



No 4
2014
SEP
2014

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THE WAY FOR FOOTBALL
CLUBS
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Dear ECA Members and Colleagues,

In keeping with previous editions, the content of this year's ECA legal bulletin has been based on the input and questions from our Member Clubs. Consequently, its main aim is to provide practical guidance on a broad range of sports-related legal issues affecting professional football clubs.

Both legal doctrine and regulatory developments have certainly not stood still since the publication of the last ECA bulletin and some of the latest developments are addressed in this new bulletin.

The first chapter of this bulletin is fully dedicated to the concept of training compensation as practice teaches us that it is a perplexing topic for clubs. The ECA regularly receives questions and misconceptions are often due to lack of knowledge of the concept itself as well as of the jurisprudence of FIFA and the Court of Arbitration for Sport (CAS). In order to clarify this concept and shed light on frequently occurring misunderstandings, the first chapter of this bulletin provides a practical overview of the current state of play by setting out the present regulations accompanied by the relevant case law.

The second chapter of this bulletin, entitled feedback from FIFA's judicial bodies & CAS, deals amongst other things with buy-out clauses and liquidated damages clauses and includes a comprehensive summary of a CAS award in which the legal qualification of a clause as either one or the other was debated. In addition, chapter two focuses on the power of the FIFA DRC to adjudicate cases as well as the issue of injuries in relation to the termination of an employment contract.

In chapter three, a quick summary is provided of the disciplinary sanctions imposed on clubs during the UEFA Competitions 2013/14 in relation to racist or other discriminatory conduct by club supporters.

The fourth and final chapter concerns some general remarks and tips with regards to the UEFA 'whereabouts' rules and the possibility to request provisional measures during a procedure.

Finally, we would like to thank Wouter Lambrecht (ECA Legal Manager) and Daan de Jong (ECA Legal Counsel) who are at the heart of this legal bulletin.

We hope that this bulletin will be of interest to you and we welcome your feedback.

Sincerely,



Michele Centenaro
General Secretary



Ivan Gazidis
Chairman of the ECA Legal Advisory Panel
and CEO Arsenal Football Club

I. Training Compensation – Case Law Analysis

1 Introduction

It seems reasonable to assume that clubs are fully familiar with the concept of training compensation as contained in the FIFA Regulations on the Status and Transfer of Players (RSTP). However, experience has taught us that this is not always the case. We often receive questions relating to this issue from our member clubs and training compensation disputes feature regularly on the agenda of the FIFA Dispute Resolution Chamber (DRC).

Undoubtedly there are cases where certain clubs look for excuses in order to avoid their obligations, but many cases also contain specific issues for which one cannot find the answer in the seven articles governing the concept of training compensation.¹

It is therefore vital to have some understanding of the jurisprudence developed by the FIFA DRC and the Court of Arbitration for Sport (CAS) respectively, and it is exactly what this article aims to provide.

Although by no means exhaustive, this article aims to provide an overview of existing jurisprudence with regards to specific issues relating to transfers of players and corresponding claims for training compensation, since experience shows that the pitfalls are manifold.

2 Purpose & main rules

Before touching upon jurisprudence, it seems prudent to briefly revisit the aim and purpose of training compensation as well as its basic rules, which you can find in annex 1 to this bulletin.

The purpose of training compensation, like the solidarity mechanism, is to foster the training of and provide educational assistance to young players by awarding training clubs a compensation/contribution for doing so.

Bearing in mind the underlying objective, training compensation is payable (1) when a player signs his first professional contract and (2) each time a professional is transferred between clubs, either during or on expiry of his contract, until the end of the season of his 23rd birthday.

Compensation is payable for training undertaken up to the age of 21, unless it is evident that a player has terminated his training before that age. It is up to the registering club to pay the compensation within 30 days following the registration of the player, pursuant to the player's passport.

Compensation is calculated on the basis of the training cost of the new club and/or the old club, in the knowledge that each football association has classified its clubs into different categories according to training costs, which are established on a confederation basis. The training cost is then multiplied by the number of years of training with the former club.

Transfers within the EU/EEA are subject to special rules, according to which training compensation is calculated based on the average training costs of the two clubs if the player moves from a lower to a higher category club and on training costs of the lower-category club if it concerns a move in the opposite direction (higher to lower category).

3 Specific issues/questions

Having briefly revisited the purpose and the key concepts, we can now address a couple of specific issues/questions.

3.1 First professional contract/registration

As already mentioned, training compensation is due on conclusion of the first professional contract/registration. What constitutes a professional contract and ditto registration are frequent subjects of debate, since certain associations tend to differentiate between amateur, non-amateur and professional players or embrace notions such as

¹ Article 22 and Annexe 4 of the FIFA Regulations on the Status and Transfer of Players.

“joueur de formation” or the scholarship agreement. Moreover, the notion “professional” at an association is usually tied to the notion of professional sportsman/worker, set by local legislation, which in its turn is often tied to a minimum level of revenue.

Now, it is important to note that in relation to training compensation, the notion of “first professional contract” is solely tied to and construed in line with the FIFA RSTP. In other words, it bears no relation whatsoever with what would be understood under or what would amount to a professional contract at domestic level. That is to say, according to the definition contained in article 2 of the RSTP, a professional player is a player who has a written contract and who is paid more for his footballing activity than the expenses he effectively incurs. A fortiori, a contract by means of which a player earns more than his expenses to play football, is considered a professional contract and triggers the entitlement to training compensation.

For example, according to a decision of the CAS²

“The status of a player has to be analysed based on the relevant FIFA rules [...]. According to the FIFA rules, there is no space for a third, hybrid category, to which might belong players undertaking training dedicated to the practice of football but who are at the same time students with the goal of becoming professional football players, even if such players would not ordinarily (i.e. in common professional parlance) be called either amateur or non-amateur.”

When calculating revenue and therefore defining the status, one should take into account not only the actual money being paid, but also whether a club provides secondary benefits such as football shoes, clothes, mileage allowance, tuition fees for children, housing, mobile costs, etc.

Hence, it is quite clear that any contract signed with a player can quickly amount to a professional contract/relationship in light of the RSTP, irrespective of contract denotation by the signing parties or the status under which the player has been registered with the association.

This can be illustrated by a recent DRC decision³ in which the DRC held that a contract entitling a player to EUR 300 p/m to cover his costs in addition to EUR 90 per appearance in the starting 11 as encouragement for his training efforts, amounted to a professional contract for which training compensation was due, irrespective of the fact that the player had been registered as an amateur.

In another case, the DRC held that a one-year contract with a Swedish club entitling a player to EUR 6,000 (EUR 500 p/m) similarly amounted to a professional contract.

The above should be borne in mind not only by clubs signing players, i.e. to avoid unwelcome surprises when it comes to facing possible claims for training compensation, but also by clubs who trained and educated the player. Since they are the ones who intend to claim, they have to follow the sporting career of their players and lodge a claim within the prescribed period of two years following a player signing his first professional contract.⁴

3.2 Bridge transfer

In recent years, the DRC and the CAS had the opportunity to deal with the practice of so-called bridge transfers in relation to training compensation. A bridge transfer is defined as a transfer of a player to a lower category club in order to avoid or limit the amount of training compensation due (intermediate transfer) following which the player is then immediately transferred to a third club which, had it signed the player directly, would have to pay a higher amount of training compensation.

