum of two matches during an international window. The nature of the matches concerned (i.e. whether a non-official match or official match) is irrelevant. A rest period of at least two full calendar days must be observed between the two matches scheduled for the specific representative team. By analogy, a player may also only play a maximum of two matches during an international window, and is subject to the same rest period.

Given that article 1 applies equally to both "A" and youth representative teams, consequently, it is permissible for a player (subject to their eligibility) to play matches for more than one category of representative team (up to a maximum of two) in the same international window. Equally, the period for which a player must be released[708] is not dependent on the category of the representative team to which they are called up. In this scenario, the two match maximum and two full calendar day rest period between matches must both be respected even if a player (for example) is called-up by both the "A" representative team and the under-21 representative team in the same international window (and in theory able to be fielded in four distinct matches).

The Regulations do not establish any minimum number of minutes for which the player must have been on the pitch to have been considered to have participated in a match. Accordingly, *any* active participation in a match (i.e. the player being fielded during the game), no matter how short, will trigger the application of the rest period provided for by the Regulations.

Again with a view to preserving players' health and to limit fatigue associated with long-distance travel, the two matches played within the same window should generally be played on the territory of the same confederation. If at least one of the two matches is a "friendly" match, the two matches can be played in different confederations, but only if the distance between

708 Article 1 paragraph 7 of Annexe 1, Regulations.

the venues does not exceed a total of five hours' flight, as measured by the airline's official schedule, and only if the venues are a maximum of two time zones apart. The other exception to this general rule covers the inter-continental playoff matches for the FIFA World Cup,™ which by definition must be played on the territory of different confederations.

ii. Final competitions of international championships

Apart from the international windows, the only other international football dates to be included in the IMC are those for the final competitions of the FIFA World Cup™ and the confederations' continental championships for "A" representative teams. Clubs are only obliged to release players to the representative teams of member associations affiliated to the confederation organising the tournament.[709]

iii. Particularities

A club is not required to release any of its registered players for more than one "A" representative team final competition (as defined by the IMC) per year, but can be obliged to release players for one tournament at "A" level and another at youth level. For example, if a player is called up by his member association for the FIFA U-20 World Cup, and is subsequently called up for his "A" representative team in the confederation championship in the same year, his club is obliged to release him twice (presuming the FIFA U-20 World Cup falls within an international window). On the other hand, if the FIFA World Cup™ were to be held in the same year as an "A" level confederation championship, the club would not be obliged to release the player for both tournaments.

If a member association whose representative team has qualified for a confederation championship plays a warm-up friendly against the representative team of a member association that has not qualified for the tournament, the obligation to release players only extends to the players representing the member association that has qualified for the tournament. Obviously, if the match in question is played during an international window listed in the IMC (other than the specific window related to that tournament), then the general obligation to release players applies.

iv. The limits of the obligation to release players

The Regulations explicitly state that it is *not* compulsory for clubs to release players outside an international window or for the final competition of an international championship that is not included in the IMC.

709 Example: CONMEBOL regularly invites two guest member associations to participate in their Copa America. While clubs are obliged to release their players for the 10 member associations of CONMEBOL, the clubs with registered players representing the two guest member associations will not have to do so.

b) OBLIGATION TO ACCEPT A CALL-UP

As a general rule, a player must comply with any call-up from a member association that he is eligible to represent on the basis of his nationality.[710] However, a player who is eligible to play for more than one member association, for example because he holds more than one nationality or on the basis of family ties to multiple countries, may legitimately refuse (or proactively inform the member association that wishes to call them up that he will refuse) to comply with a call-up from a member association that they are eligible to represent in the hope of being selected by another that he is eligible to represent.[711]

Naturally, any player may decide not to pursue an international career, or to stop playing international football at a certain point in his career. Any decision of this kind must be communicated to the member association concerned ahead of a specific call-up. If a player is called up to a representative team, and then announces his intention to quit international football after he receives the call-up, he still must comply with that specific call-up. Obviously, any such decision by a player must be communicated to the member association. Accordingly, players who do not wish to be considered for international football are advised to notify their member association of this decision in writing.

c) RELEASE PERIODS

The period for which a player needs to be released by his club to join a representative team varies depending on the circumstances in which he is released.

For an international window, the player must set off to join the representative team no later than the Monday morning of the relevant window, at the location of his club. This will normally allow him to play for his club in their national competition fixture immediately prior to the international window. He must set off to return to his club by latest the Wednesday morning following the end of the international window, at the location of his club.

For final competitions of international championships, as recognised by the Regulations and included in the IMC, players must set off to join their representative teams no later than the Monday morning of the week preceding the week in which the tournament begins.[712] Again, this will normally allow them to play in their national competition fixture immediately preceding the final competition, if there is one. At the same time, this should also allow all member associations taking part in the tournament

710 Article 3 paragraph 1 of Annexe 1, Regulations.

711 Article 5 paragraph 3 read with article 9, Regulations Governing the Application of the FIFA Statutes.

712 Example: In case the final competition of the championship for "A" representative teams of a confederation starts on Friday, 9 July 2021, the release period starts on Monday, 28 June 2021 in the morning.

a reasonable preparation period. The period for which the player must be released is set based on the date on which the final competition starts, not the day on which an individual team will play its first match. The same release period will thus apply for all players taking part in the tournament. Players must set off to re-join their clubs by latest the morning after their team's last match in the tournament.

In partial deviation from the principles of the Regulations, different release periods are normally set for the FIFA World Cup™. To protect players from excess fatigue, the FIFA Council will, *inter alia*, set a mandatory rest period for the players to be released and will confirm the duration of this preparation phase ahead of the beginning of the competition.

Players must resume duties with their clubs no later than 24 hours after the end of the period for which they were released.[713] If an individual player's representative team has been conducting its activities in different confederation to the one in which the player's club is located, this deadline is extended to 48 hours to consider the additional travelling time.

Clear and comprehensive communications are essential to ensure transparency and good relations between clubs and member associations. Consequently, member associations are required to inform the relevant clubs of each individual player's travel schedule at least ten days before the start of the release period. It is the member associations' responsibility to make sure that schedules and release periods are respected, and that the player returns to their club on time and is ready to resume their duties.

Clubs and players are free to agree to a longer period of release. This may occur, for example, because the available flight schedule for a player to join his representative team or return from representative team duty does not neatly fit within the requirements of the Regulations.

713 Example: If a player is released by his club for an international window, and the last match he plays is scheduled on the last day of such window, i.e. on Tuesday evening, the player is required to start his travel to join his club no later than Wednesday morning, and he should be back at the club's disposal on Thursday morning at the latest.

d) CONSEQUENCES OF A PLAYER NOT RESUMING DUTY WITH THEIR CLUB ON TIME

The specific situation of a player returning to their club late following an international call-up is dealt with by the PSC, which has the power to decide what, if any sanctions, should be imposed.[714] As set out below, sanctions issued by the PSC are limited to sanctions against the member association; the FIFA Disciplinary Committee is the competent body to possibly sanction a player that fails to resume duty with their club on time following an international call-up.

The consequences of a player not resuming duty with their club on time directly influence the release period applicable to the player concerned and are designed to punish the member association (as it is their responsibility to ensure players return to their clubs on time). If a player is late coming back from international duty, upon the request of their club to the PSC, their release period will be shortened by two days for his next international call-up in a standard international window, or by five days if the next call-up is ahead of a final competition of an international tournament. This means that for a standard international window, the player will only be required to set off from their club on the Wednesday morning as opposed to the Monday. Repeat offending may result in the relevant release period being further reduced, and the member association may be fined and ultimately be banned from calling-up one or more players for subsequent representative team activities.

As explained above, the entire punitive system is directed against wrongdoing on the part of the member association, rather than the player. However, member associations cannot literally force players to return to their clubs. A member association may defend itself by providing evidence that it did everything in its power to ensure that the player would be back at his club on time, but that the player arrived late because of the player's negligence or misconduct.

714 Circular no. 1542 dated 1 June 2016.

ANNEXE 1, Article 1bis - Principles for women's football

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ANNEXE 1, Article 1bis - Principles for women's football

1. Clubs are obliged to release their registered players to the representative teams of their country for which the player is eligible to play on the basis of her nationality if they are called up by the association concerned. Any agreement between a player and a club to the contrary is prohibited.
2. The release of players under the terms of paragraph 1 of this article is mandatory for all international windows listed in the women's international match calendar (cf. paragraphs 3 and 4 below) as well as for the final competitions of the FIFA Women's World Cup™, the Women's Olympic Football Tournament, the championships for women's "A" representative teams of the confederations, subject to the relevant association being a member of the organising confederation, and the confederations' final-round qualification tournaments for the Women's Olympic Football Tournament.
3. After consultation with the relevant stakeholders, FIFA publishes the women's international match calendar for a period of four years. It will include all international windows for the relevant period (cf. paragraph 4 below), as well as the final competitions of the FIFA Women's World Cup™, the Women's Olympic Football Tournament and blocked periods for the championships for women's "A" representative teams of the confederations as well as for the confederations' final-round qualification tournaments for the Women's Olympic Football Tournament. Following the publication of the women's international match calendar, only the specific dates for the championships for women's "A" representative teams of the confederations and the confederations' final-round qualification tournaments for the Women's Olympic Football Tournament will be added within the respective blocked periods. The championships for the women's"A"representative teams of the confederations and the final-round qualification tournaments for the Women's Olympic Football Tournament must be played within the respective stipulated blocked periods and confederations are required to notify FIFA of the dates, in writing, at the latest two years in advance of the respective championships for women's "A" representative teams or final-round tournament.
4. There are three types of international windows:
   a) Type I is defined as a period of nine days starting on a Monday morning and ending on a Tuesday night the following week, which is reserved for representative teams' activities. During the type I international window, a maximum of two matches may be played by each representative team, irrespective of whether these matches are qualifying matches for an international tournament or friendlies. The pertinent matches can be scheduled on any day as from Wednesday during the international window, provided that a minimum of two full

calendar days are left between two matches (e.g. Thursday/Sunday or Saturday/Tuesday).

b) Type II is defined as a period of ten days starting on a Monday morning and ending on Wednesday night the following week, which is reserved for friendly tournaments of the representative teams and qualifying matches. During the type II international window, a maximum of three matches may be played by each representative team. The pertinent matches can be scheduled on any day as from Thursday during the international window, provided that a minimum of two full calendar days are left between two matches (e.g. Thursday/Sunday/Wednesday).

c) Type III is defined as a period of 13 days starting on Monday morning and ending on Saturday night the following week, which is reserved exclusively for qualifying matches for the championships of the women's "A"representative teams of the confederations. During the type III international window, a maximum of four matches may be played by each representative team. The pertinent matches can be scheduled on any day as from Thursday during the international window, provided that a minimum of two full calendar days are left between matches (e.g. Thursday/Sunday/Wednesday/Saturday).

5. It is not compulsory to release players outside an international window or outside the final competitions listed in paragraph 2 above that are included in the women's international match calendar.

6. For all three types of international windows, players must be released and start the travel to join their representative team no later than Monday morning and must start the travel back to their club no later than the next Wednesday morning (type I), the next Thursday morning (type II) or the next Sunday morning (type III) following the end of the international window. For the confederations' final-round qualification tournaments for the Women's Olympic Football Tournament, players must be released and start the travel to join their representative team no later than Monday morning before the opening match of the qualification tournament and must be released by the association on the morning of the day after the last match of their team in the tournament. For the latter qualification tournaments, the maximum total period of release (between leaving Monday morning and the day of release back to the club by the association) is 16 days. For the other final competitions in the sense of paragraphs 2 and 3 above, players must be released and start the travel to their representative team no later than the Monday morning of the week preceding the week when the relevant final competition starts, and must be released by the association on the morning of the day after the last match of their team in the tournament.

7. The clubs and associations concerned may agree a longer period of release or different arrangements with regard to paragraph 6 above.

8. Players complying with a call-up from their association under the terms of this article shall resume duty with their clubs no later than 24 hours after the end of the period for which they had to be released. This period shall be extended to 48 hours if the representative teams' activities concerned took place in a different confederation to the one in which the player's club is registered. Clubs shall be informed in writing of a player's outbound and return schedule ten days before the start of the release period. Associations shall ensure that players are able to return to their clubs on time after the match.

9. If a player does not resume duty with her club by the deadline stipulated in this article, at request of her club, the Players' Status Chamber of the Football Tribunal may shall decide that the next time the player is called up by her association, the period of release shall be shortened as follows:

   a) international window: by two days;

   b) final competition of an international tournament: by five days.

10. In the event of a repeated violation of these provisions, at the request of her club, the Players' Status Chamber of the Football Tribunal may decide to:

   a) issue a fine;

   b) further reduce the period of release;

   c) ban the association from calling up the player(s) for subsequent representative-team activities.

1.1. Purpose and scope

a) OBLIGATION TO RELEASE PLAYERS

Article 1bis, as its title suggests, refers specifically to female eleven-a-side football. As stated above, the same principles set out in article 1 (men's eleven-a-side football) apply equally to article 1bis, unless explicitly stated otherwise. Those explicit references are provided below.

i. International windows

The particularities of women's eleven-a-side football requires the Regulations to distinguish between three different types of international windows.

The type I window matches the standard nine-day international window referred to in article 1. The same principles are therefore applicable.

The type II window is one day longer than type I. It also starts on Monday morning, but it ends on the Wednesday night of the following week rather than the Tuesday. Type II windows can only be used for "friendly" tournaments featuring representative teams or for qualifying matches for final competitions of international championships. The maximum number of matches a specific representative team can play during this window is three, irrespective of the nature of the match, and the first match of the window may be scheduled no earlier than the Thursday. The minimum rest period between matches is the same as for a type I window. By analogy, a player may also only play a maximum of three matches during this type of window, and is subject to the same rest period.

The type III window covers a period of 13 days. It also starts on Monday morning but ends on the Saturday night of the following week. It is reserved exclusively for qualifying matches for confederation championships for "A" representative teams. The maximum number of matches a specific representative team can play during a type III window is four, with the first match to be scheduled no earlier than the first Thursday. The same minimum rest period between matches applies as for type I and type II windows. By analogy, a player may also only play a maximum of four matches during this type of window, and is subject to the same rest period.

Considering that international matches between member associations affiliated to different confederations are rare outside of the final competitions of international championships, article 1bis does not include any limitations relating to the country or territory in which matches are played, maximum flight times or the number of time-zones between venues.

ii. Final competitions of international championships

Contrary to the men's IMC, the final competition of the Women's Olympic Football Tournament is included in the women's IMC. This means that it is compulsory for clubs to release players called up for that tournament. The reason for this difference lies in the nature of the Olympic Football Tournaments. The men's Olympic Football Tournament is for Under-23 teams, with a maximum of three over-age players allowed. The women's tournament, by contrast, imposes no age restrictions, meaning that member associations can (and generally do) field their best "A" representative teams.

In turn, the status of the Women's Olympic Football Tournament means that the confederations' final qualification tournaments for the Women's Olympic Football Tournament must be included in the women's IMC, meaning that clubs are obliged to release their players for these qualifying matches.

Another difference concerns "blocked periods". The final competitions for confederation championships for "A" representative teams, as well as the confederations' final-round qualification tournaments for the Women's Olympic Football Tournament, must be scheduled for the reserved blocked periods. This limitation is aimed at achieving harmonisation in the hope that this will accelerate and coordinate the development of women's football globally.

Confederations are required to notify FIFA in writing of the specific dates chosen for their tournaments (which must fall within the blocked periods) at least two years in advance.

iii. No limitation on the number of final competitions per year

To promote the continued progress and development of women's football, it is important that all players can play as much competitive football as possible. With this crucial requirement in mind, article 1bis deliberately does not include any limitations on the number of final competitions at "A" international level for which a player must be released by their club during a calendar year.

b) RELEASE PERIOD

The regulatory framework of article 1bis is identical to article 1, with some minor differences, due to the three types of international windows and the final competitions included in the IMC.

For international windows, players must set off to join their representative team no later than the Monday morning of the relevant window, at the location of their club. They must set off to return to her club by latest the morning following the last day of the international window. This will be Wednesday for type I windows, Thursday for type II and Sunday for type III.

For the final competitions of international championships, as recognised by the Regulations and included in the IMC, the exact same approach is adopted as in men's eleven-a-side football. The only significant difference concerns the final-round qualification competitions for the Women's Olympic Football Tournament, where the release period starts on the Monday morning prior to the opening match of the qualification competition. This means that the preparation period is considerably shorter than for the other final competitions to which the Regulations refer. The period for which the player must be released is set based on the date on which the final competition starts, not the day on which an individual team will play its first match. The same release period will thus apply for all players taking part. Players must set off to re-join their clubs by latest the morning after their team's last match in the tournament.

