FIFA

Commentary on the Regulations on the Status and Transfer of Players

2023 edition

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 May 2023 edition of the FIFA Regulations on the Status and Transfer of Players and the March 2023 edition of the Procedural Rules Governing the Football Tribunal.

This commentary includes references to FIFA and CAS decisions rendered up until 30 June 2023.

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INTRODUCTION

It is now almost two years since we reissued the Commentary on the FIFA Regulations on the Status and Transfer of Players (the Commentary). Its first edition dated back to 2007 and it was not until 2021 that we decided to update its content, publishing a new version of the Commentary that was not only much more comprehensive, but also fully updated to cover the current FIFA regulations and the most recent case law of both our dispute resolution bodies and the Court of Arbitration for Sport (CAS).

Over the past two years, the Commentary has once again become a basic tool for the FIFA Football Tribunal, its main stakeholders and CAS. Considering the ever-evolving regulatory changes and jurisprudence of the FIFA Football Tribunal, the Commentary does not represent a formal position of the FIFA Football Tribunal on the FIFA Regulations on the Status and Transfer of Players (the Regulations). However, it is fair to say that it is indispensable to have insight into a set of regulations that has increased in technical and material complexity in recent years, and to get a better understanding of its application.

This new 2023 version of the Commentary, which is now being published, is the fruit of the work of many colleagues in FIFA's Legal & Compliance Division. They are primarily responsible for making this update a reality, thus fulfilling the commitment we made in 2021 when we stated that this work would be updated every two years. Thanks to the work of our FIFA Legal colleagues over the past months, all "clients" of the FIFA Football Tribunal can find in this Commentary a fully updated text on the main global legal instrument of this international federation: the Regulations.

We are once again committed to renewing this Commentary within the next two years. In this regard, 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 2025. To that end, you are always welcome to email us at legal@fifa.org.

We hope that this Commentary will prove to be a useful tool in the daily work of all those who engage with the Regulations. The entire FIFA Legal team remains at your disposal if you have further queries in relation to these important regulations.

Yours faithfully,

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ABBREVIATIONS

AC:	FIFA Agents Chamber
AFC:	Asian Football Confederation
API:	Automated Programming Interface
ASP:	Administrative Sanction Procedure
AS:	Allocation Statement
CAF:	Confederation of African Football
CAS:	Court of Arbitration for Sport
CHF:	Swiss francs
CJEU:	Court of Justice of the European Union (formerly known as the ECJ)
Commentary:	This Commentary on the FIFA Regulations on the Status and Transfer of Players
Concacaf:	Conferation of North, Central America and Caribbean Association Football
CONMEBOL:	South American Football Confederation
DRC:	FIFA Dispute Resolution Chamber
DTMS:	Domestic Transfer Matching System
ECJ:	European Court of Justice (known as the CJEU from 1 December 2009)
EEA:	European Economic Area
EPP:	Electronic Player Passport
EU:	European Union
EUR:	Euros
FCH:	FIFA Clearing House
FCHR:	FIFA Clearing House Regulations
FIFA:	Fédération Internationale de Football Association
FIFPRO:	Fédération Internationale des Associations de Footballeurs Professionnels
FT:	FIFA Football Tribunal

GBP:	British pounds
IFTC:	International Futsal Transfer Certificate
ILO:	International Labour Organization
IMC:	International Match Calendar
ITC:	International Transfer Certificate
LME:	Limited Minor Exemption
Manual:	The Manual on TPI and TPO in football agreements
OFC:	Oceania Football Confederation
Procedural Rules:	FIFA Procedural Rules Governing the Football Tribunal
PSC:	FIFA Players' Status Chamber
Regulations/ RSTP:	FIFA Regulations on the Status and Transfer of Players
SCC:	Swiss Civil Code
SCM:	Sub-Committee on Minors appointed by the Players' Status Commitee
SCO:	Swiss Code of Obligations
Statutes:	FIFA Statutes
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
USD:	US dollars

DEFINITIONS

The FIFA Regulations on the Status and Transfer of Players (Regulations) set out the below definitions:

1. **Former association:** the association to which the former club is affiliated.
2. **Former club:** the club that the player is leaving.
3. **New association:** the association to which the new club is affiliated.
4. **New club:** the club that the player is joining.
5. **Official matches:** matches played within the framework of organised football, such as national league championships, national cups and international championships for clubs, but not including friendly and trial matches.
6. **Organised football:** association football organised under the auspices of FIFA, the confederations and the associations, or authorised by them.
7. **Protected period:** 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.
8. **Registration period:** a period fixed by the relevant association in accordance with article 6, Regulations.
9. **Season:** a consecutive 12-month period fixed by an association during which its official competitions, such as national league championships and national cup competitions, occur.
10. **Training compensation:** the payments made in accordance with Annexe 4, Regulations to cover the development of young players.
11. **Minor:** a player who has not yet reached the age of 18.
12. **Academy:** 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.
13. **Transfer matching system (TMS):** a web-based data information system with the primary objective of simplifying the process of international player transfers as well as improving transparency and the flow of information.

14. **Third party:** a party other than the player being transferred, the two clubs transferring the player from one to the other, or any previous club, with which the player has been registered.

15. **Eleven-a-side football:** football played in accordance with the Laws of the Game as authorised by The International Football Association Board.

16. **Futsal:** football played in accordance with the Futsal Laws of the Game that have been drawn up by FIFA in collaboration with the Sub-Committee of The International Football Association Board.

17. **Registration:** the act of making a written record containing details of a player that include:

    a. the start date of the registration (format: dd/mm/yyyy);

    b. the full name (first, middle and last names) of the player;

    c. the date of birth, gender, nationality, status as an amateur or a professional (as per article 2 paragraph 2, Regulations, and nature of the registration (on a permanent basis or on loan);

    d. the type(s) of football the player will play (eleven-a-side football/futsal/beach soccer);

    e. the name of the club at the association where the player will play (including the FIFA ID of the club);

    f. the training categorisation of the club at the moment of the registration;

    g. the FIFA ID of the player;

    h. the FIFA ID of the association.

18. **Electronic player registration system:** an online electronic information system with the ability to record the registration of all players at their association. The electronic player registration system must be integrated with the FIFA Connect ID Service and the FIFA Connect Interface in order to exchange information electronically. The electronic player registration system must provide all registration information for all players from the age of 12 through the FIFA Connect Interface and, in particular, must assign each player a FIFA ID utilising the FIFA Connect ID Service.

19. **FIFA Connect ID Service:** a service provided by FIFA assigning globally valid unique identifiers (the FIFA ID) to individuals, organisations, and facilities, providing duplicate information in case of a second registration of the same entity, and keeping a central record of the current registration(s) of all entities with an assigned FIFA ID.

20. **FIFA ID:** the worldwide unique identifier given by the FIFA Connect ID Service to each club, association, player and football agent.

21. **International transfer:** the movement of the registration of a player from one association to another association.

22. **National transfer:** the movement of the registration of a player at an association from one club to another within the same association.

23. **Electronic domestic transfer system:** an online electronic information system with the ability to administer and monitor all national transfers within an association, in line with the principles of the model implemented at international level through the transfer matching system (see Annexe 3, Regulations). At a minimum, the system must collect the full name, gender, nationality, date of birth and FIFA ID of the player, the status (amateur or professional as per article 2 paragraph 2, Regulations), the name and FIFA ID of the two clubs involved in the national transfer, as well as any payments between the clubs, if applicable. The electronic domestic transfer system must be integrated with the electronic registration system of the association and with the FIFA Connect Interface in order to exchange information electronically.

24. **Bridge transfer:** any two consecutive transfers, national or international, of the same player connected to each other and comprising a registration of that player with the middle club to circumvent the application of the relevant regulations or laws and/or defraud another person or entity.

25. **Purely amateur club:** 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.

26. **FIFA Connect Interface:** a technical interface provided by FIFA within the FIFA Connect Programme, used to exchange electronic end-to-end encrypted messages between member associations, and between member associations and FIFA.

27. **Training rewards:** the mechanisms which compensate training clubs for their role in the training and education of young players, namely training compensation (cf. article 20, Regulations) and the solidarity mechanism (cf. article 21, Regulations).

28. **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.

29. **Professional club:** a club that is not a purely amateur club.

30. **Maternity leave:** 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.

31. **Club-trained player:** a player who, between the age of 15 (or the start of the season during which he turns 15) and 21 (or the end of the season during which he turns 21), and irrespective of his nationality and age, registered with his current club for a period, continuous or not, of three entire seasons or of 36 months.

32. **Trial:** a temporary period during which a player that is not registered with a club is evaluated by that club.

33. **FIFA Clearing House:** the entity that acts as an intermediary in relation to processing certain payments made in the football transfer system.

34. **Electronic Player Passport (EPP):** an electronic document containing consolidated registration information of a player throughout their career, including the relevant member association, their status (amateur or professional), the type of registration (permanent or loan), and the club(s) (including training category) with which they have been registered since the calendar year of their 12th birthday.

35. **Transfer Compensation:** compensation which a new club of a player pays, or commits to pay to a player's former club, in exchange for the former club's acceptance to release the player from a binding contractual relationship. Compensation for breach of contract pursuant to article 17, Regulations is not considered transfer compensation.

36. **Matching Exception:** the status of an international transfer in TMS when both clubs have entered the basic information correctly (player, clubs and transfer instruction), but there are still transfer details (payment details or loan dates) that do not match in both transfer instructions. This mismatch prevents the transfer from proceeding.

37. **TMS User:** an individual trained and authorised to access TMS on behalf of a club or association. All TMS users have their own unique login credentials.

38. **TMS Manager:** the main TMS user and point of contact for a club or association with access to TMS.

39. **Transfer Instruction:** the information entered in TMS to transfer a player from one club to another. The transfer instruction type is defined by the information entered: (i) "engage" or "release"; (ii) "permanently" or "on loan"; (iii) "professional player" or "amateur player"; (iv) "with transfer agreement" or "without transfer agreement"; (v) "against payment" or "free of payment".

40. **Validation Exception:** an issue relating to an international transfer in TMS that prevents it from proceeding to the next status, thus requiring FIFA's intervention.

41. **Competition period:** the period starting with the first official match of the national league championship or national cup competition, whichever comes first, and ending with the last official match played within those competitions.

Reference is also made to the Definitions section in the FIFA Statutes.

NB: terms referring to natural persons are applicable to both genders.

Any term in the singular applies to the plural and vice versa.

Chapter I.

INTRODUCTORY PROVISION

Article 1 – Scope 18

ARTICLE 1 – SCOPE

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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 (subject to article 1 paragraph 3 b) below), 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) Associations are given three years from 1 July 2022 to implement, in agreement with domestic football stakeholders, rules on a domestic loan system which are in line with the principles of integrity of competitions, youth development, and the prevention of hoarding players. For the avoidance of doubt, the limitation on the number of loans at national level may differ from article 10 as long as it is consistent with these principles.

   c) 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).

6. These regulations also include temporary rules addressing the exceptional situation deriving from the war in Ukraine (cf. Annexe 7).

1. Purpose and scope

Article 1 sets out the general purpose and scope of the Regulations, it defines the territorial scope of application of the Regulations (paragraphs 1 and 2), it determines how these rules, and which specific provisions, also need to be implemented at national level by FIFA member associations (paragraph 3), and it gives a general overview of the further content of the Regulations (paragraphs 4-6).

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 global regulator of the sport of football, in line with 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]

Football is a sport in which teams compete against each other. Team composition is thus a critical factor for sporting success and for competitive balance. Therefore, rules concerning the status of players and their transfer between teams – and the regulatory framework for the international transfer system overall – stand at the heart of the sport of football. These rules are of critical importance for the good functioning of the international transfer system of football.

With this in mind, the Regulations determine, for instance, the recognised categories of players, the conditions required for a player to participate in organised football, aspects of their relationship with their clubs, as well as the conditions and requirements for a transfer between clubs and the criteria to become eligible to play for a new club. In a nutshell, these are the main issues the Regulations are designed to regulate, with a view to meeting the FIFA objectives stated above.

1 Article 2 (c), Statutes.
2 Article 2 (a), (b), and (d), Statutes.

In addition, the Regulations also govern regulatory aspects of 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 IMC[3] by setting the rules for the release of players to representative teams.[4]

2. The substance of the rule

A. TERRITORIAL SCOPE OF APPLICATION

Paragraphs 1 and 2 of article 1 determine the territorial scope of application of the Regulations.

FIFA is constituted as an association under the Swiss Civil Code (SCC).[5] The FIFA Statutes (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. FIFA is primarily responsible for the regulatory framework that applies to football internationally. While it is clear that FIFA has a duty to respect the autonomy of its member associations, and that issues of a purely domestic nature are to be regulated and enforced, primarily, by member associations, it is nevertheless part of FIFA's regulatory obligations to ensure that there is a degree of uniformity in domestic rules across all 211 FIFA member associations.

To create a level playing field and safeguard the regularity and (sporting) integrity of matches, certain issues and fundamental principles must be regulated uniformly at global level. 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 are 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 modifications required by the European Union (EU) to comply with the principle of freedom of movement. These exceptions were created as part of the agreement between FIFA, UEFA and the EU in March 2001. The first of these exceptions relates to 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]

3 Article 70, Statutes.
4 Annexe 1, Regulations.
5 Article 1 paragraph 1, Statutes.
6 Article 19 paragraph 2 b), Regulations.
7 Article 6 of Annexe 4, Regulations.

B. THE "THREE-TIER" APPROACH

Taking the above into account, article 1, Regulations establishes a "three-tier" approach as to how the worldwide regulatory framework of organised football is designed.

a. 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 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 online 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.

b. The "prescribed national tier"

Article 1 also imposes certain obligations on member associations with respect to their national transfer rules, with no leeway regarding the introduction or content 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 examines the national regulations to ensure that the mandatory provisions and required principles – which will be discussed below – have been included. Subsequently, if required, FIFA provides the member association concerned with specific recommendations (or requirements) to be implemented.

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 listed in article 1 paragraphs 3 a) and b). 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 (arts 2-8 and art. 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 rules, and which establishes specific principles applicable to contracts between professional players and clubs, falls into the same category. As mentioned above, it is 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 certain fundamental aspects of contracts entered into between professional players and clubs. This includes their duration and other conditions that must be met for them to be deemed valid, such as 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 other member associations with stricter provisions.

Article 12bis ("overdue payables") is 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 having equal importance, irrespective of whether the creditor is of the same nationality as the debtor club. The prohibition on grace periods is also 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 (art. 10) are included in the list of binding rules, to ensure that the mechanism governing the loan of professional players is harmonised globally. Following the introduction of new loan rules by FIFA on 1 July 2022, member associations are not obliged to implement the FIFA rules without modification but must agree on a domestic loan system with their own domestic stakeholders that is in line with the principles of integrity of competitions, youth development and the prevention of hoarding players. This system must be in place no later than 1 July 2025.

Finally, the binding list also includes specific provisions concerning third-party influence on clubs (TPI, art. 18bis), third-party ownership of players' economic rights (TPO, art. 18ter), as well as specific protections for female players (art. 18quater)[9] and minors (arts 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 Player Passport (EPP). 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 via the FIFA Clearing House. Such electronic systems have been mandatory since 1 July 2020.[10]

c. 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 those 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, any national tribunal set up for this purpose within the framework of a member association and/or any collective bargaining agreement must comply with a series of minimum requirements, so that FIFA and its decision-making bodies may recognise that its/their jurisdiction takes precedence over that of FIFA.[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 identical systems 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. However, it is important to keep in mind that these reward systems apply only when players become professional, i.e. non-amateur players. 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 the affiliated clubs must contribute when they engage a player for the first time as a professional. The proceeds of this fund can then, for example, be distributed to all training clubs periodically, for example, at the end of each season.

Finally, article 1 paragraph 3 c) 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 cover several matters, including that contracts must be respected, that amateur or unemployed players have freedom of movement, that contracts may be terminated with just cause by either party (or, with sporting just

10 Circular no. 1679 of 1 July 2019.
11 Article 1 paragraph 1, Statutes.

cause, by a professional player), and that contracts cannot be terminated during a season. Member associations must 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.

d. The "unwritten tier"

An unwritten fourth "tier" to the regulatory approach is also recognised in practice. 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 regulatory 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")[12]. 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 for all member associations and clubs. This means, in particular, that a member association may not stipulate in its national regulations that its affiliated clubs would, for example, not be obliged to release their registered players to its representative teams, or that such an obligation would extend to periods outside of the international windows listed in the International Match Calendar (IMC).

D. COACHES

Since 1 January 2021, the Regulations have also governed 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 relationships.[13]

12 For more information about the eligibility to play for representative teams see "Commentary on the Rules Governing Eligibility to Play for Representative Teams" and "Guide to Submitting a Request for Eligibility or Change of Association".
13 Circular no. 1743 of 14 December 2020.

E. TEMPORARY RULES REGARDING THE WAR IN UKRAINE

On 7 March 2022, temporary employment and registration rules were inserted to address several issues related to the war in Ukraine that commenced in February 2022. The rules have since been extended twice and modified slightly to adapt to the developing circumstances.[14]

14 Circular no. 1787 of 9 March 2022.
Circular no. 1788 of 24 March 2022.
Circular no. 1800 of 22 June 2022.
Circular no. 1804 of 2 July 2022.
Circular no. 1849 of 22 May 2023.

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. No other status shall be recognised.

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.

1. Purpose and scope

Article 2 establishes the categories of players available in organised football. It determines that only two specific categories exist (amateurs or professionals), and it defines the criteria according to which players fall into either of the two categories.

A consistent and uniform categorisation of players by their status, applied at global level, is necessary 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 may participate in specific competitions. If needed, it also enables competition organisers to establish quotas for the number of players of a given status for specific competitions. The status of players can also be relevant for the applicability of specific regulatory provisions. For example, only players with a specific status can be subject to the provisions regarding the maintenance of contractual stability and loan transfers. Similarly, the acquisition of a specific status can trigger the obligation to pay training rewards. The conditions for a player to be registered may also depend on the relevant status of that player. Finally, the distinction between professional and amateur players allows for a proper comparison of the degree of professionalisation achieved by different member associations.

2. The substance of the rule

A. THE POSSIBLE STATUS OF PLAYERS

As mentioned, the Regulations recognise only two specific categories of players: article 2 paragraph 1 determines that players are either amateurs or professionals. As article 2 is binding at national level, member associations cannot modify these categories or create other categories that differ from those established by the Regulations.[15]

15 TAS 2009/A/1895, Le Mans Union Club 72 c. Club Olympique de Bamako.

While, in practice, other status categories may exist at national level (for example 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), it is important to note that in any dispute under the Regulations, none of these hybrid categories will be recognised by FIFA or the Court 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.[16]

B. CRITERIA TO QUALIFY AS A PROFESSIONAL

For a player to qualify as a professional, two cumulative conditions must be met. A player must have entered into a written contract with their club and must be paid more for their footballing activity than the expenses they effectively incur.[17] If either of these requirements is not met, a player is not a professional.

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, the decision-making bodies consistently find that article 2 paragraph 2 is the only authoritative standard to be applied when assessing a player's status.[18] There are only amateur or professional players, and nothing in between.[19]

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, and irrespective of the status under which a player may have been registered by the member association concerned. Given that article 2, 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 FIFA Dispute Resolution Chamber (DRC) in a case regarding the status of a female player registered at an Italian club.[20] The DRC confirmed that, when assessing a player's status, the article 2 paragraph 2 criteria take precedence.

16 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.

17 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.

18 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.

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

20 DRC decision of 22 November 2019, Williams.

In this specific case, the agreement between the player and club was drafted as an "Agreement on reimbursement of costs 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.

In a recent dispute regarding training compensation, the DRC confirmed this approach with respect to a male player registered at a French second-division club as an amateur who transferred to an English first-division club as a professional in the calendar year of his 20th birthday.[21] The claimant club, which trained the player between the ages of 12-16, claimed training compensation on the basis that the player had signed his first professional contract with the English club. The English club, in turn, argued that notwithstanding the status with which the player was registered at his former club, he had a written "*contrat d'apprentissage*" (scholarship agreement), which provided for a gross monthly salary. The player also received an accommodation allowance and bonus payments, and explicitly confirmed that what he spent to play football was less than what he was paid by his former club. The DRC concluded under the circumstances that the article 2 paragraph 2 criteria were met and the claimant was not entitled to training compensation, as this was the subsequent transfer of a professional (i.e. the player was a professional at the French second-division club, notwithstanding the status he was registered as having), as opposed to the first registration as a professional.

The DRC took a similar approach in another recent dispute regarding training compensation involving a male player registered at a French club as an amateur.[22] Despite the player being registered as an amateur, he had signed a written contract with his club and the amount he received to play football exceeded his expenses; the article 2 paragraph 2 criteria were met, and he was deemed to have been a professional, notwithstanding his registration.

Another important factor that can be extracted from the relevant jurisprudence is that the financial threshold arising out of the article 2 paragraph 2 criteria is relatively low. Article 2 paragraph 2 does not require a player to make a living from their footballing activity in order to qualify as a professional. A player can qualify as a professional 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, however, not possible 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 and any non-financial benefits to which the player is entitled. In one award, CAS further relied on a liquidated damages clause included in the contract signed between the player and their club.[23]

21 DRC decision of 11 December 2020, Cheikh Sidya Diaby.
22 DRC decision of 22 December 2021, Niava Behiratche.
23 CAS 2015/A/4148 & 4149 & 4150, Sheffield Wednesday FC v. Louletano Desportos Clube & Internacional Clube de Almancil & Associação Académica de Coimbra.

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.[24]

In a recent award, CAS 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 or a general threshold amount. A player can still be a professional even if they earn much less than the average salary in their country and, conversely, a player can still be 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, as mentioned, irrelevant.[25]

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 GBP 400 exceeded the expenses effectively incurred by the player. Consequently, any player who signs a scholarship agreement that includes remuneration at or above this level acquires professional status. By contrast, in Belgium, monthly remuneration of EUR 400 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.[26] 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 was deemed a professional.[27]

C. CRITERIA TO QUALIFY AS AN AMATEUR

The criteria to qualify as an amateur are straightforward, and they follow the definition of professional players: any player who does not meet both criteria in article 2 paragraph 2 is deemed an amateur.

24 CAS 2010/A/2069, Galatasaray A.S. v. Aachener TSV Alemannia F.C.
25 CAS 2020/A/6796, Andriamirado Aro Hasina Andrianarimanana & Kaizer Chiefs FC v. Fosa Juniors & FIFA.
26 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.
27 CAS 2015/A/4148 & 4149 & 4150, Sheffield Wednesday FC v. Louletano Desportos Clube & Internacional Clube de Almancil & Associação Académica de Coimbra.

3. Relevant jurisprudence

DRC decisions

1. DRC decision of 22 November 2019, Williams.
2. DRC decision of 11 December 2020, Cheikh Sidya Diaby.
3. DRC decision of 22 December 2021, Niava Behiratche.

CAS awards

1. TAS 2009/A/1895, Le Mans Union Club 72 c. Club Olympique de Bamako.
2. CAS 2014/A/3610, CS Grevenmacher v. Sport Clube Vila Real.
3. CAS 2016/A/4843, Hamzeh Salameh & Navit Mesan FC v. SAFA Sporting Club & FIFA.
4. CAS 2015/A/4148 & 4149 & 4150, Sheffield Wednesday FC v. Louletano Desportos Clube & Internacional Clube de Almancil & Associação Académica de Coimbra.
5. CAS 2009/A/1781, FK Siad Most v. Clube Esportivo Bento Gonçalves.
6. CAS 2008/A/1739, Club Atlético Boca Juniors v. Oscar Guido Trejo, Real Club Deportivo Mallorca SAD & FIFA.
7. CAS 2016/A/4603 SC Dinamo 1948 v. FC Internazionale Milano SpA.
8. CAS 2016/A/4597, SC FC Steaua Bucuresti v. FC Internazionale Milano SpA.
9. CAS 2006/A/1177, Aston Villa F.C. v. B.93 Copenhagen.
10. CAS 2005/A/838, FC Girondins de Bordeaux v. Lyngby Boldklub and Lundtofte Boldklub.
11. CAS 2020/A/6796, Andriamirado Aro Hasina Andrianamimanana & Kaizer Chiefs FC v. Fosa Juniors FC & FIFA.
12. CAS 2020/A/7029, Association Sportive Guidars FC v. CSKA Moscow & Lassana N'Diaye.
13. CAS 2010/A/2069, Galatasaray A.S. v. Aachener TSV Alemannia F.C.
14. CAS 2014/A/3659 & 3660 & 3661 KSV Cercle Brugge v. Clube Linda-A-Velha & Club Uniao Desportiva e Recreativa de Alges & Sport Club Praiense.

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.

1. Purpose and scope

Article 3 provides rules concerning the reacquisition of amateur status with the aim of protecting the sporting integrity of competitions and avoiding the circumvention of the Regulations, in particular as regards possible breaches of contract and the transfer of players at national and international level (art. 6 par. 4, Regulations).

The article also determines the consequences of reacquiring amateur status on the payment of training compensation.

2. The substance of the rule

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 are 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.

Primarily, the 30-day waiting period prevents a professional player from reverting to amateur status at short notice, simply to participate in an amateur competition. This protects the integrity of such competitions and prevents abuse.

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 making use of the registration process and rules concerning amateur players, which are usually less stringent than for professionals. For example, players may be tempted to re-acquire amateur status in the hope of having a greater ability to unilaterally terminate a contract and avoiding

the applicability of the provisions regarding the maintenance of contractual stability (arts 13-18, Regulations). While any such attempt would seem rather unlikely to succeed (as the categorisation of a player, and of their contract, does not depend solely on the status under which the player is registered), the 30-day waiting period serves to assist in identifying any such attempt.

B. NO PAYMENT OF COMPENSATION

If amateur players move between clubs, issues such as transfer compensation, compensation for breach of contract, or training compensation are unlikely to arise, irrespective of when, where and how often such a move occurs. However, the issue of compensation will arise when a player acquires professional status. Conversely, article 3 paragraph 2 makes clear that, as a principle, no compensation is payable if and when a player reacquires amateur status.

C. PAYMENT OF TRAINING COMPENSATION

The second sentence of article 3 paragraph 2 complements article 2 paragraph 2 c) of Annexe 4.[28] 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.

28 "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.

1. Purpose and scope

Article 4 creates a clear regulatory framework for the termination of football activity. The end of footballing activity and, for professionals, a career should be triggered by a definitive and permanent decision. As a principle, the Regulations are based on the assumption that a decision to retire becomes permanent after 30 months. Before this period elapses, a player remains technically involved in organised football and is bound by the relevant regulatory framework by remaining registered at the member association to which their last club is affiliated.

2. The substance of the rule

A. THE 30-MONTH PERIOD

The content of article 4 paragraph 1 is relatively straightforward: professionals who decide to 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.

This registration becomes relevant, in particular, 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 that 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 generally no requirement to complete the registration process used to record transfers.

B. IMPACT ON TRAINING COMPENSATION

The 30-month period may also 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 shall be noted that it is 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. The consequences of any such behaviour would need to be considered, in particular, in light of article 17, Regulations, in case of a dispute.

D. START OF THE 30-MONTH PERIOD

The relevant 30-month 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.[29]

29 Definition 5, Regulations.

Chapter III.

REGISTRATION OF PLAYERS

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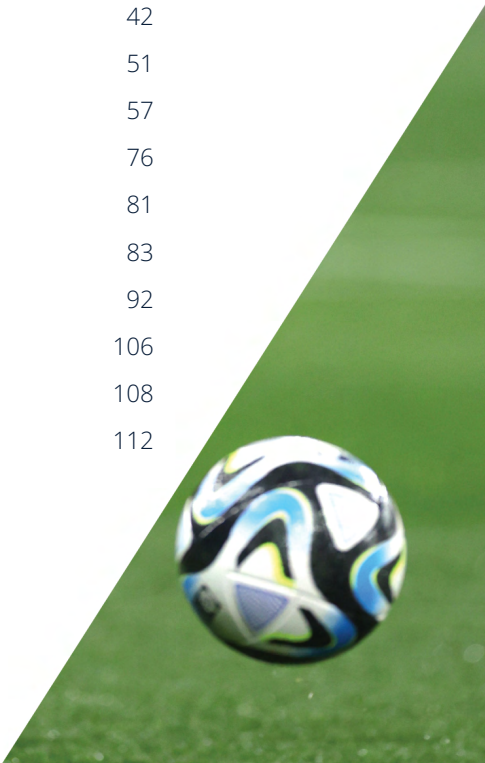

BACKGROUND

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. 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 considering continental and international championships, as well as national (league) championships, given that qualification for continental competitions is usually based on the outcome of national championships. Equally, in an ever-more globalised football world, 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 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. 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.

Member associations are thus responsible for drawing 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.

Finally, with the exception of the loan provisions, 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. With the exception of players participating in friendly matches during a trial, only electronically registered players identified with a FIFA ID are eligible to participate in organised football. By the act of registering or accepting to be on trial a player agrees to abide by the statutes and regulations of FIFA, 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 (see Annexe 3). A player that is on trial (see article 19ter) does not need to be registered to participate in friendly matches played in the context of a trial.

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, a player is only eligible to play official matches for two clubs. 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 they have fully complied with their contractual obligations towards their previous clubs, and provided that the provisions relating to registration periods (article 6) and the minimum length of a contract (article 18 paragraph 2) are respected. Limitations as per this paragraph do not apply if a player wishes to be registered based on the exception as per article 6 paragraph 3 a).

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.

6. In relation to the FIFA ID of a player and the integration of their electronic player registration systems, member associations shall

   a) assign a FIFA ID to all players already registered at the member association who have not been assigned a FIFA ID at the point in time when the electronic player registration system is integrated with the FIFA Connect ID Service

   b) where a FIFA ID has already been assigned to a player, as indicated by the FIFA Connect ID Service, ensure the same FIFA ID is used to register the player in its electronic player registration system;

c) if the FIFA Connect ID Service determines that a player is, or appears to be, registered in more than one electronic player registration system, resolve the matter within five (5) days of it becoming aware, and update the FIFA Connect ID Service without delay; and

d) provide the relevant personal information about a player to other member associations' electronic player registration systems through the FIFA Connect Interface, when requested for the purpose of registration and the determination of the FIFA ID of the player.

1. Purpose and scope

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.

By the act of registering (or agreeing to be on trial), a player agrees to abide by the Statutes and regulations of FIFA, the confederations and the associations. This principle is essential to bind all those who wish to participate in organised football to the relevant regulatory framework of football.

A registration is held by the member association to which a player's 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 therefore ineligible to participate in organised football until the member association to which their new club is affiliated has confirmed the player registration date in TMS.[30] A member association or league may stipulate further eligibility conditions for participation in national championships.

2. The substance of the rule

A. THE IMPORTANCE OF REGISTRATION

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, Regulations.[31] During the first registration of a player, the relevant member association

30 Article 11 of Annexe 3, Regulations.

31 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."

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.[32]

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 FIFA ID. As mentioned, by the act of registering for a club, 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.[33]

B. THE PURPOSE OF REGISTRATION

A player may only be registered with a club for the purpose of playing organised football.[34] 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, Regulations.

There is only one exception to the 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.

32 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."
33 Article 3 of Annexe 6, Regulations.
34 Definition 24, Regulations.

Such a "technical registration" – where there is no (immediate) purpose for the player in playing organised football – might arise if, for instance, a player returns to their parent club following a loan and is (for legitimate sporting reasons) 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.

C. LIMITATIONS ON REGISTRATION

The aim of article 5 paragraph 4 is to strike the appropriate balance between players' right to free movement and the need to protect both contractual stability and the legitimate interest in maintaining the sporting integrity of competitions. CAS has confirmed the legitimacy of this provision and the principles it enshrines (in an award of 2008, preceding the entry into force of the most recent wording).[35]

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 counted 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 (now, the Players' Status Chamber (PSC) of the FIFA Football Tribunal (FT)). 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 Football Association, to OGC Nice, affiliated to the French Football Association (FFF). In the 2014-2015 season, the player had participated in a match for the Newcastle United U-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 OGC Nice during the January registration period. The point to be clarified was whether the match played in the English "U-21 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 left no 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. This decision was challenged before CAS, which ultimately dismissed the appeal on procedural grounds.[36]

35 CAS 2007/A/1272, Cork City FC v. FIFA.
36 TAS 2015/A/3930, Hatem Ben Arfa c. FIFA.

In a recent award, CAS clarified that friendly matches may also fall within the definition of "organised football" in certain instances. CAS 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.[37] This decision had some influence on the recent amendment to article 5 paragraph 2 which provides that a player that is on trial does not need to be registered at a member association by a club to participate in friendly matches played in the context of that trial. For further information on this, please see the section on trials below.

D. THE EXCEPTION TO THE RULE

Article 5 paragraph 4 establishes an exception to the existing limitations concerning the number of clubs and registrations per season. CAS has set out that three cumulative requirements must be fulfilled for the exception to be applied.[38] As this is an exception to a clear rule, the requirements must be construed narrowly.

Under the exception established in article 5 paragraph 4, a player may be considered eligible to play official matches for a third club during a "relevant season". This "relevant season" is the playing season of the player's envisaged third club.[39]

This exception only focuses on the number of clubs and not on the number of registrations. For example, in the case of a player who was on loan from one club to another club and who returns to the parent club during the same season, the player is considered to have been registered with two clubs and to have played official matches for those two clubs even if the player continues to play for the parent club for the remainder of the season.

The specific requirements for this exception to be triggered are set out below.

a. 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 relevant transfer does, however, not need to occur between two clubs belonging to associations with overlapping seasons. 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 for clubs with "overlapping" seasons is provided in the following graphic:

37 CAS 2019/A/6432, The FA v. FIFA.
38 CAS 2007/A/1272, Cork City FC v. FIFA.
39 Circular no. 1726 of 30 July 2020.

b. Compliance with registration periods

The registration periods set by member associations are 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. Therefore, any (additional) registration that is permitted under the exception of article 5 paragraph 4 must still comply with any applicable registration period (subject to further exceptions provided in art. 6 par. 3).

c. Requirement to respect the minimum term of a contract

This last prerequisite for the exception to apply is that the minimum length of contracts (as per art. 18 par. 2) must always be respected. This requirement 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.[40] 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.

d. Unilateral termination of contract

For the sake of completeness, it shall be added that further exceptions may apply in cases where a professional player has unilaterally terminated their contract with just cause, or whose contract has been unilaterally terminated without just cause by their club. In this context, we refer to article 6 paragraph 3 a).

40 Article 18 paragraph 2, Regulations.

E. 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 further protect the integrity of each competition, reinforcing the fact that article 5, Regulations is binding at national level.[41] 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.[42]

F. ELECTRONIC REGISTRATION SYSTEMS

In November 2022, in conjunction with the introduction of the FIFA Clearing House, the new article 5 paragraph 6 was incorporated into the Regulations. This provision specifically governs the requirements for member associations regarding the assignment of a FIFA ID to each player for which they hold the registration, both at the time of the provisions entering into force and in future. They also provide for a resolution mechanism and require information sharing between member associations when duplication of players is detected by the FIFA Connect ID Service.

This new provision is to be read in conjunction with article 4 of the FIFA Clearing House Regulations (FCHR), which sets out the requirement for member associations to provide reliable, accurate and complete registration information electronically to FIFA at all times. Electronic registration systems are the cornerstone of the FIFA Clearing House (FCH) system, and the correct assignment of a FIFA ID to each player is crucial to that effect.

41 Article 1 paragraph 3 a), Regulations.
42 Circular no. 1726 of 30 July 2020.

3. Relevant jurisprudence

CAS awards

1. TAS 2015/A/3930, Hatem Ben Arfa c. FIFA.
2. CAS 2007/A/1272, Cork City FC v. FIFA.
3. CAS 2019/A/6432, The Football Association (The FA) v. FIFA.

CHAPTER III.

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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.

1. Purpose and scope

A. BACKGROUND

The unlawful practice of "bridge transfers" had become more common in recent years and it started to significantly affect the integrity and fairness of organised football. Therefore, the Regulations now include a series of provisions designed to prevent and counter such activity.

The message is clear: transfers, whether on a loan or permanent basis, should only ever be conducted for legitimate sporting reasons. Any fictitious or artificial transfer, or any transfer concluded in bad faith, notably to circumvent applicable rules, is prohibited. Bridge transfers are an example of such artificial grounds and they are specifically addressed in article 5bis.

A bridge transfer generally comprises the following elements:

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

CAS has recently pointed out that a bridge transfer is generally characterised as being a transfer made for no apparent sporting reason, where there is a non-sporting purpose underlying the move.[43]

43 CAS 2019/A/6639, Hellas Verona FC v. LFF & JFC Skonto.

Even prior to the entry into force of article 5bis, the FIFA Disciplinary Committee sanctioned this practice, considering it a breach of (the former) 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[44] also confirmed that bridge transfers should be forbidden and categorised them as "unlawful practices"; however, CAS held that the FIFA regulatory framework in force at the time did not provide an adequate legal basis to outlaw and punish bridge transfers.[45]

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 (it being understood that this list is non-exhaustive).

a. Taxation

Several member associations, or even national or regional governments, place a football levy or governmental tax on football transfers involving transfer compensation. Accordingly, although the objective of a transaction may be for the player to move from the first club to the final club, the parties may attempt to avoid paying applicable taxes by first transferring the player to a bridge club that is 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, the sole purpose of transferring the player to the bridge club is to allow the party or parties involved to avoid paying a football levy or governmental tax.

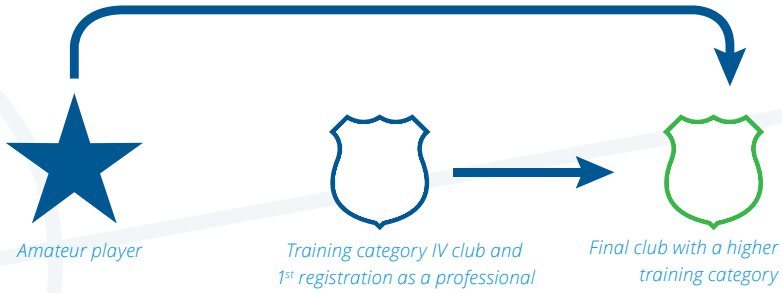
b. Training compensation

Another reason for a bridge transfer is to circumvent the requirement to pay training compensation or to reduce the amount of training compensation payable.

The most common way to structure this is to involve a bridge club within training category IV. When a player is registered as a professional for the first time by a club in 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.[46]

44 CAS 2018/A/5637, Institución Atlética Sud América v. FIFA; CAS 2014/A/3536, Racing Club Asociación Civil v. FIFA.
45 CAS 2018/A/5637, Institución Atlética Sud América v. FIFA; CAS 2014/A/3536, Racing Club Asociación Civil v. FIFA.
46 Article 3 paragraph 1 of Annexe 4, Regulations.

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 to which training compensation would be due (if applicable) for the 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:



In a recent award, CAS found a bridge transfer to have occurred since, bearing in mind the (low) level of the bridge club and the (high) potential of the player involved, it would have been nonsensical to consider that the transfer to the bridge club was made for sporting reasons. In that case, the player was only registered with the bridge club for less than a month. CAS considered that the player's short period of registration with the bridge club was intended to circumvent the application of the relevant provisions for training compensation.[47]

c. TPO

Bridge transfers can also be arranged in the context of TPO. In this scenario, a 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. In other words, the bridge club is used as a "vessel" to hold economic rights in a player.

Any previous club with which the player may have been registered is not considered a third party within the meaning of the Regulations,[48] 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.

47 CAS 2019/A/6639, Hellas Verona FC v. LFF & JFC Skonto.
48 Definition 14, Regulations.

2. The substance of the rule

The regulatory framework 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:[49]

A. THE DEFINITION

Point 24 of the Definitions section of the Regulations provides a definition of a bridge transfer, which 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.

B. 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). Conversely, any registration that occurs for any other reason is, in principle, illegitimate.

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.

C. REGULATORY PRESUMPTION

To ensure the prohibition of bridge transfers is as effective as possible, the Regulations operate with a regulatory presumption, reversing the usual allocation of the burden of proof.

The presumption is defined as follows: if one and 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.

49 Circular no. 1709 dated 13 February 2020.

To successfully rebut the regulatory presumption, the parties involved 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.

3. Relevant jurisprudence

FIFA judicial bodies' decisions

1. FIFA Disciplinary Committee decision 22 April 2021, Angers SCO, France.
2. FIFA Appeal Committee decision 16 September 2021, Angers SCO, France.

CAS awards

1. CAS 2019/A/6639, Hellas Verona FC v. LFF & JFC Skonto.
2. CAS 2018/A/5637, Institución Atlética Sud América v. FIFA.
3. CAS 2014/A/3536, Racing Club Asociación Civil v. FIFA.

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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.

2. The first registration period may begin as early as on the first day after the day on which the competition period of the previous season ended, and at the latest on the first day of the new season. This first registration period shall not be shorter than eight weeks or longer than 12 weeks. The second registration period shall occur in the middle of the season and shall not be shorter than four weeks or longer than eight weeks. The cumulative total of both registration periods may not exceed 16 weeks. The dates of the competition period and the two registration periods for the season shall be entered into TMS at least 12 months before they come into force (cf. Annexe 3). All transfers, whether a national transfer or an international transfer, shall only occur within these registration periods, subject to the exceptions in article 6 as per paragraph 3 hereinafter. FIFA shall determine the dates for any association that fails to communicate them on time.

3. Member associations are authorised to exceptionally register players outside a registration period in the following circumstances:

   a) A professional who has unilaterally terminated their contract with just cause, or whose contract has been unilaterally terminated without just cause by their club, may be registered outside a registration period. Upon receipt of the ITC request, the FIFA general secretariat shall expeditiously assess on a *prima facie* basis whether the unilateral termination occurred with or without just cause and permit or deny the registration accordingly. Such *prima facie* assessment is without prejudice to a decision of the Football Tribunal about the consequences of the termination of contract.

   b) A professional whose contract has naturally expired or has been mutually terminated prior to the end of the registration period applicable to the engaging club may be registered with the engaging club also after expiry of the respective registration period.

   c) A female player may be registered outside a registration period to temporarily replace another female player that has taken maternity leave. The period of the contract of the temporary replacement 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.

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

e) A professional whose contract has expired or been terminated as a result of COVID-19 has the right to be registered outside a registration period, regardless of the date of expiry or termination.

4. Whenever allowing a registration outside a registration period, member associations shall pay due consideration to the sporting integrity of the relevant competition. Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may define the criterion of sporting integrity in more detail.

5. In cases where the FIFA general secretariat allows a registration outside a registration period based on the exception in paragraph 3 a), any domestic regulatory provision or contractual agreement requiring the consent of the former club to register the player shall be null and void. In cases where a player's employment contract has expired, consent of the former club shall never be required to register the player.

6. With respect to the exceptions in paragraph 3 c) and d), 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, as well as the sporting integrity of the relevant competition.

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

8. 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.

1. Purpose and scope

Players must be registered at a member association to play for a club. Only then are they eligible to participate in organised football.[50] 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". As a principle, players cannot be registered for a new club outside these periods.

The creation of the concept of fixed registration periods represents one of several measures contained in the Regulations designed to strengthen the principle of contractual stability between clubs and professional players. Even more importantly, registration periods play an important role in safeguarding the sporting integrity of competitions, as they largely prevent players from moving between teams that participate in the same competition during that competition.

50 Article 5 paragraph 1, Regulations.

However, limiting the periods during which players can be registered (and thus move from one club to another) limits their right to free movement, particularly pursuant to EU 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 (ECJ), now known as the Court of Justice of the European Union (CJEU), stated in a decision of 13 April 2000 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".[51]

In other words, the CJEU recognises that the obstacle to the freedom of movement of workers created by registration periods pursues legitimate interests and can thus be justified.

Similarly, 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, no excessive formalism from the side of FIFA, as the deadline requires strict compliance in order to avoid unequal treatment."[52]

Overall, therefore, registration has long been recognised as a valid and legitimate regulatory tool to protect the integrity of competitions and to strengthen contractual stability.

With the March 2023 edition of the Regulations, FIFA introduced greater flexibility for member associations regarding registration periods. The previous link between the definition of a "season" to the "opening of the first registration period" was removed and a new concept of "competition period" was introduced. The "competition period" refers to the period that starts with the first official match of the national league championship or national cup competition – whichever takes place first – and ends with the last official match played in those competitions.[53] Those competitions should be understood as generally taking place during the season of a member association. Therefore, the competition period of a member association will need to occur within the 12-month period that a member association will need to define as the "relevant season".

51 Case C-176/96 (Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v. Fédération Royale Belge Des Sociétés De Basket-Ball Asbl [FRBSB]), European Court Reports 2000 Page I-02681.
52 CAS 2017/A/5368, Adrien Sebastien Perruchet da Silva v. FIFA (order on provisional measures).
53 Definition 41, Regulations.

2. The substance of the rule

A. SETTING REGISTRATION PERIODS

a. Responsibility and communications

It is up to each member association to set the specific dates for its respective registration periods, within the framework and limits established by the Regulations.

If a member association fails to communicate them to FIFA in a timely manner, FIFA may decide to instead impose dates for 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 and the competition periods, 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.[54]

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. 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.

b. 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 registration period at the start of a season is typically referred to as the "first" registration period, while the registration period (typically in the middle of a season) is referred to as the "second" registration period.

The first registration period may begin on the first day after the day on which the competition period of the previous season ended, and no later than the first day of the new season. The duration of the first registration period can be set between eight and 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.

54 Article 8 paragraph 2 of Annexe 3, Regulations.

In practice, many member associations close their first registration period only after the start of their national championship, which still allows some transfers of players to occur after the start of a championship. However, with the latest amendments to the Regulations concerning registration periods, in particular the fact that the first registration period may now begin as early as the first day after the competition period of the previous season, registration periods can start significantly earlier. This will help to avoid registration periods significantly overlapping into a new championship.

The second registration period shall normally occur in the middle of the season. It shall be no shorter than four weeks and no longer than eight weeks. The total duration of both registration periods may not exceed 16 weeks. In previous editions of the Regulations, the second registration period was limited to a maximum duration of four weeks. The flexibility in the allocation of the cumulative 16-week registration periods, introduced in the March 2023 edition of the Regulations, allowed for increased harmonisation between member associations following a single-year calendar and those following a dual-year calendar.[55]

c. Impact at national level

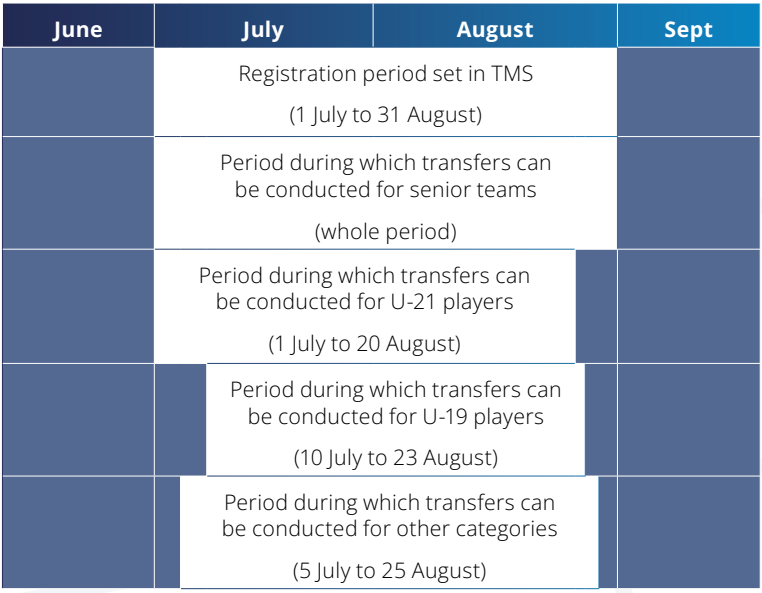
Article 6 is a binding provision at national level. Hence, and even though the transfer of players between clubs affiliated to the same member association is governed by national regulations, member associations may not provide for different registration periods at national level in respect of "first 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 the rule's 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 circumvented.

55 Explanatory Notes on the New Provisions in the Regulations on the Status and Transfer of Players Regarding Registration Periods (Transfer Windows), March 2023.

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



d. 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.[56]

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 a 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

56 By way of example, see circular no. 1763 of 30 June 2021.

result in the member association concerned being unable to register players.[57] If a member association fails to enter the registration periods despite several requests from FIFA, FIFA may set the dates itself. Member associations must enter separate registration periods for men's and women's professional football in the system, even if those periods are identical.

e. 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 that 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.[58] If a member association fails to enter the registration periods despite several requests from FIFA, FIFA may set the dates itself. 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 initially registered during one of the registration periods for professional players, or after the opening of the next registration period for professional players.[59] This rule is designed to prevent the system from being circumvented, and to protect the sporting integrity of competitions.

B. COMPLIANCE WITH THE REGISTRATION PERIODS

a. The underlying rule and principles

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.

57 Circular no. 1763 of 30 June 2021.
58 Circular no. 1763 of 30 June 2021.
59 Circular no. 1693 of 24 September 2019.

Players may only be registered during a registration period set by the relevant member association. Two compulsory requirements must be satisfied for a 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.[60]

Second, for international transfers and subject to the exceptions listed in article 6 paragraph 3, 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 no later than 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 registration following the international transfer of an eleven-a-side player must be carried out and managed via TMS. Accordingly, the administrative procedure governing the transfer of eleven-a-side players between member associations is described in Annexe 3, which forms the regulatory basis for the use and function of the system.[61]

In summary, the procedure is founded on the following basic model. If the player's transfer involves moving between different 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 ask its affiliated club (i.e. the one the player is leaving) whether any of the reasons set out in Annexe 3 to reject the ITC request applies. 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.

i. 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 6 (futsal), occurs. For further details on aspects of the administrative procedure which are not covered below, please review the other relevant chapters of this Commentary.

60 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, in order for the transfer to be processed as soon as possible once the registration period opens.

61 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 6. It follows the same principles, with some minor divergences since it is not an electronic-based system.

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 with their former club), 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 signed.

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

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. In addition, where a transfer agreement is in place, the information entered separately by the two clubs involved must match.

As far as the mandatory documents are concerned, 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).

ii. Requesting the ITC

Once the compulsory data has been entered into the system, the mandatory documents uploaded, the instruction confirmed and, for transfers involving transfer agreements, the relevant information has been 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 player's ITC via TMS from the releasing member association.

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

If both requirements are satisfied within the registration period applicable to the 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.

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 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 PSC and CAS[62] 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 just a few seconds late.

b. 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 data sets 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.[63]

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 submit its position.

62 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 c. 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.

63 Article 14 of Annexe 3, Regulations.

As a general rule, an override of the "validation exception" will occur where the engaging club and new member association duly completed 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 and uploaded all the mandatory documents correctly before the end of the registration period fixed by 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 an override of a "validation exception" will be authorised.

c. Specific rules for registering minors[64]

Any international transfer of a minor player – defined as a player who has not yet reached the age of 18 – is subject to the approval of the PSC. Prior to the introduction of the FT, such approvals were made by a Sub-Committee on Minors appointed by the Players' Status Commitee (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.[65] 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.[66] 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 must request the ITC before the registration period closes. Any request submitted after the registration period closes will be rejected.

64 Circular no. 1587 of 13 June 2017.
65 Article 10 of Annexe 3, Regulations.
66 Circular no. 1763 of 30 June 2021.

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 overridden, 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).

C. THE EXCEPTIONS

The Regulations provide for several 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 who have unilaterally terminated their contract with just cause or whose contract has been unilaterally terminated without just cause by their club. The second concerns professionals whose contracts have expired (or been mutually terminated) prior to the end of a specific registration period. The third and fourth 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. Finally, the fifth concerns circumstances related to COVID-19.

As article 6 is binding at national level, member associations may not provide for any further exceptions.

a. Unilateral termination of a contract by the player with just cause or unilateral termination by the club without just cause

The first exception in article 6 paragraph 3 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, this exception is 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 or where a club has terminated their contract without 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. This exception is intended to protect professionals that become unemployed because of their previous club's illegitimate behaviour, and who would find themselves unable to earn an income because of the restrictions imposed by the existence of 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 competitions may play a role in the decision to adopt this approach.[67] Any registration 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.

In this context, article 6 paragraph 4 expressly provides that collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may define the parameters in which the sporting integrity of a domestic competition is protected in a more specific manner. In other words, such collective bargaining agreements may provide further guidance as to when considerations of sporting integrity may allow, or prohibit, such an exceptional registration.

For this exception 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 merely assert that they had just cause; they must demonstrate on a *prima facie* basis that they had just cause. Equally, where a player claims that a club has terminated their contract without just cause, the player must demonstrate on a *prima facie* basis that the club did not have just cause to do so. The Regulations expressly provide that the FIFA administration will expeditiously assess on a *prima facie* basis whether the requirements to trigger this exception are met. It is important to underline that any decision taken in this regard by the FIFA administration has no bearing on any claim that may be lodged at a later date before the DRC or competent national body in a possible contractual dispute between player and club.

The FIFA administration will assess on that *prima facie* basis if the termination occurred with or without just cause as quickly and as swiftly as possible. The specific circumstances of each individual case will be considered using a pragmatic approach and with the best interests of unemployed players at the forefront. An important consideration will always be to facilitate a player's search for employment, taking into account all relevant circumstances in each case.

While FIFA can take those 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 put in place at national level for the eventuality where the player concerned finds new employment with a club affiliated to the same member association as their previous club.

67 Article 6 paragraph 4, Regulations.

It is paramount that no unemployed players face additional unnecessary obstacles to their employment. Article 6 paragraph 5 establishes that in cases where a registration outside a registration period is allowed by the FIFA administration in accordance with the exception in article 6 paragraph 3 a), any domestic regulatory provision or contractual agreement requiring the consent of the former club to register the player shall be null and void. In other words, no club will ever be able to rely on such a provision to prevent the subsequent registration of a player.

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

The second exception in article 6 paragraph 3 has a more general purpose. It is designed to protect unemployed professional players from overly restrictive effects which registration periods may have in some circumstances. If a professional player becomes a "free agent" at a point in time when a registration period is open, but – for some reason – does not manage to conclude the necessary contract negotiations before the end of that registration period (and thus cannot be registered within the registration period), the player may still be registered after that specific registration period in exceptional circumstances, subject to the below. In other words, the moment when a contract expires naturally or when it is mutually terminated is the decisive factor in the application of this exception, which serves as a safety net for unemployed professional players insofar as it protects them from the strict formal requirements that may result from the existence of registration periods.

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, as mentioned, that the professional must have sought employment unsuccessfully during a period in which they would already have been allowed to register for the specific new club. This has always been the approach under previous versions of the Regulations, but the most recent amendment to this article further clarifies this, by stating that the player in question must have been able to be registered "prior to the end of the registration period *applicable to the engaging club*".[68]

68 Example: a professional's contract expired on 31 July. After having faced difficulties in finding a new club, in October he

Conversely, 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 is 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.[69]

Notwithstanding the above, as also mentioned, 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.

Similarly, as with cases of unilateral termination, the consent of the former club is categorically not required to register a player in cases where a player's contract has expired. In other words, whenever a player's contract has expired, a player's former club can never take the position that its consent would be required for the registration of that player with a new club.

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

The third exception in article 6 paragraph 3 c) is designed to permit clubs to register a player to temporarily replace another player that has taken maternity leave. The exception may be u tilised regardless of whether the maternity leave period commences before or after the end of the registration period.

This provides protection to clubs when players take 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.

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 prospective new club ended on 31 August. The player's former contract had therefore 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 his contract with his former club was still valid at the time the registration period of the association of the prospective new club ended.

69 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 it. The registration periods of the association of the prospective 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 he was still unable to find a new club in January of the following year, he may rely on the exception in order to be registered for the new club in February, which is again outside the registration period.

Similarly, the choice of the player that has taken maternity leave to have a child is protected by the fact that the player that is registered in her place is considered a "temporary replacement" player; priority is given to protect the employment of the player who gives birth, and to the opportunity to exercise her right to return to work upon completion of her maternity leave.[70]

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 affords her a full registration period to find a new club after her "temporary replacement" contract expires.

As provided in article 6 paragraph 6, member associations shall adapt their national regulations accordingly.

d. Female players may be registered outside of a registration period upon completion of their maternity leave

For similar reasons to those stated for the exception pursuant to article 6 paragraph 3 c) the fourth exception in article 6 paragraph 3 d) is designed to protect the right of a female player 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.

e. Temporary COVID-19 exception

In June 2020, a temporary exception to article 6 paragraph 3 e) (previously art. 6 par. 1 d)) 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:

i. the expiry of an employment agreement. This refers to cases where:

(1) 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. due to government intervention or a decision of the competition organiser) prior to the completion of its match schedule, in which case the player and the new club may utilise the exception; or

70 Article 6 paragraph 6, Regulations.

(2) 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, in which case the player and the new club may utilise the exception; or

(3) 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, in which case the player and the parent club may utilise the exception.

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

(1) 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; or

(2) 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, in which case 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 because 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.

3. Relevant jurisprudence

CAS awards

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

Decision of the CJEU

1. Case C-176/96 (Jyri Lehtonen and Castors Canada Dry Namur-Braine ASBL v. Fédération Royale Belge Des Sociétés De Basket-Ball Asbl [FRBSB]), European Court Reports 2000 Page I-02681.

ARTICLE 7 – PLAYER PASSPORT

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A. Traditional player passports and EPPs 77

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ARTICLE 7 – PLAYER PASSPORT

1. For entitlements related to training rewards that are not governed by the FIFA Clearing House Regulations, existing obligations related to player passports shall remain unchanged, i.e. 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 their 12th birthday.

2. For entitlements related to training rewards that are governed by the FIFA Clearing House Regulations, an EPP shall be generated and used as set forth below.

3. The Electronic Player Passport is an electronic document containing consolidated registration information of a player throughout their career, including the relevant member association, their status (amateur or professional), the type of registration (permanent or loan), and the club(s) (including training category) with which they have been registered since the calendar year of their 12th birthday. It shall be generated in circumstances as defined in the FIFA Clearing House Regulations.

4. For the purpose of creating the EPP, member associations shall ensure that reliable, accurate and complete player registration information is made available electronically to FIFA through the FIFA Connect Interface, whenever requested by FIFA through such interface.

1. Purpose and scope

Article 7 sets out the basic principles related to player passports.

The raison d'être of the concept of a player passport is inextricably linked to the training reward regimes. A player passport contains the key data about a player's career history, based on which relevant training rewards are calculated. The accuracy of player registration data contained in a player passport is thus crucial for the good functioning of the training reward system established by the Regulations.

Following the introduction of the FCH in November 2022, two different types of player passport exist: (i) the "traditional" player passport – manually completed and uploaded by a member association into TMS – for entitlements related to training rewards that are not governed by the FCHR; and (ii) the EPP, a document that is automatically generated for an international transfer from the registration data held by the relevant member associations involved in the transfer (and any previous member associations with which the player was registered), for entitlements related to training rewards governed by the FCHR.

2. The substance of the rule

A. TRADITIONAL PLAYER PASSPORTS AND EPPS

Article 7 paragraphs 1 and 2 are mostly declaratory in nature and content. Paragraph 1 clarifies that for those entitlements to training rewards that are not (yet) governed by the FCHR, there is no change whatsoever in the obligations related to player passports. For traditional player passports, registering associations are still obliged to provide the club with which a player is registered with a player passport containing all the relevant registration data since the calendar year of the player's 12th birthday.

Paragraph 2 determines that for all training rewards governed by the FCHR, the new form of EPP shall be generated, as set forth in paragraphs 3 and 4, in conjunction with the FCHR.

B. EPPs IN PARTICULAR

Article 7 paragraphs 3 and 4 focus on the new concept of EPPs.

For international transfers subject to the FCHR, namely any transfers that occurred as from 16 November 2022 and for which a training rewards trigger has been identified by TMS (i.e. any transfer potentially generating training compensation and/or a solidarity contribution)[71], a "provisional EPP" is automatically generated in TMS. This contains the consolidated registration information of the player throughout their career, including the relevant member association, their status (amateur or professional), the type of registration (permanent or loan), and the club(s) (including training category) with which they have been registered since the calendar year of their 12th birthday.

In such transfers, TMS automatically adds to a provisional EPP any member association which has any registration record for a given player by extracting available electronic registration information from each connected member association. The relevant provisional EPP then remains visible to any member association and clubs for a period of ten days. During this period, any member association (on its own initiative and/or at the request of one of its affiliated clubs) may ask to take part in the EPP process. Equally, the FIFA general secretariat would have the ability to add any additional member association to a provisional EPP. This initial examination period is commonly referred to as the "inspection period".[72]

A member association that fails to provide accurate registration information in an EPP or whose electronic player registration system and/or electronic domestic transfer system is not integrated with the FIFA Connect Interface may be sanctioned by the

71 Articles 5, 6 and 7, FCHR.
72 Article 8 paragraphs 1 to 4, FCHR.

FIFA Disciplinary Committee. The FCHR *inter alia* provide that the member association will be fined and ordered to pay restitution to its affiliated club of an amount equal to the training reward that it did not receive as a result of the member association's failure to provide accurate registration information.[73] The same sanctions may apply to a member association that fails to automatically communicate or manually declare a training rewards trigger to FIFA.[74]

Following the inspection period, the FIFA general secretariat assesses a provisional EPP and either discards the EPP (if it is deemed that there is no indication that the player was registered with more than one member association since the start of the calendar year of their 12th birthday) or starts the EPP review process.[75]

During this process, which lasts at least ten days, the following will apply:

- Member associations will have the ability to manually add, amend or delete any registration data concerning their affiliated clubs.[76]
- New clubs will be given the opportunity to review the registration data and submit waivers of training rewards or exemptions if they deem that the former club terminated the player's contract without just cause.[77]
- Former clubs will be given the ability to challenge the validity of a waiver uploaded by the new club as well as the chance to provide proof that they met the contract offer requirements as set out in article 3 of Annexe 4, Regulations and, by extension, the jurisprudence of the DRC and CAS.[78]

Given that several participants in the EPP process may add registration information and/or documentation at the same time, the FCHR allow the FIFA general secretariat to ask any participant to state its position vis-à-vis a new registration and/or uploaded document that may affect its potential training rewards entitlement, to ensure that all participants' rights to be heard are respected, and that any request to amend registration information is sufficiently substantiated.[79]

The FIFA general secretariat will then assess an EPP and either make a determination on the basis of the data and evidence obtained during the EPP review process or refer an EPP to the DRC should it be considered that it contains factually and/or legally complex matters.[80] In any case, the determination made by the FIFA general secretariat and/or the DRC will be considered a final decision that may be appealed before CAS within 21 days

73 Article 17 paragraph 3, FCHR.
74 Article 17 paragraph 4, FCHR.
75 Article 8 paragraph 5, FCHR.
76 Article 9 paragraphs 2 and 3, FCHR.
77 Article 9 paragraph 7, FCHR.
78 Article 9 paragraphs 5 and 6 and Article 9 paragraph 8, FCHR.
79 Article 9 paragraph 9, and Article 10 paragraphs 1 and 2, FCHR.
80 Article 10 paragraph 3, FCHR. Examples of such complexity may include competing registration data, questions regarding the legal validity of a waiver document, or whether a contract offer was made in accordance with the relevant EU/EEA rules on training compensation. In such cases, the EPP review process is paused until the DRC renders its decision.

of notification.[81] In turn, a training compensation Allocation Statement (AS), if applicable, will be generated on the basis of a final EPP, in addition to a solidarity contribution AS, which will be generated every time the new club uploads proof to TMS that transfer compensation was paid to the former club.[82]

Once an EPP has become final and binding, it also becomes binding on all future transfers (and potential training reward triggers).[83]

81 Article 10 paragraph 5, FCHR.
82 Articles 11 and 12, FCHR.
83 Article 10 paragraph 6, FCHR.

CHAPTER III.

ARTICLE 8 – APPLICATION FOR REGISTRATION

1. Background 81

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.

1. Background

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 reasons for a member association to reject an ITC request are if it is claimed that a valid contractual relationship still exists between the player and the club they wish to leave or if there has been no mutual agreement regarding the early termination of the contract.[84]

84 Article 11 paragraph 3 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 of these regulations.

2. Associations are forbidden from requesting that an ITC be issued in order to allow a player to participate in friendly matches in the context of a trial.

3. Except for cases governed by the FIFA Clearing House Regulations, 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.

1. Purpose and scope

Article 9, Regulations establishes key principles concerning the ITC. It establishes the general concept and requirements of an ITC and it determines the conditions under which an ITC has to be issued.

The key reasoning behind the existence of, and requirement for, an ITC for international transfers can be summarised as follows:

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 binds them to the jurisdiction and disciplinary powers of the member associations, the confederations and FIFA. In this context, reference is made to those sections in the Commentary on article 5, Regulations.

If a player transfers between clubs affiliated to the same member association (i.e. in the case of a national transfer), there is no change to the member association with which the player is registered, only to the club with which they are registered and for which they will be eligible to play. The same member association will retain jurisdiction and disciplinary powers over the player. It is therefore reasonable for this kind of transfer to be governed by national regulations issued by that member association.

However, when a player is transferred internationally, their registration must also 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 ITC plays a key role in the handling of this transfer process. It is the key document for registering players following an international transfer.

Subject to two exceptions, 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. At the other end of the chain, the new member association has to confirm receipt of the ITC. Only then will it be able to complete the relevant player registration information in TMS, which will mean the player is then registered for their new club.

It is rare for very young players to be transferred internationally, but to minimise the administrative burden associated with such transfers, the Regulations provide for a minimum age as from which an ITC is required. For many years, this threshold was set at the age of 12. However, since 1 March 2015,[85] an ITC must be requested and obtained for any player over the age of ten. 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.

The administrative aspects of the procedure governing the transfer of players between member associations are covered in Annexe 3 (eleven-a-side football) and Annexe 6 (futsal). For further details on these administrative aspects, reference is made to the relevant chapters of this Commentary.

2. The substance of the rule

A. ISSUANCE OF AN ITC FREE OF CHARGE WITHOUT ANY CONDITIONS OR TIME LIMIT

Article 9 paragraph 1 expressly provides that an ITC shall be issued free of charge without any conditions or time limit. 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.

85 Circular no. 1468 of 23 January 2015.

a. Application to member associations

The requirement that an ITC shall be issued with no conditions attached was established 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 largely unchanged since.

Historically, transferring an ITC is a process that has predominantly involved 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 principle remains valid today.[86] In this context, the FIFA Disciplinary Committee has previously imposed sanctions on member associations that demanded 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.

b. Application to clubs

As confirmed by CAS on several occasions,[87] clubs may be sanctioned for breaching article 9 paragraph 1. However, the relevant awards all concerned clubs that 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."[88]

> "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."[89]

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 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

86 Article 11 of Annexe 3, Regulations.
87 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.
88 CAS 2014/A/3793, Fútbol Club Barcelona v. FIFA.
89 CAS 2016/A/4805, Club Atlético de Madrid SAD v. FIFA.

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 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 FIFA 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 FIFA 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,[90] CAS 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[91] again disagreed with the conclusions of the FIFA Disciplinary Committee and refrained from sanctioning a club for violating article 9. In this case, CAS 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 to say a condition that had to be met before any transfer could take place, as opposed to the issuance of the ITC.

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

In a recent award, CAS 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), this does not mean that article 9 paragraph 1 is breached when a player participates in organised football prior to obtaining an ITC.[92]

In another matter, the FIFA 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 FIFA Appeal Committee and overturned by CAS.[93]

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 only enter the counter-instruction and the required documents and data into TMS once payment had been made.

CAS again focused on the interpretation of the contractual clauses. It 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, CAS 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, Regulations has taken place.

c. 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.[94] When such a transfer is performed, the two clubs concerned agree, with the player's consent,

92 CAS 2019/A/6301, Chelsea FC v. FIFA.
93 CAS 2019/A/6229, AZ NV v. FIFA.
94 Article 10, Regulations.

to temporarily transfer 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[95] 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. Much like a permanent transfer, a copy of the relevant loan agreement must be uploaded to TMS. In practical terms, a loan involving a professional is subject to the administrative procedures in Annexe 3 (eleven-a-side football) or Annexe 6 (futsal), as applicable.

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. Only when the ITC has been received will the player be able to be registered with, and eligible to play for, their parent club.

B. LODGING THE ITC WITH FIFA

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 in principle be electronically registered with the relevant member association. Regarding participation in "official matches", this concept 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]

95 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 into 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.

96 Definition 5, Regulations.

In a recent award, CAS 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 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. those that are subject to the sanctioning of a member association for insurance, referees, or other reasons) are, in principle, "organised football" and thus require the player to be registered.[97]

In part to clarify this issue, new explicit rules governing trials were introduced into the Regulations for the first time in November 2022. The concept of a trial is now explicitly defined, the process for a player going on trial (internationally) is now codified, and the new regulatory framework explicitly provides that a triallist may participate in a "friendly match" without having to be registered, provided that this match takes place during the defined period of the trial.

Article 5 paragraph 1 of the Regulations was amended to provide an exception to the general rule that dictates that only electronically registered players identified with a FIFA ID are eligible to participate in organised football. Under this revised regulatory framework, triallists may participate in friendly matches during a trial, despite not being registered. Accordingly, article 9 paragraph 2 was amended to clarify that member associations shall not request an ITC for the sole purpose of allowing a triallist to participate in friendly matches played in the context of a trial.

D. ITCs AND TRAINING REWARDS

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.

However, following the commencement of operations of the FCH in November 2022, this obligation now only extends to those situations which are not governed by the FCHR (i.e. in principle, it applies only to transfers that occurred prior to 16 November 2022 and/or to transfers for which no training reward trigger is identified).

97 CAS 2019/A/6432, The FA v. FIFA.

3. Relevant jurisprudence

CAS awards

1. CAS 2013/A/3413, Olympique des Alpes SA v. Jagiellonia-Bialystok SSA.
2. CAS 2014/A/3793, Fútbol Club Barcelona v. Fédération Internationale de Football Association (FIFA).
3. CAS 2016/A/4805, Club Atlético de Madrid SAD v. Fédération Internationale de Football Association (FIFA).
4. CAS 2016/A/4785, Real Madrid Club de Fútbol v. FIFA.
5. CAS 2018/A/5953, Sport Lisboa e Benfica – Futebol, SAD v. FIFA.
6. CAS 2019/A/6229, AZ NV v. FIFA.
7. CAS 2019/A/6301, Chelsea FC v. FIFA.
8. 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 for a predetermined period by their club ("former club") to another club ("new club") on the basis of a written agreement. The following rules apply to the loan of professionals:

   a) The clubs shall conclude a written agreement defining the terms of the loan ("loan agreement"), in particular, its duration and financial conditions. The professional may also be a party to the loan agreement

   b) The professional and the new club shall sign a contract covering the duration of the loan. This contract shall acknowledge that the professional is on loan.

   c) During the agreed duration of the loan, the contractual obligations between the professional and the former club shall be suspended unless otherwise agreed in writing.

   d) Subject to article 5 paragraph 4, a loan agreement may be concluded for a minimum duration of the time between two registration periods and a maximum duration of one year. The end date shall fall within one of the registration periods of the association of the former club. Any clause referring to a longer duration of the loan shall not be recognised.

   e) A loan agreement may be extended, subject to the above minimum and maximum durations, with the written consent of the professional.

   f) A new club is prohibited from sub-loaning or permanently transferring a professional to a third club.

2. Loan agreements with a duration of more than one year which predate the entering into force of these regulations may continue until their contractual expiration. They may be extended only in accordance with article 10 paragraph 1 e).

3. The loan of a professional is subject to the administrative procedures provided in articles 5-9 and Annexe 3.

4. Where the contract between a professional and the new club has been unilaterally terminated prior to the completion of the duration agreed in the loan agreement:

   a) the professional has the right to return to the former club;

   b) the professional must immediately inform the former club of the premature termination and whether they intend to return to the former club;

   c) if the professional decides to return to the former club, the former club must reintegrate the professional immediately. The contract which was suspended during the loan shall be reinstated from the date of reintegration, and in particular, the former club must remunerate the professional;

d) rules governing registration at national level must be determined by the association in agreement with domestic football stakeholders.

5. The terms of article 10 paragraph 4 are without prejudice to:

   a) the operation of article 17 relating to termination of the contract between the professional and the new club;

   b) the operation of article 17, should the former club fail to reintegrate the professional immediately; and

   c) the right of the former club to seek compensation resulting from its obligation to reintegrate the professional. The minimum compensation payable shall be the amount the former club must pay the professional between the date of reintegration and the original completion date of the loan agreement.

6. The following limitations apply from 1 July 2024:

   a) a club may have a maximum of six professionals loaned out at any given time during a season;

   b) a club may have a maximum of six professionals loaned in at any given time during a season.

7. The loan of a professional will be exempt from the above limitations if:

   a) the loan occurs before the end of the season of the former club in which the professional turns 21; and

   b) the professional is a club-trained player with the former club.

8. The following restrictions apply irrespective of age or club-trained status:

   a) a club may have a maximum of three professionals loaned out to a specific club at any given time during a season;

   b) a club may have a maximum of three professionals loaned in from a specific club at any given time during a season.

9. The following transition period shall apply for the limitations in article 10 paragraph 6:

   a) from 1 July 2022 to 30 June 2023: a maximum of eight professionals for each limitation;

   b) from 1 July 2023 to 30 June 2024: a maximum of seven professionals for each limitation.

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 and temporary period.

As part of the reform of the transfer system initiated in 2017, the concept and rationale for loans were analysed and assessed. It became quickly apparent that the loan system lacked a clear purpose or objective and was fraught with abusive and excessive practices. This had a significant impact on the development of young players, and placed the integrity of competitions at risk, which undermined the overall objectives of the football transfer system. In particular, the loan system was being used by certain clubs for commercial as opposed to development purposes, such as utilising their market position to "hoard" the registration of players, loaning them out each season to other clubs.

Although the new regulations governing loan transfers were originally approved in February 2020, their implementation was delayed due to the COVID-19 pandemic. The new loan rules entered into force on 1 July 2022 with the agreement of stakeholders. The new rules have three core objectives: (i) protecting the integrity of competitions; (ii) development and training of young professionals; and (iii) preventing the hoarding of players.[98]

B. SCOPE

It is important to clarify that although the new FIFA rules apply only to international loans, they fall within the provisions that are binding at national level and they must be included in national transfer regulations. In other words, the specific regulations that govern the transfer of players between clubs belonging to the same association must provide for rules in relation to domestic loans. In this context, member associations are required to implement rules on a domestic loan system which are in line with the principles of the respective rules contained in the Regulations by 1 July 2025 and in agreement with domestic football stakeholders. For the sake of clarity, the loan rules agreed at national level may set a different limitation on the number of loans (at domestic level) from those contained in article 10 of the Regulations, provided that the domestic rules are consistent overall with the key principles mentioned above.

The title of 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. This obligation is based on the employment contract entered into between the parent club and the professional player, the effects

98 Circular no. 1796 of 3 May 2022.

of which are suspended for the duration of the loan, but which 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.

In the context of article 10, the term "former club" refers to the club that is loaning out the player and that is also commonly known as the club of origin, the parent club or the loan club, whereas the term "new club" refers to the club that is receiving the player on loan and that is also commonly known as the club of destination, the engaging club or the loanee club.