Now, given that the FIFA RSTP stipulate that only the previous club is entitled to training compensation in case of a transfer of a professional player, the solidarity and training compensation mechanism could be circumvented quite easily by means of such an intermediate transfer.

² CAS 2006/A/1177 Aston Villa FC v. B93 Copenhagen

³ FIFA DRC, 17 January 2014, n°01141545b

⁴ FIFA DRC, 15 June 2011, n°6111825

Therefore, the DRC and the CAS have established guidelines according to which a club may still be entitled to receive training compensation even though not all formal requirements are met.⁵

The first guideline laid down is the object of training compensation, i.e. that clubs should be encouraged to train players and that clubs carrying out the training process should be rewarded by clubs reaping the benefits of the training process.

The second guideline is that *having regard of the fundamental principle of fair play, the aim of sporting justice shall not be defeated by an overly formalistic interpretation of the FIFA Regulations which would deviate from their original intended purpose.*⁶ As such, the wording “previous club” cannot be interpreted so narrowly that circumvention is easily enabled.

Thirdly, it was held that players and/or new clubs might not always be acting in bad faith, implying that entitlement to training compensation will only arise if the transfer to the lower division/category club lacks credibility and the higher club was aware that it might be liable for training compensation.

Hence, clubs faced with a bridge transfer are not powerless to claim training compensation, nor can clubs readily hope to escape training compensation payments by setting up an intermediate transfer.

3.3 Category

For the calculation of training compensation, clubs are classified into categories which represent the training costs needed to train one player for one year multiplied by a player factor, i.e. the ratio between the number of players who need to be trained to produce one professional player. Different categories exist per confederation and associations are asked to categorize their clubs each year into the corresponding categories made available to them.

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	EURO 90,000	EURO 60,000	EURO 30,000	EURO 10,000

In order to calculate the training compensation due, one must differentiate between (1) players moving from one association to another association in the EU/EEA and (2) all other transfers movements from associations outside the EU/EEA to the EU/EEA or any other association.

In case of a transfer within the EU/EEA, the calculation shall be based on the average training cost of both categories if the player moves from a lower to a higher category club and on training costs of the lower category club if it concerns a transfer from a higher to a lower category club. In all other transfers, compensation is calculated based on the costs of the new club.

Exceptions do exist for minor players and no training compensation is payable if a player is transferred for example to a category 4 club or a professional player reacquires amateur status on being transferred.

⁵ Cf. CAS 2009/A/1757 MTK Budapest v. FC Internazionale Milano SpA & CAS 2011/A/2477 FC Spartak Moscow v. RFU & FC Rostov

⁶ CAS 2009/A/1757, paragraph 31

Now, it is quite evident that the training compensation greatly depends on the category to which clubs are attributed; occasionally clubs are allegedly placed in the wrong category by their association, be it following relegation/promotion or for other reasons.

In this respect, it is important to bear in mind that certain criteria have been worked out by FIFA in its Circular Letter 1249⁷, criteria which used to be part of the regulations. According to this Circular, associations should proceed and categorize as following:

- **Category 1** (top level, e.g. high quality training centre): all first division clubs of member associations investing on average a similar amount in training players.
- **Category 2** (still professional but at a lower level): all second division clubs of member associations in category 1 and all first division clubs in all other countries.
- **Category 3** all third division clubs of member associations in category 1 and all second division clubs in all other countries with professional football)
- **Category 4** all fourth and lower division clubs of the member associations in cat. 1, all third and lower division clubs in all other countries with football leagues and all clubs in countries with only amateur football leagues.

Hence, in the case of a top division club that has not been put in the highest category made available to the association in question, one can request an adjustment at DRC level.

More precisely, in a decision of 1 March 2012⁸, the DRC referred to the above mentioned Circular Letter 1249 which inter alia stipulates that “In such a case of manifest discrepancy, the DRC normally applies the training categories in accordance with the guidelines, despite the fact that the member association concerned had indicated a different categorization”.

3.4 Season of the 23rd birthday - Overlapping sporting season

As already mentioned in the 2011 version of the ECA Legal Bulletin, overlapping sporting seasons can complicate matters in relation to training compensation. As a reminder, training compensation is due when:

- a player is registered for the first time as a professional; or
- is transferred between clubs of two different associations

and this before the end of **the sporting season during which the player turns 23**.

Now, when it comes for example to a transfer of a player who turned 23 in February 2014, no training compensation would be payable in case it concerns a transfer between two clubs that have a sporting season running from July to June since the 2014/15 season would then be the season of the player's 24th birthday.

However, the situation differs should the same player be transferred from a club whose sporting season follows the calendar year to a club whose sporting season runs from July to June. More precisely, the player would leave the club during the season in which he turns 23 (sporting season equalling calendar year 2014) whereas the sporting season of his new club (July 2014 to June 2015) would be the season of the 24th birthday. If one were to take the sporting season of the old club, training compensation would be payable by the new club whereas if one takes the sporting season of the new club training compensation would not be due.

In recent cases, the DRC has confirmed its previous jurisprudence by which it is held that the sporting season to be taken into account for training compensation is the season of the old club. Any other interpretation according to the DRC would be contrary to the *ratio legis* of training compensation, namely to reward clubs for training and educating players.

Consequently, when signing a 23 year old player from a club with a sporting season other than the July/June season, one must be careful and make the necessary enquiries.

⁷ FIFA Circular no. 1249, concerning training compensation and the categorisation of clubs

⁸ FIFA DRC, 1 March 2012, n°3121501

3.5 Final season of training may occur before the season of the 21st birthday

As a general rule, training compensation is payable up to the age of 23 for training incurred up to the age of 21 **unless it is evident/established that a player has terminated/completed his training before that age.**⁹

In the absence of regulatory clarity regarding how to establish whether a player has terminated his training, one must turn to the jurisprudence of both the DRC and the CAS to understand how this article works in practice.

In this respect, it is worth remembering that the party claiming that a player has terminated his training bears the burden of proof in this respect.

As an introductory remark, it goes without saying that establishing the end of a player's training period is not an exact science and can possibly depend on the person analysing this and/or the level in which his old and or new club participate. Nevertheless, the DRC and the CAS have assessed this requirement on objective grounds as much as possible, as explained below.

According to established jurisprudence, **the training period is covered by FIFA by means of its regulations and applicable circular letters, whereas the development of a player is not. Therefore what needs to be established when applying this provision is the point of termination of the training period and not the extent of the subsequent development of a player as a professional football player.**

In line with DRC and CAS jurisprudence, **a player who regularly plays in the "A" team of a club is to be deemed as having completed his training**¹⁰. In the decision CAS 2003/O/527, it was stated that:

"L. signed his first non-amateur contract with the Respondent on 1 October 1996. During the season 96-97, he played 5 times with the Respondent's "A" team. During the season 97-98, he was engaged more regularly and played 15 times with the "A" team. At that time, he already spent many years with the Respondent's club and was noticed for his good technical skills and speed. L can therefore be considered as having completed his training period before the beginning of season 1997-1998, in view of the scale, the characteristics and the level of games of the Respondent's club at that time."

Besides the objective criteria of "becoming a regular player" it also stands to reason that a player who is called up to represent the A-national team of his country or who is/has been transferred for a considerable transfer fee could be taken into account as objective criteria for establishing that a player has ended his training period.