The fact that the maximum release period is limited for this tournament is unique in the Regulations. The period of 16 days was chosen to allow sufficient time for the competition to be executed properly at the same time as keeping congestion in the international calendar to a minimum.

ANNEXE 1, Article 1ter - Principles for futsal

1.1. Purpose and scope 435

a) Obligation to release players 435

i. International windows 435

ii. No limitation of the number of final competitions per year 435

b) Release period 436

ANNEXE 1, Article 1ter - Principles for futsal

1. Clubs are obliged to release their registered players to the representative teams of the country for which the player is eligible to play on the basis of his nationality if they are called up by the association concerned. Any agreement between a player and a club to the contrary is prohibited.
2. The release of players under the terms of paragraph 1 of this article is mandatory for all international windows listed in the futsal international match calendar (cf. paragraphs 3 and 4 below) as well as for the final competitions of the FIFA Futsal World Cup and of the championships for "A" representative teams of the confederations, subject to the relevant association being a member of the organising confederation.
3. After consultation with the relevant stakeholders, FIFA publishes the futsal international match calendar for the period of five years. It will include all international windows for the relevant period (cf. paragraph 4 below). Following the publication of the futsal international match calendar only the final competitions of the FIFA Futsal World Cup and the championships for "A" representative teams of the confederations will be added.
4. There are two types of international windows:
   a) Type I is defined as a period of ten days starting on a Monday morning and ending on Wednesday night the following week, which is reserved for representative teams' activities. During a Type I international window, a maximum of four matches may be played by each representative team, irrespective of whether these matches are qualifying matches for an international tournament or friendlies. Representative teams can play the maximum of four matches within an international window of Type I in no more than two confederations.
   b) Type II is defined as a period of four days starting on a Sunday morning and ending on Wednesday night the following week, which is reserved for representative teams' activities. During a Type II international window, a maximum of two matches may be played by each representative team, irrespective of whether these matches are qualifying matches for an international tournament or friendlies. Representative teams shall play the maximum of two matches within an international window of Type II on the territory of the same confederation.
5. It is not compulsory to release players outside an international window or outside the final competitions as per paragraph 2 above included in the futsal international match calendar.

6. For both types of international windows, players must be released and start the travel to join their representative team no later than the first morning of the window (i.e. Sunday or Monday, respectively), and must start the travel back to their club no later than the Thursday morning following the end of the international window. For a final competition of the championships for "A" representative teams of the confederations, players must be released and start the travel to their representative team in the morning 12 days before the relevant final competition starts and must be released by the association in the morning of the day after the last match of their team in the tournament. For the FIFA Futsal World Cup, players must be released and start the travel to their representative team in the morning 14 days before the World Cup starts and must be released by the association in the morning of the day after the last match of their team in the tournament.

7. The clubs and associations concerned may agree a longer period of release or different arrangements with regard to paragraph 6 above.

8. Players complying with a call-up from their association under the terms of this article shall resume duty with their clubs no later than 24 hours after the end of the period for which they had to be released. This period shall be extended to 48 hours if the representative teams' activities concerned took place in a different confederation to the one in which the player's club is registered. Clubs shall be informed in writing of a player's outbound and return schedule ten days before the start of the release period. Associations shall ensure that players are able to return to their clubs on time after the match.

9. If a player does not resume duty with his club by the deadline stipulated in this article, at the request of his club, the Players' Status Chamber of the Football Tribunal may decide that the next time the player is called up by his association the period of release shall be shortened as follows:

   a) international window: by two days;

   b) final competition of an international tournament: by five days.

10. In the event of a repeated violation of these provisions, at the request of his club, the Players' Status Chamber of the Football Tribunal may decide to:

   a) issue a fine;

   b) further reduce the period of release;

   c) ban the association from calling up the player(s) for subsequent representative-team activities.

1.1. Purpose and scope

a) OBLIGATION TO RELEASE PLAYERS

Article 1ter, as its title suggests, refers specifically to futsal. It does not distinguish between women's or men's futsal. As stated above, the same principles set out in article 1 (men's eleven-a-side football) apply equally to article 1ter, unless explicitly stated otherwise. Those explicit references are provided below.

i. International windows

The particularities of futsal require the Regulations to distinguish between two different types of international windows.

The type I window lasts ten days, starting on a Monday morning and ending on the Wednesday night of the following week. A specific representative team may play a maximum of four matches during this period, regardless of whether those matches are non-official or official matches. By analogy, a player may also only play a maximum of four matches during this type of window.

The type II window lasts four days, starting on a Sunday morning and ending on the Wednesday night of the same week. A specific representative team may play a maximum of two matches in this period, again regardless of whether those matches are non-official or official matches. By analogy, a player may also only play a maximum of two matches during this type of window.

There is no restriction as to when the first match of an international window can be played; member associations are free to schedule the first match at any time within the international window. Moreover, the Regulations do not provide for any mandatory rest period between matches. To protect players' health, the two or four matches (depending on the window type) must be played on the territories of no more than two confederations (for type I windows) or on the territory of a single confederation (for type II windows).

ii. No limitation of the number of final competitions per year

The Regulations deliberately do not include any limitation on the number of final competitions at "A" international level for which a futsal player must be released by their club during a single year. Consultations with stakeholders demonstrate that no such restriction is required for the time being.

b) RELEASE PERIOD

The regulatory framework is identical to article 1, with some minor differences, due to the two types of international windows.

For international windows, players must set off to join their representative team no later than the first morning of the window (i.e. Sunday for type II windows or Monday for type I windows), and to set off to return to their clubs no later than the morning after the last day of the international window (which will be a Thursday).

For final competitions of international championships included in the IMC, an exhaustive list of which is included in the relevant provisions, players must be released and set off to join up with their representative teams a specified number of days ahead of the start of the pertinent competition: 12 days ahead for confederation championships for "A" representative teams, and 14 days for the FIFA Futsal World Cup. The period for which the player must be released is set based on the date on which the final competition starts, not the day on which an individual team will play its first match. The same release period will thus apply for all players taking part. Players must set off to re-join their clubs by latest the morning after their team's last match in the tournament.

ANNEXE 1, Article 2 - Financial provisions and insurance

1.1. Purpose and scope 438

a) No financial compensation for clubs 438

b) Travel expenses 439

c) Insurance 439

i. Insurance cover against illness and accident 439

ii. Insurance cover for a player's salary where they are rendered temporarily incapable of playing 440

ANNEXE 1, Article 2 - Financial provisions and insurance

1. Clubs releasing a player in accordance with the provisions of this annexe are not entitled to financial compensation.
2. The association calling up a player shall bear the costs of travel incurred by the player as a result of the call-up.
3. The club with which the player concerned is registered shall be responsible for his insurance cover against illness and accident during the entire period of his release. This cover must also extend to any injuries sustained by the player during the international match(es) for which he was released.
4. If a professional player participating in eleven-a-side football suffers during the period of his release for an international "A" match a bodily injury caused by an accident and is, as a consequence of such an injury, temporary totally disabled, the club with which the player concerned is registered will be indemnified by FIFA. The terms and conditions of the indemnification, including the loss-handling procedures, are set forth in the Technical Bulletin –Club Protection Programme.

1.1. Purpose and scope

a) NO FINANCIAL COMPENSATION FOR CLUBS

International football played between the representative teams of member associations is an important pillar for the worldwide development of football. In this respect, the Regulations do not entitle clubs to financial compensation for releasing their players to representative teams. This ensures the playing field for member associations is as level as possible, and to increase the likelihood that representative teams will be able to call upon their best players. Given the limited financial means that smaller member associations have at their disposal, the expense involved in compensating clubs for releasing their players for international duty would be prohibitive, and they would not be able to afford to call up certain players any longer.

However, as an exception to this general rule, and in recognition of the contribution clubs make to the success of the FIFA World Cup™, FIFA has set up Club Benefits Programme, under which a share of the financial benefits associated with the successful staging of the FIFA World Cup™ is distributed via member associations to the (men's eleven-a-side football) clubs of the players taking part in the tournament.[715] The scheme was first applied after the FIFA World Cup™ in South Africa (2010) and was developed further for the subsequent tournaments in Brazil (2014) and Russia (2018), with increased payments being made to clubs. The Club Benefits Programme was applied in women's eleven-a-side football for the first time following the FIFA Women's World Cup France 2019™.[716]

b) TRAVEL EXPENSES

Each member association is responsible for paying travel expenses incurred by its players in connection with international duty. Travel expenses are considered broadly to refer to, *inter alia*, any domestic or international travel (by any means), accommodation, and meals.

c) INSURANCE

As far as injuries to players while on international duty are concerned, the Regulations address two different types of insurance, specifically insurance cover against illness and accident, and insurance cover for a player's salary in the event they suffer an injury that temporarily renders them incapable of playing.

i. Insurance cover against illness and accident

It is the responsibility of each player's club to take out insurance to cover the player concerned against illness and accident for the entire period of their release for international duty. The cover must extend to any injuries sustained by the player during the international match(es) for which they are released.

The club's responsibility to take out insurance cover for illness or accident applies irrespective of the category of the representative team that its players are called-up to.

715 Circular no. 1600 of 31 October 2017; Circular no. 1608 of 7 December 2017; Circular no. 1646 of 27 July 2018.

716 Circular no. 1672 of 14 May 2019.

ii. Insurance cover for a player's salary where they are rendered temporarily incapable of playing

This second form of insurance coverage, which is taken out by FIFA and known as the "Club Protection Programme", only applies to eleven-a-side football and exclusively to players released for international "A" matches.[717] It applies equally to professional male and female players since 1 January 2015.[718]

The Club Protection Programme was approved by the FIFA Congress in May 2012 for an initial period of 1 September 2012 to 31 December 2014.[719] It was then extended to cover the period 2015 to 2018,[720] and again to cover the period 2019 to 2022.[721]

This insurance coverage only applies to matches played during an international window or a final competition of an international championship included in the IMC. It covers the whole of the relevant release period, including preparation time, meaning that the entire period during which the player is in the care of their member association is covered.[722] If a club voluntarily releases a player outside a mandatory international window, the player will not be covered by the insurance.

From an insurance point of view, an exceptional situation may arise in the lead-up to final competitions of the FIFA World Cup™, the FIFA Women's World Cup™, or the confederations championships for "A" representative teams. For sporting reasons, it is common for a member association that has qualified to arrange friendly matches in advance of a final competition against a member association that has not qualified. In such cases, the "Club Protection Programme" would normally only cover those players participating for the member association that qualified for the final competition in question. This is because during this period, the players participating for the member association that did not qualify are not obliged to accept a call-up, nor are their clubs obliged to release them. However, given the importance of preparation ahead of major tournaments, and as an exception to this general rule, insurance cover is extended to *both* teams involved in "A" friendly internationals during pre-tournament preparation periods, provided that one of the representative teams involved has qualified for the final competition.[723]

717 Definition 5, Regulations Governing International Matches.
718 Circular no. 1454 of 31 October 2014; Circular no. 1466 of 9 January 2015.
719 Circular no. 1307 of 8 June 2012.
720 Circular no. 1466 of 9 January 2015.
721 Circular no. 1656 of 20 December 2018.
722 Circular no. 1307 of 8 June 2012; Circular no. 1466 of 9 January 2015.
723 Article 2 (b), Technical Bulletin – FIFA Club Protection Programme.

The insurance coverage is designed to cover a situation in which a professional player is released by their club for international duty and suffers a bodily injury because of an accident that renders them temporarily unable to provide any services to their club. Nevertheless, the club may still be liable to pay the player's fixed salary while they are injured.[724]

Several conditions must be met for the player's club to be indemnified for their loss. Firstly, the bodily injury must be caused by an accident whilst on international duty; any injuries already existing at the point when the player joins their representative team are not covered.[725] Secondly, the accident concerned may occur at any point during the relevant release period, including while the player is travelling during the release period; there is no requirement for it to occur during a match.[726] Thirdly, the player must be prevented from rendering their services to their club for a temporary period of more than 28 consecutive days,[727] which is to say that the player will recover and participate in professional football at some point (the insurance does not cover death or permanent disability).[728] Lastly, the temporary incapacity suffered by the player must be total, i.e. they must be unable to participate in any of the club's sporting activities.

Any compensation payable will be paid based on the player's basic remuneration only.[729] The total annual budget of the Club Protection Programme is EUR 80,000,000 and the total coverage available to clubs amounts to a maximum of EUR 75,000,000 per player, per accident. This amount is calculated at a daily rate of up to EUR 20,548, which is payable for a maximum of 365 days.[730] This means that the maximum daily amount payable in compensation is limited to EUR 20,548 per accident. If the player's basic salary is more than that, the remaining portion will not be covered.

The detailed terms and conditions in relation to indemnification, including loss adjustment procedures, are defined in the document entitled "Technical Bulletin – FIFA Club Protection Programme."

724 Circular no. 1307 of 8 June 2012; Circular no. 1466 of 9 January 2015; Circular no. 1664 of 7 March 2019.
725 Circular no. 1307 of 8 June 2012; Circular no. 1466 of 9 January 2015.
726 Article 2 (c), Technical Bulletin – FIFA Club Protection Programme.
727 Article 2 (c), Technical Bulletin – FIFA Club Protection Programme.
728 Circular no. 1307 of 8 June 2012; Circular no. 1466 of 9 January 2015.
729 Circular no. 1664 of 7 March 2019.
730 Article 2 (c), Technical Bulletin – FIFA Club Protection Programme.

ANNEXE 1, Article 3 - Calling up players

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ANNEXE 1, Article 3 - Calling up players

1. As a general rule, every player registered with a club is obliged to respond affirmatively when called up by the association he is eligible to represent on the basis of his nationality to play for one of its representative teams.
2. Associations wishing to call up a player must notify the player in writing at least 15 days before the first day of the international window (cf. Annexe 1, article 1 paragraph 4) in which the representative teams' activities for which he is required will take place. Associations wishing to call up a player for the final competition of an international tournament must notify the player in writing at least 15 days before the beginning of the relevant release period. The player's club shall also be informed in writing at the same time. Equally, associations are advised to copy the association of the clubs concerned into the summons. The club must confirm the release of the player within the following six days.
3. Associations that request FIFA's help to obtain the release of a player playing abroad may only do so under the following two conditions:
   a) The association at which the player is registered has been asked to intervene without success.
   b) The case is submitted to FIFA at least five days before the day of the match for which the player is needed.

1.1. Purpose and scope

a) OBLIGATION TO ACCEPT A CALL-UP

The obligation set out in article 3 paragraph 1 mirrors the principle established in article 1, article 1bis, and article 1ter of annexe 1. It is described in full detail in the section related to article 1 above.

b) FORMAL REQUIREMENTS

Clubs must know reasonably far in advance which of their players will be absent on international duty and, by extension, which players it will be able to field. In this regard, clear and transparent correspondence, conducted using traceable means of communication, helps to ensure smooth exchange of information between the member association calling up the player,

the club and, the player themselves, and to minimise the risk of any misunderstanding.

To encourage best practice as far as communications are concerned, the Regulations require member associations calling up a player for their representative team to inform the player and their club in writing that their player has been called up. This written notice must be given at least 15 days ahead of either the first day of the international window for which the player is being called up or, for call-ups ahead of final tournaments, 15 days prior to the start of the release period for the final competition (included in the IMC).[731] If this notification is not received on time, the club is not obliged to release the player concerned, and the player is not obliged to accept the call-up.

Member associations, as a practice, should also send formal notification that a player has been called up to the member association to which the player's club is affiliated, so that the releasing club's member association may be able to assist in smoothing out any difficulties that occur.

Clubs are required to confirm they will release the player(s) called up within six days of receipt of the notification. If a club has valid grounds to object to the call-up, it must raise this objection within the same time limit.

In this respect, if a club refuses to release a player despite a valid call-up being notified, member associations may request assistance from FIFA. However, two conditions must be satisfied before FIFA can intervene. First, the member association at which the player is registered for their club must have been asked to intervene; only if this request fails to secure the release of the player can the matter be referred to FIFA. This condition obviously does not apply where the club is affiliated to the same member association that has called-up a player. Second, the matter must be submitted to FIFA at least five days before the day of the match for which the player has been called up. Although the deadline by which notification of the call-up must be provided is linked to the start of the relevant release period, the deadline for requesting FIFA intervention is linked to the date of the actual *match*.

FIFA will not intervene in these circumstances where notification of the call-up is not made in a timely manner (i.e. in respect of the 15-day notification deadline). As previously mentioned, clubs will not be obliged to release players unless this deadline has been respected.

