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FIFA **DISPUTE RESOLUTION CHAMBER**

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Structure of presentation

Procedural aspects FIFA DRC

- Most important aspects (for general knowledge)
- Latest amendments per 1 April 2015 (in green)
- Creating a faster dispute resolution system
- Codification well-established DRC jurisprudence

Structure of presentation

Jurisprudence FIFA DRC

- General overview well-established jurisprudence
- Reference to latest decisions of the DRC (as published on the website of FIFA and ‘FBO-cases’)
- Reference to CAS awards (for better understanding)
- By no means exhaustive (unpublished, removals...)

Procedural aspects FIFA DRC

- Proceedings and deliberations of FIFA DRC take place at FIFA headquarters in Zurich (Switzerland)
- First decision of the DRC of 22 November 2002
- Publication decisions website FIFA: www.fifa.com
- Procedural aspects are laid down in: “*Rules Governing the Procedures of the PSC and the DRC*”
- New FIFA Procedural Rules as from **1 April 2015**

Procedural aspects FIFA DRC

- In general: procedures will be conducted in writing
 - **Composition**: at least 3 members; based on fundamental principle of equal representation of players and clubs; members proposed by FIFPro and clubs & leagues / Executive Committee appoints members /
- 24
- Dispute of simpler nature? Single Judge (DRC Judge) (chairman & deputy chairman as Single Judges)

Procedural aspects FIFA DRC

- Jurisdiction DRC: see Art. 22 jo. 24 RSTP
- Disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18 RSTP) in case of an ITC-request

The so-called “SUB A PROCEDURE”

Procedural aspects FIFA DRC

- Employment-related disputes between players and clubs with an international dimension, unless independent arbitration tribunal guaranteeing fair proceedings and respecting principal of equal representation of players and clubs at national level (parties must explicitly opt in writing for this)

The so-called “SUB B PROCEDURE”

Procedural aspects FIFA DRC

- Disputes related to training compensation; (1) player signs first contract; & (2) “subsequent transfer”
- Disputes related to solidarity contribution; transfer before expiry contract; deduction of 5% from transfer compensation and distributed to the training clubs

Disputes TC & SM: 1 October via TMS (Annex 6)

Procedural aspects FIFA DRC

- Admissibility: *clubs and players (and national associations)* can lodge a claim before the DRC

For example: intermediaries, investment companies, etc. cannot lodge claim before FIFA

Procedural aspects FIFA DRC

- Applicable law: FIFA Statutes and Regulations such as the FIFA RSTP, national law, collective bargaining agreements and “specificity of sport”

Area of tension between RSTP and national law

Procedural aspects FIFA DRC

- DRC: “..... *it is not appropriate to apply the principles of a particular national law to the termination of the contract but rather the RSTP, general principles of law, and, where existing, the Chamber’s well-established jurisprudence.*”

[See for example the decision of the DRC of 27 February 2014, no. 02142147](#)

Procedural aspects FIFA DRC

- Representation: services representative accepted
- Petitions: name and address parties and legal representative (if applicable), grounds for claim, relevant documents, evidence, amount in dispute (see Art. 9 Procedural Rules); FIFA language!
(time limit “answer” 20 days / extension only once / limitations of the parties’ possibilities after the closing of the investigation phase)

Procedural aspects FIFA DRC

- Prescription: if more than 2 years have elapsed from event giving rise to the dispute, DRC will not hear the case anymore! There are no exceptions!

CAS 2012/A/2919, award of 24 September 2013

“...parties mutually agreed upon a new payment schedule”

Procedural aspects FIFA DRC

- Renouncement of rights: if a party does not reply, the decision will be taken on the documents in file
- Non ultra petitem
- Counterclaim
- Intervening
- Amendment (until closure investigation phase)

Procedural aspects FIFA DRC

- **Procedural costs**: costs of proceedings before DRC and DRC Judge were free / Nowadays: only DRC cases related to “ITC requests” (sub a procedures) and employment matters with an international dimension (sub b procedures) are free / costs related to training compensation and solidarity contribution are subject to height of amount claimed
- **No procedural compensation** will be awarded!