2. The substance of the rule

A. TERMS OF A LOAN

The new article 10 paragraph 1 provides mandatory requirements for the international loan of a player. For the sake of clarity, the administrative procedures regarding registration (art. 5) and the ITC (art. 9), as well as the requirements in Annexe 3 must be followed to properly register a player in the context of a loan.

The loan of a professional must be subject to a written agreement between the new club and former club. As best practice, it is recommended (though not mandatory) that the player is also a party to the loan agreement to safeguard against any misunderstanding or dispute in future.

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 player's approval can be expressed directly by their co-signing the loan agreement, or indirectly by their signing an employment contract with the club they are joining on loan and agreeing to suspend their employment contract with the former club. Ideally, these agreements between the player and club(s) should refer to the loan agreement. In any event, 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[99] of the relationship between the player and their temporary new club.

In particular, the written loan agreement should specify its duration and the financial conditions agreed between the clubs involved.

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

The player and the new club must sign an employment contract covering the period of the loan and shall clearly acknowledge that the professional player is on loan. During that loan period, unless the player and the parent club agree otherwise in writing, the employment contract between the player and the parent club is automatically suspended.

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, reference is made to those sections in the Commentary regarding article 5.

B. DURATION OF A LOAN

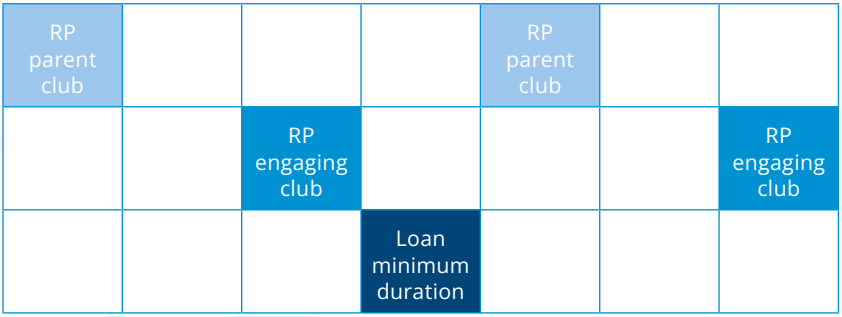
The minimum period of a loan is the period between two successive registration periods, and the maximum period of a loan is one year. This new maximum limitation was introduced in the July 2022 reform in line with the principle of preventing the hoarding of players. Any clause referring to a longer period will not be recognised.

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 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.

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 club to which they were loaned back 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 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 the member association to which the parent club is affiliated.

With this in mind, the new rules introduced on 1 July 2022 explicitly require 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, to avoid any registration issues. Purely "technical registrations", as described in the sections of 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 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).



The minimum permitted duration of a loan causes an unwritten exception to arise regarding the established minimum duration of a contract entered into between a professional and a club. The length of the employment contract entered into 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.[100]

However, there may be specific cases where loan extensions for very short periods of time, with the consent of the professional, are justified and indeed required in order to allow a player to complete a particular competition that is already in progress. In order to assess whether a deviation from the established minimum duration of a loan is to be allowed on an exceptional basis, such matters need to be assessed on a case-by-case basis, with the decision-making body considering the factual background and circumstances of the particular scenario, while also taking into account the integrity of the competition.

C. EXTENSIONS

A loan agreement may be extended, subject to the same minimum and maximum durations, with the player's written consent. Again, this was introduced in line with the principle of preventing the hoarding of players. There is no limit on the number of extensions that may be agreed.

100 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 player A and 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 clubs B and C (the player's club of origin) agree that the player will move temporarily to club B for the first half of the season only.

However, since FIFA has a duty to ensure that the rules are correctly implemented, applied and enforced, it must remain alert for cases where abuses and/or circumvention of the provisions of the Regulations are identified. Although the loan rules do not contain any express provision which prohibits "automatic extensions" of loan agreements (provided that the corresponding requirements are complied with), there could be a risk of circumvention of the rules, in particular of the maximum duration of a loan in cases where the loan extension is made dependent on the occurrence of an event that is certain to happen (as opposed to a genuine condition precedent). In such circumstances, it would be difficult to justify that such a clause merely provides for the possibility to automatically extend a loan agreement; rather it sets, from the outset, the initial end date of the loan to a period after the one "originally" agreed by the parties, which could potentially be in violation of the maximum allowed duration for loans of one year.

It follows that loan agreements with automatic extension clauses, in which the triggering element is considered to be certain, could result in the extension of the loan not being permitted and/or the commencement of compliance proceedings. Evidently, such matters need to be assessed on a case-by-case basis, with the decision-making body needing to look not only at the wording of the said clause, but also at the factual background and circumstances which contributed to the inclusion of that clause.

D. SUB-LOANS AND PERMANENT ONWARDS TRANSFERS

The new article 10 paragraph 1 f) explicitly prohibits a club where a player is on loan from sub-loaning or permanently transferring that player to a third club. Only the former club that holds the permanent registration of a player may agree to transfer the player to a third club (whether permanently or on loan).

When a club engages in an international loan, the FIFA rules on international loans become applicable and the prohibition on sub-loaning (or permanently transferring) the professional to a third club, whether at domestic or international level, would apply.

E. LOANS AND TRAINING REWARDS

The provisions on training compensation and the solidarity mechanism are also applicable to loans. Full details are contained in the relevant chapters of this Commentary.

F. UNILATERAL TERMINATION OF THE CONTRACT BETWEEN THE PROFESSIONAL AND THE CLUB THEY JOIN ON LOAN

a. Principle of contractual stability

The contractual relationship between a professional and a club they join on loan is governed by the same rules and principles that apply to professionals engaged on a permanent basis, in particular the provisions of the Regulations on the maintenance of contractual stability.

As far as the employment relationship between the player and the loan club is concerned, if such contract is terminated unilaterally, and if there is a dispute between the player and that club, the principles stipulated in articles 13 to 18, Regulations must be considered.[101]

Article 10 paragraph 4, Regulations addresses this scenario further, and it establishes specific additional consequences of such termination including for the player's former club.

Article 10 paragraph 4, Regulations was introduced in July 2022. Prior to its introduction, significant uncertainty existed as to the rights of the player, the loan club and the former club when the employment relationship between the player and the loan club breaks down.

The detailed application of article 10 paragraph 4 will always depend on the specific circumstances of each case and no DRC (or PSC) case law on this article is available so far to provide further guidance. However, the primary purpose of, and justification for, this rule is to protect players in scenarios where they terminate the contract with the loan club with just cause, or where the loan club terminates such contract without just cause. In such scenarios, in particular, it is fundamental to avoid a player ending up in limbo – this is the main purpose of article 10 paragraph 4.

Four specific matters are addressed:

i. The professional has the right to return to the parent club. In this respect, the professional is not left in limbo where, potentially through no fault of their own, their employment with the loan club has been unilaterally terminated.

ii. The professional must immediately inform the former club of the premature termination and whether they intend to return to the former club. If the player chooses to exercise their right to return, they must immediately inform their parent club of their decision. These requirements are cumulative – the communication by the player of both the premature termination and decision to exercise the right of return must occur simultaneously, or within a very short timeframe; any unreasonable delay in any of these communications may lead to the rights in question being deemed to have been waived.

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

iii. If the professional decides to return to the former club, the former club must reintegrate the professional immediately. The contract that was suspended during the loan shall be reinstated from the date of reintegration and, in particular, the former club must remunerate the professional. It goes without saying that, in such cases, the player is obliged to render sporting services for the club, and to comply with all other obligations under the contract that has now resumed.

With regard to the registration of the player with the former club, the criteria established in article 6 paragraph 3, Regulations will apply, i.e. FIFA may authorise a member association to register a player outside of a registration period, provided that the player can demonstrate on a *prima facie* basis that they had just cause, or that the club terminated the contract without just cause. If the relevant registration period is open, a registration can, in principle, occur in all cases.

The following table illustrates the possible scenarios described above (subject to the *prima facie* analysis and applicable domestic regulations):

Registration period	Termination type	Registration possible?
Open	With just cause by the player	Yes
	Without just cause by the club	
	Without just cause by the player	Yes
	With just cause by the club	
Closed	With just cause by the player	Yes
	Without just cause by the club	
	Without just cause by the player	No
	With just cause by the club	

iv. Rules governing registration at national level must be determined by the member association in agreement with domestic football stakeholders. Generally, and as under article 6 paragraph 3, Regulations, even if FIFA permits a registration, any registration must also comply with applicable domestic regulations, considering in particular the integrity of national championships and relevant national regulations.

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 may 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, that the player is therefore obliged to re-join their parent club after the end of the stipulated loan period, and that the Regulations may oblige the former club to reintegrate the player, must also be considered when determining these legal consequences.

In this context, it must be noted that CAS has held[102] 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 player and the club to which the player was loaned 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, CAS 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 would be paid, but also provided the parent club with a better position from which to take legal action against the player, whose debt it would 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 the player himself.

102 CAS 2016/A/4408, Raja Club v. Baniyas FC & Ismail Benlamalen.

b. Calculation of compensation

Article 10 paragraph 5 provides that the terms of article 10 paragraph 4 are without prejudice to:

i. the operation of article 17 relating to termination of the contract between the professional and the loan club, or if the parent club fails to reintegrate the professional immediately; and

ii. the right of the parent club to seek compensation resulting from its obligation to reintegrate the professional. The Regulations provide that the minimum compensation payable if a parent club successfully brings a claim before the FT in this regard shall be the amount the parent club must pay the professional between the date of reintegration and the original completion date of the loan agreement.

Although no case law exists with respect to the explicit rules in the new article 10 paragraph 5, previous case law of the decision-making bodies is instructive, as discussed below.

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, possibly also to the parent club.[103]

If the player is re-integrated by 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.[104]

Where the player's parent club re-integrates a player 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 the 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, if it had access to the player's services in return for the salary payments made to them.[105]

103 Article 17 paragraph 1, Regulations.
104 For further details in this respect, please refer to the chapter discussing article 17 in this Commentary.
105 Single Judge Players' Status Committee decision of 11 July 2017, no. 07171602: the Single Judge rejected the claim in question based on the lack of a contractual provision rather than on the club having the player's services at its disposal; Single Judge Players' Status Committee decision of 6 March 2018, no. 03180237-E: an entitlement to a refund was accepted, since a relevant clause had been inserted in the loan agreement, stipulating that in the event 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 end of the originally agreed loan period.

Should a player engaged by a club on loan be found to have terminated the relevant contract without just cause, or to have seriously breached their contractual obligations such that the club has just cause to terminate the contract, compensation will become payable to that club. The amount of compensation due to the club will be calculated based on article 17 paragraph 1.[106]

G. LIMITATION ON LOANS

One further fundamental change in the reform of the loan rules was the introduction of a hard cap on the number of players a club may (internationally) loan in and out. The introduction of the hard cap was linked to the objectives identified as part of the reform process, particularly that the primary purpose of loans shall be the development of young players, and not the hoarding of talent.

The below table provides the limitations implemented as from 1 July 2022, which will be phased in over a two-year transitory process:

1 July 2022 to 30 June 2023	A maximum of **8** players loaned out	A maximum of **8** players loaned in
1 July 2023 to 30 June 2024	A maximum of **7** players loaned out	A maximum of **7** players loaned in
1 July 2024 onwards	A maximum of **6** players loaned out	A maximum of **6** players loaned in

The cap applies at any given time during a season. A club may therefore loan out the maximum number of players during the first registration period, and then subsequently loan out the same maximum number of players during the second registration period, provided that the first group of players have had their loans terminated. For the avoidance of doubt, the cap on the number of international loans in and out is not limited to a particular team of a club and it is therefore applicable to the "whole" club (and all its teams jointly). However, the cap applies separately to the respective men's and women's team(s) of a club.To promote the development of young players, an exception is specifically provided for players that: (i) are loaned out prior to the end of the season of their parent club in which they turn 21; and (ii) are "club-trained players" with the parent club. These conditions are cumulative, and must both be met for the loan of the player to be excluded from the calculations for the parent club (i.e. players loaned out) and the new club (i.e. players loaned in).

The Regulations define a "club-trained player" as "a player who, between the age of 15 (or the start of the season during which he turns 15) and 21 (or the end of the season during which he turns 21), and irrespective of his nationality and age, registered with

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

his current club for a period, whether continuous or otherwise, of three entire seasons or of 36 months". This definition is aligned with the principles underpinning the new loan rules, and the general objectives of the football transfer system itself – to reward clubs that invest in the training and education of players.

Therefore, to qualify for the status of "club-trained player", a player needs to be registered with the same club for a total of three entire seasons or 36 months between the ages of 15 and 21, regardless of whether these three seasons or months were consecutive. Along these lines, the important and central element of the "club-trained" definition is that, between the ages of 15 and 21, the player is registered with the relevant club for a period of three entire seasons or 36 months, even if this period is not continuous.

For example, since a player may only be registered with one club at a time, the period during which the player was transferred on loan from a club (Club A) to another club (Club B) would not count for the purposes of achieving club-trained player status with Club A since, during this period, the player was not registered with Club A. However, upon the player's return to Club A after the expiry of the loan with Club B, the period during which the player is registered with Club A will, once again, count for the purposes of achieving club-trained status with the said club.

Finally, to avoid abuse, regardless of whether a player qualifies for these exceptions, clubs are restricted to loaning in or out a maximum of three professionals to or from a specific club at any given time during a season. There was no transitory phase for this restriction; it applied immediately as from 1 July 2022.

3. Relevant jurisprudence

DRC decisions

1. DRC decision of 11 April 2018, no. 04190658-E.

PSC decisions

1. Single Judge Players' Status Committee decision of 11 July 2017 no. 07171502.
2. Single Judge Players' Status Committee decision of 6 March 2018 no. 03180237-E.

CAS awards

1. CAS 2016/A/4408, Raja Club v. Baniyas Football Sports Club & Ismail Benlamalen.
2. CAS 2016/A/4709, SASP Le Sporting Club de Bastia v. Christian Koffi N'Dri Romaric.

ARTICLE 11 – UNREGISTERED PLAYERS

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ARTICLE 11 – UNREGISTERED PLAYERS

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.

1. Purpose and scope

The content of article 11 is the logical consequence of the principle defined in article 5, i.e. that only duly registered players are eligible to participate in organised football. If a player must be registered with a member association to play for a club, and if 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 will have played illegitimately (i.e. is considered ineligible).

In most cases, the sporting consequence of fielding unregistered players is that the club that fielded the ineligible player forfeits the relevant match. There is also scope 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. 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.

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.

1. Purpose and scope

The scope of article 12 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 matter for the club and the 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 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 FIFA Disciplinary Committee has confirmed sanctions imposed by a club on a player in relation to contractual issues can be found in CAS jurisprudence.[107]

The imposition of disciplinary sanctions does not, as such, 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 overall have a

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

legitimate interest in ensuring that any penalty is complied with in full, even following an international transfer. The content of article 12 serves precisely this purpose, as it determines the conditions under which disciplinary sanctions may also have to be enforced by a player's new association.

2. The substance of the rule

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

If a player has received a disciplinary sanction for up to four matches or three months from 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 that the circumstances surrounding its imposition be 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 are not automatically enforced following an international transfer to a club affiliated to another confederation.

B. 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 may not always be appropriate. In such cases, the gravity and potential 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 by the new member association, the FIFA Disciplinary Committee must have extended the sanction to have worldwide effect. The relevant procedure is based on article 70 of the FIFA Disciplinary Code.[108] 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 the procedural requirements identified in article 70 of the FIFA Disciplinary Code 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.[109] The (further) substance of the decision to impose the disciplinary sanction may not be reviewed.[110]

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 effect at the time the ITC is issued. However, such declaration in TMS is not sufficient for the sanction to be extended, since the formal request to the FIFA Disciplinary Committee must also be made as detailed above.

3. Relevant jurisprudence

CAS awards

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

108 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.
109 Article 70 paragraph 5, FIFA Disciplinary Code.
110 Article 70 paragraph 8, FIFA Disciplinary Code.

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.

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 grants players and clubs the ability to lodge their claims for outstanding amounts from a club through a specific procedure in which the debtor club may have a sanction imposed on it.

Article 12bis has several cumulative requirements. If a claim does not fulfil all these requirements, it will be treated as a standard claim for outstanding amounts, and the specific process under article 12bis will not be initiated.

B. BACKGROUND

A concerning trend in the football transfer system has long been that clubs were notoriously 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. This causes frustration first for individuals who are made to wait for their salaries and/or other financial benefits and second for clubs that have to chase outstanding payments. In addition, complaints from clubs about their competitors gaining an unjustified competitive advantage by promising to make payments for which they lack the necessary financial means were becoming ever more vociferous.

An important first step to address this situation was taken with the entry into force of article 12bis on 1 March 2015.[111]

The aim of article 12bis is to ensure that clubs comply with their contractual financial obligations towards players and other clubs, which makes this regulatory provision in general – and its first paragraph in particular – the crystallisation of the legal principle of *pacta sunt servanda* in connection with financial obligations assumed by clubs towards players and other clubs.

111 Circular no. 1468 of 23 January 2015.

2. The substance of the rule

A. SCOPE OF APPLICATION

As far as debtors are concerned, article 12bis is aimed exclusively at clubs as regards the ability to impose sanctions. As for creditors, the provision may be invoked by both clubs and players. Coaches cannot invoke article 12bis to claim outstanding remuneration. However, an identical provision governing coaches is found in Annexe 2, Regulations.

It is noteworthy that, while the provision under article 12bis paragraph 1 refers only to clubs as debtors, many decisions of the DRC have, in fact, reflected the principle of *pacta sunt servanda* in claims filed against players as well for outstanding amounts. In others, even if the wording of this rule only mentions clubs, the interpretation of the same by the DRC has been far more extensive.[112] However, players will not be subject to sanctions.

Article 12bis only covers outstanding financial obligations. 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 regardless of whether the transfer agreement governs a permanent or loan transfer.[113] As such, article 12bis does not apply to outstanding financial obligations which are not based on a contractual agreement, such as the regulatory obligations to pay training rewards.

Article 12bis is applied *ex officio* by the DRC or the PSC, i.e. without the interested party specifically requesting the technical application of this rule.[114] In one award,[115] a CAS 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 as this prerogative lies solely with the relevant bodies of FIFA." One decision of the DRC has reflected this conclusion.[116]

B. FORMAL REQUIREMENTS

To trigger the applicability of article 12bis, the amount concerned 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, thereby granting the debtor club a deadline of ten days to comply with its financial obligations.[117] Once these two requirements are met, an overdue payable within the meaning of article 12bis exists.

112 DRC decision of 15 June 2022, Benlamri; DRC decision of 5 May 2022, Mihajlovic; DRC decision of 8 June 2022, Naguez; DRC decision of 28 September 2022, Kore; DRC decision of 20 April 2023, Ndao; DRC decision of 15 December 2022, Taishan.
113 CAS 2016/A/4705, Al Jazira Football Sports Company v. Cardiff City Football Club & FIFA.
114 CAS 2015/A/4232, Al-Gharafa SC v. FC Steaua Bucuresti & FIFA.
115 CAS 2016/A/4718 & 4719, Club Atlético Mineiro v. Udinese Calcio & FIFA.
116 DRC decision of 24 February 2022, Toby.
117 CAS 2015/A/4232, Al-Gharafa SC v. FC Steaua Bucuresti & FIFA.

In other words, and for the avoidance of doubt, a debt must be at least 40 days overdue (30 days overdue plus ten days as per the required default notice) for sanctions to be considered to be compliant with article 12bis.

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 the debtor club (i.e. to a correct postal address, fax number or email address), and the debtor club claims not to have received the notification, the burden then shifts to the debtor club to prove that the default notice did not reach them.[118]

Should the abovementioned formal requirements be met in connection with at least one of the outstanding amounts claimed by the creditor in their claim, article 12bis will be applicable.[119]

C. MATERIAL REQUIREMENTS FOR SANCTIONS TO APPLY

The aim of article 12bis is to ensure that players and clubs that are entitled to contractual amounts receive them as swiftly as possible, without unnecessary or unjustified delay. Deliberate dilatory tactics and behaviour on the part of a debtor club will not be tolerated under any circumstances. If a claim is made pursuant to article 12bis, the burden lies with the debtor club to demonstrate that it has a contractual basis to justify the non-payment of the relevant amount due. If it cannot do so, it will be ordered to pay the overdue payables and the relevant disciplinary sanction will be imposed.

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

- there was a contractual financial obligation;
- such obligation was fulfilled by the agreed due date;
- the creditor (player or club) has complied with the formal requirements; and
- 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,[120] or where financial difficulties (including those arising from the COVID-19 pandemic)[121] or liquidity problems are invoked. In the former scenario,

118 CAS 2016/A/4718 & 4719, Club Atlético Mineiro v. Udinese Calcio & FIFA.
119 DRC decision of 24 November 2022, Moreno Fuertes.
120 DRC decision of 5 May 2020, Pereyra; DRC decision of 15 April 2020, no. 04202215; DRC decision of 19 May 2020, Sydykov; DRC decision of 14 October 2021, Konate; DRC decision of 17 May 2022, Cruz; DRC decision of 6 April 2022, Ifeanyi; DRC decision of 8 March 2022, Garcia Fernandez.
121 DRC decision of 9 December 2021, Pereira da Silva; DRC decision of 31 March 2022, Zivkovic; DRC decision of 9 November 2021, Pucko; DRC decision of 6 April 2022, Batha; DRC decision of 24 March 2022, Souza Dias.

the DRC or PSC shall decide, based on the evidence; and, in the latter scenario, the club is not exonerated from liability under this article. Similarly, difficulty in executing a payment due to banking restrictions or governmental constraints is not accepted as a *prima facie* justification for late payment either.[122]

The debtor club may be able to contest the application of article 12bis by providing evidence that: payment has already been made; the formal requirements have not been satisfied (e.g. not having received the relevant default notice, 30 days not having elapsed from the due date or no "grace period" of ten days having been granted); or that it had agreed with the creditor to delay the payment of the amount due.

Disputes on whether a payment is meant to be gross or net of taxes are usually not discussed within the scope of article 12bis, since such questions generally cannot be resolved following a *prima facie* assessment. However – and as an exception to the above – had the contracting parties clearly agreed on the amount due being net of taxes, article 12bis might apply despite one of the parties challenging the amount due as a consequence of net/gross conversions.[123]

On another note, claims based on the obligation of a debtor club to proceed with a contractually agreed conditional payment (generally, a bonus) may be considered by the DRC or the PSC as a *prima facie* obligation of the debtor – leading to the application of article 12bis – if the occurrence of the event triggering the payment is supported with the necessary documentary evidence, which will be analysed by the relevant chamber on a case-by-case basis, as confirmed by the Single Judge of the DRC in a recent decision.[124]

It is pertinent to note that, if a condition precedent to the obligation to make a payment exists, such as the creditor being contractually required to send an invoice to the debtor club concerning the amount due, and the creditor failed to do so, the application of article 12bis is not automatically excluded, as the DRC or PSC will consider each case independently based on its facts.

D. CONSEQUENCES OF A 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.

The DRC and PSC have full discretion with regards to the imposition of sanctions[125] subject to general legal principles applicable to any possible imposition of sanctions.

122 DRC decision of 2 May 2019, no. OP 05190329-E; DRC decision of 17 June 2019, no. OP 06192393-E.
123 DRC decision of 7 March 2023, Murachev.
124 DRC decision of 7 March 2023, Murachev.
125 Circular no. 1468 dated 23 January 2015; CAS 2015/A/4232, Al-Gharafa SC v. FC Steaua Bucuresti & FIFA.

Firstly, an exhaustive list (*numerus clausus*) of possible sanctions within the Regulations exists. Secondly, consideration needs to be given as to whether the debtor is a repeat offender. A repeated offence will be considered an aggravating circumstance and will generally result in a more severe sanction. In principle, the debtor will be given a warning if it commits a first offence within a timeframe of two years.[126] A more severe sanction – ultimately, a ban from registering new players – will be imposed each time a club is a repeat offender.[127] The DRC or the PSC can impose sanctions cumulatively in a decision (e.g. a warning and a fine) if the debtor club is a repeat offender.[128]

Thirdly, it goes without saying that the principle of proportionality must be considered. CAS jurisprudence has established that sanctions imposed by FIFA can only be reviewed if they are "evidently and grossly disproportionate to the offence".[129] In a specific case, a CAS panel explained and confirmed that, in assessing which sanction(s) shall be imposed in a given case, the DRC or PSC may consider several non-exhaustive factors, such as the actual overdue amount, the specific circumstances of the case, the seriousness of the infringement and/or whether the party has been sanctioned previously.

In another case, CAS referred to the wide margin of discretion granted to the DRC or PSC,[130] and considered that the imposition of a fine on a first-time offender was proportionate. In its assessment, CAS specifically stated that, first, there was nothing to indicate that first-time offenders should be sanctioned exclusively with a warning or a reprimand, and second, the debtor club had previously escaped a penalty for a similar offence due to a formal technicality. CAS further confirmed that the discretion exercised by the DRC or PSC when issuing disciplinary sanctions must be borne in mind, and a degree of deference be granted when examining their proportionality.[131]

In another matter,[132] CAS was asked to review the proportionality of a CHF 50,000 fine that had been imposed on a club with a previous record of unpaid dues, albeit none of which had been 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. CAS confirmed that a fine was an appropriate starting point when considering what sanction to impose. Moreover, bearing in mind the amount due and the length of time for which it had remained outstanding, CAS 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.[133] This is also acknowledged by CAS.[134]

126 DRC decision of 17 May 2022, Cruz DRC decision of 6 April 2022, Ifeanyi; DRC decision of 31 March 2022, Zivkovic; DRC decision of 6 April 2022, Batha; DRC decision of 9 November 2021, Pucko.
127 DRC decision of 14 October 2021, Konate; DRC decision of 8 March 2022, Garcia Fernandez; DRC decision of 24 March 2022, Souza Dias.
128 DRC decision of 17 November 2022, Silva Machado.
129 CAS 2018/A/5588, Kayserispor Külübu v. FIFA.
130 CAS 2015/A/4232, Al-Gharafa SC v. FC Steaua Bucuresti & FIFA.
131 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; CAS 2022/A/9237, Al Batin v. Afriye Acquah & FIFA; CAS 2022/A/9282, Al Batin Club v. Mohamed Rayhi & FIFA.
132 CAS 2016/A/4387, Delfino Pescara 1936 v. Royal Standard Liège & FIFA.
133 DRC decision of 12 June 2018, no. OP 06180840-E.
134 See, for example, CAS 2016/A/4675, Sporting Club Olhanense v. Gonzalo Mastriani & FIFA.

Several cases concerning article 12bis have been appealed. CAS has previously considered fines corresponding to 36.1% and 43.7% respectively of the total outstanding amounts to be proportionate.[135] 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 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.[136]

In another case, the PSC sanctioned a debtor club with a registration ban subject to a probation period of one year (in accordance with the Regulations in force at that time). The debtor club in that case had violated article 12bis seven times in the three years prior to the article 12bis proceedings. CAS upheld the sanction as proportionate,[137] concluding that, since the debtor club was a "repeat offender", the sanction imposed could hardly be considered disproportionate, particularly given that an even more severe punishment could have been imposed.

In another case where the parties reached a settlement agreement following the FIFA decision, CAS reduced the fine originally imposed.[138]

E. INTERRELATION BETWEEN ARTICLE 12BIS AND ARTICLE 17

The last paragraph of 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 entirely separate from possible proceedings pursuant to article 17.

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

135 CAS 2016/A/4718 & 4719. Club Atlético Mineiro v. Udinese Calcio & FIFA.
136 CAS 2016/A/4675, Sporting Club Olhanense v. Gonzalo Mastriani & FIFA.
137 CAS 2016/A/4718 & 4719, Club Atlético Mineiro v. Udinese Calcio & FIFA.
138 CAS 2019/A/6263 & 6264, Sport Club International v. Udinese Calcio S.p.A. & FIFA.

3. Relevant jurisprudence

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General

1. DRC decision of 12 June 2018, no. OP 06180840-E.
2. DRC decision of 14 October 2021, Konate.
3. DRC decision of 17 May 2022, Cruz.
4. DRC decision of 6 April 2022, Ifeanyi.
5. DRC decision of 8 March 2022, Garcia Fernandez.
6. DRC decision of 9 December 2021, Pereira da Silva.
7. DRC decision of 31 March 2022, Zivkovic.
8. DRC decision of 9 November 2021, Pucko.
9. DRC decision of 6 April 2022, Batha.
10. DRC decision of 24 March 2022, Souza Dias.
11. DRC decision of 24 November 2022, Moreno Fuertes.
12. DRC decision of 7 March 2023, Murachev.
13. DRC decision of 17 November 2022, Silva Machado.
14. DRC decision of 24 February 2022, Toby.

Claims for outstanding amounts against players

1. DRC decision of 15 June 2022, Benlamri.
2. DRC decision of 5 May 2022, Mihajlovic.
3. DRC decision of 8 June 2022, Naguez.
4. DRC decision of 28 September 2022, Kore.
5. DRC decision of 20 April 2023, Ndao.
6. DRC decision of 15 December 2022, Taishan.

CAS awards

1. CAS 2015/A/4232, Al-Gharafa SC v. FC Steaua Bucuresti & FIFA.
2. CAS 2016/A/4387, Delfino Pescara 1936 v. Royal Standard Liège & FIFA.
3. CAS 2016/A/4675, Sporting Club Olhanense v. Gonzalo Mastriani & FIFA.

4. CAS 2016/A/4705, Al Jazira Football Sports Company v. Cardiff City Football Club & FIFA.
5. CAS 2016/A/4718 & 4719, Club Atlético Mineiro v. Udinese Calcio & FIFA.
6. CAS 2018/A/5588, Kayserispor Külübu v. FIFA.
7. CAS 2018/A/5838, Clube Atlético Mineiro v. Huachipato SADP & FIFA.
8. CAS 2019/A/6263 & 6264, Sport Club International v. Udinese Calcio S.p.A. & FIFA.
9. CAS 2019/A/6315, Clube Atlético Mineiro v. F.C. Spartak Moscow & FIFA.
10. CAS 2020/A/6877, Al Ahli Saudi Football Club v. FIFA & Club FC Nantes.
11. CAS 2022/A/9237, Al Batin v. Afriye Acquah & FIFA.
12. CAS 2022/A/9282, Al Batin Club v. Mohamed Rayhi & FIFA.

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, which was based on an agreement between FIFA, other important football stakeholders and the European Commission.

When FIFA adopted the new regulatory framework underpinning the international football transfer system in 2001, it was recognised that the stability in employment relationships between football players and their clubs plays a more significant role in professional football, compared to other employment relationships. Football clubs require a degree of stability in those contractual relationships to be able to plan their squads over time. Hence, contractual stability was considered one of the key pillars of the transfer system when it was established in 2001 and it is still enshrined to this day in the Regulations.

One key consequence of this feature is that, as a principle, football players and clubs must enter into fixed-term contracts, which cannot – unlike in many other employment relationships – be terminated unilaterally, e.g. simply by respecting an applicable notice period.

However, many of the further rules contained in the Regulations in the chapter concerning contractual stability simply reflect generally accepted principles of contract and employment law, such as:

- the principle that contracts must be respected ("*pacta sunt servanda*");[139]
- the principle that a contract may be terminated prematurely with just cause without any kind of penalty;[140] and
- the principle that compensation should be paid whenever a contract is terminated without just cause.[141]

139 Article 13, Regulations.
140 Article 14, Regulations.
141 Article 17 paragraph 1, Regulations.

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 if a player has what is known as a "sporting just cause";[142]
- the principle that a contract may not be unilaterally terminated during the season;[143]
- 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;[144]
- the principle that sporting sanctions can be imposed for terminating a contract without just cause;[145] and
- the principle that sporting sanctions can be imposed on a club if it induces a player to terminate a contract without just cause.[146]

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

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.[147]

142 Article 15, Regulations.
143 Article 16, Regulations.
144 Article 17 paragraph 2, Regulations.
145 Article 17 paragraphs 3 and 4, Regulations.
146 Article 17 paragraph 4, Regulations.
147 Circular no. 1625 of 26 April 2018.

ARTICLE 13 – RESPECT OF CONTRACT

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ARTICLE 13 – RESPECT OF CONTRACT

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

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 entered into for a predetermined (i.e. fixed) period. The concept underlying all provisions in the Regulations that are designed to maintain contractual stability is based on this fundamental regulatory requirement.

2. The substance of the rule

Like any other fixed-term contract, a contract between a professional 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) to each other unless they agree to continue their contractual relationship by signing a new contract (or by extending the term of their current contract).

The parties may, however, decide to terminate their contractual relationship prematurely (i.e. prior to the expiry of the term of the contract) by mutual agreement. Such a course of action is permissible and is 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 generally requires a tripartite agreement. In essence, the transfer compensation is paid in exchange for the player's former club releasing the player from their duties and accepting the premature termination of the relevant contract binding the player to them. The transfer compensation is usually paid by the player's new club.

On numerous occasions, CAS has analysed the validity of mutual termination agreements. A typical claim that arises before the DRC and CAS is that one of the parties had been forced or compelled to sign the termination agreement. In one case recently brought before CAS, the parties had signed a settlement agreement after the

player had terminated his contract with the club due to outstanding amounts owed to him. The player subsequently challenged the settlement agreement's legitimacy, claiming he was forced to sign it to be able to leave the country. CAS pointed out, however, that any claim of duress needs to be proven and that a signed agreement is binding upon the parties unless there is convincing evidence to the contrary.[148]

In another recent case of mutual termination, CAS also noted that, considering the Swiss Federal Tribunal's jurisprudence, it is necessary to analyse whether, in the context of the signing of a termination agreement, a) the player was given a period of reflection and b) the agreement contained reciprocal concessions of equivalent value. As these two elements were not present in that case, CAS considered the termination agreement invalid.[149] This point was confirmed in another award, whereby the termination agreement was deemed to be ineffective because the parties had not made comparable concessions.[150]

148 CAS 2020/A/6793 Aloys Bertrand Nong v. FC Pars Jonoubi Jam.
149 TAS 2021/A/7824 Mahamadou Traoré c. CS Constantine.
150 TAS 2021/A/8335 Mohamed Keita c. AS Sale.

ARTICLE 14 – TERMINATING A CONTRACT WITH JUST CAUSE

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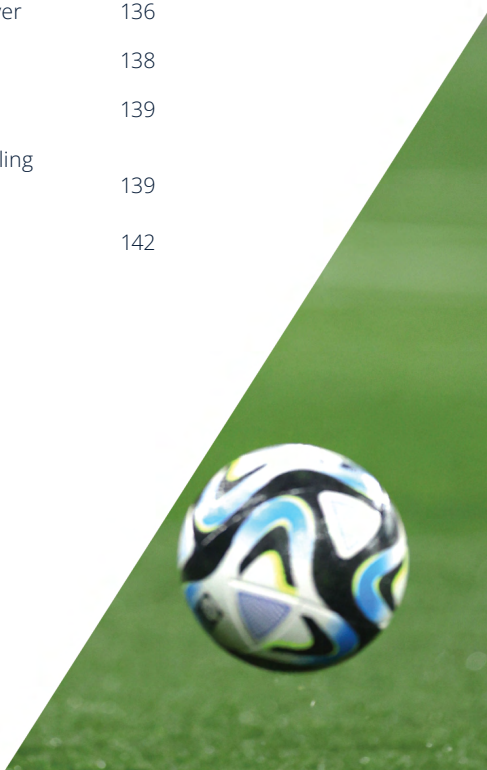

ARTICLE 14 – TERMINATING A CONTRACT WITH JUST CAUSE

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.

1. Purpose and scope

Article 14 illustrates another key element in relation to the maintenance of contractual stability between professional players and clubs. It determines that (only) in exceptional circumstances, i.e. if there is "just cause", a contract between a professional player and their club may be unilaterally terminated, without consequences of any kind. In paragraph 2, the same article also clarifies that any abusive conduct of one party to such a contract shall entitle the counterparty to terminate that contract for just cause.

2. The substance of the rule

A. THE PRINCIPLE

Article 14 determines that a party is entitled to prematurely and unilaterally terminate an (otherwise binding) contract in specific circumstances. It 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 only to the party terminating the contract. It does not imply that the counterparty will also be free from potential liability. In fact, the opposite usually applies. In most cases of premature and unilateral termination with just cause, the counterparty will be required to pay compensation and may also be subject to sporting sanctions.[151] In other words, if one party creates or provides a valid reason for the other party to prematurely terminate the contractual relationship 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.

For the respective legal consequences for each party of such a breach of contract, reference is made to article 17, Regulations.

151 Article 17 paragraphs 1, 2, and 4, Regulations.

B. WHAT IS JUST CAUSE?

a. In general

Whether a party has a just cause to prematurely terminate a binding contract must be assessed for each individual case and in consideration of all the specific circumstances.

The Regulations do not provide a definition, nor a defined list of what would generally be considered a just cause. It is impossible to capture all potential conduct that might be considered just cause for the premature and unilateral termination of a contract. However, 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.[152] In several awards, CAS has drawn a parallel between the concept of "just cause" as defined in article 14, Regulations and the concept of "good cause" in article 337 paragraph 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.[153]

When assessing whether a unilateral contract termination is justified, the following general criteria must be applied, considering the specific circumstances of each individual matter:[154]

- Only a sufficiently serious breach of contractual obligations by one party qualifies as just cause for the other party to terminate the contract.[155]
- 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.[156]

152 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.

153 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.

154 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. Franck Ribéry & Olympique de Marseille; CAS 2009/A/1932 Sporting Clube de Goa v. Eze Isiocha.

155 CAS 2006/A/1180 Galatasaray SK v. Franck 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.

156 DRC decision of 25 October 2018, no. 10180471-E; DRC decision of 24 August 2018, no. 08180794-E; DRC decision of 1 February 2023, Abdel Rahman Alattar; 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.

- The termination of a contract should always be an action of last resort (an "*ultima ratio*" action).[157]

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.[158]

In a 2018 award,[159] CAS noted that this principle (i.e. the requirement to give a default notice) is intended to ensure that 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,[160] noting this principle is also reflected in Swiss law.

CAS has returned to the topic of what is to be considered just cause on several recent occasions. In an award rendered in October 2021, CAS once again noted that it had to refer to the principles of Swiss law and CAS jurisprudence to define "just cause" as the Regulations do not provide any definition of this term. According to that award, just cause exists when the relevant breach by the other party (or other impeding circumstances) is of such nature, or has reached such a level of seriousness, that the essential conditions under which the contract was entered into are no longer present and the injured party cannot in good faith be expected to continue the employment relationship, to be established on a case-by-case basis.[161]

The parties to a contract may decide to include a list within that contract of what they consider to be just cause for the early termination of their contractual relationship. 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 nevertheless 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 may also 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.[162] In principle, the intent of the parties must be respected and followed, but only within the limits of excessive self-commitment (as defined in Swiss law).[163]

157 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, DRC decision of 18 March 2023, El Dain Khankan.
158 CAS 2016/A/4884 FC Ural Sverdlovsk v. Toto Tamuz.
159 CAS 2018/A/6029, Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Marvin Renato Emnes.
160 ATF 127 III 153; ATF 121 III 467; ATF 117 II 560; ATF 116 II 145 and ATF 108 II 444, 446.
161 CAS 2020/A/7253 Al Faisaly FC v. Doukoure Abdoulaye. In the same terms, CAS 2021/A/7959 MAS de Fes c. Alexis Yougouda Kada.
162 CAS 2016/A/4846 Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League; DRC decision of 13 February 2020, Avdic, DRC decision of 2 March 2023, Player A (anonymised decision).
163 CAS 2017/A/5056 Ittihad FC v. James Troisi & Fédération Internationale de Football Association (FIFA) & CAS 2017/A/5069 James Troisi v. Ittihad FC.

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.[164] If the definition of "just cause" agreed by the parties to the contract is deemed to be either void or unjustified, then the general principles for determining just cause will be applied.[165] In this respect, CAS recently found that a contractual clause under which only the club can terminate the agreement is potestative even if agreed upon mutually, and is therefore null and void.[166]

The Regulations establish two specific just causes ("abusive conduct" in art. 14 par. 2 and "outstanding salaries" in art. 14bis) and one specific scenario for female players where termination will be deemed to be without just cause ("pregnancy" in art. 18quater par. 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.

b. Abusive conduct

A new paragraph 2 was added to article 14 with effect from 1 June 2018.[167] This paragraph 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 abusive behaviour will entitle the counterparty to terminate the contract with just cause. This codifies long-standing jurisprudence[168], confirming FIFA's general position that such behaviour by any contractual party shall not be tolerated. The burden of proof lies on the party alleging the existence of the abusive conduct.[169]

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 – 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 abusive conduct include: a club deciding to separate a player from the rest of the team and/or making the player train alone for a prolonged period of time, potentially during unconventional hours

164 CAS 2015/A/4042 Gabriel Fernando Atz v. PFC Chernomorets Burgas; DRC decision of 11 January 2023, Santos Gonzaga; DRC decision of 15 March 2023, Ndedi.
165 CAS 2006/A/1180 Galatasaray SK v. Franck Ribéry & Olympique de Marseille.
166 CAS 2021/A/7794 GNK Dinamo Zagreb v. Rene Poms & FIFA.
167 Circular no. 1625 of 26 April 2018.
168 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.
169 Article 13 paragraph 5, Procedural Rules.

and without supervision by coaching staff; not allowing the player to participate in any of the club's activities outside of training sessions and matches (e.g. public events and appearances on social media); reducing the time available for the player to make use of physiotherapy and medical services; or sudden removal of non-financial contractual benefits (e.g. accommodation and motor vehicle usage).

In accordance with existing jurisprudence,[170] 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?
- Why was the player asked to train 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 receiving their non-financial contractual benefits?
- 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?

Regarding the issue of players having to train by themselves, it must be noted that, in principle, since football is a team sport, 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. playing for their representative team or for personal reasons), moving them temporarily to train with the reserve team can be justified.[171]

170 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; DRC decision of 6 July 2022, Handzic; DRC decision of 29 September 2022, Martins de Sousa; DRC decision of 1 February 2023, Layouni.

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

CAS has repeatedly made clear, however, "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".[172] Accordingly, any individual training should generally be an exception.

In a 2014 award prior to the inclusion of article 14 paragraph 2,[173] 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,[174] it was established that an exclusion of more than a month would entitle the player to terminate their contract with just cause.

In a 2018 award,[175] CAS 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 reserve team while training with the first team. The former would appear to imply a clearer separation from the first team, which could seriously damage the player's prospects.

In a 2019 award, the majority of a CAS panel[176] 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 to terminate his contract. This conclusion was reached after having considered other factors such as the player being prevented from joining the main team for meals, having no access to his private room and the initiation of "unfair and groundless" internal disciplinary proceedings against him. Furthermore, the club failed to respond to the player's letters in which he was proposing an amicable settlement. CAS 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.

In one of its first decisions based on article 14 paragraph 2,[177] 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 his contract. In this case, the player had been sent to train with the reserve team shortly after the commencement 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 with a much older vehicle than that used by one of his team-mates and demanded the player vacate his club-provided accommodation.

172 CAS 2011/A/2428, I. v. CJSC FC Krylia Sovetov.
173 CAS 2014/A/3643 Club Promotora del Pachuca de C.V. v. Facundo Gabriel Coria & FIFA.
174 CAS 2013/A/3074 Club KS Lechia Gdańsk v. Bedi Buval.
175 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.
176 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.
177 DRC decision of 17 January 2020, Gikiewicz.

The DRC concluded that the club's aforementioned behaviour, combined with the non-payment of salaries, club statements to the press suggesting that the club lacked interest in the player and an announcement by the coach that the player was not part of his plans, amounted to abusive conduct designed to force the player to terminate the contract.

In another case,[178] the DRC found that the club's conduct in preventing the player from training with the team after refusing to sign a termination agreement, creating artificial absences and suspending payment of salaries, cumulatively amounted to abusive conduct within the meaning of article 14 paragraph 2.

In summary, a unilateral change to a player's employment status as described above, unless exceptionally justified in line with the criteria described above, could give the player a valid reason to unilaterally terminate the employment contract.

ii. Examples of potentially abusive conduct by a player

A player's conduct can also qualify as abusive within the meaning of article 14 paragraph 2. One potential example may 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, a player may start refusing to train or to participate in matches, coming up with various excuses for their behaviour, but without a genuine explanation or justification.

Under such circumstances a club may 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.[179]

c. 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, Regulations.

178 DRC decision of 21 January 2022, Fernandes.
179 CAS 2021/A/8216 Besiktas AS v. Loris Sven Karius; see also DRC decision of 21 July 2022, Miletic.

d. Poor (sporting) performance

In line with the DRC's consistent jurisprudence,[180] in a 2016 award[181] CAS confirmed that poor (sporting) performance is not a just cause for a club to unilaterally terminate a contract, even if it is included as such in the contract signed between a professional player and their club.[182]

This decision is in line with the general approach taken by 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.[183]

e. Medical negligence

In a 2009 award,[184] the player invoked breach of contract by the club in the form of medical negligence to justify the decision to terminate his contract early. CAS concluded that the behaviour of the club and its 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.

In a recent DRC decision, the club's failure to provide professional medical help or to give proper attention to the player's mental health, while being fully aware of his condition, was considered a breach of the club's duty of care.[185]

f. 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.[186] Throughout the duration of the 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, CAS 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*).

180 DRC decision of 13 February 2020, Advic; DRC decision of 29 January 2020, Boskovic; DRC decision of 12 August 2021, Goncalves da Silva Santos.
181 CAS 2016/A/4846 Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League.
182 CAS 2018/A/6041 Theofanis Gekas v. Akhisar Belediye Gençlik.
183 CAS 2015/A/4042 Gabriel Fernando Atz v. PFC Chernomorets Burgas, see also DRC decision of 11 January 2023, Santos Gonzaga; DRC decision of 8 March 2023, Milutinovic; DRC decision of 27 October 2022, Player A (anonymised decision).
184 CAS 2009/A/1856-1857 Fenerbahçe Spor Kulübü v. Stephen Appiah & Stephen Appiah v. Fenerbahçe Spor Kulübü.
185 DRC decision of 2 March 2023, Player A (anonymised decision).
186 CAS 2010/A/2049 Al Nasr Sports Club v. F. M.

In a 2015 award,[187] 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, CAS found that he had just cause to do so.[188]

According to a recent CAS award, if the club's stance clearly indicates to the player that there is uncertainty with respect to the club's interest in continuing the employment relationship (for instance because the club belatedly called back the player to resume training) the player may potentially have just cause for termination.[189]

CAS has also recently noted that, depending on the circumstances, just cause can be the result of a situation to which both parties equally contributed (and thus no payment will be required from any party).[190]

g. 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, however, terminating the deregistered player's contract.

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

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, in principle, they have been employed and are qualified to perform. 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".

187 CAS 2015/A/4003 Maccabi Haifa v. Anderson Conceicao Xavier & Clube de Regatas Vasco da Gama.
188 CAS 2009/A/1956 Club Tofta Itróttarfelag, B68 v. R.
189 TAS 2021/A/7959 MAS de Fes v. Alexis Yougouda Kada.
190 CAS 2020/A/7030 & 7051 Sporting Clube de Portugal v. Ruben Tiago Rodrigues Ribeiro & Al Ain FC & FIFA, see also DRC decision of 15 September 2022, Braga Ribeiro; DRC decision of 23 March 2023, Ondaan.

In line with the well-established approach of the DRC, a 2014 award[191] 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 able to play official matches.[192] 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[193] and fundamental rights. Even stronger language was used in a 2015[194] award, where it was stated that deregistering the player constituted the "factual termination of the employment contract".

In a 2018 award,[195] CAS 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) or, as has been seen in recent cases,[196] where a club fails to obtain the ITC (through its own decision or negligence) before the close of the relevant registration period, despite having signed an employment contract with a player.

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 just cause to terminate the contract.[197]

One recent DRC case[198] concerned an 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 knockout 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.

191 CAS 2014/A/3643 Club Promotora del Pachuca de C.V. v. Facundo Gabriel Coria & FIFA: in addition to referring to the general considerations, CAS 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.

192 DRC decision of 19 April 2018, no. 04181696-e; DRC decision of 18 August 2016, no. 08161435-e; DRC decision of 7 July 2022, Pedersen; DRC decision of 13 October 2022, Fernandes Teijeiro.

193 On the same topic see also CAS 2013/A/3091 FC Nantes & Player Bangoura v. Club Al Nasr & FIFA; DRC decision of 18 May 2022, Sow.

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

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

196 DRC decision of 6 April 2022, Ochieng; DRC decision of 19 May 2022, Messias; DRC decision of 18 May 2022, Sow.

197 DRC decision of 14 December 2022, Silva.

198 DRC decision of 31 October 2019, Bridge.

h. Visa and work permit

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,[199] it is the club's responsibility to obtain these documents (on time). As a result, a player will generally be considered to have a just cause to terminate their contract if the required permits are not available in good time.[200] However, a player is expected to cooperate in completing the processes associated with obtaining these documents; this was recently confirmed in a 2021 case.[201] 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.

In addition to the above, the timing of the termination of the contract can play a role. In a recent case, in which a club had failed to provide the player with a working visa, CAS considered the termination of the contract by the player to be somewhat premature as the pre-season had not even started at the time the player requested the visa and, therefore, the player was not deprived of any employment right.[202]

In a 2022 case before the DRC,[203] a player signed an employment contract commencing on 1 January 2021. The contract was executed on 7 December 2020, and the club commenced administrative proceedings to obtain the player's work permit on 10 December 2020. The permit was only granted on 29 January 2021, and the player was only permitted to enter the country as from 18 February 2021. The player subsequently entered the country on 8 March 2021, and signed additional documents for the completion of the procedure regarding his work permit on 10 March 2021. The club failed to pay the player his monthly salary for January 2021 and February 2021 on the basis that he was not providing services during this period. The player lodged a claim against the club based on article 12bis (as opposed to a termination pursuant to article 14), given that the contract had expired by the time the claim was lodged. The DRC held that the club was liable to take all necessary administrative action to ensure that the work permit was granted on time, allowing the player to render services under the employment contract. The delay between the start date of the employment and the date when the sporting services started to be rendered could not be attributable to the player; as such, the player was entitled to receive the two monthly salaries (with applicable interest).

199 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).
200 DRC decision of 18 May 2022, Jobe.
201 DRC decision of 2 December 2021, Oyewusi.
202 CAS 2020/A/7253 Al Faisaly FC v. Doukoure Abdoulaye.
203 DRC decision of 20 July 2022, Valdenesio.

i. Disciplinary sanctions

There are cases where an early and unilateral termination of a contract by the club is issued as a disciplinary sanction on the player. Such cases must be treated with caution. It must be borne in mind that terminating a contract should always be a last resort (*ultima ratio*). Consequently, the less stringent sanctions available to the club, such as warnings, proportionate fines, temporary suspensions, temporary demotion to the reserve team and so on should be exhausted before such a step is considered.

In a recent decision,[204] the DRC held that termination on the basis of a mere altercation between a player and head coach on the training ground was not an *ultima ratio* action, and held that the club had terminated the contract without just cause. In any event, the DRC noted that the particular termination clause in the contract was clearly potestative (i.e. one-sided) and in any event, would not have been upheld.

In another recent decision,[205] the DRC held that a termination for disciplinary reasons was premature, as it had occurred prior to the completion of two separate disciplinary procedures initiated by the club against the player. In addition, the club had started a third disciplinary procedure against the player after the termination of the contract. The DRC noted that the club had correctly adopted more lenient measures with respect to the player's behaviour by opening the disciplinary procedures but had chosen to take decisive action based on the behaviour which was the subject of those procedures, instead of actually completing those procedures. The action could not therefore be *ultima ratio*.

j. 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 return to the club and set a reasonable deadline by which they must do so.[206]

In one illustrative case,[207] 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 March 2002, 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 services in a timely manner unless the player has been warned about their behaviour first. Termination may only be considered if the player remains absent following a warning.[208]

204 DRC decision of 9 June 2022, Soumah.
205 DRC decision of 24 March 2022, Manzala Tusungama.
206 DRC decision of 11 April 2019, no. 04190658-E; DRC decision of 21 April 2022, Melunovic.
207 CAS 2016/A/4408 Raja Club Athletic de Casablanca v. Baniyas Football Sports Club & Ismail Benlamalem.
208 ATF 121 V 277, consid. 3.a.

CAS has stated that a player's absence from their club is unjustified when the extended duration of the absence 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 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 had in fact terminated the contract based on implied intent, by the unauthorised departure and/or absence.

In a recent case,[209] a club terminated the employment of a player, for the most part, based on their late return by six days from national-team duty. The late return was caused by administrative problems deriving from the COVID-19 pandemic; the player provided evidence that he kept the club fully informed of the situation as it was unfolding. The DRC noted that the club had previously fined the player for the same issue; effectively rendering two disciplinary sanctions (fine and termination) for the same conduct. It also noted the unreasonableness of the club in providing a mere 36 hours to return following communication by the player of the issues he was facing. The DRC ultimately held that the club could have taken more lenient measures before abruptly terminating the employment contract, and deemed the termination was not an *ultima ratio* action.

In another case impacted by the pandemic,[210] the DRC held that absence based on travel restrictions mandated by national law, preventing the player from returning to the country of his club when summoned, cannot be deemed a substantial breach of contract, particularly when the club was fully informed by the player of the relevant issues.

In another recent case,[211] the DRC held that the club validly terminated the contract for unauthorised absence after a player failed to return to commence pre-season training, despite the club providing an additional month of (unpaid) leave so he could resolve a family matter. After the player failed to board his flight, the club commenced disciplinary proceedings against him when he reached ten days of unauthorised absence. It requested both that he return to the club and provide a written response. The player failed to communicate with the club until the date on which his contract was terminated and did not address the disciplinary issues. The club subsequently terminated the player's contract two weeks later, following an unauthorised absence of 35 days. The DRC held that the club had taken all reasonable steps, the player could not reasonably justify his absence (having failed to inform the club or the DRC of the nature of the family matter he had to resolve), and that the club could not reasonably have expected the player to resume his duties nor could the employment relationship continue, given his behaviour.

209 DRC decision of 15 July 2021, Poko.
210 DRC decision of 9 June 2022, Marquez Alvarez.
211 DRC decision of 15 July 2021, De Araujo Ferreira.

In another fairly recent case,[212] the DRC held that the failure of an injured player to attend three training sessions (on consecutive days) was not just cause to terminate an employment contract. The DRC noted that the player was neither warned nor put in default for the alleged misbehaviour.

For its part, CAS has recently analysed situations of early terminations of employment contracts by clubs for either unauthorised absences or late returns. In all these instances, CAS accepted that, in principle, unauthorised absence can potentially constitute a reason for an early termination of the employment contract provided, however, (amongst other things) the absence must not be negligible, the club must warn the player about their conduct and all claims must be supported with evidence.

On one occasion, in which a club terminated the employment contract solely due to the player's late arrivals at the training camp after having already imposed sanctions on the player for this reason, CAS observed that – given that the club and player had previously agreed to and accepted a sanction for the late arrival to training camp – the club could not punish the player a second time by terminating his contract (hence the early termination of the employment contract had no just cause).[213]

On another occasion, on which a player was found to have taken unapproved holiday, which led the club to terminate the player's contract on the grounds that this was deemed as an abandonment of the contract, CAS noted that the immediate termination of a contract for just cause must be accepted only under a narrow set of circumstances and provided that the terminating party substantiates its claims with evidence (in accordance with art. 8 SCC). In this case, the fact that the player had not been previously warned of a possible termination because of his allegedly incorrect behaviour was decisive in dismissing the club's claim.[214]

In another situation, in which a player had been absent for over three weeks (despite warnings and messages from the club) and failed to return to the training facilities, CAS found that there was just cause for the club to terminate the contract as the player failed to demonstrate justifiable reasons for his absence and that he had received permission to leave.[215]

In another recent case, CAS accepted that in the event of an absence without news from the employee (i.e. the player) for a few days, the employer (i.e. the club) may warn him for breach of duty and give him formal notice either to return to work or to justify his absence, and then, if the warning remains without effect, terminate the employment relationship with immediate effect in accordance with the conditions of article 337 SCO.[216]

212 DRC decision of 4 August 2022, Santana.
213 CAS 2020/A/6854 Wuhan Zall FC v. Jorge Sammir Cruz Campos.
214 CAS 2020/A/7221 CD Feirense v. Aly Ahmed Aly Mohamed & Larissa FC.
215 CAS 2021/A/8253 Bismark de Araujo Ferreira v. Al Qadsiah.
216 TAS 2021/A/8515 Mouloudia Club d'Oujda c. M. Yacouba Sylla.

In a recent award stemming from a player's unauthorised absence, CAS has found that a clause in the contract expressly providing that the employer could withhold the employee's salary in the event of an unjustified absence was in accordance with the "no work, no pay" principle and was therefore in line with article 82 SCO, which provides that one cannot demand performance without having first discharged or offered to discharge one's own obligation.

Moreover, CAS noted that, while, in general, a restrictive approach is to be adopted in respect of offsetting fines against a player's salary, as derives from CAS case law (referring to CAS 2018/A/5807), clubs can set off fines against the player's salary where an agreement expressly allows set-off. In that instance, however, CAS also pointed out that if the clauses are not clear the principle "*in dubio contra stipulatorem*" might apply and hence such clauses will be interpreted to the detriment of the party that drafted them (in this case, the club). Additionally, CAS found in that case that the "*in dubio pro operario*" principle – which means that a contract should be interpreted to the disadvantage of the stronger party – could not have played a relevant role here because the player had experience and was assisted by an agent when signing the contract, so was not a weak party per se.[217]

3. Relevant jurisprudence

DRC decisions

Definition of "just cause"

1. DRC decision of 25 October 2018, no. 10180471-E.
2. DRC decision of 24 August 2018, no. 08180794-E.
3. DRC decision of 1 February 2023, Abdel Rahman Alattar.
4. DRC decision of 18 March 2023, El Dain Khankan.
5. DRC decision of 2 March 2023, Player A (anonymised decision).
6. DRC decision of 11 January 2023, Santos Gonzaga.
7. DRC decision of 15 March 2023, Ndedi.

Abusive conduct (club)

1. DRC decision of 21 January 2022, Fernandes.
2. DRC decision of 6 July 2022, Handzic.
3. DRC decision of 29 September 2022, Martins de Sousa.
4. DRC decision of 1 February 2023, Layouni.

217 CAS 2019/A/7151 Zhejiang Green Town Football Club v. Denilson Gabionetta.

Abusive conduct (player)

1. DRC decision of 21 July 2022, Miletic.

"Ultima ratio"

1. DRC decision of 19 June 2017, no. 06170253-E.
2. DRC decision of 8 April 2021, Ramajo.
3. DRC decision of 8 April 2021, Ferreira de Oliveira.
4. DRC decision of 25 February 2021, Rubilio Castillo Alvarez.
5. DRC decision of 27 August 2020, Ebecilio.
6. DRC decision of 28 January 2021, 01211363-E.
7. DRC decision of 14 January 2021, Orazov.
8. DRC decision of 9 December 2020, Fujii.
9. DRC decision of 9 June 2022, Soumah.
10. DRC decision of 24 March 2022, Manzala Tusungama.

Visa and work permit

1. DRC decision of 18 May 2022, Jobe.
2. DRC decision of 2 December 2021, Oyewusi.
3. DRC decision of 20 July 2022, Valdenesio.

Poor sporting performance

1. DRC decision of 12 August 2021, Goncalves da Silva Santos.

Injury or illness

1. DRC decision of 8 May 2020, Rakic.
2. DRC decision of 9 April 2020, Akobeto.
3. DRC decision of 31 January 2020, Betila.
4. DRC decision of 2 March 2023, Player A (anonymised decision).

Deregistration or non-registration

1. DRC decision of 19 April 2018, no. 04181696-e.
2. DRC decision of 18 August 2016, no. 08161435-e.
3. DRC decision of 26 May 2020, no. 05200017.

4. DRC decision of 31 October 2019, Bridge.
5. DRC decision of 14 January 2021, Godal.
6. DRC decision of 6 April 2022, Ochieng.
7. DRC decision of 19 May 2022, Messias.
8. DRC decision of 7 July 2022, Pedersen.
9. DRC decision of 13 October 2022, Fernandez Teijeiro.
10. DRC decision of 18 May 2022, Sow.
11. DRC decision of 14 December 2022, Silva.

Overdue payables

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

Importance of default notice

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

Late return/unauthorised absence

1. DRC decision of 21 April 2022, Melunovic.
2. DRC decision of 9 June 2022, Marquez Alvarez.
3. DRC decision of 15 July 2021, Poko.
4. DRC decision of 9 June 2022, Marquez Alvarez.
5. DRC decision of 15 July 2021, De Araujo Ferreira.
6. DRC decision of 4 August 2022, Santana.

CAS awards

Definition of "just cause"

1. 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.
2. CAS 2018/A/6029, Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Marvin Renato Emnes.
3. CAS 2008/A/1517, Ionikos FC v. Juan Luchano Pajuelo Chavez.
4. CAS 2006/A/1180, Galatasaray SK v. Franck Ribéry & Olympique de Marseille.
5. CAS 2009/A/1932, Sporting Clube de Goa v. Eze Isiocha.
6. CAS 2019/A/6452, Sport Lisboa e Benfica Futebol SAD v. Bllal Ould-Chickh & FC Utrecht B.V. & FIFA.
7. CAS 2019/A/6521 & 6526, Osmanlispor FK v. Patrick Cabral Lalau & Club Atletico Mineiro and Club Atletico Mineiro & Patrick Cabral Lalau v. Osmanlispor FK.
8. CAS 2019/A/6626, Club Al Arabi SC v. Ashkan Dejagah.
9. CAS 2020/A/6770, Sabah Football Association v. Igor Cerina.
10. CAS 2020/A/7231, Nejmeh Club v. Issaka Abudu Diarra.
11. CAS 2020/A/7253, Al Faisaly FC v. Doukoure Abdoulaye.
12. CAS 2021/A/7959, MAS de Fes c. Alexis Yougouda Kada.

"*Ultima ratio*"

1. CAS 2014/A/3684, Leandro da Silva v. Sport Lisboa e Benfica.
2. CAS 2014/A/3693, Sport Lisboa e Benfica v. Leandro da Silva.

Poor performance

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

Stance of the parties during the contractual relationship

1. CAS 2010/A/2049, Al Nasr Sports Club v. F. M.
2. CAS 2020/A/7030 & 7051, Sporting Clube de Portugal v. Ruben Tiago Rodrigues Ribeiro & Al Ain FC & FIFA.

Injury or illness

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

Deregistration

1. CAS 2014/A/3643, Club Promotora del Pachuca de C.V. v. Facundo Gabriel Coria & FIFA.
2. CAS 2013/A/3091, FC Nantes & Player Bangoura v. Club Al Nasr & FIFA.
3. CAS 2015/A/4122, Al Shaab FC v. Aymard Guirie.
4. 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

1. CAS 2015/A/3955 & 3956, Vitoria Sport Clube & Ouwo Moussa Maazou v. Etoile Sportive du Sahel (ESS) & FIFA.
2. CAS 2020/A/7221, CD Feirense v. Aly Ahmed Aly Mohamed & Larissa FC.

Visas and work permits

1. CAS 2015/A/4158, Qingdao Zhongneng FC v. Blaz Sliskovic (coach).
2. CAS 2017/A/5164, FAT v. Victor Jacobus Hermans.
3. CAS 2020/A/7253, Al Faisaly FC v. Doukoure Abdoulaye.

Non-registration

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

Abusive conduct (prior to the adoption of art. 14 par. 2)

1. CAS 2015/A/4286, Sebino Plaku v. Wroclawski Klub Sportowy Slask Wroclaw S.A.
2. CAS 2014/A/3642, Erik Salkic v. Football Union of Russia (FUR) & Professional Football Club Arsenal.

3. CAS 2013/A/3398, FC Petrolul Ploiesti v. Aleksandar Stojmirovic.
4. CAS 2018/A/6041, Theofanis Gkekas v. Akhisar Belediye Gençlik.

Late return/unauthorised absence

1. CAS 2020/A/6854, Wuhan Zall FC v. Jorge Sammir Cruz Campos.
2. CAS 2020/A/7221, CD Feirense v. Aly Ahmed Aly Mohamed & Larissa FC.
3. CAS 2021/A/8253, Bismark de Araujo Ferreira v. Al Qadsiah.
4. TAS 2021/A/8515, Mouloudia Club d'Oujda c. M. Yacouba Sylla.
5. CAS 2019/A/7151, Zhejiang Green Town Football Club v. Denilson Gabionetta.

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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.

1. Purpose and scope

The introduction of article 14bis in 2018 was a reaction to the persistent malpractice of clubs failing to make payments on time. The vast majority of employment-related disputes between clubs and professional players brought before the DRC relate to late or non-payment of salary and other remuneration.[218] 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 an employee.[219]

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;[220] that is, the club must have been informed of its failure to abide by its contractual obligations, been made aware that the player considers this behaviour to be unacceptable, and been offered an opportunity to remedy the situation.[221]

218 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; DRC decision of 21 July 2022, Souza Pereira Junior; DRC decision of 19 May 2022, Tavares Fernandes; DRC decision of 4 August 2022, Quattara.

219 CAS 2006/A/1180 Galatasaray SK v. Franck Ribéry & Olympique de Marseille.

220 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.

221 CAS 2006/A/1180 Galatasaray SK v. Franck 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

With respect to the default notice, the jurisprudence prior to the introduction of article 14bis states that the notice must have been issued for a player to have just cause.[222] 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 party does not intend to comply with its contractual obligations.[223] Despite the handful of decisions suggesting that 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 also issues such a notice.

Article 14bis has codified 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 set out their rights more effectively. In a recent award, CAS underlined that article 14bis, in practical terms, does not differ substantially from the established jurisprudence of the DRC and CAS, apart from the express requirement of a 15-day notice period.[224]

2. The substance of the rule

A. PRINCIPLES

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 does not imply that delayed payment of other forms of (frequent, non-conditional) remuneration cannot amount to just cause for a player to terminate their contract prematurely. A player invoking other outstanding remuneration to terminate their contract may

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.

222 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.

223 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; see 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 Atlético Mineiro & Patrick Cabral Lalau v. Osmanlispor FK; DRC decision of 12 October 2022, Mengolo; DRC decision of 1 February 2023, Abdel Rahman Alattar.

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

still have just cause. 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 to factors such as whether the outstanding amount is significant (i.e. that it is neither negligible nor totally subordinated),[225] the extent of the delay, the general attitude of the parties in the specific case[226] and other relevant factors.

Prior to addressing the requirements of the provision in more detail, it is worth recalling that, following the COVID-19 pandemic, clubs found to be in default of payments have often resorted to the argument that force majeure allegedly justifies the missed payments and that CAS has analysed this issue on numerous occasions.

Essentially, in all the awards rendered in situations in which clubs have resorted to this argument CAS has found either that, on the basis of the various circulars which addressed issues related to the pandemic, no automatic recourse to the concept of force majeure is supported by applicable FIFA regulations and/or can be made by clubs or employees impacted by the pandemic[227] or that, while the pandemic could potentially result in a force majeure event, force majeure cannot be considered if clubs fail to comply with their burden of proof in showing justification for lack of payment through documentation.[228]

The leitmotiv of the reasoning behind all the awards on the topic is that force majeure introduces an exception to the binding force of an obligation and, as such, needs to be narrowly interpreted. On one recent occasion, CAS noted that, for force majeure to exist, there must be an objective (rather than a personal) impediment, beyond the control of the obligor, that is unforeseeable, that cannot be resisted and that renders the performance of the obligation impossible.[229]

B. TWO OUTSTANDING MONTHLY SALAIRES

The first requirement to trigger article 14bis is that a club unlawfully fails to pay a player two monthly salary payments. In such a scenario, the player will be deemed to have just cause to terminate their contract provided that certain formal conditions are met, which will be addressed below.

It must be noted that in accordance with the principle of the burden of proof established in article 13 paragraph 5 of the FIFA Procedural Rules Governing the Football Tribunal

225 DRC decision of 10 August 2018, no. 08181796-fr; DRC decision of 6 December 2018, no. 12181902-e.
226 DRC decision of 14 September 2018, no. 09180376-e, DRC decision of 14 September 2018, no. 09180035-e.
227 In this sense CAS 2021/A/7673 Club Olimpia de Paraguay v. FC Dynamo Kyiv & CAS 2021/A/7699 FC Dynamo Kyiv v. Club Olimpia de Paraguay and, inter alia, CAS 2021/A/7816 Yeni Malatyaspor FK v. Arturo Rafael Mina Meza, CAS 2021/A/7888 Yeni Malatyaspor FK v. Fabian Ceddy Farnolle, CAS 2021/A/7799 Yeni Malatyaspor v. Mitchell Glenn Donald, CAS 2021/A/8277 Yeni Malatyaspor FK v. Remi Walter, CAS 2021 A 8321 Yeni Malatyaspor FK v. Jody Lukoki.
228 CAS 2021/A/7955 Giresunspor Kulübü Dernegi v. Adriano Fachini.
229 CAS 2021/A/7851 Mohamed Naoufel Khacef v. FIFA & CAS 2021/A/7905 CD Tondela Futebol v. FIFA.

(Procedural Rules), it is for the club to demonstrate that it has complied with its financial obligations towards a player. This is because a player cannot be asked to prove that they did not receive payment, since a negative cannot be proven. This has been confirmed numerous times by the DRC.[230]

C. DEFAULT NOTICE

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 to fully comply with its financial obligations. This condition is in line with the established jurisprudence of the DRC and of CAS,[231] and aims to provide clarity and legal certainty, particularly in relation to the specific termination date of a contract.

Article 14bis is silent as to the method of proving the notice. In a 2022 case,[232] the DRC held that termination pursuant to article 14bis had occurred notwithstanding that the default notice was not notified in accordance with the notification methods specified in the contract (i.e. by letter to the addresses stated). In that case, the player had put the club on notice via email. The club failed to respond and the player terminated the contract. The club argued before the DRC that the notification was invalid and that the email address was one that the club did not regularly check. The DRC rejected this argument as the contract did not provide a specific email address and, in any event, the email address was that registered with TMS. Furthermore, the club did not dispute that it received the default notice, but simply argued that it was not seen in a timely manner by its representative.

Where both preconditions were met, the DRC has consistently concluded that the player in question had just cause to prematurely terminate their contract based on article 14bis.[233] 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.[234]

A frequent question posed to the DRC is whether just cause exists where a player has not received two monthly salary payments due and only grants the club a deadline of, for example, ten 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 from justifying their unilateral termination of the contract based on the general definition of just cause according to article 14 paragraph 1.[235]

230 DRC decision of 23 March 2023, Celar; DRC decision of 7 March 2023, Emanuel Rodriguez; DRC decision of 26 January 2022, Sigurjonsson; DRC decision of 24 February 2022, Barry; DRC decision of 21 July 2022, Lopes Paixao.
231 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.
232 DRC decision of 21 April 2022, Matavz.
233 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.
234 DRC decision of 20 May 2020, Leal Rodrigues.
235 DRC decision of 29 January 2020, Coria.

This was precisely what happened in a 2021 case.[236] Although the player afforded the club 15 days in the default notice (due to the non-payment of three monthly salaries), the termination took place prematurely. The DRC found that the 15-day deadline was not met, but held that the termination was with just cause pursuant to article 14 as the club did not dispute owing the amounts, and failed to comply with, or even respond to the demand.

In another 2021 case,[237] termination took place on the 15th day after the default notice was issued (i.e. one day early). The DRC held that, notwithstanding the non-applicability of article 14bis, the persistent non-payment of not insubstantial amounts, in particular salaries, was just cause for the player to terminate the contract. In that case, an amount equivalent to almost three months' salary was overdue.

Another question is whether just cause exists where less than two monthly salary payments are due. Again, in such a case, the formal requirements of article 14bis would not have been met.[238] Where the DRC has determined that less than two monthly salaries were outstanding at the time of the default notice, it will examine whether the player has discharged their burden of proof in demonstrating that the club's breach was sufficiently significant as to justify an *ultima ratio* measure, permitting the player to terminate the contract. In several recent cases, the DRC has found that the breach was not significant in this regard and that the termination by the player was without just cause.[239]

Alternatively, where less than two monthly salary payments are due but other outstanding remuneration (e.g. sign-on fee or bonuses) are also due, and the total outstanding amount exceeds two monthly salaries, the DRC has held that although the article 14bis threshold was not explicitly met, the player had just cause to terminate pursuant to article 14.[240] Concerning bonuses, a recent CAS award confirmed that, in order for a bonus to be considered an element of salary, it is necessary to establish whether the amount of such a bonus has been determined or is objectively determinable. If the amount of the bonus has been explicitly determined or is at least objectively determinable, it shall be considered as part of the salary.[241]

D. REBUTTING THE REGULATORY PRESUMPTION OF JUST CAUSE

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".

236 DRC decision of 12 November 2021, Carius.
237 DRC decision of 9 November 2021, Tidjani.
238 DRC decision of 21 September 2017, Player C (anonymised decision); DRC decision of 2020 May, Leal Rodrigues Barbosa.
239 DRC decision of 21 June 2022, Pantilmon; DRC decision of 19 May 2022, Paurevic.
240 DRC decision of 9 June 2022, Chindris.
241 CAS 2020/A/7262 Helder Jorge Leal Rodrigues Barbosa & Hatayaspor CA v. Akhisar Belediye Genclick ve SK.

This means that the club can still rebut the general presumption in the Regulations (according to which the player is deemed to have just cause) by providing convincing evidence that there was a valid reason for the non-payment.

In a DRC decision of January 2023, the club argued that it made lawful tax deductions from the player's salary. The DRC first analysed the relevant contract to identify if it contained a provision specifying that any tax deductions would apply. In the absence of a specific clause to that effect, the DRC looked at additional evidence provided by the club to determine whether the deductions were indeed justified. Since the club could not demonstrate the lawfulness of the tax deduction, it failed to rebut the regulatory presumption.[242]

E. SALARIES NOT PAID MONTHLY

For contracts under which the player's salary is not paid monthly, 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, 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 deciding the relevant case, if the latter were true, the pro-rata basis would vary each season although the annual remuneration would stay the same.[243]

F. 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.

G. 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.

242 DRC decision of 12 January 2023, Doumbia.
243 CAS 2020/A/7093 Tractor Sazi Tabriz FC v. Anthony Christopher Stokes & Adana Demirspor KD.

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 entered into in accordance with the applicable provisions of the relevant national law regarding agreements of this kind.

3. Relevant jurisprudence

DRC decisions

1. DRC decision of 28 February 2020, Sushkin.
2. DRC decision of 1 February 2019, Samardzic.
3. DRC decision of 7 March 2019, no. 03191845.
4. DRC decision of 12 February 2020, Adama.
5. DRC decision of 5 December 2019, no. 12190077.
6. DRC decision of 25 February 2020, Akaminko.
7. DRC decision of 20 May 2020, Leal Rodrigues.
8. DRC decision of 29 January 2020, Coria.
9. DRC decision of 12 August 2020, Ferreira dos Santos.
10. DRC decision of 12 June 2020, Jelic.
11. DRC decision of 21 April 2022, Matavz.
12. DRC decision of 12 November 2021, Carius.
13. DRC decision of 9 November 2021, Tidjani.
14. DRC decision of 21 June 2022, Pantilmon.
15. DRC decision of 19 May 2022, Paurevic.
16. DRC decision of 9 June 2022, Chindris.
17. DRC decision of 21 July 2022, Souza Pereira Junior.
18. DRC decision of 19 May 2022, Tavares Fernandes.
19. DRC decision of 4 August 2022, Quattara.
20. DRC decision of 12 October 2022, Mengolo.
21. DRC decision of 1 February 2023, Abdel Rahman Alattar.
22. DRC decision of 21 September 2017, Player C (anonymised decision).
23. DRC decision of 2020 May, Leal Rodrigues Barbosa.
24. DRC decision of 12 January 2023, Doumbia.