There is no limit on the number of players that can be called up by a member association for any particular international window or final competition of an international championship listed on the IMC. The competition regulations of such competitions will inevitably limit the number of players that may be registered.

731 Example: A player is called up by his member association to participate in the final competition of the championships for "A" representative teams of the relevant confederation. The tournament will start on Friday, 9 July 2021. Consequently, the pertinent release period will commence on Monday, 28 June 2021. Hence, the player and his club need to be informed of the call-up by Sunday, 13 June 2021, at the latest.

ANNEXE 1, Article 4 - Injured players

1.1. Purpose and scope 446

ANNEXE 1, Article 4 - Injured players

1. A player who due to injury or illness is unable to comply with a call-up from the association that he is eligible to represent on the basis of his nationality shall, if the association so requires, agree to undergo a medical examination by a doctor of that association's choice. If the player so wishes, such medical examination shall take place on the territory of the association at which he is registered.

1.1. Purpose and scope

The health and well-being of a player deserves protection and that all parties concerned should work together to maintain it. The desire to preserve the health and fitness of players should prevail over the other interests of clubs and member associations. On the other hand, clubs must not be permitted to sidestep their obligations to release players by claiming they are injured when they are actually fit to play.

A member association should normally be able to rely on reports by club doctors when assessing players' fitness. The importance of regular and open dialogue between the medical departments and staff concerned cannot be overstated in this regard.

However, the Regulations permit a member association to have a player examined by one of its own medical staff, as opposed to by the club doctor. This is particularly common if a club refuses to release a player for international duty on the grounds of an injury when there is no obvious sign that the player is actually injured.

Where such an examination takes place, the player is entitled to have the member association's nominated physician examine them in the country or territory where their club is domiciled. This avoids unnecessary fatigue due to travel and reduces any associated risk of damaging the player's health or fitness.

ANNEXE 1, Article 5 - Restrictions on playing

1.1. Purpose and scope 448

ANNEXE 1, Article 5 - Restrictions on playing

1. A player who has been called up by his association for one of its representative teams is, unless otherwise agreed by the relevant association, not entitled to play for the club with which he is registered during the period for which he has been released or should have been released pursuant to the provisions of this annexe, plus an additional period of five days.

1.1. Purpose and scope

If a player is validly and correctly called up by their member association, with all the relevant formal requirements having been met, the player cannot refuse to join their representative team.

Hence, a player is not eligible to play for their club during the release period during which they would ordinarily have been with their representative team, whether their club releases them and they ultimately comply with a call-up, or if their club fails to release them and/or they refuse the call-up. In the second scenario, unless the failure to release is based on the player being injured in accordance with article 4 of annexe 1, the playing restriction will be extended by five days following the end of that period.

However, the member association concerned (i.e. which called-up the player) is free to agree otherwise to waive this restriction. To maintain legal security, and to ensure the agreement is properly documented, this agreement should be issued in writing.

This rule is intended to reduce, if not eliminate, any incentive for the player and/or their club to find an excuse (as opposed to a genuine reason) for not responding to an international call-up with a view to staying with the club instead.

Further disciplinary measures can be imposed upon both the player and the club, in addition to the extension of the period during which the player is ineligible to play for their club, if the club fails to release the player and/or the player fails to comply with the call-up.[732]

732 Article 6 of Annexe 1, Regulations.

ANNEXE 1, Article 6 - Disciplinary measures

1.1. Purpose and scope 450

ANNEXE 1, Article 6 - Disciplinary measures

2. Violations of any of the provisions set forth in this annexe shall result in the imposition of disciplinary measures to be decided by the FIFA Disciplinary Committee based on the FIFA Disciplinary Code.

1.1. Purpose and scope

Violations of any of the provisions laid down in annexe 1 will result in the imposition of disciplinary measures, to be decided by the FIFA Disciplinary Committee based on the FIFA Disciplinary Code. In particular, clubs may be sanctioned for failing to release their registered players to representative teams, and players may be sanctioned for not complying with a call-up.

ANNEXE 2
Rules for the employment of coaches

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BACKGROUND

Since the introduction of the modern regulatory framework governing the football transfer system in September 2001, coaches were not properly regulated by FIFA until 1 January 2021. Prior to 1 January 2021, the word "*coach*" was only found in article 22 paragraph 1 (c) of the Regulations, which provided the PSC with jurisdiction to hear employment-related disputes with an international dimension between coaches and clubs or associations.

On 1 January 2021, FIFA introduced a new regulatory framework governing the labour relations between coaches and clubs, and coaches and member associations. This framework not only provides legal certainty to coaches and their employers with respect to their employment relationships but also properly facilitates the work of the PSC, which adjudicates disputes involving coaches.

In this respect, the specific amendment package for coaches introduced on 1 January 2021 provided:

(i) a clear definition of "*coach*" for the first time within the Regulations;

(ii) minimum contractual standards and protections for coaching contracts; and

(iii) a *lex specialis* on matters relating to contractual stability, termination of a contract without just cause, compensation for breach of contract without just cause, and enforcement of decisions.

Annexe 2 also consolidates the long-standing jurisprudence of the PSC on employment-related disputes with an international dimension involving coaches.

DEFINITIONS; ANNEXE 2, Articles 1 and 2

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Definitions

3. Coach: an individual employed in a football-specific occupation by a professional club or association whose:
   i. employment duties consist of one or more of the following: training and coaching players, selecting players for matches and competitions, making tactical choices during matches and competitions; and/or
   ii. employment requires the holding of a coaching licence in accordance with a domestic or continental licensing regulation.

ANNEXE 2, Article 1 - Scope

1. This annexe lays down rules concerning contracts between coaches and professional clubs or associations.
2. This annexe applies to coaches that are:
   a) paid more for their coaching activity than the expenses they effectively incur; and
   b) employed by a professional club or an association.
3. This annexe applies equally to football and futsal coaches.
4. Each association shall include in its regulations appropriate means to protect contractual stability between coaches and clubs or associations, paying due respect to mandatory national law and collective bargaining agreements.

ANNEXE 2, Article 2 - Employment contract

1. A coach must have a written contract with a club or an association, executed on an individual basis.
2. A contract shall include the essential elements of an employment contract, such as *inter alia* the object of the contract, the rights and obligations of the parties, the status and occupation of the parties, the agreed remuneration, the duration of the contract and the signatures of each party.
3. If a football intermediary is involved in the negotiation of a contract, they shall be named in that contract.
4. The validity of a contract may not be made subject to:
   a) the granting of a work or residence permit;
   b) the requirement to hold a specific coaching licence; or
   c) other requirements of an administrative or regulatory nature.
5. In their employment process, clubs and associations must act with due diligence in order to ensure that the coach meets the necessary requirements to be engaged (e.g. holding the required coaching licence) and performs their duties.
6. Contractual clauses granting the club or the association additional time to pay the coach amounts that have fallen due under the terms of the contract ("grace periods") shall not be recognised. Grace periods contained in collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law shall, however, be legally binding and recognised. Contracts existing at the time of this provision coming into force shall not be affected by this prohibition.

1.1. Purpose and scope

a) DEFINITION OF "COACH"

The most crucial element introduced in the special amendment package was the definition of "*coach*".

Prior to the definition being introduced, the PSC and CAS had limited the competence of FIFA to hear disputes to (nominally) head coaches and assistant coaches (including goalkeeper coaches) only.[733] In this respect, fitness coaches, sporting directors or technical directors, as well as other individuals forming part of the technical set-up of a club or member association were not deemed to form part of that single word within article 22 paragraph 1 (c) of the Regulations.

CAS endorsed this approach on several occasions.[734] It has stated that the term "*coach*" generally refers to the person in charge of the technical activities of the team, whose primary role and professional duties must be related to training and selecting the team to take part in matches. They are responsible for setting the strategy and tactics the team will try to implement on the pitch. A coach should be engaged in activities inherent to football that do not exist in the same way in other sports.

The new definition effectively captures all these elements, with one additional extension.

The first key point is in the preamble to the definition, which identifies a coach as an individual employed in a "*football-specific occupation*". This means that, in accordance with the jurisprudence in place prior to 1 January 2021, individuals practising activities that are not inherent to football are excluded from FIFA jurisdiction: nutritionists, sports scientists, fitness coaches, and the like.

The second key point is in the first sub-paragraph of the definition which links the definition of "*coach*" to the "*employment duties*" of the individual. These duties are often set out explicitly in the employment contract; they can also be demonstrated through the physical actions undertaken by the individual. In short, to be deemed a coach an individual in a football-specific occupation must have one or more of the following employment duties: (i) training and coaching players; (ii) selecting players for matches and competitions; or (iii) making tactical choices during matches and competitions. This sub-paragraph captures head coaches, assistant coaches, and specialist football coaches (such as goalkeeper coaches), and broadly reflects the CAS jurisprudence.

733 Single Judge Players' Status Committee decision of 24 July 2019, Reguera; Single Judge Players' Status Committee decision of 24 July 2019, Ruiz de Lara; Single Judge Players' Status Committee decision of 24 July 2019, Maldonado.

734 CAS 2009/A/2000 Eduardo Julio Urtasun v. FIFA; CAS 2016/A/4878 Anthony Garzitto v. Al-Hilal SC & FIFA.

The third key point, in the second sub-paragraph of the definition, is new and recognises the growing professionalism of the coaching industry, and in particular the football-specific coaching licence courses that are delivered by the confederations. As an alternative to the "*employment duties*" link to the definition of "*coach*", this sub-paragraph links an employment position that requires the holding of a coaching licence in accordance with a domestic or continental (club) licensing regulation.

In this respect, two additional elements must be considered. First, the "*coaching licence*" must be one that is issued by a football body affiliated to FIFA, whether a confederation or member association. Second, the domestic or continental (club) licensing regulation must provide that the relevant employment position is mandatory, and that the individual employed in that position must hold such a "*coaching licence*".

By way of example, the *AFC Club Licensing Regulations 2021* require all clubs participating in the AFC Champions League to employ a "*Club Technical Director*" who must hold (at least) an AFC "A" coaching licence or its equivalent recognised by the AFC. An individual employed in this role is clearly in a football-specific occupation requiring them to hold a coaching licence but does not fit the traditional definition of coach set out in the first sub-paragraph. Similarly, the *UEFA Club Licensing and Financial Fair Play Regulations* require all clubs participating in the UEFA Champions League to employ a "*Head of Youth Development Programmes*" who must hold (at least) the second-highest available UEFA coaching licence of the UEFA member association, or a valid non-UEFA coaching diploma, or a UEFA Elite Youth A coaching licence. Again, an individual employed in this role finds themself in the same situation.

b) SCOPE OF ANNEXE 2

Annexe 2 does not apply to all coaches globally. Paragraph 2 provides that annexe 2 applies to coaches that are:

(i) paid more for their coaching activity than the expenses they effectively incur. In other words, annexe 2 does not apply to volunteer coaches; and

(ii) employed by a "*professional club*" or association.

The Regulations define a "professional club" as a "club that is not a purely amateur club". A "purely amateur club" is defined as a "club with no legal, financial, or de facto links to a professional club that: (i) is only permitted to register amateur players; or (ii) has no registered professional players; or (iii) has not registered any professional players in the three years prior to a particular date".

Aside from these limitations, the scope of annexe 2 remains broad. It applies equally to football and futsal, and it does not limit its application to the first-team (or senior professional teams) of a club, or the "A" representative teams of a member association.

c) CONTRACTUAL PROTECTIONS

Article 2 of annexe 2 sets out the minimum standards for coach employment contracts and protections for coaches.

The first standard is that the contract must be in writing. The second is not so obvious. The phrase "*executed on an individual basis*" at the end of paragraph 1 explicitly prohibits so-called 'group contracts'. It is not uncommon for the PSC to decide on matters whereby a foreign head coach is accompanied by their chosen coaching team of 6 or 7 staff covering both football-specific and non-football-specific roles. To try and avoid those individuals not employed in football-specific roles not being subject to FIFA jurisdiction, the foreign head coach signs a single contract with the club which covers the payment for the whole coaching team, who effectively act as his sub-contractors (i.e. the foreign head coach receives the salary for the whole coaching team from the club, and then pays his coaching team directly). Such mechanisms are now outlawed, to protect the Regulations from being circumvented.

The third standard is an express provision covering the essential elements for a contract to be deemed a coach employment contract. In this context, the use of the singular "*contract*" in paragraph 2 as opposed to "*employment contract*" is deliberate; given the transient nature of their appointment, it is quite common that coaches do not execute employment contracts *per se* – some are characterised as freelance agreements, in other cases a coach may manage their business affairs through a private company. What is important is that the contract (in whatever form) governing the relationship between the coach and the professional club, or member association, includes all the essential elements of an employment contract. These are listed in the paragraph.

Paragraphs 4 to 6 of article 2 provide express protections for coaches. Much like article 18 paragraph 4 of the Regulations for professional players, the validity of coach employment contracts cannot be made subject to certain administrative or regulatory matters, such as the granting of a work or residence permit, or requirement to hold a specific coaching licence. Professional clubs and member associations that wish to employ a coach must undertake the necessary due diligence to ensure that the coach meets the necessary legal and regulatory requirements to be employed prior to employing them. If a contract contains such clause, i.e. a *pre-condition* or *condition precedent*, and a professional club or member association seeks to rely on it to justify the unilateral termination or the non-execution of the contract, the clause will be deemed invalid, and the termination likely will be deemed to have been made without just cause.

Paragraph 6 is effectively identical to article 18 paragraph 6 of the Regulations.

The commentary regarding article 18 paragraphs 4 and 6 of the Regulations are equally applicable to article 2 paragraphs 4 to 6 of annexe 2.

1.2. Relevant jurisprudence

- CAS 2009/A/2000 Eduardo Julio Urtasun v. FIFA
- CAS 2016/A/4878 Anthony Garzitto v. Al-Hilal SC & FIFA

ANNEXE 2, Articles 3 to 8

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1.1. Purpose and scope 466

ANNEXE 2, Article 3 - Respect of contracts

1. A contract may only be terminated upon expiry of its term or by mutual agreement.

ANNEXE 2, Article 4 - Terminating a contract with just cause

1. A contract may be terminated by either party without the payment of compensation where there is just cause.
2. Any abusive conduct of a party aimed at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty to terminate the contract with just cause.

ANNEXE 2, Article 5 - Terminating a contract with just cause for outstanding salaries

1. In the case of a club or association unlawfully failing to pay a coach at least two monthly salaries on their due dates, the coach will be deemed to have a just cause to terminate their contract, provided that they have put the debtor club or association in default in writing and granted a deadline of at least 15 days for the debtor club or association to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.
2. For any salaries of a coach which are not due on a monthly basis, the pro-rata value corresponding to two months shall be considered. Delayed payment of an amount which is equal to at least two months shall also be deemed a just cause for the coach to terminate their contract, subject to compliance with the notice of termination as per paragraph 1 above
3. Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated in paragraphs 1 and 2 above. The terms of such an agreement shall prevail.

ANNEXE 2, Article 6 - Consequences of terminating a contract without just cause

1. In all cases, the party in breach shall pay compensation.
2. Unless otherwise provided for in the contract, compensation for the breach shall be calculated as follows:

Compensation due to a coach

a) In case the coach did not sign any new contract following the termination of their previous contract, as a general rule, the compensation shall be equal to the residual value of the contract that was prematurely terminated.

b) In case the coach signed a new contract by the time of the decision, the value of the new contract for the period corresponding to the time remaining on the prematurely terminated contract shall be deducted from the residual value of the contract that was terminated early (the "Mitigated Compensation"). Furthermore, and subject to the early termination of the contract being due to overdue payables, in addition to the Mitigated Compensation, the coach shall be entitled to an amount corresponding to three monthly salaries (the "Additional Compensation"). In case of egregious circumstances, the Additional Compensation may be increased up to a maximum of six monthly salaries. The overall compensation may never exceed the residual value of the prematurely terminated contract.

c) Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may deviate from the principles stipulated above. The terms of such an agreement shall prevail.

Compensation due to a club or an association

d) Compensation shall be calculated on the basis of the damages and expenses incurred by the club or the association in connection with the termination of the contract, giving due consideration, in particular, to the remaining remuneration and other benefits due to the coach under the prematurely terminated contract and/or due to the coach under any new contract, the fees and expenses incurred by the former club (amortised over the term of the contract), and the principle of the specificity of sport.

3. Entitlement to compensation cannot be assigned to a third party.
4. Any person subject to the FIFA Statutes who acts in a manner designed to induce a breach of contract between a coach and a club or association shall be sanctioned.