On the other hand, according to jurisprudence, the fact that a player was called up to take part in matches with the national youth teams does not mean that the player has terminated his training, but rather that he was one of the best players of his age at that moment in time. Equally, a CAS Panel, after having established that a player was a regular player at his old club, rejected the argument put forward that a player after joining his new club was no longer a regular player for the first team.

"The Panel is conscious that the number of games played is only one factor, to be taken into consideration when assessing if a player has completed his training period, but deems that this is an important and objective criteria which might be sufficient in the absence of other elements.

The Panel is of the opinion that once this objective criteria is demonstrated, the burden of proof then shifts to the training club to prove that a player was not actually fully trained even though he was playing most of the games with the "A" team.
In the case at hand, the Panel deems that the fact that the Respondent's

⁹ Article 1 and 6.2 of Annexe 4 of the FIFA RSTP

¹⁰ Cf. CAS 2003/O/527 Hamburger Sport Verein v. Odense Boldklub, CAS 2006/A/1029 Maccabi Haifa FC v. Real Racing Club & CAS 2011/A/2682 Udinese Calcio SpA v. Helsingborgs IF

Sport Director considers that the Player has not completed his training in 2009 and that the Player did not play with the Appellant's "A" team after the transfer are insufficient indications to contradict such assumption and to determine that the Player had not completed his training period.

The Panel emphasizes that there is a difference between the training and the development of a player [...]

The Panel agrees with such contention and believes that the fact that the Player was not fielded in the Appellant's "A" team is not because he was not fully trained but rather because his development as a football player was not complete. It is part of a player's development to be transferred to a better team and to learn how to play with better players in a more competitive environment"¹¹

3.6 Player passport

As already stated, training compensation is payable to every club with which the player has previously been registered. Although player passports are mostly accurate and contain all the relevant data, it occasionally transpires that two or more player passports have been issued by an association, which either contradict or supplement each other.

Upon signing a first professional contract, it evidently makes a big difference whether the player passport states that a player has been registered as of the age 12 or whether for certain periods of time no record has been found and such is mentioned accordingly in the player passport.

Now, relying upon a player passport containing the reference "no record find for period X" and subsequently receiving a claim from a third club for that same period X, based on a new player passport, can of course cause unexpected costs.

In a recent case, the FIFA DRC¹² once more confirmed its previous jurisprudence as it dealt with a case in which a Brazilian club claimed training compensation in the amount of EUR 298,750, after having originally claimed and received the amount of EUR 61,250 based on a different player passport. The Brazilian club explained that its FA corrected the player passport in August 2012 following which it was requesting the additional payment.

Faced with this claim, the DRC held that the club, for which a player is registered for the first time as a professional, is responsible for paying training compensation in accordance with the player's career history as provided for in the player passport. The DRC continued by stating that professionals, as well as amateur players, must be registered with an association to play for a club. In particular, said article clearly points out that it is the responsibility of an association to register a player and that if a club relies in good faith on the data provided at first, the second player passport cannot be held against it.

This is line with an earlier DRC decision of May 2011¹³, also involving two Brazilian clubs, claiming training compensation based on a new player passport. In this case, the DRC stressed that the respondent club had complied with all its obligations by asking the responsible authorities/associations for a player passport prior to registering the player on which it could rely.

"In view of the aforementioned and also with regards to the legal certainty, the DRC concluded that it was not acceptable for a club, which takes a player under contract based on the confirmation of the previous association and trusting that it would not have to pay training compensation, to be subsequently obliged to pay training compensation"

As such, it should be stressed that when it comes to training compensation, clubs wishing to exercise due diligence should request a player passport in order to avoid unexpected surprises.

¹¹ CAS 2011/A/2682 Udinese Calcio SpA v. Helsingborgs IF, paragraph 101-104

¹² FIFA DRC, 30 August 2013, n°08121946

¹³ FIFA DRC, 20 May 2011, n°511126

3.7 Special provisions for the EU/EEA and the “Exception to the Exception”

Besides deviations to the general rule pertaining to the calculation of training compensation payable for transfers within the EU, the regulations also impose specific conditions that European clubs must meet in order to preserve their entitlement to training compensation.

More precisely for players moving from one association to another in the EU, article 6.3. of Annexe 4 of the RSTP applies and reads as follows:

“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. Such an offer shall be at least of equal value to the current contract.”

Unfortunately this provision has led and continues to lead to quite some uncertainty since it is unclear whether the three sentences in this paragraph should be read together and/or whether they complement each other or relate to two different situations.

If both conditions were to be read together, it would imply that a contract should only be offered to those players already under contract since the requirement of offering a contract 60 days prior to the expiry of the current contract would not make sense otherwise.

Furthermore, if no contract was offered, it is unclear on what basis clubs could still justify their entitlement to training compensation, let alone those clubs that did not meet the prerequisites for players already under contract.

Again, the jurisprudential community has sought to clarify this provision but DRC and CAS jurisprudence has, on rare occasions, also been contradictory.

Now, keeping the above in mind, the aim is to explain the majority point of view with regards to special provisions for transfers within the EU/EEA.

With regard to most decisions/awards, the first sentence of article 6.3 applies to both amateur and professional players, whereas the second and third sentence only apply to a situation where a professional contract already exists.¹⁴

However, if the player in question is already under contract, the extra conditions set out in article 6.3 apply and in such cases an offer, of equal value or higher, should be made i.e. 60 days prior to the expiry of the contract. Furthermore the offer is to be made in writing via registered post.

Notwithstanding the prerequisite of offering a contract, every club, even a club that has failed to meet the basic and/or additional requirements, could still claim for training compensation if it can successfully justify their entitlement; the onus for justifying such entitlement being higher for players who were already under contract.¹⁵

As to how a club can justify its entitlement to training compensation, it should be noted that jurisprudence has developed the notion of demonstrating a **genuine and bona fide interest** in retaining the services of the player.

In this respect, reference can be made to an award¹⁶ in which the Panel held that if a club wants to retain the right training compensation in respect of an amateur player it must take a proactive stance vis-à-vis the individual player so as to clearly demonstrate that the club still relies on him for the future. This can be done by offering a contract or show its bona fide and genuine interest by for example proving its desire to keep the player on the roster or in its youth academy with a view to keeping alive the option of granting him a professional contract.

¹⁴FIFA DRC, 16 April 2009, n°49444, paragraph 20 considerations

¹⁵CAS 2011/A/2682 Udinese Calcio S.p.A v. Helsingborgs IF “84. However, the Panel deems that the “exception to the exception” and the conditions of its application listed above shall be applied more strictly to professional players as clubs shall pay particular attention to those players with a contract”.

¹⁶CAS 2006/A/1152 ADO Den Haag v. Newcastle United FC

In line with the above it was held¹⁷ that it would be unreasonable to require a club to offer a professional contract to every young amateur player in order to avoid the risk of losing any entitlement to training compensation since holding the contrary would undermine the objective of encouraging clubs to engage in player training.

In another case¹⁸, it was held that in order to encourage the training of players, compensation should be granted whenever it appears contrary to common sense to conclude that the training club was not interested in keeping the services of the player. According to CAS, such could be presumed according to the normal course of events constituting a high degree of likelihood.