25. DRC decision of 23 March 2023, Celar.
26. DRC decision of 7 March 2023, Emanuel Rodriguez.
27. DRC decision of 26 January 2022, Sigurjonsson.
28. DRC decision of 24 February 2022, Barry.
29. DRC decision of 21 July 2022, Lopes Paixao.

CAS awards

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

COVID-19 and force majeure

1. CAS 2021/A/7673, Club Olimpia de Paraguay v. FC Dynamo Kyiv & CAS 2021/A/7699 FC Dynamo Kyiv v. Club Olimpia de Paraguay.
2. CAS 2021/A/7816, Yeni Malatyaspor FK v. Arturo Rafael Mina Meza.
3. CAS 2021/A/7888, Yeni Malatyaspor FK v. Fabian Ceddy Farnolle.
4. CAS 2021/A/7799, Yeni Malatyaspor v. Mitchell Glenn Donald.
5. CAS 2021/A/8277, Yeni Malatyaspor FK v. Remi Walter.
6. CAS 2021/A/8321, Yeni Malatyaspor FK v. Jody Lukoki.
7. CAS 2021/A/7955, Giresunspor Kulübü Dernegi v. Adriano Fachini.
8. CAS 2021/A/7878 & 7916, Naim Sliti v. Al Ettifaq Club.
9. CAS 2021/A/7680, Ittihad FC v. Aleksander Prijovic.
10. CAS 2021/A/8020, Muangthong United v. Alexandre Torreira Da Gama Lima.
11. CAS 2021/A/8021, Muangthong United v. Anderson Goncalves Nicolau.
12. CAS 2021/A/7738, Sociedade Esportiva Palmeiras v. Pyramids Football Club.
13. CAS 2021/A/8113, FK Crvena Zvezda v. Rajiv Ramon Van La Parra.
14. CAS 2021/A/7892, Ittihad FC v. Jonas Gomes de Sousa.
15. CAS 2021/A/8319, Beşiktas AŞ v. Jeremain Marciano Lens.
16. CAS 2021/A/8511, Wuhan FC v. Leonardo Carrilho Baptistão.
17. CAS 2021/A/8229, Leeds United Football Club Limited v. RasenBallsport Leipzig.

ARTICLE 15 – TERMINATING A CONTRACT WITH SPORTING JUST CAUSE

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ARTICLE 15 – TERMINATING A CONTRACT WITH SPORTING JUST CAUSE

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.

1. Purpose and scope

Even where a club complies fully with all its contractual obligations towards a player, this does not necessarily guarantee that a player will regularly 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 generally does not give the professional 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 professionals, and not clubs, may invoke sporting just cause to terminate an existing contractual relationship prematurely.[244]

2. The substance of the rule

A. 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.

244 DRC decision of 2 March 2023, Player A (anonymised decision).

a. Definition of "established professional"

The Regulations do not define this term; a considerable margin of discretion is thus left to the DRC and CAS.

In two relatively recent matters, the DRC[245] referred 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 team-mates were. The DRC also considered the subjective criterion of whether, at the beginning of the season, the player could have expected to be fielded regularly.

In the second case on appeal,[246] a sole arbitrator of CAS 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 article 1 paragraph 1 of Annexe 4 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. Referring once again 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, and 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 of being 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.

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

b. 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.[247] On the other hand, in the only award on this issue thus far,[248] 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 and the fact it grants professionals 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 DRC's conclusion in a more recent decision,[249] albeit this referred to the criteria for a player to be considered an established professional.

c. The player's circumstances

The case law also mentions that consideration should be given to "the player's circumstances", although it remains unclear whether it constitutes an additional criterion to take into account when determining if the player is an established professional, or if this constitutes a separate precondition to be able to invoke sporting just cause at all.

In the first place, the relevant case law refers to a warning which the player should give to the club expressing their dissatisfaction prior to the termination of the contract. CAS holds that failure to provide such a notice would result in rejection of a claim that the player had sporting just cause to terminate his contract.[250]

Furthermore, the jurisprudence refers to other aspects, such as, the player's position on the pitch (e.g. the second goalkeeper may be different to the position of a striker) or the player's age.

247 DRC decision of 10 August 2007, no. 871322.
248 CAS 2007/A/1369 Omonigho Temile v. FC Krylia Sovetov Samara.
249 DRC decision of 7 June 2018, no. 06181022-E.
250 CAS 2007/A/1369 Omonigho Temile v. FC Krylia Sovetov Samara.

B. 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.[251] 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,[252] CAS stated that to trigger article 15, the player must also 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 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.

C. 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.[253] 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 under which sporting just cause may be recognised. It is a unique decision considering the particularities of the case.[254]

251 CAS 2007/A/1369 Omonigho Temile v. FC Krylia Sovetov Samara.
252 CAS 2018/A/6017 FC Lugano SA v. FC Internazionale Milano S.p.A.
253 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.
254 DRC decision of 30 November 2017, Player A (anonymised decision).

3. Relevant jurisprudence

DRC decisions

1. DRC decision of 10 August 2007, no. 871322.
2. DRC decision of 7 June 2018, no. 06181022-E.
3. DRC decision of 30 November 2017, Player A (anonymised decision).
4. DRC decision of 2 March 2023, Player A (anonymised decision).

CAS awards

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

CHAPTER IV.

ARTICLE 16 – RESTRICTION ON TERMINATING A CONTRACT DURING A COMPETITION PERIOD

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ARTICLE 16 – RESTRICTION ON TERMINATING A CONTRACT DURING A COMPETITION PERIOD

A contract cannot be unilaterally terminated during a competition period.

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 make 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 a competition period, 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 entered into between a professional player and a club cannot be unilaterally terminated during a competition period. 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 a competition period. This exception is reflected in the fact that FIFA has the authority to authorise the registration of a player outside a registration period where a contract has been terminated with just cause.[255]

255 Article 6 paragraph 1, Regulations.

On one occasion, CAS[256] has referred to the provision in the context of the specificity of sport. CAS deemed that failure to comply with article 16 could be viewed as an aggravating circumstance when calculating the amount of compensation due.

2. Relevant jurisprudence

CAS awards

1. 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.

256 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.

ARTICLE 17 – CONSEQUENCES OF TERMINATING A CONTRACT WITHOUT JUST CAUSE

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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 exceptions stipulated in article 6 paragraph 3 of 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.

1. Purpose and scope

Although the title of article 17 suggests that this provision only addresses the consequences of a contract termination without just cause, its scope of application goes further.

More broadly, article 17 governs the consequences of a breach of contract. The term "breach of contract" encompasses scenarios where: (1) a contract is terminated,

either by a professional player or the club, *without* just cause; or (2) where one party seriously breaches its contractual obligations, so that the counterparty is entitled to terminate that contract *with* just cause.

The consequences defined in article 17 are potentially twofold: the party in breach may be liable to pay financial compensation and, in addition, FIFA may impose sporting sanctions on that same party.

2. The substance of the rule

A. CONSEQUENCES OF A BREACH OF CONTRACT

Two different consequences may arise as a result of a breach of contract.

a. 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. As indicated above, 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 indeed 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 without just cause. Moreover, based on established DRC jurisprudence and confirmation from CAS,[257] 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 as follows: 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

257 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.

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.

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 from 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.[258]

b. Sporting sanctions

In addition to the obligation to pay compensation, sporting sanctions can be imposed on a club[259] or player[260] found to be in breach of contract during what is known as the "protected period".[261] 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 and are different for clubs and players.

c. 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 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.[262]

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258 Article 2 paragraph 2 (i) of Annexe 4, Regulations.
259 Article 17 paragraph 3, Regulations.
260 Article 17 paragraph 2, Regulations.
261 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."
262 CAS 2008/A/1691 Wisla Kraków v. Fédération Internationale de Football Association (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.

d. Summary

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

- If a *player* terminates a contract *with* just cause (art. 14 and/or 14bis, in conjunction with art. 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; and
  - compensation will be payable to the player.
- If a *player* terminates a contract *without* just cause during the protected period (art. 17):
  - sporting sanctions may be applicable to the player; and
  - compensation will be payable to the club.
- If a *player* terminates a contract *without* just cause after the protected period (art. 17):
  - no sporting sanctions will be applicable to the player; and
  - compensation will be payable to the club.
- If a *club* terminates a contract *with* just cause (art. 14 in conjunction with art. 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; and
  - compensation will be payable to the club.
- If a *club* terminates a contract *without* just cause during the protected period (art. 17):
  - sporting sanctions may be applicable to the club; and
  - compensation will be payable to the player.
- If a *club* terminates a contract *without* just cause after the protected period (art. 17):
  - no sporting sanctions will be applicable to the club; and
  - compensation will be payable to the player.

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

B. CALCULATING COMPENSATION

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 in breach 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 not only to establish rules that serve as a deterrent to breach of contract, but also to make it 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 payable. 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 injured party obtaining benefits or gain that compensates it over and above the harm it sustained because of the unlawful behaviour of the other party.

a. Contractual compensation clauses

The first element to be considered under article 17 paragraph 1 is whether any contractual clauses exist to establish in advance an amount due from the party in breach of contract. Parties may include a compensation clause in their contract which establishes in advance an amount to be paid by each party in the event of a contractual breach. It is a legal requirement in some countries (e.g. Spain) for such a clause to be included in contracts between professional players and clubs. On the other hand, (sports-related) legislation or collective bargaining agreements in other countries (e.g. France) prohibit 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.

i. "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 arise if the contract is prematurely terminated due to a breach of contract by one of the parties. The starting point for drafting this clause is therefore 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, an amount that will become due as compensation if such an event occurs.

The DRC and CAS are regularly called upon to establish the nature of such a compensation clause. The primary means of determining its nature is to examine the precise wording. Generally speaking, any clause that determines a set amount of compensation, payable in the event of a unilateral, premature termination without just cause will likely be a liquidated damages clause.[263]

The principles of reciprocity and proportionality play an important role in relation to liquidated damages clauses. Both the DRC[264] and CAS[265] 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 contractual remuneration of the player, the DRC will render the clause non-applicable (i.e. invalid) and proceed to calculate the compensation due pursuant to the factors set out in article 17, Regulations. On the other hand, CAS often decides that the compensation payable based on the relevant compensation clause may be adjusted to a reasonable and appropriate level.[266]

Although proportionality must be assessed on a case-by-case basis, any clause that provides that the compensation payable will amount

263 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; 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.

264 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; DRC decision of 18 May 2022, Sow; DRC decision of 2 June 2022, Ivakhnov; DRC decision of 4 August 2022, Club A (anonymised decision).

265 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.

266 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 & F IFA; 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.

to the remaining value of the contract is generally to be deemed proportionate.[267] Moreover, liquidated damages clauses should not automatically be deemed excessive simply because they exceed the actual damage suffered by the injured party.[268]

In addition, the DRC usually requests that liquidated damages clauses meet the requirement of reciprocity, i.e. that the liquidated damages clause should trigger the same or similar consequences for either party, whether the player or the club. If the relevant compensation clause is clearly more favourable to one of the two parties, it is likely that the clause in question will be deemed invalid and disregarded.[269]

CAS has confirmed this DRC jurisprudence in some of its awards.[270] In particular, CAS has concluded that if the clause is exclusively favourable towards 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.[271] However, in other cases, CAS has ruled that the compensation clause does not need to meet the requirement of reciprocity.[272]

Nevertheless, if the obligations set forth in the clause disproportionately favour one party over the other by giving it undue control, then the clause is incompatible with the general principles of contractual stability and, as such, may be deemed null and void.[273]

Therefore, when deciding whether to recognise a liquidated damages clause, the key issues to consider are proportionality and appropriateness, rather than reciprocity. In one illustrative award, CAS[274] 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 his salary for the current season. CAS confirmed the DRC's 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 involved 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

267 CAS 2015/A/3999 & 4000 Diego de Souza v. Al Ittihad.
268 CAS 2010/A/2202 Konyaspor Club Association v. J.; CAS 2017/A/5304 PFC Lev.ki v. Dustley Roman Mulder.
269 DRC decision of 5 December 2019, Patino Lachica; DRC decision of 1 February 2023, Abdel Rahnam Alattar.
270 CAS 2014/A/3656 Olympiakos Volou FC v. Carlos Augusto Bertoldi & FIFA; CAS 2017/A/5366 Adanaspor v. Mbilla Etame Flavier.
271 CAS 2015/A/4124 Neftci PFK v. Emile Mpenza; CAS 2014/A/3684 & 3693 Leandro da Silva v. Benfica.
272 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. 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.
273 CAS 2020/A/7011 Al Hilal Khartoum Club v. Mohamed El Hadi Boulaouida.
274 CAS 2016/A/4605 Al-Arabi Sports Club Co. for Football v. Matthew Spiranovic.

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.[275] In particular, CAS has recently confirmed that if a liquidated damages clause is in violation of article 337 SCO, that clause is null and void since article 337c paragraph 1 SCO is mandatory and binding on the parties to a contract and no derogation from this provision to the detriment of the employee is allowed, as stated in article 362 paragraph 1 SCO.[276]

In another award, CAS analysed the proportionality of a clause for premature termination by the player, eventually overturning the DRC decision. In that case, CAS referred by analogy to articles 161 and 163 SCO[277] and the following factors in its decision: (i) contractual autonomy should be respected; (ii) contractual autonomy should not be disturbed light-heartedly; (iii) the judge can deviate from that if they consider the amount to be excessive; and (iv) the amount of the penalty agreed can be lawfully dissociated from the quantification of damage suffered.[278]

This same approach (assessing proportionality, notwithstanding the reciprocity of the relevant clause) has been applied in recent DRC jurisprudence.[279]

ii. "Buy-out" clauses

In contrast with liquidated damages clauses, "buy-out" clauses grant a right to the player to terminate the contractual relationship prematurely in return for payment of a predetermined sum that is stipulated in the contract. In this case, parties are not setting an amount of compensation to be paid to compensate for a breach, but rather are agreeing in advance upon the conditions of a "mutual termination", i.e. consent is given in advance to terminate the contract in the future in return for a specified payment.

The key practical difference between a liquidated damages clause and a buy-out clause is that in the case of the former, there may still be a breach of contract (thus possibly triggering sporting sanctions), whereas in the case of the latter, there is a pre-agreed mutual contract termination which cannot trigger sporting sanctions.

275 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.
276 CAS 2020/A/6961 Football Club Buriram United v. Modibo Maiga.
277 CAS 2021/A/8098 Mabrouk Jendli v. Ohod Football Club: CAS has also indicated that a liquidated damage clause can be declared null and void if it contravenes article 163(2) SCO, which prohibits a party from invoking a liquidated damages clause against the other party when the event causing the breach was beyond the debtor's control.
278 CAS 2019/A/6521 & 6526 Osmanlispor FK v. Patrick Cabral Lalau & Club Atlético Mineiro and Patrick Cabral Lalau v. Osmanlispor FK.
279 DRC decision of 21 July 2022, Dicko; DRC decision of 5 May 2022, Da Silva; DRC decision of 11 March 2021, Gomes de Souza; DRC decision of 26 January 2022, Park; DRC decision of 26 January 2022, Bernardo Mariano.

In a seminal case, CAS[280] defined a buy-out clause as a clause granting a right for parties to a contract to agree, when entering into 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. As the clause in the matter at hand did not grant the player the right to terminate the contract, CAS decided that the clause was not a buy-out clause. The panel 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.[281]

The DRC recently clarified that in the event of a breach of contract, the buy-out clause will not be treated as a liquidated damage clause by analogy: "(...) the Chamber established that no such compensation clause was included in the employment contract at the basis of the matter at stake as the buy-out clauses contained in the contract and in Annexe A do not hold the nature of a liquidated damages clause and, consequently, cannot be applied for the calculation of the compensation due to the Claimant."[282]

In summary, 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 agreed sum, with no reservations or objections. As indicated, since the party concerned is invoking a contractual right, no sporting sanctions can be imposed, 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 invoking a contractual right, and it would have to prove that it had a valid reason to prematurely terminate the contractual relationship.

280 CAS 2013/A/3411 Al Gharafa & Bresciano v. Al Nasr & FIFA.
281 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, see 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. KSV Cercle Brugge.
282 DRC decision of 8 December 2022, Reyes Urena.

b. 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 based on article 17, Regulations. The same principle will apply where the DRC considers the compensation clause inapplicable (on the grounds that it is not reciprocal or is disproportionate or abusive) and deems it invalid.

i. The law of the country concerned

Article 17 does not establish an obligation for the DRC to technically apply the law of the country concerned. Instead, it must simply 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 the applicable law clause in article 3 of the Procedural Rules (formerly art. 25 par. 6, Regulations), assess the disputes brought before them based on 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,[283] including in relation to the criteria determining the validity of a contract entered into between a professional player and a club.[284] This should not come as a surprise, since the CAS Code of Sports-related Arbitration itself follows a similar 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, on a subsidiary basis, according to Swiss law).[285]

283 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.
284 CAS 2016/A/4709 Le Sporting Club de Bastia v. Christian Romaric.
285 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

If the parties express a clear, voluntary decision to submit an employment dispute to FIFA 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.[286] 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.[287]

On 1 June 2018, several provisions in the Regulations entered into force that explicitly stated 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. The precedence of collective bargaining agreements applies to a number of areas, including the way in which compensation due to a player is calculated if their contract is prematurely terminated 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.

In a case stemming from an analysis of the validity of a unilateral extension option, CAS has pointed out that, in view of the reference under article 17 paragraph 1, Regulations to the "law of the country concerned", it is deemed appropriate to partially consider the specificities of the country concerned when assessing the amount of compensation to be paid to the player (also bearing in mind that the understanding of the validity of unilateral extension options was not unanimous under the law of that country).[288]

ii. The specificity of sport

The term "specificity of sport" was included in the Regulations long before it found its way into the Treaty on the Functioning of the European Union (TFEU).[289] 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,[290] which has

Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League.

286 Article 56 paragraph 2, Statutes.

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

288 CAS 2020/A/7145 Moreirense Futebol Clube – Futebol SAD v. Jhonatan Luiz da Siqueira & Vitória Sport Clube, Futebol SAD.

289 Article 165 paragraph 1 of the TFEU, C 83/120: "the specific nature of sport".

290 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.

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 DRC is not obliged to do so.

The main effect of including this wording in article 17 is to allow the DRC a certain margin of appreciation to possibly 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 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."[291] 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.[292] 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[293] 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.[294] 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 severely unethical behaviour of the club that dismissed the player in light of his serious illness.[295]

291 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.

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

293 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 Bucuresti & FIFA and CAS 2007/A/1359 FC Pyunik Yerevan v. Edel Apoula Edima Bete, AFC Rapid Bucuresti & 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 c. 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.

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

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

For the avoidance of doubt, 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, but are not limited to: 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 CAS award[296] 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' …".[297]

In the same award, CAS 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.

296 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.

297 Also see 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 one of the latest awards touching upon the topic, CAS has summarised the concept of specificity of sport as a criterion that shall be used by panels to verify that the solution reached is just and fair not only from a strict civil (or common) law point of view, but also taking into due consideration the specific nature and the needs of the football world (and of parties that are stakeholders in such a world) and therefore reaching a decision that can be recognised as being an appropriate evaluation of the interests at stake, and that therefore fits in the landscape of international football.[298]

In an award which analysed the aspect of the compensation to be paid to a club suffering a breach of contract, CAS confirmed that the specificity of sport can generally be relied upon to decrease the compensation due, in light of the club's behaviour during the employment relationship. CAS held that such a possibility is in line with article 44 SCO. After having analysed the conduct of both the player and the club in that specific case, however, CAS concluded that no correction of the compensation due was necessary.[299]

Fairly recently, the DRC similarly referred to the specificity of sport to mitigate the compensation payable by a player to a club.[300]

iii. Other objective criteria

The Regulations further 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.

CAS jurisprudence has confirmed that this list is non-exhaustive[301] 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.[302]

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 has slightly modified this principle.[303] 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.

298 CAS 2020/A/7145 Moreirense Futebol Clube – Futebol SAD v. Jhonatan Luiz da Siqueira & Vitória Sport Clube, Futebol SAD.
299 CAS 2021/A/7757 Club de Fútbol Pachuca v. Santos Futebol Clube & FIFA & CAS 2021/A/7762 Christian Alberto Cueva Bravo v. Santos Futebol Clube & FIFA.
300 DRC decision of 19 May 2022, Paurevic.
301 CAS 2018/A/6037 & 6043 Bangkok United FC v. Mohanad Abdulraheeem Karrar and Mohanad Abdulraheeem Karrar v. Bangkok United FC.
302 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.
303 Circular no. 1625 dated 26 April 2018.

(1) 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.[304] According to this definition of "damage", the player should be compensated by an amount corresponding to what they 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.

Readers will be familiar with the principle of "positive interest". According to this principle, the amount of compensation 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.[305]

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.[306] 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.[307]

304 Article 337c, SCO.

305 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.

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

307 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.[308] 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,[309] 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.[310] 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 there may be additional financial elements that must be considered when assessing compensation due to a club in case of breach of contract. This renders the calculation of compensation to clubs relatively more "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 on existing CAS case law is also set out below.

308 DRC decision of 20 February 2020, Alonso.
309 CAS 2015/A/4206 & 4209 Hapoel Beer Sheva FC v. Ibrahim Abdul Razak.
310 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 concept 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, which the club loses (and which thus constitutes damage) in light of the player's breach of contract.

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 (or, more generally, the transfer market) 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 time the contract is terminated prematurely. 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 to find a starting point when assessing the damage caused

to the club by the premature termination of the contract, bearing in mind 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.[311] CAS has deemed the DRC approach to be a reasonable method on several occasions.[312] 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.[313] However, a number of additional factors may also be taken into consideration, as discussed below.

(2) 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.[314]

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.

(3) Fees and expenses paid or incurred by the former club

The fourth objective criterion listed in article 17 paragraph 1 confirms that if a club is unable to amortise the investment made to obtain the player's services in its entirety through no fault of its own, this can constitute financial loss in the economic sense.[315]

Article 17 paragraph 1, 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 entering into an employment

311 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.
312 CAS 2019/A/6337 Makism Maksimov v. FIFA & FC Trakai; CAS 2017/A/4935 FC Shakhtar Donetsk v. Olexander Vladimir Zinchenko, FC Ufa & FIFA.
313 DRC decision 18 June 2020, Cinari; DRC decision of 21 February 2020, Malango.
314 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.
315 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 their contract with the club without just cause, for example, after three years, based on a linear amortisation, CHF 200,000 of the paid transfer fee will not yet have been amortised.

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, it is appropriate 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,[316] the relevant amount should actually add to the value attributed to the player's services.

To summarise, therefore, 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.[317] Typically, "fees" for calculation purposes will include the transfer fee paid to acquire the player's services, as well as fees paid to football agents in relation to the transfer concerned.[318]

On a few occasions, considering the circumstances of a case, the DRC has deviated from the general formula described above, based on the specificity of sport. In one example, the DRC took only 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

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

317 DRC decision of 15 July 2021, De Araujo Ferreira.

318 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; DRC decision of 28 April 2021, Henriquez; DRC decision of 21 June 2022, Pantilimon; DRC decision of 24 March 2022, Ofoedu.

remuneration component from the calculation.[319] It has employed this method 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 is 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."[320]

(4) Breach of contract within the protected period

Definition 7, Regulations states that the "protected period" is:

> "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 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.

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 there is 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

319 DRC decision of 10 April 2015, 04151519.

320 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.

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, CAS has considered the protected period to evaluate the seriousness of the employer's fault and increase the compensation payable.[321]

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 under Swiss law cannot exceed the equivalent of six months' salary.[322]

Although, in light 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.

The introduction of the "additional compensation" in the specific provisions relating to compensation payable to players in article 17 paragraph 1 (ii) may reduce the likelihood of those SCO provisions being cited in future.

iv. 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.[323] By the same token, it is commonly agreed that the list of criteria in article 17 is not exhaustive. Consequently,

321 CAS 2018/A/5925 Ricardo Gabriel Álvarez v. Sunderland AFC.
322 Article 337c paragraph 3, Swiss Code of Obligations.
323 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 Done tsk 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.

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"[324] and "Matuzalem".[325] The awards are a good example of how different panels can take significantly different views of similar circumstances. In these cases, the panels fundamentally 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 most of the disputes that followed.[326]

(1) "Webster"

In the "Webster" award, the compensation payable by the player to his former club for the early termination of the contract without just cause was calculated exclusively based on the residual value of the contract that was prematurely terminated, not on the value of the contract that Webster went on to sign after the termination, nor on any possible transfer value or non-amortised transfer compensation.

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, because 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".

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 the panel's 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

324 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.

325 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.

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

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".

(2) "Matuzalem"

The award rendered in the "Matuzalem" case marks the beginning of a reasonably consistent line of CAS jurisprudence based on the principle of "positive interest". As mentioned earlier, 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.

Unlike in "Webster", the player's (lost) transfer value was considered to be an element of the damage suffered since, according to CAS, 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, CAS 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.

It is only where this value (and the logical nexus between the breach and the loss of this value) has been appropriately evidenced that the amount can be taken into consideration when calculating the compensation payable by the player.

CAS 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, CAS 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 until the termination date. This approach aligns with more recent DRC jurisprudence.

(3) 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 expenses that have been saved, have been regularly followed.

On the other hand, the wide discretion when calculating the compensation due, and the fact that the list of objective criteria in article 17 paragraph 1 is not exhaustive, are also frequently emphasised. In this context, in its awards, CAS regularly mentions the deterrent effect of the threat of a substantial compensation payment that cannot be determined in advance;[327] in its view, this serves to further safeguard contractual stability.

"El Hadary"[328]

In "El Hadary", CAS followed the "Matuzalem" approach quite closely. 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 his new club had been willing to pay. Therefore, there was no reason for the panel not to consider it as a component of the damage incurred. According to CAS, 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

327 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.

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

in the new contract, and the residual value of the prematurely terminated contract was deducted from the compensation due as expenses saved.

"Appiah"[329]

In "Appiah", in calculating the amount of compensation payable by the player to his former club due to breach of contract by the player, CAS referred to "Matuzalem" once again. However, the specific circumstances of the case, particularly 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 CAS 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 CAS, this approach was "consistent with the principle of the so-called positive interest".

In its award, CAS stated that the club had lost the value of Stephen 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 Mr 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), CAS concluded that the player's former club could not be awarded any compensation for the loss of his services. Moreover, CAS pointed out that the early termination of the contract had allowed the player's former club to save on expenses, specifically the remaining salary payments and other benefits due to the player under the contract that had been terminated. Conversely, 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, CAS 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.[330]

"Zarate"[331]

In the case of "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 CAS, the termination of the contract "did not cause any direct or indirect damage". In this case, the fact

329 CAS 2009/A/1856-1857 Fenerbahçe Spor Kulübü v. Stephen Appiah & Stephen Appiah v. Fenerbahçe Spor Kulübü.
330 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 provided to each of the parties.
331 CAS 2015/A/4552 & 4553 CA Velez/Mauro Zarate v. Lazio SpA.

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, CAS expressed the view that the fact the player was not training properly or playing regularly had obviously led to a reduction in his market value. As far as the loss of a possible transfer fee was concerned, CAS 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". CAS 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"[332]

In the case of "Maazou", CAS rejected the former club's claim for compensation following the early termination of a contract by a player without just cause on the basis that the club itself bore a significant measure of responsibility for the termination. In this instance, CAS gave significant importance to the fact the club admitted to 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"[333]

In the case of "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, CAS 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.

CAS 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. CAS therefore came to the view that such a transfer agreement gave a decisive indication of the player's value, which should be given

332 CAS 2015/A/3955 & 3956 Vitoria Sport Clube & Ouwo Moussa Maazou v. Etoile Sportive du Sahel (ESS) & FIFA.
333 TAS 2009/A/1960-1961 LOSC Lille c. Tony Mario Sylva & Trabzonspor.

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 in particular 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"[334] and replacement costs

The case of "De Sanctis" marked the first time that CAS agreed to consider, primarily, the costs associated with replacing a player as a component of damage incurred when calculating the compensation payable by a player to their former club for breach of contract. This criterion had been considered in other rulings,[335] 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, CAS 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, CAS 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, CAS acknowledged that the former club had engaged two new goalkeepers: a youngster returning from a loan and an experienced player. In the eyes of CAS, 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, CAS also took the loss of the transfer fee the club might have obtained for the

334 CAS 2010/A/2145-2147 Udinese Calcio v. Morgan de Sanctis & Sevilla FC.

335 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.

young goalkeeper (whom it was forced to recalled from a loan) into consideration, as well as the fee the club had been required 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, CAS 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.

Further jurisprudence

In another award[336] in which replacement costs were considered as part of the compensation calculation, CAS 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.[337] 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. CAS also considered other heads of damage in line with its previous 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 another award, CAS considered 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 a lost investment. In this context, CAS observed that the value of the services of a player is only partially reflected in the remuneration paid to the player.

Recently, CAS has pointed out that, in order for a club to obtain compensation for damages suffered due to termination of a contract by a player, it is insufficient simply to quote the values of the existing and/or new contract and to invoke applicable FIFA regulations. While article 17 paragraph 1, Regulations undeniably provides for

336 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.
337 CAS 2020/A/7029 Association Sportive Guidars FC v. CSKA Moscou & Lassana N'Diaye.

certain criteria to calculate compensation due, this fact does not exempt the parties from the obligation to substantiate and prove the damages effectively incurred.[338]

In another recent award, CAS started from the general assumption that compensation is based on the principle of positive interest. However, when all the elements were considered, the amounts originally awarded to a club by the DRC were deemed excessive. To start with, CAS pointed out that the remuneration still due under a prematurely terminated employment contract must be considered as a saving, with the consequence that it must be deducted from the final compensation to be awarded to the club. CAS deemed that the projected amount of the player's remuneration under the new contract up to the natural expiry of the prematurely terminated contract was a fair indication of the costs that the damaged club would have incurred if it wished to hire a player of equivalent value (however, savings should be discounted from this amount). Importantly, CAS concluded that if there is insufficient evidence of lost profits (*lucrum cessans*), a CAS panel can only award compensation for the actual losses (*damnum emergens*). In particular, the panel concluded that in a hypothetical scenario in which the lost revenue (the *lucrum cessans* resulting from the loss of the opportunity to transfer the player to another club in exchange for a transfer fee) is greater than or equal to the non-amortised transfer fee paid to the previous club, the latter (i.e. the club's non-amortised expenditure) is completely incorporated in the former (the club's missed revenue from a transfer fee) and, thus there is no need to take the latter amount into account when assessing the compensation due to the injured party. On the other hand, in a hypothetical scenario in which the lost transfer fee is lower than the non-amortised transfer fee or is not proven (as in the case before CAS), the club abandoned by the departing player suffers a loss that must be compensated, since part of the non-amortised transfer fee continues to be borne by the injured club (it would remain as a loss on its balance sheet and it would not be wholly compensated by the acquisition of a player of equivalent value).[339]

(4) Conclusions

While certain elements and principles do recur, thus providing the basis for established jurisprudence, the various decisions all take specific factors into account that are not considered in other judgments. It must therefore be concluded that each case has its own characteristics, and that different CAS panels may adopt different approaches to the cases before them.

338 CAS 2020/A/7262 Helder Jorge Leal Rodrigues Barbosa & Hatayaspor CA v. Akhisar Belediye Genclick ve SK.
339 CAS 2021/A/7757 Club de Fútbol Pachuca v. Santos Futebol Clube & FIFA & CAS 2021/A/7762 Christian Alberto Cueva Bravo v. Santos Futebol Clube & FIFA.

This general conclusion is reinforced by a CAS award[340] 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, while always applying article 17.[341] In other words, there is no preferred method, be it that used in "Webster"or "Matuzalem", or the DRC's approach, which is essentially based on the average of the remuneration due to a player under their new and old (terminated) contracts.[342]

In that case, CAS 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 a U-19 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, CAS agreed with the DRC's 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, CAS 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.

(5) 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.[343]

340 CAS 2017/A/4935 FC Shakhtar Donetsk v. Olexander Vladimir Zinchenko, FC Ufa & FIFA.
341 See also CAS 2017/A/5366 Adanaspor v. Mbilla Etame Flavier.
342 DRC decision of 1 February 2023, Potocnik.
343 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.

C. 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' representatives at domestic level in accordance with national law take precedence over the Regulations.[344]

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, as mentioned earlier).

2. If no such agreement is entereed into, or where the relevant clause is declared inapplicable, 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.

344 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.

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.[345] Indeed, in its initial jurisprudence on the new provision, the DRC has confirmed its previous stance on such issues.[346]

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 succeeds in finding new employment following the breach and premature 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 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". This is regularly applied by the DRC.[347]

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 premature termination of the contract was due to overdue payables.

The term "overdue payables" used in this context is not synonymous with the technical term used in 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 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.

345 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.
346 DRC decision of 13 February 2020, Advic; DRC decision of 27 August 2020, Jelic; DRC decision of 21 July 2022, Naguez.
347 DRC decision of 21 September 2022, Alaskarov.

In its jurisprudence to date, the DRC has regularly awarded "additional compensation" amounting to three monthly salary payments where players have terminated their contracts prematurely with just cause due to overdue payables.[348] It must be highlighted that the prerequisite of "termination due to overdue payables" is essential for the entitlement to the additional compensation: "(...) the Chamber referred to art. 17 par. 1 lit. ii) of the Regulations, according to which a player is entitled to an amount corresponding to three monthly salaries as additional compensation should the termination of the employment contract at stake be due to overdue payables. In the case at hand, the Chamber confirmed that the contract termination did not take place due to the said reason and furthermore, the termination was carried out by the Respondent, and therefore decided that no additional compensation can be awarded."[349]

Based on the wording of the provision, the additional compensation comprises three monthly salaries. In one particular case,[350] 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. The DRC established that it was the salary at the time the contract was terminated that should be used as this corresponds to the most accurate value of the player's services in the relevant season.

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 was:

- forced to train alone;[351]
- banned from the training facilities and/or evicted from their accommodation;[352]
- deprived of their passport by the club;[353] or
- refused an exit visa to leave the country in which their club is based.[354]

348 DRC decision of 11 April 2019, 04191403-E; DRC decision of 11 April 2019, 04190046-E; DRC decision of 11 April 2019, 04191794-E; DRC decision of 16 February 2022, Jensen; DRC decision of 4 August 2022, Velic; DRC decision of 4 August 2022, Kanda.
349 DRC decision of 7 July 2022, dos Santos.
350 DRC decision of 11 April 2019, 04191403-E.
351 DRC decision of 23 April 2020, Batna; DRC decision of 4 June 2020, Malik; DRC decision of 22 November 2022, Vrhovac; DRC decision of 15 December 2022, Dorregaray.
352 DRC decision of 12 October 2022, Mengolo.
353 DRC decision of 15 November 2018, no. 11181176-E; DRC decision of 15 December 2022, Dorregaray.
354 DRC decision of 23 April 2020, Batna.

Equally, a track record of illicit/illegal behaviour or violations of previous contracts might also prompt the DRC to consider whether a club's behaviour qualifies as "egregious circumstances". Alternatively, the DRC has held that the mere non-payment of salary, even amounting to the equivalent of five months, did not amount to "egregious circumstances".[355]

In a November 2018 decision,[356] the DRC considered the confiscation of a player's passport to be an example of an egregious circumstance and increased the additional compensation to the maximum amount. In a May 2019 decision,[357] the DRC awarded the maximum additional compensation to a player because it considered the fact the 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,[358] 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.

Similarly, in an April 2020 decision,[359] the DRC awarded a player additional compensation of one month's 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 team-mates were permitted 30 days. On top of that, the player had been made to vacate his apartment, since the club failed to pay the rent on the property despite being contractually obliged to do so.

In a December 2022 decision,[360] the DRC established that the termination by the club qualified as egregious conduct, entitling the player to five additional monthly salaries. In its decision, the DRC highlighted that in addition to failing to pay the salaries, the club had been withholding the player's passport for several months as well as forcing him to train in isolation.

A collection of various considerations can also lead to additional compensation being awarded. In a relatively recent decision, CAS awarded six months' additional compensation for egregious circumstances due to the fact that the club: (i) had not paid the salaries on time; (ii) had imposed

355 DRC decision of 21 July 2022, Hadadi.
356 DRC decision of 15 November 2018, no. 11181176-E.
357 DRC decision of 9 May 2019, no. 05192103.
358 DRC decision of 4 June 2020, Malik.
359 DRC decision of 23 April 2020, Batna.
360 DRC decision of 15 December 2022, Dorregaray.

a disproportionate fine on the player; (iii) had not replied to any of the player's default notices; (iv) had taken advantage of the power imbalance to enter into a transfer agreement with a third club for USD 960,000 despite the fact that the player had unilaterally terminated the contract; and (v) despite the payment of such amount from the third club, had not paid the player's outstanding salaries.[361]

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.[362] This is in line with the principle of equal treatment, in the sense that players that do not find new employment contracts and players that do find new employment contracts are both able to receive the maximum amount of compensation corresponding to the residual value of the relevant contract.[363] It also avoids a player being over-compensated compared to the amounts that would be due to them under the prematurely terminated contract.

D. JOINT AND SEVERAL LIABILITY

Article 17 paragraph 2 establishes the financial liabilities 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.

a. Introduction

i. Entitlement to compensation

An entitlement to compensation for breach of contract cannot be assigned to a third party. In other words, only the party that has suffered a breach of contract is entitled to compensation for that 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. In this respect, the new club is considered a third party, simply because the "true" parties to the (prematurely) terminated contract are always a player and a club.

361 CAS 2020/A/6772 Nicholas Opoku v. Club Africain.

362 Example: player X signs a 12-month contract with club A. The agreed monthly salary amounts to EUR 10,000. The player prematurely terminates the contract with just cause after six months for overdue payables. The player is able to find new employment with club B during five of the relevant six months, with a monthly salary of EUR 5,000. The "mitigated compensation" would be EUR (residual value of the old contract, EUR 60,000 minus remuneration received under new contract, EUR 25,000). Theoretically the guaranteed "additional compensation" would be EUR 30,000 (three monthly salaries), which would lead to a total compensation of EUR 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 EUR 60,000 in compensation.

363 DRC decision of 22 November 2022, Ololade Atanda; DRC decision of 29 September 2022, Hamed; DRC decision of 4 August 2022, Tatar.

The new club therefore cannot collect compensation on behalf of its recent signing. In fact, the new club can only be jointly liable to pay compensation as detailed below, and never to receive compensation for a previously terminated contract.

ii. Joint and several liability of the player and their 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 induced 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) an 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 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). While CAS has questioned this approach in some circumstances[364] the power of FIFA to summon any natural or legal person to intervene in proceedings before the FT has been codified by article 9 paragraph 4 of the Procedural Rules and has been confirmed by the DRC.[365]

Article 17 paragraph 2 is also designed to benefit players, as it adds an additional party that may be liable for compensation (and thus cover a compensation claim originally triggered by a player's breach of contract). However, in addition to this, the rule considers that a club that is ready and willing 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 breach their previous contract in any way. Hence, while paragraph 2 may relieve 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.

364 CAS 2021/A/7784 CD Saprissa v. Nantong Zhiyun FC & Roman Rubilio Castillo Alvarez.
365 DRC decision of 2 December 2021, Oyewusi.

b. Joint and several liability in general

According to the consistent jurisprudence of the DRC,[366] 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.[367] It has been deemed applicable even if the player joined the new club only after a considerable period following the contractual breach.[368] Moreover, CAS has underlined that the joint and several liability is not dependent on the third club's being proven to have induced the player's breach or otherwise being at fault.[369]

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.[370]

In an interesting award,[371] 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 loan club and the player was prematurely terminated by the player, without just cause. At the end of the originally agreed loan period, the player returned to their parent club. In its ruling, CAS referred 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 provides the player's new club with a better starting point from which to act against the player, whose debt it will have paid on the player's behalf. Considering this, CAS concluded that the player's parent club, as his new club following the breach of contract, should be held jointly and severally liable (along with the player himself) for the compensation due to the club that the player had joined on loan.

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 CAS award.[372] 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

366 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; DRC decision of 21 June 2022, Pantilimon, DRC decision of 4 August 2022, Gonzales Lasso, DRC decision of 1 February 2023, Potocnik, DRC decision of 23 March 2023, Cheti.
367 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.
368 CAS 2013/A/3149 Avai FC v. FIFA and Bursaspor and Marcelo Rodrigues.
369 CAS 2020/A/7145 Moreirense Futebol Clube – Futebol SAD v. Jhonatan Luiz da Siqueira & Vitória Sport Clube, Futebol SAD.
370 CAS 2013/A/3149 Avai FC v. FIFA and Bursaspor and Marcelo Rodrigues.
371 CAS 2016/A/4408 Raja Club v. Baniyas FC & Ismail Benlamalen.
372 CAS 2019/A/6233 Al Shorta Sports Club v. FIFA & Dalian Yifang FC.

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 by 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 FIFA Disciplinary Committee to CAS. In the award concerning the appeal, CAS overturned the FIFA Disciplinary Committee's 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 award governing the dispute between the player and his former club, it was deemed to have complied with its obligations.

In a recently rendered award,[373] CAS dealt with the issue of joint liability from a general standpoint, though in the context of attempting to resolve a very specific matter of alleged *lis pendens*/potential *res iudicata* with an arbitration procedure initiated at domestic level by the club complaining of an unjustified breach of contract and the relevant player.

In particular, CAS determined – contrary to the longstanding jurisprudence of the DRC – that article 17 paragraph 2, Regulations does not provide a graduated relationship between the liability of the player and their new club, but it does refer to joint and several liability. According to CAS, this means that the DRC's interpretation that the player's new club only had accessory liability (and then there was *lis pendens* due to identity of claims) had no legal basis and was incorrect.

CAS further pointed out that, in cases of joint liability such as those stemming from article 17, Regulations, there are as many matters in dispute as there are pairs of claimants and respondents.

This means that the claim against the player and the claim against his new club before the DRC are, from a procedural point of view, different matters in dispute. In other words, the claim brought against the player is to be kept procedurally separate from the one brought against his new club.

When turning to the issue of *lis pendens/res iudicata* bearing in mind this legal premise, CAS found that the ongoing procedure in front of the local court of arbitration could not prevent the damaged club from initiating a separate action against the player's new club before the FIFA DRC (i.e. there was no *lis pendens*).

373 CAS 2020/A/7054 Sporting Clube de Portugal v. Rafael Alexandre de Conceicao Leao & LOSC Lille & FIFA.

c. 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. The case concerning the player, Mutu, is also 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 from a player to his previous club because of a breach of contract.[374]

In 2003, after he tested positive for cocaine following a 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 had been made with just cause. Chelsea FC went on to seek compensation for breach of contract. Once the relevant judgment had become final and binding, Chelsea FC 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 before CAS. In its judgment, CAS acknowledged the objectives and motivation behind article 17 paragraph 2. Specifically, CAS recognised that this provision 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 CAS, 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, CAS 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. CAS 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, it is worth noting that 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.[375] However, CAS's reasoning would

374 CAS 2013/A/3365 Juventus FC v. Chelsea FC and CAS 2013/A/3366 A.S. Livorno Calcio S.p.A. v. Chelsea FC.

375 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 one-month time limit, then the new club was deemed jointly responsible for the payment of the relevant compensation.

still seem to be applicable to the current wording; indeed, a more recent award ("Aziz Abdul"), which will be discussed below, 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.[376]

"Diarra"

A further exception was made by the DRC in a dispute involving FC Lokomotiv Moscow and Lassana Diarra.[377]

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 terminate the contract, particularly in view of several unauthorised absences on the player'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, 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.[378]

"Aziz Abdul"

In an award concerning the player Aziz Abdul,[379] 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. The latter negotiated a potential transfer of the player to Ismaily SC. 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 and, ultimately, signed a full transfer

376 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.
377 DRC decision of 10 April 2015, no. 04151519.
378 CAS 2015/A/4094 Lassana Diarra v. FC Lokomotiv Moscow.
379 CAS 2017/A/4977 Smouha SC v. Ismaily SC & Aziz Abdul & Club Asante Kotoko FC & FIFA.

agreement with Smouha. The player then went on to sign a contract with Smouha, and Smouha paid the agreed transfer fee to Kotoko.

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 entered into 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, CAS 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 the fact it gives the club that suffers damage an additional guarantee that the compensation will be paid; that the player is (potentially) 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. CAS 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.[380]

At the same time, however, it acknowledged that exceptions had been made in the past, referencing "Mutu" and "Diarra". CAS 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 benefit from the breach of contract, since it paid a transfer fee, and consequently, there was no unjust enrichment.

Based on all the above, CAS concluded that truly exceptional circumstances were at play, and this justified the decision not to apply the principle of automatic joint and several liability.

E. SPORTING SANCTIONS

a. General remarks

In addition to the financial consequences of a breach of contract, article 17 paragraph 4 gives the DRC the power to impose sporting sanctions. The option to apply sporting sanctions further strengthens contractual stability between

380 SFT in 4A_32/2016; also in CAS 2018/A/5693 & 5694 Riga FC and FC Partizan v. Cedric Kouame and FIFA.

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.[381]

b. The protected period

Sporting sanctions may apply only if a breach of contract occurs within the protected period. The definition of "protected period" is as follows:

> "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 entered into (as opposed to when the contract enters into force). This distinction was included because older players tend to sign shorter contracts.

The protected period starts with the entry into force 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.

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.

381 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.

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 have 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.

c. 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 applying sporting sanctions or not. 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.[382]

CAS has repeatedly and consistently confirmed this approach.[383] For sporting sanctions to be imposed, the specific circumstances surrounding the behaviour of the party in breach must justify sporting sanctions.[384] In other words, a flexible, case-by-case approach is legitimate.[385] This approach was recently confirmed.[386]

In one significant award,[387] 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.

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, at least four times in the two years preceding the DRC decision, to have terminated a contract without just cause or to have seriously breached contractual obligations such that a player has just cause to terminate their contract.[388] It must be noted, however, that while the DRC applies this approach with relative consistency, there were

382 DRC decision of 20 May 2020, Diaz; DRC decision of 25 February 2020, Capemba; DRC decision of 25 February 2020, Meleg; DRC decision of 1 February 2023, Chihadeh.
383 CAS 2007/A/1358 FC Pyunik Yerevan v. Carl Lombe, AFC Rapid Bucuresti & FIFA and CAS 2007/A/1359 FC Pyunik Yerevan v. Edel Apoula Edima Bete, AFC Rapid Bucuresti & 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.
384 CAS 2014/A/3460 Rogério de Jesus Abreu v. SFK Pierikos & FIFA.
385 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.
386 CAS 2020/A/7310 FK Partizani SH.A. v. NK Istra 1961 & Erald Çinari & Klubi I Futbollit Vllaznia SH.A. & FIFA & CAS 2020/A/7322 Erald Çinari v. NK Istra 1961 & FIFA.
387 CAS 2014/A/3754 Metalurg Donetsk FC v. FIFA & Marin Anicic.
388 DRC decision of 12 February 2020, de Jesus; DRC decision of 27 February 2020, Fortunato; DRC decision of 15 February 2018, no. 02182231-E; DRC decision of 19 May 2022, Tavares Fernandes; DRC decision of 23 June 2022, Steuble; DRC decision of 4 August 2022, Velic; DRC decision of 4 August 2022, Outtara.

cases in which the circumstances merited sanctions to be imposed on clubs right away even if the threshold of four repeated offences was not met.[389] In other words, should the circumstances of a case justify it, nothing prevents the DRC from immediately imposing sporting sanctions, even in a first case of breach of contract of a club. Likewise, it is clear that the Regulations allow the DRC to impose sporting sanctions without any "mathematical" threshold, again depending on the circumstances of each case. Should, for example, a decision specifically alert a debtor club that further instances of breach of contract by that same club may lead to sporting sanctions, the DRC may well impose sporting sanctions in an immediate next case involving that same club.

CAS has supported the general approach of the DRC,[390] finding that a repeated offence should be viewed as a decisive and extremely serious aggravating factor in any wrongdoing.[391] The fact that clubs (and players) sometimes benefit from the lenient approach of the DRC does not imply that sporting sanctions should not be applied in some cases, and repeated previous instances of unjustified (financial) 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.[392]

Bearing this in mind, 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.[393]

CAS has confirmed this on several occasions.[394] It has stated that there is no discretion as to the severity of the sanctions imposed.[395] Equally, it has found that article 17, Regulations contains no provision for reducing the stipulated sporting sanctions.[396] However, in a relatively recent – and rather isolated – award, CAS reduced the registration ban imposed on a club from two to one registration periods in light of the circumstances of the case.[397]

CAS has also confirmed that the decision as to whether sporting sanctions should be imposed is discretionary, and the DRC has the power to impose them regardless of any requests from the parties to the dispute.

389 DRC decision of 25 April 2014, Player A (anonymised); DRC decision of 25 October 2012, Afolabi.
390 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.
391 CAS 2017/A/5011 Eskisehirspor Külübu v. Sebastian Perurena & FIFA; see also CAS 2017/A/5068 Balikesirspor FC v. Josip Tadic & FIFA.
392 CAS 2014/A/3797 Khazar Lankaran Football Club v. FIFA.
393 DRC decision of 27 August 2009, no. 89733; DRC decision of 16 April 2009, no. 49194; DRC decision of 10 August 2007, no. 871322.
394 CAS 2017/A/5011 Eskisehirspor Külübu v. Sebastian Perurena & FIFA.
395 CAS 2014/A/3765 Mersin Idmanyurdu Spor Kulübü v. Mr David Bicik & FIFA.
396 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.
397 CAS 2020/A/7310 FK Partizani SH.A. v. NK Istra 1961 & Erald Çinari & Klubi I Futbollit Vllaznia SH.A. & FIFA & CAS 2020/A/7322 Erald Çinari v. NK Istra 1961 & FIFA.

d. 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 is 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.[398] 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, CAS confirmed that aggravating circumstances existed, and that the player should be suspended for six months.[399]

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 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. Accordingly, 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 for the purposes of the ban the player is required to serve, but 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 to be "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.

398 DRC decision of 2 November 2007, no. 117923.
399 CAS 2008/A/1448 S. & Zamalek SC v. PAOK FC & FIFA.

e. Sporting sanctions against a club

The sporting sanction that can be imposed on a club found to be in breach of contract is 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 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.

Regarding 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 hand, it also stops the club circumventing its punishment by registering a player before the opening of the first registration period after their ban is completed. 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.

F. INDUCEMENT TO BREACH OF CONTRACT BY THE NEW CLUB

Article 17 paragraph 4, 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 against any club. In other words, it is not possible to pursue an action against the club for inducement to breach of contract without taking action 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 that 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 for 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 that player to breach the contract.[400] 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,[401] 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. CAS reached the same conclusion in a more recent matter.[402] In that case, CAS remarked that the new club failed to provide any conclusive evidence that it did not induce the player to unilaterally terminate their previous contract. In its view "[t]he 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.

400 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; DRC decision of 21 June 2022, Pantilimon; DRC decision of 4 August 2022, Gonzales Lasso; DRC decision of 1 February 2023, Potocnik; DRC decision of 23 March 2023, Cheti.

401 TAS 2005/A/916 AS Roma c. FIFA.

402 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.

However, this is not to say that the regulatory presumption cannot be rebutted. The potential to do so has also been confirmed by CAS.[403] In this respect, the DRC as well as CAS apply the requirement for "due diligence" from the new club, as opposed to active poaching. It shall nonetheless be noted that the standard of diligence is rather high as, for example, relying on statements made by the player or his football agent would not be sufficient to escape sporting sanctions.[404]

In a case from 2015, CAS considered the timeline in the run-up to the entry into 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 its own employment contract with the player was signed. 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,[405] 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 entered into a series of new employment contracts with several different clubs, but only actually registered with one of them. Only the club with which the player was formally registered was sanctioned by the DRC for inducement to breach of contract. In this respect, CAS 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.[406]

G. 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.

In practice, article 17 paragraph 5 has only ever been applied once, in relation to a football agent who was found to have contributed to a breach of contract by one of the

403 CAS 2015/A/3953 & 3954 Stade Brestois 29 & John Jairo Culma v. Hapoel Kiryat Shmona FC & FIFA.
404 CAS 2015/A/3953 & 3954, Stade Brestois 29 & John Jairo Culma v. Hapoel Kiryat Shmona FC & FIFA; CAS 2021/A/7851 & CAS 2021/A/7905, Mohamed Naoufel Khacef v. FIFA & CD Tondela Futebol v. FIFA.
405 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.
406 DRC decision of 29 September 2022, Gonzales Lasso; DRC decision of 5 October 2022, Essono; DRC decision of 24 March 2022, Ofoedu.

players he represented. The case was heard in February 2006, and the agent's licence was suspended for six months. An appeal was lodged with CAS, but was later withdrawn.

Contrary to the provision concerning clubs inducing a player to breach a 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 that person being required to prove they have done no wrong.

3. Relevant jurisprudence

DRC decisions

Proportionality of liquidated damages clauses

1. DRC decision of 26 November 2004, no. 114796.
2. DRC decision of 12 January 2006, no. 16394.
3. DRC decision of 21 February 2020, Malango.
4. DRC decision of 11 April 2019, no. 04190658.
5. DRC decision of 20 May 2020, Miramar.
6. DRC decision of 10 December 2020, Cueva Bravo.
7. DRC decision of 28 January 2021, Anangono Leon.
8. DRC decision of 28 April 2021, Rodrigues da Silva.
9. DRC decision of 29 March 2018, 03180370_E.
10. DRC decision of 18 May 2022, Sow.
11. DRC decision of 2 June 2022, Ivakhnov.
12. DRC decision of 21 July 2022, Dicko.
13. DRC decision of 5 May 2022, Da Silva.
14. DRC decision of 11 March 2021, Gomes de Souza.
15. DRC decision of 26 January 2022, Park.
16. DRC decision of 26 January 2022, Bernardo Mariano.
17. DRC decision of 1 February 2023, Abdel Rahnam Alattar.
18. DRC decision of 4 August 2022, Player B (anonymised decision).

Buy-out clause

1. DRC decision of 8 December 2022, Reyes Urena.

Specificity of sport

1. DRC decision of 19 May 2022, Paurevic.

Amortisation

1. DRC decision of 15 July 2021, De Araujo Ferreira.
2. DRC decision of 28 April 2021, Henriquez.
3. DRC decision of 21 June 2022, Pantilimon.
4. DRC decision of 24 March 2022, Ofoedu.

Reciprocity of compensation clauses

1. DRC decision of 5 December 2019, Patino Lachica.
2. DRC decision of 11 March 2021, Gomes de Sousa.
3. DRC decision of 25 March 2021, Pesic.
4. DRC decision of 9 February 2017, 02171238_E (CAS2017/A/5242).
5. DRC decision of 13 July 2017, 07170126_E (CAS 2017/A/5366).

Calculating compensation due by a player to a club

1. DRC decision of 18 June 2020, Cinari.
2. DRC decision of 21 February 2020, Malango.
3. DRC decision of 20 May 2020, Diaz.
4. DRC decision of 17 January 2020, Ayala.
5. DRC decision of 18 June 2020, da Silva Barbosa.
6. DRC decision of 25 March 2021, Khacef.
7. DRC decision of 28 April 2021, Henriquez.
8. DRC decision of 21 June 2022, Pantilimon.
9. DRC decision of 4 August 2022, Gonzales Lasso.
10. DRC decision of 1 February 2023, Potocnik.
11. DRC decision of 23 March 2023, Cheti.
12. DRC decision of 15 September 2022, Essono.

Compensation due to a player – mitigated

1. DRC decision of 21 September 2022, Alaskarov.
2. DRC decision of 16 February 2022, Jensen.
3. DRC decision of 4 August 2022, Velic.
4. DRC decision of 4 August 2022, Kanda.

Compensation due to a player – remains unemployed

1. DRC decision of 21 July 2022, Naguez.

Compensation due to a player – egregious circumstances

1. DRC decision of 15 November 2018, no. 11181176-E.
2. DRC decision of 9 May 2019, no. 05192103.
3. DRC decision of 4 June 2020, Malik.
4. DRC decision of 23 April 2020, Batna.
5. DRC decision of 18 February 2021, De Paula (2).
6. DRC decision of 9 May 2019, no. 05192103_E.
7. DRC decision of 21 July 2022, Hadadi.
8. DRC decision of 12 October 2022, Mengolo.
9. DRC decision of 22 November 2022, Vrhovac.
10. DRC decision of 15 December 2022, Dorregaray.

Limit on total compensation

1. DRC decision of 22 November 2022, Ololade Atanda.
2. DRC decision of 29 September 2022, Hamed.
3. DRC decision of 4 August 2022, Tatar.

Joint and several liability

1. DRC decision of 10 April 2015, no. 04151519.

Repeat offenders

1. DRC decision of 12 February 2020, de Jesus.
2. DRC decision of 27 February 2020, Fortunato.
3. DRC decision of 15 February 2018, no. 02182231-E.
4. DRC decision of 19 May 2022, Tavares Fernandes.
5. DRC decision of 23 June 2022, Steuble.
6. DRC decision of 4 August 2022, Velic.
7. DRC decision of 4 August 2022, Outtara.

Inducement to breach of contract by new club

1. DRC decision of 18 June 2020, Cinari.
2. DRC decision of 18 June 2020, da Silva Barbosa.
3. DRC decision of 25 March 2021, Khacef.
4. DRC decision of 29 September 2022, Gonzales Lasso.
5. DRC decision of 5 October 2022, Essono.
6. DRC decision of 24 March 2022, Ofoedu.
7. DRC decision of 21 June 2022, Pantilimon.
8. DRC decision of 1 February 2023, Potocnik.
9. DRC decision of 23 March 2023, Cheti.

CAS awards

Consequences of article 17 also applicable to termination with just cause in the event of breach of contract by the other party

1. CAS 2012/A/2910, Club Eskisehirspor v. Kris Boyd.
2. CAS 2012/A/2775, Al-Gharafa SC v. Hakan Yakin & FC Luzern.
3. CAS 2010/A/2202, Konyaspor Club Association v. J.
4. CAS 2012/A/3033, A. v. FC OFI Crete.

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1. CAS 2017/A/5242, Esteghlal Football Club v. Pero Pejic.
2. CAS 2016/A/4826, Nilmar Honorato da Silva v. El Jaish FC & FIFA.
3. 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.
4. CAS 2013/A/3411, Al-Gharafa & Bresciano v. Al Nasr & FIFA.
5. CAS 2021/A/8098, Mabrouk Jendli v. Ohod Football Club.

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1. CAS 2008/A/1519, FC Shakhtar Donetsk (Ukraine) v. Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) & FIFA.
2. CAS 2008/A/1520, Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) v. FC Shakhtar Donetsk (Ukraine) & FIFA.
3. CAS 2009/A/1880 & 1881, FC Sion v. FIFA & Al-Ahly Sporting Club and El Hadary v. FIFA & Al-Ahly Sporting Club.
4. CAS 2012/A/2698, AS Denizlispor Kulübü Dernegi v. Wescley Pina Gonçalves.
5. CAS 2013/A/3411, Al Gharafa & Bresciano v. Al Nasr & FIFA.
6. CAS 2015/A/4046, Lizio & Bolivar v. Al Arabi.
7. CAS 2016/A/4560, Al Arabi SC Kuwait v. Papa Khalifa Sankaré & Asteras Tripolis FC.
8. CAS 2016/A/4843, Hamzeh Salameh & Nafit Meson FC v. SAFA Sporting Club & FIFA.
9. CAS 2018/A/6029, Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Marvin Renato Emnes.
10. 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.
11. CAS 2019/A/6337, Makism Maksimov v. FIFA & FC Trakai.
12. 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.
13. CAS 2020/A/7093, Tractor Sazi Tabriz FC v. Anthony Christopher Stokes & Adana Demirspor KD.

14. CAS 2018/A/5925, Ricardo Gabriel Álvarez v. Sunderland AFC.
15. CAS 2020/A/6727, Benjamin Acheampong v. Zamalek Sports Club.
16. CAS 2020/A/6770, Sabah Football Association v. Igor Cerina.
17. CAS 2020/A/7231, Nejmeh Club v. Issaka Abudu Diarra.
18. CAS 2020/A/6772, Nicholas Opoku v. Club Africain.
19. CAS 2020/A/7145, Moreirense Futebol Clube – Futebol SAD v. Jhonatan Luiz da Siqueira & Vitória Sport Clube, Futebol SAD.

Proportionality of liquidated damages clauses/penalty clauses

1. 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.
2. 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.
3. CAS 2015/A/3999 & 4000, Diego de Souza v. Al Ittihad.
4. CAS 2020/A/6752, Club Atlético Independiente Fernando Amorebieta Mardaras v.
5. CAS 2019/A/6521 & 6526, Osmanlispor FK v. Patrick Cabral Lalau & Club Atlético Mineiro and Patrick Cabral Lalau v. Osmanlispor FK.
6. CAS 2020/A/6961, Football Club Buriram United v. Modibo Maiga.
7. CAS 2021/A/7727, Yeni Malatyaspor FK v. Issiar Dia.
8. TAS 2020/A/7473, Daniel Guindos López c. Federación Ecuatoguineana de Fútbol.

Reciprocity of compensation clauses

1. CAS 2016/A/4605, Al-Arabi Sports Club Co. for Football v. Matthew Spiranovic.
2. CAS 2014/A/3656, Olympiakos Volou FC v. Carlos Augusto Bertoldi & FIFA.
3. CAS 2017/A/5366, Adanaspor v. Mbilla Etame Flavier.
4. CAS 2015/A/4124, Neftci PFK v. Emile Mpenza.
5. CAS 2014/A/3684 & 3693, Leandro da Silva v. Benfica.
6. CAS 2015/A/4067, Valeri Bozhinov v. Sporting de Portugal & 4068 Sporting de Portugal v. Valeri Bozhinov & Levski Sofia.
7. CAS 2015/A/3999 & 4000, Diego de Souza v. Al Ittihad.

8. 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.
9. CAS 2017/A/5242, Esteghlal Football Club v. Pero Pejic.
10. CAS 2019/A/6533 & 6539, Club Al Arabi S.C. v. Sérgio Dutra Junior & Sérgio Dutra Junior v. Al Arabi S.C. & FIFA.
11. CAS 2019/A/6626, Club Al Arabi S.C. v. Ashkan Dejagah.
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2. CAS 2019/A/6525, Sevilla FC v. AS Nancy Lorraine.
3. CAS 2020/A/7128, Sporting Clube de Portugal v. KSV Cercle Brugge.
4. CAS 2020/A/7079, Jaime Javier Ayovi Corozo v. Shabab Al Ahli Dubai Club.

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1. 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.
2. CAS 2018/A/5925, Ricardo Gabriel Álvarez v. Sunderland AFC.
3. CAS 2021/A/7757, Club de Fútbol Pachuca v. Santos Futebol Clube & FIFA & CAS 2021/A/7762, Christian Alberto Cueva Bravo v. Santos Futebol Clube & FIFA.

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1. 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.
2. 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.
3. CAS 2009/A/1880 & 1881, FC Sion v. FIFA & Al-Ahly Sporting Club and El Hadary v. FIFA & Al-Ahly Sporting Club.
4. CAS 2009/A/1856-1857, Fenerbahçe Spor Kulübü v. Stephen Appiah & Stephen Appiah v. Fenerbahçe Spor Kulübü.
5. TAS 2009/A/1960-1961, LOSC Lille c. Tony Mario Sylva & Trabzonspor.

6. CAS 2010/A/2145-2147, Udinese Calcio v. Morgan de Sanctis & Sevilla FC.
7. CAS 2017/A/4935, FC Shakhtar Donetsk v. Olexander Vladimir Zinchenko, FC Ufa & FIFA.
8. 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.
9. CAS 2020/A/7029, Association Sportive Guidars FC v. CSKA Moscou & Lassana N'Diaye.
10. CAS 2020/A/7262, Helder Jorge Leal Rodrigues Barbosa & Hatayaspor CA v. Akhisar Belediye Genclick ve SK.
11. CAS 2021/A/7757, Club de Fútbol Pachuca v. Santos Futebol Clube & FIFA & CAS 2021/A/7762, Christian Alberto Cueva Bravo v. Santos Futebol Clube & FIFA.

Joint and several liability

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2. CAS 2017/A/4977, Smouha SC v. Ismaily SC & Aziz Abdul & Club Asante Kotoko FC & FIFA.
3. CAS 2020/A/7054, Sporting Clube de Portugal v. Rafael Alexandre de Conceicao Leao & LOSC Lille & FIFA.

Sporting sanctions

1. CAS 2007/A/1358, FC Pyunik Yerevan v. Carl Lombe, AFC Rapid Bucuresti & FIFA and CAS 2007/A/1359, FC Pyunik Yerevan v. Edel Apoula Edima Bete, AFC Rapid Bucuresti & FIFA.
2. CAS 2017/A/5011, Eskisehirspor Kulübü v. Sebastian Perurena & FIFA.
3. 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.
4. CAS 2020/A/7310, FK Partizani SH.A. v. NK Istra 1961 & Erald Çinari & Klubi I Futbollit Vllaznia SH.A. & FIFA & CAS 2020/A/7322, Erald Çinari v. NK Istra 1961 & FIFA.

Repeat offenders

1. CAS 2017/A/5011, Eskisehirspor Kulübü v. Sebastian Perurena & FIFA.
2. CAS 2017/A/5068, Balikesirspor FC v. Josip Tadic & FIFA.

Inducement to breach of contract by new club

1. 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.
2. CAS 2015/A/3953 & 3954, Stade Brestois 29 & John Jairo Culma v. Hapoel Kiryat Shmona FC & FIFA.
3. CAS 2021/A/7851 & CAS 2021/A/7905, Mohamed Naoufel Khacef v. FIFA & CD Tondela Futebol 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. Any employment contract that is concluded following the provision of football agent services shall specify the football agent's name, their client, their FIFA licence number and their signature, in accordance with the FIFA Football Agent Regulations.

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.

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 entered into between professional players and clubs.

2. The substance of the rule

A. INVOLVEMENT OF INTERMEDIARIES

With a view to improving transparency, as well as to making sure that relevant football authorities have as much detail as possible available to them in the event of a complaint or dispute, if a football agent is involved in the negotiation of a contract between a professional and a club, that football agent must be named in the contract.

This provision complements the newly introduced FIFA Football Agent Regulations which requires that clubs or players must ensure that any transfer agreement or employment contract entered into with the services of a football agent bears the name and signature of that football agent.

This specific detail concerning the negotiation of, and entry into, 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 football agent(s) used by the club, as well as those of any football agent(s) 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 entered into for a predetermined period. To provide a degree of uniformity and harmonisation, the Regulations include several rules as to the maximum and minimum lengths of these contracts.

a. 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 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 in line with article 10, Regulations. 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.[407] In this respect, it should be emphasised that the end of the loan (and of the relevant employment contract entered into between the player and the new club) must 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.

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 knockout 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. It should be noted that the minimum length of the contract is one season, but this does not mean that if this threshold is respected, the remaining time in the contract beyond this season must also match the season end date.

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 represent a 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 to five years offers the player a high level

407 Example: the minimum length of a contract between player A and 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.

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.[408] 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 considered in such cases.

Though not expressly covered by the Regulations, an interesting and much-debated topic that indirectly concerns the maximum duration of a contract (as well as potentially just cause to terminate a contract) is the validity of unilateral extension options, or other similar contractual arrangements regarding the length of contracts.

The DRC and CAS have analysed these clauses with a high degree of caution, considering the specific circumstances of each case. Historically, both bodies have been quite critical and the corresponding decisions state quite explicitly that clauses which put the player at the mercy of the club, which can decide unilaterally to extend the contract without any corresponding gain for the player (such as an increased salary, for instance), are illegal in that they limit the player's freedom of movement and contravene the general principles of labour law.[409]

By the same token, CAS jurisprudence has examined in depth the criteria for a unilateral extension clause to be deemed valid, which has become known as the "Portmann criteria".[410] Nonetheless, they have not been applied uniformly by CAS, since three important awards in the aftermath of TAS 2005/A/983 & 984 referred to "Portmann" but did not apply it.

The first such award was CAS 2005/A/973[411], in which CAS ruled that a unilateral extension option clause was valid, applying an extremely pragmatic analysis of the relevant contract. CAS found that no imbalance or obvious disproportion, associated with the "*pacta sunt servanda*" principle and the lack of good faith on the player's part, made the extension option inserted in the contract valid under the applicable law, which was Greek law.

408 CAS 2007/A/1272 Cork City FC v. FIFA.
409 DRC decision of 22 July 2004, no. 74508; DRC decision of 21 February 2006, no. 261245; DRC decision of 23 March 2006, 36858; DRC decision of 7 May 2008; no. 58860; DRC decision of 6 May 2010, no. 510635.
410 TAS 2005/A/983 & 984 Club Atlético Peñarol v Carlos Heber Bueno Suárez, Christian Gabriel Rodriguez Barotti & Paris Saint-Germain.
411 CAS 2005/A/973 Panathinaikos FC v. Storios Kyrgiakos.

In turn, in the second relevant case[412] CAS determined that: "Unilateral options are, in general, problematic, since they limit the freedom of the party that cannot make use of the option in an excessive manner. Furthermore, such options are not based on reciprocity, since the right to extend a contract is left exclusively at the discretion of one party."

The third case[413] involved the transfer of a minor. In this dispute, CAS agreed with the decision rendered by the DRC, but for different reasons. Unlike in the appealed decision, CAS had great difficulty in following the "Portmann" criteria and accepting the validity of the unilateral extension option inserted in the player's contract.

More recently, however, some flexibility seems to have been offered, which can be attributed both to the sophistication of the football industry in general and the observance of the jurisprudence on this topic in particular. For instance, the DRC has recognised why unilateral extension options clauses exist in the world of football and the rationale for their insertion: they allow a party to decide, without the need for further consent from the other party (beyond that given at the time of entering into the employment agreement), to extend their employment relationship. As clubs are frequently hiring new players (and consequently dismissing others), it is likely or even predictable that some athletes will not succeed at their new clubs. If players do succeed, however, clubs do not want to risk losing such an important sporting and economic asset without the corresponding compensation, especially considering article 18 paragraph 3, Regulations according to which a player can sign a contract with a new club if their contract is due to expire within six months. However, if valid, a clause must be correctly exercised under penalty of being set aside.[414]

In one interesting decision[415], the DRC found that a clause by means of which a contract would be unilaterally extended if the player played a certain number of games to be potestative and thus invalid. In particular, the DRC outlined that the club alone decided if the player was fielded or not and thus had the power to control if the contract would be terminated or extended, therefore putting the player at the mercy of the club.

In a recent case, like the DRC, CAS remarked that a case-by-case assessment must always be carried out in order to determine the validity of such clauses. The majority of the panel, recalling previous awards (*inter alia*, CAS 2013/A/3260 and CAS 2014/A/3852) underlined that several elements can be taken into account in order to determine the validity of a unilateral extension clause. These included that: 1) the potential maximum duration of the labour relationship should not be excessive; 2) the option should be exercised within an acceptable deadline before the expiry of the current contract; 3) the salary reward deriving from the option

412 CAS 2004/A/678 Apollon Kalamarias F.C. v. Davidson Oliveira Morais.
413 CAS 2006/A/1157 Club Atlético Boca Juniors v. Genoa Cricket and Football Club S.p.A.
414 DRC decision of 13 January 2022, Oliveira Correia; DRC decision of 8 December 2022, Valdez Chamorro.
415 DRC decision of 10 December 2020, Sastre Reus.

right should be defined in the original contract; 4) one party should not be at the mercy of the other party with regard to the contents of the employment contract; 5) the option should be clearly established and emphasised in the original contract so that the player is conscious of it at the time they sign the contract; 6) the extension period should be proportional to the main contract; and 7) it would be advisable to limit the number of extension options to one sole extension. CAS further remarked that, even if all criteria are met, this still does not automatically mean that a unilateral extension option is valid and vice versa (even if all the above criteria are not met, this does not, by definition, lead to the clause being invalid).[416]

b. Players under the age of 18[417]

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. Being bound to a specific club for an excessively long period 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 invalid 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,[418] and it will be deemed to have been terminated in the ordinary way 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.

In addition to the above, a contract must be respected by a minor player as much as any other, since the player can be found to be in breach of contract as a result of their own actions or those of their legal guardian.[419]

416 CAS 2020/A/7145 Moreirense Futebol Clube – Futebol SAD v. Jhonatan Luiz da Siqueira & Vitória Sport Clube, Futebol SAD.
417 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).
418 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.
419 DRC decision of 1 February 2023, Potocnik.

C. APPROACHING A PLAYER UNDER CONTRACT AND SIGNING PERIODS

a. 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 articles 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 enter into a contract with a professional player must inform the player's current club in writing before entering into 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 a notification from another club that it wishes to enter into 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 to actively obtain a green light from the player's current club before starting negotiations – it is merely required *to inform* the club in writing of its intention 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 into contract negotiations with a player who is still under contract with 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 persuade the interested club to refrain from taking 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.[420] 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.[421] However, failure to provide written notification may give rise to disciplinary consequences for the parties concerned.

420 CAS 2016/A/4495 Hakan Calhanoglu v. Trabzonspor FC; FIFA & CAS 2016/A/4535 Trabzonspor FC v. Hakan Calhanoglu.
421 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.

b. Period in which a new contract can be signed

If their contract with their last club has expired, a professional player is at liberty to sign a contract with another club. However, a player under contract is only permitted to enter into 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.

Here, the Regulations aim to find a balance between the interests of the player and those of their current 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 (or the entry into a new contract) 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 permissible 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 administrative 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.

a. 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 or fails to undertake a medical.[422] A contract terminated in this way is considered to have been terminated without just cause.

422 DRC decision of 9 June 2022, Barbosa.

According to CAS,[423] any clause in a contract requiring a player to (successfully) pass a medical examination before an employment contract can enter 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.[424]

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.[425] 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.[426] It is for the club taking on the player, not the club releasing them, to assess whether the player is fit to play football.[427]

A medical examination is crucial for a club that is trying to decide whether to sign a player. It is therefore justified to oblige clubs to perform the required medical examinations before signing a contract with a player and not to shift the risk related to a medical examination to the player once a contract has already been signed. Article 18 paragraph 4 is mandatory and cannot be contractually amended or circumvented.[428] These clear rules ensure 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.[429] In one illustrative decision,[430] 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 entered into 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 was not to its satisfaction, the club believed it had valid grounds for its decision not to

423 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.
424 CAS 2016/A/4495 Hakan Calhanoglu v. Trabzonspor FC and FIFA & CAS 2016/A/4535 Trabzonspor FC v Hakan Calhanoglu.
425 DRC decision of 31 January 2020, Betila.
426 CAS 2008/A/1593 Kuwait Sporting Club v. Z. & FIFA.
427 CAS 2013/A/3314 Villareal CF SAD v. SS Lazio Roma SpA.
428 DRC decision of 19 February 2015, no. 02151450; DRC decision of 15 February 2008, no. 28195.
429 CAS 2016/A/4489 Beijing Renhe FC v. Marcin Robak.
430 DRC decision of 18 June 2018, no. 11180693.

enter negotiations with the player. The DRC accepted the club's line of argument, which the DRC considered to be both logical and genuine.