ANNEXE 2, Article 7 - Overdue payables

1. Clubs and associations are required to comply with their financial obligations towards coaches as per the terms stipulated in the contracts signed with their coaches.
2. Any club or association found to have delayed a due payment for more than 30 days without a *prima facie* contractual basis may be sanctioned in accordance with paragraph 4 below.
3. In order for a club or an association to be considered to have overdue payables in the sense of the present article, the creditor coach must have put the debtor club or association in default in writing and have granted a deadline of at least ten days for the debtor club or association to comply with its financial obligation(s).
4. Within the scope of its jurisdiction, the Football Tribunal may impose the following sanctions:
   a) warning;
   b) reprimand;
   c) fine.
5. The sanctions provided for in paragraph 4 above may be applied cumulatively.
6. A repeated offence will be considered an aggravating circumstance and lead to a more severe penalty.
7. The terms of the present article are without prejudice to the payment of compensation in accordance with article 6 paragraph 2 above in the event of unilateral termination of the contractual relationship

ANNEXE 2, Article 8 - Consequences for failure to pay relevant amounts in due time

1. When:
   a) the Football Tribunal orders a party (a club, a coach or an association) to pay another party (a club, a coach or an association) a sum of money (outstanding amounts or compensation), the consequences of the failure to pay the relevant amounts in due time shall be included in the decision;
   b) parties to a dispute accept (or do not reject) a proposal made by the FIFA general secretariat pursuant to the Procedural Rules Governing the Football Tribunal, the consequences of the failure to pay the relevant amounts in due time shall be included in the confirmation letter.
2. Such consequences shall be the following:
   a) Against a club: a ban from registering any new players, either nationally or internationally, up until the due amounts are paid. The overall maximum duration of the registration ban shall be of up to three entire and consecutive registration periods, subject to paragraph 7 below.
   b) Against an association: a restriction on receiving a percentage of development funding, up until the due amounts are paid, subject to paragraph 7 below.
   c) Against a coach: a restriction on any football-related activity up until the due amounts are paid. The overall maximum duration of the restriction shall be of up to six months, subject to paragraph 7 below.
3. Such consequences may be excluded where the Football Tribunal has been informed that the debtor club or association was subject to an insolvency-related event pursuant to the relevant national law and is legally unable to comply with an order.
4. Where such consequences are applied, the debtor must pay the full amount (including all applicable interest) due to the creditor within 45 days of notification of the decision.
5. The 45-day time limit shall commence from notification of the decision or confirmation letter.
   a) The time limit is paused by a valid request for grounds of the decision. Following notification of the grounds of the decision, the time limit shall recommence.
   b) The time limit is also paused by an appeal to the Court of Arbitration for Sport.

6. The debtor shall make full payment (including all applicable interest) to the bank account provided by the creditor, as set out in the decision or confirmation letter.

7. Where the debtor fails to make full payment (including all applicable interest) within the time limit, and the decision has become final and binding:

   a) the creditor may request that FIFA enforce the consequences;

   b) upon receipt of such request, FIFA shall inform the debtor that the consequences shall apply;

   c) the consequences shall apply immediately upon notification by FIFA, including, for the avoidance of doubt, if they are applied during an open registration period. In such cases, the remainder of that registration period shall be the first"entire" registration period for the purposes of paragraph 2 a);

   d) the consequences may only be lifted in accordance with paragraph 8 below.

8. Where the consequences are enforced, the debtor must provide proof of full payment (including all applicable interest) to FIFA, for the consequences to be lifted.

   a) Upon receipt of the proof of payment, FIFA shall immediately request that the creditor confirm receipt of full payment within five days.

   b) Upon receipt of confirmation from the creditor, or after expiry of the time limit in the case of no response, FIFA shall notify the parties that the consequences are lifted.

   c) The consequences shall be lifted immediately upon notification by FIFA.

   d) Notwithstanding the above, where full payment (including all applicable interest) has not been made, the consequences shall remain in force until their complete serving.

9. For the avoidance of doubt, the provisions set out in article 25 apply equally to this annexe.

1.1. Purpose and scope

Articles 3 to 8 of annexe 2 reflect the same principles and rules contained in the provisions governing the maintenance of contractual stability between professional players and clubs, with minor amendments to govern the specificity of the employment relationship between a coach and a professional club and/or member association.

Article 3 of annexe 2 is effectively identical to article 13 of the Regulations.

Article 4 of annexe 2 is effectively identical to article 14 of the Regulations.

Article 5 of annexe 2 is effectively identical to article 14bis of the Regulations.

Although article 6 of annexe 2 is has several differences in scope to article 17 of the Regulations, the same principles generally apply. To be clear: no provision is made for joint and several liability of a new club or member association if a coach is found liable to pay compensation, nor is any provision made for sporting sanctions to be imposed on a coach, or on a club or member association, given that no regulatory "*protected period*" exists with respect to coaching contracts.

Article 7 of annexe 2 is identical to article 12bis of the Regulations, with the exception of one type of sanction.

Article 8 of annexe 2 is identical to article 24 of the Regulations, with one exception. Unlike professional players, coaches may be employed by member associations. It is not uncommon for an employment-related dispute of an international-dimension between a coach and a member association to be determined by the PSC. As such, it was necessary to introduce consequences for member associations that fail to pay the relevant amounts ordered in such decisions. Unlike clubs, that participate in the football transfer market, the range of appropriate consequences for member associations is limited. Subsequently, it was decided that the most appropriate consequence would be a restriction on receiving a percentage of FIFA development funding (e.g. FIFA Forward Programme funds) until the due amounts are paid. This will incentivise member associations to comply with such decisions.

With respect to these provisions, the discussion elsewhere in this Commentary regarding the equivalent provisions related to players applies equally to these provisions in annexe 2, particularly where the wording is identical.

ANNEXE 3
Transfer Matching System

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BACKGROUND

The success story of TMS began on 31 May 2007, when the 57th FIFA Congress approved a proposal from the Task Force "*For the Good of the Game*" to develop a transfer matching system for professional football. The idea was to create a web-based system for exchanging data so that all parties involved could enter their data for it to be assessed. TMS was intended to play a central role in the administrative procedures governing the transfer of players between member associations. It was emphasised from the outset that a player's right to play would not be affected by the implementation of the new system.[735]

TMS was first piloted with a select group of member associations in January 2008 and was gradually rolled out to all other clubs and member associations over the following years. This roll-out was accompanied by a programme of visits by the TMS staff to introduce the system.[736] Finally, on 5 October 2009, a one-year transition period began prior to the system becoming mandatory. This transition period ensured that clubs and member associations were given two full registration periods in which to familiarise themselves with the new system and the processes associated with it.[737]

Annexe 3 of the Regulations first came into force on 1 October 2010.[738] This was even though the use of TMS had been mandatory since 1 October 2009 for all applications to the SCM.

When TMS was first made mandatory, it only applied to international transfers of professional male players in eleven-a-side football. From 1 January 2018, TMS has also been mandatory for all international transfers of professional female players in eleven-a-side football.[739] From 1 July 2020, all international transfers in amateur eleven-a-side football must be conducted using TMS. This means that the use of TMS is mandatory for all international transfers in eleven-a-side football.[740]

A mechanism for claiming solidarity mechanism and training compensation was incorporated into TMS on 1 October 2015. All such claims are now submitted through TMS before being adjudicated upon by the DRC.

735 Definition 13, Regulations.
736 Circular no. 1174 of 12 January 2009.
737 Circular no. 1205 of 23 September 2009.
738 Circular no. 1233 of 12 July 2010.
739 Circular no. 1601 of 31 October 2017.
740 Circular no 1679 of 1 July 2019.

The "pre-TMS era" was characterised by a lack of transparency and central monitoring regarding money flows. It could take weeks to complete an international transfer, with parties travelling extensively to deliver transfer documents in person, and these documents being archived in hard copy. This made the transfer system vulnerable to money laundering, and the process used to protect minor players from exploitation was unwieldy and not particularly effective.

TMS is focused on ensuring the whole transfer process is conducted in one place and maintaining the integrity of the football transfer system. It has increased transparency, by ensuring information is controlled centrally using standardised procedures. The system has provided open access to information, resulting in a much more efficient system for completing international transfers.

TMS does not impact, alter, or affect the substance of the various provisions contained in the Regulations. However, TMS does play a crucially important role in safeguarding and enforcing key aspects, primarily as far as adherence to registration periods is concerned, but also as regards the protection of minors and the enforcement of suspensions imposed on clubs and member associations.

ANNEXE 3, Article 1 - Scope

1.1. Purpose and scope 472

a) Increasing transparency in the transfer system 472

b) Protecting minors 473

c) Improving the administrative procedure governing transfers between member associations 473

d) Claim management tool for training rewards 473

ANNEXE 3, Article 1 - Scope

1. The transfer matching system (TMS; cf. point 13 of the Definitions section) is designed to ensure that football authorities have more details available to them on international player transfers. This will increase the transparency of individual transactions, which will in turn improve the credibility and standing of the entire transfer system.
2. TMS is designed to clearly distinguish between the different payments in relation to international player transfers. All such payments must be entered in the system as this is the only way to be transparent about tracking the money being moved around in relation to these transfers. At the same time, the system will require associations to ensure that it is indeed a real player who is being transferred and not a fictitious player being used for illicit activities such as money laundering.
3. TMS helps safeguard the protection of minors. If a minor is being registered as a non-national for the first time or is involved in an international transfer, approval must be given by the Players' Status Chamber of the Football Tribunal for that purpose (cf. article 19 paragraph 4). The request for approval by the association that wishes to register the minor on the basis of article 19 paragraph 2, 3, or 4 c) and the subsequent decision-making workflow must be conducted through TMS.
4. Within the scope of the present annexe (cf. specifically, article 1 paragraph 5), TMS is the means by which ITCs are requested and delivered.
5. The use of TMS is a mandatory step for all international transfers of professional and amateur players (both male and female) within the scope of eleven-a-side football, and any registration of such a player without the use of TMS will be deemed invalid. In the following articles of the present annexe, the term "player" will refer to male and female players participating in eleven-a-side football. Within this Annexe, the term "international transfer" will exclusively refer to the transfer of such players between associations.
6. Every international transfer within the scope of eleven-a-side football must be entered in TMS. If the player will be registered as an amateur by the new association, the transfer instruction shall be entered in TMS by the club(s) holding a TMS account, or, in the case of a club not holding a TMS account, by the association concerned.

1.1. Purpose and scope

TMS plays an active role in four core areas.

a) INCREASING TRANSPARENCY IN THE TRANSFER SYSTEM

As clubs and member associations are required to enter specific information and upload a series of documents into TMS whenever a player is internationally transferred in eleven-a-side football, football authorities now have more details available to them regarding individual transfers. This increases transparency at the same time as bolstering the credibility of the entire football transfer system.

Financial flows are especially important in this respect. TMS is designed to distinguish between the different payments made in connection with international transfers. Training compensation, transfer compensation, sell-on fees, solidarity contributions and payments made to trigger buy-out clauses must all be declared separately in TMS.[741] Each individual club-to-club payment recorded in the system can also be tracked using TMS. To enable payments to be monitored in this way, clubs must declare all payments made, and upload evidence of the relevant transfers of funds into TMS.[742]

The mandatory requirement for all member associations to introduce electronic systems for national transfers (modelled on the TMS system used for international transfers), national electronic player registration systems, and the FIFA Connect System by 1 July 2020, is also intended to increase transparency.[743] Specifically, these systems will help to ensure that reliable and complete player registration data is available in the form of an electronic player passport.

TMS also aims to combat attempts to launder money through the football transfer system. A relatively simple example of a transfer-related money laundering scam is where a fictional player is transferred in return for a real fee. The use of the various computerised systems will eliminate schemes of this kind. TMS includes several features designed to ensure that all players being transferred are real players. The most important of these is that the system prevents an ITC from being requested until the details of the player concerned have been checked, edited as required, and confirmed by the member association to which the club releasing the player is affiliated.[744]

741 Article 4 paragraph 3 of Annexe 3, Regulations: "Indication of whether the transfer is being made against any of the following payments:".

742 Article 4 paragraph 7 of Annexe 3, Regulations.

743 Circular no. 1679 of 1 July 2019.

744 Article 5.2 paragraph 1 of Annexe 3, Regulations.

Furthermore, proof of the player's identity, nationality (or nationalities) and date of birth, such as a copy of their passport or national identity card, must be uploaded by the player's new club before the transfer can be confirmed.[745] This requirement also prevents duplicate player records in TMS.

b) PROTECTING MINORS

TMS is used to process all applications for the international transfer of a minor or first registration of a foreign minor player. Both types of application must be submitted to the PSC via TMS.

c) IMPROVING THE ADMINISTRATIVE PROCEDURE GOVERNING TRANSFERS BETWEEN MEMBER ASSOCIATIONS

The original and core mission of TMS was and remains to facilitate and manage the process associated with the international transfer of players.

TMS must be used for all international transfers in eleven-a-side football. Any transfers not completed using TMS are invalid.

Generally, it is for the club(s) involved in transferring a player internationally to enter the relevant transfer instruction in TMS. This is done by entering all the required information and supporting documentation into the system. However, the Regulations recognise that some clubs do not have their own TMS accounts, since they have never had to transfer a player internationally, or only do so very rarely. In the case of a professional club, they must appoint a TMS manager and facilitate the necessary instructions in the system. In the case of a purely amateur club, the member association to which it is affiliated will have to enter the instruction to register the player on its behalf.

d) CLAIM MANAGEMENT TOOL FOR TRAINING REWARDS

Although it is not explicitly mentioned in annexe 3, TMS also provides training clubs with a claim management tool to help them assert their entitlements to training rewards. Claims are submitted and managed through TMS before being decided upon by the DRC.

745 Article 8.2 paragraph 1 of Annexe 3, Regulations.

ANNEXE 3, Article 2 - System

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ANNEXE 3, Article 2 - System

1. TMS provides associations and clubs with a web-based data information system designed to administer and monitor international transfers.
2. Depending on the type of instruction, a variety of information must be entered.
3. In case of an international transfer where no transfer agreement exists, the new club must submit specific information and upload certain documents relating to the transfer into TMS. The process is then moved to the associations for electronic ITC handling (cf. section 8 below).
4. In case of an international transfer where a transfer agreement exists, both clubs involved must, independently of each other, submit information and, where applicable, upload certain documents relating to the transfer into TMS as soon as the agreement has been formed.
5. In the case referred to in the preceding paragraph of this article, the process is only moved to the associations for electronic ITC handling (cf. section 8 below) once club-level agreement has been reached.

1.1. Purpose and scope

a) GENERAL PRINCIPLES

Clubs involved in transferring a player internationally enter a variety of information into TMS depending on the nature of the specific transfer instruction. The first distinction to be made is between the club releasing the player (also referred to as the player's former club) and the one engaging the player (their new club). The information provided also depends on whether the transfer is permanent or a loan, whether there is a transfer agreement in place with the club releasing the player, and whether the transfer entails an exchange of (professional) players between the two clubs (i.e. a "swap deal"). If the instruction follows an earlier loan, the clubs must specify whether the new instruction relates to the player's return from the loan, an extension of their existing loan, the loan being converted into a permanent transfer, or the conclusion of the loan. The transfer record on TMS must also state whether the transfer is being made in return for compensation or not.[746]

746 Article 4 paragraph 3 of Annexe 3, Regulations.

b) SUBMITTING INFORMATION AND UPLOADING DOCUMENTS

When processing an international transfer, a club will have to enter a wide range of information in the system. In order to do so, it will have to reply to four essential questions:

1. Is the club engaging or releasing the player?
2. Is it a permanent transfer or a loan transfer?
3. Is there any agreement concluded between the clubs involved in the transaction?
4. Is there any payment to be made between the clubs?

i. Procedure where no transfer agreement is in place

While the new club is always required to enter specific information and upload certain documents relating to the transfer into TMS, the former club will only have to do so if the player is transferred based on a transfer agreement. If there is no transfer agreement, the new club will have to provide the information and documentation to enable the member association to which it is affiliated to request the ITC. Once the club has fulfilled its duties, the focus of the process moves to the member associations to which the two clubs are affiliated, which are responsible for dealing with the ITC.

ii. If there is a transfer agreement, data must match

If a transfer agreement is in place, both clubs must enter information into TMS independently of each other. TMS is a data matching system, not a negotiation tool. It only plays a role once a transfer agreement has been concluded between the clubs. At that point, both clubs must enter the relevant information into TMS before their respective member associations can deal with the ITC process. The transfer will not move to the ITC stage until the information entered by both clubs is confirmed and matched on the system.