Procedural aspects FIFA DRC

- Decision: DRC will adjudicate within 60 days

Parties receive decision without grounds

Party can request (within 10 days after motivated decision is received) for motivated decision in case they agree to pay the costs related to procedure

Procedural aspects FIFA DRC

- “New fast track procedure”: decision < 8 weeks
- ARTICLE 12bis: new procedure per 1 March 2015
- In case a payment is outstanding for 30 days, a club has “*overdue payables*” in the meaning of 12bis
- Prerequisite: club must be put in default in writing and have granted a deadline of at least 10 days
- Following sanctions may be imposed: a warning, a reprimand, a fine, a ban registering new players

Procedural aspects FIFA DRC

- **Enforcement**: through FIFA channels / no arbitral awards (no enforcement through national courts)

Enforcement via FIFA Disciplinary Committee:
deduction of points / transfer ban. Very effective.

Procedural aspects FIFA DRC

- Appeal with CAS:

FIFA has recognised CAS since December 2002

“*CAS Code of Sports-Related Arbitration*”

Within 21 days of notification: “*Statement of Appeal*”

Within 10 days after term of Statement of Appeal:
submission “*Appeal Brief*” → legal arguments

Well-established jurisprudence FIFA DRC

- Till sofar procedural aspects of FIFA procedures
- DRC has created a well-established jurisprudence as from 2001 until now: medical examination, work permit, visa, extension option, a lot of “just cause-cases”, sporting sanctions, compensation, training compensation, solidarity contribution, etc.
- General overview and recent cases of the DRC

Well-established jurisprudence FIFA DRC

- Medical examination:

DRC: “*The validity of a contract may not be made subject to a positive medical examination.*”

See for example the decisions of the DRC of 15 February 2008, no. 28195 and DRC 19 March 2013, no. 03131648 / See also Art. 18 Par. 4 of the RSTP

Well-established jurisprudence FIFA DRC

- Visa and Work Permit:

DRC: “*The validity of a contract may not be made subject to the granting of a visa or a work permit.*”

See for example the decisions of the DRC of 13 December 2010, no. 1210266 and DRC 4 October 2013, no. 1013439 / See also Art. 18 Par. 4 of the RSTP

Well-established jurisprudence FIFA DRC

- Issuance ITC / approval national association:

DRC: *“The validity of a contract may not be made subject to the issuance of an ITC and/or approval of the national association concerned.”*

See for example the decision of the DRC of 19 March 2013 , no. 03131648 and DRC 31 October 2013, no. 1013136 / This is not laid down in the RSTP

Well-established jurisprudence FIFA DRC

- Administrative formalities:

DRC: *“The validity of an employment contract cannot be made conditional upon the execution of (administrative) formalities, such as, but not limited to, the registration procedure*

Well-established jurisprudence FIFA DRC

..... in connection with the international transfer of a player, which are of the sole responsibility of a club and on which a player has no influence.”

See for example the decisions of the DRC of 15 March 2013, no. 03132656 and DRC 7 February 2014, no. 0214780

Well-established jurisprudence FIFA DRC

- Unilateral extension option:

DRC: *“A clause which gives one party the right to unilaterally cancel or extend the contract, without providing the other party to the contract with similar rights is a clause with disputable validity.....”*

Well-established jurisprudence FIFA DRC

DRC: “.....*If the unilateral extension option is unilateral to the benefit of the stronger party in the employment relationship, i.e. the club, there is no apparant gain for the player and therefore the unilateral extension option cannot be valid*”

[DRC 18 March 2010, no. 310607 and DRC 31 July 2013, no. 07132435](#)

Well-established jurisprudence FIFA DRC

- Majority of the DRC & CAS-cases: the unilateral extension option cannot be considered as valid
-However, under special circumstances a unilateral extension option can be valid

See DRC of 12 January 2007, unpublished and CAS 2005/A/973, 'Panathinaikos Football Club v/Sotirios Kyrgiakos', 10 October 2006

Well-established jurisprudence FIFA DRC

- Strained relationship DRC and national tribunals
- KNVB Arbitration Tribunal: unilateral extension option is valid (this was decided in two cases)
- In the most recent case (“*Letschert-case*”):
duration of original contract was 5 months and
duration of the extension period was 2 years

Well-established jurisprudence FIFA DRC

- KNVB Arbitration Tribunal: validity depends on the particular facts of the case (there was no future for player with the former club) and the clause did not limit the freedom of player in an excessive manner
- View of KNVB Arbitration Tribunal in line with international jurisprudence of FIFA DRC and CAS?