The above example 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 does not constitute a contractual offer, and that any further contract negotiations will occur only once certain conditions are met (in the case described above, passing a medical examination).

The above rule applies solely to employment agreements between players and clubs. In fact, the Regulations do not forbid conditions precedent related to medical examinations from being inserted in transfer agreements between clubs in order for these to be valid. There are numerous elements under the sphere of control of a club to ensure that all necessary steps of a transfer are followed and, more frequently than not, clubs agree between themselves certain conditions for a transfer to go through. It must be noted therefore that there are limits to this. The PSC[431] and CAS[432] have examined these at length on multiple occasions.

b. Pre-contracts

The issue of pre-contracts often arises in disputes involving article 18 paragraph 4.

Regardless of whether the title of an agreement indicates it is an offer or a pre-contract, the DRC, will analyse the content of the agreement and, whether it contains the essential elements of an employment agreement.

In a 2016 award,[433] 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 previous CAS jurisprudence[434] and noted that the concept of a "pre-contract" is well known in legal practice as effectively a "promise to contract", defining it as a reciprocal commitment between at least two parties to enter into 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."

In the same case, CAS 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

431 Bureau of the PSC decision of 25 September 2019, Sala; Decision of the Single Judge of the PSC of 6 October 2020, Gervais Yao; PSC decision of 10 March 2022, Mustafazade.
432 CAS 2020/A/7482 Zantong Zhiyan FC v. Caracas FC; CAS 2021/A/8023 Frosinone Calcio v. FC Chiasso.
433 CAS 2016/A/4489 Beijing Renhe FC v. Marcin Robak.
434 CAS 2008/A/1589 MKE Ankaragücü Spor Külübü v. J.

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."

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 its 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 entered into. 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,[435] 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, CAS analysed whether an invitation letter should be considered a pre-contract or a contract. CAS concluded that a letter can be considered a contract if it contains the *essentialia negotii* of contracts 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.[436]

As article 18 paragraph 4 is qualified as a "special" provision, its scope should be interpreted narrowly.[437] 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.

435 DRC decision of 29 January 2020, Mendonca.
436 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.
437 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.

c. Work permits

Similarly to medical examinations, obtaining a valid work permit – and, although it is not explicitly mentioned, a visa[438] – is considered an administrative formality that a club is required to complete prior to signing a contract with a player. The engaging 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.[439] 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.[440]

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 authorisation, the contract will be considered valid and binding, and if it is terminated by the club because of the refusal of the state authorities, 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 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 authorisation in a timely manner. If a club 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.[441]

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." [442]

438 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.
439 For example, CAS 2017/A/5092 Club Hajer FC Al-Hasa v. Arsid Kruja.
440 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.
441 CAS 2017/A/5092 Club Hajer FC Al-Hasa v. Arsid Kruja.
442 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.[443] The same reasoning applies *mutatis mutandis* to the parties' rights and obligations to maintain the relevant visa status of the player up to date.[444]

The provisions of article 18 paragraph 4 are mandatory and cannot be contractually amended or circumvented.[445]

E. SIGNING MULTIPLE CONTRACTS

As mentioned, 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, reference can be made to two fundamental principles of the Regulations.

Firstly, a specific feature of contracts signed between professional players and clubs is that they are always entered into 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 in breach will be liable to pay compensation and sporting sanctions might be imposed on it.

If a professional signs more than one contract for a specific period, they will only be able to honour one of them; they will logically 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.[446]

It is therefore logical that the sanctions provided for in the event 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.

443 DRC decision of 24 August 2018, no. 08181021-E.
444 DRC decision of 2 December 2021, Oyewusi.
445 See, for example, DRC decision of 6 May 2010, no. 510836.
446 CAS 2015/A/4206 Hapoel Beer Sheva FC v. Ibrahim Abdul Razak & CAS 2015/A/4209 Ibrahim Abdul Razak v. Hapoel Beer Sheva FC.

In a relatively old award,[447] 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 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[448] 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 entered into with the first club. This approach was later confirmed by CAS.[449]

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.[450]

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 disproportionate or contrary to the principles of the Regulations per se.

In an old award[451] (based on the 2001 edition of the Regulations), CAS 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 his 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 CAS, 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.

447 CAS 2009/A/1909 RCD Mallorca SAD & A. v. Fédération Internationale de Football Association (FIFA) & UMM Salal SC.
448 CAS 2016/A/4495 Hakan Calhanoglu v. Trabzonspor FC; FIFA & CAS 2016/A/4535 Trabzonspor FC v. Hakan Calhanoglu.
449 CAS 2022/A/8758 & 8759 Saifedlin Malik Bakhit Maki v. Al Merreikh Sudanese SC, Pharco SC, Sudanese FA & Egyptian FA.
450 CAS 2016/A/4495 Hakan Calhanoglu v. Trabzonspor FC; FIFA & CAS 2016/A/4535 Trabzonspor FC v. Hakan Calhanoglu.
451 CAS 2006/A/1180 Galatasaray SK v. Franck Ribéry & Olympique de Marseille.

In a 2015 award, CAS[452] concurred with a previous DRC decision, and found that a grace period was not contrary to the Regulations per se. However, CAS stated that the grace period should not exceed a "period which is considered acceptable".

Grace periods of 30[453] and 90[454] days have also been accepted by CAS in other cases, however these were all before article 18 paragraph 6 was introduced.

Article 18 paragraph 6, which came into force on 1 June 2018,[455] 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 in 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 a 15-day period in respect of the 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.[456]

452 CAS 2015/A/3993 Patrick Nkenda v. AEL Limassol.
453 CAS 2015/A/4055 Victor Javier Añino Bermudez v. Club Elagzispor Kulübü.
454 CAS 2015/A/4039 Nashat Akram v. Dalian Aerbin FC, albeit by majority of the panel.
455 Circular no. 1625 of 26 April 2018.
456 DRC decision of 8 October 2020, Mieczyslaw Stachowiak.

In a 2022 decision,[457] the DRC confirmed that the strict wording of the provision leaves no room for doubt and set aside a contractual clause providing a grace period of 60 days in favour of the club.

G. MATERNITY LEAVE

Article 18 paragraph 7 entered into force on 1 January 2021, introducing 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
- Ensuring the maintenance of contractual stability

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".[458]

In this respect, the minimum period of 14 weeks and reduced salary amount is based on recommendations made by the International Labour Organization (ILO).[459] Although the ILO's recommendations were silent on the minimum number of weeks to be taken after childbirth, the eight-week period falls within their general guidelines (which generally refer to six weeks).

Considering the definition, a period of the maternity leave may occur prior to childbirth. Article 18quater paragraph 4 c) states that a female player has the right to independently determine the commencement date of her maternity leave, taking into consideration these minimum periods.

The FIFA rules are a minimum standard and had to be be implemented in national regulations no later than 30 June 2021.[460] 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 specific to female players are discussed below in section regarding article 18quater.

457 DRC decision of 9 November 2021, Tidjani.
458 Definition 30, Regulations.
459 Article 4, International Labour Organization Maternity Protection Convention No. 183.
460 Circular no. 1743 of 14 December 2020.

3. Relevant jurisprudence

DRC decisions

Unilateral extension options

1. DRC decision of 22 July 2004, no. 74508.
2. DRC decision of 21 February 2006, no. 261245.
3. DRC decision of 23 March 2006, 36858.
4. DRC decision of 7 May 2008, no. 58860.
5. DRC decision of 6 May 2010, no. 510635.
6. DRC decision of 10 December 2020, Sastre Reus.
7. DRC decision of 13 January 2022, Oliveira Correia.
8. DRC decision of 8 December 2022, Valdez Chamorro.

Due diligence to carry out medical examination before concluding contract

1. DRC decision of 31 January 2020, Betila.
2. DRC decision of 9 June 2022, Barbosa.

Mandatory nature of article 18 paragraph 4

1. DRC decision of 19 February 2015, no. 02151450.

Grace periods

1. DRC decision of 8 October 2020, Mieczyslaw Stachowiak.
2. DRC decision of 9 November 2021, Tidjani.

CAS awards

Permitted maximum length of a contract for a minor player

1. CAS 2016/A/4495, Hakan Calhanoglu v. Trabzonspor FC and FIFA & CAS 2016/A/4535, Trabzonspor FC v. Hakan Calhanoglu.

Unilateral extension options

1. CAS 2007/A/1272, Cork City FC v. FIFA.
2. TAS 2005/A/983 & 984, Club Atlético Peñarol c. Carlos Heber Bueno Suárez, Christian Gabriel Rodriguez Barotti & Paris Saint-Germain.

3. CAS 2005/A/973, Panathinaikos FC v. Storios Kyrgiakos.
4. CAS 2004/A/678, Apollon Kalamarias F.C. v. Davidson Oliveira Morais.
5. CAS 2006/A/1157, Club Atlético Boca Juniors v. Genoa Cricket and Football Club S.p.A.
6. CAS 2013/A/3260, Grêmio Foot-ball Porto Alegrense v Maximiliano Gastón López.
7. CAS 2014/A/3852, Ascoli Calcio 1898 S.p.A. v. Papa Waigo N'diaye & Al Wahda.
8. CAS 2020/A/7145 Moreirense Futebol Clube – Futebol SAD v. Jhonatan Luiz da Siqueira & Vitória Sport Clube, Futebol SAD.

Termination of contract after unsuccessful medical examination

1. CAS 2008/A/1593, Kuwait Sporting Club v. Z. & FIFA.

Due diligence to carry out medical examination before concluding contract

1. CAS 2008/A/1593, Kuwait Sporting Club v. Z. & FIFA.

Medical examinations and "pre-contracts"

1. CAS 2008/A/1589, MKE Ankaragücü Spor Külübü v. J.
2. CAS 2016/A/4489, Beijing Renhe FC v. Marcin Robak.
3. CAS 2018/A/6037 & 6043, Bangkok United FC v. Mohanad Abdulraheem Karrar & Mohanad Abdulraheem Karrar v. Bangkok United FC.
4. CAS 2019/A/6521 & 6526, Osmanlispor FK v. Patrick Cabral Lalau & Club Atletico Mineiro, Patrick Cabral Lalau v. Osmanlispor FK.

Players entering two professional contracts at the same time

1. CAS 2022/A/8758 & 8759, Saifedlin Malik Bakhit Maki v. Al Merreikh Sudanese SC, Pharco SC, Sudanese FA & Egyptian FA.

Club's obligation to take all administrative measures, including procuring a work permit/visa, so as for player to be able to render their services

1. 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 AND GENERAL REMARKS

One of FIFA's statutory objectives as the governing body of football is 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".[461]

To ensure that this objective is accomplished, FIFA has made a conscious effort to eradicate those activities and practices that pose a threat to football's integrity and are liable to tarnish its reputation and hinder the preservation of its essential values.

In recent decades, 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 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 and transfer of players. Through such arrangements, clubs gained access to money that was not previously available to them to acquire players and thereby sustain their competitiveness while, in principle, minimising their financial risk. However, by becoming involved in these transactions, clubs took on substantial (financial) risks vis-à-vis these third-party investors.

The proliferation of this type of transaction was detrimental to the autonomy of clubs to determine their policies and their independence in the decision-making process regarding their sporting and employment matters, as well 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, protects players, 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, compromising football's integrity and reputation, as well as its essential values. It may also be highly detrimental to the very interests of players, who stand at the heart of the international player transfer system.

461 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 competitive balance between clubs taking part in the same competitions be preserved.

Therefore, in line with the need to respect and protect the specificity of sport, clubs must remain autonomous to 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 to be contrary to the defence of the specificity of sport.

Because of all of the above, FIFA decided to exercise its regulatory power by firstly amending the Regulations to include article 18bis (which entered into force on 1 January 2008).

Initially, article 18bis was aimed at drawing 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 in employment and transfer-related matters, its policies or even the performance of its teams.

Subsequently, the evolution of the football transfer market, the improved overview provided by TMS, and the further growth of football as a business made FIFA aware that:

- the prohibited influence on clubs was also coming directly from other clubs, and not only from parties outside football; and
- a further regulatory approach in the form of a prohibition on TPO of players' economic rights needed to be carefully analysed and potentially implemented.

Subsequently, in 2015, after multiple discussions with different representatives from the football community (i.e. confederations, member associations, leagues, clubs, and player representatives), FIFA did the following:

- Amended the wording of article 18bis to reflect that a sanction for violating this provision could also be imposed on the club that exercises the "influence" and not only on the club that is "influenced".
- Implemented article 18ter, with the aim of preventing the phenomenon of speculative investment by third parties in exchange for a percentage of a player's economic rights.
- Introduced the definition of "third party", which currently reads as follows: "a party other than the player being transferred, the two clubs transferring the player from one to the other, or any previous club with which the player has been registered".[462]

462 Definition 14, Regulations. In 2019, the definition was amended to reflect that "the player being transferred" would not

Both article 18bis and article 18ter are provisions that are binding at national level which must be included without modification in the national association's regulations.[463]

In September 2020, the manual on TPI and TPO in football agreements (Manual) was published.

The Manual featured a thorough explanation of the scope and regulatory framework of article 18bis and article 18ter, together with FIFA and CAS case law relating to TPI and TPO, including a comprehensive statistical analysis and a dedicated section with practical recommendations for clubs to avoid violations of the regulations.

The following section of the Commentary provides an additional overview of the framework, interpretation and practical implementation of article 18bis and article 18ter, and also includes details of the most up-to-date FIFA and CAS case law, as well as an insight into recent trends and types of contractual agreements that are relevant to both provisions.

The purpose of this section is to serve as a further reference guide to these two topics, and also to act as additional guidance to the Manual. However, for the sake of simplicity, when needed, reference will also be made to the Manual for further information on a specific concept or decision.

be considered a third party. Circular no. 1679 of 1 July 2019.
463 Article 3 paragraph 1, Regulations.

CHAPTER V.

ARTICLE 18BIS – TPI ON CLUBS

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ARTICLE 18BIS – TPI 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.

1. Purpose and scope

The transfer of players is an area that often attracts much attention. This may give rise to conflicts of interest, where parties involved in a transfer may attempt to secure financial gains by including clauses that can provide them with undue entitlements to the speculative investment made by persons or entities from inside or outside the football structure.

Such practices create the risk of interference with a club's freedom and independence in employment- and transfer-related matters. Clubs may grant the counterparty or a third party the ability to influence (or even control) their decisions with respect to the transfer and employment contract of a certain player.

Therefore, the prohibition on TPI on clubs was implemented to ensure that clubs remain independent and autonomous in order to make the decisions that they deem appropriate in relation to their sporting needs.[464]

The article draws a clear line between the legitimate involvement of third parties in football and the illegitimate purpose of gaining an advantage from the clubs by exercising undue influence on them.

2. The substance of the rule

Article 18bis prohibits any club from entering into a contract which enables the counter club(s), 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. Paragraph 2 clarifies that a breach of this prohibition may lead to disciplinary sanctions on clubs.

464 FIFA Activity Report 2018 when addressing "third-party influence on clubs": "PRINCIPLE. In the past, certain third parties have been able to influence transfers because they 'owned' the rights to a player, either in whole or in part. Under the new regulations, clubs are no longer allowed to grant third parties a say in transfer agreements or professional contracts, thus denying them the opportunity to influence the autonomy and internal operations of the clubs or the performance of the teams concerned."

The FIFA Disciplinary Committee is competent to analyse possible violations of article 18bis. When doing so, the FIFA Disciplinary Committee must be "comfortably satisfied" that an agreement does not comply with article 18bis in order to impose a sanction on the club in breach.[465] This assessment is made on a case-by-case basis, taking account of all relevant elements of the case, as mentioned in further detail in section 4. Article 18bis comprises various specific relevant elements, which are addressed in turn in the following paragraphs.

A. THE CONCEPT OF "INFLUENCE"

A violation of article 18bis occurs whenever a club enters into a contract which entitles the counterparty or any third party to acquire the ability to "influence" the decision-making of the club in employment- or transfer-related matters.

The concept of "influence" means that one party acquires a real and true capacity to produce effects, condition or affect the conduct of a club, in a way that the club's independence and autonomy is clearly restricted.[466] The influence exercised by a party over a club does not need to be direct but, rather, the effectiveness of the influence must actually impact the club's decision-making capacity.[467]

This is irrespective of whether such influence materialises. The relevant aspect is whether the party "acquires the ability" to influence or, in other words, whether the contractual agreement provides the party with the capacity to exercise an influence over the club.

As the title of article 18bis suggests, the rule primarily refers to contracts signed with third parties. Although the original main purpose of the rule was indeed to protect clubs from the influence of parties external to football, the improved overview provided by TMS of the international transfer market led to the conclusion that the prohibited influence was also being exercised between clubs.

The original wording of article 18bis only permitted sanctions to be issued against the club that was being influenced, and not the club exercising the influence but, in 2015, article 18bis was slightly modified through the introduction of the words "vice versa".[468] This inclusion authorised the FIFA Disciplinary Committee to also sanction clubs exercising influence in agreements between clubs. Therefore, both the party that is exercising the influence and the club that is influenced are prohibited from engaging in such conduct.

465 Article 39 paragraph 3, FIFA Disciplinary Code.
466 CAS 2020/A/7016, Sport Club Corinthians Paulista v. FIFA. CAS 2017/A/5463, Sevilla FC v. FIFA.
467 CAS 2020/A/7009, Sport Lisboa e Benfica SAD v. FIFA (180009). CAS 2020/A/7009, Sport Lisboa e Benfica SAD v. FIFA (180010).
468 "No club shall enter into a contract which enables any other party to that contract 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."

The wording of the article does not distinguish between direct and indirect influence. However, CAS has previously ruled that if this distinction were made it would be easier to circumvent the prohibition under article 18bis and its pursued objective would be frustrated as the relevant contractual clause could simply be amended to avoid stipulating that there would be direct decision-making influence over a given club.

The range of possible factors for consideration demonstrates the varying types of clauses that may entail influence, and the determining list of factors to consider is not exhaustive.

B. THE CONCEPT OF "INDEPENDENCE"

The independence of a club, as referred to in article 18bis, shall be understood to mean the freedom of clubs to make decisions without being governed or controlled by other clubs or third parties.

To determine whether a club's independence has been affected by a contract and is being influenced, due consideration shall be given to whether such impact genuinely jeopardises or limits the autonomy and capacity of a decision made by the club, and whether it grants a third party or the counter club the real ability to determine the behaviour or conduct of the club.

The general independence that a club must enjoy in its decision-making also comprises the need to remain free from external influence in any decision related to "its policies or the performance of its teams". Therefore, the freedom of clubs also extends to more general and sporting matters relating to clubs.

This means that no contractual agreement may impact the freedom of the club by including provisions that limit its autonomy in transfer, employment, policy and sporting matters.

By way of illustration, in CAS 2020/A/7158, the panel referred to such a prohibited impact on a club's independence as follows: "(...) when a contract is negotiated [...] under pressure – of any nature – such that the club agreeing to be influenced is insufficiently free (or able) to counteract its counterparty's authority, which ultimately means that it is required to accept all of the conditions imposed upon it by the latter".

C. THE RELEVANCE OF THE PARTIES' FREEDOM OF CONTRACT

It is clear that the prohibition under article 18bis may restrict the parties' freedom of contract, which is a fundamental principle and right upheld by CAS case law as well as Swiss law. Therefore, as a principle, clubs are allowed to freely set the conditions stipulated in a contract, with only provisions violating mandatory law being prohibited.

However, as the world governing body of football, FIFA is equally entitled to stipulate rules and regulations which may impose further limitations on what would otherwise be the parties' general freedom of contract, if they are proportionate, justified and reasonable in order to achieve a legitimate aim. This is the case with article 18bis, as recognised by CAS and by various ordinary courts.[469]

In any case, since article 18bis is a provision restricting freedom of contract, CAS case law generally holds that such provisions must be interpreted restrictively, and on a case-by-case basis.[470]

3. Practical examples

This section will detail how the concept of influence has been applied to concrete situations and will present the general considerations from FIFA case law on article 18bis, as well as an overview of the types of contractual agreements which have generally been considered (and not considered) to be in violation of article 18bis.

The last part of this section will also provide a relevant update on FIFA case law and new trends on contractual agreements following the publication of the Manual. Where necessary, reference should be made to the Manual for further detail on a specific point or decision.

A. GENERAL CONSIDERATIONS FROM FIFA CASE LAW ON ARTICLE 18BIS

In general, the case law related to article 18bis has determined that the influence required for a certain provision to be considered to be in breach of article 18bis must be real and effective and impact the club's decisions.

The prohibited influence would occur if another club or a third party has the capacity to actually affect and condition the decision-making process of the club in employment or transfer-related matters, or limits its independence in internal or sporting matters.

However, the influence does not need to effectively materialise in order to trigger a violation of article 18bis.

B. TYPE OF CLAUSES GENERALLY CONSIDERED TO BE IN BREACH OF ARTICLE 18BIS

The following chart shows an illustrative and non-exhaustive list of the types of provisions included in contractual agreements, signed between clubs or between clubs and third parties, that have been considered to contravene article 18bis.

469 CAS 2016/A/4490, RFC Seraing v. FIFA, CAS 2017/A/5463 Sevilla FC v. FIFA, Swiss Federal Supreme Court decision 4A_260/2017 and Brussels Court of Appeal decision of 12 November 2017 (2015/KR/54).

470 With reference to CAS 2020/A/7417, Arsenal FC v. FIFA: "[…] a restrictive interpretation must be made of a rule when it is of disciplinary or punitive nature".

	**Provisions restricting the new club with respect to the future transfer of the player**
	Prohibition on transferring the player without the other club's consent
	Prohibition on transferring the player to a competitor club (or making this subject to a higher penalty fee)
	Prohibition on transferring the player until the transfer fee to acquire the player is paid in full
	Prohibition on loaning the player without authorisation
	Prohibition on assigning the player's economic rights without consent
	Ability for the other club or the third party to also negotiate the transfer of the player
	**Provisions related to the employment relationship between the club and the player**
	Inability to freely negotiate the terms of engagement of the player/ obligation to prevent the player becoming a free agent
	**Provisions linked to selection in matches**
	Obligation to ensure that the player transferred (on loan) is fielded regularly
	**Provisions obliging the club to communicate certain information**
	Obligation to notify a player's injury
	Obligation to disclose every transfer offer
	**Provisions obliging the club to transfer/release a player under certain conditions**
	Obligation to accept an offer for a specific transfer fee
	Obligation to transfer the player in the event of relegation
	Obligation to release the player for training and friendly matches
	Obligation to transfer the player before a certain date
	**Provisions granting other types of influence**
	Ability to select new players for the team jointly with the (new) club
	Ability to decide the market value of the player jointly with the (new) club
	Ability to force the club to acquire the share of the player's economic rights belonging to the third party
	Ability for the third party to acquire players for the club, retain their economic rights and decide when and how to transfer them

Section 8 contains references to all decisions rendered by the FIFA judicial bodies for each type of provision. In addition, a summary of the main considerations from the FIFA Disciplinary Committee and the FIFA Appeal Committee on all decisions taken until 1 August 2020 can be found in the Manual.

All relevant updates on FIFA case law as from 1 August 2020, as well as an overview of the most recent contractual trends related to article 18bis can be found in sub-section D below.

C. TYPE OF CLAUSES GENERALLY CONSIDERED NOT TO BE IN BREACH OF ARTICLE 18BIS

The following list provides an overview of provisions that may typically be included in transfer agreements and which have not been considered to violate article 18bis per se.

It is important to outline that although, as a general principle, these types of provisions have not been regarded as being against the purpose and objectives of the prohibition, this does not exclude the possibility that one of those provisions might include, in a specific contract, an "influence" considered to be against the spirit of article 18bis. It shall always be within the competence of the FIFA Disciplinary Committee to make a decision, on a case-by-case basis and taking account of all specific circumstances, on whether a particular clause violates this prohibition.

- Sell-on fees: sell-on fees are generally recognised and accepted by FIFA and CAS.

  The compatibility of a sell-on fee with article 18bis might be questioned when a club tries to safeguard its economic interest in a player by including provisions in the contract that have the capacity to restrict the independence of the club where the player is (or will be) registered.

  Example: a significant penalty fee to be imposed if the player is not subsequently transferred or the former club simply loses its entitlement to the sell-on fee.

- Performance-related bonuses: conditional payments for successful individual and collective results are to be regarded as "positive" influence. They are aligned with the sporting principle in which football is based, and are, therefore, generally regarded to be beyond the rationale and objectives of the prohibition.

  Example: for the permanent transfer of a player, the new club shall pay a fixed transfer fee of EUR 2,000,000. Once the player makes 50 appearances, the new club shall pay an additional amount of EUR 50,000 to the former club.

- Matching right option: although in these type of cases the new club contractually agrees to limit its autonomy to decide the club to which its player will be transferred, this limitation does not constitute sufficient influence so as to trigger a violation of article 18bis since the new club (i) can always freely decide to reject the transfer offer; and (ii) will not receive less money for transferring the player back to the former club.

  Example: if the new club receives an offer from another club to acquire the player on or before 30 June 2024 and is willing to accept this offer, the former club shall have three days to match that offer. If it does so, the new club is obliged to transfer the player to the former club (subject, of course, to the player's consent).

- Buy-back options: the mutual pre-determination of a transfer fee for the former club to buy back the services of the player does not constitute a sufficient standard of influence to consider that the new club is influenced.

  Example: the club has the first option to buy back the player for a transfer fee of EUR 10,000,000.

  Pre-determined fees are also common in loan agreements, where the loaning club gives the option to the loanee club to acquire the player on a permanent basis following the period of the loan.

- Automatic conversion of a loan agreement into a permanent transfer: the fact that meeting certain conditions in a loan agreement obliges the loanee club to acquire the player on a permanent basis does not mean that the autonomy of the club is restricted in such a way as to consider it a prohibited influence.

  Example: if one of the following conditions is met during the loan, the club is obliged to exercise the purchase option for the permanent transfer of the player: the club is promoted, the player has scored at least 15 goals or the player has made 35 appearances. If one of these conditions is met and the club refuses to acquire the player permanently, a penalty fee of EUR 15,000.00 will apply.

- Automatic payment of a fee to the former club every time the employment contract between the new club and the player is renewed

  Example: in the permanent transfer agreement signed between clubs A and B for the transfer of the player to club B it is agreed that every time the player's employment contract with club B is renewed, club B shall pay club A an amount of EUR 150,000.[471]

- A clause which simply provides an obligation for the affected club to disclose certain information.

- A clause triggering a certain incentive.

471 FIFA Disciplinary Committee decision of 7 March 2019, Slavia Prague and NKUFO Academy Sports.

Example: two clubs entered into a loan agreement where the engaging club was obliged to pay a loan fee to the releasing club in the maximum amount of EUR 500,000, and the loan fee would be reduced by EUR 50,000 for each match appearance by the player. In the event that the balance reached EUR 0, no payment would be due from the engaging club. The FIFA Disciplinary Committee considered that this provision did not amount to a violation of article 18bis.[472]

D. RELEVANT UPDATES FOLLOWING THE PUBLICATION OF THE MANUAL

It must be noted that there appears to be a decreasing tendency for FIFA case law to relate to article 18bis, in comparison with the period until August 2020, when the Manual was published. Furthermore, the reduction in the number of decisions is particularly significant in agreements signed between clubs and third parties, with the overall tendency being that a violation of article 18bis is more frequent in agreements between clubs.

The following sub-section incorporates the types of contractual agreements that have been recently investigated by FIFA, together with the latest jurisprudence of the FIFA Disciplinary Committee and the FIFA Appeal Committee in relation to those contracts.

a. Agreements between clubs granting prohibited influence

Recently, agreements between two clubs conferring influence that is prohibited under article 18bis have had the following content and structure:

PROVISIONS RESTRICTING THE NEW CLUB WITH RESPECT TO THE FUTURE TRANSFER OF THE PLAYER

- Transfer of the player to a competitor club subject to a higher/penalty fee[473]

PROVISIONS LINKED TO SELECTION FOR MATCHES

- Appearance of the player in a match against the club which loaned them, subject to a fee[474]
- Obligation/commitment that the player transferred (on loan) is fielded regularly[475]

472 FIFA Disciplinary Committee decision of 22 October 2020, Sheffield United & Bayer 04 Leverkusen.
473 FIFA Disciplinary Committee decision of 20 August 2020, FK Mlada Boleslav & FC Krasnodar. FIFA Disciplinary Committee decision of 24 September 2020, Benfica & Avai FC.
474 FIFA Disciplinary Committee decision of 20 August 2020, FK Mlada Boleslav & FC Krasnodar.
475 FIFA Disciplinary Committee decisions of 24 September 2020 (Omonoia FC & FC Midtjylland) and (Stoke City FC & Trabzonspor).

PROVISIONS RELATED TO THE CLUB-PLAYER EMPLOYMENT RELATIONSHIP

- Obligation for the club to prevent the player from becoming a free agent[476]
- Inability to freely negotiate the player's terms of engagement[477]

PROVISIONS OBLIGING THE CLUB TO TRANSFER A PLAYER UNDER CERTAIN CONDITIONS

- Obligation to accept and offer for a specific transfer fee (or pay a penalty fee)[478]

b. Agreements between a club and a third party granting prohibited influence

Recently, agreements between a club and a third party conferring influence that is prohibited under article 18bis have had the following content and structure:

CLAUSES RESTRICTING THE NEW CLUB WITH RESPECT TO THE FUTURE TRANSFER OF THE PLAYER

- Impossibility to freely decide to transfer a player[479]

CLAUSES OBLIGING THE CLUB TO TRANSFER A PLAYER UNDER CERTAIN CONDITIONS

- Obligation to accept and offer for a specific transfer fee (or pay a penalty fee)[480]

c. Recent considerations from FIFA case law on article 18bis

In the more recent jurisprudence from the FIFA Disciplinary Committee and the FIFA Appeal Committee, the following trends could be observed:

- Those clauses which establish a significantly higher (or a penalty) fee should the player be transferred to a competitor club generally trigger a violation of article 18bis, since in the event of two identical offers, the club would always be inclined to accept the offer which makes the operation more financially profitable.

476 FIFA Disciplinary Committee decision of 24 September 2020, Benfica & Avai FC.
477 FIFA Disciplinary Committee decision of 16 May 2019, General Diaz & Argentinos Juniors.
478 FIFA Disciplinary Committee decision of 18 June 2018, Club Universitario de Deportes & Colo-Colo.
479 FIFA Disciplinary Committee decision of 5 August 2021, Deportivo La Guaira FC.
480 FIFA Disciplinary Committee decision of 20 August 2020, Sporting Clube de Braga.

- It has been reemphasised that:
  - In order to be considered truly independent, clubs shall be free to transfer their players to any club they desire.
  - The conflicted provision must provide a real and true ability to restrict the club's autonomy and independence.
  - The wording of article 18bis is intentionally broad, in order to encompass all possible types of undue influence on clubs.
- There has been the first-ever decision considering a clause to be in violation of article 18bis where the loanee club needed to pay a fee to the parent club should they want to field the player in a match against them.[481]

  In this regard, the FIFA Disciplinary Committee considered that the clause in question instigated the club to refrain from fielding the player in an eventual match against the other club, due to the negative financial impact that doing so would involve. Therefore, the club would not enjoy complete independence with regard to its policies and the performance of its teams.
- There is a difference between:
  - conditional bonus payments for fielding a player (e.g. "the club shall receive EUR X in the event that the player plays in at least % of the matches"); and
  - penalties for not fielding them (e.g. "in the event that the player is not fielded in at least X matches even if fit and not suspended, then the club shall pay to the other club a contingent sum of EUR X").

    While in the first scenario, any possible influence shall be regarded as a "positive", aligned with the sporting principle, and thus no violation of article 18bis is triggered, in the second scenario the (new) club is prevented from freely deciding whether to field the player only on sporting merit, since it would be instigated to select that player due to the possible negative financial impact that not doing so would entail.[482]
- It has been reconfirmed that a provision which – subject to a significant penalty fee – prevents a club from allowing the player to become a free agent without the former club receiving its share of the economic rights of the player, results in a violation of article 18bis.[483]

481 FIFA Disciplinary Committee decision of 20 August 2020, FK Mlada Boleslav & FC Krasnodar.
482 FIFA Disciplinary Committee decision of 24 September 2020, Stoke City FC & Trabzonspor.
483 FIFA Disciplinary Committee decision of 24 September 2020, Benfica & Avai FC.

4. Range of sanctions imposed by FIFA for violations of article 18bis

When establishing the sanction to be imposed for violations of article 18bis, the FIFA judicial bodies, based on article 25 of the FIFA Disciplinary Code, take into account both subjective and objective elements related to the offence, including all aggravating and mitigating circumstances, as well as whether the offender provided assistance and substantial cooperation in uncovering or establishing a breach of the FIFA rules.

Likewise, the degree of the offender's guilt is another aspect that has an impact on the determination of the sanction. For example, in violations of article 18bis, there might be a distinction between the "influencing" and the "influenced" club.

Furthermore, in exercising their discretionary powers, the FIFA judicial bodies may scale down the disciplinary measure to be imposed or even dispense with it entirely.

Since the implementation of article 18bis, all of the clubs considered to have violated this provision have been sanctioned with fines ranging between CHF 10,000 and CHF 187,500.[484]

The amount of the fine always depends on several factors, which may include but are not limited to:

- the number of prohibited clauses;
- the severity of the clause(s) (i.e. the seriousness of the violation(s) and the degree of influence);
- the club's level, status, training category and sporting and financial situation;
- whether the club "influenced" or was "influenced";[485]
- whether there was also a violation of article 18ter;
- any previous offences;
- the degree of collaboration and/or the club's endeavours to remedy the breach; and
- any other mitigating/aggravating circumstances.

484 In the case of RFC Seraing, the economic fine was imposed together with a ban on registering players, either nationally or internationally, for a period of four years. FIFA Disciplinary Committee decision of 4 September 2015, RFC Seraing. It must be noted that, in such case, the club was also found to be in breach of article 18ter.

485 In more recent decisions of the FIFA Disciplinary Committee, a distinction has been made between the "influencing" and the "influenced" clubs' responsibilities in relation to article 18bis, deeming the influencer's behaviour to be more reprehensible.

5. Considerations from CAS

CAS has recognised the validity of article 18bis, the objectives pursued with its implementation, its binding nature and its compatibility with EU law.[486]

In particular, CAS has considered that article 18bis does not violate, limit, restrict or unlawfully affect any of the fundamental freedoms of the EU and that the rule seeks to achieve a legitimate aim that is aligned with the specificity of sport.[487]

More recently, CAS has also analysed and interpreted the application of article 18bis to various contractual agreements signed by clubs with other clubs or third parties and, in particular, the concepts of "influence" and "independence".

The main considerations and conclusions from these awards – the references of which can be found in section 8 – are as follows:

- Article 18bis meets the "predictability test" (*nulla poena sine lege clara*). It is sufficiently clear and precise in prohibiting clubs from entering into contracts that enable other parties to acquire the ability to influence, in employment and transfer-related matters, their independence, policies, or teams' performances.
- The fact that article 18bis can capture an unspecified variety of contracts does not mean that it lacks sufficient legal basis and predictability.
- As confirmed by the Swiss Federal Tribunal, the starting point for interpreting the article is the wording (literal interpretation). There is no reason to depart from the plain text, unless there are objective reasons to think that it does not reflect its core meaning.
- Article 18bis, in the context of Swiss law, must be interpreted narrowly, given its potential to significantly restrict the contractual freedom of the parties.
- However, it is also of utmost importance to safeguard the independence of clubs.
- In this sense, a contract falls foul of article 18bis if it grants a third party the real ability and capacity to have an effect on, determine or impact the behaviour or conduct of a club in relation to employment and/or transfer matters, in such a way as to restrict the club's independence or autonomy, thereby conditioning its sporting policies or its ability to manage such matters and/or the performance of its teams.
- Therefore, the influence must be material, effective and impact the club's determinations. A hypothetical or theoretical influence should not trigger a violation of article 18bis.

486 CAS 2016/A/4490 RFC Seraing v. FIFA and CAS 2017/A/5463 Sevilla FC v. FIFA.
487 This interpretation was also confirmed by various ordinary courts (e.g. the Swiss Federal Supreme Court decision 4A_260/2017, or the Brussels Court of Appeal of 12 November 2017 (2015/KR/54)).

However, the club might also be found guilty of the prohibited conduct if the contract effectively enables the said party to have an influence on the club in such matters, regardless of whether this influence actually materialises.

- The "influence" shall be considered unreasonable or unacceptable towards the protected values of the provision. A high threshold should be applied to determine whether a certain provision goes against the spirit of article 18bis.

  Thus, even when there could be contractual structures where an undue influence may be established, the particular circumstances may not make it sufficiently unreasonable or unacceptable for a violation of article 18bis to be triggered.

- The particularities of the agreement, the clubs involved or the nature of the provision may have an impact on the consideration of whether a violation of article 18bis occurs. All factors surrounding a conflicted provision shall be examined, and there must be a case-by-case appraisal of the potential influence.

6. Relevant elements to determine a possible breach of article 18bis based on case law

Taking into consideration the relevant case law from FIFA and CAS, the following factors in particular shall be taken into account when assessing whether a certain provision might violate article 18bis:[488]

- The legitimate objectives of the agreement
- The positive or negative nature of the clause concerned
- The context in which influence is exercised
- Whether the parties freely negotiated the agreement or suffered any restriction
- The status and sporting and financial position of the clubs involved
- The sporting or economic impact of the clause
- The number and economic value of the player(s) for which the club entered into a contractual relationship
- The prominence and market power of the clubs and companies involved

488 Some examples: CAS 2020/A/7009, Sport Lisboa e Benfica SAD v. FIFA (180009) & CAS 2020/A/7009 Sport Lisboa e Benfica SAD v. FIFA (180010), CAS 2020/A/7158 Real Madrid CF v. FIFA and CAS 2020/A/7417 Arsenal FC v. FIFA.

7. Declaration on TPI by clubs in TMS

For completeness, it shall be noted that when clubs enter an international transfer into TMS, the club engaging the player must either declare "Yes" or "No" in response to being asked whether they have entered into a contract which enables the counter club, and vice versa, or any third party to acquire the ability to influence employment- and transfer-related matters the club's independence, policies or performance of the team.[489]

By incorrectly declaring that there is no TPI, clubs fail to disclose full mandatory and correct information in TMS. Therefore, an infringement of article 18bis also includes a failure to provide the mandatory information or entry of incorrect information in the TPI declaration in TMS.

For this reason, when sanctioning a club for a breach of article 18bis, the FIFA judicial bodies might also find that club guilty of failing to declare the relevant agreement in TMS, in breach of Annexe 3.

8. Relevant jurisprudence

Below is a comprehensive list with the most relevant case law from FIFA and CAS in relation to article 18bis. The jurisprudence has been arranged having regard to the different types of provisions included in contracts that might lead to undue influence contrary to article 18bis.

For the sake of simplicity, reference is also made to the Manual, where a summary can be found of the main considerations from the FIFA judicial bodies and CAS on all decisions rendered until August 2020.

Decisions of FIFA judicial bodies:

Provisions restricting the new club with respect to the future transfer of the player

1. FIFA Disciplinary Committee decision of 24 June 2019, Colo-Colo, Necaxa.
2. FIFA Disciplinary Committee decision of 20 August 2020, FK Mlada Boleslav, FC Krasnodar.
3. FIFA Disciplinary Committee decision of 24 September 2020, Benfica, Avai FC.

Provisions obliging the loanee club to field the player regularly

1. FIFA Disciplinary Committee decision of 11 April 2019, Atlético de Madrid, AC Milan.
2. FIFA Disciplinary Committee decision of 26 February 2020, Udinese, Cadiz.

489 Article 10 paragraph 4 g), Annexe 3, Regulations.

3. FIFA Disciplinary Committee decision of 24 September 2020, Omonoia FC, FC Midtjylland.
4. FIFA Disciplinary Committee decision of 24 September 2020, Stoke City FC, Trabzonspor.

Provisions obliging the new club to pay a higher fee if the player is transferred to a competitor club

1. FIFA Disciplinary Committee decision of 20 September 2019, Juventus, Al Duhail.
2. FIFA Disciplinary Committee decision of 17 October 2019, Real Madrid, Manchester City.
3. FIFA Disciplinary Committee decision of 26 February 2020, Arsenal, PAOK and Frosinone.
4. FIFA Disciplinary Committee decision of 24 September 2020, Benfica, Avai FC.

Provisions obliging the club to transfer/release a player under certain conditions

1. FIFA Disciplinary Committee decision of 18 June 2018, Club Universitario Deportes, Colo-Colo.
2. FIFA Disciplinary Committee decision of 18 May 2020, Yokohama Marinos, Palmeiras.

Provisions related to the employment relationship between the club and the player

1. FIFA Disciplinary Committee decision of 12 April 2018, Rayo Vallecano.
2. FIFA Disciplinary Committee decision of 5 March 2019, Porto.
3. FIFA Disciplinary Committee decision of 20 August 2020, Sporting Clube de Braga.

CAS awards

1. CAS 2016/A/4490, RFC Seraing v. FIFA.
2. CAS 2017/A/5463, Sevilla FC v. FIFA.
3. CAS 2018/A/6027, Sociedade Esportiva Palmeiras v. FIFA.
4. CAS 2019/A/6301, Chelsea Football Club v. FIFA.
5. CAS 2020/A/7016, Sport Club Corinthians v. FIFA.
6. CAS 2020/A/7158, Real Madrid v. FIFA.
7. CAS 2020/A/7414, Udinese Calcio v. FIFA.

8. CAS 2020/A/7008 & 7009, Benfica v. FIFA.
9. CAS 2020/A/7025 & 7026, Futebol Clube do Porto v. FIFA.
10. CAS 2020/A/7417, Arsenal FC v. FIFA.
11. CAS 2020/A/6838, Celta Vigo v. FIFA.
12. CAS 2020/A/7003, Rayo Vallecano v. FIFA.
13. CAS 2021/A/8076, Benfica v. FIFA.

ARTICLE 18TER – TPO OF PLAYERS' ECONOMIC RIGHTS

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ARTICLE 18TER – TPO 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. Purpose and scope

The prohibition on TPO was implemented to avoid financial speculation with respect to the transfer of players and the respective payments. The prohibition targets a practice, according to which third parties would hold an entitlement in (or the entirety of) what is known as the "economic rights" in a player.

This gave rise to speculation, harmful activities towards players and clubs, conflicts of interest, risks related to the integrity of competitions and the transparency of the international transfer market, as well as other developments harmful to football overall.

The objective for the implementation of article 18ter was that the financial revenues generated by clubs due to their transfer activity remain within the football family, and do not end up with external stakeholders outside the football structure that do not have a genuine interest in the sporting benefit of the club and whose primary interest is to generate the highest possible return on their investment.

Article 18ter does not preclude clubs from obtaining external financial aid, but simply restricts the power to dispose of player's economic rights by third parties, so that they cannot obtain any profit from the transfer of a player.

The prohibition is directed at clubs and also at players. Should the FIFA Disciplinary Committee conclude that an agreement is in breach of article 18ter, the relevant club(s) and/or player(s) may be sanctioned (art. 18ter par. 6).[490]

2. The substance of the rule

A. INTRODUCTION: THE CONCEPT OF "ECONOMIC RIGHTS"

In the context of the transfer of a professional football player, a distinction needs to be made between a variety of rights, notably between the "federative rights" and the "economic rights" of a player.

The term "federative rights" usually refers to the right of the relevant football club, with which a professional is under a contract, to register the player to participate in organised football and official competitions, and to field that player in official matches. When a player is transferred, these federative rights are acquired by the engaging club.

Conversely, the term "economic rights" refers to the financial aspects of such a transfer. Since a transfer of a player may trigger the payment of compensation, parties involved in the transfer (typically the releasing club has an entitlement to these economic benefits that may arise out of a transfer. These entitlements are usually referred to as the economic rights of (or in) a player.

CAS case law describes economic rights as "ordinary contract rights" and the club holding the player's employment contract "(...) may assign, with the player's consent, the contract rights to another club in exchange for a given sum of money or other consideration", otherwise known as the "economic rights to the performances of a player".[491]

While a player's federative rights may not be shared between clubs or third parties, a player's economic rights may in theory be (entirely or partially) assigned to, and held by, different rights holders.

This is where the historic business activities related to economic rights – and TPO – had originally arisen: third party investors would acquire, in exchange for payment, a share in the economic rights of a player, thus speculating in the player's development and being

490 However, a player shall not be considered a third party with respect to their own transfer (Definition 14).
491 CAS 2004/A/635, RCD Espanyol de Barcelona SAD v. Club Atlético Vélez Sarsfield and CAS 2004/A/662, RCD Mallorca v. Club Atlético Lanús.

entitled to receive a pay out if and when that player is transferred in return for payment of a transfer fee. The third-party investor would receive a payment corresponding to the proportion of economic rights that it is holding.

B. THE PROHIBITION ON TPO

The prohibition in general

Article 18ter prohibits any club or player from entering into an agreement with a third party whereby that third party is 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.

In other words, article 18ter forbids third-party investment in a player's economic rights. Clubs remain free to pursue external investment, as long as investors do not secure it by receiving a share of the economic rights of players. This becomes important, for instance, when clubs negotiate an agreement with a third party for a possible financial investment or loan for the club.

Parties entitled to receive "compensation" for the future transfer of a player

When entering into agreements with third parties (or with other clubs for the transfer of players), clubs must ensure that only the following parties are entitled to participate in the compensation payable in relation to the future transfer of a player:

- the releasing club
- the player subject to the transfer
- another club where the player was previously registered

This follows from the definition of "third party" which, as mentioned in the Background section, is referred to as "a party other than the player being transferred, the two clubs transferring the player from one to the other, or any previous club with which the player has been registered". Therefore:

- The "player being transferred" is not considered a third party.

This amendment to the definition was implemented in 2019 following various decisions from the FIFA Disciplinary Committee, which considered that a percentage promised to players on their own future transfer is to be seen as part of the remuneration under their employment relationship with their clubs, and does not represent a violation of article 18ter.[492]

492 FIFA Disciplinary Committee decisions of 18 and 26 June 2018, SV Werder Bremen, Panathinaikos FC, CSD Colo-Colo and Club Universitario de Deportes.

It must be noted that a player, as an individual, would still be considered a "third party" if the transaction in which they are involved is not their own transfer.

- Any "previous club with which the player has been registered" might also be entitled to receive compensation related to the future transfer of a player.

This means, for instance, that a sell-on fee agreed between the former and the new club that is activated by the "future transfer of a player" would not trigger a violation of article 18ter. This would also be the case if the sell-on fee is not only due to the former club upon the subsequent transfer of the player, but also upon a possible future transfer, if so agreed between the parties.[493]

Finally, for the sake of completeness, some examples of a third party for the purposes of the Regulations and the prohibition of article 18ter include:

- a company;
- an investment fund;
- an individual;
- a football agent; and
- a club with which the player has never been registered and to which they are not being transferred.

3. Practical examples

The following section will describe how the concept of TPO has been applied to concrete situations. The Manual provides a broad analysis of different agreements that were considered to be in breach of article 18ter until August 2020 (either by the FIFA Disciplinary Committee, the FIFA Appeal Committee or CAS).

It must be noted that the FIFA case law on article 18ter is more limited than that on article 18bis. Since the implementation of article 18ter in the Regulations in 2015, 17 clubs have been sanctioned by the FIFA Disciplinary Committee for entering into agreements with third parties in contravention of the TPO prohibition.

The following chart shows how these decisions have been rendered depending on the relevant paragraph of article 18ter. Primarily, the decisions concern contracts signed between clubs and companies, agencies or investment funds whereby those entities were assigned (economic) rights in relation to the future transfer of a player.

493 CAS 2020/A/6851 Asociación Deportivo Cali v. Club Santiago Wanderers & FIFA.

	Article 18ter	Number of decisions
Paragraphs 1 and 2	**Paragraph 1:** No club or player shall enter into an agreement with a third party whereby a third party in 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. **Paragraph 2:** The interdiction as per paragraph 1 comes into force on 1 May 2015.	**8**
Paragraph 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.	**-**
Paragraph 4	The validity of any agreement covered by paragraph 1 signed between 1 January 2015 and 30 April 2015 may not have a contractual duration of more than one year beyond the effective date.	**3**
Paragraph 5	By the end of April 2015, all existing agreements covered by paragraph 1 need to be recorded within the 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**

A. EXAMPLES OF AGREEMENTS CONSIDERED TO BE IN BREACH OF ARTICLE 18TER

The list below is a non-exhaustive overview of some types of agreements which have been analysed by the FIFA judicial bodies and considered contrary to article 18ter.

- Agreement between a club and an investment fund where the latter assists the club financially in exchange for a defined percentage on the economic rights of one (or more) of the club's players.[494]
- Agreement between a club and a company where the latter finances part of the transfer of a player from another club in exchange for a sell-on fee on the future transfer of that player.
- Agreement between a club and a sports company where the latter becomes a sponsor of the club, and due to its investment, is entitled to receive, amongst other things, financial compensation from the transfer of some of the club's players.

Depending on the specificities of each contractual agreement, the future compensation to be received by the third-party for the player's economic rights might only apply in the event of a permanent transfer, or also in the event of a transfer on loan or if any other financial rights arise from the future transfer of the player. This means that, in some cases, a contract may entitle a third-party to receive compensation in more than one future type of "transfer".

The services provided by football agents and the prohibition of article 18ter

As mentioned in section 2, in the context of a transfer, a football agent is considered to be a third party. For this reason, as a matter of principle, football agents cannot be entitled to any compensation or rights linked to the future transfer of a player.

Therefore, as confirmed by the FIFA Disciplinary Committee, contractual provisions which grant a football agent the ability to receive a percentage and/or remuneration linked to the future transfer of the player, are contrary to article 18ter.[495]

However, as per FIFA case law, an important distinction shall be considered:

- A football agent representing a party to a transfer may enter into a representation agreement and receive compensation for the services provided in that specific transfer.
- For this reason, as an example, a football agent's fee calculated on the basis of the amount received by the club for the upcoming transfer in relation to which the football agent has provided services shall not be considered a "future transfer"

494 FIFA Disciplinary Committee decision of 4 September 2015, RFC Seraing.
495 FIFA Disciplinary Committee decision of 11 August 2022, Santa Clara Acores. FIFA Disciplinary Committee decision of 18 July 2022, Faisal FC. FIFA Disciplinary Committee decision of 16 February 2023, FK Spartaks.

that is prohibited by article 18ter, since it does actually represent remuneration for the services provided by the football agent for that specific transfer.[496]

- However, services by a football agent as part of a specific transfer do not extend to receiving a percentage of the player's economic rights if that same player is subsequently transferred where the football agent does not act or provide services as part of that subsequent transfer.

  Example: a club enters into an agreement with a football agent where the latter is entitled to compensation for the services rendered for the club (e.g. assistance in negotiating and signing an employment contract with a player), but also a percentage of the future transfer fee of the player.[497]

  As per article 15 of the FIFA Football Agent Regulations, the calculation of the service fee of a football agent may be made in proportion to the transfer compensation received (when a football agent represents a releasing club), always provided that the football agent is effectively performing football agent services. This is only a calculation method, which the FIFA Football Agent Regulations expressly permit. There is no restriction, limitation or change to the general rule that any form of TPO remains prohibited under article 18ter. Therefore, if, for example, a football agent does not effectively provide any form of football agent services but in any case is entitled to receive a percentage of (future) transfer compensation, this would appear to be in breach of article 18ter, as per the FIFA case law.

  Finally, it is worth mentioning that the calculation of the transfer compensation shall not include any sell-on fee in favour of the agent and, if included, may also lead to a violation of article 18ter.

B. GENERAL CONSIDERATIONS FROM FIFA CASE LAW ON ARTICLE 18TER

The following are general considerations concerning the practical application of article 18ter, Regulations, based on existing jurisprudence.

- The wording of article 18ter is clear and leaves no room for interpretation: the mere fact of entering into an agreement with a third party whereby such third party is entitled to participate in compensation payable in relation to a player's future transfer constitutes a breach of such provision, regardless of whether the relevant transfer or compensation eventually materialises or not.

- Every clause shall be interpreted according to its wording, the real intention of the parties and the rationale behind article 18ter.

- The prohibition on a third party from paricipating in the "compensation payable" in relation to the future transfer of the player has been interpreted together with

496 FIFA Disciplinary Committee decision of 28 September 2017, Juventus FC.
497 FIFA Disciplinary Committee decision of 11 August 2022, Santa Clara Acores.

the prohibition of "being assigned any rights" in relation to a future transfer or transfer compensation. Therefore, no contract can grant any kind of financial (or other) right to a third party in relation to the future transfer of a player.

- Usually, contractual agreements in contravention of article 18ter also entail a possible violation of article 18bis. By nature, a third party that has a stake in the economic rights of a player might also acquire the ability to influence the transfer or employment situation of that player.

- The content and nature of the term "third party" (Definition 14) has been reinforced. It does not apply to the player being transferred, to the two clubs transferring the player or to any other previous clubs where the player was registered.

- The applicable standard of proof to consider a possible violation of article 18ter is the "comfortable satisfaction" of the committee. This means that is higher than the civil standard of "balance of probability" but lower than the criminal standard of "proof beyond a reasonable doubt".[498]

- The degree of the club's liability, the seriousness of the violations and/or the endangerment of the legal asset protected are factors to be considered for the imposition of the relevant sanction.

C. RELEVANT UPDATES FOLLOWING THE PUBLICATION OF THE MANUAL:

Since the publication of the Manual, only four decisions have been rendered by FIFA in relation to article 18ter. Therefore, no additional conclusions have arisen from the most recent FIFA case law beyond those in sub-section B above.

However, the football transfer system is in constant evolution and clubs are naturally searching for new and more modern and sophisticated contractual solutions to engage players, maximise their profits and minimise their risks. In view of this progressive dynamism, it is the responsibility of FIFA to continue monitoring any new trends in the transfer market and ensure a correct and realistic application of the rules, always making sure that the interests protected by article 18ter are safeguarded, and that, overall, the Regulations are respected.

The phenomenon of crowdfunding

Crowdfunding has increasingly become an alternative source of revenue for clubs. With this financial mechanism, clubs seek to receive funds (e.g. from their supporters) through specialised companies and digital platforms in exchange for benefits related to the club, including access to exclusive services or assignment of rights for future revenues generated by the club.

498 Article 39 paragraph 3, FIFA Disciplinary Code. Also see among others CAS 2009/A/1920, CAS 2010/A/2172, CAS 2013/A/3323 or CAS 2017/A/5006.

An example could be a crowdfunding platform launched by a football club which enables supporters to actively finance a percentage of the transfer of a player and/or of their employment contract in exchange for access to club content, engagement possibilities or a certain financial contribution (which might depend on several factors).

As mentioned before, it is within the competence of the FIFA judicial bodies to interpret and render binding decisions on article 18ter taking into account the applicable regulatory framework and all circumstances of the specific case.

There is only one precedent regarding a crowdfunding company sanctioned by the FIFA Disciplinary Committee for a violation of article 18ter: the case of KICKRS and the Belgian club K St Truidense VV. The company – a start-up aimed at crowdfunding to secure revenue for investment in the transfer of players – signed an agreement with the club which allowed its fans to finance the club (through a digital platform) in order to engage a certain player. In return, the fans would be entitled to participate in the compensation received by the club for the future transfer of that player.[499]

The only additional decision related to crowdfunding was dismissed by the FIFA Disciplinary Committee. In that case, the Austrian club FC Admira Wacker Mödling launched a campaign with the support of KICKRS (with which the club had previously signed a service agreement) to collect funds for trainers' education, equipment and training materials as well as for the expansion of the academy's facilities. In return for the investment, the investors (i.e. the fans) would be repaid after three years, with 2% interest per annum, through a financial participation in the sporting success of the club.

The FIFA Disciplinary Committee considered that the club had not violated article 18ter, since the investors were not given the right to participate in any compensation related to the future transfer of players of the club.

Therefore, a key aspect to determine whether article 18ter may have been violated by these funding schemes is whether the possible return on an investment from a third party (i.e. a fan) is linked to compensation related to the future transfer of a player (or players).

A potential violation of article 18bis might also not be disregarded in this kind of financial investment and may arise if the third party is granted any ability to influence the club in employment- and transfer-related matters as regards its independence, its policies or the performance of its teams.

Specific aspects of the relationship between the fans, the crowdfunding company and the club should be taken into consideration to understand whether a violation of article 18ter (or of article 18bis) might be triggered.

499 FIFA Disciplinary Committee decision of 4 March 2016, Club K St Truidense VV.

This includes but is not limited to, the rights and obligations granted to the third parties, the specific criteria based on which their return on investment is calculated, the agreements between the club and the crowdfunding company and/or the obligations of the club towards the third parties.

To prevent any possible violation of article 18ter (or article 18bis), it will always be of paramount importance that the business model and operations of the clubs with the crowdfunding companies ensure overall that the third party investing in a certain club is not, in any way, entitled to receive compensation for the future transfer of a player and/or cannot influence the club in employment- or transfer-related matters.

4. Range of sanctions imposed by FIFA for violations of article 18ter

When establishing the sanction to be imposed for violations of article 18ter, the same principles apply as those mentioned in article 18bis paragraph 4. The FIFA judicial bodies take account of both subjective and objective elements related to the offence, including all aggravating and mitigating circumstances, as well as whether the offender provided assistance and substantial cooperation in uncovering or establishing a breach of the FIFA rules.

Likewise, the degree of the offender's guilt is another aspect that has an impact on the determination of the sanction.

Since the implementation of article 18ter, all of the clubs considered to have violated this provision have been sanctioned with fines ranging between CHF 10,000 and CHF 187,500.[500]

The amount of the fine always depends on several factors, which may include but are not limited to:

- The number of prohibited clauses
- The severity of the clause(s)
- The level, status, training category and sporting and financial situation of the club
- Whether there was also a violation of article 18bis
- Any previous offences
- The degree of collaboration and/or the club's endeavours to remedy the breach
- Any other mitigating/aggravating circumstances

500 In some cases, the economic fine has been imposed together with a ban on registering players, either nationally or internationally, for a period of time. Example: decision of the FIFA Disciplinary Committee of 4 September 2015, RFC Seraing.

5. Considerations from CAS

As mentioned in the introduction to section 3, since the implementation of article 18ter in the Regulations in 2015, 17 clubs have been sanctioned for entering into agreements with third parties in contravention of the TPO prohibition. Consequently, the CAS case law is also (much) more limited than that in relation to article 18bis.

In fact, there is only one concrete precedent that simply analyses the nature, objectives and legitimacy of article 18ter (the RFC Seraing case) in detail.[501] In that decision, CAS recognised the validity of the prohibition, the objectives pursued with its implementation, its binding nature and its compatibility with EU law.

In particular, CAS considered that article 18ter does not violate, limit, restrict or unlawfully affect any of the fundamental freedoms of the EU and that the rule seeks to achieve a legitimate aim that is aligned with the specificity of sport.[502]

Furthermore, CAS ruled that the following risks appear to be associated to the practice of TPO:

- Risks of conflicts between the interests of clubs, players and final or successive beneficiaries of investment agreements.
- Risks related to the opacity of investors in question who are beyond the control of the football regulatory bodies and who may freely proceed with uncontrolled disposals of their investment.
- Risks of infringement of professional freedom and the rights of players by being able to influence speculative interest in their transfer.
- Risks of match manipulation, contrary to the integrity of competitions, since the same investor could be involved in TPO in several clubs belonging to the same competition.
- Risks to ethics, since the objective pursued is a speculative financial interest, exclusive of sporting and (even) moral considerations.

In relation to the specific contract signed by RFC Seraing with the third party, CAS determined that its content contradicted article 18ter since it granted the third party 30% of the economic rights of three players from the club.

Therefore, two conclusions can be drawn from the only CAS case so far on article 18ter:

- CAS recognises the validity of article 18ter.

501 CAS 2016/A/4490, RFC Seraing v. FIFA

502 This interpretation was also followed by various ordinary courts (e.g. the Swiss Federal Supreme Court decision 4A_260/2017 or the Brussels Court of Appeal decision of 12 November 2017 (2015/KR/54)).

- A contractual provision granting a third party a financial right related to the future transfer of a player goes against article 18ter, and is subject to sanctions.

For the sake of completeness, it must be noted that there have been other CAS decisions which, although not directly related to TPO, have considered that a financial claim arising out of a contract that is in breach of article 18ter is still valid and enforceable. The fact that a contract might be contrary to article 18ter does not mean that it becomes invalid or unenforceable, but simply that the club would need to face the disciplinary consequences of entering into a contract in contravention of this provision.[503]

6. Declaration on TPO by clubs in TMS

Similar to the declaration on TPI required for international transfers in TMS, the same applies to TPO of the player's economic rights.

When clubs enter an international transfer into TMS, they must either declare "Yes" or "No" to whether they have entered into an agreement with a third party, whereby this third party in entitled to participate, in full or in part, in compensation payable in relation to the future transfer of the player. [504]

Clubs should answer "Yes" in TMS for cases where they or the player in question have entered into a TPO agreement at any time in the past, even if it has already been uploaded in TMS in the third-party agreement library.[505] If they click "No", no further action is needed.

By incorrectly declaring that there is no TPO of the player's economic rights, clubs fail to disclose full mandatory and correct information in TMS. Therefore, an infringement of article 18ter also includes failure to provide mandatory information or entering incorrect information to the TPO declaration in TMS.

For this reason, decisions of the FIFA judicial bodies sanctioning a club for a breach of article 18ter might also find the club guilty of failing to declare the respective agreement in TMS, in breach of Annexe 3.

503 CAS 2021/A/8213 Club Tijuana v. Aguirregaray & FIFA.

504 Article 10 paragraph 4 g), Annexe 3, Regulations.

505 If the releasing club declares "Yes", it will be requested to enter the third-party name, and indicate whether the payment will be a certain amount or a percentage of the player's income. The releasing club will also need to upload a copy of the TPO agreement. If the engaging club declares "Yes", no further action is needed.

7. Relevant jurisprudence

Below there is a comprehensive list with the most relevant case law from FIFA and CAS in relation with article 18ter. For the sake of simplicity, reference is also made to the Manual, where a summary of the main considerations from all decisions of the FIFA judicial bodies rendered until August 2020 can be found.

Decisions of FIFA judicial bodies

1. FIFA Disciplinary Committee decision of 4 September 2015, RFC Seraing.
2. FIFA Disciplinary Committee decision of 4 March 2016, Club K St. Truidense VV.
3. FIFA Disciplinary Committee decision of 20 July 2017, Anderlecht.
4. FIFA Disciplinary Committee decision of 28 September 2017, Juventus.
5. FIFA Disciplinary Committee decision of 1 March 2018, Spezia.
6. FIFA Disciplinary Committee decision of 12 April 2018, Al-Arabi.
7. FIFA Disciplinary Committee decision of 12 April 2018, Sporting Portugal.
8. FIFA Disciplinary Committee decision of 12 April 2018, Rayo Vallecano.
9. FIFA Disciplinary Committee decision of 18 September 2018, MFK Kosice.
10. FIFA Disciplinary Committee decision of 7 March 2019, Slavia Prague.
11. FIFA Disciplinary Committee decision of 7 March 2019, Rio Ave.
12. FIFA Disciplinary Committee decision of 27 March 2019, Borussia Dortmund.
13. FIFA Disciplinary Committee decision of 5 August 2021, Deportivo La Guaira FC.
14. FIFA Disciplinary Committee decision of 18 July 2022, Faisal FC.
15. FIFA Disciplinary Committee decision of 11 August 2022, Santa Clara Acores.
16. FIFA Disciplinary Committee decision of 16 February 2023, FK Spartaks.

CAS award

1. CAS 2016/A/4490, RFC Seraing v. FIFA.

Chapter VI.

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CHAPTER VI.

ARTICLE 18QUATER – 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 measures stipulated in article 6 paragraph 3 c) 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 3 d), 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.

1. Purpose and scope

In the same way as article 18 paragraph 7, article 18quater was introduced in the specific amendments to the Regulations regarding women's football which entered into force on 1 January 2021.

While article 18 paragraph 7 is a general clause regarding the entitlement to maternity leave, article 18quater specifically establishes provisions that govern the employment relationship between professional female players and clubs. It introduces, *inter alia*, the following provisions:

- contractual protection
- a *lex specialis* to article 17 regarding the termination of contracts
- specific employment rights relating to pregnancy or maternity

2. The substance of the rule

A. CONTRACTUAL PROTECTION

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 exercising rights relating to maternity (art. 18quater pars 4 and 5) in general.

This provision is intended to operate in a similar manner to article 18 paragraph 4. If an employment contract 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 cannot be made subject to any pregnancy-related factor.

B. *LEX SPECIALIS* REGARDING THE TERMINATION OF CONTRACTS

Article 18quater paragraphs 2 and 3 introduce a *lex specialis* to article 17 regarding contract termination when a player is or becomes pregnant, is on maternity leave or utilises rights relating to maternity (art. 18quater pars 4 and 5) in general.

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 (art. 18quater pars 4 and 5) in general, the club will be deemed to have terminated the contract without just cause.

Paragraph 2 a) provides specific protections for female players in this regard. It is presumed, unless proven to the contrary, 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 burden of proof lies with the club to demonstrate that the termination of the contract during this period was for just cause.

Paragraph 3 provides specific rules regarding the calculation of compensation to be paid to a player should the employment contract be terminated on the grounds of the player 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 sub-paragraph a) iii. provides for a mandatory payment of six months' salary, 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 consisting of a ban on registering female players for two entire and consecutive registration periods. The Regulations also give the DRC the ability to fine the club, in addition to imposing sporting sanctions.

The termination of an employment relationship on the grounds of a player being or becoming pregnant is considered to be a serious breach of the principle of contractual stability and there is a clear intention to protect female players against abuse of this type. The main purpose of this specific rule is to ensure that the affected player is compensated accordingly and that in addition to having to pay substantial compensation, the relevant club is 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's pregnancy. Again, the objective of the rule is to protect a female player's rights to work and to *return to work*.

Sub-paragraphs 4 a) and b) provide that, when a player becomes pregnant, she has the rights, during the term of her contract, to:

a. 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; or

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 providing sporting services, or should she choose 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.

Similarly, sub-paragraph 4 b) 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 not to exercise that right any further.

In either case where sub-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. The main objective of the rule is to provide a work environment for the player, protecting her health and safety during pregnancy, while ensuring that she can continue to work and receive full remuneration.

Sub-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 will be subject to disciplinary action.

Sub-paragraph 4 d) covers a player's right to return to football activity after the completion of her maternity leave, following medical clearance from her treating practitioner and independent medical professional. Following her return to football activity, the club has an obligation to reintegrate the player and provide adequate ongoing medical support and 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 establishes the player's right to a safe work environment, specifically regarding breastfeeding. In this respect, while the player is 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.

D. CASE LAW

The DRC decided its first case referencing the new article 18quater in May 2022.[506] The following is a summary of that case:

- In March 2021, the player verbally informed her club of her pregnancy.
- On 26 March 2021, the medical practitioner decided that it was not safe for the player to continue to provide sporting services.
- On 29 March 2021, the player and club agreed that the player could return to her home country to continue her pregnancy and not render sporting services to the club.
- On 30 March 2021, the club applied for social security allowance on behalf of the player.
- On 1 April 2021, the player left for her home country.
- On 30 April 2021, the local authorities confirmed that the player was entitled to her social security allowance.
- As of the date that the player was placed on "sick leave", the club paid her a reduced salary. In correspondence between the player and club, the club justified the reduction by noting that she was not providing sporting services or engaged in any alternate employment during her pregnancy until her maternity leave started. Effectively, article 18quater paragraph 4 b) was not applicable as no sporting services or alternate employment were rendered. As a result, the player was subject to sick leave legislation pursuant to national law.
- The player contested this interpretation, arguing that article 18quater paragraph 4 b) guarantees players full remuneration regardless of whether alternate services are provided. Notwithstanding this, she noted that the club had never asked her, or formed any plan for her, to undertake alternate employment, but she was ready and available to do so.

Relevantly, the DRC held the following:

- In general, the new maternity rules provided in the Regulations enshrined an employer's duty of care, with the main objective of providing protection for a player's pregnancy.
- Article 18quater paragraph 4 b) is applicable. The player clearly chose not to exercise her right to continue providing sporting services.

506 DRC decision of 19 May 2022, Gunnarsdóttir.

- Considering the club's duty of care and the employer-employee relationship, the club was required to transparently clarify the consequences it deemed to have resulted from the player's departure from the country, and particularly the impact on her salary if she chose not to provide alternate services.
- Considering the club's duty of care as the employer, the club was required to offer alternate employment to the player within the meaning of article 18quater paragraph 4 b) particularly considering she offered to perform alternate duties.
- Given its failings, the club was ordered to remunerate the player fully (i.e. pay her full salary) as from 1 April 2021 until the commencement of her maternity leave, in accordance with article 18quater paragraph 4 b) Regulations. The club was also ordered to remunerate the player with two thirds of her salary for the period of her maternity leave, in accordance with the Definitions section of the Regulations.

3. Relevant jurisprudence

DRC decision

1. DRC decision of 19 May 2022, Gunnarsdóttir.

Chapter VII.

INTERNATIONAL TRANSFERS INVOLVING MINORS

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BACKGROUND

The protection of minors is one of the core objectives and key pillars of the international player transfer system, based on 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 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 turn professional, let alone make it to the top, 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 away 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. The relevant rules in the Regulations all aim to ensure that minors are provided with a stable environment for training to enable them to 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 on the one hand,[507] 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. Alternatively, they may not have been scouted by any club whatsoever before moving abroad. 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, or at the very least creates a substantial risk for their well-being and development.

507 The financial interests of the training clubs are, to a certain extent, protected by the training rewards regimes. Nevertheless, a training club would of course also wish for a talented young player to remain with them for as long as possible in order to be able to 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 is at least temporarily permitted to reside in the country of arrival and/or is recognised by the competent state authorities as vulnerable and requiring state protection by the country of arrival after fleeing their country of origin (or previous country of domicile) for humanitarian reasons, without their parents, due to either of the following:

i. their life or freedom being threatened on account of race, religion, nationality, belonging to a particular social group, or political opinion; or

ii. any other circumstances where their survival is seriously threatened.

If the minor has been formally recognised as a refugee or a protected person, they may be registered with a professional club or purely amateur club. There are no restrictions on any subsequent national transfer of the minor prior to their turning 18.

If the minor has been formally recognised as asylum seeker or has been recognised by the competent state authorities as vulnerable in accordance with article 19 paragraph d) above, they may only be registered with a purely amateur club. They may be the subject of a subsequent national transfer, but are not permitted to register with a professional club until they turn 18.

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 years old, the Players' Status Chamber of the Football Tribunal must approve:

a) their international transfer according to paragraph 2;

b) their first registration according to paragraph 3; or

c) their first registration, where the minor player is not a national of the country where the association at which they wish 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. A club that has registered a minor player following a national transfer, international transfer or first registration shall:

   – owe a duty of care to the minor;

   – take any reasonable measures to protect and safeguard the minor from any possible abuse; and

   – ensure that the minor is provided with an opportunity to obtain an academic education (according to the highest national standards) that allows them to pursue a career other than football.

9. 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.

1. Purpose and scope

A. GENERAL REMARKS

Specific provisions relating to international transfers involving minors were first introduced into the Regulations in September 2001. When the provision was first introduced, 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:

- if the player's family had moved to the country in which the new club was located for reasons not linked to football; or
- within the territory of the EU or EEA and, for players aged between the minimum working age in their new training club's country and 18, if suitable arrangements for their sporting training and academic education were made by the new training club. For this purpose, a code of conduct was to be established and enforced by the football authorities.[508]

At this point in time, the same principles also applied to the first registration of players under the age of 18 that were nationals of a country other than that in which they wished to be registered. In 2005, a further exception was introduced to 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,[509] 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 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.

Based on the established jurisprudence of the SCM, the "five-year rule" was formally included in the Regulations in 2016.[510] On 1 March 2020, two further exceptions were explicitly incorporated into article 19; one concerning unaccompanied refugee players, and another relating to exchange students.[511] 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.

508 This code of conduct never materialised.
509 Circular no. 1190 of 20 May 2009.
510 Circular no. 1542 of 1 June 2016.
511 Circular no. 1709 of 13 February 2020.

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.

As part of the November 2022 reforms, the FIFA Council approved amendments and additions to the Regulations in respect of the international transfer of minors that reflect general principles endorsed by the Football Stakeholders Committee and that had been previously approved by the FIFA Council in May 2021.

In this context:

- the humanitarian exception established in the Regulations was amended to modernise and apply it more flexibly in order to reflect real-life cases;
- additional minimum protection standards (safeguarding) for minors transferring internationally were introduced. These concern a club's duty of care towards minors and principles to protect minors against abuse;
- the first-ever regulatory framework for trials, including rules concerning medical care, minimum age and an effective way to seek legal protection was introduced into the Regulations; and
- more stringent regulation in relation to private academies to increase oversight of minors was implemented.

Further details in respect of the November 2022 reforms regarding the international transfer of minors can be found in the Explanatory Notes on the New Provisions in the Regulations on the Status and Transfer of Players Regarding the International Transfer of Minors, which is also available on the FIFA website.

B. SCOPE OF APPLICATION

a. General rule and exceptions

The regulatory framework is based on a clear rule, i.e. a general prohibition on international transfers of minors. However, it codifies several exceptions.

International transfers of minors are, as a general rule, prohibited. The Regulations define a minor as a player who has not yet reached the age of 18.[512] 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.

512 Definition 11, Regulations.

b. 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 possible 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 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.[513] 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 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.

c. 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 a non-national minor, unless one of the exceptions or the five-year rule applies. In all cases, the trigger is the (proposed) registration of the minor player with a member association for a club. This registration is required for a player to be able to play for a club and participate in organised football.

However, this has raised the question of how the provisions apply to a minor player who is merely *training* with a club or undertaking a trial, and therefore does not need to be registered.

With respect to the second question, the new rules on trials introduced in November 2022 (discussed in the relevant section below) provide some explicit answers. Prior to the introduction of those rules, these questions were addressed in the case of two minor players who trained for a club (with several interruptions) and participated in several tournaments.

Organised football

In a case of a club that was under scrutiny for having violated the prohibition on international transfers of minors, 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".

513 CAS 2008/A/1485, FC Midtjylland A/S v. FIFA.

The FIFA Disciplinary Committee and FIFA 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,[514] 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".[515] 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.

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.

However, 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. This is one of the reasons why FIFA introduced specific rules governing trials for minors and, in particular, notification requirements and a set maximum length of time spent on trial per season.

Provisional registration pending approval

Another 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.

514 CAS 2016/A/4785, Real Madrid Club de Fútbol v. FIFA.
515 Definition 6, Regulations.

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 clubs to 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 FIFA member association that retains responsibility for, and actual control of, the registration procedures for minor players. This was also confirmed in a different award from 2014.[516]

These conclusions have since lost much of their relevance, given that article 5 paragraph 1 now requires each member association to have an electronic player registration system[517] and this system must assign each player a FIFA ID[518] 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.[519]

516 CAS 2014/A/3793, Fútbol Club Barcelona v. FIFA.
517 Definition 18, Regulations.
518 Definition 20, Regulations.
519 See also CAS 2019/A/6301, Chelsea Football Club Limited v. FIFA.