TMS will first compare information regarding the type of instruction concerned, the player's name, and the name of the other club involved in the transaction. For example, if one of the clubs instructs that it wants to sign a player permanently from the other club in return for a fee (referred to as "against payment" in the system), TMS will search for an instruction from the other club stating it wishes to release the same player to the other club, permanently, and in return for a fee.

Once these basic details have been checked, TMS goes on to compare all other details entered into the system,[747] to make sure they match and reflect the terms of the transfer agreement. Where discrepancies (known as "matching exceptions") arise, the clubs are expected to work together to resolve them and correct the details accordingly.[748]

747 Article 4 paragraph 3 of Annexe 3, Regulations.
748 Article 4 paragraph 5 of Annexe 3, Regulations.

ANNEXE 3, Article 3 - Users

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ANNEXE 3, Article 3 - Users

1. All users shall act in good faith.
2. All users shall check TMS at regular intervals on a daily basis and pay particular attention to any enquiries or requests for statements.
3. Users are responsible for ensuring that they have all the necessary equipment to fulfil their obligations.

3.1. Clubs

1. Clubs are responsible for entering and confirming transfer instructions in TMS and, where applicable, for ensuring that the required information matches. This also includes uploading the required documents.
2. Clubs are responsible for ensuring that they have the necessary training and know-how in order to fulfil their obligations. In this regard, clubs shall appoint TMS managers who are trained to operate TMS, and shall be responsible for the training of a replacement TMS manager if required, so that clubs are at all times in a position to fulfil their obligations in TMS. The FIFA Regulatory Enforcement department and the relevant hotline may assist them in this respect with all technical-related issues, if need be. Furthermore, article 5.3 of this annexe applies in connection with this matter.

3.2. Associations

1. Associations are responsible for maintaining their season and registration details, if applicable for male and female players separately, as well as those of their clubs (including, in particular, the categorisation of clubs in connection with training compensation). In addition, they are responsible for conducting the electronic ITC process (cf. section 8 below) and, where applicable, for confirming players deregistering from their association.
2. Associations are responsible for ensuring that they have the necessary training and know-how in order to fulfil their obligations. In this regard, each association shall appoint a TMS manager and, at least, one additional user who are trained to operate TMS. Associations shall be responsible for the training of a replacement TMS manager if required, so that associations are at all times in a position to fulfil their obligations in TMS. The FIFA Regulatory Enforcement department and the relevant hotline may assist them in this respect with all technical-related issues, if need be.

3.3. FIFA general secretariat

The various competent departments within the FIFA general secretariat are responsible for

a) entering relevant sporting sanctions and managing possible objections to regulation infringements;

b) entering relevant disciplinary sanctions;

c) entering association suspensions.

3.4. Confidentiality and access

1. Associations and clubs will keep all data obtained based on the access to TMS strictly confidential and take all reasonable measures and apply the highest degree of care in order to guarantee at all times complete confidentiality. Furthermore, associations and clubs will use the confidential information exclusively for the purpose of accomplishing player transactions in which they are directly involved.
2. Associations and clubs will ensure that only authorised users have access to TMS. Furthermore, associations and clubs will select, instruct and control the authorised users with the highest possible care.

1.1. Purpose and scope

The users of TMS are clubs, member associations and the FIFA general secretariat. All users are required to act in good faith when using the system.

a) IMPORTANCE OF TIMELY RESPONSES AND COOPERATION

Besides having the equipment necessary to fulfil their obligations, it is of utmost importance for all users to check TMS each day and to pay attention to any enquiries or requests for information.

When a player is internationally transferred on the basis of a transfer agreement, the process of dealing with the ITC cannot begin until the data entered by the two clubs in TMS is confirmed to match.[749] Hence it is essential that the former club cooperates fully, specifically by entering the counter-instruction in TMS in due time, and working with the new club to resolve any matching exceptions.[750] Equally, for international transfers involving professionals, the former club is expected to reply quickly to any request concerning its contractual relationship with the player, irrespective

749 Article 2 paragraph 5 of Annexe 3, Regulations.
750 Article 4 paragraph 5 of Annexe 3, Regulations.

of whether a transfer agreement is in place.[751] Failure to comply will delay and jeopardise the international transfer, and may result in disciplinary sanctions.[752]

As stated above, the ITC request procedure can only be initiated once the player's details have been verified and confirmed by the member association to which the former club is affiliated. Consequently, it is crucially important that the member association concerned proceeds without delay.[753] Failure to do so may lead to the new member association being unable to request the ITC before the closure of its registration period,[754] thus jeopardising the international transfer. The verification described in this paragraph only occurs the first time that a player is transferred internationally.

The former member association is required to reply to an ITC request within seven days.[755] If they do not respond, the new member association may (provisionally) register the player for the new club. [756]

For its part, the member association to which the new club is affiliated shall immediately request the ITC from the member association to which their former club is affiliated in TMS as soon as the new club receives notification that the request is pending.[757] Once again, any delay risks the transfer not being completed before the closure of the relevant registration period.[758]

b) THE CLUB ROLE

The primary responsibility of clubs is to enter and confirm transfer instructions, and, if applicable, to upload the mandatory documents. This applies whether they are the new club or, if a player is moving based on a transfer agreement, the former club. If the information entered separately by the two clubs does not match, they need to cooperate with each other to resolve the situation.[759]

To complete their obligations in TMS, all clubs are required to appoint TMS managers who are trained to operate the system. Clubs must also ensure that if their TMS manager leaves the club, a replacement is trained in good time and there is no lapse in the club's ability to use TMS. Not having a trained TMS manager could adversely affect a club's ability to comply with its obligations. Clubs are advised to nominate additional TMS users so that they can ensure continuity if the main TMS manager is absent from work or leaves the club.

751 Article 8.2 paragraph 3 of Annexe 3, Regulations.
752 Article 9.1 paragraph 1 of Annexe 3, Regulations.
753 Article 5.2 paragraph 1 of Annexe 3, Regulations.
754 Article 8.1 paragraph 2 of Annexe 3, Regulations.
755 Article 8.2 paragraphs 3 and 4 of Annexe 3, Regulations.
756 Article 8.2 paragraph 6 of Annexe 3, Regulations.
757 Article 8.2 paragraph 2 of Annexe 3, Regulations.
758 Article 8.1 paragraph 2 of Annexe 3, Regulations.
759 Article 4 paragraph 5 of Annexe 3, Regulations.

While it is a club responsibility to make sure that their TMS manager is trained and has the knowledge required to fulfil their role, member associations are requested to organise ongoing training for their affiliated clubs.[760] FIFA's basic approach is to "train the trainer". The FIFA general secretariat provides ongoing training to the member association, which, in turn, is expected to train its clubs. In the meantime, FIFA makes available training materials on a dedicated portal within TMS, including video tutorials, a help centre, a document library, regular newsletters, and a frequently asked questions section.

Finally, clubs and member associations are liable for the information entered in the system by their TMS managers and for the way they use the system.[761] This should be borne in mind when appointing TMS managers.

c) THE MEMBER ASSOCIATION ROLE

One of key responsibilities of a member association regarding TMS is keeping their season and registration period[762] details up to date. They are also responsible for ensuring the accuracy of the data pertaining to their clubs, including their addresses, telephone numbers, e-mail addresses, and categories for training compensation.[763] Moreover, besides playing their essential role in the ITC process, member associations are responsible for confirming the accuracy of these certificates.[764]

Just like clubs, member associations are required to appoint TMS managers who are trained to operate the system and ensure there are no gaps in their ability to use the system. While it is merely advisable for clubs to appoint additional TMS users, the Regulations explicitly recommend that member associations appoint at least one additional TMS user in addition to the TMS manager, and ensure they are trained to operate the system.

It is the responsibility of member associations to make sure their TMS users are trained and have the knowledge required to fulfil their roles. As stated above, the FIFA general secretariat is responsible for training the TMS managers and users appointed by member associations.

d) THE ROLE OF THE FIFA GENERAL SECRETARIAT

Sporting and disciplinary sanctions imposed on clubs and member associations must be entered in TMS, as must any suspensions to which member associations are subject. This task is performed by the FIFA general secretariat. The FIFA general secretariat is also responsible for investigating violations of the Regulations.

760 Article 5.3 of Annexe 3, Regulations.
761 Article 9.1 paragraph 3 of Annexe 3, Regulations.
762 Article 5.1 paragraph 1 of Annexe 3, Regulations.
763 Article 5.1 paragraph 2 of Annexe 3, Regulations.
764 Article 5.2 paragraph 2 of Annexe 3, Regulations.

e) CONFIDENTIALITY AND ACCESS

FIFA confirms that TMS is secure, and that the information therein is kept confidential in accordance with Swiss data protection law and the European Union General Data Protection Regulation.

It goes without saying that the information in TMS is extremely sensitive. At the same time, TMS cannot function unless it includes this sensitive information, and that the parties concerned will only provide this data if they trust the safeguards in place and are confident that their data is as safe as possible.

Access to TMS is restricted to authorised users. The other core responsibility of the FIFA general secretariat is to set user access rights and criteria for authorised users.[765]

To ensure the confidentiality of the data in the system, all TMS users must sign a data protection agreement committing them to take all necessary steps to ensure access is restricted for work-specific purposes and the information is kept confidential. Moreover, each individual TMS user, club, and member association is bound by the terms of a data protection agreement and is issued with unique login credentials which must also be kept confidential.[766]

As part of the data protection measures, member associations and clubs are explicitly required to use any confidential information they may obtain exclusively for the purpose of completing transactions in which they are directly involved. Member associations and clubs must ensure that only authorised users can access TMS. This requirement includes a strict ban on sharing login credentials with anyone else, including people working for, or acting on behalf of, a club or member association. Any party that does so may be sanctioned.

765 Article 7 paragraph 1 of Annexe 3, Regulations.
766 Circular no. 1405 of 16 January 2014.

ANNEXE 3, Article 4 - Obligations of clubs

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b) Process-related obligations 486

i. Compulsory data 486

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ANNEXE 3, Article 4 - Obligations of clubs

1. Clubs must ensure that their contact details, (i.e. address, telephone number and e-mail address) and banking details are valid and kept up-to-date at all times.
2. Clubs must use TMS for international transfers of players.
3. Clubs and, if applicable, associations (cf. Annexe 3, article 1 paragraph 6 and article 5) must provide the following compulsory data when creating instructions, as applicable:-Instruction type (Engage player or Release player);

   - Indication of whether the transfer is on a permanent basis or on loan
   - Indication of whether there is a transfer agreement with the former club
   - Indication of whether the transfer relates to an exchange of players
   - If related to an earlier loan instruction, indication of whether:
     - it is a return from loan; or
     - it is a loan extension; or
     - the loan is being converted into a permanent transfer
   - Player's name, nationality(ies) and date of birth
   - Player's former club
   - Player's former association
   - Date of the transfer agreement
   - Start and end dates of the loan agreement
   - Club intermediary's name and commission
   - Start and end dates of player's contract with former club
   - Reason for termination of player's contract with former club
   - Start and end dates of player's contract with new club
   - Player's fixed remuneration as provided for in player's contract with new club
   - Player intermediary's name
   - Indication of whether the transfer is being made against any of the following payments:
     - Fixed transfer fee, including details of instalments, if any

- Any fee paid in execution of a clause in the player's contract with his/her former club providing for compensation for termination of the relevant contract
- Conditional transfer fee, including details of conditions
- Sell-on fees
- Solidarity contribution
- Training compensation

– Payment currency

– Amount(s), payment date(s) and recipient(s) for each of the above listed types of payments

– Own banking details (name of bank or bank code; account number or IBAN; bank address; account holder)

– Declaration on third-party payments and influence

– Declaration on third-party ownership of players' economic rights;

– Player's status (amateur or professional) at the former club;

– Player's status (amateur or professional) at the new club.

4. Clubs are also obliged to upload at least the mandatory documents to support the information that has been entered in TMS (cf. Annexe 3, article 8.2 paragraph 1) and provide confirmation of the relevant instruction.

5. Equally, where matching exceptions arise, clubs are required to resolve them with the participation of the other club concerned.

6. The procedure in relation to the ITC request (cf. Annexe 3, article 8.2 paragraph 1) can only be initiated once the club(s) have complied with their obligations in line with the preceding paragraphs of this article.

7. Clubs must declare in TMS any payments made. This also applies to payments made by the player's new club to the player's former club on the basis of contractual clauses contained in the player's contract with his/her former club and despite no transfer agreement having been concluded. When declaring the execution of a payment, the club making the payment must upload evidence of the money transfer into TMS within thirty (30) days of the date of the payment.

If payment is made in instalments, such evidence must be uploaded for the payment of each instalment within 30 days of the date of each payment.

Where a payment indicated in TMS is no longer applicable (e.g. as a result of a contractual amendment or conditional payment not due), the clubs involved in the transfer shall request the force closure of the transfer without delay.

1.1. Purpose and scope

a) DATA MANAGEMENT

In proceedings before the FT, communication with parties is by e-mail, which is deemed sufficiently traceable for establishing whether deadlines have been met.

FIFA sends its communications to the parties in the proceedings using either the e-mail addresses provided or those in TMS. The e-mail addresses entered in TMS by clubs are considered a valid and binding means of communication. Parties are obliged to comply with the instructions provided in FIFA communications sent to the relevant e-mail addresses.

In view of the above, clubs are therefore advised to make sure that their address, telephone number, and e-mail address in TMS are kept up to date.

b) PROCESS-RELATED OBLIGATIONS

i. Compulsory data

To complete a transfer using TMS, certain compulsory data must be entered in the system.

Engaging clubs are always required to enter the relevant details into TMS as part of the application for registration, while clubs releasing players will only have to enter such data if a transfer agreement is in place.

The instruction type and certain types of payments have already been addressed above. Alongside this information, data that allows individual players to be identified, such as their name, date of birth, nationality, and status (amateur or professional) at their former and new clubs respectively, also must be entered into TMS, along with the details of the two clubs involved in the international transfer. The former member association must also be shown in TMS, as it will be asked to issue the ITC in due course. There is no need to enter the details of the member association to which the proposed new club is affiliated, because it will have to request the ITC, and disclose its details when it does so.

In line with article 8, if an international transfer concerns a professional, data reflecting the basic remuneration and the start and end dates of their new contract must be entered in TMS. The start and end date of the previous

contract and the reason for its termination must also be disclosed[767]. This is especially important if a request is made to register the player outside a registration period, or if the former member association refuses to issue the ITC on the grounds that there is an ongoing contractual dispute between the player and their former club.

If any intermediaries are involved in the transfer, their names must be entered in TMS, along with the party (club or player) they represented. Service fees paid to intermediaries representing clubs must be disclosed, but those paid to intermediaries representing players are not disclosed, as players are not TMS users.

If there is a transfer agreement, its key details must also appear in the system.

In terms of finances, both the currency in which the agreed payment will be made and the clubs' bank details must be inserted in TMS, as well as the amounts to be paid, and the payment dates for each individual payment, regardless of payment category. Disclosing these details allows money transferred in relation to any international transfer to be monitored properly.

Following the implementation of the ban on TPO, and in view of the provision on TPI, clubs are required to provide two separate declarations, one on influence, and one on TPO (i.e. they must state whether a TPO agreement is in place or not).

Exactly which pertinent data is required depends on the nature of the instruction, so not all documents will be required for every transfer. TMS provides users with guidance as to the documents they need to submit by displaying the relevant fields as they enter the data.

The data entered must, of course, be supported by documentary evidence. Clubs are required to upload at least the relevant mandatory documents as per article 8.2 paragraph 1 of annexe 3.

Once all the required information has been entered and all mandatory documents uploaded, the clubs involved in the transfer must confirm the relevant instruction. An ITC request can only be initiated once the clubs have undertaken this (and where two instructions are applicable, they have matched). The member association to which the new club is affiliated will subsequently be able to request the ITC. This is a key aspect to bear in mind, particularly given that, as a general rule, ITCs must be requested by the new member association no later than on the last day of its registration period.[768]

767 For the sake of clarity, this may vary depending on the instruction type:
1. The start and end date of the previous employment with the former club would have to be entered by the former club when releasing the player permanently upon conclusion of a transfer agreement;
2. The date and reason for termination of the player's previous employment with the former club would have to be entered by the engaging club when engaging the player permanently without a transfer agreement;
3. The start and end date of the current employment with the former club would have to be entered by the former club when releasing the player on a loan basis.

768 Article 8.2 paragraph 2 of Annexe 3, Regulations.

ii. Payments

As previously mentioned, TMS also tracks actual payments in relation to a transfer. To this end, clubs must declare in TMS all payments made in relation to a transfer and upload corresponding evidence.

