



ECA
EUROPEAN CLUB ASSOCIATION



Dispute Resolution within FIFA

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Introduction



- ➔ Five principles agreed between FIFA/UEFA and European Commission in March 2001:
- Contractual Stability
 - Protection of Minors
 - Training of Young Players
 - Solidarity in the Football World
 - **Dispute Resolution System**



Introduction



➔ Dispute Resolution System

- Agreement to provide for an appropriate dispute resolution system inside the football structures, without prejudice to the right of any player or club to seek redress before a civil court for employment related disputes
- FIFA opts to implement one unified system worldwide



Introduction



➔ Statutory Provisions

- Art. 4 par 2 of the FIFA Statutes:

“FIFA shall provide the necessary institutional means to resolve any dispute that may arise between Members, Confederations, Clubs, Officials and Players”

- Art. 64 par. 2 of the FIFA Statutes:

“Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA Regulations”



Introduction



➔ The Relevant Decision Making Bodies

- Competence where there is an international dimension
- Players' Status Committee (PSC)
 - Single Judge of the Players' Status Committee (Single Judge)
 - Cases which are urgent, or raise no difficult factual or legal issues
 - Decisions pertaining to the provisional registration of a player
- Dispute Resolution Chamber (DRC)
 - DRC Judge
 - Very limited competency
 - » Litigious value less than CHF 100,000
 - » Disputes regarding calculation of training compensation/solidarity contribution



Players' Status Committee



➔ Competences

- Provided it is established that FIFA is competent to hear a specific dispute brought before its decision making bodies, Players' Status Committee is competent to decide on:
 - *Employment related disputes between a Club or an association and a coach of international dimension (art. 22 (c) of the Regulations on the Status and Transfer of Players).*
 - *Disputes between Clubs belonging to different associations that do not fall within the scope of training compensation or the solidarity mechanism (art. 22 (f) of the Regulations on the Status and Transfer of Players). E.g. transfer contract disputes such as outstanding instalments, sale-on clauses, etc.*



Players' Status Committee



- *Proceedings pertaining to the provisional registration of a player (international clearance, provisional measures, art. 23 par 3 in connection with Annex 3. art. 8 or Annex 3a of the Regulations on the Status and Transfer of Players) – exclusively dealt with by the single judge.*
 - *Three criteria for provisional registration:*
 - » *Likelihood of success test*
 - » *Irreparable harm test*
 - » *Balance of interest test*



Players' Status Committee



- *Disputes of investigations in relation to the release of players to association teams (Annex 1 to the Regulations on the Status and Transfer of Players)*
- *All other disputes arising from the Regulations on the Status and Transfer of Players, subject to the competence of the Dispute Resolution Chamber (art. 23 par. 1 of the Regulations on the Status and Transfer of Players).*



Players' Status Committee



➤ *Protection of Minors*

- *Any registration of a minor player who is not a national of the country in which he wishes to be registered for the first time or following an international transfer is subject to the approval of the sub-committee appointed by the Players' Status Committee (art. 19 par. 4 of the Regulations on the Status and Transfer of Players)*



Dispute Resolution Chamber



➔ Nature

- Consists of equal numbers of Club and Player representatives (art. 24 par. 3 of the Regulations on the Status and Transfer of Players).

➔ **Composition** *(art. 4 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber)*

- Currently 1 chairman and 24 members
- Members:
 - 12 club representatives *(appointed for four years)*
 - 12 player representatives *(appointed for four years)*
- Chairman and members of the Dispute Resolution Chamber (DRC) are chosen by the FIFA Executive Committee.
- The 24 members to be appointed on the proposal of the players' associations and the Clubs or leagues.
- Members (including chairman) are designated for a term of four years.



Dispute Resolution Chamber



⇒ Activity

- Adjudicates in the presence of at least three members (usually five), including the chairman or the deputy chairman (art. 24 par 2. of the Regulations on the Status and Transfer of Players).
- Monthly meetings, 20 to 30 cases dealt with each time.