In a more recent award,[520] 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 […]."

This was directly addressed in the November 2022 reform, when a maximum limit was introduced. In this context, reference is made to the more detailed sections of the Commentary concerning these new rules on trials contained in article 19ter.

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.[521]

The jurisprudence of the SCM (and PSC) regarding compliance with article 19 follows this strict approach. 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 are required to frustrate any attempt to circumvent the Regulations even if, in isolated cases, this may create a perception that rules are applied in an inflexible or overly rigid way. As a matter of fact, a strict application of rules is the only way to effectively provide protection to minor players, which is the ultimate purpose of article 19.

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, as mentioned, the only way to avoid this 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

520 CAS 2019/A/6301, Chelsea Football Club Limited v. FIFA.
521 Circular no. 801 of 28 March 2002.

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 general approach, involving a strict interpretation, has been confirmed by CAS on several occasions.[522] 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."[523] In another matter,[524] CAS confirmed that article 19 needed to be applied in a "strict, rigorous and consistent manner" and, hence, that "[a]rticle 19 para. 2 of the Regulations has to receive a strict construction".

The clarity with which different CAS panels have determined that article 19 should be applied rigorously and in line with the approach constantly taken by FIFA has only rarely been challenged.[525]

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.[526]

In another matter,[527] CAS 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[528] 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,[529] CAS stated that article 19 proved "an individual's freedom of movement and the right to work does not override the specific

522 CAS 2005/A/955, Cádiz C.F. SAD v. FIFA and Asociación Paraguaya de Fútbol and CAS 2005/A/956, Carlos Javier Acuña Caballero v. FIFA and Asociación Paraguaya de Fútbol; CAS 2008/A/1485, FC Midtjylland A/S v. FIFA; CAS 2011/A/2354, E. v. FIFA; CAS 2011/A/2494, FC Girondins de Bordeaux v. FIFA; CAS 2012/A/2787, Villareal CF v. FIFA; CAS 2014/A/3611, Real Madrid FC 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; CAS 2020/A/7150, Ryoga Fujita v. FIFA, CAS 2020/A/7503, R.N.C. v. FIFA.

523 CAS 2011/A/2354, E. v. FIFA.

524 CAS 2013/A/3140, A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol & FIFA.

525 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.

526 CAS 2005/A/955, Cádiz C.F. SAD v. FIFA and Asociación Paraguaya de Fútbol and CAS 2005/A/956, Carlos Javier Acuña Caballero v. FIFA and Asociación Paraguaya de Fútbol.

527 CAS 2008/A/1485, FC Midtjylland A/S v. FIFA.

528 CAS 2012/A/2862, FC Girondins de Bordeaux v. FIFA.

529 CAS 2014/A/3813, Real Federación Española de Fútbol v. FIFA.

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. Indeed, restrictions on the international transfer of minors were one of the key elements of the agreement reached in 2001 with the European Commission.

C. EXHAUSTIVE LIST OF EXCEPTIONS

While FIFA has always defended the position that the list of exceptions contained in article 19 is indeed exhaustive, others have called for a more flexible approach to addressing exceptional circumstances.

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 recent amendments codified two additional unwritten exceptions that FIFA had been applying regularly (as from 1 March 2020) and significantly relaxed the humanitarian exception (as from November 2022). It is notable that most awards that indicate other exceptions are permissible refer to situations which are now covered by the Regulations.

The first reason is that allowing additional exceptions would reduce legal security. In particular, in an area as sensitive as the protection of minors, legal security is of paramount importance; the youngest and most vulnerable participants should benefit from the most stringent possible safeguards and a clear and consistent regulatory framework. 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. If one were to imagine that a club genuinely believes that the particular facts 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, but FIFA and subsequently CAS then decide that no exceptional circumstances exist, what would the outcome be 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 very 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.

Existing CAS jurisprudence is less clear. In some cases, CAS seemed to concur that the list of exceptions is exhaustive. In one matter,[530] 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."

In another case,[531] 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."[532] The same approach was reaffirmed in a recent award.[533]

In a 2005 award,[534] CAS 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.

530 CAS 2011/A/2354, E. v. FIFA.
531 CAS 2015/A/4312, John Kenneth Hilton v. FIFA.
532 CAS 2013/A/3140, A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol & FIFA.
533 CAS 2017/A/5244, Oscar Bobb & Associação Juvenil Escola de Futebol Hernâni Gonçalves v. FIFA.
534 CAS 2005/A/955, Cádiz C.F. SAD v. FIFA and Asociación Paraguaya de Fútbol and CAS 2005/A/956, Carlos Javier Acuña Caballero v. FIFA and Asociación Paraguaya de Fútbol.

In a 2012 award, a CAS panel was more ambiguous.[535] 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 there to be 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,[536] 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.[537] It stated that the situation of the minor player in question did not fit within any of the exceptions and 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 "one-off".

2. The substance of the rule

A. 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,

535 CAS 2012/A/2862, FC Girondins de Bordeaux v. FIFA.
536 CAS 2008/A/1485, FC Midtjylland A/S v. FIFA.
537 CAS 2015/A/4178, Zohran Ludovic Bassong & RSC Anderlecht v. FIFA.

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.[538] 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.[539]

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 specific 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 applies 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. To assist with this task, FIFA 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.

a. Parents move countries for reasons not linked to football

i. Basic principle

The first exception has been included in the Regulations since 2001. The reasons behind this exception are that 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 a job opportunity abroad, leading the entire family to relocate. Other reasons for relocating may include reuniting with other family members, cultural considerations, or specific circumstances relating to the health of a family member.

There is, unfortunately, 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 arrange jobs for the minor player's parents outside the formal 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

538 CAS 2016/A/4805, Club Atlético de Madrid SAD v. FIFA.
539 CAS 2014/A/3793, Fútbol Club Barcelona v. FIFA.

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.[540]

A Paraguayan minor player (16 years old) who was registered with a Paraguayan club left the country for Spain with his mother and younger brother, having previously taken part in a U-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 (APF) refused to issue the ITC to the Spanish Football Association (RFEF) due to the player's age. At the request of its club, the RFEF 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 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 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

540 CAS 2005/A/955, Cádiz C.F. SAD v. FIFA and Asociación Paraguaya de Fútbol & CAS 2005/A/956, Carlos Javier Acuña Caballero v. FIFA and Asociación Paraguaya de Fútbol.

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.

ii. 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 CAS 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.[541] While this principle applies generally to all the exceptions, in the context of the first exception, it is for 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[542] 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[543] 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, 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.[544] 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 their child's football activity.

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541 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 de Bordeaux v. FIFA.

542 CAS 2013/A/3140, A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol & FIFA.

543 CAS 2015/A/4312, John Kenneth Hilton v. FIFA.

544 CAS 2019/A/6301, Chelsea FC 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, 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).

iii. Requirement that the reasons for the parents' move should not be linked to football

It is essential 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. CAS has set the evidential bar relatively high. In a first illustrative decision dating from 2011,[545] 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 by the findings of a different CAS panel in 2013.[546] In this particular matter, the SCM had rejected the relevant 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".

545 CAS 2011/A/2494, FC Girondins de Bordeaux v. FIFA.
546 CAS 2013/A/3140, A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol & FIFA.

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.
- 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.
- A statement 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 enjoyed by 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 was 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 not necessarily deemed 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.
- 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.

Two awards from 2015 demonstrated the different approaches undertaken by CAS on this point. In the first case,[547] 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 that allegedly included 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 wealthy enough for the risk of the player being commercially exploited by his family to be excluded played a significant role in the decision.

547 CAS 2015/A/4178 Zohran Ludovic Bassong & RSC Anderlecht v. FIFA.

The second 2015 award,[548] 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 to 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 (…) 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 and the fact they were very financially secure to be convincing arguments in favour of applying the exception.

The basic principle that the player's parents must move for reasons not linked to football or at least not linked primarily to football,[549] 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."[550]

> "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."[551]

548 CAS 2015/A/4312, John Kenneth Hilton v. FIFA.
549 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
550 CAS 2017/A/5244, Oscar Bobb & Hernâni Gonçalves v. FIFA.
551 CAS 2020/A/7150, Ryoga Fujita v. FIFA.

> "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."[552]

In another recent award,[553] 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. This 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".

CAS has recently dealt with another case where this factor was considered. The appeal concerned two consecutive applications rejected by the PSC Single Judge (the first due to the absence of convincing elements and the second due to *res iudicata*). After having clarified that the principle of *res iudicata* only applies to arbitral awards and court decisions and not to decisions of judicial bodies of sport federations which are mere embodiments of the will of the federation concerned, the sole arbitrator found that the prerequisites of the exception were not met. The sole arbitrator remarked that article 19 has to be applied in a strict, rigorous and consistent manner as it is designed to protect the interests of minor players. Interestingly, the sole arbitrator pointed out that the fact that the family stayed in the country concerned after the first decision of the Single Judge per se was irrelevant (in fact, when analysed in light of the other circumstances of the case, which did not suggest that the move to that country had been unrelated to football in the first place, this did not change the outcome).[554]

552 CAS 2020/A/7503, R.N.C v. FIFA.
553 TAS 2020/A/7116, Jerome Ow v. FIFA.
554 CAS 2021/A/7807, Sport Lisboa e Benfica v. FIFA.

iv. 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 may be linked to football. Notably, in the 2013 award referred to above, 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.[555] 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, 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.[556] 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 other awards on this topic.[557]

v. Interim summary

By way of an interim 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 events relating to the move to the new country plays an important role in determining whether this burden of proof is met.

The following paragraphs will address further specific scenarios in relation to the exception under article 19 paragraph 2 a).

vi. 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 minor player's family is forced to move to another country on humanitarian grounds, for example because

555 CAS 2013/A/3140, A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol & FIFA.
556 CAS 2015/A/4312, John Kenneth Hilton v. FIFA.
557 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.

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. 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.[558]

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 this 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.[559]

vii. 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?

558 Circular no. 1635 of 8 June 2018, last paragraph on page 2.
559 "Guide to submitting a minor application", available on the FIFA website.

Based on the consistent SCM and PSC 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[560] 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 SCM 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 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 relating to employment, amongst others, are not uncommon, and that minor players should not be negatively impacted solely because of such circumstances.

560 CAS 2011/A/2354, E. v. FIFA.

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 or not 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 of the 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.

b. Transfers within the EU/EEA or within the same country

While all other exceptions apply globally, the second exception in the Regulations refers to a specific geographical area or to specific geographical circumstances. The relevant regulatory framework is only applicable to minor players moving internationally within the territory of the EU/EEA, or within the same country.[561] It allows players between 16 and 18 years of age to transfer internationally, subject to certain conditions being met.

i. 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, a fundamental tenet of EU law. 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 can be 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.

ii. 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.[562]

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

561 By way of example, the member associations domiciled in the territory of the United Kingdom (England, Scotland, Wales, Northern Ireland).
562 Essentially, this only applies to Switzerland at present.

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[563] 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 ECJ ruling in Kolpak in 2003 is also of interest in this regard.[564] 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.

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 that any existing agreement between a specific country (or group of countries) and the EU includes provisions on the free

563 CAS 2008/A/1485 FC Midtjylland A/S v. FIFA.
564 Deutscher Handballbund eV v. Maros Kolpak. Case C-438/00; European Court Reports 2003 I-04135.

movement of workers equivalent to those contained in TFEU lies with the player, club, and/or member association invoking the exception.

Although 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 Argentinian 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), 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.[565] 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 16th 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) 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.[566] 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 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

565 CAS 2011/A/2494, FC Girondins de Bordeaux v. FIFA.
566 CAS 2012/A/2862, FC Girondins de Bordeaux v. FIFA.

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 CAS. In 2016, CAS had another opportunity to consider the issue in detail and confirmed the amended approach.[567]

This 2016 case involved a 16-year-old player living in Argentina who held dual Argentinian/Italian nationality.[568] 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 16th birthday, he entered into 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 that "the statutes and regulations of an 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

567 CAS 2016/A/4903, Club Atlético Vélez Sarsfield v. The FA, Manchester City FC & FIFA.
568 He obtained Italian nationality a couple of days after the envisaged new club had already informed the Argentinian club of the player's intention to move to England, and just a couple of days prior to his 16th birthday.

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".

iii. 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 became 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.

iv. 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.[569]

569 CAS 2011/A/2354 E. v. FIFA.

Adequate football education and/or training

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 in principle be deemed to satisfy the requirement to provide the best possible facilities only if it belongs to the highest training compensation category[570] for the member association to which it is affiliated. An explicit reference to this requirement was included in the provision in March 2020[571] to enhance transparency. This means that, for associations that have four training categories available (categories 1 to 4, with 1 being the highest category and 4 being the lowest), in principle only clubs that are assigned to either category 1 or category 2 will be considered to provide adequate football education and/or training in line with the highest national standards. For those associations that have not four but three training categories available (categories 2, 3 and 4) or two training categories (categories 3 and 4), or one training category (category 4), only clubs that are assigned to the respective highest category are generally considered to have adequate football education and/or training in line with the highest national standard;

- 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.

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.

570 Article 4 of Annexe 4, Regulations.
571 Circular no. 1709 of 13 February 2020.

Academic and/or vocational education and training

Not every talented player will go on to have a successful professional career. Any number of obstacles may arise, including injury or simple loss of 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 confirm that it complies 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.

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 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

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.

Requirement to present proof of compliance with obligations to the member association

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.

c. Cross-border transfers

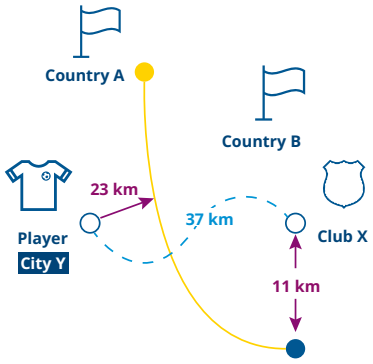
This third exception has been part of the Regulations since 1 July 2005. It covers the situation in which a minor player who lives close to an international border wants to play football on one side of the border while living on the other side of it. It would seem unduly harsh to prevent a player who 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, if not 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 50 kilometres from the national border concerned, and the club with which the player wishes to register must not be located more than 50 kilometres from that border. At the same time, the distance between the player's home and the club's headquarters may not exceed 100 kilometres. All these requirements must be satisfied for the transfer to be approved.

The below graphic sets out how this works in practice:

Situation 1



The player lives in city Y of country A.
The player wants to be registred with club X located in neighbouring country B.
The player's address in city Y is located 23km (point-to-point distance) from the (closest) common border between country A and country B.
Club X's headquarters is located 11km (point-to-point distance) from the (closest) common border between country A and country B
The "router travel" between the player's address and the club's seat is 37km.

Assessment

✓ The distance requirements of article 19 paragraph 2 c) **are cumulatively met**.

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.

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 50 kilometres 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.

d. Unaccompanied minors (humanitarian cases)

This exception was introduced into the Regulations on 1 March 2020, having codified existing unwritten exceptions found in the SCM jurisprudence. The humanitarian exception for unaccompanied minors was further strengthened and broadened, based on real-life case experience, in the November 2022 reforms.

For this exception to apply, the minor player's international move must not be linked to football in any way.

Unaccompanied minors (humanitarian cases)

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.

For the relevant exception to apply, the minor player concerned must have emigrated to another country without their parents[572] on humanitarian grounds. Prior to the November 2022 reform, this was limited to minor players with the formal status of "refugee" or "protected person" in their country of origin. However, in practice, it has become clear that the exception did not sufficiently cater to the reality of thousands of unaccompanied, displaced and vulnerable children moving internationally because their lives were seriously threatened – but who did not fall within the formal legal definition of a "refugee" – and who simply wanted to play football as a leisure activity.

Accordingly, considering that unaccompanied foreign minors are a vulnerable group whose physical and mental well-being deserves protection, the Regulations were broadened.

A minor player that has emigrated to another country without their parents on humanitarian grounds will therefore qualify for the exception where:

- they are at least temporarily permitted to reside in the country of arrival (e.g. through issuance of a visa, government decision or court order) or are recognised by the competent state authorities of the country of arrival as being vulnerable and requiring state protection (e.g. through legislation or government decision); and fled their country as a result of:
  i. their life or freedom being threatened on account of race, religion, nationality, belonging to a particular social group, or political opinion; or

572 For a move for humanitarian reasons with their parents, the exception "*parents' move for reasons not linked to football*" may apply.

ii. any other circumstances where their survival is seriously threatened.

In order to avoid abuse, applications submitted by professional clubs to register a minor utilising this exception will only be accepted where the player has been formally recognised by state authorities as a "refugee" or "protected person". Applications submitted by purely amateur clubs may be accepted where the player has formal recognition, is an asylum seeker or is deemed to be a vulnerable person.

Minors that are registered based on a formal recognition of their refugee or protected person status are not subject to any restrictions upon their subsequent national transfers. Minors that are registered on the basis of being an asylum seeker or vulnerable person may be transferred nationally but are not permitted to register with a professional club until the age of 18.

With regard to minors being vulnerable, recent decisions of the PSC were accepted: (i) where a decision by a state court or a confirmation by the relevant authority underlines the minor's vulnerability and/or need for state protection, (ii) the move of the minor is not linked to football and (iii) provided that the club for which the minor wants to be registered has purely amateur status.

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.[573]

e. Exchange students

This exception was also introduced into the Regulations on 1 March 2020, having codified existing unwritten exceptions found in the SCM jurisprudence. 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.

573 Circular no. 1635 of 8 June 2018, last paragraph on page 2.

Besides these two central requirements, and 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. 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 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 of 13 February 2020, 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".

f. The five-year rule

Besides the five exceptions listed 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. 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 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,[574] 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 five 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.

574 Circular no. 1542 of 1 June 2016.

B. APPLICATIONS FOR FIRST REGISTRATION

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 must 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.[575]

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.

C. 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. To improve monitoring and exert more control over the way the rules protecting minors were implemented, and 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 such cases from the associations to FIFA.

On 1 October 2021, the SCM was abolished and its competence absorbed 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.

To ensure that the principles of due process, and in particular, the right to be heard, 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

575 CAS 2014/A/3793, Fútbol Club Barcelona v. FIFA.

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 ten. 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.[576]

CAS has previously declined to sanction a club for violating the provisions on the protection of minors.[577] 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, however, heard prior to FIFA circular no. 1468 being issued, and prior to the amendment of 1 March 2020.

D. THE LME

In 2009, just prior to the introduction of the SCM, it was decided that a provision would be introduced to allow 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,[578] 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 process 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.

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.

576 Circular no. 1709 of 13 February 2020.
577 CAS 2016/A/4785, Real Madrid Club de Fútbol 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.
578 Circular no. 1209 of 30 October 2009.

Provided the relevant conditions are met, an association may request an LME by lodging a written request to the PSC via TMS. The assessment of such an application will depend, *inter alia*, on the amount of work associated with applications involving minors relating to the respective member association, 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.[579]

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 that has been 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.[580]

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, which the LME permits the member association to rely upon when registering amateur minor players.

579 Circular no. 1576 of 10 March 2017.
580 Circular no. 1576 of 10 March 2017.

To ensure that an LME is used appropriately, FIFA assesses the accuracy and validity of published reports received. The main reason for these assessments 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.[581]

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.

E. SANCTIONS

a. General points

The FIFA 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.

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;

581 Circular no. 1576 of 10 March 2017.

- 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 in accordance with article 39 paragraph 3 of the FIFA Disciplinary Code, is to "the comfortable satisfaction of the competent judicial body".[582]

Some violations concern the substantive conditions pertaining to the protection of minors, while others refer to procedural duties.[583] 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 primarily as a tool to ensure compliance with the substantive requirements. This is not to say procedural violations should not be sanctioned, but the sanction imposed is generally less severe than for a violation of the substance of the Regulations.

In a 2016 award,[584] CAS 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.

Even though a member association is obliged to request (and obtain) an ITC for any player above the age of ten, prior to registering them for one of its affiliated clubs, a club can also be held responsible for 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.[585] This interpretation of the procedures was advanced by CAS as early as 2014,[586] where the panel explained that the onus was on the registering club to initiate

582 CAS 2016/A/4805, Club Atlético de Madrid SAD v. FIFA; CAS 2019/A/6301, Chelsea FC v. FIFA.
583 As regards this distinction, CAS 2019/A/6301, Chelsea Football Club Limited v. FIFA.
584 CAS 2016/A/4805, Club Atlético de Madrid SAD v. FIFA.
585 CAS 2016/A/4805, Club Atlético de Madrid SAD v. FIFA.
586 CAS 2014/A/3793, Fútbol Club Barcelona v. FIFA.

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,[587] 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 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 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 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.

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

587 CAS 2016/A/4805, Club Atlético de Madrid SAD v. FIFA.

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, CAS held in 2014[588] 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 CAS 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,[589] 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;
- 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 CAS awards[590] 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,[591] 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

588 CAS 2016/A/4805, Club Atlético de Madrid SAD v. FIFA.
589 CAS 2014/A/3813, Real Federación Española de Fútbol v. FIFA.
590 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.
591 CAS 2014/A/3793, Fútbol Club Barcelona v. FIFA.

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."

b. 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,[592] 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.

F. FURTHER OBLIGATIONS

The November 2022 reform also saw the introduction of explicit safeguarding duties for clubs that register minor players, whether following a national transfer, international transfer or first registration.

Safeguarding means taking proactive action to protect people from harm or abuse through appropriate prevention and response measures and promoting their well-being, which means doing everything possible to identify and address risks and to prevent any kind of harm or abuse from happening, as well as offering the best conditions for a player's future. Child protection is evidently an essential part of safeguarding.

592 CAS 2014/A/3813, Real Federación Española de Fútbol v. FIFA.

Before the November 2022 reform, the safeguarding concepts for the international transfer of minors in the Regulations were limited to the specific scenarios covered by article 19 paragraph 2 b) which, as explained above, allows players between 16 and 18 years of age to transfer internationally, subject to certain conditions being met

In this context, the corresponding amendments in relation to safeguarding, which are captured in article 19 paragraph 8, are based on the fundamental premise that all minor players must be properly looked after and must be safeguarded as far as possible and that protecting the welfare of young players against exploitation and mistreatment is paramount.

In this respect, article 19 paragraph 8 introduces general and dedicated protection and safeguarding requirements for clubs which register minors following a national transfer, an international transfer or a first registration, in that they:

- owe a duty of care to the minor. In this context, clubs are required to exercise a reasonable standard of care when engaging in activities that may foreseeably cause harm to others and clubs must act with prudence and vigilance towards minor players to avoid any foreseeable risk of harm
- take any reasonable measures to protect and safeguard the minor from any possible abuse. To this end, it is recommended that all players should have access to a reliable point of contact at all times within the club and that such persons complete the FIFA Safeguarding in Sport educational programme, which is a 90-minute online and free education tool available at https://safeguardinginsport.fifa.com; and
- ensure that the minor is provided with an opportunity to obtain an academic education (according to the highest national standards) that allows them to pursue a career other than football. This requirement has been introduced given that it has been deemed of the utmost importance that players should be given the chance to pursue a solid dual education (in football and in academic or vocational subjects) in order to be better prepared for the future. In this regard, it is worth highlighting that although clubs are not required to present documentary evidence that the player has actually been enrolled in a school or academic institution (unless explicitly required by the Regulations as is the case in article 19 paragraph 2 b) ii.), it is expected that clubs keep records of all actions undertaken to make sure that the minor has the chance to obtain a solid and suitable education in order to be in a better position to face a future away from football, where relevant.

3. Relevant jurisprudence

CAS awards

Strict application of the provisions on the protection of minors

1. CAS 2005/A/955, Cádiz C.F. SAD v. FIFA and Asociación Paraguaya de Fútbol and CAS 2005/A/956, Carlos Javier Acuña Caballero v. FIFA and Asociación Paraguaya de Fútbol.
2. CAS 2011/A/2354, E. v. FIFA.
3. CAS 2014/A/3611, Real Madrid FC v. Fédération Internationale de Football Association (FIFA).
4. CAS 2015/A/4312, John Kenneth Hilton v. FIFA.
5. CAS 2017/A/5244, Oscar Bobb & Associação Juvenil Escola de Futebol Hernâni Gonçalves v. FIFA.
6. TAS 2020/A/7116, Jerome Ow c. FIFA.
7. CAS 2020/A/7150, Ryoga Fujita v. FIFA.
8. TAS 2020/A/7374, Isaac Korankye Obeng c. FIFA.
9. CAS 2020/A/7503, R.N.C. v. FIFA.

Exhaustive list of exceptions

1. CAS 2011/A/2354, E. v. FIFA.
2. CAS 2015/A/4312, John Kenneth Hilton v. FIFA.
3. CAS 2013/A/3140, A. v. Club Atlético de Madrid SAD & Real Federación Española de Fútbol & FIFA.
4. CAS 2017/A/5244, Oscar Bobb & Associação Juvenil Escola de Futebol Hernâni Gonçalves v. FIFA.

Legitimacy of the provisions on the protection of minors

1. CAS 2005/A/955, Cádiz C.F. SAD v. FIFA and Asociación Paraguaya de Fútbol and CAS 2005/A/956, Carlos Javier Acuña Caballero v. FIFA and Asociación Paraguaya de Fútbol.
2. CAS 2008/A/1485, FC Midtjylland A/S v. FIFA.
3. CAS 2014/A/3813, Real Federación Española de Fútbol v. FIFA.

Parents move for reasons not linked to football

1. CAS 2011/A/2354, E. v. FIFA.
2. CAS 2011/A/2494, FC Girondins de Bordeaux v. FIFA.
3. CAS 2013/A/3140, A. v. Atlético Madrid & RFEF & FIFA.
4. CAS 2015/A/4178, Zohran Ludovic Bassong & RSC Anderlecht v. FIFA.
5. CAS 2015/A/4312, John Kenneth Hilton v. FIFA.
6. CAS 2017/A/5244, Oscar Bobb & Associação Juvenil Escola de Futebol Hernâni Gonçalves v. FIFA.
7. TAS 2020/A/7116, Jerome Ow c. FIFA.
8. CAS 2020/A/7150, Ryoga Fujita v. FIFA.
9. TAS 2020/A/7374, Isaac Korankye Obeng c. FIFA.
10. CAS 2020/A/7503, R.N.C. v. FIFA.
11. CAS 2021/A/7807, Sport Lisboa e Benfica v. FIFA.

Extended application of EU/EEA exception

1. CAS 2011/A/2494, FC Girondins de Bordeaux v. FIFA.
2. CAS 2012/A/2862, FC Girondins de Bordeaux v. FIFA.
3. CAS 2016/A/4903, Club Atlético Vélez Sarsfield v. The FA, Manchester City FC & FIFA.

Disciplinary aspects

1. CAS 2014/A/3793, Fútbol Club Barcelona v. FIFA.
2. CAS 2014/A/3813, Real Federación Española de Fútbol v. FIFA.
3. CAS 2016/A/4785, Real Madrid Club de Fútbol v. FIFA.
4. CAS 2016/A/4805, Club Atlético de Madrid SAD v. FIFA.
5. CAS 2019/A/6301, Chelsea Football Club Limited v. FIFA.

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ARTICLE 19BIS – REGISTRATION AND REPORTING OF MINORS AT ACADEMIES

1. Clubs that operate an academy (within their own structure and/or through a separate entity with legal, financial or de facto links to the club) are obliged to report all minors who attend the academy (registered with the club or not) to the association with which the club concerned is affiliated. When an academy is operated outside the territory of the club's respective association, the reporting shall be made by the club to the association on whose territory the academy operates.

2. Each association shall request all academies without legal, financial or de facto links to a club (private academies) operating on its territory to report all minors who attend the academy to the association. Each association shall report any wrongdoing occurring at private academies of which it becomes aware to the relevant authorities, taking all necessary measures to protect and safeguard minors from potential abuse.

3. Each association shall keep a register of players, comprising at least the following information: full name (first, middle and last names), nationality, date of birth, country of origin (or previous country of domicile), agent (if any) and club operating the respective academy, regarding the minors who have been reported to it by clubs or academies..

4. A club that wishes to collaborate with a private academy shall:

   i. report such collaboration to the association with which the club is affiliated;

   ii. ensure that the private academy reports its players to the association where the academy operates;

   iii. before entering into a contract with a private academy, ensure that the private academy takes proper measures to protect and safeguard minors; and

   iv. report any wrongdoing of which it may become aware to the relevant authorities, taking all necessary measures to protect and safeguard minors from potential abuse.

5. 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.

6. Associations shall report to FIFA each minor that attends an academy within the territory they govern where the minor:

   i. is not a national of the country where the association is domiciled; and

   ii. has not lived continuously for at least the last five years in that country.

   Such reports shall contain a *prima facie* assessment of whether the minor meets the requirements of article 19.

7. Any violations of this provision will be sanctioned by the Disciplinary Committee in accordance with the FIFA Disciplinary Code.

1. Purpose and scope

A. GENERAL REMARKS

Article 19bis, which was introduced in October 2009,[593] concerns minor players who join a football academy (which may or may not be linked to a club), without, however, 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.

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, often with a view to registering them when they reach the age of 18, with no need for additional approval. However, the welfare of these minor players could not be ensured in all cases.

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.[594]

593 Circular no. 1190 of 20 May 2009.
594 CAS 2014/A/3793, Fútbol Club Barcelona v. FIFA; in CAS 2016/A/4785, Real Madrid Club de Fútbol v. FIFA.

Article 19bis is another provision that was significantly strengthened in the November 2022 reform of the rules pertaining to minors, which aimed to avoid ambiguity, strengthen the protection of minors, and enhance reporting requirements. The following are the key elements of these amendments:

First, the amendments clarify that clubs that operate an academy through their own structure or through a separate entity must report all minors attending the academy to the member association to which the club is affiliated, and if the academy is operated outside the territory of the club's respective member association, the report made by the club must be to the member association upon whose territory the academy operates;

Second, they clarify that member associations must request reports from all academies operating on their territories *without* legal, financial or *de facto* links to a club to report on the minors who attend the academy (regardless of whether the minor is a national or foreigner);

Third, they require member associations to keep a register of minors attending an academy, with specific additional details;

Fourth, they oblige clubs that enter into cooperation agreements with private academies to report such collaboration to their member association; they require the private academy to report its players to the member association on whose territory it operates. Clubs must ensure that this private academy takes proper measures to safeguard minors and they must report any wrongdoing to the authorities immediately.

B. 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".[595]

The definition of an academy in the Regulations[596] 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.

595 CAS 2016/A/4805, Club Atlético de Madrid SAD v. FIFA.
596 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."

- 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.

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.

Moreover, the Regulations distinguish between two types of academies:

- Academies that are operated by a club within their own structure and/or through a separate entity with legal, financial or *de facto* links to the club; and
- Academies without a legal, financial or *de facto* link to a club, colloquially known as "private academies".

2. The substance of the rule

A. OBLIGATION TO REPORT MINORS TO MEMBER ASSOCIATIONS

Regardless of whether a player is registered with a club, all minor players (regardless of whether the minor is a national or foreigner) attending an academy must be reported by the club to the member association in the territory where the academy operates, whether that academy is operated within the club's structure and/or through a separate entity with legal, financial or *de facto* links to the club.

When a club operates an academy outside the territory of the club's respective association, the report shall be made by the club to the association on whose territory the academy operates. Since it is relatively common for large clubs to 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.

Article 19bis does not specify exactly how a club must report minors. However, CAS 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.[597] 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.

597 CAS 2016/A/4785, Real Madrid Club de Fútbol v. FIFA.

As CAS has confirmed,[598] 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.[599] 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".[600]

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.

B. OBLIGATIONS IN RESPECT OF PRIVATE ACADEMIES

Alongside the 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. Regrettably, there has been a tendency, seemingly fuelled by the rise of private academies, under which minor players are internationally "transferred" under the radar, circumventing FIFA's principle of transparency, by using private academies as vehicles for such "transfers". Since such private academies operate outside organised football, FIFA's capacity to regulate their activities remains limited.

However, as the world governing body of football, FIFA has a responsibility also towards young players attending academies of this kind. The recently introduced reporting mechanisms will give FIFA the maximum insight possible into the operation of academies, so that abuse can be identified and, where appropriate, sanctioned.

i. Obligations for member associations in respect of private academies

The Regulations impose an obligation on member associations to request reports from all academies operating on their territories without legal, financial or *de facto* links to a club to report on the minors who attend the academy (regardless of whether the minor is a national or foreigner).

598 CAS 2014/A/3793, Fútbol Club Barcelona v. FIFA.
599 For the avoidance of doubt, there can be many minor players who are registered for a club, without being enrolled in an academy of that same club. These are not covered by the scope of article 19bis, and their circumstances are to be assessed solely in light of article 19.
600 CAS 2016/A/4785, Real Madrid Club de Fútbol v. FIFA, confirming the findings in CAS 2014/A/3793, Fútbol Club Barcelona v. FIFA.

Moreover, member associations must report to the relevant authorities any wrongdoing of private academies they may become aware of, as well as take any available measures to protect and safeguard minors from potential abuses.

ii. Obligations for clubs in respect of private academies

In order to increase safeguarding and transparency, the Regulations impose obligations on clubs wishing to collaborate with a private academy. In this respect, as a first step, clubs are obliged to report a collaboration with a private academy to the member association with which the relevant club is affiliated.

Given that the protection of minors is paramount and a fundamental principle embedded in the Regulations, any club that wishes to collaborate with a private academy must ensure that the private academy complies with its reporting duty of its minor players to the member association where the academy operates. Moreover, before entering into a contract with a private academy, a club has the obligation to ensure that the private academy takes proper measures to protect and safeguard minors.

If the club becomes aware of any wrongdoing by the private academy, the club has the obligation to report such wrongdoing to the relevant authorities. In this situation, and in order to protect minors from potential abuse, the club must also take any available measures to safeguard minors.

C. MINIMUM DETAILS TO BE PROVIDED

Member associations are required to keep a register including, as a minimum, the full names (first, middle and last names), dates of birth, nationalities, their country of origin or previous country of domicile, and agent's involvement (if any) of all the minors who have been reported to them by the clubs or academies. This represents the minimum level of detail clubs or private academies must provide.

D. 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 essentially 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.

E. 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 is a foreigner and has not lived continuously for at least the last five years in the country where the member association is located, the member association must report the minor to FIFA and assess on a *prima facie* basis whether the minor meets the requirements of article 19 of the RSTP or not. In principle, a foreign player under 18 may only attend an academy if their circumstances satisfy one of the exceptions for the international transfer of minors or the five-year rule.

F. ENFORCEMENT

To ensure effective enforcement, the FIFA Disciplinary Committee remains competent to impose sanctions for any violations of article 19bis of the Regulations. In this regard, it is highly recommended that associations and clubs keep a record of all communications and actions undertaken in order to comply with the obligations established in article 19bis of the RSTP.

3. Relevant jurisprudence

CAS awards

1. CAS 2014/A/3793, Fútbol Club Barcelona v. FIFA.
2. CAS 2016/A/4785, Real Madrid Club de Fútbol v. FIFA.
3. CAS 2016/A/4805, Club Atlético de Madrid SAD v. FIFA.
4. CAS 2019/A/6301, Chelsea FC v. FIFA.

ARTICLE 19TER – TRIALS

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ARTICLE 19TER – TRIALS

General conditions for all triallists

1. A club may invite a player to trial with it for a defined period of time. A professional (within the meaning of art. 2 herein) may only trial with another club with the express written permission of their current club.

2. The club and the invited player shall agree on the conditions of the trial (e.g. payment for accommodation, travel, meals and daily expenses) on the FIFA Trial Form before the trial commences. A complete and duly signed FIFA Trial Form must be lodged in FIFA TMS by the club at the latest ten days before the trial commences.

3. During a trial, the club owes a duty of care to the triallist. In particular, the club shall provide the triallist with, and cover the cost of, any necessary medical treatment for injuries sustained while performing activities within the trial.

4. The maximum duration of a trial for players aged 21 and below shall be eight weeks, consecutive or non-consecutive, per club in any one season. The maximum duration of a trial for players over the age of 21 shall be three weeks, consecutive or non-consecutive, per club in any one season.

5. A player on trial is only permitted to participate in friendly matches and any activity that does not fall within the scope of organised football. Such friendly matches must take place during the duration of the relevant trial.

6. Any person subject to the FIFA Statutes is prohibited from requesting, offering, and/ or receiving any payment whatsoever connected to a trial, without prejudice to the agreement between the club and the triallist on the conditions of the trial, according to paragraph 2 above.

7. Clubs having a player on trial are not entitled to receive training rewards for the period during which a player is on trial with that club.

Conditions specific to minor triallists

8. In addition to the general conditions, a minor may only trial with a club provided that:

    a) the date the trial period begins occurs during the season of:

        i. the minor triallist's 16th birthday; or

        ii. the minor triallist's 15th birthday if both the minor's and the club's domicile are located in Europe;

b) the club obtains express written permission from the minor triallist's parents;

c) the club designates an employee within the club to be the point of contact for the minor triallist;

d) the club ensures that the minor triallist is provided with optimum accommodation and living standards and adequate coverage of expenses; and

e) for amateur minor players below the age of 16, the current club of the minor is informed of the trial and provided with the complete and duly signed FIFA Trial Form.

9. A minor may only attend two trials per calendar year, each of them subject to the maximum duration stipulated in article 19ter paragraph 4.

Other matters

10. Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level, in accordance with national law, may deviate from the minimum standards stipulated above and/or establish additional conditions when a player may leave his current club to attend a trial.

Sanctions

11. Any failure to fulfil a condition agreed in a FIFA Trial Form or to upload a complete and duly signed FIFA Trial Form and/or any violation of this provision will be sanctioned by the Disciplinary Committee in accordance with the FIFA Disciplinary Code. In such proceedings, both the triallist and the club concerned will have the procedural status of a party before the Disciplinary Committee.

1. Purpose and scope

A. GENERAL REMARKS

Despite its importance in the football ecosystem, the concept of a trial remained absent from the Regulations (with two minor passing references) until November 2022. This created uncertainty about the rights, obligations and duties of clubs, players and member associations with respect to trials with an international dimension.

The regulation of the concept of trials is all the more important when one considers that a trial is often a minor's first step into the world of organised football or, alternatively, is the way they showcase their talent prior to commencing a professional career.

To increase legal certainty and to provide regulatory protection against exploitation and abuse, FIFA, after discussions with its stakeholders, introduced its first specific regulatory framework governing trials in November 2022. These rules are split into two categories – general rules pertaining to trials and specific rules pertaining to the trial of minors.

B. SCOPE OF APPLICATION

The regulatory framework that has been implemented is applicable to international trials, in other words, article 19ter, Regulations regulates cross-border trials. An international trial is understood as the movement of a player for a trial with a club which is domiciled in a different member association to the one where the player is domiciled. Therefore, as a principle, the key aspect in order to determine the international dimension of a trial would be the place (country) of residence of the player invited to trial and the domicile (country) of the club that invites the said player to trial, rather than the nationality of the triallist/club.

Considering that one of the underlying reasons behind the regulation of international trials is the understanding that a triallist is "moving" abroad (albeit for a temporary period), as opposed to travelling back and forth, for a trial, if a player continues to live at home during the trial, such trial would be considered a domestic one, including in cases where the player is domiciled in a different country from the club that invited the said player to trial. If the triallist continues to live at home, the risk of the player being uprooted because of the trial is greatly reduced.

With this in mind, generally speaking, if: 1) the player invited to trial lives no more than 50 kilometres from the national border concerned; 2) the club that invited the minor on trial is located no more than 50 kilometres from that border; and 3) the player continues to live at home, the situation described could – from a regulatory perspective – be considered to be a domestic trial.

However, it is important to note that as a consequence of this not being considered an international trial, the regulatory framework for international trials would not be applicable and the triallist and the club cannot benefit from the regulatory framework implemented in article 19ter, Regulations. For example, the triallist (not registered with the club) would not be permitted to participate in friendly matches.

2. The substance of the rule

A. DEFINITION

The starting point for the new regulatory framework is the definition of a "trial". A trial is defined as "a temporary period during which a player that is not registered with a club is evaluated by that club".[601]

This reflects the purpose of a trial – for a club to assess, over a short period, the skills and character of a player – with a view to potentially registering that player for the club in the future. In this respect, a trial neither creates an employment relationship between the club and triallist, nor does it grant professional status (cf. art. 2 par. 2) to the triallist.

Since the trial definition takes into consideration that the underlying rationale of a trial is for a club to *evaluate* a player during a temporary period during which the said player is not registered with it, a scenario where a player is temporarily participating in training sessions merely for recreational purposes or to maintain a level of fitness with a club, would in principle not be considered a trial if the skills and character of a player are not assessed by the club. That being said, the competent decision-making bodies of FIFA will always have to analyse the specific circumstances of each case and will evaluate them accordingly. Criteria that would be taken into account include, for example, whether there are any indications that the player was nevertheless evaluated during this period, what exactly the reasons were of the temporary participation in training, if there is a genuine explanation why the player is staying at the club for such a short time (other than being evaluated), if a contract was offered after the player's stay with the club and/or if there are indications that applicable rules were circumvented, and so on.

In case of doubt, if a club wants to avoid any risk of breaching article 19ter, Regulations, completing the procedure for a formal trial would remedy this risk, provided, of course, that all requirements under the regulatory framework are fulfilled.

B. GENERAL CONDITIONS FOR ALL TRIALLISTS

The new regulatory framework provides seven general conditions which govern the international trial of a player.

A player may be invited by a club for a trial

Article 19ter paragraph 1 provides that a trial follows on from an *invitation* from a club to a player to trial for a defined period. In other words, indefinite trials are not permitted. A triallist may be amateur or professional; given that a professional going on trial would be subject to a written contract

601 Definition 32, Regulations.

with a club, they may only undertake a trial with another club with the express written permission of their current club. In this respect, there is no obligation for a club to seek the permission of an amateur player's current club before they take the player on trial.

Agreement between the parties on the conditions of the trial – FIFA Trial Form

Article 19ter paragraph 2 requires all of the conditions of the trial to be agreed in advance of the trial. This includes payment for accommodation, travel, meals and daily expenses, as well as any other conditions not anticipated in the Regulations. Given that the parties must give form to their agreement, such conditions must be agreed and signed by the club and player on the FIFA Trial Form (available to download from legal.fifa.com).

If the parties agree that the club is responsible for the payment of any of these conditions, then the parties must agree on the total amount for the duration of the trial (and not per day) for each of the conditions. The FIFA Trial Form must be lodged in FIFA TMS by the club no later than ten days before the trial commences. This provides certainty for the parties to the trial, and clarity in case of any dispute.

Duty of care – medical treatment

As mentioned above, a professional under contract with a club is allowed to undertake a trial with another club, provided that the written permission of the player's current club is duly obtained. In such case, the written consent from the current club must be uploaded in TMS, together with the FIFA Trial Form.

Article 19ter paragraph 3 states that the club owes any triallist a duty of care, and, in this context, must provide and cover the cost of necessary medical treatment for injuries sustained while on trial. This was introduced into the regulatory framework as a safeguarding provision and does not mean there is an obligation to enter into an injury insurance policy for a triallist player. However such insurance may be taken out to cover the cost of any necessary medical treatment for injuries which occur while performing activities within the scope of the trial. In this regard, it is ultimately up to each club to determine whether it wants to take out an injury insurance policy for a triallist player or assume the risk of the possible financial consequences directly itself, taking into consideration that the essential requirement is

that the relevant costs are ultimately covered and that there is no financial exposure for a triallist.

Maximum duration of a trial

Article 19ter paragraph 4 governs the maximum length of a trial. For players aged 21 and below, the limitation is set at eight weeks per club per season, and for players over the age of 21, the limitation is set at three weeks per club per season. By way of example, a 19-year-old amateur may go on trial at a professional club for six weeks during the summer break, return to their amateur team for the first half of the season, and subsequently return to the same club on trial at a later stage. This second trial is capped at two weeks – having cumulatively reached the maximum length of eight weeks on trial with that particular club during the season. There is no limitation on the number of trials that an adult may take during the season as long as the maximum length per club is respected. Moreover, the "relevant season" is the playing season of the club that invited the player on trial. It is pertinent to note that a trial does not need to commence, nor is it linked to a registration period given that no registration occurs and no ITC is issued.

Type of matches in which a player can participate during a trial

Article 19ter paragraph 5 reflects the existing (and updated) rule in article 9 that an ITC is not required for a player on trial, as a player on trial is only permitted to participate in friendly matches and activities that do not fall within the scope of organised football. Such friendly matches must take place during the duration of the relevant trial. For the purposes of article 19ter, a friendly match can generally be understood as any match that does not form part of an official competition of FIFA, a confederation, a member association or a league affiliated to a member association. In this regard, subject to specific rules existing at national level, matches in national league championships and national cup competitions, as well as matches in international club competitions (which form part of the official competitions of FIFA or a confederation), would generally not qualify as friendly matches.

Prohibition on requesting, offering and/or receiving payment connected to a trial

Article 19ter paragraph 6 prohibits any payments with respect to trials, whether to the player, the current club of a professional or a football agent. The only exception is the conditions agreed on the FIFA Trial Form.

Clubs are not entitled to receive training rewards for trials

Similarly, article 19ter paragraph 7 explicitly confirms that no training rewards are due for the period when a player goes on trial. In this respect,

a trial period should not be listed on the player passport or EPP of a player that transfers internationally, as no registration has occurred for the purposes of the trial. The entitlement to receive training rewards is, and remains, with the club where the player is registered.

C. CONDITIONS SPECIFIC TO MINOR TRIALLISTS

Minors find themselves in a much more vulnerable position than adults, as such, more stringent safeguarding mechanisms are needed to protect them. To help combat child trafficking, prevent mistreatment and abuse of minor players, avoid circumvention of the rules and provide stronger accountability, specific conditions for minor triallists were inserted in addition to the general conditions.

Minimum age for international trials

A minor may only trial with a club internationally if the date of the trial period begins during the season of the minor's 16th birthday (generally), or if the minor and the club are both located in Europe, the season of the minor's 15th birthday. In this respect, "Europe" means the minor and club(s) are all affiliated to a member association of UEFA.

Additional requirements for trials concerning minors

In addition to this age limitation, the club which invites the minor to go on trial must:

i. obtain express written permission from the minor's parents, which must be uploaded, together with the FIFA Trial Form;

ii. designate an employee within the club as the point of contact. The full name and contact details of the designated employee within the club to be the point of contact for the minor trialist must be specified in the FIFA Trial Form;

iii. ensure the minor is provided with optimum accommodation and living standards, and their expenses are covered. It must be stressed that, in order to protect young players, these conditions may not be negotiated; and

iv. in the case of an amateur player below the age of 16, explicitly inform their current club of the trial and provide them with a copy of the FIFA Trial Form.

These are the minimum standards expected of clubs that take minors on trial internationally. In practice, clubs should go above and beyond to ensure that they meet their safeguarding obligations and satisfy their duty of care to minors that are on trial.

Article 19ter paragraph 9 limits a minor to attending two trials per calendar year. In effect, this means that a minor may only go on trial internationally for a maximum of 16 weeks per calendar year, given the maximum length is eight weeks per club.

D. OTHER MATTERS AND SANCTIONS

The Regulations provide primacy to collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level over the new regulatory framework. However, for the sake of clarity, no deviation is possible, for example, from the minimum age in respect to international trials, the type of matches that a player can participate in during a trial, the fact that clubs are not entitled to receive training rewards for having a player on trial and so on.

The Regulations also provide that the FIFA Disciplinary Committee is competent to sanction any failure to fulfil a condition agreed in a FIFA Trial Form or to upload a complete and duly signed FIFA Trial Form and/or any violation of article 19ter. Considering that no employment relationship exists between a triallist and club, the DRC does not have jurisdiction to deal with any (financial) dispute deriving from a trial. In such cases before the FIFA Disciplinary Committee, article 19ter awards both the triallist and the club concerned the procedural status of a party to ensure that all their rights can be adequately protected.

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 CJEU. This formed a pillar of the March 2001 agreement and was confirmed in the CJEU decision in "Bernard" in 2010.[602]

Following the approval of the regulations by the FIFA Council in October 2022, the FCH began operating on 16 November 2022, with an initial focus on the centralisation, processing and automation of payments between clubs relating to training compensation and solidarity contributions (jointly referred to as "training rewards"), as well as on the promotion of financial transparency and integrity within the international transfer system.

The advent of the FCH project has led to training reward triggers being automatically identified by the integrated systems, processed through the EPP procedure[603] and, after a due diligence and compliance assessment carried out by the independent FCH entity, the amounts being directly distributed to the training clubs, guaranteeing they receive their fair share for the education and training of the player.

While the substantial rules described have remained almost untouched, the process to identify and distribute training rewards entitlements has changed fundamentally with the go-live of the FCH in November 2022.

Any payment of training compensation or solidarity contributions within the regulatory framework of FIFA in accordance with the Regulations, and arising from a training rewards trigger occurring as from 16 November 2022, will be automatically processed through the FCH.

It is worth noting that transfers or registrations of players having occurred before the go-live of the FCH (even if possible instalments of the respective payments related to these transfers or registrations fall due after 16 November 2023) will be paid and processed via the "traditional" claims system.

Finally, it is worth reiterating that the objective of the FCH is to centralise, process and automate payments between clubs, as a first step in relation to training rewards payments and with the vision of potentially expanding to other types of fees or payments in the future.

602 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 judgment point 39 and the pertinent reference to the "Bosman" ruling.

603 For further information on the EPP, see the section of the Commentary in relation to article 7.

ARTICLE 20 – TRAINING COMPENSATION

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ARTICLE 20 – TRAINING COMPENSATION

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.

1. Purpose and scope

A. GENERAL REMARKS

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 as, in principle, they are benefiting from the training and education provided by those training clubs.

Article 20, Regulations 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.

B. WOMEN'S FOOTBALL

The last sentence of article 20, Regulations came into force on 1 January 2018. It concerns the non-application of the training compensation system to women's football.[604]

This non-application is based primarily on a decision by the DRC in 2011[605] 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.[606] 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".[607]

604 Circular no. 1603 of 24 November 2017.
605 DRC decision of 7 April 2011, no. 411375.
606 DRC decision of 7 April 2011, no. 411375; DRC decision of 5 November 2015, no. 11150999.
607 DRC decision of 7 April 2011, no. 411375.

No similar amendment was included regarding the solidarity mechanism. For the avoidance of doubt, the principles of the solidarity mechanism do apply to women's football.

2. Relevant jurisprudence

DRC decisions

1. DRC decision of 7 April 2011, no. 411375.
2. DRC decision of 5 November 2015, no. 11150999.

CAS award

1. CAS 2016/A/4598, WFC Spartak Subotica v. FC Barcelona.

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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. Purpose and scope

Article 1 of Annexe 4 determines the key parameters for calculating training compensation, as it determines – primarily – the ages at which training of a player is deemed to take place, and the age until which training compensation is payable.

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.

2. Substance of the rule

A. TRAINING PERIOD

Although article 20, Regulations 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.[608]

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 their 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

608 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.

which they celebrated their 18th to 22nd birthdays and, prior to the calendar year of their 23rd birthday, the 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.[609]

If a player has 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 mere fact that a player has signed a first professional contract 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 least, the U-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 generally does not 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.[610]

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.

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.

609 DRC decision of 19 September 2019, no. 09192966-E; DRC decision of 22 June 2019, no. 06190545-E.

610 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 (Daushvili); 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.; CAS 2019/A/6096, FC Lugano SA v. FC Internationale Milano S.p.A. One of the few DRC decisions where the termination of training was proven was DRC decision of 12 March 2012, no. 3121474.

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, 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.

3. Relevant jurisprudence

DRC decisions

1. DRC decision of 12 March 2012, no. 3121474.
2. DRC decision of 22 June 2019, no. 06190545-E.
3. DRC decision of 19 September 2019, no. 09192966-E.

CAS awards

1. CAS 2019/A/6096, FC Lugano SA v. FC Internazionale Milano S.p.A.
2. CAS 2018/A/5513, Sport Club Internacional v. Hellas Verona Football Club S.p.A.

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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.

3. For cases governed by the FIFA Clearing House Regulations, payment of training compensation shall be made in accordance with the FIFA Clearing House Regulations.

1. Purpose and scope

Article 2 of Annexe 4 determines the situations in which training compensation becomes payable. 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 than that of their current club); or
- A professional is transferred between clubs affiliated to different member associations (whether during or at the end of their contract) before the end of the calendar year of their 23rd birthday.

In addition, the Regulations list three specific events after which no training compensation is due.

2. The substance of the rule

A. EVENTS TRIGGERING AN ENTITLEMENT TO TRAINING COMPENSATION

a. 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).[611]

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.[612] 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 relevant national regulations. It is to be noted that each member association should have put in place, within their respective national regulations, a system to reward clubs affiliated to the relevant association investing in the training and education of young players (cf. art. 1 par. 2, Regulations).[613]

It is thus important to establish exactly what the criteria are for determining whether a player has acquired professional status, so that training compensation becomes 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, Regulations 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.

611 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.
612 DRC decision of 23 October 2019, no. 10190558-FR.
613 For further information on this topic, see the section of the Commentary relating to article 1.

b. 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.

According to case law,[614] 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.

Nevertheless, the inclusion of training compensation in the agreed transfer compensation is limited to the training compensation entitlement of the former club, without any effect on the potential entitlement of other training clubs in the context of the "loan" jurisprudence.[615]

c. 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.

a. Club terminates the contract with the player without just cause

The first event after which no training compensation is due is where the player's former club terminates the player's contract without just cause.[616] 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, Regulations, if a player terminates their contract with their former club with just cause, this situation should be treated as if the club

614 DRC decision of 26 September 2019, no. 09191934-E; CAS 2004/A/785, Strømsgodset IF Toppfotball v. Liebherr GAK; DRC decision of 12 April 2021 Cerqueira Paim.
615 DRC decision of 4 August 2022, Faustino de Melo.
616 DRC decision of 16 October 2014, no. 1014311.

had terminated the contract without just cause. This means that if a player terminates their contract with just cause due to their 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 (for those cases that will still be handled under the "traditional" claims system).[617]

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.

b. Transfer to a category IV club

The second scenario in which no training compensation falls due 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. Many clubs in this category are purely amateur clubs, so it would be overly burdensome if they were obliged to pay training compensation for a player joining the club.

Over the years, this has proved a tempting vehicle for those attempting to circumvent the obligation to pay training compensation, as set out in those parts of the Commentary covering bridge transfers. Clubs may be tempted to artificially engineer a first transfer of a player to a category IV club (to avoid the obligation to pay training compensation), only to then transfer the player onwards quickly, to the real club of destination.

In the existing jurisprudence on such scenarios,[618] the following factors have been considered as evidence of of circumvention attempts:

- the player only stayed with the category IV club for a short period of time;
- the player did not appear for the category IV club before they joined the higher category club;

617 DRC decision of 13 November 2020, Pitta Saldivar, 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.

618 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.

- the player had already signed a contract/taken part in training sessions with a higher category club before they were transferred to the category IV club;
- 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 obliged to pay the pertinent amount of training compensation.[619]

c. 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 go on 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 grassroots 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.[620] 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 make 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. As to the temporal requirements of this article, it is considered that the end of the professional activity of a player occurs at the end of their registration as professional with their last club, even if the player does not register as an amateur straight away. The end of the professional activity marks the start of the 30-month period of reference. The 30-month period foreseen by this article should not be confused with the 30-month period foreseen by article 4, Regulations, the latter only applying to cases where a player ends their career and/or football activity.

619 CAS 2011/A/2544, FK Ventspils v. FC Stefan del Mare.
620 Article 3 paragraph 2, Regulations.

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 – no later than the calendar year of their 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, Regulations applies. Equally, should the last club where the player was registered (i.e. the former club) and the new club re-registering the player as professional both be affiliated to member associations based in the EU and/or EEA, the provisions of article 6 paragraph 3 of Annexe 4, Regulations (and the jurisprudence developed by the DRC and CAS in this respect) vis-à-vis the contract offer requirement(s) would also apply. This recognition concurs with the *ratio legis* of the training rewards system.

On the other hand, there does not seem to be 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, Regulations (to which art. 3 par. 2, Regulations 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. In its interpretation of article 3 paragraph 2, Regulations, CAS also confirmed that the last club where the player was registered as professional would not be entitled to training compensation.[621]

3. Relevant jurisprudence

DRC decisions

Circumvention of the rules on training compensation

1. 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

1. DRC decision of 16 October 2014, no. 1014311.
2. DRC decision of 13 November 2020, Pitta Saldivar.

Training compensation is included in the transfer compensation unless expressly agreed otherwise

1. DRC decision of 12 April 2021, Cerqueira Paim.
2. DRC decision of 4 August 2022, Faustino de Melo.

621 CAS 2021/A/7858, Association Omnisport Centre Mbérie Sportif v. Union Sportive Tataouine.

CAS awards

Acquisition of professional status

1. 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.
2. TAS 2015/A/4060, Club Jorge Wilstermann v. Argentinos Juniors.
3. CAS 2015/A/4148 & 4149 & 4150, Sheffield Wednesday FC v. Louletano Desportos Clube & Internacional Clube de Almancil & Associação Académica de Coimbra.
4. CAS 2020/A/7029, Association Sportive Guidars FC v. CSKA Moscow & Lassana N'Diaye.
5. CAS 2021/A/7858, Association Omnisport Centre Mbérie Sportif v. Union Sportive Tataouine.

Training compensation is not due if the former club terminates the player's contract without just cause

1. CAS 2009/A/1757, MTK Budapest v. FC Internazionale Milano S.p.A. (Filkor).
2. CAS 2011/A/2544, FK Ventspils v. FC Stefan del Mare.
3. CAS 2014/A/3553, FC Karpaty Lviv v. FC Zestafoni (Daushvili).
4. CAS 2016/A/4597, SC FC Steaua Bucuresti v. FC Internazionale Milano SpA.
5. CAS 2016/A/4603, SC Dinamo 1948 v. FC Internazionale Milano SpA.
6. 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. Purpose and scope

This article provides the key principles concerning the responsibility of clubs to pay, and the ability of clubs to receive, training compensation.

According to these principles, 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 their 12th and 21st birthdays is only entitled to receive training compensation *once*, if at all.

Training compensation must be paid within 30 days of the registration with the new club.

Finally, the article provides that, under very specific conditions, a member association may be entitled to receive training compensation.

For transfers that occurred as from 16 November 2022, the distribution of training compensation will be processed through the FCH.

2. The substance of the rule

A. TWO DIFFERENT SCENARIOS

a. 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) with which they were registered in the calendar year of their 12th birthday. The Regulations assume that if a player was registered with a given club, they will have received training and education from that club. 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 player had *de facto* left the club (in particular by virtue of living in another country), then no training compensation will be awarded for that period of the player's career.[622]

The amount payable in training compensation is calculated on a *pro rata* basis according to the period the player spent with each training club.[623] 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 ten 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 ten days would get nothing. In its more recent jurisprudence (already going back a few years), the DRC is now calculating the amount of training compensation due to the nearest day, and both clubs in that scenario would receive training compensation, in strict application of the wording of this article. If and when a player is registered with the former club and the new club on the same day, this day will not be split in two considering that a player may only be registered with one club at a time (cf. art. 5 par. 3, Regulations), and the player will be deemed to have ended their registration with the former club on the previous day of their transfer to the new club.

622 DRC decision of 29 April 2021, Juwara.

623 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 birthdays), two seasons by club X (seasons of his 14th and 15th birthdays) and three seasons by club A (seasons of his 16th, 17th and 18th birthdays). Club B will be responsible for the payment of training compensation to the clubs Z, X and A for the respective periods of training.

b. 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 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.[624] 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, as already mentioned, 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.

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,[625] the club is free to claim training compensation for the *entire* period over which it 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.

c. 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 (and for training compensation matters governed by the FCHR,

624 CAS 2007/A/1320 and 1321, Feyenoord Rotterdam v. Clube de Regatas do Flamengo.
625 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 EPP) 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.

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.

In the case of an EPP, the process is as follows: TMS, by extracting available electronic registration information from each connected member association, automatically adds to a provisional EPP any member association which has any registration record for a given player, as well as any member association concerned by the nationality(ies) of the player. A provisional EPP remains visible for any member association and clubs for a period of ten days, and during this period any member association (on its own initiative and/or at the request of one of its affiliated clubs) may request participation in an EPP. Equally, the FIFA general secretariat may add any additional member association to a provisional EPP. In this respect, the EPP guarantees that any member association concerned by the training and education of a player is represented during an EPP process, a significant change in comparison to the regulatory framework in place prior to the existence of the FCH. For further information on the process related to an EPP, see the section of this Commentary in relation to article 7.

From a practical perspective, only the official player passport (or EPP), as issued and confirmed by the relevant member association, will be considered by the DRC in the event of any dispute. This has been consistently upheld by the DRC; clubs must do their due diligence before signing players and can only rely in good faith on player passports issued by a member association as being an accurate representation of the player's registration history.[626]

In addition, 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.However, 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".[627]

626 DRC decision of 19 August 2021, no. 082139. DRC decision of 6 November 2020, Malong.
627 TAS 2015/A/4060, Club Jorge Wilstermann v. Argentinos Juniors.

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, in the context of a claim, the DRC generally awards interest on outstanding payments starting from the 31st day following the player's registration with the new club.[628] Since the latest possible due date is the 30th day after the player's registration, the new club is considered in default from the 31st day following registration. Second, the two-year time limit in which any claim must be lodged with the DRC also begins on the 31st day following the player's registration with the new club.[629]

For cases governed by the FCHR, training compensation must be paid by the player's new club to the FCH within 30 days of being requested to do so. Failure to do so will result in a 2.5% levy being applied and a further seven days being provided to pay. Failure to pay after the second deadline will result in disciplinary action.[630]

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.

628 DRC decision of 9 September 2019, no. 09192304-ES; DRC decision of 26 September 2019, no. 09193176-ES.
629 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.
630 Article 13 paragraph 4, FCHR.

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.

3. Relevant jurisprudence

DRC decisions

Effective training and education

1. DRC decision of 29 April 2021, Juwara.

Reliance on player passports and due diligence

1. DRC decision of 19 August 2021, no. 082139.
2. DRC decision of 6 November 2020, Malong.

CAS awards

Subsequent transfer as a professional

1. CAS 2007/A/1320 and 1321, Feyenoord Rotterdam v. Clube de Regatas do Flamengo.

First professional contract with training club

1. 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

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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).

1. Purpose and scope

Article 4 provides the key principles as to how the exact amounts of training compensation are to be calculated.

To calculate the compensation due, 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. These categories are (together with the period of registration of a player) determinative to establish the exact amounts due.

2. The substance of the rule

A. CATEGORISATION OF CLUBS

Each member association must divide its affiliated clubs into a maximum of four categories.

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 the case of "Bernard", the CJEU 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.[631] In other words, the CJEU accepted the application of the player factor in its ruling.

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.

631 Olympique Lyonnais SASP v. Olivier Bernard and Newcastle UFC, Case C-325/08, European Court Reports 2010 I-02177.

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 based on FIFA circular no. 799 of 19 March 2002. 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.

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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. Purpose and scope

Article 5 of Annexe 4 further defines the exact method of calculation of the amounts of training compensation due.

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.

For the years of training occurring between a player's 12th and 15th birthdays, the amount set in category 4 of the confederation in question will always be applied.

This article also gives authority to the DRC to potentially review an amount that would be deemed disproportionate.

2. The substance of the rule

A. GENERAL RULE

The general rule provides that training compensation is generally calculated by taking the training costs which 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 their 21st birthday. The words "in principle" here indicate that a club may still 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.[632]

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.[633] 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.[634]

B. OVERLAPPING SEASONS

For transfers having occurred before 1 January 2021, the date of entry into force of the January 2021 edition of the Regulations which implemented the calculation of training rewards to be based on calendar years of a player's birthday as opposed to seasons of a player's birthday, 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). For further information on this topic, see the 2021 edition of the Commentary.[635]

632 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.
633 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.
634 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.
635 Commentary on the Regulations on the Status and Transfer of Players, edition 2021

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 level, regardless 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).[636]

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. On the one hand, 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. The burden of proof lies with the party claiming an adjustment of the amounts due.

In this respect, given the wording of the provision ("clearly disproportionate"), the DRC will only proceed to adjust the training compensation due if evidence is provided to prove unequivocally that the amount calculated based on indicative average training costs is disproportionate. Moreover, only economic aspects will be taken into consideration. Neither the player's talent, their importance to the club, the fact that 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 case. This approach has been confirmed by CAS,[637] although neither the DRC[638] nor CAS have ever actually adjusted the compensation due on the grounds that it was clearly disproportionate for an amount of training compensation considered too high.

636 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.

637 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.

638 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.

However, the DRC started to develop jurisprudence regarding the recategorisation of certain clubs that had registered professional players whilst listed by their member associations as category 4.[639] In this instance, the DRC may consider adjusting an amount of training compensation that is deemed to be too low (or in the case of a new club being listed under category 4, not existent) should it deem that (1) the DRC recognises that there is a manifest discrepancy between the category assigned to a club and the categories available in the country (i.e. there is more than only category 4 in the country of the club concerned), and (2) the claimant has provided proof that the new club is not assigned the category that corresponds to its level. In other words, the DRC, whilst remaining within the spirit of the Regulations and, in this particular case, in the spirit of the training categories system, permitted the assignment of a different category that would be available to one member association in order to reflect the true football pyramid of the said country. In doing so, the DRC applies the content of FIFA circular no. 1249, which establishes certain parameters and guidelines for national associations to categorise their clubs, states that the DRC will intervene only in cases of manifest discrepancy between the category assigned by the national association and the actual training costs of a club.

In its decision of 16 April 2021, the DRC considered that the respondent, a US club competing in the second professional division in the country, could not be considered a category 4 club. In fact, the DRC deemed that since categories 2, 3 and 4 were available to the USSF, clubs of the second professional division in the US, such as the respondent, should in principle be considered category 3.

It shall be noted that such recategorisation interferes, to a certain degree, with the powers generally conferred to the national associations by article 4 paragraph 1 of Annexe 4, Regulations to allocate categories to their clubs. In general, associations are better placed than the DRC to determine the training and education costs of their members and which categories should be allocated correspondingly. As such, the DRC applies a high threshold and a strict approach vis-à-vis the proof to be submitted by the respective party.

E. 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[640] 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.

639 DRC decision of 16 April 2021, Mason.
640 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; DRC decision of 26 February 2021, Armenakas.

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.[641]

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 their career. In this respect, the DRC has consistently held that a waiver issued by an employee of a club that may not explicitly have authority to issue the waiver based on the internal processes of the club is valid; the club that waived training compensation cannot avoid the legal consequences of the act, and the club that receives the waiver in good faith can presume the employee has the relevant authority to do so.[642]

Finally, a unilateral declaration by a training club constitutes a valid waiver. CAS has confirmed the DRC approach in this regard.[643]

CAS recently returned to the point and, while noting that there is no guidance in the Regulations on whether it is possible to waive a certain right, referred to Swiss law and CAS jurisprudence, noting that, in general, rights may be waived voluntarily unless the waiver is contrary to law, public policy or good morals. In addition, for a waiver to be valid, (i) the person renouncing a right must have the capacity/authority to do so; (ii) the waiver must be clear and unequivocal; and (iii) the person must have the right that they are renouncing.[644]

It can be emphasised that, with the introduction and the development of the FCH, a strict approach on waivers for training compensation has been followed throughout the implementation of the system. In this respect, the FCH approach provides that, for instance: waivers must be uploaded by the new club in the line of the training club(s) concerned and within the right procedural step related to the EPP review process; training clubs cannot transfer their entitlement to a third club; or the entitlement to training compensation always strictly remains with the training clubs for the time the player was registered with them.[645]

In fact, one of the main objectives of the FCHR is to promote financial transparency in the football transfer system and the FCH acts as an intermediary for the payment of training rewards in the football transfer system that fall due pursuant to the Regulations. The FCH also has the obligation and function to perform all required Compliance Assessments in the execution of the respective payments (cf. art. 1 par. 3, FCHR).

641 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.
642 DRC decision of 18 May 2021, Boruc.
643 CAS 2017/A/5277 FK Sarajevo v. KVC Westerlo.
644 CAS 2021/A/8392 PFC Lviv v. AD Guarulhos.
645 This also applies in cases where the player was loaned, i.e. no "re-assignment" of the entitlement to training compensation from the loanee club to the parent club is accepted.

The FCH therefore has a duty to ensure that, if and when required, a new club is instructed by the FCH to pay training rewards specifically and exactly to those training clubs that did indeed participate in the training and education of the player in question. Assigning such an entitlement to a third club would go against this principle. Such a circumvention could also undermine the integrity of the system, obstruct financial transparency and give rise to fraudulent conduct, which the FCH system is designed to prevent. In order to achieve the objectives of the FCH, the processes related to the EPP have been built on the basis of a strict application of the relevant provisions of the Regulations, i.e. the new club shall always pay training rewards to the training clubs *stricto sensu* (i.e. the clubs with which the player was registered, as per the career history of the player, based on the data obtained from all participating member associations).

As a consequence, in the spirit of the FCHR combined with the jurisprudence established by the DRC in this respect, a new club may only be required to pay training compensation to the relevant training club(s) and a training club shall be the only party that is in a position to waive such an entitlement vis-à-vis the new club.

3. Relevant jurisprudence

DRC decisions

Training compensation clearly disproportionate

1. DRC decision of August 2019, no. 08193815.
2. DRC decision of 19 June 2020, Danubio FC v. Extremadura UD.
3. DRC decision of 29 June 2020, Danubio FC v. Extremadura UD.
4. DRC decision of 10 December 2019, Club Alem de Villa Nueva v. FK Liepaja.
5. DRC decision of 16 April 2021, Mason.

Recategorisation

1. DRC decision of 10 December 2019, Club Atlético 9 de Julio v. FK Liepaja.
2. DRC decision of 10 December 2019, Club Lautaro Roncedo v. FK Liepaja.
3. DRC decision of 10 December 2019, Club Alem de Villa Nueva v. FK Liepaja.
4. DRC decision of 10 December 2019, Club Deportivo Argentino v. FK Liepaja.
5. DRC decision of 10 December 2019, Club Atlético Ricardo Gutiérrez v. FK Liepaja.
6. DRC decision of 10 December 2019, Club Lautaro Roncedo v. FK Liepaja.

7. DRC decision of 10 December 2019, Banda Norte v. FK Liepaja.
8. DRC decision of 14 February 2020, Canon Yaounde v. SC Rheindorf Altach.
9. DRC decision of 2 July 2020, FC Kairat v. FC Noah.

Waiver

1. DRC decision of 26 February 2021, Armenakas.
2. DRC decision of 18 May 2021, Boruc.

CAS awards

Training compensation clearly disproportionate

1. CAS 2004/A/560, AC Venezia v. Club Atlético Mineiro & AS Roma.
2. CAS 2009/A/1908, Parma FC S.p.A. v. Manchester United FC.
3. CAS 2015/A/3981, CD Nacional v. CA Cerro.

Overlapping seasons

1. TAS 2012/A/3009, Arsenal FC v. Central Español FC.

Waiver

1. CAS 2021/A/8392, PFC Lviv v. AD Guarulhos.

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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. Purpose and scope

Annexe 4 contains special rules pertaining to players moving from one association to another inside the territory of the EU or EEA.

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, even if the former club is based in a country which has a bilateral agreement with the EU.[646] The player's nationality is irrelevant.[647] The relevant jurisprudence shows that a strict approach is taken.[648]

646 DRC decision of 11 February 2022, Marques Da Silva; CAS 2019/A/6590, FC Lugano S.A. v. Empoli FC S.p.A.
647 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.
648 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.

To properly understand the inclusion of article 6 of Annexe 4, Regulations, 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 cause issues with regard to free movement principles under the TFEU.

2. The substance of the rule

A. CALCULATION OF TRAINING COMPENSATION

The calculation of training compensation under these specific provisions deviates significantly from the general calculation concepts.

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 transfers 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, Regulations.

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.

a. 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 rather 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 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.[649]

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.

Finally, it is to be noted that the requirements of article 6 paragraph 3 of Annexe 4, Regulations are to be fulfilled even in the context of a mutual termination of contract between the relevant club and the player.[650]

b. Applicability to amateurs and professionals

The DRC[651] and CAS[652] confirmed that the requirement to offer a contract set out in the first sentence of article 6 paragraph 3 of Annexe 4, Regulations ("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") also applies to amateur players. Indeed, given the aim of the provision is to limit any potential obstacles to the free movement of players, the requirement to offer a contract must apply to any player whose transfer triggers training compensation.

649 CAS 2008/A/1533, Anorthosis Famagusta FC v. PAE Panathinaikos FC.
650 DRC decision of 8 December 2020, ref. 122088.
651 DRC decision of 8 June 2007, no. 6754.
652 CAS 2006/A/1152, ADO Den Haag v. Newcastle United FC (Krul).

The DRC and CAS further established that the second and third sentences of article 6 paragraph 3 of Annexe 4 ("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 (...). Such an offer shall furthermore be at least of an equivalent value to the current contract") only apply to situations when a professional contract is already in existence.

As a consequence:

- If the former club is a professional club and the player was always registered under amateur status, then the former club has to justify its entitlement to training compensation by way of a contract offer to the player: the provisions set out in the first sentence of article 6 paragraph 3 of Annexe 4 are applicable, but not the second and third sentences. In other words, the former club would only be required to offer the player a contract at any time during their registration relationship;

- If the player was already a professional with the former club, the second and third sentences of article 6 paragraph 3 of Annexe 4 are applicable: the former club must prove that it offered a contract of at least equivalent value to the expiring contract to the player at least 60 days prior to the expiry of the contract.

As mentioned, if the player was already a professional at their previous club and, therefore, already had a contract with that club, the offer must be of at least equivalent value to the existing contract.[653]

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, their 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 criterion for establishing the right to training compensation following a player moving between member associations within the territory of the EU/EEA.

c. 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.[654]

653 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.
654 CAS 2014/A/3710, Bologna FC 1909 S.p.A. v. FC Barcelona.

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 strict formal precondition for the offer to be considered valid; rather, it is a condition for proving that the offer was made in the first place.[655] 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 email address.[656]

Moreover, the offer must have been submitted to the player at least 60 days before the expiry of their 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.[657]

Returning briefly to the requirement for the offer to be of at least an equivalent value to the current contract, the existing jurisprudence[658] provides few reference points for establishing consolidated and standardised benchmarks. Matters are dealt with on a case-by-case basis, considering the specific circumstances.

d. 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 their being transferred, for example if applicable national legislation does not permit players to sign a professional contract prior to a certain age, 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 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,[659] 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

655 CAS 2010/A/2316, Stoke City FC v. Brescia Calcio.
656 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".
657 CAS 2010/A/2316, Stoke City FC v. Brescia Calcio.
658 CAS 2010/A/2316, Stoke City FC v. Brescia Calcio.
659 DRC decision of 26 September 2019, 09190902-E.

that it had a "genuine and *bona fide* interest in retaining the services of the player" in order to be entitled to training compensation.[660] 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 to consider.