In this sense, the CAS jurisprudence is somewhat less restrictive than the DRC in that the discharge of the burden of proof is accepted more easily to the extent that it is held that *“the aim of sporting justice shall not be defeated by an overly formalistic interpretation of the FIFA Regulations which would deviate from their original intended purpose, i.e. that a club which trained a player should be compensated for its training efforts.”*¹⁹

Keeping the above in mind, it is quite clear that European clubs signing a player from another European club should exercise due care when it comes to training compensation and that it might be a good and safe starting point to assume that training compensation will be payable since all clubs can justify their entitlement even if not having offered a contract.

3.8 Special provisions for the EU/EEA - Mutual termination

Referring once again to the special provisions for players moving from one association to another in the EU/EEA, it should be noted that in case a club and a player terminate their contract by mutual agreement, the club loses its right to receive training compensation.

*“The members of the Chamber underline that the Claimant by putting an end to the contractual engagement with the player, even though it wanted to enable the player to transfer to another club, failed to meet the requirements of art. 5 par. 5 (old article 6) of the regulations. [...] a club willing to transfer a young player to another club is not actually seeking to retain the services of the player and has thus foregone its entitlement [...].”*²⁰

Whereas the mutual termination of a contract precludes European clubs to claim training compensation for a player moving within in the EU/EEA, this is not the case when it concerns a player moving between non-EU/EEA countries or from EU/EEA countries to non-EU/EEA countries and vice versa.

This was clarified once more in a recent CAS award:²¹

“76. The Panel finds that a proper reading of article 20 of the FIFA Regulations and article 2 of Annex 4 to the FIFA Regulations, leads to the conclusion that, in accordance with the appealed decision, the wording “at the end of the player’s contract” includes the registration of a player after expiry, mutual termination or termination with just cause of the player’s previous employment contract. In these situations, the training club is, in principle, still entitled to training compensation for the period it effectively trained the player.”

¹⁷ CAS 2009/A/1757 MTK Budapest v. FC Internazionale Milano S.p.A

¹⁸ CAS 2012/A/2990 FC Nitra v. FC Banik Ostrava

¹⁹ CAS 2011/A/2682 Udinese Calcio S.p.A v. Helsingborgs IF, paragraph 83

²⁰ FIFA DRC, 21 February 2006, n°26595

²¹ CAS 2013/A/3119 Dundee United FC v. Club Atlético Vélez Sarsfield

3.9 Player loans and subsequent transfers

When it comes to the development of youngsters, many clubs send their young players on loan in order for them to get acquainted with competitive football and to close the gap between the youth team and first team football. Now, as is clear from the aforementioned, the weight given to training and developing players is reflected in the provisions on training compensation and as such one would assume that both concepts (loan and training compensation) go hand in hand.

A recently published case from the CAS²² however threatened to undermine the correlation between both concepts. That is to say, according to the Panel in this case a training club sending out a player on loan is not entitled to receive training compensation for any training provided before the loan takes place when that player returns to the club and then goes on to sign with another club.

In reaching its conclusion, the Panel referred to article 10 of the FIFA RSTP according to which any loan of players is subject to the same rules as apply to the transfer of players, including the provisions on training compensation and the solidarity mechanism.

It is submitted that the decision of the CAS in this case is incorrect, not only for applying the rules incorrectly but also for failing to understand the objective underpinning the concept of training compensation; an objective which has even been confirmed by the European Court of Justice in the Bernard case.

When analysing article 10 it is worth bearing in mind that it forms part of part III of the RSTP which is entitled "Registration of Players".

Consequently, when article 10 states that loans are subject to the same provisions as apply to transfers, including the provisions on training compensation and solidarity contribution, it should be understood that in order to register a player on loan a club must comply with the necessary administrative requirements (issuance of an ITC etc.) and that those clubs receiving a player also benefit from training compensation or the solidarity mechanism for the time the player was effectively trained by that club on loan.²³

According to established jurisprudence of the FIFA DRC, disregarded by the Panel in this case, it should be understood that the period during which a player is sent on loan and the period during which he is registered for his mother club are to be seen as one contiguous time period.

"This being said, the Chamber furthermore unanimously remarked that the period of time during which the player was registered for the Claimant as well as for D has to be considered as one entire timeframe and that therefore the loan to the latter club cannot be considered as a subsequent transfer, triggering the consequences stipulated in art.3. par. 1 of Annexe 4 of the Regulations and consequently preventing the Claimant from receiving training compensation for the period of time during which the player was registered for it prior to the loan" ²³

This would appear to be quite a logical understanding as it could not have been the intention of those imposing the regulations for a club to lose its entitlement to training compensation as a result of sending a player on loan, since clubs would then be quite reluctant to send out players on loan, which in turn would restrict the possibilities for players to develop themselves.

It is understood that this award has tried to find an equitable solution for the parties involved in this specific case since the facts of this case show that the Greek club that was held to pay training compensation did not expect such since it, in good faith, thought it had entered into a partnership agreement with a Spanish club, which in its opinion was responsible and liable for training compensation payments.

²² CAS 2012/A/2908 Panionios GSS FC v. Paraná Clube

²³ FIFA DRC, 6 August 2009, n°891179

Luckily, it can be noted that a Panel in a more recently issued CAS award²⁴ disregarded this specific award and followed the FIFA jurisprudence:

“112. The Panel wishes to add that this view is consistent with CAS jurisprudence, such as CAS 2011/A/2599, whereby it was determined that:”

“the obligation to pay training compensation arises only in case a player is definitively transferred from one club to another (...).”

113. The Panel also finds that this conclusion is consistent with the actual rationale of the training compensation system, which is to encourage the recruitment and training of young players. To hold that the loan of a player would interrupt the training period, could, in the opinion of the Panel, deter training clubs from loaning players. It occurs frequently in the world of football that young players are not proficient enough to play for the first team of their club. In order to prepare these players for the first team, or to give these players a chance to train and play in order to try and reach the required level to play for the first team, a solution regularly used is to loan the player concerned to another team in order for the player to gain experience with another club and to prepare him or give him the chance to reach the requisite professional level for playing in the first team of the training club. However, if the making of such loan would entail the consequence that the training club would thereby waive its entitlement to training compensation, the training club might decide not to loan the player to another club merely in order to secure its entitlement to training compensation. In such situation, the player would be deprived from the very training considered to be the most suitable for him. The Panel would regard such a situation as undesirable, and endorses the view of the FIFA DRC insofar it argued that any other interpretation of the FIFA Regulations would potentially deprive young players of the opportunity to gain practical experience in official matches for another club in order to develop his footballing skills in a positive way.”

Finally, making an abstract of this CAS award and referring to established jurisprudence of the FIFA DRC, **clubs should note that entering into a transfer agreement and paying a certain transfer fee does not always imply that no training compensation will be payable.**

That is to say, according to DRC and CAS jurisprudence, clubs that received a player on loan are entitled to training compensation (if all other criteria are met) when after the expiry of the loan the player returns to his club of origin, and thereafter is transferred from his club of origin to a club belonging to another association before the end of the season of his 23rd birthday.²⁵

3.10 Free transfer document

On several occasions the DRC has dealt with cases in which clubs faced with a claim for training compensation invoked a document by which a player was granted a free transfer by his previous club.