Dispute Resolution Chamber



➔ Competences

- Provided it is established that FIFA is competent to hear a specific dispute brought before its decision making bodies, the DRC is competent to decide on:
 - *Disputes between Clubs and players in relation to the maintenance of contractual stability where there has been a request for an international transfer certificate (ITC) and a claim from an interested party in relation to such ITC request (art. 22 (a) of the Regulations of the Status and Transfer of Players)*
 - *Employment related disputes between a Club and a player of an international dimension (art. 22 (b) of the Regulations on the Status and Transfer of Players).*



Dispute Resolution Chamber



- *Disputes relating to training compensation and the solidarity mechanism between Clubs belonging to different associations (art. 22 (d) of the Regulations on the Status and Transfer of Players).*
- *Disputes relating to the solidarity mechanism 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 (art. 22 1(e) of the Regulations on the Status and Transfer of Players).*



Jurisdictions



- ➔ **Disputes between Clubs and players in relation to the maintenance of contractual stability (art. 22 (a))**
 - International dimension required – contractual dispute must be based on the request for an international transfer certificate (ITC)
 - Aims at avoiding different forums for the question of the registration and the consideration of the substance of the contractual dispute.
 - Jurisdiction of FIFA somehow extended to employment related disputes with a national dimension as to the substance.



Jurisdictions



➔ Employment related disputes between a Club and a player

(cf. art. 22 (b) Regulations on the Status and Transfer of Players)

- DRC Jurisdiction where international dimension
 - Player and Club have a different nationality
 - No arbitration clause necessary
- Limits of FIFA's jurisdiction despite an international dimension
 - Establishment of a national independent arbitration tribunal within the framework of the Association and/or a collective bargaining agreement (NDRC, cf. also circular no. 1129 of 28 December 2007)
 - NDRC to respect the principle of equal representation (same weight of decision making power)
 - NDRC to guarantee "fair proceedings".



Jurisdictions



- ➔ **What is a “fair proceeding”?**

- ➔ DRC has not yet addressed this issue
 - Circular no. 1010 of 20 December 2005 (in relation to art. 64 par 3 (former art. 60 par 3(c) of the FIFA Statutes)):
 - Principle of parity when constituting the arbitration tribunal
 - Right to an independent and impartial tribunal
 - Principle of a fair hearing (whether in writing or orally, right of reply to other party)
 - Right to contentious proceedings
 - Principle of equal treatment



Jurisdictions



- Limits of FIFA's jurisdiction despite an international dimension
 - Jurisdiction clause in the contract installing the exclusive jurisdiction on the national court or an arbitration body
 - If no parties invoke the forum clause, FIFA will deem that parties tacitly accept its jurisdiction
 - Issue of "Litis Pendens"
 - If FIFA was approached before national court it will continue to hear the case
 - problems relating to valid subpoena's
 - tactical appeals
 - » Avoid sporting sanctions
 - » Lower pecuniary damages
 - Clubs in administration



Dispute Resolution Chamber



- Practical Issues
 - Arbitral role versus representative role
 - FIFPro
 - Club Representatives
 - Case Load
 - ECA Support



CAS Appeal



➔ Article 63 FIFA Statutes ed. 2011

- ***Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, members or leagues shall be lodged with CAS within 21 days of notification of the decision in question***

➔ Article 15 Rules Governing the procedure of PSC and DRC

- ***The Players' Status Committee, the DRC, the single judge and the DRC judge may decide not to communicate the grounds of a decision and instead communicate only the findings of the decision. At the same time, the parties shall be informed that they have ten days from receipt of the findings of the decision to request, in writing, the grounds of the decision, and that failure to do so will result in the decision becoming final and binding. If a party requests the grounds of a decision, the motivated decision will be communicated to the parties in full, written form. The time limit to lodge an appeal begins upon receipt of this motivated decision.***



CAS Appeal



➔ Are 10 days to request grounds of decision contrary and or limit one's statutory right to appeal within 21 days?

➔ CAS 2011/A/2563 CD Nacional v. FK Sutjeska

“The Panel is therefore satisfied that in general the addressees of the FIFA Procedural Rules do, in good faith, correctly understand Article 15 FIFA Procedural Rules in the meaning it was enacted, i.e. as a first deadline of 10 (ten) days to request the grounds, failing which no appeal against the FIFA decision would be possible, and with an untouched deadline of 21 days to file an appeal with CAS, such deadline starting upon receipt of the reasoned decision”



Questions and Answers