In a case from 2006,[661] when asked to analyse what might be considered as a justification for an entitlement to training compensation despite the absence of a contract offer, CAS concluded that the training club had to show "a genuine and *bona fide* 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.[662] In a 2017 case, where a club had not offered the player an actual contract, CAS deemed that the club's genuine and *bona fide* interest in the player had been demonstrated by extended negotiations with the player's agent.[663]

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.[664] 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.[665]

Finally, and as already indicated, jurisprudence considers that clubs that had mutually terminated their contracts with players cannot fulfil the above genuine and *bona fide* interest requirements.[666]

660 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).
661 CAS 2006/A/1152, ADO Den Haag v. Newcastle United FC.
662 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.
663 CAS 2017/A/5103, Valletta FC v. Apollon Limassol.
664 CAS 2016/A/4720, Royal Standard de Liege v. FC Porto; CAS 2014/A/3710, Bologna v. Barcelona, where CAS deemed that no convincing evidence was provided to prove that the offer for the renewal of the contract had been made in bad faith.
665 CAS 2014/A/3497, SK Slavia Praha v. Genoa Cricket and Football Club.
666 DRC decision of 8 December 2020, no. 122088.

D. HOW A LACK OF INTEREST IN THE PLAYER'S SERVICES IMPACTS THEIR 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)?

In such a scenario, the basic requirements for paying training compensation are generally met. The player is registered for the first time as a professional before the end of the calendar year of their 23rd birthday. The required international dimension also exists. Finally, it can be established 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. Therefore, in the absence of a contract offer, these former clubs do not lose their entitlement to training compensation.

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.[667]

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, Regulations 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 (SFA), the Irish Football Association (IFA) or the Football Association of Wales (FAW).

667 DRC decision of 27 July 2002, Electrico FC, Portugal v. Throttur Reykjavik, Iceland; DRC decision of 27 July 2002, Louletano DC, Portugal v. Throttur Reykjavik, Iceland.; DRC decision of 27 July 2002, SU Sintrense, Portugal v. Throttur Reykjavik, Iceland; and DRC decision of 19 August 2020, Mem Martins SC, Portugal v. Throttur Reykjavik, Iceland.

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Article 6 of Annexe 4, Regulations remains applicable to the registration or transfer of players to or from clubs affiliated to one of the four UK associations that occurred until the end of December 2020.

3. Relevant jurisprudence

DRC decisions

Genuine interest in a player

1. DRC decision of February 2016, no. 0216140-E
2. DRC decision of 30 November 2017, no. 11170863-E
3. DRC decision of 8 December 2020, no. 122088.

No obligation for other former clubs to offer contract

1. DRC decision of 27 July 2002, Electrico FC, Portugal v. Throttur Reykjavik, Iceland.
2. DRC decision of 27 July 2002, Louletano DC, Portugal v. Throttur Reykjavik, Iceland.
3. DRC decision of 27 July 2002, SU Sintrense, Portugal v. Throttur Reykjavik, Iceland.
4. DRC decision of 19 August 2020, Mem Martins SC, Portugal v. Throttur Reykjavik, Iceland.

Contract offer requirements strictly applied to clubs based in EU/EEA

1. DRC decision of 11 February 2022, Marques Da Silva.

CAS awards

Applicable to amateurs and professionals

1. CAS 2006/A/1152, ADO Den Haag v. Newcastle United FC (Krul).
2. CAS 2008/A/1521, VfB Admira Wacker Modling v. AC Pistoiese S.p.A.
3. CAS 2009/A/1757, MTK Budapest v. FC Internazionale Milano S.p.A. (Filkor).

No obligation for other former clubs to offer contract

1. CAS 2006/A/1152, ADO Den Haag v. Newcastle United FC (Krul).
2. CAS 2011/A/2682, Udinese Calcio S.p.A. v. Helsingborgs IF.
3. CAS 2018/A/5733, Koninklijke Racing Club Genk (KRC Genk) v. Manchester United Football Club.
4. CAS 2016/A/4721, Royal Standard de Liège v. FC Porto (player C).

Contract offer requirements strictly applied to clubs based in EU/EEA

1. CAS 2019/A/6590, FC Lugano S.A. v. Empoli FC S.p.A.

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ANNEXE 4, ARTICLE 7 – DISCIPLINARY MEASURES

The FIFA Disciplinary Committee may impose disciplinary measures on clubs or players that do not observe the obligations set out in this annexe.

1. Purpose and scope

This provision contains a general rule to ensure the rules on training compensation are properly and effectively applied, if necessary by deploying sporting sanctions. The competence to impose possible sanctions lies with the FIFA Disciplinary Committee.

LOAN OF PROFESSIONALS AND TRAINING COMPENSATION

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1. Introduction

In the context of a loan of a player, specific issues may arise in relation to training compensation. This section addresses these issues and provides an overview of existing practice and jurisprudence.

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, or the number of times the player was loaned during that period.[668] There are very few exceptions to this view in the jurisprudence.

2. Specific scenarios

In the context of loan transfers and their impact on training compensation, specific scenarios may arise, which are each addressed and described in turn below.

A. PROFESSIONAL PLAYER IS LOANED FROM THE RELEASING (PARENT) CLUB TO THE ENGAGING (LOANING) CLUB AND RETURNS FROM A LOAN TO THE RELEASING (PARENT) CLUB

As per the jurisprudence of the DRC, training compensation is not due when a professional player is loaned internationally from its releasing (parent) club to the engaging (loaning) club, nor is it due when the player returns from the loaning club to the parent club.

Although the requirements of article 10, Regulations[669] would *prima facie* appear to be met in such a scenario the DRC established that an international loan of a professional player would neither constitute a first professional registration nor a subsequent registration in the sense of Annexe 4, Regulations, because a loan means that the professional player in question is only suspending his contract with the parent club.[670]

668 DRC decision of 4 May 2021, Angban.
669 Article 10, paragraph 1, Regulations stipulates that a professional may be loaned to another club on the basis of a written agreement between them 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.
670 DRC decision of 17 August 2012, no. 8122321.

In fact, the DRC emphasised that training compensation would only apply to instances where the player is internationally transferred on a definitive basis, and that any other application would go against the intentions of the legislator and effectively disincentivise the loaning of young players and therefore impede their development.[671]

In other words, the concept of a "transfer" of a player between two clubs affiliated to different associations in the sense of article 2 paragraph 1 b) of Annexe 4, Regulations is to be interpreted solely and strictly as a definitive and permanent transfer.

In contrast, a distinction is made in article 1 paragraph 2 a) and b) of Annexe 5, Regulations which *inter alia* specify that a "solidarity contribution" is due when a player is transferred, either on a permanent or loan basis.

B. PROFESSIONAL PLAYER MOVES PERMANENTLY TO A THIRD (NEW) CLUB WHEN THE LOAN EXPIRES – THE "LOAN JURISPRUDENCE"

a. The general principles of the loan jurisprudence

When a professional player moves permanently from their former club to a third (new) club, after having been on loan from the former club to one or more loaning clubs, given that the player is in the calendar year of his 23rd birthday at the latest and the former club and the new club are affiliated to two different associations, training compensation would in principle be due to the former club only on the basis of article 2 paragraph 1 b) of Annexe 4, Regulations.

Nevertheless, the DRC has extended the training compensation entitlement of the former club to the club(s) which had the player on loan from the former club.[672]

If the requirements of article 2 paragraph 1 b) of Annexe 4, Regulations are met when the player moves from the former club to the third (new) club, the DRC considers that the club(s) that had the professional player on loan from the former club *de facto* form part of the former club's registration continuum and, as such, are entitled to training compensation for the training and education with which they provided the player during the loan(s),

Equally, the DRC considers that the former club is not entitled to receive training compensation for the period during which the player was on loan, an approach confirmed by CAS.[673]

671 DRC decision of 7 September 2011, no. 911668; DRC decision of 1 March 2012, no. 3121474.

672 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 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.

673 DRC decision of 21 November 2019, no. 11194351-E; see 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; CAS 2020/A/7381, Genoa Cricket and Football Club v. Club Atlético San Martin de San Juan.

Despite the many challenges, this jurisprudence, now commonly referred to as the loan jurisprudence, has uniformly been applied by the DRC and rather constantly confirmed by CAS[674] as the decision-making bodies have confirmed that it legitimately serves the objectives of the training competition system, namely promoting the training and development of young players.

As a general rule, the requirements of the loan jurisprudence are met (and training compensation would be due to the former club and the club(s) that had the player on loan) when:

- The player is permanently transferred to a third club (affiliated to an association other than the one to which the former club was affiliated) after spending some time with their parent club (the releasing club) upon returning from the loan(s); or

- The player is permanently transferred to a third club (affiliated to an association other than the one to which the former club was affiliated) immediately after expiry of the loan.

On the other hand, the loan jurisprudence does not apply when a player is permanently transferred from the former club to the new club if these two clubs are affiliated to the same association, even if the former club had loaned the player to a club affiliated to a different association. In fact, because this transfer would not qualify as a "subsequent registration" in the sense of article 2 paragraph 1 b) of Annexe 4, Regulations, then no training compensation as foreseen in the Regulations would be due.[675]

However, if the former (parent) club loaned a player to a club affiliated to a different association, and after the expiry of the loan, the player permanently moves to a third (new) club affiliated to the same association than the club where they had been loaned, the loan jurisprudence would apply and the new club would have to pay training compensation in the sense of article 20 and Annexe 4, Regulations to the loaning club, even if the two are affiliated to the same association. In fact, in this very particular configuration, because this would constitute a "subsequent registration", not awarding training compensation to the loaning club would deprive the club of any reward for the training provided to the player, since the international dimension of the transfer would not entitle this club to receive compensation at national level.

674 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; 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.

675 DRC decision of 14 December 2022, Sego.

b. Exceptions to the loan jurisprudence

Notwithstanding the above, it has been recently established by the DRC that if the loan of the player by the former (parent) club to the loaning club was significantly subsidised by the former (parent) club, the loaning club would not be entitled to receive training compensation under the loan jurisprudence because any investment in training and educating the player would have been considered to have *de facto* been incurred by the former (parent) club.[676]

Furthermore, CAS also ruled that the former (parent) club could be entitled to training compensation for the time the player spent on loan if the former (parent) club "can demonstrate that it bore the costs for the player's training for the duration of the loan".[677]

c. Article 6 of Annexe 4, Regulations and the loan jurisprudence

If the former club and the new club are both based in the EU/EEA, article 6 of Annexe 4, Regulations would apply: the former club would have to meet the contract offer requirements to justify its training compensation entitlement, and any amount awarded would have to be calculated based on the training category of the new club (if the category of the new club is lower than the one of the former club) or based on an average of the training categories of the two clubs.

If the player was loaned by the former club to one or more clubs based in the EU/EEA, the club(s) where the player was loaned would not have to meet the contract offer requirements because the player was, for the duration of the loan, under a valid (albeit suspended) contract with the former (parent) club.

Nevertheless, any amount awarded to the loaning club(s) in this scenario would be based on the category of the new club (if its category is lower than the category of the loaning club) or on the average of the category of the loaning club and the new club.

Finally, if the former club and the new club are based in the EU/EEA, but the player was loaned to a club based outside of the EU/EEA, any amount awarded to the loaning club would likely be based on the category of the new club since the territoriality requirements of article 6 of Annexe 4, Regulations would not be met, although case law on this specific point yet has to be rendered.

676 DRC decision of 3 October 2019, no. 10193416-E.
677 CAS 2008/A/1705, Grasshopper v. Alianza Lima and CAS 2013/A/3119, Dundee United FC v. Club Atletico Vélez Sarsfield.

3. Relevant jurisprudence

DRC decisions

Training compensation is not due when a player is loaned by their parent club to the loaning club

1. DRC decision of 17 August 2012, no. 8122321.
2. DRC decision of 7 September 2011, no. 911668.
3. DRC decision of 1 March 2012, no. 3121474.

Loan does not break chain/is not the player's last club

1. DRC decision of 22 September 2019, no. 09190767-E.
2. DRC decision of 14 October 2019, no. 10194441-E.
3. DRC decision of 21 November 2019, no. 11194495-E.
4. DRC decision of 12 April 2019, no. 04191559-E.
5. DRC decision of 22 July 2019, no. 07191442-E.
6. DRC decision of 15 October 2019, no. 10193153-E.
7. DRC decision of 4 May 2021, Angban.
8. DRC decision of 14 December 2022, Sego.

CAS awards

Loan does not break chain/is not the player's last club

1. CAS 2020/A/7381, Genoa Cricket and Football Club v. Club Atlético San Martin de San Juan.
2. CAS 2018/A/5513, Sport Club Internacional v. Hellas Verona Football Club S.p.A.
3. CAS 2017/A/5090, Olympique des Alpes SA v. Genoa Cricket & Football Club.
4. CAS 2016/A/4543, FC Kuban v. FC Gagauzyia.
5. CAS 2016/A/4541, FC Kuban v. FC Dacia.
6. CAS 2015/A/4335, Genoa Cricket and Football Club v. NK Lokomotiva Zagreb.
7. CAS 2013/A/3119, Dundee United FC v. Velez Sarsfield.
8. CAS 2008/A/1705, Grasshopper v. Alianza Lima.

ARTICLE 21 – SOLIDARITY MECHANISM

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ARTICLE 21 – SOLIDARITY MECHANISM

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.

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, Regulations and Annexe 5, Regulations. Article 21, Regulations sets out the main principles of the scheme, while the detailed provisions concerning the solidarity contribution are contained in the technical Annexe.

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 (as well as to domestic transfers with an international dimension, as will be set out further below).

It is easier to understand the distinction between the two mechanisms if one returns 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 sense of solidarity within the football community.

Apart from this conceptual 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. It has already been explained 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 the way money is distributed to training clubs. 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 amount. 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 their contract).

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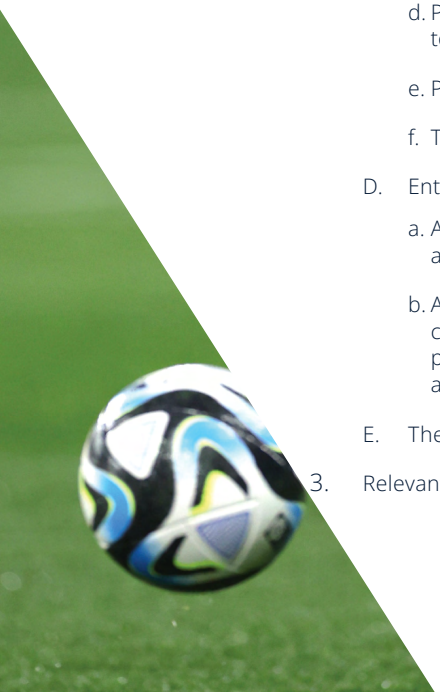

ANNEXE 5, ARTICLE 1 – SOLIDARITY CONTRIBUTION

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:

   a) Calendar year of 12th birthday: 5% of 5% of any compensation

   b) Calendar year of 13th birthday: 5% of 5% of any compensation

   c) Calendar year of 14th birthday: 5% of 5% of any compensation

   d) Calendar year of 15th birthday: 5% of 5% of any compensation

   e) Calendar year of 16th birthday: 10% of 5% of any compensation

   f) Calendar year of 17th birthday: 10% of 5% of any compensation

   g) Calendar year of 18th birthday: 10% of 5% of any compensation

   h) Calendar year of 19th birthday: 10% of 5% of any compensation

   i) Calendar year of 20th birthday: 10% of 5% of any compensation

   j) Calendar year of 21st birthday: 10% of 5% of any compensation

   k) Calendar year of 22nd birthday: 10% of 5% of any compensation

   l) 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. Purpose and scope

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.

The solidarity contribution applies to any transfer of the player throughout their career.

2. The substance of the rule

A. THE PRINCIPLE

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 used to be common if the player's economic rights were 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 to which the former cub is affiliated, either directly or via the releasing club.

CAS[678] 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, Regulations 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.

678 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.

The amount by reference to which the solidarity contribution is calculated is, as a principle, always the transfer fee in question. In a recent case, CAS faced a challenge from a club claiming that a scheme had been put in place to reduce the solidarity payment. In particular, the club argued, *inter alia*, that the player was transferred for an unlawful and artificially reduced transfer fee and that the true market value should have been determined through information published by the data analysis organisation, the CIES Football Observatory in Switzerland, and honoured in the actual transfer fee. In this respect, CAS explained that a player's market value is irrelevant for the purposes of solidarity contributions and made a distinction between the player's market value and the agreed price.[679]

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 benefiting directly from the player's services. With this aim in mind, it would not be appropriate to reduce the training compensation payment.

B. SPECIFIC QUESTIONS

a. The solidarity mechanism and "buy-out" clauses

One interesting question is whether the solidarity mechanism should apply to "buy-out" clauses.[680] 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.

However, 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 in any case 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.

679 CAS 2020/A/7281, Koninklijk Diegem Sport vzw v. Club Atlético de Madrid SAD and Dalian Professional F.C. Ltd.

680 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 (see CAS 2013/A/3411, Al Gharafa & Bresciano v. Al Nasr & FIFA).

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,[681] 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,[682] a CAS 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 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.[683] The matter in question concerned whether a contractually agreed "sell-on clause" [684] 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 panel concluded that the previous club could not claim part of the amount paid to exercise a buy-out clause as a sell-on fee. However, as

681 DRC decision of 24 April 2015, no. 04151496.
682 CAS 2011/A/2356, SS Lazio v. Vélez Sarsfield & FIFA.
683 CAS 2010/A/2098, Sevilla FC v. RC Lens (Keita).
684 A clause included in a transfer agreement according to which the releasing club will have a share of a certain predetermined percentage of the compensation received by the engaging club in case of a subsequent transfer of the player to a third club.

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,[685] 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 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.

Recently, CAS has looked into the topic again and confirmed that buy-out clauses generally trigger a solidarity contribution payment. The panel's task in that case was to establish whether a clause in a contract allowing a player to terminate the contract prematurely in exchange for the payment of a certain amount had to be considered a liquidated damages clause (not generating a solidarity payment) or a buy-out clause (generating a solidarity payment). A number of factors, including the fact the parties had excluded the application of sporting sanctions in the event that the clause was activated, pointed towards the clause being considered a buy-out clause. From there, CAS pointed out that, legally speaking, a transfer fee is an amount of compensation paid for which a club is prepared to terminate an employment contract with a player early by mutual agreement. Hence, regardless of the way the relevant clause in the contract is labelled (in this case was it was a "*clausula indemnizatoria*"), a predetermined buy-out fee set out in a buy-out clause is not materially different from a negotiated transfer fee for the purposes of the solidarity mechanism. The buy-out fee is to be considered as an offer that remains valid throughout the term of the employment contract.[686]

Equally, if a correlation between the mutual termination of a player's contract, by which the player would commit to pay financial compensation to the releasing club, and the terms of the new employment contract with the engaging club can be demonstrated, the DRC considers that the solidarity contribution would apply to the compensation agreed by the player and the former club in the said termination agreement.[687]

One final 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.

685 CAS 2019/A/6525, Sevilla FC v. AS Nancy Lorraine.
686 CAS 2021/A/8543, Paris Saint-Germain Football v. FC Barcelona.
687 DRC decision of 4 November 2021, Ndao.

Both the DRC and CAS have previously confirmed that it should be.[688] 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 in addition. 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.

b. Settlement agreements related to the "move" of a player

In a recent award,[689] 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 committed itself to pay the amount of EUR 22.5 million to the former club.

In this context, CAS firstly noted that a solidarity payment 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 the new club , this 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 "compensation" and a solidarity contribution was therefore due.

c. Compensation for breach of contract

The solidarity mechanism does not apply to any compensation payable by a player (and their new club, which 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.[690] 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

688 DRC decision of 22 July 2010, no. 7101224; CAS 2015/A/4188 AS Monaco v. Sevilla FC; DRC decision of 11 March 2021, TMS 6508.
689 CAS 2020/A/7291, Club Atlético de Madrid SAD & Sporting Clube de Portugal - Futebol SAD v. Clube Futebol Benfica.
690 CAS 2011/A/2356, SS Lazio v. Vélez Sarsfield & FIFA.

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 to be a transfer between clubs for the purposes of the solidarity mechanism. This was confirmed by the DRC as early as 2005.[691]

d. 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 monetary 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 registrations of professionals are exchanged in this way.[692] 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.[693] 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 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.[694]

The next question is how the value attributed to the services of the respective players should be determined. In one specific case, the specific circumstances surrounding the transaction assisted the DRC in this respect.[695] 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 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 those 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

691 DRC decision of 23 June 2005, no. 65178.
692 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.
693 CAS 2016/A/4821 Stoke City FC v. Pepsi Football Academy.
694 CAS 2012/A/2929 Skeid Fotball v. Toulouse FC.
695 DRC decision of 12 January 2007, no. 17630.

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. A sensible course of action (and one that has been 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.[696]

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 the 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 be correct to calculate the solidarity contribution based on the value attributed to the player's services when they were transferred in the past.[697]

Finally, and for the avoidance of doubt, if players are exchanged, the training clubs of *both* players will benefit from the solidarity contribution.

C. CALCULATION AND PAYMENT MECHANISM

a. 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.[698]

696 DRC decision of 7 June 2018, no. 06181269; DRC decision of 17 August 2012, no. 812019.
697 CAS 2016/A/4821, Stoke City FC v. Pepsi Football Academy.
698 Example: player X is trained by club A between the seasons of his 12th and his 17th birthdays. Subsequently the player is trained by club B between the seasons of his 18th and 21st birthdays. Finally, the player is trained by club C during the seasons of his 22nd and 23rd birthdays. 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 compensation amounting to EUR 1m. Club E will pay EUR 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.

b. 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 the solidarity mechanism triggered as from 1 January 2021) or season (for the 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 into 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.

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,[699] under such circumstances and in strict application of the Regulations, it is still the new club that will be required to pay the solidarity contribution to the training clubs concerned. In turn, and only when requested by the new club, 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) before the DRC against the new club for the solidarity contribution upon request of the new club (for reasons of procedural economy) or later on, in separate proceedings initiated by the new club before the PSC.

There are two problems with requiring the former club to pay the relevant solidarity contribution to the player's training club(s). 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*. Second, the training club(s) have no entitlement under the Regulations to a

699 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 VfL 1900 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; DRC decision of 11 February 2022, Barak.

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.

Recently CAS had the chance to analyse the issue of shifting the obligation to pay solidarity contributions. In this case, the sole arbitrator first pointed out that CAS jurisprudence has confirmed that the Regulations do not preclude the parties from agreeing on a contract which could shift the financial responsibility for the payment of the solidarity contribution, i.e. from the buying club to the selling one. According to the sole arbitrator, the parties' agreement to shift the financial burden of the solidarity contribution had to be respected considering the general principle of "*pacta sunt servanda*". In that case the sole arbitrator also noted that the clause shifting the liability did not contravene Swiss law, in particular articles 19 and 20 SCO, given that the clause was not contrary to the law and did not violate public order, morality or individual rights. It is to be noted that, although the sole arbitrator did not explicitly touch upon the issue of the new club's standing to be sued, it can be concluded that she implicitly confirmed this, considering an express reference to a previous CAS award explaining that the parties can agree to shift the final financial burden and on a rule regarding any reimbursement due or not due (and the fact that third clubs are very likely unaware of contractual agreements between selling and buying club).[700]

c. Impact of the FCHR

For cases governed by the FCHR, the theoretical possibility of agreeing such clauses, which deviate from the payment mechanisms required by article 21 and Annexe 5, Regulations is rather moot.

As previously indicated in the section related to training compensation of this Commentary, one of the main objectives of the FCHR is to promote financial transparency in the football transfer system and the FCH acts as an intermediary for the payment of training rewards in the football transfer system that fall due pursuant to the Regulations and performs all required Compliance Assessments in their execution (cf. art. 1 par. 3, FCHR).

Accordingly, the FCH has a duty to ensure that, if and when required, a new club is instructed by the FCH to pay training rewards to the training clubs that have indeed participated in the training and education of the player in question. Therefore, assigning such an entitlement or shifting the responsibility of the distribution of training rewards to a third club would go against this principle.

As a consequence, the FCH system always strictly orders and instructs exactly those clubs to pay solidarity contributions as provided in the Regulations, regardless of any bilateral agreements between the involved clubs.

In other words, the new club is requested to pay to the former club a sum representing 95% of the transfer compensation it had agreed with it, to which

700 TAS 2021/A/7966, Club Social y Deportivo Colo-Colo c. Club Atlético San Lorenzo de Almagro.

the 5% of solidarity contribution as provided in article 1 paragraph 1 of Annexe 5, Regulations is considered to have been withheld. It is on this basis that the FCH will calculate the respective entitlements and start the FCH payment procedure.[701]

Clubs and member associations shall be reminded that the FCHR only allows for a strict application of this article, and clubs declaring amounts that would not correspond to 95% of the agreed transfer compensation would open themselves to sanctions under article 17 paragraph 5, FCHR in combination with article 16 paragraph 3 of Annexe 3, Regulations and/or by having to pay a higher amount of solidarity contribution to the entitled training clubs. In other words, and as indicated, the FCH strictly follows the Regulations: the amount to be declared as paid will always be considered to represent 95% of the agreed transfer compensation, with the remaining 5% having been withheld. Only with such a strict application can the FCH calculation system properly function, in line with what the Regulations provide.

d. Payment of solidarity contribution in addition to transfer compensation ("100 plus 5" cases)

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.[702] It considered that the solidarity contribution must always be 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 considerations. 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 deprived 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 CAS award,[703] 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

701 Article 11 paragraph 5, FCHR.
702 DRC decision of October 2008, no. 108250; DRC decision of 26 January 2011, no. 111492.
703 CAS 2006/A/1018, C.A. River Plate v. Hamburger S.V.

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.[704] 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.

While the DRC has maintained its approach 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.[705] Insisting that "100 plus 5" contractual clauses were admissible, another panel confirmed that the clubs that were 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.[706] 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.[707] 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.[708] Subsequent awards confirmed the precedent set by this ruling,[709] which was later reflected by the DRC.[710]

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704 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 Fútbol SAD.

705 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.

706 CAS 2012/A/2707, AS Nancy-Lorraine v. FC Dynamo Kyiv.

707 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.

708 Example: the former club A and the new club B agree on transfer compensation amounting to EUR 1m, net of any solidarity contribution. Club B will thus pay EUR 1m to club A, this being 95% of the compensation actually agreed for the purposes of calculating the solidarity contribution. The basis for calculating the entire solidarity contribution will be 100% (i.e. EUR 1,052,631), meaning that the amount of the solidarity contribution relating to the pertinent transfer will be EUR 52,631, and not EUR 50,000.

709 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.

710 DRC decision of 26 August 2019, no. 08192031-E; DRC decision of 26 August 2019, no. 08192030-E.

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.[711] 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%.

Similar to what has been mentioned above, for cases governed by the FCHR, the ability to agree such clauses, contrary to the wording of article 21 and Annexe 5, Regulations is rather moot.

If parties nevertheless decide to make an agreement along the lines of "100 plus 5", the new club must declare in the proof of payment the total amount paid to the former club (exceptionally without withholding 5%) and the amount of the solidarity contribution due will be calculated by the FCH according to the amount declared in the proof of payment, considering in all cases the amount declared as 95% of the total payment.

In such cases, it is not expected that the new club will pay any remaining amount to the former club, as part of the transfer fees outside of the FCH.[712]

e. Players below the age of 23

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, and this is done strictly: each calendar year of training is attributed a fixed percentage of the solidarity contribution, irrelevant of the age of the player at the time of the transfer. In other words, a club that trained a player during a period of time will always receive the same percentage of solidarity contribution for that training period. 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.

711 CAS 2016/A/4518 & 4519, FC Porto v. Hellas Verona FC & River Plate (4518) / Cerro Porteño (4519).
712 TMS communication on "FIFA Clearing House – Declaration of transfer compensation payments and training rewards".

Therefore, any solidarity contribution not payable at the time of the transfer because the player did not yet reach the end of the calendar year of his 23rd birthday is to be considered due to the former club as part of the transfer fee, rather than being redistributed between the training clubs as additional solidarity contribution.

f. The former club as one of the training clubs

A similar approach to the one outlined above 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.[713]

For transfers falling under the FCHR, the solidarity contribution, including any portion due to the releasing club, will be exclusively distributed through the AS process (cf. art. 12, FCHR).

In this respect, article 11 paragraph 4 of the FCHR stipulates that the amount declared by the engaging club in the proof of payment will be considered to effectively be 95% of the respective transfer compensation (or instalment thereof), with 5% as a solidarity contribution having been withheld by the engaging club, in accordance with article 1 paragraph 1 of Annexe 5, Regulations.

Engaging clubs deviating from these principles may run the risk of paying higher amounts than originally foreseen and potentially be subject to sanctions.

D. ENTITLEMENT TO SOLIDARITY CONTRIBUTION

All clubs involved in training and educating a player between the calendar years (for a solidarity mechanism triggered as from 1 January 2021) or season (for a solidarity mechanism triggered prior to that date) of their 12th and 23rd birthdays are entitled to solidarity contributions.

713 DRC decision of June 2008, no. 3881052.

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 the 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.

a. 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.S.C. Napoli. Given that Higuaín transferred between clubs affiliated to different member associations, the training club, CA River Plate, was entitled to a solidarity contribution.

b. 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.[714]

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, Regulations being fulfilled, the national transfer of a professional player will

714 CAS 2007/A/1307, Asociación Atlética Argentinos Juniors v. Villarreal C.F. SAD; CAS 2007/A/1287, Danubio FC v. FIFA & Internazionale Milano.

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.[715] This amendment enhances the solidarity principle, a key objective of the Regulations.

E. 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.[716] 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.

3. Relevant jurisprudence

DRC decisions

Buy-out clauses

1. DRC decision of 24 April 2015, no. 04151492.
2. DRC decision of 4 November 2021, Ndao.

Compensation for breach of contract

1. DRC decision of 23 June 2005, no. 65178.

"100 plus 5" cases

1. DRC decision of 26 August 2019, no. 08192031-E.
2. DRC decision of 26 August 2019, no. 08192030-E.
3. DRC decision of 11 March 2021, Ruiz Peña.

715 Example: a Bolivian club that trained an Ecuadorian player during the pertinent period of time would be entitled to the solidarity payment if the player returns on an international transfer to Ecuador and is subsequently transferred within Ecuador.
716 DRC decision of 16 March 2016, no. 0316367; DRC decision of 15 June 2017, no. 06171997.

New club pays solidarity contribution

1. DRC decision of 11 February 2022, Barak.

Solidarity mechanism on national transfer prior to 1 July 2020

1. DRC decision of 19 August 2021, Lirola Kosok.

Exchange of players

1. DRC decisions of August 2012, no. 812020.
2. DRC decision of 7 June 2018, no. 06181269.
3. DRC decision of 17 August 2012, no. 812019.
4. DRC decision of 12 January 2007, no. 17630.

CAS awards

Buy-out clauses

1. CAS 2011/A/2356, SS Lazio v. Vélez Sarsfield & FIFA (Zárate).
2. CAS 2015/A/4188, AS Monaco v. Sevilla FC (Kondogbia).
3. CAS 2021/A/8543, Paris Saint-Germain Football v. FC Barcelona.

Settlement agreement

1. 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

1. CAS 2006/A/1158 & 1160 & 1161, F. C. Internazionale Milano S.p.A. v. Valencia Club de Fútbol SAD.
2. CAS 2008/A/1544, RCD Mallorca v. Al Arabi.
3. CAS 2009/A/1773 & 1774, Borussia Mönchengladbach v. Asociación Atlética Argentinos Juniors.

"100 plus 5" cases

1. 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.
2. 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).
3. CAS 2015/A/4131, Al Nassr FC v. Clube de Regatas do Flamengo & Hernane Vidal de Souza.

Exchange of players

1. CAS 2016/A/4821, Stoke City FC v. Pepsi Football Academy.

Value of the transfer

1. CAS 2020/A/7281, Koninklijk Diegem Sport vzw v. Club Atlético de Madrid SAD and Dalian Professional F.C. Ltd.

Shifting the obligation to pay solidarity contributions

1. TAS 2021/A/7966, Club Social y Deportivo Colo-Colo c. Club Atlético San Lorenzo de Almagro.

ANNEXE 5, ARTICLE 2 – PAYMENT PROCEDURE

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ANNEXE 5, ARTICLE 2 – PAYMENT PROCEDURE

1. For cases not governed by the FIFA Clearing House Regulations, 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. For cases not governed by the FIFA Clearing House Regulations, 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. For cases governed by the FIFA Clearing House Regulations, payment of solidarity contribution shall be made in accordance with the FIFA Clearing House Regulations.

4. 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.

5. The Disciplinary Committee may impose disciplinary measures on clubs that do not observe the obligations set out in this annexe.

1. Purpose and scope

This article addresses in more detail when and how the payment of the solidarity contribution is to be made.

As a principle, the new club has to distribute the solidarity contribution within 30 days from the due date of the transfer compensation and/or within 30 days of each instalment becoming due.

Under very specific conditions, a member association may be entitled to receive training compensation.

For transfers that occurred as from 16 November 2022, the distribution of the solidarity contribution will be organised through the FCH.

2. The substance of the rule

A. TEMPORAL ASPECTS

As mentioned above, it is the new club's responsibility to pay the solidarity contribution to the training clubs.

For cases not subject to the FCHR, the new club 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 FIFA is requested to intervene by a creditor club, the DRC generally awards interest on outstanding compensation payments starting from the 31st day following the player's registration with the new club.[717] Since the latest possible due date is the 30th day after the player's registration with the new club, the new club is in default from the 31st day following registration. Second, the two-year time limit in which any claim must be lodged with the DRC also begins on the 31st 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)[718] 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 31st 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.

For cases governed by the FCHR, solidarity contributions must be paid by the player's new club to the FCH within 30 days of being requested to do. Failure to do so will result in a 2.5% levy being applied and a further seven days being provided

717 DRC decision of 7 June 2018, no. 06180751-E.
718 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.

to pay. Failure to pay after the second deadline will result in disciplinary action.[719] For further information on the payment procedure, see the section "Article 7", "Article 12 of Annexe 3" and "Article 20 – f) New Club's Responsibility To Pay The Solidarity Contribution" of the Commentary.

B. ACCURATE CAREER HISTORY DATA AND THE PLAYER PASSPORT

For cases not subject to the FCHR, 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.

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.

Only the official player passport, as issued and confirmed by the relevant member association, will be considered in the event of any dispute.

For cases governed by the FCHR, TMS, by extracting available electronic registration information from each connected member association, automatically adds to a provisional EPP any member association which has any registration record for a given player, as well as any member association concerned by the nationality(ies) of the player. A provisional EPP remains visible for any member association and clubs for a period of ten days, and during this period any member association (on its own initiative and/or at the request of one of its affiliated clubs) may request participation in an EPP. Equally, the FIFA general secretariat has the ability to add any additional member association to a provisional EPP. For further information on the procedure related to an EPP, see the section "Article 7".

719 Article 13 paragraph 4, FCHR.

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 benefiting 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.[720]

For cases governed by the FCHR, member association shall pay particular attention to the declared status of their clubs in their respective domestic electronic registration systems and in TMS. In fact, they must provide accurate and up-to-date registration at all times and are open to referral to the FIFA Disciplinary Committee and/or the Ethics Committee as well as financial sanctions that may lead to a member association having to repay the training reward one of its affiliated clubs may have been deprived of due to its fault or negligence.

D. DISCIPLINARY MEASURES

Finally, the Regulations make clear that the FIFA Disciplinary Committee may impose disciplinary measures on clubs that do not observe the obligations set out in this Annexe. 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.

3. Relevant jurisprudence

DRC decision

1. DRC decision of 20 May 2020, Cuadrado Bello.

720 DRC decision of 20 May 2020, Cuadrado Bello.

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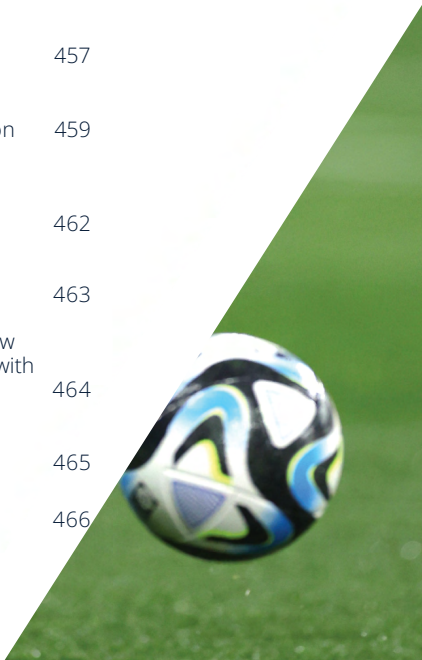


ARTICLE 22 – COMPETENCE OF FIFA

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, that are not governed by the FIFA Clearing House Regulations;

   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, that are not governed by the FIFA Clearing House Regulations;

   f) matters of legal or factual complexity in an EPP review process in accordance with article 10 paragraph 3 of the FIFA Clearing House Regulations and disputes between clubs in accordance with article 18 paragraph 2 of the FIFA Clearing House Regulations; and

g) disputes between clubs belonging to different associations that do not fall within the cases provided for in a), d), e) and f).

2. FIFA is competent to decide regulatory applications made pursuant to these regulations or any other FIFA regulations.

1. Purpose and scope

Article 22, Regulations introduces FIFA's dispute resolution system.

This dispute resolution system is one of the most important outcomes of the March 2001 agreement. The FT, composed of the DRC, the PSC and the FIFA Agents Chamber (AC) is the decision-making body competent to hear disputes in accordance with FIFA's regulations.

FIFA's 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. The parties to employment-related disputes between clubs and players (with an international dimension), or between clubs or member associations and coaches (with an international dimension) have the option of taking employment-related disputes to civil (state) courts. This preamble to article 22 was included in accordance with the requirements of the European Commission, and to respect constitutional rights applicable in some jurisdictions.

The Regulations set 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. It shall be noted that the term "competence" is used to describe the jurisdiction of the FT and its respective chambers.

The dispute resolution system is completed by the recognition of CAS as the body of appeal.[721] All final decisions passed by the FT, subject to certain conditions, can be appealed before CAS.

2. The substance of the rule

A. THE COMPETENCE OF FIFA IN GENERAL

FIFA is an association incorporated in accordance with the Swiss Civil Code.[722] As such and based on the liberal and flexible legal framework applicable to private associations in Switzerland, FIFA is free to set its own objectives, scope of operations and competences, amongst other things. Accordingly, if it decides to introduce and

721 Article 56, Statutes.
722 Article 1 paragraph 1, Statutes.

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's jurisdiction is focused on disputes with an international dimension. As a fundamental principle, an international element is required for any dispute to fall within FIFA's jurisdiction.

Article 22 then provides an exhaustive list of the types of disputes FIFA is competent to hear. It is important to emphasise that the scope of FIFA's jurisdiction is not open to the parties' discretion; it derives from the FIFA Statutes and regulations, and not from private agreements between parties.[723] For example, it is not possible for a club to enter into 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 listed within article 22. The jurisdiction of the FT is strictly limited to direct and indirect members of FIFA. It cannot be extended to third parties, even if these third parties request it. Similarly, decisions passed by the DRC or PSC can only be enforced with certainty 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 listed in the Procedural Rules (art. 8 par. 1).

B. THE ASPECT OF INTERNATIONALITY

As mentioned, FIFA generally only assumes jurisdiction over disputes with an international dimension.

For disputes between two clubs, the aspect of internationality is relatively straightforward, as this requirement is met as soon as the two clubs are affiliated to two different FIFA member associations.

For employment-related matters involving players or coaches, however, internationality is a somewhat more complex aspect. An employment-related dispute between a club and a player is generally deemed to have an international dimension whenever the player is of a nationality other than that of the country in which their club is domiciled. This means that, for example, an employment-related dispute between a Brazilian player and a Brazilian club will not normally fall within FIFA's jurisdiction, whereas an employment-related dispute between a Brazilian player and a Malaysian club will normally fall within FIFA's jurisdiction. In other words, contrary to standards that may apply under international private laws, it is not the domicile of the player that is decisive, but only their nationality.

723 DRC decision of 13 October 2015, no. 1016908-E.

This conclusion is in line with CAS case law,[724] which holds that "...the international dimension is related to the national status of the parties and not to the national status of the dispute". In a 2016 award, CAS considered that a dispute between a player and a club should generally be assumed to have an international dimension within the meaning of the Regulations, unless the parties share the same nationality.[725]

In cases of dual nationality, the internationality of a dispute is determined according to the nationality under which a player is registered to play football for the relevant club.

This definition has been confirmed by CAS, which 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".[726] This approach has also been confirmed by the Swiss Federal Tribunal.[727] In a recent award, CAS confirmed that when assessing sporting nationality: "[i]t is decisive to establish, first, under which nationality a player actually signs the contract, and subsequently under which nationality he registers with the club concerned".[728]

In summary, a dispute between a player and a club is deemed to be international whenever the player and the club are of different nationalities. If the player holds dual nationality, the dispute will be deemed to have an international dimension if the player is registered by their club under their "foreign" nationality (e.g. a Brazilian/Italian player playing for a Brazilian club is registered to play as an Italian). This is because players registered as locals as a result of their "shared" nationality with the club cannot be deemed to be international players. By the same token, the DRC has established that, for independent countries which have more than one member association of FIFA incorporated within their territory, there was no international element for players who were nationals of those countries.[729]

The same principles apply, in principle, to disputes between clubs/member associations and coaches (albeit coaches are not registered in the same manner as players). To establish the international dimension of a dispute, the coach will need to hold a nationality other than that of the country where the club/association is based (e.g. a dispute between a Spanish coach and a Mexican club or a dispute between a Moroccan coach and the Saudi Arabian Football Federation (SAFF) would be covered). In cases where a coach holds dual nationality and one of those nationalities is the same as the

724 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).

725 CAS 2016/A/4441, Jhonny van Beukering v. Pelita Bandung Raya FC & FIFA.

726 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).

727 ATF 4A_404/2010 at 4.3.3.2.

728 CAS 2020/A/6933, Emilio Yamin Faure v. Al Salam Zgharta Club & FIFA.

729 DRC decision of 3 March 2022, Affonso Junior; DRC decision of 3 March 2022, Kok Kan; DRC decision of 3 March 2022, Yun Yip; DRC decision of 3 March 2022, Wing Tse; DRC decision of 3 March 2022, Vinet; DRC decision of 3 March 2022, Torilla; DRC decision of 3 March 2022, Yuen; DRC decision of 3 March 2022, Ruiz; DRC decision of 3 March 2022, Fung; DRC decision of 3 March 2022, Vasudeva Das; DRC decision of 3 March 2022, Cardona; DRC decision of 2 June 2022, Dai; DRC decision of 12 October 2022, 102288.

nationality of their counterparty (club or association) in a dispute before FIFA, the decisive element in determining whether the dispute has an international dimension will be the nationality mentioned in the employment contract.[730] Accordingly, had the parties entered into the employment contract as nationals of the same country, the dispute would not have met the international dimension requirement and FIFA would have had no jurisdiction to hear it.

In a recent decision,[731] the Single Judge of the PSC found that a dispute between a coach holding dual nationality (from Trinidad and Tobago and from the United Kingdom) and the Trinidad and Tobago Football Association (TTFA) lacked an international dimension, insofar as the coach – whose nationality was not mentioned in the relevant employment contract – held closer links to Trinidad and Tobago than to the United Kingdom, as the coach was born in Trinidad and Tobago, played official matches for the national team of Trinidad and Tobago and only acquired British nationality at a later stage via a naturalisation process. These factors were sufficient for the PSC to conclude that the coach signed the employment contract as a national of Trinidad and Tobago and, therefore, that the dispute in question was of a domestic nature.

C. RELATIONSHIP TO CIVIL COURTS

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 generally prohibited, in accordance with the FIFA Statutes.[732] 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, FIFA regulations may state exceptions to this principle. The following paragraphs provide an overview of the type of disputes that may be brought before civil courts, which is expressly limited to employment-related disputes.

a. Employment-related disputes between a player and a club

The Regulations expressly establish that FIFA's 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.

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.[733] 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.[734]

730 PSC decision of 23 March 2021, Bodog.
731 PSC decision of 25 August 2020, Lawrence.
732 Article 59 paragraph 2, Statutes.
733 DRC decision of 25 October 2018, no. 10181394-E; DRC decision of 14 June 2019, Gómez.
734 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).

It is important to note that the FT reviews jurisdiction clauses on a case-by-case basis and only when one of the parties challenges the competence of the FT, invoking the relevant clause. However, jurisprudence dictates that jurisdiction clauses must be sufficiently clear, including at the very least the designation of a specific place or (civil) court. This requirement ensures that the parties involved have a clear understanding of the agreed forum for resolving potential disputes, thereby promoting predictability and certainty in the resolution of disputes. The relevant clause must also be exclusive, in favour of the relevant court to exclude the jurisdiction of the FT.

In a 2021 case,[735] a contract provided that any and all disputes arising out of, or in connection with, the contract should be dealt with exclusively by the Courts and Enforcement Offices of Ankara. The respondent contested the jurisdiction of FIFA. The DRC found that the parties had unequivocally established the exclusive competence of the Ankara court in relation to any and all disputes arising out or in connection with the contract.

In another 2021 case,[736] the relevant clause provided for the competence of the ordinary courts. The claimant alleged that the dispute resolution clause was invalid and submitted a legal opinion in support of this argument. However, the legal opinion was not supported with excerpts from any law, literature or jurisprudence. The Single Judge found that the claimant failed to establish on the balance of probabilities that the ordinary courts were not competent to adjudicate in the matter.

In a 2022 case,[737] the relevant clause provided that disputes should be referred to and resolved by the District Court of the City of Kediri. The Single Judge declined jurisdiction and held that the parties had unambiguously and exclusively decided that any dispute would be submitted to a civil court.

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 should adjudicate.[738] In other words, despite the existence of a jurisdiction clause in the contract, if a claim is lodged before the FT and the respondent does not challenge the jurisdiction of the FT, the DRC will accept jurisdiction to hear the matter. A challenge to the competence of the DRC *in principle* must therefore be invoked by the respondent, otherwise it is deemed that the jurisdiction of the DRC is accepted by both parties.

In CAS case law, some panels/sole arbitrators have applied criteria to jurisdiction clauses that are somewhat less strict.

In an award of January 2023, CAS stated that there is no regulatory or jurisprudential basis that supports the argument that if a clause in a contract is not exclusive, FIFA has the right to declare itself competent. In particular, the panel on that occasion pointed out that article 22 does not refer to the

735 DRC decision of 14 October 2021, Johansson.
736 Single Judge Players' Status Committee decision of 9 July 2021, Sacramento.
737 DRC decision of 8 June 2022, Bordon.
738 DRC decision of 9 February 2017, no. 02171603.

necessity for an "exclusive" jurisdiction clause, but only prescribes that there has to be a clear reference in the agreement. Resorting to article 5 paragraph 1 of the Swiss Federal Act on Private International Law, the panel concluded that when the clause is sufficiently clear, that choice of forum must be also considered as exclusive ("unless otherwise agreed, a choice of forum is exclusive").[739]

With respect to the clarity of the jurisdiction clause contained in the contract at the heart of the dispute, a recent CAS award did not consider ambiguous a clause by means of which the parties agreed "that the venue for any action brought hereunder shall be Gibraltar". According to the sole arbitrator, the lack of reference to a particular court in Gibraltar does not mean that the jurisdiction clause would be ineffective or inoperative since, when the jurisdiction clause refers to Gibraltar as the proper venue or forum for any action to be brought, the competent court, both territorial and *rationae materiae*, can be easily deduced by following the rules contained in the local judicial and procedural codes.[740]

In a 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 would be heard.[741] 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.[742] As was pointed out in the award, when determining whether a dispute is subject to arbitration in Switzerland, the applicable *lex arbitri* is Swiss law, and specifically the Federal Act on Private International Law, which provides that any dispute with a monetary value is arbitrable.[743]

b. 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. Coaches and member associations were only included in the preamble from 1 January 2021. In any event, the existing jurisprudence[744] 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 on this point.

In a recent award involving a coach, CAS recalled that – based on article 22 – it is possible to "opt out" of FIFA's jurisdiction and bring employment-related matters before national courts. However, in order to do so, the parties must establish

739 CAS 2021/A/7794, GNK Dinamo Zagreb v. Rene Poms & FIFA.
740 CAS 2020/A/7382, Miguel Angel Londero v. Mons Calpe SC & FIFA.
741 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.
742 CAS 2015/A/3896, Elias Trindade v. Atlético de Madrid.
743 CAS 2015/A/4152, Cerro Porteño v. Roberto Antonio Nanni & FIFA.
744 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.

a clear contractual choice of forum to elect the specific forum and exclude FIFA's jurisdiction. Moreover, the panel underlined that there is no parallelism between applicable law and jurisdiction, meaning that opting for a certain law on the merits does not equate to agreement on a specific forum.[745]

In another recent case, an appeal was filed by a coach against a PSC decision which considered that FIFA did not have jurisdiction to resolve his dispute with the relevant association since they both agreed to submit their disputes to the civil courts of the city of Guayaquil, Ecuador. According to the panel, since the PSC had the authority to rule on its own competence (*Kompetenz-Kompetenz* principle), it should have assessed the competence of the Ecuadorian courts to rule on the employment contract dispute. The panel concluded that, considering that in this case the civil courts of Guayaquil could not review an employment-related dispute, the jurisdiction clause in their favour was null and, in any case, lacked effectiveness. The panel therefore deemed that, given that the forums established in the contract were ineffective in resolving the dispute between the parties, the PSC should have retained jurisdiction in line with the *pro operario* principle.[746]

c. Disputes between clubs

For completeness, it shall be noted that the Regulations do not allow for international disputes *between clubs* to be referred to ordinary courts of law. In a case from 2020, which consisted of an international dispute between two clubs over a transfer agreement, the respondent argued that the dispute should be handled by the courts of Madrid (Spain), as stated in the contract. However, in his decision, the Single Judge confirmed his own competence (jurisdiction) and referred to article 59 paragraph 2 of the FIFA Statutes, while he underlined that the right to bring a case before an ordinary court concerns employment-related disputes, but not international disputes between clubs.[747]

D. RELATIONSHIP TO CAS

DRC case law recognises that parties can opt out of FIFA's jurisdiction and have their disputes settled directly by CAS. As indicated before, the challenge to the competence of the FT must be invoked by the respondent before FIFA; otherwise it is deemed that the jurisdiction of the FT is accepted by both parties.

In a 2022 case[748], the Single Judge declined jurisdiction in favour of the ordinary jurisdiction of CAS based on a dispute resolution clause which stated "this settlement agreement and its terms are governed by the laws of Switzerland. Any dispute arising from or related to the present contract will be submitted exclusively to the CAS and resolved definitely in accordance with the CAS Code."

745 CAS 2020/A/7605, Mol Fehervar FC v. Joan Carrillo Milan & FIFA.
746 TAS 2019/A/6795, Gustavo Quinteros c. Federación Ecuatoriana de Football & FIFA.
747 Single Judge Players' Status Committee decision of 14 July 2020, Chacon.
748 DRC decision of 4 August 2022, Gonen.

In a recent CAS award, the sole arbitrator interpreted 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 RSTP, the validity of an arbitration clauses [sic.] in favour of CAS to hear employment-related disputes 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's deciding bodies.[749]

E. RELATIONSHIP TO NATIONAL DECISION-MAKING BODIES

For some disputes, it may be relevant to determine whether a decision-making body that meets specific requirements exists at national level, so that this body can assume jurisdiction instead of FIFA.

Indeed, if an independent arbitration tribunal has been set up at national level, either based on 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.[750]

In order for the DRC to decline its jurisdiction, the following prerequisites have to be fulfilled: (i) the club and the player must have incorporated a written, explicit and exclusive arbitration clause into their contract, nominating the national body to deal with any potential dispute; (ii) the jurisdiction of the DRC must be contested during the FIFA proceedings; and (iii) the national body must fulfil the minimum standards per circular no. 1010 of 20 December 2005, i.e. it is an independent body guaranteeing fair proceedings as well as equal representation of players and clubs.

a. Clear and exclusive arbitration clause

Any opt-out from FIFA's jurisdiction must be made explicitly and in writing,[751] i.e. a clear and exclusive arbitration clause must be present in the contract between the parties.[752] If this is not the case, the DRC will confirm its own jurisdiction.

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.[753] In a 2021 case,[754]

749 CAS 2019/A/6312, Ailton José Almeida v. Al Jazira Football Sports Company & FIFA.
750 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, see CAS 2015/A/4333, MKS Cracovia v. Bojan Puzigaca & FIFA.
751 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, see 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 e Benfica.
752 CAS 2016 A 4568, Wisla Krakow v. Milan Jovanic & FIFA, CAS 2018/A/5925, Ricardo Gabriel Álvarez v. Sunderland AFC.
753 CAS 2014/A/3579, Anorthosis Famagusta FC v. Emmanuel Perrone. DRC decision of 30 March 2023, Verrone.
754 DRC decision of 2 December 2021, Oyewusi.

the dispute resolution clause provided that the "parties undertake to resolve their disputes solely within the framework of the football arbitration and in accordance with the applicable collective agreement and not before any ordinary courts except in cases where Slovenian law stipulates otherwise. Where football arbitration is not held to have jurisdiction over a dispute, the dispute shall be resolved by the competent court in Ljubljana. The contracting parties shall recognise the jurisdiction and decision of CAS as defined in the statutes of FIFA and UEFA." The respondent challenged the competence of FIFA. The Single Judge found that the dispute resolution clause was not clear, exclusive and unequivocal, and deemed the FT to be competent.

In a recent award on the topic of clarity of such a clause, CAS found that the clause invoked by the club was inoperative and could not have any legal effect given that it referred to multiple decision-making bodies and not to one specific judicial body.[755]

The written choice of forum should be expressly stated 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 as being an integral part of the contractual relationship between the parties.[756]

In a 2022 case,[757] the relevant dispute resolution clause provided that the parties agreed that all disputes relating to, or arising from, the agreement should be subject to the grievance procedures set forth in a collective bargaining agreement and that the parties expressly waived all rights to bring a claim, action, dispute or grievance for resolution on the merits to any FIFA body or tribunal, including any rights either may have pursuant to the Regulations. The DRC found the dispute resolution clause to be clear and exclusive, and declined jurisdiction.

In one recent award,[758] 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 the fact that the collective bargaining agreement contained 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.

755 CAS 2021/A/8042, Al Nigoom Saudi Football Club v. Anthony Bassey.
756 DRC decision of 30 November 2017, no. 11172079-E; CAS 2018/A/5628, Hellas Verona FC v. Rade Krunic & FK Borac Čačak.
757 DRC decision of 9 June 2022, Penilla.
758 CAS 2014/A/3684 & 3693, Leandro da Silva v. Benfica.

b. Objection to DRC jurisdiction

If FIFA's jurisdiction is not contested despite a clear and exclusive arbitration clause in favour of the national body, the DRC will accept jurisdiction. 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's jurisdiction, the parties are considered to have entered into a tacit agreement concerning FIFA's jurisdiction which supersedes any previous agreement. As CAS has confirmed, this approach is also legitimate where the respondent refuses to respond to the claim made against it.[759] In a recent award, CAS recalled that, even if a written agreement signed between a player and a club contains a clause that refers to the jurisdiction of another body, FIFA's jurisdiction must be contested. In other words, a party may decide not to raise an objection on the grounds of lack of jurisdiction and to validly accept the competence of a FIFA judicial body called upon by another party. In such cases, CAS has also pointed out that it has to be one of the parties to the employment contract that has to raise an issue of jurisdiction (i.e. a third-party club that is eventually ordered to pay compensation and that was not a party to the employment contract is not in a position to object the jurisdiction of the FIFA judicial bodies, since this has been validly accepted by the parties that had originally agreed on another judicial body).[760]

Along the same lines, in a recent award involving FIFA as a party, CAS confirmed that the plea of lack of jurisdiction needs to be raised before the DRC in order to be raised before CAS.[761]

c. Minimum standards as per circular no. 1010 of 20 December 2005

Where the relevant formalities to nominate a national body to hear a dispute have been observed, 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 per circular no. 1010 of 20 December 2005.

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 to be 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. It must be noted that it is for the party contesting FIFA's competence to provide evidence that the national body does indeed meet these requirements foreseen in circular no. 1010.[762]

759 CAS 2015/A/4083, Honefoss Ballklub v. Heiner Mora Mora & Belen; CAS 2014/A/3656, Olympiakos Volou FC v. Carlos Augusto Bertoldi & FIFA.
760 CAS 2020/A/7145, Moreirense Futebol Clube – Futebol SAD v. Jhonatan Luiz da Siqueira & Vitória Sport Clube, Futebol SAD.
761 CAS 2020/A/7267, Larissa FC v. Gordan Petric & FIFA. See also CAS 2021/A/8199, FC Dinamo Batumi v. Vagner Goncalves Nogueira de Souza & FIFA.
762 DRC decision of 23 April 2020, Pavicevic; DRC decision of 4 August 2022, Velic.

If the DRC establishes that the national body concerned fulfils the criteria to hear the case, it will decline its jurisdiction.[763] If the national body does not meet all the pertinent conditions, the DRC will proceed to consider the substance of the individual matter regardless of any arbitration clause in favour of the national body.[764]

The following paragraphs provide an overview of the relevant criteria, as established in circular no. 1010.

i. 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 being equally represented.

The chairperson and deputy chairperson should be chosen by agreement between the player and club representatives of the body concerned.

The FIFA National Dispute Resolution Chamber Standard Regulations were drafted with the objective of assisting member associations to 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 player representatives should be elected or appointed either following a proposal by a player association affiliated to the Fédération Internationale des Associations de Footballeurs Professionnels (FIFPRO) or, if there is no such association in the country concerned, based on a selection process agreed by FIFA and FIFPRO.[765] The club representatives, for their part, should be elected or appointed following a proposal from the clubs or leagues.[766]

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.[767]

763 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.

764 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 national dispute resolution chamber in question did not respect the minimum standard lies on the claimant before the DRC, as this was the party seeking to deviate from the jurisdictional clause inserted in the contract.

765 Article 3 paragraph 1 b), National Dispute Resolution Chamber (NDRC) Standard Regulations.

766 Article 3 paragraph 1 c), National Dispute Resolution Chamber (NDRC) Standard Regulations.

767 DRC decision of 7 March 2019, no. 03191173-E (requirement met); DRC decision of 7 March 2019, no. 03191325-ES

Before summarising the relevant jurisprudence, it shall be noted that, in line with the current practice, the party claiming the compliance of the relevant national body must provide the relevant evidence (cf. art. 13 par. 5 Procedural Rules) to prove that the national dispute resolution chamber in question meets the requirements established in article 22 paragraph 1 b) Regulations.[768] Upon analysis of the evidence provided by the parties, CAS confirmed the DRC's 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.[769]

In a different matter, and again confirming the DRC's 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 relevant member association, and the membership of that member association was made up exclusively of its affiliated clubs.[770]

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 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.[771] In an award rendered in August 2021, in which the contract forming the basis of the dispute contained a clause in favour of the tribunals of the Hellenic Football Federation (HFF), CAS focused on the composition and the tasks of the HFF Executive Committee to verify whether the said body could be considered as a club representative or whether it could be said to represent the interests of all stakeholders and, thus, be considered to fulfil one of the main conditions of circular no. 1010 (after a thorough analysis, that panel concluded that the HFF judicial bodies fulfilled the conditions of circular no. 1010).[772]

In another recent case, CAS analysed whether the national court of arbitration of the Croatian Football Federation (HNS) respected the prerequisites of circular 1010. CAS found that, since the President and the Vice-President were appointed by the Executive Committee of the HNS and were not elected by consensual agreement of the players and clubs from a list of at least five persons drawn up by the association's executive committee, the HNS did not respect the principle of parity as expressed in circular no. 1010, and thereby failed to meet the requirements set out to establish competence to hear the case in place of FIFA.[773]

(requirement not met).
768 DRC decision of 15 March 2023, Player A; DRC decision of 26 October 2022, Simic.
769 CAS 2012/A/2970, Barcelona Sporting Club v. Player Delgado & FIFA.
770 CAS 2014/A/3690, Wisla Krakow S.A. v. Tsvetan Genkov.
771 CAS 2016/A/4846, Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League.
772 CAS 2020/A/6830, Dorian Leveque v. FC PAOK Thessaloniki & FIFA.
773 CAS 2021/A/7800, NK Inter Zapresic v. Borislav Aleksandrov Tsonev & FIFA, see also CAS 2021/A/7859, NK Inter Zapresic

CAS has also recently considered the cumulative criteria set out in circular no. 1010 in order to determine whether the Qatar Sports Arbitration Tribunal indicated by the parties in their contract was competent to hear the case in question instead of the DRC. The sole arbitrator confirmed the DRC's decision[774] and concluded that this was not the case, in particular due to the lack of reference to the representatives of two stakeholders – player and club representatives – in compiling the list of arbitrators.[775] In a similar 2022 case concerning the Qatar Sports Arbitration Tribunal, the DRC held that it could not establish with certainty and to its comfortable satisfaction that both groups (players and clubs) could exercise equal influence over the compilation of the arbitrator list of the Qatar Sports Arbitration Tribunal and as such, assumed jurisdiction.

ii. Independent national body guaranteeing fair proceedings

The second mandatory precondition concerns the way the national dispute resolution body operates, which is more difficult to assess. FIFA circular no. 1010 sets out the criteria that must be fulfilled for an arbitration tribunal to qualify as independent and duly constituted. If the national body 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 made 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.

Establishing whether a national dispute resolution body fulfils these criteria is often a complex task for the DRC, particularly given that proceedings are conducted exclusively in writing. The DRC bases its decisions on the way the national decision-making body concerned conducts its proceedings. This practice was confirmed by CAS.[776]

v. Serder Serderov & FIFA.
774 DRC decision of 7 July 2022, Platero.
775 CAS 2021/A/7927, Al Sailiya FC v. Gregory Diranth Gomis & FIFA.
776 CAS 2014/A/3483, S.C.C. Fotbal Club CFR 1907 Cluj S.A. v. Mr Fernandino Sforzini & FIFA.

d. Parallel proceedings before the DRC and the national body

The potential existence of parallel proceedings before the DRC and a national decision-making body gives rise to additional legal complexities. If proceedings are started before a 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 same reasoning applies for cases of *lis pendens*.[777] CAS has confirmed this *modus operandi*.[778]

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.[779] If the national body concerned is deemed not to guarantee fair proceedings, its rulings are not considered binding.

That having been said, if both parties recognise the jurisdiction of the national body by failing to contest it, the DRC 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 1b) (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.[780]

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

777 *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.

778 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.

779 CAS 2014/A/3483, S.C.C. Fotbal Club CFR 1907 Cluj S.A. v. Mr Fernandino Sforzini & FIFA.

780 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.

result that suits its purposes. The relevant jurisprudence[781] is designed to prevent such behaviour, which is viewed as illegitimate. A party should not be able to game the system by having the same argument heard in multiple fora in the hope one of them will hand down the judgment it wants.[782] For example, a party should not be 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 against "forum shopping", namely that a party that has chosen to have a case heard under one competent jurisdiction cannot then have recourse to another,[783] is consistently applied.

F. DISPUTES FIFA IS COMPETENT TO HEAR

Article 22 provides a full and exhaustive list of the disputes that FIFA is competent to hear.

a. Disputes between clubs and players regarding the maintenance of contractual stability

Article 22 paragraph 1 a) extends FIFA's jurisdiction to cover specific scenarios of employment-related disputes involving a club and a player that share the same nationality 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's 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, regardless of the player's nationality.

Whenever a player moves between two clubs affiliated to different member associations, the player's registration with their new club is certified by means of the ITC. A player 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, i.e. 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). 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

781 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.
782 DRC decision of 16 December 2021, Haurylovich, DRC decision of 3 August 2022, Aliaksei.
783 "Electa una via, non datur recursus ad alteram", see DRC decision of 16 December 2021, Haurylovich; DRC decision of 3 August 2022, Aliaksei.

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 issue the international clearance for a player to register with a new club. This is one of the reasons why FIFA's competence extends to these employment-related disputes, even if 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 makes sense for the international decision-making body deciding on the registration of a player to also have jurisdiction to hear the employment-related dispute in question. It follows that the main reason why FIFA assumes jurisdiction in these cases is because there is a *foreign* club involved, which means that FIFA (and not, for example, a national tribunal) is best placed to adjudicate on such matters.

Further, and equally importantly, in such a scenario, a player's new foreign club cannot fall within the jurisdiction of the member association to which the former club belongs, because the national bodies within member associations generally only have jurisdiction over their own members or affiliates. The fact that a foreign club is involved in the dispute corroborates the international dimension of such a matter. This is relevant given that a possible breach of contract by the player may entail joint and several liability for the player's new (foreign) club, as well as sporting sanctions against that club (art. 17, Regulations).

The DRC[784] 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 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 is not affected by the judgment, there is no international dimension to the case. The DRC's 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.

In a 2021 case,[785] the player and the claimant club were of the same nationality. The DRC found that the player's transfer to his new club (which belonged to a different FIFA member association) had no connection to the contractual dispute at the basis of the player's claim as the transfer had taken place many months after the alleged breach of contract by the player. The DRC was of the view that the claimant had waited until the player had found new (international) employment so that it could then involve the new club, and that this rendered the claim inadmissible.

784 DRC decision of 9 November 2017, no. 11171143-FR.
785 DRC decision of 15 July 2021, Ethemi.

To conclude, article 22 paragraph 1 a) requires a contractual dispute between the player and their former club to be linked to an *ITC request*.[786] Therefore, if an employment dispute with no international dimension arises between a player and a club, 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. There is, therefore, no international dimension to the original contractual dispute. In this vein, CAS has recently underlined that an ITC request in itself does not cure the lack of international dimension required for the DRC to assume jurisdiction if there is no relation between the employment-related dispute and the ITC request in existence.[787] In another recent case, however, CAS found that this link can still be deemed to exist even if some time has passed between the termination of the contract and the ITC request (in that case, approximately ten weeks), provided that the matters are not segmented but sequential.[788]

In an award rendered in July 2021, stemming from a case in which the DRC had based its competence not only on the basis of the wording of the contract and article 22 paragraph 1 b) but primarily on the basis of article 22 paragraph 1, CAS noted that – unlike article 22 paragraph b) – article 22 paragraph 1 a)does not allow deviation from the default competence of the DRC, i.e. the discretion to refer employment-related disputes to national arbitration tribunals is restricted if the dispute concerns a claim related to an ITC request. In that case, the panel subsidiarily noted that, in any case, the contract needs to contain a clear reference to a dispute resolution body other than the DRC in order to deviate from the default FIFA competence and, since that was not the case, the DRC's competence would have been confirmed, also on the basis of article 22 paragraph 1 b).[789]

Finally, it is to be noted that in accordance with article 22 paragraph 1 a), Regulations, FIFA retains jurisdiction regardless of whether there is a recognised independent arbitration tribunal in the country concerned (see the following considerations concerning art. 22 par. 1 b).

b. Employment-related disputes between a club and a player with an international dimension

As mentioned, FIFA is competent to hear employment-related disputes between a club and a player with an international dimension. For the definition of the aspect of internationality, reference is made to the comments further above.

786 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.
787 CAS 2021/A/7865, Aliaksandr Paulavets v. F.C. Dynamo Brest & FIFA.
788 CAS 2020/A/7054, Sporting Clube de Portugal v. Rafael Alexandre de Conceicao Leao & LOSC Lille & FIFA.
789 CAS 2020/A/6899 & 6930, Cádiz FC & Mamadou Mbaye v. FIFA & Watford FC.

A crucial aspect in such disputes, however, can often be whether a dispute is actually "employment-related".

Generally speaking, it can be held that whenever the origin of a dispute lies within the contractual employment relationship between a player and their club, i.e. whenever the relevant employment contract serves as the legal basis for the claim between the parties, it can be assumed that the dispute is "employment-related" within the meaning of article 22 paragraph 1 b), Regulations.[790]

In a 2019 award,[791] the sole arbitrator considered that the DRC was competent to deal with a settlement agreement entered into between the parties following a decision by the national dispute resolution chamber in an underlying employment-related dispute between a player and their club. The sole arbitrator found that disputes of this nature had to be viewed as "employment-related" for the purposes of determining FIFA's jurisdiction, however considering also that the two parties had agreed on a jurisdiction clause in favour of FIFA in their settlement.

The fact that disputes of this kind, i.e. 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.[792] It is widely accepted that if such disputes have an international dimension, they can be heard by the DRC.

In a recent award, CAS pointed out that the notion of employment-related disputes includes a wider range of disputes than just simply those arising out of employment agreements.[793]

A specific point of contention often relates to image rights agreements. In practice, the contractual relationship between a professional player and their club may incorporate an 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.

In principle, a dispute between a player and a club over an image rights contract is not employment-related and, consequently, FIFA does not have jurisdiction to consider it.[794] However, 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.[795]

790 DRC decision of 21 March 2021, Garcia Perdomo; DRC decision of 6 May 2021, Girotto Frenchanco; DRC decision of 5 May 2022, Mihajlovic; DRC decision of 7 December 2022, De Carvalho Serra.
791 CAS 2019/A/6160, Cristóbal Màrquez Crespo v. FC Karpaty Lviv & FIFA.
792 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.
793 CAS 2019/A/6312, Ailton José Almeida v. Al Jazira Football Sports Company & FIFA.
794 DRC decision of 6 December 2018, no. 12181902-E.
795 DRC decision of 4 August 2022, Santana.

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 entered into with a third party normally suggests it is not part of the employment relationship between the player and the club.[796]
- 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 a supplementary agreement to the employment contract.[797]
- The image rights agreement provides for the payment of a signing-on fee or bonuses (e.g. for performance and/or appearances). These kinds of bonuses would normally be expected to be included in a professional player's employment contract.[798]
- The duration of the image rights agreement and the employment contract are the same.[799]
- 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 the specific circumstances of each individual dispute. Therefore, it is 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 between a professional player and a private company should be viewed as part of the player's employment relationship.[800] 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

796 CAS 2014/A/3579, Anorthosis Famagusta FC v. Emmanuel Perrone; TAS 2018/A/5653, Nelson Ezequiel González v. Club Deportivo Sport Loreto.
797 TAS 2018/A/5653, Nelson Ezequiel González c. Club Deportivo Sport Loreto; CAS 2014/A/3579, Anorthosis Famagusta FC v. Emmanuel Perrone.
798 CAS 2015/A/3923, Fabio Rochemback v Dalian Aerbin; CAS 2015/A/4039, Nashat Akram v. Dalian Aerbin Football Club.
799 DRC decision of 15 December 2022, Taishan.
800 CAS 2015/A/3923, Fabio Rochemback v. Dalian Aerbin.

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 entered into between a third-party company and the professional player.[801] 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.[802] 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.

c. Employment-related disputes with an international dimension between a club or a member association and a coach

Generally, FIFA is also competent to hear employment-related disputes between a club or a member association and a coach, provided that the dispute has an international dimension. Unlike players, coaches may sign employment agreements with either a member association or a club.

On 1 January 2021, the Regulations incorporated – for the first time – a definition of the term "coach", as well as a specific Annexe relating to coaches (first included as Annexe 8 and now found as Annexe 2, Regulations). Previously, coaches were only mentioned in article 22 paragraph 1 c). According to the said definition and Annexe, for a coach to be considered as such under the Regulations, certain criteria – that do not need to cumulatively apply – must be met (see definition no. 28, Regulations) but, in any case, the coach must have a football-specific occupation. This is further discussed in the relevant chapter dedicated to Annexe 2.

The fundamental aspects of article 22 paragraph 1 c) providing for competence over disputes involving coaches – e.g. that there must be an "international dimension",[803] they must be "employment-related"[804] and there must be the

801 CAS 2015/A/4039, Nashat Akram v. Dalian Aerbin Football Club.
802 TAS 2018/A/5653, Nelson Ezequiel González c. Club Deportivo Sport Loreto.
803 As an example of how the contractual relationship between a coach and an association qualifies, see CAS 2010/A/2108, Jamaican Football Federation v. FIFA & Velibor Milutinovic.
804 Single Judge Players' Status Committee decision of 25 May 2020, Benzarti.

ability to establish the competence of national dispute resolution bodies[805] – are the same as for disputes between a club and a player as described above. Disputes involving coaches follow the same principle as disputes involving players since CAS has recently noted that the requirement for an international dimension has to exist at the moment the dispute arises.[806]

On the other hand, unlike in disputes between players and clubs where article 22 paragraph 1 a) applies, there is no such provision to extend FIFA's jurisdiction to national disputes in respect of coaches as the latter are not transferred between, or registered with, clubs or associations.

Notwithstanding the regulatory basis provided by article 22 paragraph 1 c), CAS found that nothing prevents the parties from opting out of article 22 in favour of CAS. By means of an arbitration clause inserted in a contract, the parties can opt out of the jurisdiction of the FIFA adjudicatory bodies at first instance and refer any dispute arising from the employment relationship directly to CAS.[807] For further discussion regarding coaches, reference is made to the specific chapter of this Commentary concerning Annexe 2.

d. 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. It therefore follows that any dispute arising between clubs in connection with either issue can only be resolved by FIFA.

For training rewards disputes in relation to transfers or first registrations that occurred up until 15 November 2022, a training club may lodge a claim for training rewards in TMS in accordance with articles 27 and 28 of the Procedural Rules. The FCHR do not apply to such disputes.

A possible international dimension is again a key factor to determine whether FIFA has jurisdiction. Generally, 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).

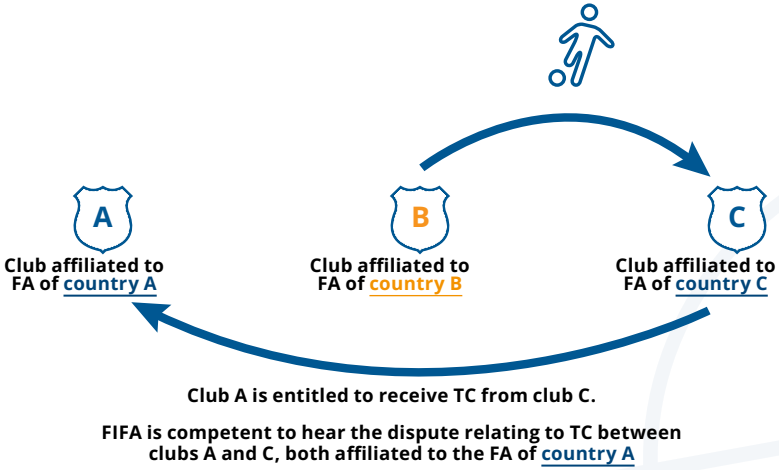
As of 1 July 2020, a second exception to the general rule has been included in the Regulations. FIFA is competent to hear disputes relating to training

805 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.

806 CAS 2021/A/7694, Tamás Bódog v. Honved FC & FIFA.

807 CAS 2021/A/7914, Mr. Cesar Domingo Mendiondo Lopez v. Hapoel Tel Aviv FC & FIFA and CAS 2021/A/7915, Mr. Javier Gonzalez Lopez v. Hapoel Tel Aviv FC & FIFA.

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:



For disputes relating to transfers or first registrations that occurred as from 16 November 2022, the FCHR apply. Generally, any dispute will be resolved and decided upon by the FIFA general secretariat during the EPP review process. However, a club that did not participate in an EPP review process may lodge a claim pursuant to article 22 paragraph 1 f), Regulations and article 27 of the Procedural Rules, as described below and, in that case, the dispute will be decided upon by the DRC in accordance with article 23 paragraph 1, Regulations.