Such document stated that the previous club or the player had no rights or claims against each other and that the player was free to sign at any club of his liking.

As such, the club signing the players understood that the previous club had waived its right to receive training compensation.

Faced with such cases, the DRC noted that for a club to waive its entitlement, an explicit waiver is requested by which the club unequivocally waives its right. Lacking such explicit waiver, it was also noted that such a document was a bilateral document between the concerned club and the player and as such did purport to a document which was evocable by the new club.

Therefore, clubs should always conduct due diligence when faced with a similar document.

²⁴ CAS 2013/A/3119 Dundee United FC v. Club Atlético Vélez Sarsfield

²⁵ FIFA DRC, 1 September 2011, n°911668

II. Feedback from FIFA'S Judicial Bodies & CAS

RECENT JURISPRUDENCE

1 Buy-out clauses & Liquidated Damages Clauses

1.1 Introduction

As described in the ECA Legal Bulletin edition N°1²⁶, it is important to note that buy-out clauses and liquidated damages clauses are two completely different legal figures and therefore also operate in a distinct manner.

Confusion seems to exist as to whether a certain contractual clause is to be qualified as either a liquidated damages clause or a buy-out clause. The main difference between both types of clauses lies in the different legal effects they trigger when invoked by a party to the contract.

According to CAS²⁷, a liquidated damages clause can be described as:

“a mutually agreed upon contractual clause that allows the parties to establish in advance in their contract the amount to be paid by either party in the event of unilateral, premature termination without just cause.”

As is commonly known, the FIFA RSTP foresees the possibility of adding such a liquidated damages clause to the contract by means of Article 17 sub 2 of the RSTP which states that parties may insert a contractual clause which stipulates the amount of compensation payable in case of a contractual breach without just cause.

Whereas a liquidated damages clause limits itself to establishing the amount of compensation payable in case of a contractual breach, a buy-out clause actually allows (one of) the parties to terminate the contract if a certain prerequisite is met (i.e. the payment of a certain amount of money) as also explained in the FIFA commentary on the RSTP:²⁸

The parties may, however, stipulate in the contract the amount that the player shall pay to the club as compensation in order to unilaterally terminate the contract (a so-called buyout clause). The advantage of this clause is that the parties mutually agree on the amount at the very beginning and fix this in the contract. (...) With this buyout clause, the parties agree to give the player the opportunity to cancel the contract at any moment and without a valid reason, i.e. also during the protected period, and as such, no sporting sanctions may be imposed on the player as a result of the premature termination

Therefore, unlike a liquidated damages clause, a buy-out clause provides for the opportunity and right to unilaterally terminate an employment contract whereas the liquidated damages clause does not allow for such action following which besides the financial consequences sporting sanctions can also be applied.

In a recent case, both the FIFA DRC and the CAS had the opportunity to further clarify the difference between both types of clauses whilst at the same time making some interesting observations as to the validity of the liquidated damages clause at stake.

The CAS rendered its award²⁹ on 9 May 2014 in a dispute involving the Saudi-Arabian club Al Nasr against the Australian Player Mark Bresciano and his new club Al Gharafa S.C. from Qatar.

²⁶ECA Legal Bulletin N°1, September 2011, p. 6-8

²⁷CAS 2008/A/1519-1520 FC Shakhtar Donetsk v. Matuzalem Francelino da Silva & Real Zaragoza SAD and FIFA, paragraph 67

²⁸FIFA Commentary on the Regulations for the Status and Transfer of Players

²⁹CAS 2013/A/3411 Al Gharafa S.C. & Mark Bresciano v. Al Nasr S.C. & FIFA

1.2 CAS 2013/A/3411 – case analyses

The main facts of this case are as follows:

The Player and Al Nasr concluded an employment contract which included the following debated provision:

“If the Player cancels by himself the said contract made between him and the Club for any reason whatsoever, he shall pay to the Club all amounts paid by the Club to the Player as a result of the implementation of the contract. Unless the damage caused to the Club exceeds these amounts, and in this case the Club may claim the Player for compensating it for the actual damages resulting from such breach.”

The Player was of the opinion that this clause allowed him to terminate the contract whereas the Club held that no such right could be derived from the contract as the clause merely constituted a liquidated damages clause.

Faced with the termination of the Player’s contract, the Club filed a claim with the FIFA DRC which subsequently ruled that the relevant clause did not amount to a buy-out clause as it did not “establish a *right for the Player to terminate the contract for a specific, clearly predetermined amount but only seeks at somehow fixing the minimum amount of compensation due in case of breach by the Player*”.³⁰

As no other reasons for the contractual termination were put forward by the Player, the Chamber held that the Player had breached the employment contract without just cause following which it turned to the financial consequences of the contractual breach.

When establishing the financial consequences, the DRC disregarded the liquidated damages clause since it considered that the clause was not clear in its wording, thereby leaving room for ambiguity.

Furthermore and even more interesting, **the DRC ruled that the clause was anyhow not enforceable as it lacked a reciprocal character given that it only foresaw the financial consequences of a contractual breach by the Player and not by the Club**; the reciprocal nature of a liquidated damages clause being something which has been advocated by FIFPro for a very long time.

Now, as a result of the breach of contract the DRC obliged the Player and his new club to pay damages to the tune of EUR 1,375,000, composed of the average remuneration of the Player at his former and new club.

In addition hereto, sporting sanctions were imposed as the breach of contract occurred in the protected period, consisting of a four-month ban on the Player and a transfer ban of two registration periods on the new club

Faced with the DRC decision, the Player and his new club appealed to the CAS arguing principally that the disputed clause was to be regarded as a buy-out clause which would have allowed the Player to terminate the employment contract and sign a contract with a new club.

FIFPro, whose representatives were involved in the DRC procedures, lent their weight to this argument by making a public statement on their website³¹ arguing that the Player was in his right to terminate the agreement as he “activated a clause in the contract”.

³⁰ FIFA DRC 4 October 2013, Al Nasr S.C v. Mark Bresciano & Al Gharafa S.C.

³¹ <http://www.fifpro.org/en/news/bresciano-case-exposes-need-to-reform-fifa-rstp>

In analysing the clause and determining its legal nature, the CAS Panel quite easily came to the conclusion that the debated clause did not amount to a buy-out clause but constitutes a liquidated damages clause and this for the following reasons.

- The wording of the clause did not grant the Player the right to terminate but only set the consequences of a contractual termination;
- The clause referred to “damages” caused by the Player’s contractual “cancellation”. The wording “damages” is inconsistent with a buy-out clause as payments as a result of a buy-out clause are not “damages” but a “consideration for the exercise of contractual rights”;
- The appellants did not provide sufficient evidence establishing that the true intention of the parties was to insert a buy-out clause in the employment contract.

Having established the above, the CAS Panel turned its attention to the financial consequences of the breach and analysed whether the liquidated damages clause was a valid and enforceable clause. In doing so, the CAS Panel held a different opinion than the DRC, an opinion which should set the bar for further analyses to be made by the FIFA DRC when it comes to such types of clauses.

More precisely, lacking concrete provisions in the FIFA RSTP, the CAS Panel turned to Swiss law and deemed that the contested provision was to be seen as a liquidated damages clause under Article 160 of the Swiss Code of Obligations (CO) as it contained all the essential elements required for such purpose³², being:

- The parties bound thereby were mentioned;
- The sort of penalty had been determined;
- The conditions triggering the obligation to pay were set;
- The measure was identifiable.

