

ASSER International Sports Law Series

More information about this series at <http://www.springer.com/series/8858>

Frans de Weger

The Jurisprudence of the FIFA Dispute Resolution Chamber

Second Edition



ASSER PRESS



Springer

Frans de Weger
Legal Counsel
Dutch Federation of Professional Football
Clubs (FBO)
Zeist
The Netherlands

ISSN 1874-6926 ISSN 2215-003X (electronic)
ASSER International Sports Law Series
ISBN 978-94-6265-125-8 ISBN 978-94-6265-126-5 (eBook)
DOI 10.1007/978-94-6265-126-5

Library of Congress Control Number: 2016945136

Published by T.M.C. ASSER PRESS, The Hague, The Netherlands www.asserpress.nl
Produced and distributed for T.M.C. ASSER PRESS by Springer-Verlag Berlin Heidelberg

© T.M.C. ASSER PRESS and the author 2008, 2016

No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, microfilming, recording or otherwise, without written permission from the Publisher, with the exception of any material supplied specifically for the purpose of being entered and executed on a computer system, for exclusive use by the purchaser of the work.

The use of general descriptive names, registered names, trademarks, service marks, etc. in this publication does not imply, even in the absence of a specific statement, that such names are exempt from the relevant protective laws and regulations and therefore free for general use.

Printed on acid-free paper

This Springer imprint is published by Springer Nature
The registered company is Springer-Verlag GmbH Berlin Heidelberg

Series Information

Books in the *ASSER International Sports Law Series* comprehensively chart and analyse legal and policy developments in the emerging field of European and international sports law. Within scholarly publishing, the series is the most cited in its area and uniquely features contributions from the leading sports law scholars. It is a valuable resource for practitioners, academics, sports officials, and anyone interested in or impacted by sports and the law.

The Series is developed, edited and published by the ASSER International Sports Law Centre in The Hague. The Centre's mission is to provide a centre of excellence in particular by providing high-quality research, services and products to the sporting world at large (sports ministries, international—intergovernmental—organisations and federations, the professional sports industry, etc.) on both a national and an international basis. As a pioneer in the field of European and international sports law, the Centre has established a worldwide network of academics and practitioners and cooperation agreements with various sports law institutes and centres in Europe and beyond.

Apart from the Series, the Centre edits and publishes *The International Sports Law Journal*.

Editor-in-chief

Prof. Dr. Ben Van Rompuy
e-mail: b.van.rompuy@law.leidenuniv.nl

Series editor

Dr. Antoine Duval
e-mail: a.duval@asser.nl

Editorial Office

ASSER International Sports Law Centre
T.M.C. Asser Instituut
P.O. Box 30461
2500 GL The Hague
The Netherlands
www.sportslaw.nl



Advance Reviews

Frans de Weger's work on the jurisprudence of the DRC is a "must-have" for anybody dealing with sports law and, in particular, dealing with football issues under the *FIFA Regulations on the Status and Transfer of Players*. It is a comprehensive and well-organized book that I highly recommend.

Massimo Coccia, Professor of International Law and Attorney-at-Law in Rome (Italy), CAS Arbitrator, Author of many publications on sports law issues

Where to go when trying to understand the *FIFA Regulations on the Status and Transfer of Players*? Now Frans de Weger has the answer with his new version of the much-awaited and needed "Jurisprudence of the FIFA DRC". His first one of 2008 was and is still the only book in English which has reviewed the long and winding case law of FIFA DRC. This is not an easy task and the 2016 edition has not only improved on its predecessor but also opened a wider range of enlightenment for the football law practitioner. This is the book that we all called for and quoting Woody Allen, I would say that with it you will be aware of "Everything you wanted to know about FIFA DRC and you were afraid to ask". We must thank Frans for sparing us time with this clairvoyant and helpful book.

*Juan de Dios Crespo Pérez
Sports lawyer*

By a systematic and analytical study of the most important decisions rendered by the FIFA Dispute Resolution Chamber, Frans de Weger has traced the context, purpose and evolution on how one should read and understand the *FIFA Regulations on the Status and Transfer of Players*. The Author has managed to explain in a pure and understandable way the issues specific to the industry of football and how these should be taken into account by clubs and players in their legal relationship and within organised football. The second edition of this book, which is systematic and practical at the same time, will surely be of great interest to both specialists active in the world of "football law" and aspiring individuals.