Well-established jurisprudence FIFA DRC

CAS 2013/A/3260, award of 4 March 2014:

- 7 Criteria have to be taken into account
- However, “*assessment on a case by case basis*”
- Circumstances of each individual case (factual background, parties’ attitude during negotiations, etc.)
- The 7 criteria may serve as “*a guiding benchmark*”

Well-established jurisprudence FIFA DRC

Minimum conditions at international level:

- Substantial salary increase; minimum: 25%
- Salary increase laid down in contract
- Player must be aware of the unilateral option
(assistance intermediary / lawyer? / place contract?; not in annexes / in bold characters, etc.)

Well-established jurisprudence FIFA DRC

- Lifting of option within acceptable deadline
- Maximum duration may not be excessive
(original duration contract + 'option period' < 5 years;
- 'Option period' not exceed the duration of contract
- Not several options in contract

Well-established jurisprudence FIFA DRC

- Special circumstances of the case are decisive:

Behaviour player after option is invoked / earlier acceptance other options by player / invoked by club to create a higher transfer compensation?

Well-established jurisprudence FIFA DRC

- Termination of contract:

Art. 13 RSPT: contracts between players and clubs can only be terminated:

- on expiry of the term; or
- by mutual consent

Well-established jurisprudence FIFA DRC

- Termination of contract:

PACTA SUNT SERVANDA: respect of contracts

FIFA introduced the so-called “Protected Period”

Art. 14 RSTP: contract may be unilaterally terminated by either party with no consequences of any kind, in case of a justified reason, a so-called “**Just Cause**”

Well-established jurisprudence FIFA DRC

- Bad performance player; Just Cause for club?

DRC: “*A player’s lack of performance is no just cause for a club to unilaterally terminate the contract.*”

See DRC of 7 April 2011, no. 411438 and DRC 29 November 2013, no. 11133071

Well-established jurisprudence FIFA DRC

- Injury player; Just Cause for club?

DRC: *“An injury of a player is no just cause for a club to unilaterally terminate the contract.”*

See DRC 7 February 2014, no. 02141221 and DRC 28 June 2013, no. 06131988

Well-established jurisprudence FIFA DRC

- Injury player; Just Cause for club?

DRC: “*Although permanent incapacity in itself cannot be considered as a valid reason to unilaterally terminate an employment contract, such specific circumstance will however have*”

Well-established jurisprudence FIFA DRC

....an effect on the amount of compensation, in the light of the bilateral character of an employment contract and the circumstance that in the event of permanent incapacity to play, a player is no longer in the position to render his services to the club.”

[See for example the decision of the DRC of 7 February 2014, no. 02141221](#)

Well-established jurisprudence FIFA DRC

- Absence player; Just Cause for club?

DRC: *“The absence of a player without the authorisation of the club can generally constitute a just cause for a club to terminate the contract.”*

Well-established jurisprudence FIFA DRC

- Absence player; Just Cause for club?

Few days or one week is not enough

See DRC of 28 July 2005, no. 75368 and DRC 12 January 2006, no. 16828

5 days absence is not enough

See DRC of 28 June 2013, no. 06131988

Well-established jurisprudence FIFA DRC

- Absence player; Just Cause for club?

10 days absence is not enough

See DRC of 27 February 2014, no. 02141999

Special circumstances: two weeks can be enough!

See DRC of 23 March 2006, no. 36460 , DRC 28 September 2006, no. 96391 and DRC 12 December 2013, no. 12131160 / FIFA Commentary, explan. Art. 14, p. 40

Well-established jurisprudence FIFA DRC

- Drugs abuse player; Just Cause for club?

DRC: “*A positive result of a doping test can constitute a just cause for a club to terminate the contract.*”

See for example the decisions of the DRC of 7 February 2014, no. 0214233, DRC 21 February 2006, no. 26439 and DRC 12 January 2007, no. 17595

Well-established jurisprudence FIFA DRC

- Outstanding salaries; Just Cause for player?

DRC: “*The persistent failure of a club to pay the salaries of the player can be considered as a just cause for the player to terminate the contract.*”

Well-established jurisprudence FIFA DRC

- Outstanding salaries; Just Cause for player?

Period of few weeks is not enough

See DRC of 26 October 2006, no. 1061207 and DRC 8 June 2007, no. 67229

General rule: more than THREE months is enough

See DRC of 9 May 2011, no. 5112513 and 7 September 2011, no. 9111901

Well-established jurisprudence FIFA DRC

- Outstanding salaries; Just Cause for player?

Later cases: a period of more than TWO months

See for example DRC of 7 September 2011, no. 9111901, DRC 27 April 2012, no. 412871 (even one month was enough) and DRC 28 June 2013, no. 06133230

Well-established jurisprudence FIFA DRC

- Outstanding salaries; Just Cause for player?