According to the CAS Panel, the fact that the clause only provided for a minimum amount of compensation did not alter the legal nature of the penalty clause as article 162.2 CO states that “*where the loss or damage suffered exceeds the penalty amount, the creditor may ask the Club for further compensation only if he can prove that the debtor was at fault*”.

What was considered *room for ambiguity* by the DRC was therefore set aside by the CAS as it held that if the actual damages exceed the amount stipulated in the liquidated damages clause, the creditor is entitled to compensation for the actual damages.

Furthermore and maybe even more important, the CAS Panel similarly noted that neither Swiss Law, nor the FIFA RSTP for that matter, require liquidated damages clauses to be reciprocal in order to be valid and enforceable. It goes without saying that this remark, albeit mentioned tacitly in the CAS award, could and should set a precedent.

Notwithstanding the above considerations, the CAS Panel confirmed the amount awarded by the FIFA DRC since:

- The DRC had awarded damages which actually exceeded the amount stipulated in the liquidated damages clause;
- Al Nasr, albeit successfully³³ establishing higher damages, requested the CAS Panel to uphold the amount awarded during the DRC proceedings.

Finally, the CAS Panel confirmed the sanctions imposed by the DRC as it deemed them to be fair and appropriate.

³² Cf. Gaspard Couchepin, *la clause pénale*, Zurich 2008 paragraph 462

³³ i.e. (1) the amount Al Gharafa was willing to spend on the acquisition of the Player and which corresponded to the liquidated damages clause, (2) the non-amortized acquisition costs incurred by Al Nasr such as agent fees, (3) expenses for acquisition costs and salaries related to replacement(s), (4) the specificity of sport.

2 The FIFA DRC's power to adjudicate

2.1 Tacit acceptance

According to article 22 of the FIFA RSTP, FIFA is competent to hear contractual disputes between players and clubs of an international dimension **unless** a dispute resolution chamber guaranteeing fair proceedings and respecting the principle of equal representation of players and clubs exists at national level (NDRC).³⁴

From the plain reading of this article one could deduce that, from the moment an NDRC exists, the FIFA DRC would apply this article and refuse to take jurisdiction.

However, DRC standard practice provides that it will exercise jurisdiction if a club or player does not invoke the existence of such an NDRC or possibly a choice of forum clause.

That is to say, the DRC continues to apply the well-known principle that any defence on lack of jurisdiction must be raised prior to a defence on the merits of a case and this despite the clear wording of article 22 of the RSTP.

Contrary to what might be expected, it should be noted that FIFA requests that a party relying on the competence of the NDRC has to discharge its burden of proof in that the NDRC meets the minimum requirements rather than that the one party challenging the NDRC would have to give concrete proof/evidence to the contrary.

In a recent case the DRC refused to accept the argument of *list pendency/res iudicata* and followed the argumentation of the player given that it was held that the player's right to a fair trial had not been respected as he had not been summoned correctly to appear before the NDRC.

In this respect, and when faced with such argument, one should bear in mind the decision of the CAS³⁵ in which it was held that the issue of jurisdiction must be foreseeable for both parties from the beginning in that the FIFA DRC is not an appeal body designed to assess whether or not in an individual case the right to be heard of a party was violated and thus must assume jurisdiction. **According to the CAS, the decision as to whether a certain body is competent should not depend on events which take place during the course of a procedure such as for example incorrect notification, but should merely depend on the NDRC meeting the minimum requirement as set out above.**

2.2 Dual nationality

According to Article 22 Sub b RSTP, FIFA is competent to hear disputes between a club and a player of an international dimension.

In a recent case, the DRC had to deal with a claim lodged by a player who after having concluded his employment contract with a club had been naturalized and acquired the nationality of the country in which the club was registered. Consequently, the player had also been registered as a local player with the respective football association and, following the breach, the player was registered for a new club in a different association, be it under his "new" nationality.

Assessing its power to adjudicate, the DRC expressed that it was increasingly confronted with claims from players holding dual nationality. It continued by assessing that in the framework of plural citizenship, players can possibly invoke a so-called "**sportive nationality**", which is linked to the concrete registration of the player with a club, and which provides both players and clubs with advantages such as not charging a possible quota for foreign players.

The DRC ruled that although the player had signed the contract as a foreign player, the player had been registered with the relevant Football Association, as a domestic player, providing advantages to both contractual parties. Consequently, when assessing the international element, the DRC referred to the sporting nationality of the player and held that it did not have jurisdiction.

³⁴ Cf. FIFA Circular no.1010, concerning the minimum procedural standards of national arbitral tribunals

³⁵ CAS 2012/A/2983 Aris Football Club v. Marcio Amoroso dos Santos & FIFA

2.3 Choice of forum clauses

By means of two recent decisions³⁶, the FIFA DRC has correctly clarified that a choice of forum clause must clearly identify the competent body and establish an exclusive jurisdiction from which one could deduct that any other judicial body, including the DRC, would lack competence.

The debated clauses in question read as following:

“The parties shall submit, in good faith, all efforts to amiably settle any disputes, controversies or agreements arising from or in connection with the present agreement. Should this not be possible, the litigation shall only be submitted for settlement to the sportive jurisdiction bodies of country R football federation or Professional Football League”

“Any disputes concerning the validity, existence or termination hereof shall be resolved by the relevant P authorities. Financial disputes relating to the contract shall be submitted by the parties for resolution by the Football Arbitration Court.”

In both cases, the DRC stressed that the basic condition to be met in order to establish that another organ than the DRC can settle an employment related dispute is that the jurisdiction of the relevant tribunal derives from a clear reference in the employment contract.

In this respect, it should be noted that DRC deems it insufficient for a clause to refer to the competent authorities at national level and requires that a specific deciding body should be pinpointed in the clause in order for article 22 of the RSTP to be applicable.

With regards to the first mentioned clause, the DRC equally pointed out that this clause could not be seen as a clear arbitration clause in favour of either of the national bodies, rendering it inapplicable.

A mere reference to the Collective Bargaining Agreement, which in turn contains the provisions on dispute resolution was not accepted either by the DRC.³⁷

It goes without saying that the above mentioned jurisprudence should be kept in mind when drafting a jurisdiction clause, by which jurisdiction is installed on another body than the FIFA DRC.

3 Contractual termination due to an injury

It is generally known³⁸ that the validity of an employment contract may not be made subject to a successful medical examination of the player.

Therefore, clubs should always be careful to conduct a medical examination prior to an employment contract being signed as terminating an employment contract on this basis constitutes a breach of contract without just cause, with all the legal consequences that could entail.

Whereas the above is clearly worded in the RSTP, the possibility to terminate an employment contract as a result of a (long-term) injury is not excluded by a clear provision in the FIFA regulations.