*Wouter Lambrecht, Attorney-at-law, Head of Legal
at the European Club Association, FIFA Dispute Resolution
Chamber Member and Mediator at the Court of Arbitration for Sport*

Contents

Part I Introduction

1	Background Dispute Resolution Chamber	3
1.1	Introduction	4
1.2	Regulations on the Status and Transfer of Players	6
1.2.1	Introduction	6
1.2.2	History	6
1.2.3	<i>Bosman</i> Case	7
1.2.4	Post- <i>Bosman</i> Period	8
1.2.5	2001 Edition	10
1.2.6	2005 Edition	11
1.2.7	FIFA Comparison 2001 and 2005	13
1.2.8	FIFA Commentary	14
1.2.9	2008 Edition	16
1.2.10	2009 Edition	17
1.2.11	2010 Edition	18
1.2.12	2012 Edition	19
1.2.13	2014 Edition	20
1.2.14	2015 Edition	21
1.2.15	2016 Edition	24
	References	24
2	Procedural Aspects	25
2.1	Introduction	26
2.2	Procedural Rules	28
2.3	Composition	30
2.4	Jurisdiction	31
2.4.1	Civil Court	31
2.4.2	The PSC	35
2.4.3	The DRC	39
2.4.3.1	General	39
2.4.3.2	“ <i>Sub a Procedure</i> ”: ITC Request	41

2.4.3.3	“ <i>Sub b Procedure</i> ”: Employment-Related Disputes	42
2.4.3.3.1	General	42
2.4.3.3.2	International Dimension	46
2.4.3.3.3	Independent Arbitration Tribunal	50
2.4.3.4	Training Compensation and Solidarity Mechanism	55
2.4.3.5	Solidarity Mechanism Between Clubs Belonging to the Same Association	56
2.4.4	The DRC Judge and the Single Judge of the PSC	56
2.4.5	Conclusion	58
2.5	Applicable Law	60
2.5.1	National Law	60
2.5.2	Applicable Edition RSTP	64
2.6	Admissibility	66
2.7	Representation	70
2.8	Withdrawal and Challenges	71
2.9	Petitions	73
2.10	Evidence	77
2.11	Burden of Proof	82
2.12	Renouncement of Rights	84
2.13	Non Ultra Petitem	86
2.14	Amendment of Claim	87
2.15	Counterclaim	88
2.16	Intervening Party	89
2.17	Costs	90
2.17.1	Costs of FIFA Proceedings	90
2.17.2	Procedural Compensation	93
2.18	Provisional Measure	93
2.19	Prescription	96
2.20	Decision	99
2.20.1	General	99
2.20.2	Form and Contents	100
2.20.3	Service and Publication	101
2.20.4	Enforcement	102
2.20.4.1	General	102
2.20.4.2	Disciplinary Committee	103
2.21	Court of Arbitration for Sport	105
2.21.1	General	105
2.21.2	Background	106
2.21.3	Relevant Procedural Aspects	107
	References	110