ANNEXE 3, Article 5 - Obligations of the associations

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ANNEXE 3, Article 5 - Obligations of the associations

Associations must use TMS in connection with international transfers of players.

5.1. Master data

1 The start and end dates of both registration periods and of the season, if applicable for male and female players separately, as well as of possible registration periods for competitions in which only amateurs participate (cf. article 6 paragraph 4 of these regulations), shall be entered in TMS at least 12 months before they come into force. Under exceptional circumstances, associations may amend or modify their registration period dates up until they commence. Once the registration period has begun, no alteration of dates will be possible. The registration periods shall always comply with the terms of article 6 paragraph 2.

a) Associations may, at any stage:

i. request to extend or amend their season start date and end date;

ii. request to extend or amend their registration periods that have already commenced, provided that their duration complies with the maximum limit (i.e. 16 weeks) established in article 6 paragraph 2;

iii. request to amend or postpone their registration periods that have not commenced, provided that their duration complies with the maximum limit (i.e. 16 weeks) established in article 6 paragraph 2.

b) Any such request will be assessed by the FIFA Administration and is subject to the guidelines set out in the COVID-19 Football Regulatory Issues FAQs

2 Associations shall ensure that club address, telephone, e-mail address and training category (cf. Annexe 4, article 4) information is valid and kept up-to-date at all times.

3 Associations shall ensure that all affiliated clubs and every player currently registered with the association have a FIFA ID.

4 If the FIFA Connect ID Service determines that a player is or appears to be registered in one or more electronic player registration systems, the member association(s) involved shall resolve the matter as soon as it becomes apparent, and update the FIFA Connect ID Service without delay.

e) Any other association that may be contacted for assistance in this respect is obliged to collaborate.

5.2. Transfer-related information

1. When entering transfer instructions, clubs shall specify the player involved (cf. Annexe 3, article 4 paragraph 2). TMS contains the details of many players who have participated in FIFA tournaments. If the details of the player involved are not already in TMS, the clubs shall enter them as a part of the transfer instruction. The procedure in relation to the ITC request (cf. Annexe 3, article 8.2 paragraph 1) may only be initiated once these player details have been verified, corrected if required and confirmed by the player's former association. The former association shall reject the player if the details of his/her identity cannot be fully confirmed against its own registration records. The verification of player details shall be done without delay.
2. The procedure in relation to the ITC request (cf. Annexe 3, article 82 paragraph 2) shall be carried out by the new association at the appropriate time.
3. The procedure in relation to the response to the ITC request and the player deregistration (cf. Annexe 3, article 8.2 paragraphs 3 and 4) shall be carried out by the former association at the appropriate time.
4. In case of ITC receipt, the new association is required to enter and confirm the player registration date (cf. Annexe 3, article 82 paragraph 1).
5. In case of rejection of the ITC request (cf. Annexe 3, article 82 paragraph 7), the new association is required to either accept or dispute the rejection, as the case may be.
6. In case of provisional registration (cf. Annexe 3, article 82 paragraph 6) or in case of authorisation for provisional registration by the single judge after the new association has disputed the rejection, the new association is required to enter and confirm the registration information.

5.3. Club training

To ensure that all affiliated clubs are able to fulfil their obligations in relation to this annexe, ongoing training is the responsibility of the relevant association.

1.1. Purpose and scope

a) DATA MANAGEMENT

Member associations are required to enter their registration periods into TMS, together with the dates of their season, at least 12 months before they come into force. They may only be amended or modified after this time under exceptional circumstances, and only prior to their commencement. Dates cannot be altered once the relevant registration period has begun.

Exceptional circumstances leading to changes in the relevant dates may include extreme weather, political or civil unrest, pandemics, or any other unforeseeable event that might force a member association to change the start date of its season. There may also be sporting reasons, such as a change to the number of teams participating in the national championship, or if the league involved is under new management. In practice, FIFA recognises a wide range of reasons for changing a calendar, but expects adherence to deadlines.

Registration periods apply to both professional and amateur players, as well as to men's and women's competitions. However, member associations set separate registration periods for their men's and women's professional competitions, and for amateur competitions. Although member associations have a lot of flexibility in this regard, they must comply with compulsory guidelines when setting the registration periods for their competitions. For further details on these obligations, please review the pertinent chapter in this commentary.

As stated above, it is important to ensure that the contact details in TMS are accurate and up to date at all times. Consequently, while clubs are advised to make sure that their addresses, telephone numbers, and e-mail addresses are kept up-to-date, member associations also have a duty to monitor their clubs' relevant data and intervene to amend as necessary. Member associations are also responsible for ensuring their own data remains accurate.

b) CONFIRMING PLAYER DATA

TMS includes data for many players that have participated in organised football. However, some players are not yet in TMS when they are transferred. Their data must be entered by the clubs as part of the transfer instruction (or if the new club does not have a TMS account, by their member association on their behalf).[769] The names and other details must be verified, corrected, and confirmed by the member association to which the former club is affiliated.

769 Article 4 paragraph 3 of Annexe 3, Regulations.

If any of the data cannot be fully confirmed, the player's identity will be rejected by the system, and the transfer will be cancelled. A player shall only be rejected by the former member association if they are not registered with that member association at the moment of the relevant player confirmation request.

Player data must be verified without delay, because the process of requesting an ITC cannot begin until it has been confirmed.

c) PROCESS-RELATED OBLIGATIONS

The roles of both member associations in an international transfer are described in detail in the Regulations. Since a player only becomes eligible to play for their new club in organised football once they are registered for that club with its member association, and given that the member association may only proceed to register the player once it has received their ITC from the former member association,[770] it is crucial that member associations work quickly to complete the relevant procedures. Those procedures are:

- submitting an ITC request;
- replying to the ITC request within seven days, either by delivering it and de-registering the player, or formally rejecting it;
- confirming the ITC receipt and the player's new registration with the new club; or
- if the ITC request is rejected: accepting or disputing the rejection.

The player's registration by the new member association is the final step to be carried out to complete an international transfer; the transfer is not considered completed once the ITC is received. The new member association must confirm the date of registration in TMS. The same applies to provisional registrations where there has been no response to the ITC request within seven days, or if a player is registered following authorisation from the PSC.

d) TRAINING FOR CLUBS

As discussed above, member associations have an obligation to train their clubs in the use of TMS.

770 Article 8.1 paragraph 1 of Annexe 3, Regulations.

ANNEXE 3, Article 6 - Role of FIFA general secretariat

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b) Use of documentation and evidence from TMS 497

c) Entering sanctions into TMS 497

ANNEXE 3, Article 6 - Role of FIFA general secretariat

1. Upon request from the association concerned through TMS, the relevant department will deal with any validation exceptions and, if need be, refer the matter to the Players' Status Chamber of the Football Tribunal for a decision, except for the so-called "player confirmation", which needs to be dealt with by the association concerned (cf. Annexe 3, article 5.2 paragraph 1).
2. The association(s) concerned shall be legally notified of the relevant department's assessment or the Football Tribunal decision via TMS. Notification will be deemed complete once the assessment or the decision has been uploaded into TMS. Such notification of assessments or decisions shall be legally binding.
3. Upon request, the relevant department will deal with any validation warnings and, if need be, refer the matter to the competent decision-making body for a decision.
4. Within the scope of proceedings pertaining to the application of these regulations, FIFA may use any documentation or evidence generated by or contained in TMS or obtained by the FIFA Regulatory Enforcement department on the basis of their investigation powers (cf. Annexe 3, article 7 paragraph 3) in order to properly assess the issue at stake.
5. Sporting sanctions of relevance for TMS will be entered in TMS by the competent department.
6. Disciplinary sanctions of relevance for TMS will be entered in TMS by the competent department.
7. Association sanctions of relevance for TMS will be entered in TMS by the competent department.

1.1. Purpose and scope

a) VALIDATION EXCEPTIONS AND WARNINGS

The main task of the FIFA general secretariat regarding international transfers relates to "validation exceptions" – the situations where TMS stops the transfer procedure and prevents it from moving to the next stage. This can happen, by way of example, because:

a) the player's details are still to be confirmed by the former member association;

b) the player is under 18 and the relevant minor application has not yet been accepted;

c) the new club is currently serving a transfer ban;

d) the ITC request is made outside the relevant registration period, and the exception in the third sentence of article 6 paragraph 1 of the Regulations does not apply;[771]

e) the player is out of contract and asking to be registered before the next registration period opens, and the exception in the third sentence of article 6 paragraph 1 of the Regulations does not apply;[772] or

f) the ITC request has been rejected by the former member association and the rejection has been disputed by the new member association.[773]

Confirming a player's details, as described in scenario (a), is the responsibility of the former member association. In all other circumstances, the new member association may request FIFA to intervene and override the validation exception by granting an exemption, allowing the transfer to proceed.

If requested, the FIFA general secretariat will examine whether the conditions for granting an exemption are met and inform the member association concerned. Some of the validation exceptions are based on matters of fact, such as scenarios (b), (c), (d) and (e), which must be examined on a case-by-case basis, while requests relating to scenario (f) follow their own dedicated procedures.[774] The various factors that are considered in scenarios (d) and (e) are discussed in the chapter regarding registration of players.

Should a member association or its affiliated club disagree with the initial assessment of the FIFA general secretariat, the member association may request a decision from the PSC. That decision will then be subject to appeal to CAS.[775]

771 Article 8.1 paragraph 2 of Annexe 3, Regulations.
772 Article 6 paragraph 1, Regulations.
773 Article 8.2 paragraphs 4 (b) and 7 of Annexe 3, Regulations.
774 Article 8.2 paragraph 7 of Annexe 3, Regulations.
775 Article 58, Statutes.

Since 1 March 2020, such requests have been handled directly through TMS.[776] This means that the request for intervention must be submitted by the relevant member association, and that the initial assessment or, if applicable, decision of the PSC, will also be notified through TMS. Parties are deemed to have been duly notified once the assessment or decision has been uploaded to TMS.

b) USE OF DOCUMENTATION AND EVIDENCE FROM TMS

The Regulations allow the FT or FIFA general secretariat to make use of any documentation or evidence generated by or contained in TMS or obtained by the FIFA general secretariat based on their investigatory powers, in the context of proceedings pertaining to the Regulations.

TMS thus delivers direct benefits for decision-making processes. Even where these documents are used in proceedings, they remain confidential.

c) ENTERING SANCTIONS INTO TMS

To improve and maintain transparency, sanctions imposed on member associations and clubs are entered into TMS by the FIFA general secretariat. This helps to improve compliance and facilitates monitoring and enforcement.

776 Circular no. 1709 of 13 February 2020.

ANNEXE 3, Article 7 - Role of FIFA

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a) System maintenance and responding to user requirements 500

b) Compliance 500

ANNEXE 3, Article 7 - Role of FIFA

1. FIFA is responsible for ensuring the availability of and access to the system. FIFA and the FIFA Regulatory Enforcement department is additionally responsible for managing user access and defining criteria to be an authorised user
2. To ensure that all associations are able to fulfil their obligations in relation to this annexe, ongoing training and support of member associations is the responsibility of the FIFA Regulatory Enforcement department.
3. To ensure that the clubs and associations are fulfilling their obligations in respect to this annexe, the FIFA Regulatory Enforcement department shall investigate matters in relation to international transfers. All parties are obliged to collaborate to establish the facts. In particular, they shall comply, upon reasonable notice, with requests for any documents, information or any other material of any nature held by the parties. In addition, the parties shall comply with the procurement and provision of documents, information or any other material of any nature not held by the parties but which the parties are entitled to obtain. Non-compliance with these requests from the FIFA Regulatory Enforcement department may lead to sanctions imposed by the FIFA Disciplinary Committee.

1.1. Purpose and scope

a) SYSTEM MAINTENANCE AND RESPONDING TO USER REQUIREMENTS

It is incumbent on FIFA to ensure that TMS is always accessible to its users, and that they are not hindered in carrying out their respective duties and obligations under the Regulations. FIFA is also responsible for providing ongoing training and support to member associations.

b) COMPLIANCE

The rules concerning the mandatory use of TMS are only as strong as the compliance and enforcement mechanisms associated with them. Bearing in mind the impact that a delay, error, or failure to complete a required step within a procedure might have on a player's career, and potentially on contractual agreements that have already been signed, effective measures must be in place to ensure that clubs and member associations fulfil their relevant obligations in a correct and timely manner.

The FIFA general secretariat therefore investigates any violations of the Regulations arising in relation to international transfers. During such investigations, all parties are obliged to cooperate to establish the facts. This duty requires compliance with requests for any documents, information, and other materials, of any nature, that a party may possess, and to procure such evidence if a party does not possess the relevant material but has a right to obtain it. If a party refuses or fails to cooperate and comply with such requests, it may be subject to disciplinary sanctions.[777]

777 Article 9.1 paragraph 1 and article 9.2 paragraph 1 of Annexe 3, Regulations.

ANNEXE 3, Article 8 - Administrative procedure governing the transfer of players between associations

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ANNEXE 3, Article 8 - Administrative procedure governing the transfer of players between associations

8.1. Principles

1. Any player who is registered with a club that is affiliated to one association may only be registered with a club affiliated to a different association after an ITC has been delivered by the former association and the new association has confirmed receipt of the ITC. The ITC procedure must be conducted exclusively via TMS. Any form of ITC other than the one created by TMS shall not be recognised.
2. At the very latest, the ITC must be requested by the new association in TMS on the last day of the relevant registration period of the new association.
3. The former association must upload a copy of the player passport (cf. article 7) when creating an ITC in favour of the new association.
4. The former association must upload a copy of any relevant documentation pertaining to disciplinary sanctions imposed on a player and, if applicable, their extension to have worldwide effect (cf. article 12) when creating an ITC in favour of the new association.

8.2. Creating an ITC for a player

1. All data allowing the new association to request an ITC shall be entered into TMS, confirmed and matched by the club wishing to register a player during one of the registration periods established by that association (cf. Annexe 3, article 4 paragraph 4). When entering the relevant data, depending on the selected instruction type, the new club shall upload at least the following documents into TMS:
   - a copy of the contract between the new club and the professional player, if applicable;
   - a copy of the transfer or loan agreement concluded between the new club and the former club, if applicable;
   - copy of proof of the player's identity, nationality(ies) and birth date, such as passport or identity card;
   - proof of player's last contract end date and reason for termination, if applicable.

Where third-party ownership of players' economic rights has been declared (cf. Annexe 3, article 4 paragraph 2), the former club shall upload a copy of the relevant agreement with the third party.

Documents must be uploaded in the format required by the relevant FIFA department.

If explicitly requested, a document not available in one of the four official languages of FIFA (English, French, German and Spanish), or a specifically defined excerpt of it, must be uploaded in TMS together with its respective translation in one of the four official languages. Failure to do so may result in the document in question being disregarded.

2. Upon notification in the system that the transfer instruction is awaiting an ITC request, the new association shall immediately request the former association through TMS to deliver an ITC for the player ("ITC request").

3. In the case of an international transfer of a player who had professional status at his former club, upon receipt of the ITC request, the former association shall immediately request the former club and the professional player to confirm whether the professional player's contract has expired, whether early termination was mutually agreed or whether there is a contractual dispute.

4. Within seven days of the date of the ITC request, the former association shall, by using the appropriate selection in TMS, either:

a) deliver the ITC in favour of the new association and enter the deregistration date of the player; or

b) reject the ITC request and indicate in TMS the reason for the rejection, which may be either that the contract between the former club and the professional player has not expired or that there has been no mutual agreement regarding its early termination.

At the same time, the former association shall upload a duly signed statement in one of the four official languages of FIFA (English, French, German and Spanish) in TMS supporting its argumentation for the rejection of the ITC.

The latter possibility applies to the international transfer of players who had professional status at their former clubs only.

5. Once the ITC has been delivered, the new association shall confirm receipt and complete the relevant player registration information in TMS.

6. If the new association does not receive a response to the ITC request within seven days of the ITC request being made, it shall immediately register the player with the new club on a provisional basis ("provisional registration"). The new association shall complete the relevant player registration information in TMS (cf. Annexe 3, article 52 paragraph 6).

7. The former association shall not deliver an ITC for a professional player if a contractual dispute on grounds of the circumstances stipulated in Annexe 3, article 82 paragraph 4 b) has arisen between the former club and the professional player. In such a case, upon request of the new association, FIFA may take provisional measures in exceptional circumstances. In this respect, it will take into account the arguments presented by the former association to justify the rejection of the ITC request (cf. Annexe 3, article 82 paragraphs3 and 4). If the Football Tribunal authorises the provisional registration (cf. article 23), the new association shall complete the relevant player registration information in TMS (cf. Annexe 3, article 52 paragraph 6). Furthermore, the professional player, the former club and/or the new club are entitled to lodge a claim with FIFA in accordance with article 22. The decision on the provisional registration of the player shall be without prejudice to the merits of such possible contractual dispute.