For further discussion regarding training rewards, reference is made to the chapters of this Commentary dedicated to Annexes 4 and 5.

e. Matters of legal or factual complexity in an EPP review process and disputes between clubs in accordance with article 18 paragraph 2 of the FCHR

Article 22 paragraph 1 f) was introduced following the entry into force of the FCHR and is designed to provide the DRC with jurisdiction from two specific scenarios arising from the FCH process.

First, article 9 of the FCHR provides that the EPP review process will be administered by the FIFA general secretariat. This means, *inter alia*, that the FIFA general secretariat will *prima facie* make the final decision on both the clubs to be listed within an EPP and on the allocation of training rewards to be

paid to each of those clubs. In an ordinary case, this would be uncontroversial – the registration data provided by the relevant member associations would be definitive and the EPP would simply be validated by the FIFA general secretariat on that basis. However, where issues of legal or factual complexity occur in an EPP review process – such as an allegation over whether a player was registered or not, or questions regarding the validity of a waiver or contract offer – it may be more appropriate for an independent forum, the DRC, to decide such issues. The decision to refer such a matter to the DRC is made by the FIFA general secretariat; this decision may not be appealed. In such cases, the EPP review process is paused pending the DRC's decision; the DRC is competent to determine the clubs listed on the EPP and the training rewards to be paid to each of those clubs in accordance with article 28bis of the Procedural Rules.

Second, the FCHR (in article 18 paragraph 2) provide the DRC with competence to deal with cases (as discussed above) where a club that did not participate in an EPP review process believes that, because of a bridge transfer, the exchange of players or information declared by the new club or its member association (including the training category of the club):

i. it was incorrectly not entitled to any training rewards, or entitled to a lesser amount than should have been calculated; or

ii. an EPP review process should have taken place.

f. Other disputes between clubs affiliated to different member associations

In addition to FIFA's jurisdiction to hear 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, which must be present in the relevant dispute for FIFA to have jurisdiction to hear it. The dispute concerned must also fall within the general scope of the Regulations (see art. 1, Regulations), which will be assessed on a case-by-case basis. In principle, this means that the dispute must be related to international transfers of players. The most common matters of this kind are claims relating to the execution of transfer agreements (irrespective of whether those are of a temporary or of a permanent nature).

However, FIFA may have jurisdiction to hear disputes based on other kinds of agreements entered into by clubs affiliated to different member associations. On this note, in a recent decision of the PSC,[808] the Single Judge confirmed FIFA's jurisdiction over a dispute concerning the execution of an agreement entered into between two clubs (affiliated to different member associations), the subject matter of which was the payment of a certain amount by club A to club B, for club B to accept the premature termination of its contract with its coach, thereby enabling club A to sign that coach.

808 PSC decision of 8 December 2022, Klos.

In the decision, the Single Judge underlined that, insofar as the dispute is between two clubs affiliated to different member associations and is based on the execution of an agreement concerning their employment relationship with a coach, FIFA "appear[s] to be an appropriate dispute-resolution forum, noting that the Players' Status Chamber specializes both in contractual disputes between clubs that are affiliated to different associations, but also in relation to international employment-related disputes concerning coaches", thereby confirming that the dispute at hand comfortably falls within the scope of the Regulations and that the PSC is the appropriate decision-making body to hear it.

On the other hand, disputes between two clubs that are affiliated to different member associations and cooperate based on – for example – a partnership agreement (e.g. 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), do not fall under FIFA's jurisdiction. In this respect, although the dispute would have an international dimension as the two clubs are affiliated to different member associations, the case is outside the scope of the Regulations, insofar as FIFA is not the appropriate forum to entertain disputes in connection with partnership agreements.[809]

3. Relevant jurisprudence

DRC/PSC decisions

Civil courts

1. DRC decision of 25 October 2018, no. 10181394-E.
2. DRC decision of 14 June 2019, Gómez.
3. DRC decision of 14 October 2021, Johansson.
4. Single Judge Players' Status Committee decision of 9 July 2021, Sacramento.
5. DRC decision of 8 June 2022, Bordon.
6. DRC decision of 4 August 2022, Gonen.
7. Single Judge Players' Status Committee decision of 14 July 2020, Chacon.

809 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" entered into 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 a "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".

Competence on maintenance of contractual stability – link to ITC request

1. DRC decision of 20 February 2020, Rodrigues.
2. DRC decision of 16 August 2019, no. 08191586-E.
3. DRC decision of 30 November 2017, no. 11171392-E.
4. DRC decision of 15 July 2021, Ethemi.

Competence of national dispute resolution bodies

1. DRC decision of 2 December 2021, Oyewusi.
2. DRC decision of 9 June 2022, Penilla.
3. DRC decision of 4 August 2022, Velic.
4. DRC decision of 7 July 2022, Platero.
5. DRC decision of 15 March 2023, Player A.
6. DRC decision of 26 October 2022, Simic.

Compliance with the principle of equal representation

1. DRC decision of 7 March 2019, no. 03191173-E.
2. DRC decision of 7 March 2019, no. 03191325-ES.
3. DRC decision of 4 August 2022, Velic.
4. DRC decision of 7 July 2022, Platero.

"Forum shopping"

1. DRC decision of 12 February 2020, Stancu.
2. DRC decision of 4 October 2018, no. 10181141-FR.
3. DRC decision of 16 December 2021, Haurylovich.
4. DRC decision of 6 August 2022, Aliaksei.

Lack of an international element to the dispute

1. DRC decision of 3 March 2022, Affonso Junior.
2. DRC decision of 3 March 2022, Kok Kan.
3. DRC decision of 3 March 2022, Yun Yip.

4. DRC decision of 3 March 2022, Wing Tse.
5. DRC decision of 3 March 2022, Vinet.
6. DRC decision of 3 March 2022, Torilla.
7. DRC decision of 3 March 2022, Yuen.
8. DRC decision of 3 March 2022, Ruiz.
9. DRC decision of 3 March 2022, Fung.
10. DRC decision of 3 March 2022, Vasudeva Das.
11. DRC decision of 3 March 2022, Cardona.
12. DRC decision of 2 June 2022, Dai.
13. DRC decision of 12 October 2022, 102288.

Definition of employment-related disputes

1. DRC decision of 21 March 2021, Garcia Perdomo.
2. DRC decision of 6 May 2021, Girotto Frenchanco.
3. DRC decision of 5 May 2022, Mihajlovic.
4. DRC decision of 7 December 2022, De Carvalho Serra.

Competence of national dispute resolution bodies in relation to coaches

1. Single Judge Players' Status Committee decision of 25 May 2020, Benzarti.

Competence limited to coaches and assistant coaches

1. Single Judge Players' Status Committee decision of 24 July 2019, Reguera.
2. Single Judge Players' Status Committee decision of 24 July 2019, Ruiz de Lara.
3. Single Judge Players' Status Committee decision of 24 July 2019, Maldonado.
4. PSC decision of 23 March 2021, Bodog.
5. PSC decision of 25 August 2020, Lawrence.
6. PSC decision of 8 November 2022, Torrijo.
7. PSC decision of 22 March 2022, Moreno Fernández.
8. PSC decision of 25 October 2022, Haibeh.
9. PSC decision of 7 October 2022, Larralde.

Competence on disputes opposing clubs affiliated to different member associations

1. PSC decision of 8 December 2022, Klos.

CAS awards

Civil courts

1. CAS 2014/A/3690, Wisla Krakow S.A. v. Tsvetan Genkov.
2. CAS 2015/A/4103, Franco Zuculini v. Club Real Zaragoza SAD & FIFA.
3. CAS 2018/A/5624, Dominique Cuperly v. Al Jazira.
4. CAS 2017/A/5111, Debreceni Vasutas Sport Club (DV.C) v. Nenad Novakovic.
5. CAS 2020/A/7605, Mol Fehervar FC v. Joan Carrillo Milan & FIFA.
6. TAS 2019/A/6795, Gustavo Quinteros c. Federación Ecuatoriana de Football & FIFA.
7. CAS 2020/A/7382, Miguel Angel Londero v. Mons Calpe SC & FIFA.

Arbitrability

1. CAS 2015/A/3896, Elias Mendes Trindade v. Atlético de Madrid.
2. CAS 2015/A/4152, Cerro Porteño v. Roberto Antonio Nanni & FIFA.
3. CAS 2019/A/6621, Club Atlético Osasuna v. Alvaro Fernández Llorente and AS Monaco FC.

International dimension

1. CAS 2010/A/2255, René Salomon Olembe Limbe v. Kayserispor Kulübü Dernegi.
2. CAS 2010/A/1996, Omer Riza v. Trabzonspor Kulübü Dernegi & Turkish Football Federation (TFF).
3. CAS 2016/A/4846, Amazulu FC v. Jacob Pinehas Nambandi & FIFA & National Soccer League South Africa.
4. CAS 2016/A/4441, Jhonny van Beukering v. Pelita Bandung Raya FC & FIFA.
5. CAS 2020/A/6791, Diego Alonso Estrada Valverde c. Comunicaciones Fútbol Club S.A. & FIFA.

6. CAS 2020/A/6933, Emilio Yamin Faure v. Al Salam Zgharta Club & FIFA.
7. CAS 2021/A/7865, Aliaksandr Paulavets v. F.C. Dynamo Brest & FIFA.
8. CAS 2021/A/7694, Tamás Bódog v. Honved FC & FIFA.

Competence on maintenance of contractual stability – link to ITC request

1. 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.
2. CAS 2020/A/6899 & 6930 Cádiz FC & Mamadou Mbaye v. FIFA & Watford FC.

Explicit and specific written arbitration clause

1. CAS 2016/A/4568, Wisla Krakow v. Milan Jovanic & FIFA.
2. CAS 2015/A/4333, MKS Cracovia SSA v. Bojan Puzigaca & FIFA.
3. CAS 2018/A/5659, Al Sharjah FC v. Leonardo Lima da Silva & FIFA.
4. CAS 2014/A/3684, Leandro da Silva v. Sport Lisboa e Benfica & CAS 2014/A/3693 Sport Lisboa e Benfica v. Leandro da Silva.
5. CAS 2018/A/5925, Ricardo Gabriel Álvarez v. Sunderland AFC.
6. CAS 2019/A/6312, Ailton José Almeida v. Al Jazira Football Sports Company & FIFA.
7. CAS 2021/A/7914, Mr. Cesar Domingo Mendiondo Lopez v. Hapoel Tel Aviv FC & FIFA and CAS 2021/A/7915, Mr. Javier Gonzalez Lopez v. Hapoel Tel Aviv FC & FIFA.
8. CAS 2021/A/7794, GNK Dinamo Zagreb v. Rene Poms & FIFA.

Compliance with the principle of equal representation

1. CAS 2014/A/3483, S.C.C. Fotbal Club CFR 1907 Cluj S.A. v. Mr Fernandino Sforzini & FIFA.
2. CAS 2014/A/3582, S.C. Fotbal Club Otelul S.A. v. Zdenko Baotic & FIFA & Romanian Professional Football League.
3. CAS 2020/A/6830, Dorian Leveque v. FC PAOK Thessaloniki & FIFA.
4. CAS 2021/A/7927, Al Sailiya FC v. Gregory Diranth Gomis & FIFA.
5. CAS 2021/A/7800, NK Inter Zapresic v. Borislav Aleksandrov Tsonev & FIFA.

6. CAS 2021/A/7859, NK Inter Zapresic v. Serder Serderov & FIFA.CAS 2014/A/3854, AFC Astra v. Nikola Michellini & FIFA.
7. CAS 2014/A/3864, AFC Astra v. Laionel da Silva Ramalho & FIFA.
8. CAS 2012/A/2970, Barcelona Sporting Club v. Marcelo Alejandro Delgado & FIFA.
9. CAS 2014/A/3690, Wisla Krakow S.A. v. Tsvetan Genkov.
10. CAS 2016/A/4846, Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League South Africa.

National body guaranteeing fair proceedings

1. CAS 2014/A/3483, S.C.C. Fotbal Club CFR 1907 Cluj S.A. v. Mr Fernandino Sforzini & FIFA.

Assessment of the legitimacy of a national dispute resolution body

1. 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

1. CAS 2010/A/2289, S.C. Sporting Club S.A. Vaslui v. Marko Ljubinkovic.
2. CAS 2008/A/1518, Ionikos FC v. Marco Paulo Rebelo Lopes.
3. CAS 2007/A/1012, Altamira Fútbol Club S.A. de C.V. v. Federación Mexicana de Fútbol, Jairo Manfredo Martínez Puerto & FIFA.
4. CAS 2014/A/3690, Wisla Krakow S.A. v. Tsvetan Genkov.
5. CAS 2016/A/4846, Amazulu FC v. Jacob Pinehas Nambandi & FIFA & National Soccer League South Africa.
6. CAS 2020/A/7050, Mashinsazi Tabriz Cultural and Sports Club v. Jai Quitongo.
7. CAS 2020/A/7144, Raja Club Athletic v. Léma Mabidi.
8. CAS 2020/A/7145, Moreirense Futebol Clube – Futebol SAD v. Jhonatan Luiz da Siqueira & Vitória Sport Clube, Futebol SAD.
9. CAS 2020/A/7267, Larissa FC v. Gordan Petric & FIFA.

"Forum shopping"

1. 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

1. CAS 2009/A/2000, Eduardo Julio Urtasun v. FIFA.
2. CAS 2016/A/4878, Anthony Garzitto v. Al-Hilal SC & FIFA.

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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), e) and f).

2. The Players' Status Chamber of the Football Tribunal shall adjudicate on any of the cases described in article 22 paragraphs 1 c) and g), 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.

1. Purpose and scope

Prior to 1 October 2021, the dispute resolution system provided two decision-making bodies: (i) the PSC; and (ii) the DRC.

On 1 October 2021, the FT began operations. Composed of three chambers (the DRC, the PSC and the AC), it consolidates all previous FIFA decision-making bodies into one single, unified body.

Single judges are used to decide on matters within all three chambers, in accordance with the Procedural Rules. The use of single judges allows for greater flexibility, meaning that each chamber can work much more quickly than if a panel of judges were required, and urgent matters can be resolved much faster. It is noted, however, that for the DRC, single judges may adjudicate only in cases of lesser factual or legal complexity, or in cases in which the amount sought as relief does not exceed USD 200,000. In contrast, for the AC and the PSC, single judges may adjudicate in any case as a general rule.

Article 23, Regulations primarily determines which chambers of the FT may adjudicate on which types of cases. Further, it establishes a general limitation period of two years, and it determines that this time limit is examined *ex officio*.

Finally, for the specific procedures to lodge claims before the FT, the provision refers to the Procedural Rules Governing the Football Tribunal.

A. DISPUTE RESOLUTION CHAMBER

a. Role and activity

The DRC 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 that respects the principle of equal representation of players (employees) and clubs (employers), as well as fair proceedings.

In line with this principle of equal representation, the DRC consists of equal numbers of club and player representatives and is presided over by an independent chair and deputies, who are appointed by the FIFA Council for a term of four years.[810] Candidates must pass an eligibility check carried out by the Review Committee.[811]

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.

The previous edition of this Commentary stated that "A DRC meeting is generally held biweekly". While this largely reflects general practice, it must be noted that the FIFA general secretariat may organise as many meetings of the chambers of the FT, and as frequently, as necessary.

As outlined above, for the DRC, a Single Judge may adjudicate in cases in which the amount sought as relief does not exceed USD 200,000 (or its equivalent in another currency). For all other matters, 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).[812]

The parties to a dispute are informed in advance of the composition of the DRC (whether a panel or a Single Judge) that will deal with their case. A party may challenge the appointed judge(s) if it believes that there is a legitimate doubt as to their impartiality, provided they do so within five days of being informed of the composition of the chamber. Ever since the start of operations of the FT in October 2021, the Procedural Rules have established that the nationality of a judge does nor per se constitute grounds for a valid challenge.[813]

A decision on the challenge will be made by the chairperson of the FT, or in their absence, by the chairperson of the DRC or PSC.[814]

b. Jurisdiction

The main competence of the DRC is to decide on employment-related disputes with an international dimension between clubs and professional players, and on disputes between clubs and players relating to the maintenance of contractual

810 Article 35 paragraph 5, Statutes; article 4, Procedural Rules.
811 Article 39 paragraph 5, Statutes.
812 Article 24 paragraph 1, Procedural Rules.
813 Article 5 paragraph 2, Procedural Rules
814 Article 5 paragraph 3, and article 4 paragraph 6, Procedural Rules.

stability following an ITC request. Disputes concerning the issuance of an ITC from one member association to another do not fall within the jurisdiction of the DRC; they are dealt with by the PSC.

The DRC also adjudicates on disputes relating to training compensation and the solidarity mechanism, including disputes deriving from the EPP review process associated with the FCH. 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.

c. Appeals

Any decision passed by the DRC may be appealed before CAS.

B. PLAYERS' STATUS CHAMBER

a. Role and activity

The Players' Status Committee was a FIFA standing committee; in its 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 on 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 composed of a chairperson, deputy chairperson and a 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.[815] Candidates must pass an eligibility check carried out by the Review Committee.[816]

When deciding on disputes falling within its jurisdiction, a Single Judge of the PSC will generally decide. Where a matter is legally complex, at least three judges shall adjudicate.[817] When deciding on regulatory applications falling within its jurisdiction, generally a Single Judge will adjudicate on the case. In a complex matter or where exceptional circumstances exist, at least three judges will adjudicate.[818] The rules on challenging the judges appointed to adjudicate on a specific matter apply to the PSC in the same manner as to the DRC.

815 Article 35 paragraph 5, Statutes; article 4, Procedural Rules.
816 Article 39 paragraph 5, Statutes.
817 Article 24 paragraph 2, Procedural Rules.
818 Article 29 paragraph 4, Procedural Rules.

b. 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; and
- any regulatory applications where the Regulations or other FIFA regulations provide it with competence.

c. Appeals

Any decision passed by the PSC may be appealed before CAS.

C. DISPUTES ABOUT THE COMPETENT CHAMBER

Once it has been established that FIFA has jurisdiction, the next question is which chamber of the FT should hear the case. In particular, if a party requests that a dispute be heard by the wrong chamber, 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 the facts of the case, it is uncertain or specifically disputed which chamber has jurisdiction to decide on a matter, the chairperson of the FT will decide on the correct chamber.[819]

D. STATUTE OF LIMITATIONS

Article 23 paragraph 3, Regulations sets out the statute of limitations for lodging claims. The period within which a claim must be lodged is two years as from the occurrence of the event giving rise to the dispute.

The applicability of the 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 that 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 on the matter or order the FIFA general secretariat to continue the procedure.[820]

819 Article 2 paragraph 2, Procedural Rules.
820 Article 19, Procedural Rules.

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 thus be deemed inadmissible.[821]

In a 2021 case,[822] a claimant lodged a claim on 18 November 2022 for sums that were due on 20 December 2017 and 20 January 2018. The Single Judge found the claim to be time-barred and held that the sending of a default notice could not be considered as an interruption to the limitation period. Similarly, in another 2021 case,[823] a player lodged a claim on 7 May 2019, but it was later deemed to have been withdrawn due to the player's failure to complete his claim despite being invited by FIFA to do so. On 21 March 2021, the player reiterated his claim. The DRC found the 2021 claim to be a new matter as opposed to a continuation of the 2019 claim, and therefore it was time-barred.

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 on which the payment was contractually due) to see whether it is time-barred or not.[824] The same applies to 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.[825] This approach is applied consistently and without exception in the jurisprudence.[826]

In a 2022 case,[827] two clubs had agreed that a transfer fee was inclusive of solidarity mechanism payments. The player's training clubs then lodged claims against the claimant. The claimant failed to respond to the claim by the first club, but lodged a defence against the claim by the second club. Ultimately, the claimant paid the sums awarded to the training clubs and lodged a claim for reimbursement from the respondent. The Single Judge held that the sums due before 18 March 2020 were time-barred (i.e. no reimbursement for money paid to the first club was ordered). Notwithstanding that, the Single Judge considered the claim *sub judice* and admitted it partially, insofar as it referred to the reimbursement of monies paid to the second club, as the limitation period had been duly interrupted on 10 August 2020 by means of the claimant's statement of defence.

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821 DRC decision of 30 October 2019, Chansa.
822 PSC decision of 23 March 2021, Caicedo Medina.
823 DRC decision of 6 May 2021, Cardoso Garcia.
824 Example: the contract between player A and 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 salaries for the months of September to December 2017, which were 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 to be time-barred. However, the claims for the monthly salary payments due on 30 September 2017 and 30 October 2017 will not be heard.
825 Example: on 1 July 2017, club A and club B sign a transfer agreement concerning player X and stipulate that the transfer fee of EUR 9m shall be paid in three equal instalments of EUR 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 to be time-barred.
826 DRC decision of 21 February 2020, Mendes da Graca; DRC decision of 12 June 2020, Konaté.
827 PSC decision of 17 May 2022, Do Nascimento Cruz.

In another 2022 case,[828] a player lodged a claim on 20 April 2022 for outstanding salary payments between 30 November 2019 and 31 May 2021. The DRC concluded that the player's request was partially time-barred insofar as it pertained to amounts that were due before 20 April 2020.

In one CAS 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 of the SCO applied: "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".[829]

When it comes to claims relating to the unilateral termination of a contract without just cause and the corresponding requests for compensation (in addition to any outstanding amounts due under the contract), the two-year time limit is automatically calculated from the day on which the contractual relationship was terminated.

Regarding claims for training compensation for transfers or registrations that occurred before 16 November 2022, the date on which the FCHR came into force, the new club must pay training compensation within 30 days of the player being registered with their affiliated member association. As the last possible due date is the 30th day after the player registered with the new club, the club will be in default from the 31st day onwards. Accordingly, the two-year time limit for lodging a claim with FIFA also starts as of the 31st day following the player's registration with the new club.[830]

The same approach applies to claims for solidarity contributions for transfers that occurred before 16 November 2022. However, if a transfer agreement provides for the agreed transfer fee to be paid in instalments, or in the event that 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 on the day after these contingent payments are due to be paid. As one would expect, if the new club is late in paying an instalment or a contingent payment, this does 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 a claim with FIFA will also start on the 31st day following the due date of the instalment or contingent payment concerned.

828 DRC decision of 23 June 2022, Mrsic.
829 CAS 2018/A/6045, Manuel Henrique Tavares Fernandes v. FC Lokomotiv Moscow.
830 CAS 2016/A/4428, Udinese Calcio S.p.A. v. Santos Futebol Clube & FIFA.

Finally, the two-year time limit will only be respected if a complete claim in line with the requirements of the Procedural Rules is submitted to FIFA within this timeframe.[831] 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, will not, in principle, interrupt the limitation period.

One exception is noted in the jurisprudence, i.e. circumstances in which a party acknowledges or admits a debt. Such instances have been recognised by CAS as a valid ground 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.[832] Some decisions of the FT also reflect this approach.[833]

In this respect, however, the interpretation of CAS of the event giving rise to the dispute is not uniform. Two recent awards dealt with this matter,[834] both concerning the issue of sporting succession. In both cases, the relevant clubs had 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, i.e. the non-payment of salaries, had not been 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 that 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.

E. FURTHER LEGAL REQUIREMENTS

In addition to the competence of the FT in line with article 22, Regulations and the admissibility of a claim vis-à-vis the statute of limitations as indicated above, there are further elements which are equally important so that a claim can be entertained as to its substance.

The first element is the *res iudicata* principle. In multiple cases, the FT has ruled a claim inadmissible as the dispute had already been decided by another competent body, or by the FT itself.[835] In essence, this approach is considered consistent with the spirit of the Regulations, which do not permit the FT to reassess a final and binding decision. Equally, the Procedural Rules do not enable decisions to be reconsidered based on a new claim.

831 Article 19, Procedural Rules.
832 CAS 2012/A/2919, FC Seoul v. Newcastle Jets FC.
833 PSC decision of 11 October 2022, Costa Marinho.
834 CAS 2020/A/7154, ARIS FC v. Ikechukwu John Kingsley Ibeh & FIFA; CAS 2020/A/6971 Mihaita Plesan v. FC Nizhny Novgorod & FIFA.
835 PSC decision of 8 November 2022, Avila Gordon; DRC decision of 9 June 2022, Coulibaly; Decision of the chairperson of the DRC of 6 May 2022, Segbefia; Decision of the chairperson of the DRC of 24 March 2023, 032308; Decision of the chairperson of the DRC of 28 March 2022, Gamarra.

The second element is the *lis pendens* principle. As with *res iudicata*, the FT cannot entertain a claim if an identical one, involving the same parties and the same object, is pending before another competent decision-making body. This has been consistently confirmed by both the DRC and the PSC.[836]

The third element is preclusion. This concept is enshrined in article 21 of the Procedural Rules as well as in the jurisprudence of the FT. It is aimed at ensuring legal certainty, procedural fairness and procedural economy. In essence, preclusion avoids a situation in which parties could freely file independent claims as they please, which would jeopardise legal due process in proceedings before the FT. With respect to the Procedural Rules, article 21 determines that any counterclaim must be filed by the relevant party within the time limit set by the FIFA general secretariat. In other words, where a party has already been summoned to the proceedings, any counterclaim (or parallel claim) must be filed within the time limit granted, otherwise it will be deemed late and the party in question will be precluded from submitting it.[837] CAS has confirmed this approach taken by the DRC.[838]

The same rationale applies *mutatis mutandis* to multiple claims filed by the same party for different amounts that could have been requested in the same proceedings[839]. In two recent decisions, the DRC found that it could not overlook the procedural behaviour of the players concerned. In both cases, the players had lodged a first claim for outstanding remuneration, only to several months later file a new claim for a bonus which had already fallen due by the time the first claim had been lodged. The Single Judge found that the claimant not only could have but should have requested the bonus together with the other remuneration sought per the first claim. However, as the bonus was not requested then, the Single Judge equally found that the players were precluded from launching new proceedings for the bonus. The decisions further outlined that the principle of preclusion, as a general principle of law, denotes that the parties must (procedurally) act in good faith and file the entirety of their requests in the appropriate time, under penalty of being prohibited from doing so at a later stage, and that allowing multiple claims would jeopardise the spirit of the Procedural Rules, since parties would be able to file independent claims as they please, which would not only contravene the principles of good procedural order and procedural economy, but would also jeopardise due process and, ultimately, legal certainty within the FIFA dispute resolution system.

F. PROCEDURAL RULES GOVERNING THE FOOTBALL TRIBUNAL

Article 23 paragraph 4, Regulations provides that the detailed procedures for resolving disputes arising from the application of the Regulations are 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.

836 PSC decision of 25 October 2022, Priske Pedersen; DRC decision of 21 July 2022, Bia.
837 DRC decision of 22 October 2020, Ruiz Torre.
838 CAS 2020/A/7455, Besiktas A.S. v. FIFA & Victor Ruiz Torre.
839 DRC decision of 29 June 2023, Schenk; DRC decision of 29 June 2023, Rahyi.

This section very briefly sets out some key elements of the Procedural Rules.

a. 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. a 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 of a decision once the terms of the decision have been published, it does not have to pay any procedural costs that 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 of the decision.

b. 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".[840]

However, "take into account" does not necessarily mean "apply". The DRC and the PSC have significant discretion in this regard, and they make full use of it. Indeed, if one examines the hundreds of decisions handed down since September 2001, one can 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.

840 Article 3, Procedural Rules.

This approach is guided by the desire to ensure equal treatment for all 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,[841] including in relation to the criteria for establishing the validity of a contract between a professional player and a club.[842] This should not come as a surprise, as 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.[843]

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.

One recent award provides a summary of the predominant approach in such cases.[844] 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.

CAS made 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 the 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.

841 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.

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

843 CAS 2016/A/4846, Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League; CAS 2019/A/6525, Sevilla FC v. AS Nancy Lorraine, with a 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.

844 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.

The key question to 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, which 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 of a state court, must also be considered.

Finally, 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 light of the specific circumstances of the football industry.

A similar approach has been adopted in various CAS awards,[845] 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 judgments. In another judgment, 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.[846]

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.[847]

On another occasion, in a 2012 award,[848] the specificity of sport was cited as an "aggravating factor". In this case, the panel considered that the fact that 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, as the club had signed a contract with the player for three seasons and had

845 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 Bucuresti & FIFA and FC Pyunik Yerevan v. E., AFC Rapid Bucuresti & 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.

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

847 CAS 2015/A/3871, and 3872 Sergio Sebastián Ariosa Moreira v. Club Olimpia and Club Olimpia v. Sergio Sebastián Ariosa Moreira.

848 CAS 2012/A/3033, A. v. FC OFI Crete.

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 as 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.

2. Relevant jurisprudence

DRC decisions

Limitation and admissibility

1. PSC decision of 23 March 2021, Caicedo Medina.
2. DRC decision of 6 May 2021, Cardoso Garcia.
3. PSC decision of of 17 May 2022, Do Nascimento Cruz.
4. DRC decision of 23 June 2022, Mrsic.
5. PSC decision of 8 November 2022, Avila Gordon.
6. DRC decision of 9 June 2022, Coulibaly.
7. Decision of the chairperson of the DRC of 6 May 2022, Segbefia.
8. Decision of the chairperson of the DRC of 24 March 2023, 032308.
9. Decision of the chairperson of the DRC of 28 March 2022, Gamarra.
10. PSC decision of 25 October 2022, Priske Pedersen.
11. DRC decision of 21 July 2022, Bia.
12. DRC decision of 22 October 2020, Ruiz Torre.
13. DRC decision of 29 June 2023, Schenk.
14. DRC decision of 29 June 2023, Rahyi.
15. PSC decision of 11 October 2022, Costa Marinho.

CAS awards

Applicable material law

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

3. CAS 2007/A/1298, Wigan Athletic FC v. Heart of Midlothian.
4. CAS 2007/A/1299, Heart of Midlothian v. Webster & Wigan Athletic FC.
5. CAS 2007/A/1300, Webster v. Heart of Midlothian.
6. CAS 2007/A/1358 and 1359, FC Pyunik Yerevan v. L., AFC Rapid Bucuresti & FIFA and FC Pyunik Yerevan v. E., AFC Rapid Bucuresti & FIFA.
7. CAS 2008/A/1453, Elkin Soto Jaramillo & FSV Mainz 05 v. CD Once Caldas & FIFA.
8. CAS 2008/A/1519, FC Shakhtar Donetsk (Ukraine) v. Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) & FIFA.
9. CAS 2008/A/1520, Mr Matuzalem Francelino da Silva (Brazil) & Real Zaragoza SAD (Spain) v. FC Shakhtar Donetsk (Ukraine) & FIFA.
10. TAS 2009/A/1960-1961, LOSC Lille v. Tony Mario Sylva & Trabzonspor; CAS 2015/A/4042 Gabriel Fernando Atz v. PFC Chernomorets Burgas.
11. 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).
12. CAS 2016/A/4843, Hamzeh Salameh & Nafit Mesan FC v. SAFA Sporting Club & FIFA.
13. CAS 2016/A/4709, Le Sporting Club de Bastia v. Christian Romaric.
14. CAS 2016/A/4846, Amazulu FC v. Jacob Nambandi & FIFA & National Soccer League.
15. CAS 2018/A/5659, Al Sharjah FC v. Leonardo Lima da Silva & FIFA.
16. 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.
17. CAS 2019/A/6175, Osmanlispor FK v. Josué Filipe Soares Pesqueira & Akhisar Belediyespor FC & FIFA.

Statute of limitations

1. CAS 2018/A/6045, Manuel Henrique Tavares Fernandes v. FC Lokomotiv Moscow.
2. CAS 2020/A/7154, Aris FC v. Ikechukwu John Kingsley Ibeh & FIFA.
3. CAS 2020/A/7290, Aris FC v. Oriol Lozano Farran & FIFA.
4. CAS 2020/A/6971, Mihaita Plesan v. FC Nizhny Novgorod & FIFA.

Preclusion

1. CAS 2020/A/7455, Besiktas A.S. v. FIFA & Victor Ruiz Torre.

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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 up to 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.

   a) 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.

   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 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.

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) the 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.

1. Purpose and scope

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 that 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 the enforcement of financial decisions made by the DRC or PSC.

Article 24 was introduced (as article 24bis) on 1 June 2018,[849] and article 25 (as article 24ter) on 1 January 2021.[850]

Article 24 grants the FT the power to decide on the consequences that a 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 the PSC) is expected to decide on both the substance of the (contractual) dispute before it and, at the same time, on the consequences associated with failure to comply with the financial provisions in the decision. Equally, where the FIFA general secretariat provides a "proposal" in an effort to settle a case, if the 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 to be a final and binding decision pursuant to the Regulations.[851]

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.

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 have been paid in full, even if the sanction in question has not yet been fully served at that point.

849 Circular no. 1625 of 26 April 2018.
850 Circular no. 1743 of 14 December 2020.
851 Article 20 paragraph 4, Procedural Rules.

2. The substance of the rule

A. CONSEQUENCES FOR THE PARTIES

a. General remarks

It is mandatory for the FT or the FIFA general secretariat to include the consequences for failure to pay the relevant amounts in due time within a decision or confirmation letter. The consequences may only be excluded where:

i. a direct sporting sanction has been imposed in the same case against the party to whom the consequences would apply; or

ii. 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.[852]

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 the sanction is not lifted even if payment compliance is achieved. The execution of the 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.[853] The insolvency-related event (e.g. bankruptcy proceedings, entering administration or appointment of a liquidator) must have occurred prior to the issuing of the decision, and proof of the matter must have been provided to the relevant body. As a result of this event, the debtor club must be legally restricted from settling its debts. If the debtor club fails to comply with the financial decision in these circumstances (which is likely), the creditor may seek to enforce the decision before the FIFA Disciplinary Committee.

b. 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 the full payment of the due amounts (including all applicable interest) has been made. Consistent with the principle of proportionality, the maximum duration of the registration ban cannot exceed three entire and consecutive registration periods.

852 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.
853 DRC decision of 1 February 2023, Iliev; DRC decision of 2 March 2023, García Fernandez; DRC decision of 7 March 2023, Rodriguez; DRC decision of 23 March 2023, Celar.

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 that failed to comply with a monetary decision had to commence at the start of a registration period – even if the failure to comply fell one or two days into an open registration period. This led to the unfortunate situation where debtor clubs that 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 to expressly set out the procedure for consequences to be applied. In short, following notification to FIFA by a creditor (club or player) that it has not received full payment (including all applicable interest), FIFA will inform the debtor (club or player) that the consequences will apply. The new paragraph 7 expressly states that the consequences will "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 may be lifted. A debtor that has had consequences applied against it must provide FIFA with proof that the payment has been made in full (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). This means that the debtor must pay the amount, as written in a decision or confirmation letter, in full to the creditor without deductions and irrespective of bank fees, or taxation obligations, or any other reason.

Upon receipt of the proof of payment of the full amount (including any applicable interest), FIFA will 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.

c. 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.

d. 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.[854]

The consequences described above have been consistently applied to all employment-related disputes between clubs and players, and to 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.

B. 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.

This deadline period 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 the decision. Upon notification of the grounds, the time limit recommences. The time limit is subsequently paused again by any appeal to CAS.

The inclusion of this specific rule within the Regulations is designed to provide legal certainty and to prevent parties (in particular repeat offender clubs) from taking advantage of procedural elements to delay the proper enforcement of the consequences.

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. 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.[855] 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 deadline period 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 deadline period 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.

854 Article 21, FIFA Disciplinary Code (2023 edition).
855 Articles 18 and 27, Procedural Rules.

C. APPEAL TO CAS

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; rather, they only analyse it from the perspective of FIFA's standing to be sued.[856]

D. IMPLEMENTATION OF DECISIONS

Article 25 (formerly art. 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. It explicitly states that the sporting successor of a debtor shall be considered to be the same entity as the 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;

ii. It explicitly defines when the payment of a sum of money (as ordered by the FT) is considered to have been made. 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;

856 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.

iii. It 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:

- The return from loan of a professional, solely where the loan agreement expires naturally;
- The extension of the loan of a professional, beyond the natural expiry of the loan agreement;
- The definitive engagement of a professional who was temporarily registered for the club directly prior to the registration ban being imposed; and
- The registration of a professional who was already registered with the club as an amateur directly prior to the registration ban being imposed.

3. Relevant jurisprudence

DRC decisions

Consequences

1. DRC decision of 16 August 2019, Hamilton.
2. DRC decision of 16 August 2019, Habib Daf.
3. DRC decision of 3 October 2019, Medic.
4. DRC decision of 1 February 2023, Iliev.
5. DRC decision of 2 March 2023, García Fernandez.
6. DRC decision of 7 March 2023, Rodriguez.
7. DRC decision of 23 March 2023, Celar.

CAS awards

1. CAS 2019/A/6508, Cruzeiro E.C. v. Independiente del Valle & FIFA.
2. CAS 2019/A/6422, Cruzeiro E.C. v. Ramon Dario Abila & FIFA.
3. TAS 2020/A/6851, Asociacion Deportivo Cali c. Club Santiago Wanderers & FIFA.
4. CAS 2020/A/6694, Bursaspor KD v. Henri Gregoire Saivet.

Chapter X.

FINAL PROVISIONS

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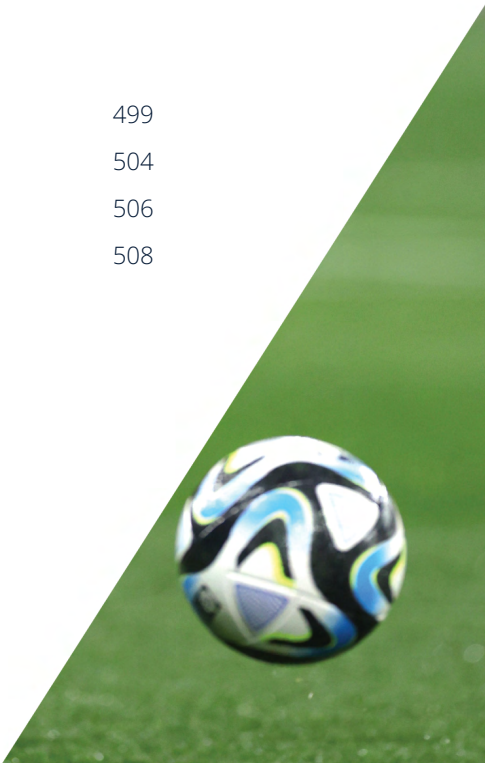

CHAPTER X.

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).

4. If, at the time when these regulations come into force, a competition period (within the meaning of these regulations) in an association has already started and the first registration period in that same competition period has already been completed, the following shall apply: if the first registration period lasted less than 12 weeks, the second registration period within that same competition period may last up to eight weeks, provided that the total of both registration periods does not exceed 16 weeks.

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 which 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 reward 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.

2. The substance of the rule

A. THE GENERAL PRINCIPLE

Article 26 establishes in fact one rule with two exceptions.

The general principle is simple: the current edition of the Regulations applies *ex nunc*, that is, from the moment the Regulations come into force onwards, as detailed in article 26 paragraph 2. In other words, 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.

Article 26 paragraph 1 outlines the first exception, which is a deviation from the legal principle *tempus regit actum* and the general rule. This means that 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 on which the contract was signed.

If a case or matter was 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).

The second exception concerns disputes relating to training rewards, as detailed below.

In a case from 2015, CAS had the 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).[857] 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 a case, the FIFA general secretariat must always interpret the Procedural Rules in the most favourable way for a party.[858]

B. DISPUTES REGARDING TRAINING REWARDS

The training reward regimes pursue specific objectives. They both aim to reward 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 the 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 was originally transferred.

It was with this in mind that the second 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 which edition of the Regulations was in force when the matter was actually brought to FIFA.

CAS had the opportunity to confirm this exceptional approach. The panel emphasised that the DRC had to assess the dispute according to the Regulations that were

857 CAS 2015/A/4310, Al Hilal Saudi Club v. Abdou Kader Mangane.
858 Article 31, Procedural Rules.

applicable on the basis of the exception in article 26, irrespective of when the player concerned had actually been trained.[859]

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 that 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.

3. Relevant jurisprudence

CAS awards

1. CAS 2014/A/3652, KRC Genk v. Lille Metropole.
2. CAS 2015/A/4310, Al Hilal Saudi Club v. Abdou Kader Mangane.
3. CAS 2016/A/4418, Centro Recreativo Unión Cultura v. UD Almería.

859 CAS 2014/A/3652, KRC Genk v. Lille Metropole; CAS 2016/A/4418, Centro Recreativo Unión Cultura v. UD Almería.

ARTICLE 27 – MATTERS NOT PROVIDED FOR

1. Purpose and scope 504

ARTICLE 27 – MATTERS NOT PROVIDED FOR

Any matters not provided for in these regulations and cases of force majeure shall be decided by the FIFA Council whose decisions are final.

1. Purpose and scope

Article 27 is a typical "catch-all" article, included in the Regulations to ensure that any matter relating to the topics covered in the Regulations that is not specifically regulated may be decided by a FIFA body, or where a case of *force majeure* occurs. This provision is in line 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 used for the first time by the FIFA Council in March 2020 because 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

1. Purpose and scope 506

ARTICLE 28 – OFFICIAL LANGUAGES

In the case of any discrepancy in the interpretation of the English, French, or Spanish texts of these regulations, the English text shall be authoritative.

1. Purpose and scope

In 2022, FIFA extended its official languages in the FIFA Statutes to include several new languages. The official languages of FIFA are now English, Spanish, French, German, Arabic, Portuguese and Russian. Minutes, official correspondence, regulations, decisions and announcements are published in English, French and Spanish, and in the other languages when deemed necessary.[860]

Accordingly, article 28 of the Regulations has been amended to reflect this change in approach – the Regulations are now published in English, Spanish and French only.

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. Therefore, the provision also clarifies that, in the event of any such discrepancies, the English version of the Regulations shall prevail over the others.

860 Article 9 paragraph 1, Statutes.

ARTICLE 29 – ENFORCEMENT

1. Purpose and scope 508

ARTICLE 29 – ENFORCEMENT

These regulations were approved by the Bureau of the FIFA Council on 21 May 2023 and come into force immediately.

Temporary amendments approved by the FIFA Council as a result of the COVID-19 pandemic will be periodically reviewed and removed accordingly.

Further regulatory amendments that may become necessary as a result of the war in Ukraine will be periodically assessed by the FIFA Council.

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 came 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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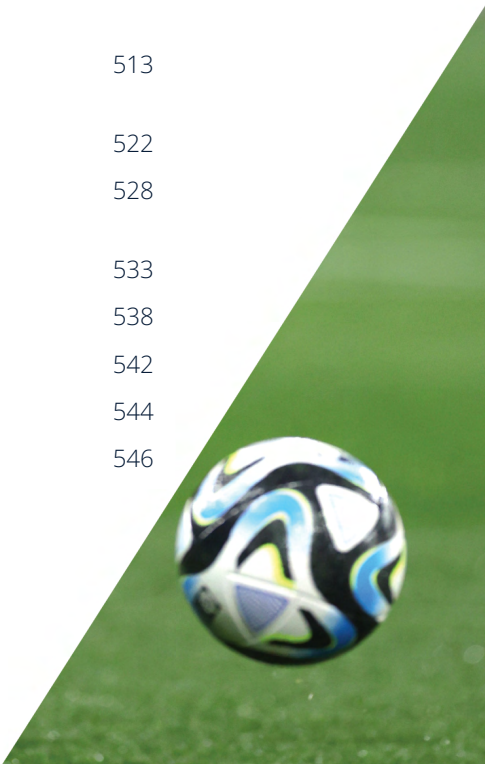

BACKGROUND

Both club and international football play important roles within association football. Both capture the attention of fans and the public at large, and each branch of the game 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 who are selected by and participate for representative teams, particularly at "A" level ("senior international football"), are generally employed by clubs as professionals. The clubs paying their wages would expect that their employees do not provide 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 an 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 or member association.

Overall, a balance needs to be struck. Member associations want to be able to field a full-strength team 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 to be available to schedule matches. Last, but by no means least, it is imperative to consider the interests, health, fitness and general well-being of the players concerned.

Annexe 1 is aimed at striking a balance between all of the above interests and requirements, and at facilitating the collaboration between all stakeholders involved.

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, the process for players to accept a call-up, and the consequences in the event that the parties involved in this process fail to comply with their obligations. It also covers the question of insurance coverage, drawing a distinction between illness and accident insurance, and insurance covering the payment of a player's salary if they are injured while on international duty.

The key tool in this respect is the IMC. The IMC is compiled by the FIFA Council after consultation with relevant football stakeholders and is binding. Confederations, member associations, leagues and representatives of clubs and players are consulted as part of the drafting process. The IMC is published for four or eight years for men's football, and for four years for women's football and 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 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 may 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, as these players may have to join up with their representative teams and could miss club games while away on international 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 their representative team, 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 the 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). Conversely, 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, or that the release (as provided by Annexe 1) would not be mandatory.

ANNEXE 1, ARTICLE 1 – PRINCIPLES FOR MEN'S FOOTBALL

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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 window scheduled for March 2022, for associations affiliated to OFC:

        a) the international window is extended by one day; and

        b) a maximum of three matches may be played by each representative team.

    ii. During the international windows scheduled for March 2022, for associations affiliated to CONCACAF:

        a) the international window is extended by one day; and

        b) a 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 intercontinental 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.

    i. During the international windows that have been extended in accordance with paragraph 4 i. and ii., 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. Purpose and scope

Article 1 determines the key principles underpinning the system of releasing players for national-team duty. It determines the general obligation to release players, the obligation to accept a call-up and the timeframe of a specific release.

2. The substance of the rule

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 that those players are eligible to represent,[861] 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.

a. 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

861 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.

are reserved for the activities of representative teams. Contrary to the provisions that were 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 them 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 give players sufficient time to recover and regenerate between matches, factoring in their return to their club to participate in club competition matches, a representative team may only play a maximum of two matches during an international window. The nature of the matches concerned (i.e. whether a non-official match or an 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, it is also permissible for a player (subject to their eligibility) to play matches for more than one category of representative team (but up to a maximum of two) in the same international window. Equally, the period for which a player must be released 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 U-21 representative team in the same international window.

The Regulations do not establish a 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, and will count towards the maximum number of matches.

Again, with a view to protecting players' health and to limit the 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 may be played in different confederations, but only if the distance between 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 intercontinental play-off matches for the FIFA World Cup™, which by definition must be played on the territory of different confederations.

b. Final competitions of international championships

Apart from the international windows, the only other international football dates for which release is mandatory 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.[862]

c. 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 it 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 their member association for the FIFA U-20 World Cup™ and is subsequently called up for their "A" representative team in the confederation championship in the same year, their club is obliged to release the player 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 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. 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.

d. 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.

B. OBLIGATION TO ACCEPT A CALL-UP

As a general rule, a player must comply with any call-up from a member association that they are eligible to represent on the basis of their nationality. However, a player who is eligible to play for more than one member association, for example because they hold 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 they will refuse) to comply with a call-up from a member association

862 Example: CONMEBOL regularly invites two guest member associations to participate in the *Copa América*. While clubs are obliged to release their players for the ten member associations of CONMEBOL, the clubs with registered players representing the two guest member associations will not have the obligation to do so.

that they are eligible to represent in the hope of being selected by another that they are eligible to represent.[863] For more information about eligibility to play for representative teams, reference is made to the Commentary on the Rules Governing Eligibility to Play for Representative Teams and to the Guide to Submitting a Request for Eligibility or Change of Association.

Naturally, any player may decide not to pursue an international career, or to stop playing international football at a certain point in their 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 their intention to quit international football after they have received the call-up, they still must comply with that specific call-up. Obviously, any such decision by a player must be communicated to the member association concerned. 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 their club to join a representative team varies depending on the circumstances in which they are released.

For an international window, the player must set off to join the representative team by no later than the Monday morning of the relevant window, at the location of their club. This will normally allow the player to play for their club in a national competition fixture immediately prior to the international window. They must set off to return to their club by no later than the Wednesday morning following the end of the international window, at the location of their 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 by no later than the Monday morning of the week preceding the week in which the tournament begins.[864] Again, this will normally allow them to play in a national competition fixture immediately prior to the final competition, if there is one. At the same time, this should also allow all member associations taking part in the tournament to have 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 return to their clubs by no later than the morning after their representative 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

863 Article 5 paragraph 3 read with article 9, Regulations Governing the Application of the FIFA Statutes.
864 Article 5 paragraph 3 read with article 9, Regulations Governing the Application of the FIFA Statutes.

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.[865] If an individual player's representative team has been conducting its activities in a different confederation to the one in which the player's club is located, this deadline will be 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 each member association's responsibility to make sure that schedules and release periods are respected, and that each of the players called up for representative-team duty returns to their club on time and is ready to resume their duty.

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 up with their representative team or to return from representative-team duty does not fit within the requirements of the Regulations.

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 on possible sanctions, if any.[866] 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 who fails to resume their duty with their club on time following an international call-up.

The consequences of a player not resuming their 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 that players return to their clubs on time). If a player returns late from international duty, upon the request of their club to the PSC, their release period will be shortened by two days for their 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

865 Example: if a player is released by their club for an international window, and the last match in which the player plays is scheduled on the last day of such window, i.e. on Tuesday evening, the player is required to start their travel to return to their club by no later than Wednesday morning, and should be back at the club's disposal by Thursday morning at the latest.

866 Circular no. 1542 dated 1 June 2016.

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 banned from calling up one or more players for subsequent representative-team activities.

As explained above, the entire sanctioning 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 their club on time, but that the player arrived late because of the player's negligence or misconduct.

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 the 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. Purpose and scope

Article 1bis sets out specific rules applicable to female eleven-a-side football. It is the same as article 1 in that it concerns the general obligation to release, as well as the applicable release period.

2. The substance of the rule

A. OBLIGATION TO RELEASE PLAYERS

Article 1bis 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.

a. International windows

The particularities of women's eleven-a-side football require 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 on 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 that a representative team may 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 that a representative team may 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.

b. 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 U-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.

c. 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 are able to 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 that of article 1, with some minor differences due to the three types of international windows and the final competitions included in the women's IMC.

For international windows, players must set off to join their representative team by no later than the Monday morning of the relevant window, at the location of their club. They must set off to return to their club by no later than 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 women's 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 return to their clubs by no later than the morning after their representative 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. Purpose and scope 530

2. The substance of the rule 530

   A. Obligation to release players 530

      a. International windows 530

      b. No limitation on the number of final competitions per year 530

   B. Release period 531

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 four 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. Purpose and scope

Article 1ter determines the principles regarding release specifically for futsal, without distinguishing between men's or women's futsal.

2. The substance of the rule

A. OBLIGATION TO RELEASE PLAYERS

As stated above, the same principles regarding release as set out in article 1 (men's eleven-a-side football) apply equally to article 1ter (futsal), unless explicitly stated otherwise. Those explicit references are provided below.

a. 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 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).

b. No limitation on 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 that of 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 by 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 by 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 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 return to their clubs by no later than the morning after their representative team's last match in the tournament.

ANNEXE 1, ARTICLE 2 – FINANCIAL PROVISIONS AND INSURANCE

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2. The substance of the rule 533

A. No financial compensation for clubs 533

B. Travel expenses 534

C. Insurance 534

a. Insurance cover against illness and accident 534

b. Insurance cover for a player's salary where they are rendered temporarily incapable of playing 534

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. Purpose and scope

Article 2 addresses financial matters and the topic of insurance coverage in the context of the release of players. It establishes the principles that no financial compensation is due to clubs for releasing a player, that member associations must bear the costs of travel, that clubs bear the primary obligation of insurance coverage, and that – under specific circumstances – FIFA may indemnify clubs in cases of injury.

2. The substance of the rule

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 that the playing field for member associations is as level as possible, and increases 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 expenses involved in compensating clubs for releasing their players for international duty would be prohibitive, and they would no longer be able to afford to call up certain players.

However, as an exception to this general rule, and in recognition of the contribution that clubs make to the success of the FIFA World Cup™, FIFA has set up the 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.[867] 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), Russia (2018) and Qatar (2022), 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 that they suffer an injury that temporarily renders them incapable of playing.

a. 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 for which its players are called up.

b. 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 is known as 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.[868]

867 Circular no. 1600 of 31 October 2017; circular no. 1608 of 7 December 2017; circular no. 1646 of 27 July 2018.
868 Circular no. 1672 of 14 May 2019.

It was then extended to cover the period from 2015 to 2018,[869] then to cover the period from 2019 to 2022,[870] and again to cover the period from 2023 to 2026.[871]

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.

As the club would still have an obligation to pay the player's salary based on the employment contract, the Club Protection Programme, generally speaking, provides compensation, to a certain extent, for the losses encountered by the club during the period that the player is injured due to an accident while on duty with senior representative "A" teams for matches on dates listed in the IMC.[872]

The Club Protection Programme only applies to eleven-a-side football and exclusively to players released for international "A" matches.[873] It has applied equally to professional male and female players since 1 January 2015.[874]

This insurance coverage applies to matches between two "A" representative teams played on the dates of the IMC or on dates covered by the respective release period for such matches as defined in Annexe 1. 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.[875] 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. However, 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. In such cases, given the importance of preparation ahead of major tournaments, the coverage applies to all friendly international "A" matches played by the "A" representative teams participating in confederation final competitions, the FIFA World Cup final competition and the FIFA Women's World Cup final competition during the preparation period. Therefore, coverage includes players of both "A" representative teams involved, provided that one of the representative teams involved has qualified for the final competition.

869 Circular no. 1307 of 8 June 2012.
870 Circular no. 1656 of 20 December 2018.
871 Circular no. 1852 of 29 July 2023
872 Circular no. 1307 of 8 June 2012; circular no. 1466 of 9 January 2015; circular no. 1664 of 7 March 2019; circular no. 1852 of 29 July 2023
873 Definition 5, Regulations Governing International Matches.
874 Circular no. 1454 of 31 October 2014; circular no. 1466 of 9 January 2015.
875 Circular no. 1307 of 8 June 2012; circular no. 1466 of 9 January 2015.

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.[876] Secondly, the accident concerned may occur whilst under the control of the respective member association at any point during the relevant release period, including all playing, practising, training, training matches, travelling and time spent away; there is no requirement for it to occur during a match.[877] Thirdly, the player must be prevented from rendering their services to their club for a temporary period of more than 28 consecutive days[878] 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[879]. 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 fixed salary paid directly by the club as an employer.[880] 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 7,500,000 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. This means that the maximum daily amount payable in compensation is limited to EUR 20,548 per accident. If the player's fixed 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, which was enclosed to circular no. 1852 of 29 July 2023.

876 Circular no. 1307 of 8 June 2012; circular no. 1466 of 9 January 2015.
877 Article 2 (c), Technical Bulletin – FIFA Club Protection Programme.
878 Article 2 (c), Technical Bulletin – FIFA Club Protection Programme.
879 Circular no. 1307 of 8 June 2012; circular no. 1466 of 9 January 2015; circular no. 1852 of 29 July 2023.
880 Circular no. 1852 of 29 July 2023.

ANNEXE 1, ARTICLE 3 – CALLING UP PLAYERS

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2. The substance of the rule 538

A. Obligation to accept a call-up 538

B. Formal requirements 539

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. Purpose and scope

Article 3 defines the requirements for a valid call-up. It determines the principle that a player is, in general, obliged to respond affirmatively when called up. It further defines the exact formal requirements for a call-up to be valid and binding.

2. The substance of the rule

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. As a general principle, every player registered with a club is obliged to respond affirmatively when called up by the association that they are eligible to represent on the basis of their nationality to play for one of its representative teams. This obligation 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, the club and the player, as well as to minimise the risk of any misunderstandings.

To encourage best practice as far as communications are concerned, the Regulations require member associations calling up a player for their representative teams 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 competitions, 15 days prior to the start of the release period for the final competition (included in the IMC).[881] 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 standard 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 may occur.

Clubs are required to confirm that 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.

881 Example: a player is called up by their member association to participate in the final competition of the championship 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 their club need to be informed of the call-up by Sunday, 13 June 2021, at the latest.

FIFA will not intervene in any circumstances in which the 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 in the IMC. The competition regulations of the respective competition will, however, usually limit the number of players that may be registered.

ANNEXE 1, ARTICLE 4 – INJURED PLAYERS

1. Purpose and scope 542

ANNEXE 1, ARTICLE 4 – INJURED PLAYERS

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. Purpose and scope

The health and well-being of a player deserves protection, and all parties concerned should work together to maintain it. The desire to protect the health and well-being 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 that players 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. Purpose and scope 544

ANNEXE 1, ARTICLE 5 – RESTRICTIONS ON PLAYING

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. Purpose and scope

If a player is validly and correctly called up by their member association, with all of 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, regardless of 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. the member association which called up the player) is free to agree to waive this restriction. To maintain legal security, and to ensure the agreement is properly documented, it is recommended to issue such an agreement 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 may 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.

ANNEXE 1, ARTICLE 6 – DISCIPLINARY MEASURES

1. Purpose and scope 546

ANNEXE 1, ARTICLE 6 – DISCIPLINARY MEASURES

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. 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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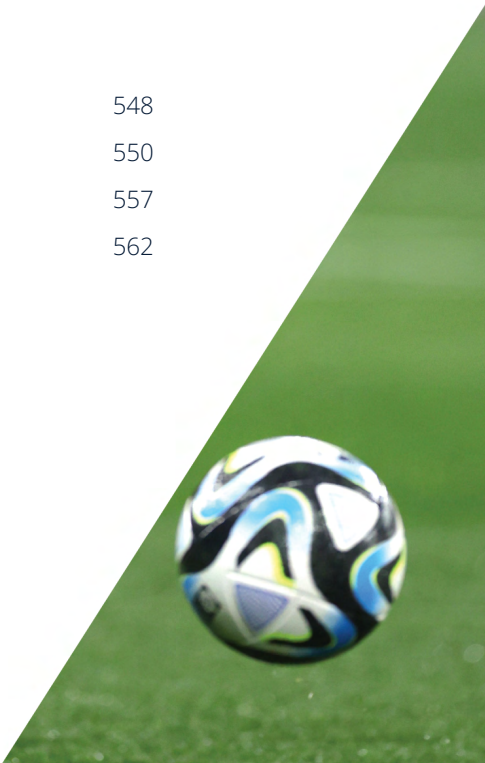

BACKGROUND

On 1 January 2021, FIFA introduced a new regulatory framework governing the labour relations between coaches and clubs, and between 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 on disputes involving coaches.

In this respect, the specific amendment package for coaches included:

i. a clear definition of the term "coach";

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, overdue payables 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.

It is noteworthy that most of the provisions included in Annexe 2 are effectively identical to the ones related to players. Therefore, the discussions elsewhere in this Commentary apply, *mutatis mutandis*, equally to these provisions, particularly where the wording is identical.

For ease of reference:

APPLICABLE TO COACHES (ANNEXE 2)		EQUIVALENT TO PLAYERS
Article 2	Paragraph 4	Article 18 paragraph 4
	Paragraph 6	Article 18 paragraph 6
Article 3		Article 13
Article 4		Article 14
Article 5		Article 14bis
Article 6		Article 17
Article 7		Article 12bis
Article 8		Article 24

To avoid repetition, this chapter aims to provide specific guidance on particular issues encountered in disputes involving coaches. Reference is made to the most important discussions brought before the PSC since Annexe 2 came into force.

ANNEXE 2, DEFINITIONS AND ANNEXE 2, ARTICLE 1

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2. The substance of the rule 551

   A. Definition of "coach" 551

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DEFINITIONS

28. 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.

1. Purpose and scope

Article 1 determines – in conjunction with the general definition of the term "coach" – the scope of Annexe 2 and provides an overview of its general content.

It further determines that 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.

2. The substance of the rule

A. DEFINITION OF "COACH"

The first crucial element introduced in the special amendment package was a definition of the term "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.[882] 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 fall within that term, as used in article 22 paragraph 1 (c) of the Regulations.

CAS has endorsed this approach on several occasions.[883] 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 that 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 encapsulates all of 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's jurisdiction: nutritionists, sports scientists, fitness coaches, data analysts, etc.

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 covers head coaches, assistant coaches and specialist football coaches (such as goalkeeper coaches), and broadly reflects the CAS jurisprudence.

882 Single Judge of the Players' Status Committee decision of 24 July 2019, Reguera; Single Judge of the Players' Status Committee decision of 24 July 2019, Ruiz de Lara; Single Judge of the Players' Status Committee decision of 24 July 2019, Maldonado.

883 CAS 2009/A/2000, Eduardo Julio Urtasun v. FIFA; CAS 2016/A/4878, Anthony Garzitto v. Al-Hilal SC & FIFA; CAS 2020/A/6990, Dalian Professional FC v. José Carlos Pérez-Cascallana Álvarez & FIFA.

The PSC has considered the admissibility of cases involving fitness coaches or other roles since the introduction of the definition in the Regulations.

In a 2021 case,[884] the claimant was employed as a fitness coach, and in his submissions, he expressly stated that his employment duties were related to fitness and physical preparation. The chairperson concluded that this occupation was not "football-specific" and declined jurisdiction accordingly.

In a 2022 case,[885] the claimant was also employed as a fitness coach. The chairperson observed that none of the duties in the employment contract consisted of the duties of a coach, as defined in the Regulations, and that the claimant should have provided more convincing evidence, such as his registration at the association, match reports and other ancillary evidence. Jurisdiction was therefore declined.

In another 2022 case,[886] the claimant was employed as an assistant coach for the first team and fitness coach generally. The chairperson, upon reviewing the employment contract, noted that it solely described the obligations of a fitness coach, and held that the claimant was a fitness coach despite the contract also referring to him as an assistant coach. Jurisdiction was therefore declined.

The same reasoning was applied in another decision, whereby the claimant had been hired as a team doctor. The chairperson decided that the FT lacked jurisdiction, even if the parties had agreed in their contract to submit their disputes to FIFA.[887]

Other similar cases involving claimants employed as scouts, analysts, methodology assistants and general managers have also been considered to fall outside the jurisdiction of the PSC.[888]

Contrario sensu, where sufficient evidence was advanced by the relevant party to demonstrate that the definition of coach had been met irrespective of the *nomen iuris* indicated in the contract, the PSC retained jurisdiction.[889]

The third key point, in the second sub-paragraph of the definition, 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 a "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.

884 Decision of the chairperson of the PSC of 15 October 2021, Bin Naji.
885 Decision of the chairperson of the PSC of 20 June 2022, Laqrachli.
886 Decision of the chairperson of the PSC of 19 August 2022, Trkulja.
887 Decision of the chairperson of the PSC of 16 February 2023, Moran.
888 PSC decision of 23 March 2022, Moreno Fernandez; PSC decision of 7 October 2022, Larralde; PSC decision of 25 October 2022, Haibeh; PSC decision of 9 May 2023, Urosevic.
889 PSC decision of 7 June 2022, Thyus Vieville; PSC decision of 19 April 2022, Sena; PSC decision of 5 July 2023, Meske; PSC decision of 8 November 2022, Torrijo.

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 or recognised by FIFA, whether a confederation or member association. Second, the domestic or continental (club) licensing regulations 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 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.

It must be noted, however, that holding a licence does not by any means give the recognition of the status of a coach to someone not employed in a "football-specific" occupation in accordance with Definition no. 28 of the Regulations. In fact, the definition determines that the first threshold to be met is that the person is employed in a "football-specific" role in order to be deemed a coach. In other words, if domestic or continental regulations require fitness coaches to hold licences, this does not mean that by having such a licence the FT will automatically have jurisdiction to hear their claims.[890]

B. SCOPE OF ANNEXE 2

Annexe 2 does not apply to all coaches globally. Paragraph 2 provides that Annexe 2 applies to coaches who are:

a. paid more for their coaching activity than the expenses they effectively incur. In other words, Annexe 2 does not apply to volunteer/amateur coaches; and/or

b. 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".

890 PSC decision of 19 April 2022, Saccone.

The PSC has confirmed that where a person is not employed by a professional club or association, the definition of a coach under the Regulations is not met, and therefore the PSC lacks jurisdiction to decide on the dispute.[891]

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.

3. Relevant jurisprudence

PSC decisions

1. Single Judge of the Players' Status Committee decision of 24 July 2019, Reguera.
2. Single Judge of the Players' Status Committee decision of 24 July 2019, Ruiz de Lara.
3. Single Judge of the Players' Status Committee decision of 24 July 2019, Maldonado.
4. PSC decision of 7 October 2022, Larralde.
5. PSC decision of 25 October 2022, Haibeh.
6. PSC decision of 23 March 2022, Moreno Fernandez.
7. PSC decision of 19 April 2022, Sena.
8. PSC decision of 19 April 2022, Saccone.
9. PSC decision of 7 June 2022, Thyus Vieville.
10. PSC decision of 19 April 2022, Sena.
11. PSC decision of 19 April 2022, Saccone.
12. PSC decision of 8 November 2022, Torrijo.
13. PSC decision of 31 March 2023, El Taief.
14. PSC decision of 9 May 2023, Urosevic.
15. PSC decision of 5 July 2023, Meske.

Preliminary decisions

1. Decision of the chairperson of the PSC of 15 October 2021, Bin Naji.
2. Decision of the chairperson of the PSC of 20 June 2022, Lagqrachli.
3. Decision of the chairperson of the PSC of 19 August 2022, Trkulja.
4. Decision of the chairperson of the PSC of 16 February 2023, Moran.

891 PSC decision of 31 March 2023, El Taief.

CAS awards

1. CAS 2009/A/2000, Eduardo Julio Urtasun v. FIFA.
2. CAS 2016/A/4878, Anthony Garzitto v. Al-Hilal SC & FIFA.
3. CAS 2020/A/6990, Dalian Professional FC v. José Carlos Pérez-Cascallana Álvarez & FIFA.

ANNEXE 2, ARTICLE 2

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A. Collective v. individual contracts 558

B. Essential elements and contractual protections 558

3. Relevant jurisprudence 560

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. Any employment contract that is concluded following the provision of football agent services shall specify the football agent's name, their client, their FIFA licence number and their signature, in accordance with the FIFA Football Agent Regulations.

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. Purpose and scope

Article 2 of Annexe 2 sets out the minimum standards for coach employment contracts and protections for coaches.

2. The substance of the rule

A. COLLECTIVE V. INDIVIDUAL CONTRACTS

The first standard is that the contract of a coach 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 six or seven staff members 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 the coach's 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 have been outlawed since 1 January 2021 to protect the Regulations from being circumvented.

As an illustration of this issue, the PSC adjudicated on four connected disputes in 2023: the head coach and three assistant coaches from the same coaching staff initiated proceedings in front of FIFA for the unlawful termination of their contracts.[892] Despite being concluded on an individual basis, the contracts signed with the assistant coaches expressly established that they would be automatically terminated if the relationship with the head coach was ended, for whatever reason. In this specific constellation and in strict observation of the contractual freedom of the parties concerned, the PSC confirmed that, by prematurely terminating the contract with the head coach, the other three assistant coaches had also been automatically dismissed by the club (for the same reason and without just cause). Consequently, the club was held liable for the consequences of a breach of contract in all four cases.

B. ESSENTIAL ELEMENTS AND CONTRACTUAL PROTECTIONS

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 mandates, freelance

892 PSC decision of 28 February 2023, Rebelo Fernandes; PSC decision of 31 March 2023, Braz Marques; PSC decision of 31 March 2023, Salazar; PSC decision of 9 May 2023, Morais.

agreements or other types of contracts, whereas 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 which are typically found in an employment contract. These are listed in the same 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, paragraph 4 of article 2 stipulates that 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, the requirement to hold a specific coaching licence or other requirements of an administrative or a regulatory nature.

Paragraph 5 goes on to detail that 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. This provision is exclusive to coaches and provides an extra layer of protection for cases in which employers intend to terminate or depart from the execution of a contract based on technicalities and/or other unilateral aspects outside the coach's sphere of control. Therefore, if a contract contains any clause contrary to either paragraph 4 or 5, i.e. a pre-condition, condition precedent or a potestative termination clause, 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 likely be deemed invalid, and a termination to have been issued without just cause.

In a case of 2022,[893] a club challenged the validity of an employment contract renewal with a coach by arguing *inter alia* that it had been signed during a critical stage of a national competition (i.e. when the club was facing an imminent relegation and suffering from financial difficulties as a result of the COVID-19 pandemic), for which it lacked the proper "meeting of minds". While assessing the matter, the PSC acknowledged that all the *essentialia negotii* were included in the contract at the basis of the dispute. In the absence of any proof of duress or forgery, the PSC concluded that the validity of the employment contract could not be made subject to the sporting background, thus the contract was valid and binding on the parties.

In another case,[894] the PSC was called upon in 2023 to decide on a dispute concerning the issue of a coach's licence. In its decision, the chamber found that the club could not base the termination of the employment contract on the fact that the coach had failed to procure a new, "upgraded" licence, for this was in direct contravention of the Regulations. The same rationale was also applied in another recent dispute in which the PSC confirmed that holding a specific licence does not have an impact on the validity of the contract, hence it could also not be deemed as a valid reason to terminate a contract.[895]

893 PSC decision of 13 September 2022, Molina.
894 PSC decision of 23 May 2023, Alves Cardoso.
895 PSC decision of 11 April 2023, Soliman.

Finally, paragraph 6 of article 2, concerning grace periods (and largely prohibiting corresponding contractual clauses), is effectively identical to article 18 paragraph 6 of the Regulations. Reference is made to the respective sections of this Commentary.

3. Relevant jurisprudence

PSC decisions

1. PSC decision of 13 September 2022, Molina.
2. PSC decision of 28 February 2023, Rebelo Fernandes.
3. PSC decision of 31 March 2023, Braz Marques.
4. PSC decision of 31 March 2023, Salazar.
5. PSC decision of 11 April 2023, Soliman.
6. PSC decision of 9 May 2023, Morais.
7. PSC decision of 23 May 2023, Alves Cardoso.

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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) a warning;

   b) a reprimand;

   c) a 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. Purpose and scope

Articles 3 to 8 of Annexe 2 largely 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. Generally, these rules aim to provide coaches with a significant degree of protection and to ensure that they are not left at the mercy of their employer.[896]

With respect to these provisions, the general remarks concerning players are equally applicable to cases involving coaches subject to minor particularities, as outlined below.

2. The substance of the rules

A. FUNDAMENTAL PRINCIPLES: WHAT IS JUST CAUSE?

a. General principles

Article 3 of Annexe 2 is identical to article 13 of the Regulations. This provision establishes the principle of *pacta sunt servanda* in respect of contracts involving coaches.[897]

896 PSC decision of 23 May 2023, Alves Cardoso.
897 PSC decision of 11 April 2023, Acosta López; PSC decision of 31 March 2023, Da Rosa; PSC decision of 6 December 2022, Maciel.

Article 4 of Annexe 2 is also identical to article 14 of the Regulations. It sets forth the core ideal of contractual stability: a contract can only be terminated without consequences when just cause exists. Like for players, the definition of just cause in the rules is not exhaustive. The existence of just cause is assessed on a case-by-case basis, taking into account all relevant circumstances of a specific case, and in line with the well-established jurisprudence of the FT.

Similarly, the PSC has also established that in relationships involving coaches, it is for the party notifying the premature termination of a contract to demonstrate that such termination took place as an *ultima ratio* measure. Put differently, the interested party bears the burden of demonstrating that the continuation of the employment relationship became impossible or the bind and mutual trust between the employer and the employee was broken.[898]

In a case from 2021,[899] a club based the termination of a contract on the coach's multiple breaches of contract and "incompatibility" with his position. In support of its decision, the club referred to statements of players, notifications exchanged between the parties and, ultimately, a recommendation made by an external lawyer within the disciplinary proceedings opened against the coach. The PSC decided that the coach's conduct was not substantial enough to justify the abrupt termination as an *ultima ratio* measure. Yet, the PSC considered that his controversial behaviour could not be overlooked, thus no compensation was awarded. In exercise of its de *novo* powers, CAS confirmed that the termination took place without just cause but departed from FIFA's decision to award 50% of the amount of compensation. The panel decided that a mitigated amount of compensation would reflect the coach's role and level of fault for the termination of the employment relationship with the club.

A similar conclusion was reached by the PSC in a 2023 case.[900] The PSC decided that the coach had significantly contributed to the unlawful termination of a contract by the club,considering a speech made in the dressing room in the presence of players and club management. In particular, the Single Judge remarked that the functions of a coach within the realm of modern football fairly exceed one's day-to-day activities managing and coaching players or making tactical or technical choices on the pitch. According to the Single Judge, the coach was not a mere employee of the club with a secondary role; in fact they should be regarded as a high official within a club, managing not only players within the aspect of sporting potential but also economic assets upon which the clubs significantly invest their resources. As such, the coach was found to possess a higher degree of responsibility for his actions as they could severely and significantly impact the functioning of a football club. The compensation payable by the club was reduced by two thirds.

In another case from 2023,[901] the club terminated the contract with a coach due to him being involved in an "incident" with a player from another team after the

898 PSC decision of 6 December 2022, Skender; PSC decision of 28 February 2023, Vasic.
899 CAS 2021/A/8148, Jozef Vukusic v. AmaZulu Football Club.
900 PSC decision of 6 June 2023, Yorke.
901 PSC decision of 28 February 2023, Rebelo Fernandes.

end of a match. The termination was notified to the coach and announced in the media following the opening of disciplinary proceedings by the club and by decision of its board of directors. However, the PSC determined that (i) the club failed to advance documentary evidence of the incident as well as to prove that it was serious enough to, alone, justify an abrupt termination; (ii) the coach's procedural rights were not fully respected during the disciplinary proceedings, especially because the public announcement of the coach's dismissal and replacement was made before the disciplinary decision issued by the club had become final and binding; and (iii) in any event and considering that the coach had never committed any other breach of contract, more lenient measures could have been taken, such as a warning, a reprimand, a fine or a suspension. In conclusion, the PSC decided that the termination by the club took place without just cause.

b. Poor (sporting) performance

The PSC has also confirmed that the long-standing jurisprudence with respect to players and termination based on poor (sporting) performance is also applicable to coaches.

In two recent cases,[902] the PSC held that the poor (sporting) performance of a coach (or, more precisely, the team under their responsibility) per se was not a valid reason to cease paying due salaries or to terminate an employment contract, as this is a purely unilateral and subjective evaluation. Equally, a clause that generically entitles the employer to terminate a contract based on unsatisfactory performance of a coach is potestative in that it provides for an obligation of which fulfilment is subjective and can only be assessed by one party. It follows that such clauses cannot be upheld, given the imbalance of bargaining power of the employer and employee, and the limitation of rights it places on the employee.[903]

In a case of 2022,[904] the PSC was called upon to analyse the justification of a termination by a member association based on the failure of a coach to achieve contractually stipulated sporting goals. The parties agreed that the employer would be entitled to unilaterally terminate the contract without consequences if two cumulative targets were not reached: (i) it was mathematically impossible for its national team to qualify for the FIFA World Cup Qatar 2022; and (ii) it was eliminated from the continental competition at an early stage. While assessing the contractual provisions, the PSC underlined that employers can provide necessary incentives to encourage employees to perform to the best of their abilities to reach a certain sporting goal. Nevertheless, in light of the principle of contractual stability, a contract cannot be unilaterally terminated solely due to the non-achievement of a specific, collective and (overambitious) sporting goal as such occurrence would amount to enabling a dismissal for poor performance based on the assessment of subjective criteria.

902 PSC decision of 19 April 2022, Koopman; PSC decision of 25 January 2022, Ibela Ignambi.
903 PSC decision of 8 November 2022, Findlay.
904 PSC decision of 18 August 2022, Mendes Pereira.

c. Outstanding salaries

Article 5 of Annexe 2 is effectively identical to article 14bis of the Regulations. Reference is thus made to the sections of this Commentary regarding article 14bis of the Regulations.