Part II Decisions

3 Introduction to Classification of Decisions 113

4 Medical Examination 117

4.1 Introduction 117

4.2 Information About the Player 118

4.3 Medical Result 119

4.4 Conclusion 123

5 Visa and Work Permit 125

5.1 Introduction 125

5.2 Visa 126

5.3 Work Permit 128

5.4 Conclusion 130

6 Employment Contract 131

6.1 Introduction 132

6.2 Negotiations 136

6.3 Invalid Conditions Precedent 139

6.4 Essentialia Negotii 141

6.5 Formal Aspects 143

6.5.1 Form 143

6.5.2 Length 145

6.5.3 Signature 146

6.5.4 Language 150

6.6 Payments 152

6.6.1 Salaries 152

6.6.2 Bonuses 156

6.7 Conclusion 159

Reference 161

7 Unilateral Extension Option 163

7.1 Introduction 164

7.2 DRC Jurisprudence 165

7.2.1 Decisions Between 2004 and 2006 165

7.2.2 Decisions Between 2007 and 2009 168

7.2.3 Decisions After 2010 173

7.3 CAS Jurisprudence 177

7.4 Conclusion 186

7.4.1 General 186

7.4.2 Relevant Criteria 187

References 191

8 Termination 193

8.1 Introduction 194

8.2 Mutual Agreement 195

8.3 Relegation Clause 200

8.4	Probation Period	203
8.5	Period of Notice	205
8.6	Just Cause	208
8.6.1	For the Club	208
8.6.1.1	Performance Player	209
8.6.1.2	Played Matches	216
8.6.1.3	Injury	219
8.6.1.4	Absence	224
8.6.1.5	Misbehaviour	229
8.6.1.5.1	General	229
8.6.1.5.2	Drug Abuse	233
8.6.1.5.2.1	DRC Jurisprudence	233
8.6.1.5.2.2	<i>Mutu</i> Cases	235
8.6.1.5.3	Alcohol	238
8.6.1.5.4	Conclusion	239
8.6.2	For the Player	240
8.6.2.1	Outstanding Salary	240
8.6.2.2	Exclusion and Deregistration	254
8.7	Sporting Just Cause	260
8.7.1	Introduction	260
8.7.2	Requirements	261
8.7.2.1	Established Professional	262
8.7.2.2	Appearance Professional	263
8.7.2.3	“15-Day Term”	263
8.7.3	CAS and DRC Jurisprudence	263
8.7.4	Final Remarks	266
8.8	Conclusion	268
	References	271
9	Compensation	273
9.1	Introduction	274
9.2	Calculation of the Compensation	276
9.3	Compensation to Be Paid by the Club to the Player	286
9.3.1	General	286
9.3.2	DRC Approach	287
9.3.2.1	General	287
9.3.2.2	Adjustment Amount of Compensation	288
9.3.2.3	Behaviour Parties	289
9.3.2.4	Permanent Incapacity	293
9.4	Compensation to Be Paid by the Player to the Club	294
9.4.1	General	294
9.4.2	DRC Approach	299
9.4.3	Breach of Contract and the Protected Period	300
9.4.3.1	Introduction	300

9.4.3.2	<i>Webster</i> Case	302
9.4.3.3	<i>Matuzalem</i> Case	304
9.4.3.4	<i>De Sanctis</i> Case	305
9.5	Conclusion	312
	Reference.	314
10	Sporting Sanctions	315
10.1	Introduction	315
10.2	Sporting Sanctions on Player	316
10.2.1	Four-Month Rule	318
10.2.2	Aggravating Circumstances	321
10.3	Sporting Sanctions on Club	323
10.3.1	Inducement	325
10.4	Conclusion	330
	Reference.	330
11	Training Compensation	331
11.1	Introduction	333
11.2	Developments After Bosman	335
11.2.1	Bernard Case	335
11.2.2	Wilhelmshaven Saga	337
11.3	When Is Training Compensation Due?	340
11.3.1	First Professional Contract	340
11.3.2	Subsequent Transfer	342
11.4	Difference Between Amateurs and Professionals.	344
11.4.1	Introduction	344
11.4.2	DRC Jurisprudence.	345
11.4.3	CAS Jurisprudence.	353
11.4.4	Conclusion	358
11.5	Responsibility of the New Club	360
11.5.1	General	360
11.5.2	Player Passport	363
11.5.3	Entitlement of the National Association.	364
11.6	Loan of Professional.	365
11.7	When Is Training Compensation <i>not</i> Due?	372
11.7.1	General	372
11.7.1.1	Exceptions Worldwide	372
11.7.1.1.1	Circumvention	376
11.7.1.1.2	Prescription	379
11.7.1.1.3	Women’s Football.	382
11.7.1.2	Exceptions Within the EU/EEA	382
11.7.1.2.1	General	382
11.7.1.2.2	Free Movement of Players	384
11.7.1.2.3	General Rule: Contract Offer to Professionals and Amateurs	387

- 11.7.1.2.4 Prerequisites of Article 6
 - Para 3 Annex 4 392
 - 11.7.1.2.4.1 “60-Day Obligation” and “Equivalent Value” 392
 - 11.7.1.2.4.2 Registered Mail 393
- 11.7.1.2.5 Justification 399
 - 11.7.1.2.5.1 General 399
 - 11.7.1.2.5.2 DRC Jurisprudence 400
 - 11.7.1.2.5.2.1 Decisions Between 2004 and 2010 400
 - 11.7.1.2.5.2.2 Decisions After 2010 403
 - 11.7.1.2.5.3 CAS Jurisprudence 406
- 11.8 Waiver of Rights 410
 - 11.8.1 General 410
 - 11.8.2 Decisions Between 2004 and 2010 411
 - 11.8.3 Decisions After 2010 416
 - 11.8.4 Conclusion 422
- 11.9 Calculation of the Amount 423
 - 11.9.1 General 423
 - 11.9.2 Worldwide 425
 - 11.9.3 Within EU/EEA 427
- 11.10 Completion of the Training 428
 - 11.10.1 General 428
 - 11.10.2 DRC Jurisprudence 428
 - 11.10.3 CAS Jurisprudence 432
 - 11.10.4 Conclusion 435
- 11.11 Clearly Disproportionate Rule 437
- 11.12 Conclusion 443
- References 446
- 12 Solidarity Mechanism 447**
 - 12.1 Introduction 448
 - 12.2 Domestic Transfers 450
 - 12.3 Responsibility of the New Club 452
 - 12.3.1 Calculation 452
 - 12.3.2 Distribution 454
 - 12.3.2.1 General 454