However, the DRC jurisprudence, quite controversially³⁹, provides that such termination is equally to be seen as a termination without just cause:

“The premature and unilateral termination of an employment contract by a club because of an injury of the player was always considered as an abusive termination of the contract without just cause (...) if such a termination were to be accepted as a termination with just cause, this would create a disproportionate repartition of the rights of the parties to an employment contract, to the strong detriment of the player”⁴⁰

³⁶ FIFA DRC, 27 February 2014, n°02143259 & FIFA DRC, 28 March 2014, D.B. v. X, unpublished

³⁷ FIFA DRC, 17 January 2014, n°01143276

³⁸ Article 18 sub. 4 of the FIFA RSTP

³⁹ See article 3.5. of the EU Autonomous Agreement regarding Minimum Requirements for Standard Player Contracts in the Professional Football Sector in the European Union and in the rest of the UEFA Territory which states that Any early termination must be founded (just cause). In cases of prolonged periods of injury/illness or of permanent incapacity of the Player, the Club may serve a reasonable notice to the Player.

⁴⁰ FIFA DRC, 12 January 2006, n°16828_613

Even in cases where the player and the club explicitly agreed upon including a provision in the employment contract allowing the club to terminate the employment contract after the player is injured for a certain amount of time, the DRC has ruled⁴¹ that a club cannot unilaterally question the validity of an employment contract during its course based on the physical state of the player. A termination on this ground was therefore considered to be invalid.

Interestingly, with regards to a permanent injury of a player, forcing a player to retire from professional football completely, contradicting jurisprudence exists as to whether such an injury provides the club with a just cause to terminate the employment contract.

Whereas in the past the DRC, correctly, ruled that:

*“the incapacity of the Player to fulfill the terms of the employment contract creates a particular situation according to which (...) the player cannot perform his obligation any longer and (...) the club is free to step out from the agreement”*⁴²

The Chamber took a different approach in a recently issued DRC decision.⁴³

In this case, the DRC had to adjudicate a very sensitive and ill-fated case in which a player was forced to retire from professional football after he had become paralyzed as a result of a car accident.

In this case, the DRC recalled that a club cannot unilaterally question the validity of the contract based on the physical state of the player but held that

“although permanent incapacity in itself cannot be considered as a valid reason to unilaterally terminate an employment contract, such specific circumstance will however have an effect on the amount of compensation”

In establishing the amount of compensation, the DRC considered that compensation within the range of 70% to 80% of the original final amount of compensation was considered reasonable in light of the permanent injury of the player being the reason for the breach of contract by the club.

It is unclear what the decision of the DRC might be in cases where the injury sustained was due to the negligence/fault of an employee by for example partaking in activities outside one's work environment/relationship explicitly prohibited by the employment contract. In any case, given the sensitive nature of such cases, they need to be addressed and dealt with in a sensible matter.

4 Relocating a player to the reserve team

In a recent case, the DRC had to determine whether relocating a player from a club's 1st team roster to that of its reserve team, thereby obliging a player to participate in the reserve team's training sessions and matches, provided a player with a just cause to terminate the employment contract.

Needless to say, each case depends on knowledge of the facts and in this specific case the DRC ruled that obliging a player to join the reserve team activities of a club does not automatically provide a player with a just cause to terminate an employment contract.

That is to say, in this specific case, there was a contractual clause in the contract allowing the club to relocate the player.

Furthermore, the fact that the reserve team of the club was composed of professional players participating in a professional competition was equally taken into account.

Bearing the above in mind, caution is advised as it cannot be derived from this decision that clubs are freely entitled to relocate a player to their reserve team. On the contrary, such will always depend on the overall circumstances of the case and the contractual provisions agreed upon by the parties.

⁴¹ FIFA DRC, 28 March 2012, n°3122702

⁴² FIFA DRC, 15 January 2004, n°14301_646

⁴³ FIFA DRC, 7 February 2014, n°02141221

5 Claims involving clubs in insolvency proceedings

Recently, the DRC dealt with a case involving a club which, after having concluded a settlement agreement with a player, underwent bankruptcy proceedings.

As a result of these proceedings, the club concluded a so-called creditor's voluntary agreement ("CVA") and agreed on a payment plan set out and approved by the local court, which entitled the creditors to only a small percentage of the original debt.

Although the specifics of a CVA provide that all creditors, thus not only the creditors which are a party to such an agreement, are bound by and covered under its terms, the DRC recognized that the player was entitled to the full amount as stipulated in the settlement agreement (debt recognition).

It then went on to state that it would be up to the FIFA Disciplinary Committee to deal with the question as to the possible consequences of insolvency proceedings i.e. as to whether the terms of the CVA should be taken into account when establishing the actual amount payable by the club.

It would appear that this decision is in line with CAS jurisprudence regarding the consequences of bankruptcy proceedings as ruled by the Panel in CAS 2012/A/2754⁴⁴ in that: "*FIFA's deciding bodies are competent as long as they are asked to address the issue of the **recognition of the claim**. It is only when they are seized with a request for the enforcement of the claim, that FIFA's Disciplinary Code comes into play and that [disciplinary proceedings, may be closed if (...) a party declares bankruptcy]*".

However, "recognizing a debt" when being aware and informed about the terms of the CVA appears to be problematic, as such a decision does more than merely recognizing debt.

That is to say, the FIFA Disciplinary Committee is only engaged when a decision of the FIFA DRC is not complied with. The DRC decision obliges the club to pay an amount of money, failing which it is subject to a disciplinary procedure and possible sanctions.

Only at this stage can the terms of the CVA possibly be taken into account, a procedure which moreover is a pure intra-party procedure between FIFA and the club that has allegedly failed to respect its obligations under the FIFA Statutes or Regulations.

⁴⁴ CAS 2012/A/2754 UC Sampdoria v. Club San Lorenzo de Almagro & FIFA

III. Article 14 of the UEFA Disciplinary Regulations

By means of the amended Disciplinary Regulations edition 2013, UEFA implemented stronger provisions for racist behaviour. This in line with the zero-tolerance approach it has adopted.

This article aims to provide an overview of the number of offences that have taken place during the 13/14 UEFA club competitions and equally deals with an award of the CAS in relation to this topic.

Article 14 of the Disciplinary Regulations (DR) defines racist behaviour or other discriminatory conduct and propaganda as conduct by which one *insults the human dignity of a person or group of persons on whatever grounds, including skin colour, race, religion or ethnic origin* and holds that clubs and member associations are responsible for the behaviour of their fans.

More precisely, if supporters engage in an activity as described here above, the minimum sanction imposed on clubs as a result of racist behaviour consists of a partial stadium closure.

In case of a second offence, the club will be punished with one game played behind closed doors and a fine of EUR 50,000, followed by more matches to played behind closed doors, deduction of points or even disqualification of the club competition in case of further recidivism.

Below is an overview of the sanctions imposed on the basis of Article 14 DR on clubs participating in the UEFA Europa League (UEL) and Champions League (UCL) During the 2013/2014 season:

COMPETITION	N° INCIDENTS	PARTIAL STADIUM CLOSURE	CASE CLEARED	MATCH BEHIND CLOSED DOORS	FINE
UEFA Champions League	14	11	1	2	0
UEFA Europa League	9	7	0	1	1
TOTAL	23	18	1	3	1

CLUBS	INCIDENTS
AJAX	1
APOEL FC	1
APOLLON LIMASSOL	1
ATLETICO MADRID YOUTH	1
BAYERN MÜNCHEN	1
CSKA MOSKVA	2
FC ZENIT	1
GNK DINAMO	3

CLUBS	INCIDENTS
HONVED BUDAPEST	2
LAZIO	1
LECH POZNAN	2
LEGIA WARSAW	4
OLYMPIACOS	1
PIAST GLIWICE	1
REAL MADRID	1
GNK RIJEKA	1

Dealing with each and every case and its specifics as to why certain conduct was or was not qualified as a violation of article 14 of the DRC would take us far. What is clear is that clubs will face sanctions as a result of the racist and discriminatory conduct by its supporters, although the club concerned can prove the absence of any fault or negligence.