8. A player is not eligible to play in official matches for his/her new club until the new association has either:

   a) entered and confirmed the player registration date in TMS upon receipt of the ITC for the player (cf. Annexe 3, article 52 paragraph 4); or

   b) completed the player registration information in TMS upon receiving no response to the ITC request for the player within seven days of the ITC request being made or upon authorisation of FIFA to provisionally register the player (cf. Annexe 3, article 52 paragraph 6).

8.3. Loan of professional players

1. The rules set out above also apply to the loan of a professional player from a club affiliated to one association to a club affiliated to another association, as well as to his/her return from loan to his/her original club, if applicable.

2. When applying for the registration of a professional player on a loan basis, the new club shall upload a copy of the pertinent loan agreement concluded with the former club, and possibly also signed by the player, into TMS (cf. Annexe 3, article 82 paragraph 1). The terms of the loan agreement shall be represented in TMS.

3. Loan extensions and permanent transfers resulting from loans shall also be entered in TMS at the appropriate time.

1.1. Purpose and scope

The administrative procedure governing international transfers is inextricably linked to a player's registration. As already mentioned, TMS plays a crucial role in the protection and enforcement of the Regulations, both in relation to compliance with registration periods and as far as other mandatory requirements associated with the transfer and registration of players are concerned.

Most of the key provisions set out in this provision are discussed in the chapter on registration of players. Accordingly, this section of the commentary is designed to complement the information in that chapter.

a) PRINCIPLES

For guidance on compliance with registration periods in general, the importance of the ITC, the mandatory requirement to use TMS for any international transfer within eleven-a-side football, the importance of player passports, and how outstanding sanctions imposed on a player should be reflected in TMS, please refer to the chapter on registration of players.

b) DRAWING UP AN ITC FOR A PLAYER

i. Mandatory documents

The compulsory data and mandatory documents that must be confirmed, uploaded, and matched in TMS before a club can register an international transfer are discussed in the chapter on registration of players, and at certain instances in this chapter.

The core aim behind TMS is to increase transparency. It has been designed to ensure that football authorities have more details available to them regarding players' international transfers than they did in the past.[778] At the same time, it is also intended to make it easier to distinguish between the different payments made in relation to such transfers[779] and to provide greater insight into the associated money flows. As a result, the document underlying any transfer in return for a fee (i.e. a copy of the transfer agreement) must be uploaded into TMS.

To ensure the system works as it should do, the FIFA general secretariat sets the format in which the mandatory documents must be uploaded, and the maximum size of the relevant files.

778 Article 1 paragraph 1 of Annexe 3, Regulations.
779 Article 1 paragraph 2 of Annexe 3, Regulations.

All documents must be uploaded to TMS in the original version and, if requested by the FIFA general secretariat, accompanied by a translation into an official FIFA language; otherwise the document in question may not be taken into consideration. Alternatively, a translation of a specific excerpt of the document may be requested.

ii. The various steps of the process

The ITC procedure[780] can begin when:

(a) all the compulsory data[781] and mandatory documents[782] have been entered and uploaded;

(b) the relevant instruction(s) have been confirmed by the respective club(s).[783]

(c) all data submitted by the clubs has been matched;[784] and

(d) (if required) the former member association has confirmed the player's details.[785]

TMS will notify the new member association that the transfer instruction is awaiting an ITC request, at which point the new member association should request the ITC from the former member association.

All the other actions required before an ITC can be issued and the player can be registered with their new club, is governed by article 8.2 paragraphs 3 to 8 of annexe 3. This is discussed in the chapter on registration of players.

iii. Loans of professional players

For more details of the specific administrative procedure governing the international transfer of players on loan, please refer to the chapter on the registration of players.

780 Article 4 paragraph 6 and article 5.2 paragraph 1 of Annexe 3, Regulations.
781 Article 4 paragraph 3 of Annexe 3, Regulations.
782 Article 8.2 paragraph 1 of Annexe 3, Regulations.
783 Article 3.1 paragraph 1, article 4 paragraph 4 of Annexe 3, Regulations.
784 Article 2 paragraphs 4 and 5 of Annexe 3, Regulations.
785 Article 5.2 paragraph 1 of Annexe 3, Regulations.

ANNEXE 3, Article 9 - Sanctions

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ANNEXE 3, Article 9 - Sanctions

9.1. General provision

1. Sanctions may be imposed on any association or club that violates any of the provisions of the present annexe.
2. Sanctions may also be imposed on any association or club found to have entered untrue or false data into the system or for having misused TMS for illegitimate purposes.
3. Associations and clubs are liable for the actions and information entered by their TMS managers.

9.2. Competence

1. The FIFA Disciplinary Committee is responsible for imposing sanctions in accordance with the FIFA Disciplinary Code.
2. Sanction proceedings may be initiated by FIFA, either on its own initiative or at the request of any party concerned.
3. The relevant FIFA department may also initiate sanction proceedings on its own initiative for non-compliance with the obligations under its jurisdiction (specifically with respect to the defined Administrative Sanction Procedure (cf. FIFA Circulars 1478 and 1609)) and when authorised to do so by the FIFA Disciplinary Committee for explicitly specified violations.

9.3. Sanctions on associations

In particular, the following sanctions may be imposed on associations for violation of the present annexe in accordance with the FIFA Disciplinary Code:

- a reprimand or a warning;
- a fine;
- exclusion from a competition;
- return of awards.

These sanctions may be imposed separately or in combination.

9.4. Sanctions on clubs

In particular, the following sanctions may be imposed on clubs for violation of the present annexe in accordance with the FIFA Disciplinary Code:

- a reprimand or a warning;
- a fine;

- annulment of the result of a match;
- defeat by forfeit;
- exclusion from a competition;
- a deduction of points;
- demotion to a lower division;
- a transfer ban;
- return of awards.

These sanctions may be imposed separately or in combination.

1.1. Purpose and scope

a) GENERAL REMARKS

If a member association or a club fails to comply with any of the provisions pertaining to the use of TMS, disciplinary sanctions may be imposed.

Article 9 of annexe 3 specifically states that sanctions can be imposed if a party is found to have entered untrue or false data into TMS, or to have misused TMS for illegitimate purposes. TMS is designed to improve transparency and to provide the football authorities with more details on international transfers than they had in the past.[786] Consequently, entering incorrect information into the system would defeat the whole purpose of TMS. Some examples that have occurred over the years (this list is not exhaustive) include:

- entering inaccurate information about a player's age to avoid or circumvent the provisions on the protection of minors. This would usually entail falsified or counterfeit evidence of the player´s identity being uploaded;
- entering an incorrect category for a club to avoid having to pay, or to pay a lower amount of, training compensation;
- submitting a false TPO declaration;
- disguising payments made in relation to a player's international transfer;
- using TMS as a negotiation tool;
- providing incorrect information about a player's status with their new club to register the player during the registration period for amateur competitions;

786 Definition 13, Regulations.

– entering an incorrect and/or back-dated end date for the player's contract with their former club, potentially together with fabricated proof of the end date of the player's last contract, to register a player outside the registration period; or

– providing incorrect information about a player's status with their new club to avoid having to pay training compensation.[787]

For the avoidance of doubt, and to prevent clubs and member associations from trying to escape their responsibilities by making their TMS managers individually liable for misuse of TMS, article 9 of annexe 3 explicitly states that clubs and member associations are liable for the information entered in the system by their TMS managers and for the way they use the system. This should be borne in mind when appointing TMS managers.

b) COMPETENCE

i. General principle

FIFA may initiate disciplinary proceedings based on relevant information, including reports in the media or elsewhere in the public domain, that a breach of the Regulations has taken place. It can also start investigations based on suspicious entries in TMS or at the request of any party concerned. It should be noted that in the latter case, the role of the complainant is limited to reporting the matter at hand. The party that reports the matter to FIFA does not necessarily become a party to the disciplinary procedure; nor does it have an automatic right to be informed of the outcome of the investigation.

In practice, the FIFA general secretariat carries out the investigation as per the competences granted to it in article 7 paragraph 3 of annexe 3. It then submits the matter to the FIFA Disciplinary Committee for consideration and a potential decision.

ii. Administrative Sanction Procedure

Some of the obligations imposed on TMS users are of a technical or minor nature. Nevertheless, failure to comply with them still constitutes a clear infringement of annexe 3. If a party does not comply with these provisions, this will cause an immediate negative impact on the status of an international transfer, which may negatively affect a player's career or jeopardise agreements already signed.

In view of the above, a separate compliance procedure has been introduced specifically to streamline the process for dealing with violations of annexe 3. Similarly to the way minor violations, such as parking offences, are dealt with in criminal justice systems, the Administrative Sanction Procedure (**ASP**) allows the FIFA general secretariat to issue an administrative sanction letter

787 Article 4 paragraph 3 of Annexe 3, Regulations.

recommending an appropriate sanction for a breach of annexe 3 following simplified summary proceedings. Although these proceedings are simplified, they still respect the parties' rights to be heard and the principles of due process.

The competence to issues sanction letters is based on an authority delegated by the FIFA Disciplinary Committee. This delegated authority is limited to explicitly specified violations of annexe 3, and the sanctions are also restricted to warnings, reprimands, and/or fines of up to CHF 14,000.

This authority was first delegated on 2 May 2011 to cover a list of ten infringements.[788] In an acknowledgement of the increasing use of TMS, and after monitoring the extensive transfer activity in the system, the FIFA Disciplinary Committee deemed that compliance among football stakeholders had to be improved, and that there was therefore a need to revise and extend the ASP. The current list covers 14 categories of infringements, and has remained unchanged since that date.[789]

If an infringement is detected that is covered by the ASP, the FIFA general secretariat will contact the member association or club concerned and ask for its position by a set deadline. Where applicable, it will also ask the party to rectify the breach immediately. This is of particular importance where the breach may hold up a player's international transfer. Depending on the content of the position received, and after considering the matter, the FIFA general secretariat will issue an administrative sanction letter if it is appropriate to do so.

The party concerned may accept the recommended sanction by signing the letter. In this case, the sanction will become effective from the date of the signature. If the party complies with the sanction and the infringement is corrected in TMS within the given deadline, the matter will be considered closed. If, on the other hand, the party rejects the recommended sanction, ordinary disciplinary proceedings will be opened under the FIFA Disciplinary Code. Such disciplinary proceedings will also be opened if the party fails to respond to the administrative sanction letter, if it fails to comply with the imposed sanction within the stipulated period (if the sanction is a fine), or if the party does not correct its failure to carry out the obligation concerned. Under such circumstances, the FIFA Disciplinary Committee may impose a harsher sanction than that recommended by the FIFA general secretariat.

c) SANCTIONS ON MEMBER ASSOCIATIONS AND CLUBS

Article 9 of annexe 3 provides a non-exhaustive list of sanctions that may be imposed on member associations and clubs for violating any provision of annexe 3. The respective sanctions may be imposed separately or in combination.

788 Circular no. 1259 of 7 April 2011.
789 Circular no. 1478 of 6 March 2015; Circular no. 1609 of 8 December 2017.

ANNEXE 3, Article 10 - Time limits

1.1. Purpose and scope 513

ANNEXE 3, Article 10 - Time limits

1. With respect to proceedings and investigations conducted by the FIFA Regulatory Enforcement department, electronic notifications through TMS or by electronic mail to the address provided in TMS by the parties are considered valid means of communication and will be deemed sufficient to establish time limits.

1.1. Purpose and scope

The FIFA general secretariat sends its communications to parties in the proceedings using the e-mail addresses provided in TMS by the parties. Those email addresses are considered a valid and binding means of communication and for establishing whether deadlines have been met. Parties are obliged to comply with the instructions provided in FIFA communications sent to their nominated email addresses. This is yet another reason why all users should check TMS daily and pay particular attention to any enquiries or requests. It also underlines why clubs and member associations need to keep their contact details, including email addresses, up to date.

ANNEXE 3a
Administrative procedure governing the transfer of players between associations outside TMS

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ANNEXE 3a, Article 1 - Scope

1. The present annexe governs the procedure for the international transfer of all futsal players.

ANNEXE 3a, Article 2 - Principles

1. Any player who is registered with a club that is affiliated to one association shall not be eligible to play for a club affiliated to a different association unless an ITC has been issued by the former association and received by the new association in accordance with the provisions of this annexe. Special forms provided by FIFA for this purpose or forms with similar wording shall be used.
2. At the very latest, the ITC must be requested on the last day of the registration period of the new association.
3. The association issuing the ITC shall also attach a copy of the player passport to it.

ANNEXE 3a, Article 3 - Issue of an ITC for a professional

1. All applications to register a professional must be submitted by the new club to the new association during one of the registration periods established by that association. All applications shall be accompanied by a copy of the contract between the new club and the professional. Equally, a copy of the transfer agreement concluded between the new club and the former club shall be provided to the new association, if applicable. A professional is not eligible to play in official matches for his new club until an ITC has been issued by the former association and received by the new association.
2. Upon receipt of the application, the new association shall immediately request the former association to issue an ITC for the professional ("ITC request"). An association that receives an unsolicited ITC from another association is not entitled to register the professional concerned with one of its clubs.

3. Upon receipt of the ITC request, the former association shall immediately request the former club and the professional to confirm whether the professional's contract has expired, whether early termination was mutually agreed or whether a contractual dispute exists.

4. Within seven days of receiving the ITC request, the former association shall either:

   a) issue the ITC to the new association; or

   b) inform the new association that the ITC cannot be issued because the contract between the former club and the professional has not expired or that there has been no mutual agreement regarding its early termination.

5. If the new association does not receive a response to the ITC request within 30 days of the ITC request being made, it shall immediately register the professional with the new club on a provisional basis ("provisional registration"). A provisional registration shall become permanent one year after the ITC request.

6. The former association shall not issue an ITC if a contractual dispute has arisen between the former club and the professional. In such a case, upon request of the new association, FIFA may take provisional measures in exceptional circumstances. In this respect, it will take into account the arguments presented by the former association to justify the rejection of the ITC. If the Football Tribunal authorises the provisional registration (cf. article 23) the new association shall complete the relevant player registration information in TMS. Furthermore, the professional player, the former club and/or the new club are entitled to lodge a claim with FIFA in accordance with article 22. The decision on the provisional registration of the player shall be without prejudice to the merits of such possible contractual dispute.

7. The new association may grant a player temporary eligibility to play until the end of the season that is underway on the basis of an ITC sent by fax. If the original ITC is not received by that time, the player's eligibility to play shall be considered definitive.

8. The foregoing rules and procedures also apply to professionals who, upon moving to their new club, acquire amateur status.

ANNEXE 3a, Article 4 - Issue of an ITC for an amateur

1. All applications to register an amateur player must be submitted by the new club to the new association during one of the registration periods established by that association.
2. Upon receipt of the application, the new association shall immediately request the former association to issue an ITC for the player ("ITC request").
3. The former association shall, within seven days of receiving the ITC request, issue the ITC to the new association.
4. If the new association does not receive a response to the ITC request within 30 days, it shall immediately register the amateur with the new club on a provisional basis ("provisional registration"). A provisional registration shall become permanent one year after the ITC request.
5. The foregoing rules and procedures also apply for amateurs who, upon moving to their new club, acquire professional status.

ANNEXE 3a, Article 5 - Loan of players

1. The rules set out above also apply to the loan of a professional from a club affiliated to one association to a club affiliated to another association.
2. The terms of the loan agreement shall be enclosed with the ITC request.
3. Upon expiry of the loan period, the ITC shall be returned, upon request, to the association of the club that released the player on loan.

1.1. Purpose and scope

a) INTRODUCTION

As the international transfer of professional and amateur players (male and female) within eleven-a-side football are made in TMS,[790] the scope of this annexe is limited to the international transfer of (male and female) futsal players, both amateurs and professionals.