DRC case: (again) “three months-rule” applies

[See DRC 15 March 2013, no. 03132433](#)

DRC case: “grace period” 90 days is valid; ‘free will’

[See DRC 27 February 2013, no. 02131190 / DRC 6 November 2014, no. 11141064](#)

Well-established jurisprudence FIFA DRC

- Outstanding salaries; Just Cause for player?

DRC case: club must be warned by player

[See DRC of 24 November 2011, no. 1111796](#)

DRC case: a ‘final notice’ is no prerequisite

[See DRC 28 June 2013, no. 0613151a](#)

DRC case : short deadline of 1 day permitted

[See DRC 27 February 2013, no. 02131190](#)

Well-established jurisprudence FIFA DRC

- Points of interest:
 - Minimum period of two months can be enough (however, to be safe: hold on to three months)
 - Written warning to club: send a 'final notice'
 - Player available during 'non-salary-period'
 - DRC procedure: specify the outstanding amount
 - DRC procedure: outstanding salary + 'compensation'

Well-established jurisprudence FIFA DRC

- Exclusion and deregistration of players

DRC: “*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*”

Well-established jurisprudence FIFA DRC

- Exclusion and deregistration of players

..... mates in the team's official matches. By refusing to register a player, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, violating one of his fundamental rights as a football player.

Well-established jurisprudence FIFA DRC

- Exclusion and deregistration of players

....The sole fact of not registering the player, thus preventing him from rendering his services to the club, constitutes in itself a serious breach of contract.”

[See for example the decision of the DRC of 27 February 2014, no. 02142436.](#)

Well-established jurisprudence FIFA DRC

Relegation clause:

- KNVB Arbitration Tribunal: relegation clause is not valid (this was indirectly decided in one case)
- Relegation clause has a '*potestative character*'
- DRC panels have different approach (internally and in comparison to KNVB Arbitration Tribunal)

Well-established jurisprudence FIFA DRC

On the one hand: a relegation clause not valid ([see DRC of 10 May 2012, nos. 5121238 and 5121239](#)). On the other hand, the DRC shows that a relegation clause can be valid ([see for example DRC 7 February 2014, no. 02142233, DRC of 10 August 2007, no. 87677 \(CAS 2008/A/1447, 29 August 2008\) and 18 June 2009, no. 69311\)](#))

Well-established jurisprudence FIFA DRC

- FBO dealt with a 'relegation case' before the DRC
- Dispute in 2013: parties skipped KNVB arbitration clause and referred the matter to DRC
- Received a DRC decision in July 2015: the relegation clause was considered as valid

Well-established jurisprudence FIFA DRC

Analysing the jurisprudence: in the event there is no discretion for the club (automatic termination instead of a “right to terminate”) and the clause is drafted in a clear way, relegation clause can be considered valid

Circumstances of case: per whose initiative inserted?

Well-established jurisprudence FIFA DRC

- Compensation after breach of contract

Compensation for breach: See Article 17 RSTP

Criteria: national law / specificity of sport / objective criteria such as time remaining contract, breach falls inside or outside the Protected Period, etc.

DRC and CAS: Webster / Matuzalem / De Sanctis

Well-established jurisprudence FIFA DRC

- Sporting Sanctions

According to Article 17 Paragraphs 3 and 4 of the RSTP, edition 2015, so-called sporting sanctions can be imposed on players (Par. 3) and clubs (Par. 4) in the event a breach of contract without just cause takes place within the Protected Period of contract.

Well-established jurisprudence FIFA DRC

- Sporting Sanctions

For the player: restriction to play matches for period of 4 or 6 months (aggravating circumstances).

For the club: ban from registering new players, either nationally or internationally, for 2 registration periods.

Well-established jurisprudence FIFA DRC

Training compensation:

Recurring issues:

- Is the training period terminated before 21?
- Valid contract offer in line with Art. 6 Par. 3?
- Training compensation validly waived?

Well-established jurisprudence FIFA DRC

Termination training period of the player < 21:

A player's training takes place between the ages of 12 and 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*

DRC (& CAS): several elements; very strict approach!

[See for example the decision of the DRC 12 December 2013, no. 12132748.](#)



Well-established jurisprudence FIFA DRC

Conditions termination training period < 21 year:

- Most important condition: number of matches the player played for the 'training club' and/or 'new club' (substantial; 19 out of 30); What is the status of the 'training/new club'?, Quality of the competition? Did the player play as substitute or first eleven?
- Did the player play matches in national (youth)team?