What is more, and possibly worrying, is that even if such behaviour is not aimed at the opponent club, but directly aimed at the President of the supporters' own club, such conduct is still to be seen as a violation of article 14 of the DR as ruled in the recently published case CAS 2013/A/3324 & 3369.⁴⁵

The CAS at hand concerns an appeal lodged by GNK Dinamo Zagreb against a decision by the UEFA Appeals body which confirmed the verdict of the UEFA Control and Disciplinary Body sanctioning the club for racist chants by its supporters aimed at the club's president and consisting of "Mamic, gipsy get out of my temple".

In the CAS proceedings, the club disputed the racist character of the use of the word "gipsy" and argued that the chants were only aimed at the club's president, who was furthermore not offended by the comments.

In determining the racist nature of the chants, the Panel preliminary noted that it is not necessary for an offence to prove that the supporters intended to insult as Article 14 DR does not contain the precondition of intention.

In determining whether certain chants constitute racial insults, the Panel noted that the following circumstances must be considered, the background of the persons chanting, the addressee(s) of the chants, against which background the chants are conducted etc.

Reflecting the above to the case at hand, the Panel deemed that the criteria for triggering the application of Article 14 DR were satisfied for inter alia the following reasons:

- Any opposition by the supporters could be raised without making reference to the word "gipsy";
- The hostile character of the chanting.
- The president of the club was a known supporter of the Roma ethnic minority;
- Discrimination against the Roma has been widely acknowledged by the European Commission and the European Court of Human rights.

Although admittedly the actions of the supporters amounted to racist conduct, it is remarkable that neither the CAS Panel nor the UEFA bodies took into account that the ultra-supporters and the management of the club had an open conflict and that these decisions effectively empowered the ultras in their actions against the club and its president.

That is to say, article 17 of the DR foresees in the possibility of reducing the minimum sanctions enumerated in Article 14 DR under exceptional circumstances, the above possibly being a mitigating/exception circumstance.

⁴⁵ CAS 2013/A/3324 & 3369
GNK Dinamo v. UEFA

IV. General Remarks and Tips

1 Whereabouts rules and B-list (youth team) players

As outlined in Legal Bulletin N°3,⁴⁶ clubs forming part of the UEFA testing pool must at all times submit whereabouts information regarding their players. In case of changes to the team's or player's plans from those originally indicated in their whereabouts information, UEFA demands clubs to immediately send updates of this information.

As defined in a CAS case⁴⁷, "immediately" is to be understood as within 10 to 15 minutes after a club has become aware of the change of plans.

Bearing this in mind, it is important to note that the whereabouts rules are applicable to all the players registered with UEFA, i.e. to both the A and B lists (such as youth players).

Clubs failing to send an update on the whereabouts information on time with regards to players registered on the B list, face equally severe sanctions as violations relating to A List players.

This is all the more apparent from a recently issued decision by the UEFA Control and Disciplinary Body⁴⁸. In this case, the club was fined € 40,000 after UEFA Doping Control Officers noted the absence of two reserve team players during a visit to the club's training ground, despite not having received a prior notification thereof by the club.

It is therefore important that clubs exercise due diligence in this regard and task someone within the club with keeping UEFA informed at all times.

2 Provisional measures

One glance at the match calendar of UEFA Club Competitions tells us that matches follow each other in quick succession, especially during the qualification rounds.

Now, if a violation of the UEFA Disciplinary Regulations (DR) takes place, it is conceivable that a club/player/manager will be referred to the UEFA Control, Disciplinary and Ethics Body for a decision and this prior to the next match or at least during the course of the season and when other matches are still to be played.

If faced with a disciplinary sanction, such as for example a partial or full stadium closure, it should be noted according to article 55 of the UEFA DR, an appeal has no lasting effect, which implies that the sanctions mentioned above would be immediately enforceable for a next game, irrespective of a pending appeal.

Similar to proceedings before any other judicial bodies, one can also request provisional measures before the Control, Disciplinary & Ethics Body as well as the UEFA Appeals Body in that a decision and its consequences would be stayed.

According to article 42 of the UEFA DR, titled provisional measures, such measures can be issued by the Chairman of the competent body to ensure the proper administration of justice, maintain sporting discipline or to avoid irreparable harm or for reasons of safety and security.

⁴⁶ ECA Legal Bulletin N°3, September 2013, p.14-15

⁴⁷ CAS 2012/A/2762 X. v. UEFA

⁴⁸ UEFA Control and Disciplinary Body, 17 June 2014 concerning Real Madrid CF

Although not explicitly worded in the UEFA DR, it should be noted that when deciding whether to stay the execution of an appealed decision, or to grant provisional measures, it is necessary for the person formulating the request to meet the following conditions:

- **Irreparable harm:** the measure is useful to protect the applicant from irreparable harm or from damage that is difficult to compensate and harm is considered irreparable if it cannot be fully compensated for if the appeal is subsequently won.
- **the likelihood of success on the merits of the appeal:** the condition of likelihood of success is fulfilled if it can be demonstrated that the chances of the appellant winning over substance is, **prima facie**, reasonable in the sense that it cannot be definitely discounted.
- **Balance of interest:** whether the interests of the Appellants outweigh those of the opposite party.

These three requirements for the issuance of interim measures are, in principle, cumulative and shall thus all be met. However, pursuant to the CAS jurisprudence, one of the conditions may be decisive on the facts of a particular case.

Hence, when faced with a decision of the UEFA Control, Disciplinary and Ethics Body, one should keep in mind that provisional measures can be requested and that, when doing so, the three above conditions should be met.

Note however that at UEFA level such a request may not be submitted until the well-founded decision has been notified by the Control, Ethics and Disciplinary Body which implies that, in the absence of good grounds, a decision is not enforceable.

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Training compensation

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 season 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.

2 Payment of training compensation

1.

Training compensation is due when:

- i. a player is registered for the first time as a professional; or
- ii. a professional is transferred between clubs of two different associations (whether during or at the end of his contract)

before the end of the season of his 23rd birthday.

2.

Training compensation is not due if:

- i. the former club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs); or
- ii. the player is transferred to a category 4 club; or
- iii. a professional reacquires amateur status on being transferred.



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 season 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.

4 Training costs

1.

In order to calculate the compensation due for training and education costs, associations are instructed to divide their clubs into a maximum of four categories in accordance with the clubs' financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average "player factor", which is the ratio of players who need to be trained to produce one professional player.

2.

The training costs, which are established on a confederation basis for each category of club, as well as the categorisation of clubs for each association, are published on the FIFA website (www.FIFA.com). They are updated at the end of every calendar year. Associations are required to keep the data regarding the training category of their clubs inserted in TMS up to date at all times (cf. Annexe 3, article 5.1 paragraph 2).

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 season of the player's 12th birthday to the season 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 seasons between their 12th and 15th birthdays (i.e. four seasons) 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.

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 season of training may occur before the season 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. 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).

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.

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