Since 2021, this provision has been regularly invoked by parties in claims for breach of contract due to overdue payables.[905]

B. CONSEQUENCES OF BREACH OF CONTRACT

Although article 6 of Annexe 2 has several differences in scope compared to article 17 of the Regulations, the same principles generally apply. However, there are two main differences: (i) 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; (ii) 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.

In a case from 2023,[906] the PSC had to assess a particular clause included in a coach's employment contract. The parties established that in the event of a transfer or unilateral termination by the coach, he would be liable to pay a buy-out compensation and his new club would be jointly and severally liable for the obligation. It followed that the contract had been prematurely terminated by the coach, which led to a claim being lodged by the club against the coach and his new club. Due to the particularities of the case, the claim was deemed inadmissible (*lis pendens*) and the substance of the matter was not entertained by the PSC. Nevertheless, in the decision, the Single Judge asserted that the joint liability for coaches lacked a regulatory basis and it could not be established via a bilateral employment contract with *inter partes* effect.

C. OVERDUE PAYABLES

Article 7 of Annexe 2 is almost identical to article 12bis of the Regulations, with two exceptions: (i) it is also applicable to member associations; and (ii) paragraph 4 of article 7 of Annexe 2 does not foresee a ban on registering new players as a possible sanction, which is exclusive to cases involving players.

The requirements and hypothesis of application are equivalent to the ones for players and the PSC does not make a distinction for its interpretation for cases involving coaches.

905 PSC decision of 13 September 2022, Molina; PSC decision of 10 January 2023, Jovic; PSC decision of 14 March 2023, Vasiljevic.
906 PSC decision of 25 October 2022, Priske Pedersen.

D. ENFORCEMENT OF DECISIONS

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 adjudicated 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 as this would 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.

3. Relevant jurisprudence

PSC decisions

Pacta sunt servanda and termination of contracts

1. PSC decision of 6 December 2022, Maciel.
2. PSC decision of 6 December 2022, Skender.
3. PSC decision of 28 February 2023, Vasic.
4. PSC decision of 28 February 2023, Rebelo Fernandes.
5. PSC decision of 31 March 2023, Da Rosa.
6. PSC decision of 11 April 2023, Acosta López.
7. PSC decision of 6 June 2023, Yorke.

Poor sporting performance not just cause

1. PSC decision of 19 April 2022, Koopman.
2. PSC decision of 25 January 2022, Ibela Ignambi.
3. PSC decision of 18 August 2022, Mendes Pereira.
4. PSC decision of 8 November 2022, Findlay.

Termination due to overdue payables

1. PSC decision of 13 September 2022, Molina.
2. PSC decision of 10 January 2023, Jovic.
3. PSC decision of 14 March 2023, Vasiljevic.

Consequences of breach of contract

1. PSC decision of 25 October 2022, Priske Pedersen.

CAS award

1. CAS 2021/A/8148, Jozef Vukusic v. AmaZulu Football Club.

Annexe 3

International Transfer of Players and Transfer Matching System

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ANNEXE 3, ARTICLES 1 AND 2

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TITLE I: GENERAL RULES

ANNEXE 3, ARTICLE 1 – OBJECTIVES

1. The transfer matching system (TMS) is designed to fulfil the objectives of the football transfer system.
2. TMS also has the following specific objectives:
   a) to monitor and regulate the procedure for the international transfers of players;
   b) to provide football authorities with information concerning the football transfer system;
   c) to increase the transparency, efficiency and credibility of the international football transfer system;
   d) to clearly distinguish between the different payments in relation to international player transfers; and
   e) to guarantee the protection of minors.

ANNEXE 3, ARTICLE 2 – SCOPE

1. This annexe governs the procedure for the international transfer of players in TMS.
2. It is mandatory for associations and clubs to use TMS for the international transfer of professional and amateur players in eleven-a-side football.
3. FIFA provides free access to TMS to associations and clubs. No one shall be charged for any activity performed in TMS.

1. History and objectives of TMS

The 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.[907]

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.[908] 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.[909]

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.[910] 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.[911]

A mechanism to manage solidarity mechanism and training compensation claims was incorporated into TMS on 1 October 2015. All such claims which are not subject to the FCHR are now submitted through TMS before being adjudicated upon by the DRC.

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. Another significant change implemented through TMS was that ITCs were requested and delivered via the system, ensuring that the registration period deadline was respected and the integrity of the competition protected.

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.

907 Definition 13, Regulations.
908 Circular no. 1174 of 12 January 2009.
909 Circular no. 1205 of 23 September 2009.
910 Circular no. 1601 of 31 October 2017.
911 Circular no. 1679 of 1 July 2019.

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.

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. Transfer compensation (whether fixed or conditional), sell-on fees and payments made to trigger buy-out clauses must all be declared separately in TMS. 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.

TMS also aims to combat attempts to launder money through the football transfer system. An example of a transfer-related money-laundering scam is where a fictional player is transferred in return for a real fee. 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 (art. 13 of Annexe 3).

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. 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.

When a club enters an instruction in TMS to transfer a minor player, the system automatically detects whether the PSC has authorised the international transfer of the player in question. If not, the transfer will be prevented from proceeding. This automatic control embedded in TMS guarantees that an ITC cannot be issued for a minor player whose international transfer has not been authorised by FIFA.

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. In other words, transfers outside of TMS are, as a fundamental and general rule, strictly prohibited.

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 that does not have access to the system, the member association to which it is affiliated will have to enter the instruction to register the player on its behalf. Member associations have the discretion to decide whether to request access to TMS for their affiliated purely amateur clubs or to perform the relevant actions on their behalf.

D. CLAIM MANAGEMENT TOOL FOR TRAINING REWARDS AND CLEARING-HOUSE RELATED PROCESSES

Although this is not strictly within the scope of Annexe 3, since 1 October 2015 TMS has also provided training clubs with a claims 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, as long as the respective training rewards have not yet been processed via the FCH.

With the introduction of the FCH in November 2022, TMS has also become the platform where the EPP process is carried out. Likewise, in TMS it is now possible to declare information that is pivotal for the functioning of the FCH, such as the first professional registrations of players and payments made in connection with domestic transfers.

2. Scope of Annexe 3

Annexe 3 of the Regulations first came into force on 1 October 2010.[912] It establishes general principles governing the use of TMS, the process for international transfers of players in the system and the enforcement of the relevant rules. It also sets the obligations of member associations, clubs and their users when utilising the system.

The October 2022 edition of the Regulations presented a completely new version of Annexe 3, which was the result of a consultation process commenced in 2021 with member associations and clubs aimed at modernising the regulatory framework governing the procedure for international transfers of players in TMS.

The new version of Annexe 3 includes the following main features: a more agile structure that follows the procedure to create and complete a transfer in TMS; a clear codification of FIFA's practices; and a clear codification of special procedures affecting international transfers of players (i.e. player confirmation, validation exceptions and cancellation).[913]

912 Circular no. 1233 of 12 July 2010.
913 Circular no. 1816 of 8 November 2022.

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TITLE II: TMS USERS

ANNEXE 3, ARTICLE 3 – GENERAL PROVISIONS

1. In the context of the international transfer of players, TMS users will be authorised to perform actions in TMS on behalf of a club or an association, in line with the permissions granted to each of them by FIFA.

2. The FIFA general secretariat is authorised to perform actions provided for in this annexe.

ANNEXE 3, ARTICLE 4 – PROCEDURE TO OBTAIN ACCESS TO TMS

1. Only users authorised by FIFA shall have access to TMS.

Associations

2. To access TMS for the first time, an association shall appoint at least two TMS users, who shall undergo training provided by FIFA.

3. An association may appoint a new TMS user at any time. The new TMS user shall be trained by an existing authorised TMS user of the association. Upon completion of the training, the association shall submit a new user request via TMS.

Clubs

4. To access TMS for the first time, a club shall appoint at least one TMS user, who shall undergo training provided by the association to which the club is affiliated. Upon completion of the training, the association shall submit a new user request via TMS.

5. A club may appoint a new TMS user at any time. The new TMS user shall be trained by an existing authorised TMS user of the club, or in the absence of any existing TMS users, by the association to which the club is affiliated. Upon completion of the training, the association shall submit a new user request via TMS.

ANNEXE 3, ARTICLE 5 – TMS USER REQUIREMENTS

1. To be eligible as a TMS user, an individual:

   a) shall be a direct employee of the relevant club or association. In the absence of employees, a volunteer or executive member could be permissible;

b) shall be trained to use TMS by a TMS user of the relevant association or club, or by completing the TMS e-learning training programme;

c) shall have basic computer skills;

d) shall have a good working knowledge of at least one of the following official FIFA languages: English, French or Spanish;

e) shall pass a background check run by FIFA, ensuring in particular that the prospective user has never been convicted of a criminal charge regarding matters related to: organised crime, drug trafficking, corruption, bribery, money laundering, tax evasion, fraud, match manipulation, misappropriation of funds, conversion, breach of fiduciary duty, forgery, legal malpractice, sexual abuse, violent crimes, harassment, exploitation of child or vulnerable young adult trafficking, and/or similar;

f) cannot be an active TMS user for more than one organisation at the same time;

g) cannot hold any position or perform any activity that could generate a conflict of interest;

h) cannot be a professional football player;

i) cannot be a football agent;

j) shall provide a personal email address (corporate if possible) that is not general or shared; and

k) shall be 18 years of age or older.

2. An association may define additional minimum requirements for TMS users within its jurisdiction.

1. Purpose and scope

These provisions establish minimum requirements that member associations and clubs must meet in order to access TMS. Likewise, they establish requirements which the respective individuals must meet to become a TMS user.

Establishing these requirements is crucial to ensure that member associations and clubs are always in a position to fulfil their obligations with respect to the use of TMS.

2. The substance of the rules

A. GENERAL REMARKS

The parties which use TMS in connection with international transfers are clubs, member associations and the FIFA general secretariat. They are each represented by dedicated individuals, known as "TMS users", who have been trained and registered to access the system. All TMS users have their own unique login credentials (email address and password).

Whereas associations are required to have at least two TMS users (one of them being the association's TMS manager), clubs are requested to have at least one user, who will be the club's TMS manager. The TMS manager will be the organisation's main point of contact for FIFA and for the other TMS users. If a TMS user leaves the organisation, the latter must appoint a replacement without delay in order to respect the required number of active users foreseen in this Annexe. Not having a trained TMS user could adversely affect a member association's and club's ability to comply with their obligations.

Both associations and clubs have the ability to limit the access of their TMS users to only some specific modules in TMS, such as:

- International transfers of professional and amateur players;
- Male and female players;
- Minors (for associations only);
- Claims;
- Domestic transfers of male players and female players, both amateur and professional (for those associations that have adopted a Domestic Transfer Matching System (DTMS);
- Domestic transfer declarations, first professional registrations and EPPs.

In view of their role, TMS managers must have full access to all the organisation's activities in TMS. Although clubs are not required to have more than one TMS user, they are strongly advised to appoint additional ones to assist the TMS Manager with their tasks in TMS and to cover these during their absence.

B. HOW TO BECOME A TMS USER

As explained above, an organisation (be it an association or a club) must have a specific number of active TMS users to access the system. Therefore, having the required number of active TMS users is essential for the organisation to perform actions in TMS.

In order to become a TMS user, individuals must undergo specific training that provides them with the necessary know-how to fulfil their obligations in TMS. FIFA's basic approach is to "train the trainer". The FIFA general secretariat provides ongoing training to member associations, which, in turn, are expected to train its affiliated clubs. In the meantime, FIFA makes training materials available on a dedicated portal within TMS, including video tutorials, a help centre, a document library, regular newsletters and a frequently asked questions section.

Member association users are the only ones able to add new users for their own organisation as well as for their affiliated clubs.

In addition to having to complete the required training, individuals are also subject to several eligibility, conflict of interest and integrity-related requirements before being accepted as a TMS user. In view of the sensitive nature of the information contained in TMS, as well as the relevance of the actions performed therein in the context of international transfers of players, FIFA sets such requirements to guarantee that the system is used by individuals that act in the best interests of the organisation they represent and for legitimate purposes only. A member association may impose additional requirements on TMS users in their jurisdiction.

In detail, these requirements are as follows:

- being a direct employee of the relevant club or association. If the club or association in question does not have direct employees, the Regulations provide for an exception to the general rule, by allowing volunteers or executive members to be appointed as TMS users;
- being trained to use TMS by a TMS user of the relevant association or club, or by completing the TMS e-learning training programme offered by FIFA;
- having basic computer skills;
- being able to work in at least one of the following official languages of FIFA: English, French or Spanish;
- passing a background check performed by FIFA. These checks are run to ensure that the prospective user has never been convicted of a criminal charge regarding different types of offences;

- not being an active TMS user for more than one organisation at the same time;
- not holding another any position or performing any activity that could generate a conflict of interest;
- not being a professional football player or a football agent;
- providing a personal email address (corporate, if possible) that is not general or shared with other people;
- being at least 18 years old.

ANNEXE 3, ARTICLES 6 TO 9

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TITLE III: OBLIGATIONS

ANNEXE 3, ARTICLE 6 – GENERAL OBLIGATIONS: CLUBS AND ASSOCIATIONS

1. Clubs and associations are responsible for all actions undertaken by their respective appointed TMS users.
2. Clubs and associations shall always:
   a) act in good faith;
   b) abide by the FIFA Statutes and all FIFA regulations;
   c) inform FIFA of any suspected breaches of FIFA regulations;
   d) maintain confidentiality over all data in TMS, apply the highest degree of care to guarantee complete confidentiality and only use confidential data for the purpose of completing player transfers in which they are directly involved;
   e) ensure that only their authorised TMS users may access TMS on their behalf;
   f) check TMS at regular intervals to ensure they are in a position to comply with their obligations at all time;
   g) perform pending actions in TMS without delay;
   h) ensure that they have all of the necessary equipment, training and know-how to fulfil their obligations;
   i) use TMS only for the purposes set out in the FIFA regulations;
   j) ensure that the email address of any authorised TMS user is valid and always kept up to date;
   k) request the deactivation of an account of an authorised TMS user who is no longer authorised to use TMS on their behalf;
   l) ensure that all information entered is true and correct;

m) ensure that all documents uploaded in TMS are authentic, complete and legible. Documents uploaded shall conform to the type requested (e.g. an "employment contract" shall not be uploaded in the "transfer agreement" section). Documents shall be uploaded in PDF format; and

n) if requested by the FIFA general secretariat, upload a translation of a document (or an excerpt thereof) into one of the following official languages of FIFA: English, French or Spanish.

3. To ensure that clubs and associations are fulfilling their obligations in respect of this annexe, the FIFA general secretariat shall investigate matters in relation to international transfers. Clubs and associations shall collaborate in the event of an investigation being carried out by FIFA concerning international transfers of players and the clubs' and associations' use of TMS. In particular, they shall collaborate to establish the facts and comply, within the granted deadline, with requests for any documents, information or any other materials of any nature held by them or, if not held by them, which they are entitled to obtain within the time limits established by FIFA.

ANNEXE 3, ARTICLE 7 – SPECIFIC OBLIGATIONS: CLUBS

Clubs with access to TMS shall:

a) always have at least one TMS user;

b) ensure that their contact details (postal address, telephone, and email address) are valid and always kept up to date;

c) ensure that their own bank account details are valid and always kept up to date;

d) enter and confirm transfer instructions and (where applicable) ensure that the required information matches (cf. art. 10 of this annexe); and

e) declare all payments made in the context of an international transfer.

ANNEXE 3, ARTICLE 8 – SPECIFIC OBLIGATIONS: ASSOCIATIONS

1. Associations shall:

   a) monitor the activity of their affiliated clubs in TMS to verify compliance with this annexe, and inform FIFA about any potential infringements;

   b) always have at least two authorised TMS users;

   c) provide their affiliated clubs with ongoing TMS training;

   d) ensure that their contact details (postal address, telephone number and email address) and the those of their affiliated clubs are valid and always kept up to date;

   e) ensure that their bank account details are valid and always kept up to date;

   f) enter the training category of their affiliated clubs;

   g) ensure that their affiliated clubs and registered players are assigned a FIFA ID and, when required, resolve duplicate entries concerning their affiliated clubs and registered players without delay;

   h) confirm or reject newly created players (cf. art. 13 of this annexe);

   i) carry out the ITC procedure (cf. art. 11 of this annexe);

   j) enter transfers of amateur players on behalf of affiliated clubs that do not have access to TMS (cf. art. 10 of this annexe); and

   k) enter all required data related to dates of competitions periods, seasons and registration periods, as applicable (cf. article 6 of these regulations) at least 12 months before the first match of the relevant season in the following categories of competition, where applicable:

      i. Male professional competitions

      ii. Female professional competitions

      iii. Amateur competitions (female and male)

2. An association may modify in TMS the dates for a registration period that has already been entered in TMS prior to its commencement. The said modification shall be notified to FIFA. Once a registration period has commenced, no modification of its dates is permitted.

ANNEXE 3, ARTICLE 9 – FIFA'S ROLE

The FIFA general secretariat is responsible for:

a) assisting TMS users with technical and regulatory issues;

b) managing the access of TMS users;

c) providing ongoing education and support to associations and clubs;

d) entering in TMS any sanctions against a club or association;

e) managing any special procedures identified in this annexe;

f) investigating possible infringements of FIFA regulations related to the use of TMS; and

g) imposing administrative sanctions for breaches of this annexe (cf. art. 17 of this annexe).

1. Purpose and scope

Articles 6 to 9 set out the obligations of all stakeholders in relation to the use of TMS, notably, the general obligations of clubs and associations as well as the specific obligations applicable to clubs and, respectively, specific obligations applicable to associations. Further, article 9 defines FIFA's role's and responsibilities in this context.

2. The substance of the rules

A. GENERAL OBLIGATIONS AND CONFIDENTIALITY

All TMS users are required to act in good faith when using the system. In addition, all TMS users must comply with general obligations that apply both to member associations and clubs.

Member associations and clubs are expected to select their TMS users carefully since they are responsible (and thus, strictly liable) for the actions of their appointed TMS users.

In view of the sensitive nature of the data collected in TMS, particular emphasis is put on the duty to apply the highest degree of care to guarantee complete confidentiality about such information (art 6.2 d) of Annexe 3).

In this sense, FIFA confirms that TMS is secure and that the information therein is kept confidential in accordance with all applicable data protection rules.

Access to TMS is restricted to authorised TMS users. To ensure the confidentiality of the data in the system, all TMS users must read and agree to a data protection agreement committing them to take all necessary steps to ensure access is restricted to 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.[914]

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.

The detailed obligations of clubs and associations, as set out in article 6 paragraph 2, are to:

- always act in good faith;
- comply with the FIFA Statutes and all FIFA regulations;
- ensure that all data in TMS remains confidential, apply the highest degree of care to guarantee absolute confidentiality and only use confidential data for the purpose of completing player transfers in which they are directly involved;
- ensure that only authorised TMS users may access TMS on their behalf;
- check TMS at regular intervals to ensure that they are always in a position to comply with their obligations;
- perform pending actions in TMS without delay;
- ensure that they have all of the necessary equipment, training and know-how to fulfil their obligations at all times;
- use TMS only for the purposes set out in the FIFA regulations;
- ensure that the email address of any authorised TMS user is valid and always kept up to date;

914 Circular no. 1405 of 16 January 2014.

- request the deactivation of an account of an authorised TMS user who is no longer authorised to use TMS on their behalf (e.g. because the user has changed role within the organisation or has left the club or association);
- ensure that all information entered in TMS is true and correct;
- ensure that all documents uploaded in TMS are authentic, complete, legible and uploaded under the correct category (e.g. an "employment contract" shall not be uploaded in the "transfer agreement" section);
- ensure that documents are always uploaded in TMS;
- and if requested by the FIFA general secretariat, upload a translation of a document (or an excerpt thereof) into one of the following official languages of FIFA: English, French or Spanish.

B. CLUBS' OBLIGATIONS

To fulfil their obligations in TMS, all clubs are required to appoint at least one TMS user who is trained to operate the system. Clubs must also ensure that if their sole TMS user 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 user 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.

While clubs are responsible for ensuring that their TMS user is trained and has the knowledge required to fulfil their role, member associations must organise ongoing training for their affiliated clubs. 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 training materials available on a dedicated portal within TMS, including video tutorials, a help centre, a document library, regular newsletters and a frequently asked questions section.

The primary obligation 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. In the context of international transfers, clubs also have an obligation to declare all payments made.

The correct and complete declaration of payments made between two clubs is essential since it guarantees full transparency and allows the system to detect training reward triggers, particularly with respect to solidarity contributions. In this sense, clubs are required to declare the agreed transfer fees in TMS. Nonetheless, and in line

with article 11 paragraph 4 of the FCHR, clubs are requested to pay the previously agreed transfer fees after having deducted the solidarity contribution payable in line with the Regulations and upload the relevant proof of payment thereof. By way of example, if Club A agrees to transfer a player to Club B in exchange for payment of EUR 100,000, payable by Club B in one instalment, both clubs shall declare in TMS the full transfer fee (i.e. EUR 100,000) when creating the transfer instruction. Club B is then requested to pay to Club A EUR 95,000 (i.e. 95% of the transfer fee), declare such payment in TMS and upload the relevant proof thereof. For more information about how payments are declared in TMS, please refer to the section dedicated to article 12 of Annexe 3.

Finally, clubs also have a responsibility to ensure that their contact details and bank account details are valid and always kept up to date in TMS.

C. MEMBER ASSOCIATIONS' OBLIGATIONS

Member associations are required to enter their registration periods in TMS, together with the dates of their season and competition period dates, 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 exceptional sporting reasons, such as a change to the number of teams participating in the national championship. 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 may 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.

Member associations are also responsible for ensuring the accuracy of the data pertaining to their clubs, including their addresses, telephone numbers, email addresses and categories for training compensation. Moreover, besides playing their essential role in the ITC process, member associations are responsible for confirming the accuracy of these certificates.

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, 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 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. THE ROLE OF THE FIFA GENERAL SECRETARIAT

The FIFA general secretariat both assists and supports TMS users affiliated to members association and clubs, but also manages their access, and investigates any wrongdoing pursuant to these Regulations. In this sense, Annexe 3 foresees a specific procedure, called the Administrative Sanction Procedure (ASP) which allows the FIFA general secretariat to propose sanctions when administrative breaches have been committed by clubs or associations. For more information about the ASP, please refer to the section dedicated to article 17 of Annexe 3.

ANNEXE 3, ARTICLES 10 TO 12

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TITLE IV: PROCESS FOR TRANSFERRING A PLAYER

ANNEXE 3, ARTICLE 10 – CLUBS: CREATING TRANSFER INSTRUCTIONS

1. When creating a transfer instruction, clubs shall enter information and upload supporting documents concerning:
    a) the instruction type;
    b) the player being transferred;
    c) the details of the transfer; and
    d) the parties involved in the transfer.
2. Clubs shall indicate if the transfer instruction refers to:
    a) engaging a player or releasing a player;
    b) whether the transfer is permanent or a loan;
    c) whether the player will be a professional or an amateur with the new club; and
    d) if related to an earlier loan transfer instruction, whether there is:
        i. a return from loan;
        ii. a loan extension;
        iii. a loan being converted into a permanent transfer; or
        iv. a loan conclusion (i.e. the loan agreement between the clubs has ended and the player's employment contract with the former club has also ended).
3. Concerning the player being transferred, clubs shall enter the following information as applicable, depending on the transfer instruction type:
    a) Status (amateur or professional) with the former club;
    b) Name, nationality(ies), date of birth and gender;

c) For loans, whether the player is a club-trained player (cf. definition 31 of these regulations) and whether the loan occurs before the end of the season of the former club at which the professional turns 21;

d) Start and end dates of the employment contract with the former club;

e) Start and end dates of the employment contract with the new club;

f) Fixed remuneration set out in the employment contract with the new club; and

g) The reason for termination of the employment contract with the former club.

4. With respect to the details of the transfer, clubs shall enter the following information as applicable, depending on the transfer instruction type:

a) Whether there is a transfer agreement with the former club; for the avoidance of doubt, this includes any agreement where the former club waives its right to receive training rewards in exchange for another payment in line with art. 10. par. 4 d) of this annexe;

b) The date of execution of the transfer agreement;

c) The start and end dates of the loan agreement;

d) Whether the transfer is performed against any of the following types of payment:

i. fixed transfer fee, including the amount and date of instalments, if any;

ii. release (buy-out) fee, including the amount and date of instalments, if any;

iii. conditional transfer fee, including the amount and details of conditions; or

iv. sell-on fee, including the percentage.

e) Payment currency;

f) Club bank account details; and

g) A declaration on influence and third-party ownership of the player's economic rights (cf. arts. 18bis and 18ter of these regulations).

5. With respect to the parties involved in the transfer, clubs shall enter the following information as applicable:

   a) the player's former club;

   b) the player's former association;

   c) the player's new club;

   d) the player's new association;

   e) the club football agent's name, service fee and any other fee to be paid to the football agent; and

   f) the player's football agent's name.

6. Clubs are obliged to upload the following mandatory supporting documents regarding the information that has been entered in TMS as applicable, depending on the transfer instruction type:

   a) The new club:

      i. Proof of the player's identity (passport or national identity card);

      ii. Proof of the end date of the player's last employment contract and the reason for its termination;

      iii. The player's employment contract with the new club;

      iv. The transfer agreement (whether permanent or loan) between the new club and the former club. Where applicable, a copy of any amendments shall be uploaded in TMS as soon as they have been concluded.

      v. A copy of the representation agreement entered into with a football agent, if applicable, within 14 days of occurrence. Where applicable, a copy of any amendments shall be uploaded in TMS within 14 days of occurrence.

      vi. A copy of any other agreement entered into with a football agent other than a representation agreement, if applicable, within 14 days of occurrence. Where applicable, a copy of any amendments shall be uploaded in TMS within 14 days of occurrence.

b) The former club:

i. Where third-party ownership of the player's economic rights has been declared (cf. article 10.4 g) of this annexe), the agreement with the third party.

ii. For loans, proof that the professional is a club-trained player (cf. art. 10 par. 3) of this annexe).

iii. A copy of the representation agreement signed with a football agent, if applicable, within 14 days of occurrence. Where applicable, a copy of any amendments shall be uploaded in TMS within 14 days of occurrence.

iv. A copy of any agreement entered into with a football agent other than a representation agreement, if applicable, within 14 days of occurrence. Where applicable, a copy of any amendments shall be uploaded in TMS within 14 days of occurrence.

7. Once all of the relevant information has been entered and the mandatory documents have been uploaded, the club(s) shall confirm the transfer in TMS without delay and before the end of the new association's registration period (subject to the exceptions in art. 6 of these regulations).

8. For international transfers with a transfer agreement (whether permanent or on loan), both clubs shall:

a) independently of each other, enter and confirm the transfer instruction as soon as the agreement has been concluded;

b) ensure that the required information matches; and

c) collaborate to resolve any matching exceptions.

9. This article also applies to associations entering the transfer of an amateur player on behalf of an affiliated club without access to TMS.

ANNEXE 3, ARTICLE 11 – ASSOCIATIONS: ITC PROCEDURE AND PLAYER REGISTRATION

1. Once a transfer instruction has been created (cf. art. 10 of this annexe) and (if applicable) the player has been confirmed (cf. art. 13 of this annexe):

a) the new association will be notified in TMS that the transfer instruction is awaiting an ITC request;

b) upon receipt of this notification, the new association will be able to request in TMS that the former association deliver an ITC for the player;

c) at the very latest, the ITC shall be requested on the last day of the new association's registration period for the transfer to occur during that registration period. An ITC requested after the close of the relevant registration period of the new association (subject to the exceptions in art. 6 of these regulations) will go into validation exception status (cf. art. 14 par. 1 c) of this annexe); and

d) for the international transfer of minors, an ITC may only be requested if the corresponding minor application has been approved by the Football Tribunal or if the player is being registered under a valid limited minor exemption (cf. art. 19 of these regulations).

2. Where the player was a professional at his former club, upon notification of the ITC request, the former association shall immediately request the former club to confirm whether or not:

   a) the employment contract has expired; or

   b) an early termination was mutually agreed.

3. Within seven days of the ITC request, the former association shall either:

   a) deliver the ITC to the new association; or

   b) reject the ITC request, select the reason for the rejection, and upload a duly signed supporting statement. A rejection may only be made where:

      i. an employment contract between the former club and the professional player is considered to be still in force; or

      ii. there has been no mutual agreement regarding its early termination.

4. When delivering an ITC, the former association shall 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. art. 12 of these regulations).

5. Upon delivery of the ITC, the new association shall confirm its receipt, enter the relevant player registration information in TMS and register the player in its electronic registration system without delay.

6. If the former association fails to respond to the ITC request within seven days, the new association will be able to register the player with the new club and enter the relevant player registration information in TMS.

7. The new association shall only confirm the ITC receipt (cf. par. 5 above) or confirm registration in TMS (cf. par. 6 above) if the player is to be registered with the new club.

8. If the former association rejects the ITC request, the new association shall:

   a) accept the rejection, in which case the transfer will be cancelled; or

   b) dispute the rejection, in which case the transfer will go into validation exception status. In such a case, upon request of the new association, the FIFA Football Tribunal may authorise the player registration without prejudice to any claim being lodged with FIFA in accordance with article 22 of these regulations.

9. A player is not eligible to play for his new club until the new association has either:

   a) confirmed receipt of the ITC, entered the player registration information in TMS and registered the player in its electronic registration system; or

   b) registered the player in its electronic registration system and entered the player registration information in TMS following:

      i. no response to the ITC request with seven days; or

      ii. authorisation from the FIFA Football Tribunal to register the player.

10. All registrations described in paragraph 9 above have the same effect and are equally valid.

ANNEXE 3, ARTICLE 12 – PAYMENTS

1. Clubs shall declare all club-to-club payments made in the context of an international transfer (cf. art. 11 par. 4 of the FIFA Clearing House Regulations). When declaring the execution of a payment, the new club shall upload the relevant proof of payment in TMS within 30 days of each payment.

2. Where a club-to-club payment is no longer due, clubs shall request the forced closure of the transfer without delay.

3. Clubs shall declare any payments made in relation to any representation agreement entered into with a football agent. When declaring the execution of a payment, the relevant club shall upload the relevant proof of payment in TMS within 14 days of receipt.

4. Clubs shall declare any payments made in relation to any agreement entered into with a football agent other than a representation agreement. When declaring the execution of a payment, the relevant club shall upload the relevant proof of payment in TMS within 14 days of each payment.

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 title are discussed in the chapter on registration of players. Accordingly, this section of the Commentary is designed to complement the information in that chapter.

2. The substance of the rules

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, reference is made to the chapter on player registration.

B. CREATING TRANSFER INSTRUCTIONS

Clubs involved in transferring a player internationally have to enter a variety of information into TMS depending on the nature of the specific transfer instruction.

There are four different general types of football-specific information which constitute a transfer instruction.

The first is whether the specific club concerned is releasing the player or whether it is *engaging* the player.

The second is whether the transfer is *permanent* or *temporary* (i.e. a loan transfer), and whether there is a transfer agreement in place between the two clubs.

The third is the status of the player (professional or amateur) at the new club. For professional players, the registration periods for professional competitions as declared by the member association will automatically apply. For amateur players, the applicable registration period (for professional or amateur competitions) will depend on whether the amateur player in question will participate in purely amateur competitions or not. In this sense, and in order to safeguard the sporting integrity of competitions,

FIFA has clarified that a player registered with a club to play in a competition in which only amateurs participate will only be eligible to play for that same club in a professional competition during the course of one sporting season if they were initially registered during one of the two registration periods fixed for professional competitions.[915]

The fourth relates to whether the transfer is *free of payment* or *against payment*. Depending on whether there are club-to-club payments involved, these will need to be declared in the system. For more information, reference is made to the section below, dedicated to the types of payments and their declaration.

In case of loans, there are specific instructions that follow an earlier temporary transfer of the player. In these cases, 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. Only in the case of a return from loan does the ITC process take place.

C. SUBMITTING INFORMATION AND UPLOADING DOCUMENTS

Clubs must submit a wide range of information with respect to both the player being transferred and the details of the transfer.

While the new club is always required to enter compulsory data and upload mandatory documents into TMS, the former club will only have to do so if the player is transferred based on a transfer agreement between the two clubs in question. If a transfer agreement is in place, both clubs must enter information in 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 signed between the clubs. At that point, both clubs must enter the relevant information in TMS before their respective member associations can engage in 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.

Compulsory data regarding players

With respect to players, 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.

Data that allows individual players to be identified (name, gender, date of birth and nationality) must be entered. If an international transfer concerns a professional, data reflecting the basic remuneration and the start and end dates of their new contract must be declared. The start and end dates of the previous contract and the reason for its termination must also be disclosed. 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.

915 Circular no. 1693 of 24 September 2019.

Finally, in view of the new rules concerning loans (art. 10 of the Regulations), clubs involved in a loan must also declare whether the player in question is club-trained and whether the loan occurs before the end of the season of the former club at which the professional player turns 21. This information is pivotal for the system to automatically enforce the cap on loans.

Compulsory data regarding the transfer

With respect to the transfer itself, if there is a transfer agreement, its key details (date of execution, type of transfer, start and end dates) must be uploaded. If the transfer is subject to transfer compensation, both the currency in which the agreed payment will be made and the clubs' bank details must be inserted, together with 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 TPI/TPO agreement is in place or not).

The Regulations clarify that any agreement referring to the waiver of rights to receive training rewards in exchange for another payment are considered to be transfer agreements and have to be declared accordingly. Therefore, if a training club decides to waive its rights to receive training compensation or solidarity contribution in exchange for a fee (e.g. a sell-on fee in the event of a future transfer of the player), both clubs will have to enter a transfer instruction in TMS and declare the agreed fee in the system. Such fees are considered to fall under the concept of transfer compensation in the sense of article 21 and Annexe 5.

Compulsory data regarding the clubs involved and their member associations

Clubs must upload the details of the former and new clubs, their affiliated member associations, and any football agent involved in the transfer (whether representing the player, engaging club or releasing club). Service fees paid to football agents representing clubs must also be disclosed. There is no obligation to disclose fees paid to football agents representing players in TMS, as players are not TMS users and clubs are not expected to know the details of such payments.

Mandatory documents

The data entered must be supported by documentary evidence. Clubs are required to upload at least the relevant mandatory documents as per article 10 paragraph 6 of Annexe 3. The type of document to be uploaded depends on the type of transfer instruction and on whether the club is the new club (i.e. engaging club) or the former club (i.e. releasing club).

To ensure the system works as it should, the FIFA general secretariat sets the format in which the mandatory documents must be uploaded (PDF only), and the maximum size of the relevant files (10 MB). 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 (English, French or Spanish); otherwise, the document in question may not be taken into consideration. Alternatively, a translation of a specific excerpt of the document may be requested.

D. MATCHING

Once all the compulsory data has been entered and all mandatory documents uploaded, the club(s) involved in the transfer must confirm the relevant transfer instruction. An ITC request can only be initiated once the clubs have undertaken this and – where two instructions are applicable – they have matched.

When a transfer agreement exists, TMS will pair the two instructions by taking into consideration the following basic information:

- Player: both clubs must select the same player.
- Instruction type: the two instructions type must match, i.e. one club is engaging and the other is releasing permanently or on loan, against payment or free of payment.
- Counter club: each club must select the specific counter party involved in the transfer.

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 in the system 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.

A matching exception occurs, in other words, when two transfer instructions have paired in principle, but some of the additional details do not match (i.e. the loan dates or the payment dates and amounts). The system itself indicates where the mismatch is. In these cases, the clubs must agree on the correct information and update it accordingly in TMS in order for the transfer to proceed.

E. ITC PROCEDURE AND PLAYER REGISTRATION

As explained above, only when the transfer instruction has been confirmed and, where applicable, matched, is the new member association able to request the ITC. As a general rule, and subject to the exceptions in article 6 of the Regulations, ITCs must be requested by the new member association no later than on the last day of its registration period.

TMS will notify the new member association that the transfer instruction is awaiting an ITC request, at which point the new member association will be able to request the ITC from the former member association.

If the player in question is a minor, the new association will be able to request the ITC only if the corresponding minor application has been approved by the FT or if the player is being registered under a valid limited minor exemption. TMS will detect if neither of these two requirements has been met and, if so, will prevent the new association from requesting the ITC.

The former member association is required to reply to an ITC request within seven days. If they do not respond, the new member association may register the player for the new club.

If the former association rejects the ITC request within the seven-day period, the new association can either accept or dispute the rejection. In the event of a dispute, and upon request of the new association, the FT will intervene and may authorise the player registration.

Under previous iterations of the Regulations, this registration was provisional for one year and became permanent if not responded to within that timeframe. This designation as "provisional" was removed in the October 2022 edition. A registration following a failure to respond to an ITC request is always permanent and has the same effects as a registration that occurs upon receipt of the ITC.

If the new association has requested the ITC, and this is either delivered by the former association or the player's registration can take place without an ITC, the new association is required to register the player. In other words, whereas the new association can decide whether to request the player's ITC or not, once this has been delivered (or one of the scenarios allowing the player's registration without an ITC has occurred) the new association is required to register the player. The justification for this approach is explained below.

On the one hand, it falls under the competence of each member association to establish whether a player can be registered with them or not. For instance, take the example of a player who has signed an employment contract with a club that has already

reached its quota of foreign players under the applicable domestic regulations. In this case, the new association is granted the power not to request the ITC since the player cannot be registered for its affiliated club. The non-request of the ITC and consequent non-registration of the player are without prejudice to the validity of the employment contract and, where applicable, the transfer agreement entered into by the engaging club. On the other hand, associations are responsible for requesting the ITC only if they know that the player will eventually be registered for one of their affiliated clubs. This is to avoid a situation in which players remain in a state of uncertainty where they are neither registered with the former association (that is requested to de-register them when issuing an ITC) nor with the new association. Such a situation could cause, *inter alia*, the creation of incomplete EPPs as well as uncertainty If, in the future, the player is transferred to a club affiliated to a third member association, which will be unable to know from whom the ITC should be requested. Finally, a player is not eligible to play for their new club until the new member association has either:

a. confirmed receipt of the ITC, entered the player registration information in TMS and registered the player in its electronic registration system; or

b. registered the player in its electronic registration system and entered the player registration information in TMS following: (i) no response to the ITC request with seven days; or (ii) authorisation from the FT to register the player.

F. PAYMENTS DECLARATION

As previously mentioned, TMS also tracks actual payments in relation to a transfer. To this end, clubs and/or their member association must declare in TMS (and/or in their electronic domestic transfer system) all payments made in relation to a transfer and upload corresponding evidence within 30 days of the payment occurring.[916]

The payment declaration plays a crucial role not only in ensuring that FIFA has a clear overview of the flow of money, but also in guaranteeing the proper functioning of the FCH.

Although the obligation for clubs to declare payments in TMS has existed for some time, this obligation has become even more fundamental since the entry into force of the FCHR. Uploading a proof of payment in TMS triggers the creation of an AS for the distribution of the solidarity contribution (cf. arts 11 and 12 of the FCHR).

Indeed, for any transfer for which a training rewards trigger has been identified and an EPP review process has led to an EPP becoming final, an AS will be automatically calculated by TMS based on the final EPP, including the amount(s) to be distributed to training clubs.[917] Equally, a further AS concerning a final EPP will only be created after the uploading of each proof of payment of the transfer compensation by the new club.[918]

916 Article 11 paragraphs 1 to 3, FCHR.
917 Article 10 paragraph 4, FCHR.
918 Article 12 paragraph 3, FCHR.

In this framework, increased scrutiny from the FIFA general secretariat in the proper uploading of payments declarations has become a necessity due to the pivotal role it plays in the rightful distribution of training rewards through the FCH, and clubs (and their member associations) are now exposed to sanctions under the FCHR should they fail to upload timely proof of payments in the context of a transfer for which an EPP has become final.[919]

Finally, the proof of payment uploaded shall correspond to an amount representing 95% of the transfer compensation agreed with the former club, to which the 5% solidarity contribution contained in article 1 paragraph 1 of Annexe 5 of the Regulations is considered to have been withheld by the new club.[920]

919 Article 17 paragraph 5, FCHR and article 16 of Annexe 3, Regulations.
920 Article 11 paragraph 5, FCHR and TMS communication on "FIFA Clearing House – Declaration of transfer compensation payments and training rewards"

ANNEXE 3, ARTICLES 13 TO 15

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TITLE V: SPECIAL PROCEDURES

ANNEXE 3, ARTICLE 13 – PLAYER CONFIRMATION

1. If the player being transferred does not exist in TMS, the club that first enters the transfer instruction in TMS shall create his profile. The same applies to associations entering transfer instructions of amateur players on behalf of their affiliated clubs that do not have access to TMS.

2. The ITC procedure will only be initiated once the newly created player details have been verified, corrected if required and confirmed by the former association. By confirming the player, the former association confirms that the player was last registered with it and that his identity details (name, nationality, date of birth and gender) are correct.

3. The former association shall reject the newly created player if the player is not registered with it at the time of the transfer.

4. The player confirmation procedure shall be carried out without delay.

ANNEXE 3, ARTICLE 14 – VALIDATION EXCEPTIONS

1. A validation exception may be triggered in the following cases:

   a) the player is less than 18 years old and the corresponding minor application has not yet been accepted;

   b) the new club is serving a ban on registering new players;

   c) the new club and/or the former club has exceeded the loan limitations (cf. art. 10 of these regulations);

   d) the date of the ITC request is outside the new association's registration period, and no exception under art. 6 of these regulations applies; or

   e) the ITC request has been rejected by the former association and the rejection has been disputed by the new association.

2. Any requests for intervention in a validation exception shall be submitted via TMS. Upon request from the association concerned, the FIFA general secretariat will assess the request and, if necessary, refer the matter to the Players' Status Chamber of the Football Tribunal. Any such request and any supporting documentation shall be provided only in one of the following official languages of FIFA: English, French or Spanish. Each case is assessed individually on its own merits.

Since 1 March 2020, such requests have been handled directly through TMS. 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.

ANNEXE 3, ARTICLE 15 – CANCELLATION

1. As a general rule, a transfer instruction containing incorrect information shall be cancelled.

2. The club(s), or the new association acting on behalf of a club in an amateur transfer, may cancel a transfer instruction prior to an ITC request.

3. Once an ITC has been requested, only the relevant association(s) may request the cancellation in TMS, indicate the reason for cancellation and specify the correct information.

4. In such a case, the counter association shall accept or dispute the cancellation request.

   a) If it accepts the request, the transfer will be cancelled; or

   b) If it disputes the request, the relevant association shall upload a supporting statement in TMS and contact the FIFA general secretariat to resolve the dispute.

1. Purpose and scope

Articles 13 to 15 govern special procedures that can occur in the context of an international transfer in TMS. They were codified for the first time in the October 2022 edition of the Regulations.

All these procedures exist to guarantee the correct functioning of TMS as well as the implementation of key objectives of the transfer system.

They all take place in TMS directly, more precisely in the transfer instruction affected.

2. The substance of the rules

A. PLAYER CONFIRMATION

TMS includes data for many players that have participated in organised football. However, some players are not yet in TMS when they are transferred internationally. 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). The names and other details must be verified, corrected and confirmed by the member association to which the former club is affiliated.

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 should only be rejected by the former member association if they are not registered with that member association at the time of the relevant player confirmation request. If the player in question was indeed registered with the former association but some of their identity details appear to be incorrect, these details should be edited in TMS before confirming the player's entry. The player should not be rejected based on incorrect details if the player was last registered with the association of the former club.

If the association in question rejects the player, the transfer will be cancelled and will need to be re-entered by the club(s) with the correct former association.

Player data must be verified without delay, because the process of requesting an ITC cannot begin until it has been confirmed.

B. VALIDATION EXCEPTION

A validation exception occurs whenever there is a situation where TMS stops the transfer procedure and prevents it from moving to the next stage. Article 14 of Annexe 3 provides a list with all case scenarios that trigger a validation exception.

Validation exceptions need to be resolved by the FIFA general secretariat. Any request to override a validation exception shall be sent by the relevant association via TMS. In fact, since March 2020, the entire process concerning validation exceptions takes place exclusively within TMS.

The new association may request FIFA's intervention for the following validation exception statuses:

- The new club is currently serving a registration ban;
- The ITC request date is outside the new association's defined registration periods;

- There is an out-of-contract transfer prior to the next registration period and none of the exceptions under article 6 of the Regulations applies;
- There is an amateur transfer prior to the next registration period;
- The ITC request has been rejected by the former association and the rejection has been disputed by the new association.

Both associations may request FIFA's intervention in the following scenarios:

- The maximum cap on loans has been exceeded by the new club or the former club, as applicable;
- The maximum cap on loans has been exceeded by both clubs.

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. The parties involved are deemed to have been duly notified once the assessment or decision has been uploaded to TMS.

C. CANCELLATION

Depending on the status of the transfer, clubs or associations can cancel or request the cancellation of the transfer instruction in question.

As a general rule, the parties involved in the transfer have the regulatory obligation to request the transfer cancellation. This is justified by the fact that all transfers in TMS must include truthful information.

If there is a disagreement between the parties regarding whether the transfer in question should be cancelled or not, the FIFA general secretariat will resolve the dispute upon request for intervention.

ANNEXE 3, ARTICLES 16 TO 18

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TITLE VI: ENFORCEMENT

ANNEXE 3, ARTICLE 16 – SANCTIONS

1. Sanctions shall be imposed on clubs and associations that violate the provisions contained in this annexe, including violations committed by their TMS users.

2. The FIFA general secretariat is responsible for investigating any violation of the provisions contained in this annexe.

3. The FIFA Disciplinary Committee is responsible for sanctioning violations of the provisions contained in this annexe in accordance with the FIFA Disciplinary Code.

ANNEXE 3, ARTICLE 17 – ADMINISTRATIVE SANCTION PROCEDURE

1. Without prejudice to the competence of the FIFA Disciplinary Committee, the FIFA general secretariat has the competence to impose sanctions within the administrative sanction procedure (ASP) as set out below.

2. The ASP deals with infringements of this annexe that are of a primarily technical or administrative nature.

3. If such an infringement is detected, the following procedure will take place:

   a) The FIFA general secretariat will contact the association or club to identify the infringement, request a statement or any other relevant information within a defined deadline and, if applicable, request that the infringing behaviour be corrected.

   b) Upon receipt of the statement or relevant information or upon expiry of the time limit to do so, the FIFA general secretariat may issue an administrative sanction letter containing a sanction, if applicable.

   c) The party may accept the sanction or reject it and, in this case, request the opening of disciplinary proceedings before the FIFA Disciplinary Committee. If the party accepts the sanction, the latter will be enforceable from the date of acceptance.

   d) If the party accepts the sanction, complies with it (where applicable) and corrects the infringing behaviour within the time limits to do so, the matter will be closed.

e) If the party fails to respond to the administrative sanction letter, responds inconsistently or incompletely and/or does not correct the infringing behaviour and/or does not comply with the sanction, the matter will be referred to the FIFA Disciplinary Committee for evaluation and decision.

4. Without prejudice to any further sanction imposed by the FIFA Disciplinary Committee, the sanctions that may be imposed through the ASP are:

a) a warning;

b) a reprimand; or

c) a fine of up to CHF 30,000.

ANNEXE 3, ARTICLE 18 – TIME LIMITS AND MEANS OF NOTIFICATION

Letters or decisions notified by the FIFA general secretariat to a party through TMS or to the email address provided by a party in TMS by the parties are considered valid means of communication and are sufficient to establish time limits.

1. Purpose and scope

The rules contained in this Title VI of Annexe 3 aim to establish the investigatory power of the FIFA general secretariat to investigate, and of the FIFA Disciplinary Committee to sanction, breaches of the rules included in the Annexe.

Likewise, this Title codifies a longstanding practice of the FIFA general secretariat (and previously of FIFA TMS GmbH), commonly known as the ASP.

2. The substance of the rules

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.

Sanctions can be imposed, *inter alia*, if a party is found to have entered untrue or false data in 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. Consequently, entering incorrect information in 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;
- 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.

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, clubs and member associations are liable for the information entered in the system by their TMS users and for the way they use the system. This should be borne in mind when appointing TMS users.

B. GENERAL COMPETENCE

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 the Regulations. It then submits the matter to the FIFA Disciplinary Committee for consideration and a potential decision.

C. ASP

Some of the obligations imposed on TMS users are of a technical or administrative 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 may cause an immediate negative impact on the functioning of the system and on the implementation of the principles that TMS was created to protect.

In view of the above, a separate compliance procedure has been introduced specifically to streamline the process for dealing with violations of Annexe 3. The ASP allows the FIFA general secretariat to issue an administrative sanction letter 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.

Originally, the competence to issue sanction letters was based on an authority delegated by the FIFA Disciplinary Committee. The ASP has since been codified in article 17 of Annexe 3, and the sanctions that may be issued include a warning, a reprimand and a fine of up to CHF 30,000.

This authority was first delegated on 2 May 2011 to cover a list of ten infringements.[921] 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. In 2015, the list was updated to cover 14 categories of infringements.[922] Finally, in 2017, the ASP was further streamlined to simplify and accelerate the process.[923]

With the entry into force of article 17 of Annexe 3, the ASP is not only applicable to the 14 categories previously listed in the relevant circular, but to all infringements of Annexe 3 of a purely technical or administrative nature.

Below is a non-exhaustive list of breaches that can be sanctioned through the ASP:

- Failure to upload a proof of payment in TMS in relation to international and domestic transfers;
- Failure to upload in TMS mandatory documents (e.g. failure to upload a complete and authentic copy of the transfer agreement or of the employment contract);
- Failure to enter correct or mandatory information in a TMS instruction (e.g. entering the wrong start and end date of the employment contract or not declaring the existence of a transfer agreement with the former club);
- Failure to have the minimum number of trained TMS users required by Annexe 3 (cf. art. 4 of Annexe 3);

921 Circular no. 1259 of 7 April 2011.
922 Circular no. 1478 of 6 March 2015.
923 Circular no. 1609 of 8 December 2017.

- Breach of confidentiality, which includes disclosing confidential information contained in TMS as well as giving access to TMS to unauthorised users;
- Failure to enter a counter instruction;
- Failure to confirm or reject a player;
- Failure to declare a club's training categories in TMS;
- Failure to enter in TMS the start and end dates of the season, of the registration periods and of the competition period;
- Failure to cooperate with an investigation concerning a possible breach related to the use of TMS or, more generally, a possible breach of the rules governing international transfers.

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 or have an impact on other processes (e.g. the failure to upload a proof of payment might have an impact on the training reward trigger foreseen in the FCHR). 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, the case will be transferred to the FIFA Disciplinary Committee for a decision. 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. The FIFA Disciplinary Committee may impose a harsher sanction than that recommended by the FIFA general secretariat.

D. TIME LIMITS AND MEANS OF NOTIFICATION

The FIFA general secretariat sends its communications to parties in the proceedings using the email 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 6

RULES FOR THE STATUS AND TRANSFER OF FUTSAL PLAYERS

Articles 1 to 10 621

ANNEXE 6, ARTICLES 1 TO 10

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ANNEXE 6, ARTICLE 1 – SCOPE

1. The Rules for the Status and Transfer of Futsal Players are an integral part of these regulations.

2. These rules establish global and binding provisions concerning the status of futsal players, their eligibility to participate in organised futsal, and their transfer between clubs belonging to different associations.

3. These rules shall apply equally to men, women, amateurs and professionals unless expressly provided for otherwise in this annexe.

4. The transfer of futsal players between clubs belonging to the same association is governed by specific regulations issued by the association concerned. These regulations shall include:

   a) appropriate means to protect contractual stability, paying due respect to mandatory national law and collective bargaining agreements, as well as the principles in article 1 paragraph 3 b) of these regulations; and

   b) specific rules for the settlement of disputes between futsal clubs and players.

5. 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, 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.

ANNEXE 6, ARTICLE 2 – RELEASE OF FUTSAL PLAYERS TO ASSOCIATION TEAMS

1. Article 1ter of Annexe 1 of these regulations is binding.

2. A player may only represent one association in both futsal and elevenaside football. Any player who has already participated in a match (either in full or in part) in an official competition of any category or any type of football for one association may not play an international match for a representative team of another association team.

   This provision is subject to the exception in article 9 of the Regulations Governing the Application of the Statutes.

ANNEXE 6, ARTICLE 3 – REGISTRATION OF FUTSAL PLAYERS

1. A futsal 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 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 FIFA Statutes and regulations, as well as the statutes and regulations of the relevant confederation and the associations.

2. A futsal player may only be registered for one futsal club at a time. A futsal player may, however, also be registered for one eleven-a-side club at the same time. It is not necessary for the futsal and the eleven-a-side club to be affiliated to the same association.

3. A futsal professional player under contract with an eleven-a-side club may sign another professional contract with a different futsal club only if he obtains written approval from the eleven-a-side club employing him, and vice-versa.

4. Futsal 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 futsal player moving between two futsal clubs belonging to associations with overlapping seasons (i.e. the start of the season is 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.

5. Under all circumstances, due consideration must be given to the sporting integrity of the competition. In particular, a futsal 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.

ANNEXE 6, ARTICLE 4 – RESPECT OF CONTRACT

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

2. The provisions applicable to the maintenance of contractual stability are set out in articles 13-18 of these regulations.

ANNEXE 6, ARTICLE 5 – INTERNATIONAL TRANSFER OF FUTSAL PLAYERS

5.1 Principles

1. A futsal player registered with a futsal club affiliated to an association may only be registered with a futsal club affiliated to a different association after:

   a) the International Futsal Transfer Certificate (IFTC) has been requested by the new association;

   b) the IFTC has been delivered by the former association;

   c) the IFTC has been received by the new association; and

   d) the new association has registered the player in their electronic registration system.

2. The above principle applies to all international transfer of professional and amateur futsal players.

3. A futsal player is not eligible to play for his new futsal club until all the conditions in paragraph 1 above are met, where applicable.

4. An IFTC is not required for a futsal player under the age of ten.

5. Clubs and associations shall always:

   a) act in good faith;

   b) abide by the FIFA Statutes and all FIFA regulations; and

   c) ensure that all information provided is true and correct.

5.2 Transfer process: IFTC procedure and futsal player registration

1. The new futsal club shall submit an application to its association to register a futsal player during one of the registration periods established by that association, subject to the exception in article 6 of these regulations.

   The relevant application shall be accompanied, if applicable, by:

   a) a copy of the employment contract between the new futsal club and the futsal player; and

   b) a copy of the transfer agreement (whether permanent or on loan) concluded between the new and the former futsal clubs.

2. Upon receipt of the application, the new association shall immediately request that the former association deliver an IFTC for the futsal player ("IFTC request"). The IFTC request shall be accompanied by the documentation established in paragraph 1 above, if applicable.

3. At the very latest, the IFTC must be requested on the last day of the relevant registration period of the new association for the transfer to occur during that registration period.

4. In the case of an international transfer of a futsal player who had professional status at his former futsal club, upon receipt of the IFTC request, the former association shall immediately request that the former futsal club and the futsal player confirm whether:

   a) the employment contract has expired;

   b) an early termination was mutually agreed; or

   c) there is a contractual dispute.

5. Within seven days of the IFTC request, the former association shall either:

   a) deliver the IFTC to the new association; or

   b) inform the new association in writing that the IFTC cannot be delivered. This may only be the case where:

      i. an employment contract between the former futsal club and the futsal player has not expired; or

      ii. there has been no mutual agreement regarding the contract's early termination.

   The provision in paragraph b) above applies only to the international transfer of futsal players who had professional status at their former futsal clubs.

6. When delivering an IFTC to the new association, the former association shall also:

   a) attach a copy of the player passport;

   b) notify the new association in writing of any pending disciplinary sanctions imposed on the futsal player and, if applicable, their extension to have worldwide effect (cf. article 12 of these regulations); and

   c) lodge a copy of the IFTC with FIFA.

7. The IFTC shall be delivered free of charge without any conditions or time limitation. Any provisions to the contrary shall be null and void.

8. Upon delivery of the IFTC, the new association shall register the player in their electronic registration system.

9. If the former association fails to respond to the IFTC request within 30 days, the new association shall immediately register the futsal player for the new futsal club on a provisional basis ("provisional registration") and enter the relevant player registration information in the national electronic player registration system. A provisional registration shall become permanent one year after the IFTC request.

10. The former association shall not deliver an IFTC for a futsal player if a contractual dispute on grounds of the circumstances stipulated in paragraph 4 above, has arisen between the former futsal club and the futsal 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 IFTC. If the Football Tribunal authorises the provisional registration (cf. article 23), the new association shall proceed to register the player. Furthermore, the professional futsal player, the former and/or the new futsal 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.

11. The new association may grant the player temporary eligibility to play until the end of the ongoing competition period on the basis of an IFTC sent by fax or email. If the original IFTC is not received by that time, the player's eligibility to play shall be considered definitive.

12. The foregoing rules and procedures apply without distinction to professional and amateur futsal players who, upon moving to their new futsal club, acquire a different status.

5.3 Loan of futsal players

1. The rules set out above also apply to the loan of a professional futsal player from a futsal club affiliated to one association to a futsal club affiliated to another association, as well as to his return from loan to his original futsal club, if applicable.

2. A copy of the loan agreement shall accompany the IFTC request (cf. article 5.2 paragraph 2).

3. Upon expiry of the loan period, the association of the futsal club that released the futsal player on loan shall request the IFTC to the association of the futsal club where he is registered on loan. Until the IFTC procedure has not been completed and the association that released the futsal player on loan has re-registered him in their electronic registration system, the futsal player is not eligible to play for his original futsal club.

ANNEXE 6, ARTICLE 6 – ENFORCEMENT OF DISCIPLINARY SANCTIONS

1. A suspension imposed in terms of matches 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 futsal 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, at the same time, for a futsal and an eleven-a-side club belonging to two different associations.

4. When delivering an IFTC, the former association shall notify the new association in writing of any pending disciplinary sanctions imposed on a player and, if applicable, their extension to have worldwide effect (cf. article 12 of these regulations).

ANNEXE 6, ARTICLE 7 – PROTECTION OF MINORS

International transfers of players 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 8 – TRAINING COMPENSATION

The provisions on training compensation as provided for in article 20 and Annexe 4 of the regulations shall not apply to the transfer of players from futsal clubs.

ANNEXE 6, ARTICLE 9 – SOLIDARITY MECHANISM

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 10 – COMPETENCE OF FIFA

1. Sanctions shall be imposed on clubs and associations which violate the provisions contained in this annexe.

2. The FIFA general secretariat is responsible for investigating any violation of this annexe.

3. The FIFA Disciplinary Committee is responsible for sanctioning any violation of this annexe, in line with the FIFA Disciplinary Code.

4. Without prejudice to the right of any futsal player, coach, association or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear disputes as stipulated in article 22 of these regulations.

5. The Football Tribunal shall adjudicate on all disputes as stipulated in article 23 of these regulations.

1. Purpose and scope

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.[924] 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 to be 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. However, some minor adaptations or amendments are required to address the particularities and specific characteristics of futsal. In particular, the international transfer of futsal players is governed by a manual procedure, as opposed to the use of TMS. However, the registration of a minor has to be applied via TMS as established in article 30 of the Procedural Rules.

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. Those provisions of the Regulations that are binding at national level and that 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.

924 Definition 16, Regulations.

2. The substance of the rules

A. RELEASE OF PLAYERS TO REPRESENTATIVE (NATIONAL) TEAMS

The rules on the release of players to representative teams apply to, and are binding for, futsal. A distinct international match calendar for futsal is decided upon 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.

B. 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). A player must therefore represent the same member association in all forms of association football.

C. 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.

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. 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.

D. 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. 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. 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's competence to deal with employment and transfer-related disputes with an international dimension pertaining to futsal is explicitly confirmed in article 10 of Annexe 6. Such decisions may be appealed to CAS.

E. IFTC

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 International Futsal Transfer Certificate (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.

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.

The only key difference is in procedure. The international transfer of futsal players is governed by a manual procedure, as opposed to the use of TMS. Some differences which may arise as a result of the manual procedure are addressed below.

Unsolicited IFTC

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.[925]

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.

The reason for this extended deadline is that TMS allows real-time information exchange, whereas for the non-electronic process it is appropriate to leave enough of a 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" for the 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 player's former club does not object to the transfer.

F. 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.

G. TRAINING COMPENSATION AND THE SOLIDARITY MECHANISM

The principles of training compensation and the solidarity mechanism do not apply to futsal. The situation of futsal in this regard is vastly different to that in eleven-a-side football (whether for men or women), particularly in relation to the level of professionalism, the amount invested in youth development, and 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.

925 Circular no. 1601 of 31 October 2017; Circular no. 1679 of 1 July 2019.

H. 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 that 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.

Article 6 of Annexe 6 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.

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.

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. 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.

Annexe 7

TEMPORARY RULES ADDRESSING THE EXCEPTIONAL SITUATION DERIVING FROM THE WAR IN UKRAINE

Articles 1 to 8 634

ANNEXE 7, ARTICLES 1 TO 8

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ANNEXE 7, ARTICLE 1 – SCOPE OF APPLICATION

1. Without prejudice to paragraph 2 below, this annexe applies to employment contracts of an international dimension concluded between players or coaches and clubs affiliated to the Ukrainian Association of Football (UAF) or the Football Union of Russia (FUR).

2. This annexe does not apply to:

   a) employment contracts of an international dimension of players who, at the time this annexe enters into force and thereafter, are registered with a club affiliated to the UAF or FUR;

   b) employment contracts of an international dimension of coaches who, at the time this annexe enters into force and thereafter, render their services to a club affiliated to the UAF or FUR;

   c) employment contracts of an international dimension of players or coaches that have been concluded or extended after 7 March 2022.

ANNEXE 7, ARTICLE 2 – EMPLOYMENT CONTRACTS OF AN INTERNATIONAL DIMENSION WITH CLUBS AFFILIATED TO THE UAF OR FUR

1. Notwithstanding the provisions of these regulations and unless otherwise agreed between the parties, a contract of an international dimension between a player or a coach and a club affiliated to the UAF or FUR can be unilaterally suspended until 30 June 2024 by the player or the coach.

2. In order to validly suspend the contract, the player or coach shall inform the club of the unilateral suspension in writing by 1 July 2023 at the latest.

3. The minimum length of a contract established under article 18 paragraph 2 of these regulations does not apply to any new contract concluded by the professional whose contract has been suspended in accordance with paragraphs 1 and 2 above.

ANNEXE 7, ARTICLE 3 – CONSEQUENCES OF THE SUSPENSION

A player or coach whose contract has been suspended as per article 2 paragraphs 1 and 2 above does not commit a breach of contract by signing and registering with a new club. Article 18 paragraph 5 of these regulations does not apply to a professional whose contract has been suspended as article 2 paragraphs 1 and 2 above.

ANNEXE 7, ARTICLE 4 – REGISTRATION

Notwithstanding the provisions of article 5 paragraph 4 of these regulations, a player whose previous registration was in the UAF or FUR, may be registered with a maximum of four clubs during one season and is eligible to play official matches for three different clubs.

ANNEXE 7, ARTICLE 5 – REGISTRATION PERIODS

Notwithstanding the provisions of Annexe 3, in case the UAF or FUR reject an ITC request for a professional within the scope of this annexe, the FIFA administration may immediately authorise the registration of the player at the new association for his new club.

ANNEXE 7, ARTICLE 6 – PROTECTION OF MINORS

Notwithstanding the provisions of article 19 of these regulations, any minors residing in the territory of Ukraine who wish to be registered with a new club shall be deemed to fulfil the requirements of the exception provided in article 19 paragraph 2 a) or d) of these regulations.

ANNEXE 7, ARTICLE 7 – TRAINING COMPENSATION

1. No training compensation is payable by the new club for any player whose previous registration was in the UAF or FUR and whose contract has been suspended in order to be registered with a new club in accordance with this annexe.

2. No entitlement to training compensation will arise for any club not affiliated to the UAF or FUR who has registered a player following the suspension of the player's contract in accordance with this annexe.

3. No training compensation is payable by the new club for a player being registered for the first time as a professional if:

   a) the player is registered with a club not affiliated to the UAF or FUR after having left the territory of Ukraine or Russia subsequently to 7 March 2022 and was allowed to be registered with a new club under the exception provided in article 19 paragraph 2 a) or d) of these regulations;

   b) the player left the territory of Ukraine or Russia subsequently to 7 March 2022 and now wishes to be registered for the first time as a professional with a club affiliated to the UAF or FUR.

ANNEXE 7, ARTICLE 8 – INTERNATIONAL TRANSFER OF PLAYERS

1. A player whose contract has been suspended on the basis of this annexe may, during the period of suspension, not be subject to a transfer (whether permanent or on loan) against payment.

2. A player who has suspended their contract on the basis of this annexe may not sign a new contract with another club affiliated to the UAF or FUR during the time of the suspension.

1. Purpose and scope

A. GENERAL REMARKS

As a consequence of the military invasion of Ukraine by Russian armed forces, FIFA decided to urgently address these extraordinary and unforeseen circumstances.

In the context of this complex and urgent situation, after a consultation process involving the key football stakeholders, the Bureau of the FIFA Council adopted regulatory measures to provide urgent legal certainty and clarity on a number of important regulatory matters. This led to the adoption of Annexe 7 in March 2022.[926]

Subsequently, in June 2022, the Bureau adopted a decision approving a revised text of Annexe 7, extending this regulatory framework until 30 June 2023.[927] These rules were fully validated by CAS[928] as a proportionate, reasonable and necessary regulatory step to address the extremely challenging circumstances caused by Russia's war against Ukraine.

Following these decisions, the tragic situation between Ukraine and Russia and the unforeseeable duration of the war led to the need for further clarification on the application of Annexe 7. In light of this, on 21 May 2023, the Bureau of the FIFA Council approved further temporary amendments to Annexe 7,[929] which were the result of extensive discussion and represent a consensus reached between the stakeholders concerned, which covers various interests.

926 Circular no. 1787 of 9 March 2022; Circular no 1788 of 24 March 2022.
927 Circular no. 1800 of 22 June 2022.
928 CAS 2022/A/9016, FC Shakhtar Donetsk v. FIFA.
929 Circular no. 1849 of 22 May 2023.

B. SCOPE OF APPLICATION OF THE TEMPORARY RULES ADDRESSING THE EXCEPTIONAL SITUATION DERIVING FROM THE WAR IN UKRAINE

Annexe 7 applies to employment contracts of an international dimension concluded between players or coaches and clubs affiliated to the Ukrainian Association of Football (UAF) or the Football Union of Russia (FUR). Therefore, these temporary rules are applicable to foreign players and coaches who have employment contracts with clubs affiliated to the UAF or FUR. For the sake of clarity, these temporary rules apply to men's and women's football and futsal.

Article 1 of Annexe 7 includes limitations regarding the scope of application of the Annexe. The underlying rationale is that players and coaches who have, despite the war in Ukraine, decided to arrive in, return to, or not leave the territories of Ukraine or Russia cannot rely on Annexe 7 to suspend an ongoing contract.

Along these lines, Annexe 7 is not applicable to the following employment contracts:

- Employment contracts of foreign players who were registered with a club affiliated to the UAF or the FUR at the time at which Annexe 7 entered into force or at any point after that i.e. 21 May 2023.
- Employment contracts of foreign coaches who render their services to a club affiliated to the UAF or FUR at that point in time or at any point after 21 May 2023.
- Employment contracts of foreign players or coaches that have been concluded or extended after 7 March 2022.

As from 7 March 2022, i.e. the date of entry into force of the first version of the temporary rules, a key measure has been available to provide players and coaches with the opportunity to train, play and receive a salary, while protecting Ukrainian clubs and facilitating the departure of foreign players and coaches from Russia, namely the suspension of employment contracts of foreign players and coaches with clubs affiliated to the UAF or FUR.

With this in mind, as from 21 May 2023, Annexe 7 does not apply to the employment contract of an international dimension of a player or coach that has been concluded or extended with a club affiliated to the UAF or FUR after 7 March 2022 since, under such circumstances, any request to suspend a contract would appear contradictory and thus abusive.

However, there may be extraordinary circumstances where a strict reliance on the registration of a player may not produce results that are in line with the aforementioned rationale. For example, there may be players who have invoked Annexe 7 (in its earlier

versions) to suspend their employment contracts, but who have been unable to find other employment opportunities. As a result, such players would indeed still be registered with a club affiliated to the UAF or FUR. However, in line with the underlying rationale of Annexe 7, these players will also be able to invoke Annexe 7.

2. The substance of the rules

A. UNILATERAL SUSPENSION OF FOOTBALL CONTRACTS OF FOREIGN PLAYERS AND COACHES EMPLOYED BY UKRAINIAN OR RUSSIAN CLUBS

It is clear that the ongoing military conflict has had an impact, with players and coaches leaving the territories of Ukraine or Russia, and who might not wish to return in view of the situation.

In view of this, the provision in article 2 of Annexe 7 contains a key measure, namely the right for foreign players and coaches who have left the territories of Ukraine or Russia due to the conflict and may not wish to currently return, to further unilaterally suspend their contracts until 30 June 2024. It is worth highlighting that employment contracts of an international dimension concluded between players or coaches and clubs affiliated to the UAF or FUR are treated in the same way in this provision.

However, in order to prevent abuse, to provide clarity to the affected clubs and to ensure that players and coaches exercise their right to suspend their employment contracts within a clear time frame, the player or coach would have needed to have informed the club of the unilateral suspension in writing by 1 July 2023 for the suspension to be considered valid.

For the avoidance of doubt, "in writing" means written correspondence duly signed by the person suspending their contract.

The discussions with the different stakeholders have led to the conclusion that this deadline provided sufficient time to foreign players and coaches to decide whether, in light of the situation, they wished to return to Ukraine or Russia, and also to clubs affiliated to the UAF or FUR to organise their teams adequately.

Finally, as implied by the wording "unless otherwise agreed between the parties" in article 2 paragraph 1 of Annexe 7, foreign players and coaches have the discretion to waive the suspension mechanism by reaching alternative agreements with their respective clubs affiliated to the UAF or FUR.

B. CONSEQUENCES OF THE SUSPENSION

If foreign players or coaches validly exercised their right to unilaterally suspend their contracts with clubs affiliated to the UAF or FUR, the obligation to provide sporting services and for the players or coaches to be remunerated for those services is deemed to be paused until 30 June 2024.

A valid suspension of a contract as per the above-mentioned provisions means that the players or coaches concerned are considered "out of contract" until 30 June 2024 and are, therefore, at liberty to sign a contract with another club without facing consequences of any kind (either payment of compensation or sporting sanctions), for the period of suspension.

However, in order to prevent abuse, to provide clarity to the affected clubs and to ensure that players and coaches exercise their right to suspend their employment contracts within a clear time frame, the player or coach would have needed to have informed the club of the unilateral suspension in writing by 1 July 2023 for the suspension to be considered valid.

A valid suspension also means that foreign clubs that have subsequently registered players whose contracts have been suspended or are deemed suspended will not be subject to any sporting or financial consequences. However, in principle, the validity of any new contract shall not extend past 30 June 2024.

Moreover, any new contract entered into by a professional with a new club until 30 June 2024, whose contract has been suspended as per the above-mentioned provisions, will not be considered a violation of article 18 paragraph 5 of the Regulations, which states that: "If a professional enters into more than one contract covering the same period, the provisions set forth in Chapter IV shall apply".

C. REGISTRATION MATTERS

In order to alleviate any concern that a player in these circumstances may inadvertently breach article 5 paragraph 4 when they transfer to a club affiliated to a different MA, all players whose previous registration was at the UAF or foreign players whose previous registration was at the FUR may be registered with a maximum of four clubs and shall be eligible to play official matches for a maximum of three clubs during the same season (i.e. the same season in which the transfer occurs).

In the event that the UAF or FUR rejects the ITC request for a professional whose contract has been suspended as per Annexe 7, in order to allow a smooth and swift process, the FIFA administration may immediately authorise the registration of the player at the new association wishing to register them.

For the sake of completeness, these temporary rules apply to registration matters concerning all players in Ukraine regardless of their nationality, and the principles outlined in this section shall apply *mutatis mutandis* to amateur players and futsal.

D. PROTECTION OF MINORS

Article 19 paragraph 2 (a) exempts minors moving with their parents from the rule preventing the international transfer of players before the age of 18 when the reasons for the move are not linked to football. Article 19 paragraph 2 (d) exempts minors moving for humanitarian reasons from the general prohibition regarding the international transfer of players before the age of 18. The exemption is limited to those categories of persons set out in the 1951 Refugee Convention. The FT has previously applied the exemption to asylum seekers whose civil status in their new country has yet to be determined, permitting their registration with amateur clubs.

In this respect, minors fleeing Ukraine, regardless of their nationality, to other countries due to the armed conflict will be considered to have fulfilled the requirements of article 19 paragraph 2 (a) or (d) of the Regulations. Their registration at the new association would normally be approved by the FT.

E. TRAINING COMPENSATION

Article 7 of Annexe 7 essentially means that the training compensation mechanisms do not apply for players who previously invoked the rights under Annexe 7 to suspend their contracts and move to another club. The main rationale is to facilitate as much as possible the movement of these players and not to cause any financial burden, which may exist if an obligation to pay training compensation would otherwise be triggered.

Therefore, no training compensation is payable by the relevant new club if foreign players whose contracts have been suspended in accordance with Annexe 7 to the Regulations sign a new contract in order to be registered with this new club.

Conversely, new clubs not affiliated to the UAF or FUR where such foreign players have signed a new contract are not entitled to receive training compensation for the period during which the player is registered with them (i.e. while the respective contract with a club affiliated to the UAF or FUR is suspended).

Furthermore, in order to facilitate the possible return of players (regardless of their nationality) to clubs affiliated to the UAF or FUR, should they wish to do so, no training compensation is payable by the relevant new club for a player being registered for the first time as a professional in two scenarios:

The player was allowed to be registered with a new club under the exception provided in article 19 paragraph 2 (a) or (d) after leaving the territories of Ukraine or Russia after 7 March 2022, and is registered for the first time as a professional with a club not affiliated to the UAF or FUR.

The player that now wishes to be registered for the first time as a professional with a club affiliated to the UAF or FUR had previously left the territories of Ukraine or Russia after the temporary rules were implemented (7 March 2022).

F. INTERNATIONAL TRANSFER OF PLAYERS

Certain limitations in relation to the international transfer of players are part of article 8 of Annexe 7 (May 2023 edition), with the main rationale being to prevent abuses or unwelcome scenarios from a financial perspective.

In this context, players whose contracts have been suspended on the basis of this Annexe may not:

i. be subject to a transfer against payment, regardless of whether the said transfer is on a permanent or a loan basis, during the period of the relevant suspension;

ii. sign a new contract with another club affiliated to the UAF or FUR during the period of the relevant suspension.

It is true that there may be exceptional circumstances where, for example, a player of Ukrainian nationality has invoked Annexe 7 to suspend a contract with a Russian club and is unable to find any employment elsewhere, other than with a club in their home country of Ukraine (or vice versa for players with Russian nationality). In situations where this would otherwise cause hardship to those players, on a case-by-case basis, a registration with a club in the respective home country may still be permissible.

3. Relevant jurisprudence

CAS award

1. CAS 2022/A/9016, FC Shakhtar Donetsk v. FIFA.


FIFA