Well-established jurisprudence FIFA DRC

- Did he play matches in European competitions?
- What was the exact amount of the transfer-/loan fee?
- Did the player already have a contract with the 'training club' (what was his salary in this regard)?
- Other conditions: Captain? How many goals scored?

[See CAS 2014/A/3486, 2 February 2015 and CAS 2014/A/3518, 31 October 2014](#)

Well-established jurisprudence FIFA DRC

Dispute regarding training period:

Foreign club sent invoice for training compensation in the amount of € 300,000.-. Dutch club refused to pay because it was of the opinion that the player had already terminated his training period before the age of 21.

Based on settlement proposal and legal opinion of ECA parties concluded an amicable settlement: € 75,000.-

Well-established jurisprudence FIFA DRC

CONTRACT OFFER

- ARTICLE 6.3: important special provision EU/EEA
 - 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 ("bona fide interest")

Well-established jurisprudence FIFA DRC

- Prerequisites contract offer Art. 6.3 Annex 4:
 1. contract offer via registered post
 2. at least 60 days before expiry former contract
 3. offer equivalent value to current contract

Well-established jurisprudence FIFA DRC

GENERAL REMARKS

- Contract offer to professionals and amateurs
- No offer? Prove existence of ‘bona fide interest’
- Earlier acceptance of ‘*bona fide interest*’ by the DRC (or CAS) in the event that the contract is not offered to an amateur player of the club
- “Registered post-condition” eases burden of proof

Well-established jurisprudence FIFA DRC

- What if the player wants to leave? Club must prove player's will to leave and must prove the existence of a 'bona fide interest' ([see DRC 28 September 2007, no. 97349](#))
- 'Trainee contract' and 'poolbrief' helps to demonstrate the 'bona fide interest' ([see DRC 21 May 2010, no. 510425 and CAS 2006/A/1152, ADO and Newcastle, 7 February 2007](#))

Well-established jurisprudence FIFA DRC

- What if the contract was offered after the club was informed that the player and another club started negotiations? Bad faith? DRC: no ([see DRC 27 February 2014, no. 02141750](#)) / CAS: no ([CAS 2014/A/3710, award of 22 April 2015](#))
- It should be taken into consideration that the '*bona fide interest*' does not apply if there is no contract offer to a player who was already under contract

Well-established jurisprudence FIFA DRC

Parties can waive right to training compensation

Arrangements / declarations must be legally correct

Statements of intermediaries, players, oral
statements of the former club not enough

(see DRC 7 September 2011, no. 9112744 and DRC 12 June 2012, no. 6122546)

Well-established jurisprudence FIFA DRC

- A correct **WAIVER** must be signed
- Attention: '*financial compensation*' / '*free agent*'
- DRC (& CAS): Contact the former club....

See DRC 28 September 2007, no. 9719, DRC 7 September 2011, no. 9112744 and CAS 2013/A/3119, Dundee/Sarsfield, award of 20 November 2013

Well-established jurisprudence FIFA DRC

POINT OF INTEREST:

- Only the former club can waive its right
- Waiver is signed by authorised person
- Reference is made to the payment of “*training compensation*” as laid down in the FIFA RSTP
- Print waiver on writing-paper of the club

Well-established jurisprudence FIFA DRC

Disputes SOLIDARITY CONTRIBUTION

“If a professional moves during the course of his contract, 5% of any compensation, shall be deducted from the total amount of this compensation and distributed by the new club as a solidarity contribution to the clubs involved in the training of the player.”

Well-established jurisprudence FIFA DRC

- New club obliged to withhold 5% from transfer fee
- New club obliged to distribute to former clubs

For example: transfer compensation € 100,000.-

- € 95,000.- new club pay to selling club
- € 5,000.- new club distribute to former clubs
- Different arrangements: net / inclusive amount

Well-established jurisprudence FIFA DRC

Exchange of players

- Existence of a transfer sum activates the concept of solidarity mechanism; what if players exchanged?
- DRC jurisprudence shows that a solidarity contribution can be due if players are exchanged.

Well-established jurisprudence FIFA DRC

DRC : *“Exchange of players implies indirectly a financial agreement due to the fact that, in practice, the relevant qualities of the players have a financial value in the football employment market. The provisions regarding the solidarity mechanism cannot be circumvented by means of an exchange of players.”*

See DRC 17 August 2012, no. 812019 and DRC 17 August 2012, no. 812020.



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