The relevant administrative procedure follows the same principles and logic as that carried out via TMS for eleven-a-side football, with a few minor deviations or differences resulting from the fact there is no electronic system underpinning the process. This chapter will be limited to addressing the specific aspects which differ. For more details on the other relevant aspects, please refer to the chapter on annexe 3.

b) ENFORCEMENT OF DISCIPLINARY SANCTIONS

Although there is no reference to the enforcement of disciplinary sanctions in annexe 3a, when a futsal player is transferred internationally, the member association to which the player's former club is affiliated must inform the member association of the new club of any disciplinary sanction that is yet to be served when issuing the international futsal transfer certificate (**IFTC**). For more details, please refer to the chapter on annexe 6.

c) UNSOLICITED IFTCS

In the absence of an electronic system, it is possible that a member association might issue an IFTC to another member association without being requested to do so, either by mistake or, for example, because the player has been on loan with an affiliated club, and the loan has expired. Such an unsolicited IFTC does not authorise the member association which receives it to register the player.[791]

790 Circular no. 1601 of 31 October 2017; Circular no 1679 of 1 July 2019.
791 Article 2 paragraph 2 of Annexe 3a, Regulations.

d) ABSENCE OF RESPONSE TO AN IFTC REQUEST

In contrast to the seven-day deadline applied under the TMS process in eleven-a-side football, if the member association to which the player's new club is affiliated does not receive a response to an IFTC request, it must wait until 30 days have elapsed from the date of the request before it can proceed to register the player on a provisional basis.[792]

The reason for this extended deadline is that TMS allows real-time exchange of information, whereas for the non-electronic process it is appropriate to leave enough margin to cover delays in processing due to miscommunication or having to communicate using different systems.

The member association to which the player's former club is affiliated may demand, within a one-year time limit, the withdrawal of the provisional registration if it can demonstrate "*valid reasons*" regarding its lack of reply to the IFTC request. If no demand is made after the time limit expires, the player's provisional registration becomes permanent.

In the majority of cases, the reason for the non-response is because the former club of the player does not object to the transfer.

e) TEMPORARY ELIGIBILITY

An IFTC sent by fax authorises the new member association to register the player with its affiliated club. However, registration based on a faxed IFTC grants the player only temporary eligibility to play for their new club. The player's registration will not be confirmed until the original IFTC is received or, at the latest, the end of the current season. If no IFTC has been received by this point, the player's eligibility to play for their new club will be considered permanent.[793]

The reason for this provision was to strike a balance between the need to prevent abuse using falsified certificates sent by fax only and the desire not to make the releasing member association follow up on every faxed IFTC by sending the original through the post.

792 Article 3 paragraph 5 of Annexe 3A, Regulations.
793 Article 3 paragraph 7 of Annexe 3A, Regulations.

ANNEXE 6
Rules for the Status and Transfer of Futsal Players

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ANNEXE 6, Articles 1 to 13

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ANNEXE 6, Article 1 - Principle

1. These rules are an integral part of the FIFA Regulations on the Status and Transfer of Players.

ANNEXE 6, Article 2 - Scope

1. The Rules for the Status and Transfer of Futsal Players establish global and binding provisions concerning the status of futsal players, their eligibility to participate in organised football, and their transfer between clubs belonging to different associations.
2. The Regulations on the Status and Transfer of Players shall apply without alterations to futsal players unless a diverging provision in this annexe expressly provides for a different rule applicable to futsal.
3. The transfer of futsal players between clubs belonging to the same association is governed by specific regulations issued by the association in accordance with article 1 of these regulations.
4. The following provisions in these regulations are binding for futsal at national level and shall be included, without modification, in the association's regulations: articles 2-8, 10, 11, 12bis, 18, 18bis, 18ter, 19 and 19bis.
5. Each association shall include in its regulations appropriate means to protect contractual stability, paying due respect to mandatory national law and collective bargaining agreements. In particular, the principles in article 1 paragraph 3 b) of these regulations shall be considered.

ANNEXE 6, Article 3 - Release and eligibility of players for association teams

1. The provisions in Annexe 1 of these regulations are binding.
6. A player may only represent one association in both futsal and eleven-a-side football. Any player who has already represented one association (either in full or in part) in an official eleven-a-side or futsal competition of any category may not play an international match with another association team. This provision is subject to the exception in article 5 paragraph 3 and article 9 of the Regulations Governing the Application of the FIFA Statutes.

ANNEXE 6, Article 4 - Registration

1. A futsal player must be registered with an association to play for a club as either a professional or an amateur in accordance with the provisions of article 2 of these regulations. Only registered players are eligible to participate in organised football. By the act of registering, a player agrees to abide by the Statutes and regulations of FIFA, the confederations and the associations.
2. A player may only be registered for one futsal club at a time. A player may, however, also be registered for one eleven-a-side club during this time. It is not necessary for the futsal and the eleven-a-side club to belong to the same association.
3. Players may be registered with a maximum of three futsal clubs during one season. During this period, the player is only eligible to play official matches for two futsal clubs. As an exception to this rule, a player moving between two futsal clubs belonging to associations with overlapping seasons (i.e. start of the season in summer/autumn as opposed to winter/spring) may be eligible to play in official matches for a third futsal club during the relevant season, provided he has fully complied with his contractual obligations towards his previous clubs. Equally, the provisions relating to the registration periods (article 6 of these regulations) as well as to the minimum length of a contract (article 18 paragraph 2 of these regulations) must be respected. The number of eleven-a-side clubs with which the same player may also be registered during one season is specified in article 5 paragraph 3 of these regulations.

ANNEXE 6, Article 5 - International Futsal Transfer Certificate

1. Futsal players registered with one association may only be registered with a futsal club of a new association once the latter has received an International Futsal Transfer Certificate (hereinafter: IFTC) from the former association. The IFTC shall be issued free of charge without any conditions or time limitation. Any provision to the contrary shall be null and void. The association issuing the IFTC shall deposit a copy with FIFA. The administrative procedures for issuing an International Transfer Certificate (ITC) for eleven-a-side football shall be likewise applicable to the issuing of an IFTC. These procedures are set out in Annexe 3a of these regulations. The IFTC must be distinguishable from the ITC used in eleven-a-side football.
2. An IFTC is not required for a player under the age of ten.

ANNEXE 6, Article 6 - Enforcement of disciplinary sanctions

1. A suspension imposed in terms of matches (cf. article 20 paragraphs 1 and 2 of the FIFA Disciplinary Code) on a player for an infringement committed when playing futsal or in relation to a futsal match shall only affect the player's participation for his futsal club. Similarly, a suspension imposed in terms of matches on a player participating in eleven-a-side football shall only affect the player's participation for his eleven-a-side club.
2. A suspension imposed in terms of days and months shall affect a player's participation for both his futsal as well as his eleven-a-side club, regardless of whether the infringement was committed in eleven-a-side football or futsal.
3. The association with which a player is registered shall notify a suspension imposed in terms of days and months to the second association with which this player may be registered, if the player is registered for a futsal and an eleven-a-side club belonging to two different associations.
4. Any disciplinary sanction of up to four matches or up to three months that has been imposed on a player by the former association but not yet (entirely) served by the time of the transfer shall be enforced by the

new association at which the player has been registered in order for the sanction to be served at domestic level. When issuing the IFTC, the former association shall notify the new association in writing of any such disciplinary sanction that has yet to be (entirely) served.

5. Any disciplinary sanction of more than four matches or more than three months that has not yet been (entirely) served by a player shall be enforced by the new association that has registered the player only if the FIFA Disciplinary Committee has extended the disciplinary sanction to have worldwide effect. Additionally, when issuing the IFTC, the former association shall notify the new association in writing of any such pending disciplinary sanction.

ANNEXE 6, Article 7 - Respect of contract

1. A professional under contract with an eleven-a-side club may only sign a second professional contract with a different futsal club if he obtains written approval from the eleven-a-side club employing him. A professional under contract with a futsal club may only sign a second professional contract with a different eleven-a-side club if he obtains written approval from the futsal club employing him.
2. The provisions applicable to the maintenance of contractual stability are set out in articles 13-18 of these regulations.

ANNEXE 6, Article 8 - Protection of minors

1. International player transfers are only permitted if the player is over the age of 18. The exceptions to this rule are outlined in article 19 of these regulations.

ANNEXE 6, Article 9 - Training compensation

1. The provisions on training compensation as provided for in article 20 and Annexe 4 of these regulations shall not apply to the transfer of players to and from futsal clubs.

ANNEXE 6, Article 10 - Solidarity mechanism

1. The provisions on the solidarity mechanism as provided for in article 21 and Annexe 5 of these regulations shall not apply to the transfer of players to and from futsal clubs.

ANNEXE 6, Article 11 - FIFA competence

1. Without prejudice to the right of any futsal player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to deal with disputes as stipulated in article 22 of these regulations.
2. The Football Tribunal shall adjudicate on all disputes as stipulated in article 23 of these regulations.

ANNEXE 6, Article 12 - Matters not provided for

1. Matters not provided for in this annexe shall be governed by these regulations.

ANNEXE 6, Article 13 - Official languages

1. In the case of any discrepancy in the interpretation of the English, French, Spanish or German texts of these regulations, the English text shall be authoritative.

1.1. Purpose and scope

a) GENERAL REMARKS

Futsal is football played indoors in accordance with the Futsal Laws of the Game, as drawn up by FIFA in collaboration with the Sub-Committee of the International Football Association Board.[794] As established in article 7 paragraph 4 of the FIFA Statutes, each member association is obliged to play futsal in accordance with the Futsal Laws of the Game. Futsal is considered part of the wider sport of association football.

In principle, the overarching and binding rules set out in the Regulations concerning the status of players, their eligibility to participate in organised football and their transfer between clubs belonging to different member associations apply equally to futsal players.[795] However, some minor adaptations or amendments are required to address the particularities and specific characteristics of futsal.

As in eleven-a-side football, transfers of futsal players between clubs affiliated to the same member association (national transfers) are governed by the regulations issued by the member association concerned.[796]. Those provisions of the Regulations that are binding at national level and must be included in the member association's regulations for eleven-a-side football, are also binding for futsal. Moreover, member associations must incorporate appropriate mechanisms for protecting contractual stability into their national regulations, paying particular attention to the relevant principles set out in the Regulations.[797]

794 Definition 16, Regulations.
795 Article 2 paragraphs 1 and 2 of Annexe 6, Regulations.
796 Article 2 paragraph 3 of Annexe 6, Regulations.
797 Article 2 paragraphs 4 and 5 of Annexe 6, Regulations.

b) SPECIFIC PROVISIONS WHICH DIFFER FROM ELEVEN-A-SIDE FOOTBALL

i. Release of players to representative (national) teams

The rules on release of players to representative teams apply to, and are binding for, futsal.[798] A distinct international match calendar for futsal is decided by the FIFA Council. The biggest difference between this calendar and that for eleven-a-side football relates to the international windows during which players must be released; in men's eleven-a-side football there is only one type of international window, while in futsal there are two. This has a knock-on effect in relation to the periods during which futsal players must be released.

ii. Eligibility to play for representative teams

The Regulations Governing the Application of the FIFA Statutes, which govern the eligibility to play for representative teams, apply equally to futsal. In short, a player is committed to representing a member association once they have been fielded by that member association in an official competition in any form of football (i.e. football, futsal, or beach soccer).[799] A player must therefore represent the same member association in all forms of association football.[800]

iii. Registration

The principle that a player must be registered at a member association to play for a club and to be eligible to participate in organised football applies equally to futsal, as does the limit on the number of clubs for which a player may be registered and play official matches over the course of a single season.[801]

However, there is one important exception: a player may be registered for an eleven-a-side club and a different futsal club at the same time.[802] As futsal is a different form of association football, allowing a player to be registered with a different club for each form of the game does not impact the sporting regularity and integrity of the relevant competitions. It is permissible for the two clubs concerned to be affiliated to different member associations. However, for the avoidance of doubt, a player may only be registered for one futsal club at a time.

798 Article 3 paragraph 1 of Annexe 6, Regulations.
799 Article 5 paragraph 2, Regulations Governing the Application of the FIFA Statutes.
800 Article 3 paragraph 2 of Annexe 6, Regulations.
801 Article 4 paragraphs 1 and 3 of Annexe 6, Regulations.
802 Article 4 paragraph 2 of Annexe 6, Regulations.

iv. Respect of contracts and dispute resolution

Contractual stability is a key consideration for all professional players, both in futsal and eleven-a-side football. The Regulations are designed to protect the contractual relationship between a club and its professional players (futsal and/or eleven-a-side football) and to ensure that contractual stability is maintained more widely.

The relevant obligation imposed on a player in this regard derives from an employee's duty to act in good faith. Specifically, an employee is required to safeguard the interests of their employer. Fundamentally, the employee (in this context, a professional player) must refrain from any action or behaviour that could damage the employer and commit to displaying loyalty and solidarity towards their employer.

In view of this obligation, a professional player under contract with an eleven-a-side football club must obtain written approval prior to signing a contract covering the same period with a (different) futsal club, and vice-versa.[803] It stands to reason that the club's interests are worthy of protection. In addition, it should be borne in mind that the double burden associated with being professional for two separate clubs, and in two distinct forms of association football, comes with its own risks and challenges. On top of the risk of potential fixture clashes, playing for two different clubs may also have an impact on the player's health and fitness, recovery times, and focus on a specific competition, as well as increasing the risk of injury.

The principles on the maintenance of contractual stability also apply to futsal players and clubs.[804] Futsal players and clubs may thus invoke just cause or sporting just cause as grounds for the unilateral early termination of their contracts and refer any contractual dispute to the competent body. Parties found to be in breach of contract may be subject to financial and sporting sanctions in accordance with the Regulations.

FIFA competence to deal with employment and transfer-related disputes with an international dimension pertaining to futsal is explicitly confirmed in article 11 of annexe 6. Such decisions may be appealed to CAS.

v. International Futsal Transfer Certificate

The administrative procedure governing the transfer of futsal players between clubs affiliated to different member associations is similar in principle to that for eleven-a-side football players. Notably, this includes the requirement for the member association to which the new club is affiliated to request and receive an IFTC from the member association to which their former club is affiliated. Only once this has been received can a futsal player be registered for their new club.[805]

803 Article 7 paragraph 1 of Annexe 6, Regulations.
804 Article 7 paragraph 2 of Annexe 6, Regulations.
805 Article 5 paragraph 1 of Annexe 6, Regulations.

The formal requirements associated with the IFTC, including the age limit beyond which a certificate needs to be requested and issued are identical to those for an ITC.

vi. Protection of minors

The objectives of the provisions on the protection of minors apply irrespective of the type of football in which a young player under 18 is involved.[806]

vii. Training compensation and the solidarity mechanism

The principles of training compensationand the solidarity mechanism do not apply to futsal.[807] The situation of futsal in this regard is vastly different to that in eleven-a-side football (whether female or male), particularly in relation to the level of professionalism, amount invested in youth development, or commercial success. At the time of writing, very few member associations count professional futsal clubs among their affiliates. Applying the principles of training compensation or the solidarity mechanism to futsal would thus hinder the development of this form of association football.

viii. Enforcement of disciplinary sanctions

The exact same terms that apply to eleven-a-side football also apply to futsal, aside from the technical difference that the member association which issues an IFTC should inform the member association to which the player's new club is affiliated of any relevant disciplinary sanctions in writing, rather than via TMS. This reflects the fact that TMS is not applicable to futsal.[808]

Article 6 of annexe 7 also addresses the particularities associated with the fact that a player may play futsal and eleven-a-side football at the same time, either with the same club, or with two different clubs.

Regarding disciplinary sanctions, a distinction is made depending on whether the sanction imposed on a player is expressed in terms of a number of matches, or in terms of days and months. In the former case, infringements committed by a player when playing futsal, or in connection with a futsal match, only affect the player's ability to play for their futsal club, and not their eligibility to participate in matches for their eleven-a-side club, and vice-versa.[809]

This approach to enforcement follows the logic that a suspension expressed in terms of a number of matches is normally directly linked to the player's actions in a specific match in one or other form of association football and relates to misconduct specifically committed while playing.

806 Article 7 of Annexe 6, Regulations.
807 Articles 9 and 10 of Annexe 6, Regulations.
808 Article 6 paragraphs 4 and 5 of Annexe 6, Regulations.
809 Article 6 paragraph 1 of Annexe 6, Regulations.

In the latter case, the disciplinary sanction can be assumed to be more severe. Sanctions expressed in terms of a set period usually relate to misbehaviour that is not directly linked to the player's actions in a specific match. In other words, these sanctions are more often imposed where a player's conduct violates rules and regulations designed to protect the game of football in general. Given the need to ensure a fair and respectful environment for all participants in organised football, such conduct cannot be tolerated.

With this in mind, if the disciplinary sanction concerned covers a period expressed in terms of days and months, it affects a player's eligibility to participate in *both* types of football, regardless of where the infringement that triggered the sanction was actually committed.[810] It follows, therefore, that if a player is registered for a futsal club and for a different eleven-a-side football club affiliated to another member association, the member association where the sanction is originally imposed must inform the other member association accordingly so that it can be properly enforced.[811]

810 Article 6 paragraph 2 of Annexe 6, Regulations.
811 Article 6 paragraph 3 of Annexe 6, Regulations.

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