12.3.2.2	Decisions	455
12.3.2.3	Conclusion	464
12.3.3	Player Passport	465
12.4	Entitlement of the National Association.	466
12.5	Prescription.	470
12.6	Contingent Payments	471
12.7	Loan	472
12.8	Exchange of Players	473
12.9	Buy-Out Clause	477
12.10	Default Interest	480
12.11	Conclusion	481
	Reference.	482
13	Final Conclusions	483
	Index.	491

Abbreviations

BGH	German Bundesgerichtshof
CAS	Court of Arbitration for Sport
CAS Code	CAS Code of Sports-related Arbitration
CHF	Swiss Franc
CJEU	Court of Justice of the European Union
CO	Swiss Code of Obligations
DRC Judge	Single Judge of the DRC
DRC or Chamber	Dispute Resolution Chamber
EC	European Commission
EU	European Union
EURO	EUR
FA	Football Association
FBO	Dutch Federation of Professional Football Clubs
FIFA	Fédération Internationale de Football Association
FIFA Commentary	Commentary on the Regulations of the Status and Transfer of Players
FIFA Comparison	Comparison of the FIFA regulations version July 2001 and following Circulars with the new FIFA regulations version December 2004
GBP	British Pounds
ICAS	International Council of Arbitration for Sport
IRTC	International Registration Transfer Certificate
ITC	International Transfer Certificate
KNVB	Royal Netherlands Football Association
NDRC	National Dispute Resolution Chamber
NDRC Regulations	National Dispute Resolution Chamber Standard Regulations
PILA	Private International Law Act
Procedural Rules	Rules governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber
PSC	Players' Status Committee
RSTP	Regulations on the Status and Transfer of Players

SCC	Swiss Civil Code
SFT	Swiss Federal Tribunal
Single Judge	Single Judge of the PSC
TFEU	Treaty on the Functioning of the European Union
TMS	Transfer Matching System
TPO	Third-Party Ownership
UEFA	Union Européenne de Football Association

Foreword

Its competence and the applicable regulations having been established, the members of the Dispute Resolution Chamber went on to deal with the substance of the matter and started by acknowledging the facts of the case and the arguments of the parties as well as the documents contained in the file.

These or very similar words are contained in hundreds of decisions of the FIFA judiciary bodies. What follows, in all those decisions, is the dealing with thousands of personal stories, raised claims, advanced objections, submitted allegations and, yes, also legal arguments made by the parties before FIFA.

Since their creation, the FIFA judiciary bodies and in particular the FIFA Players' Status Committee (PSC) and the FIFA Dispute Resolution Chamber (DRC), together with their Single Judges, have rendered several thousand decisions. And even though "nobody is perfect" and no adjudicatory body of this world can claim never to take a wrong decision, the work of the FIFA judiciary bodies has helped solving a huge number of disputes in quite an efficient manner, providing the parties with a judiciary, objective assistance that may still be considered to be sometimes too slow, but which is also rather inexpensive and pretty much well-fitted for an international environment like the one of international football.

It is praiseworthy that FIFA publishes a large number of decisions of the PSC and the DRC on its website on a regular basis. However, the handling and the analysis of such decisions is not easy. If one looks for instance at the more than 2000 decisions of the DRC currently available online, one will see that they are first very numerous and second divided in simply four categories: labor-related disputes, training compensation, solidarity matters and disputes relating to overdue payables.

Back in the years 529 to 534 p. Chr., the Eastern Roman Emperor Justinian ordered the collection of all sources of Roman jurisprudence, and so the admirable Corpus Iuris Civilis was put together, a fundamental work providing an overview on the quite chaotic Roman legal system existing at that time.

Today, almost identically, the present book, prepared under the wise guidance of my dear friend Frans de Weger, provides the reader—or even: the “user”—with a great access to the body of the jurisprudence of the FIFA DRC: DRC decisions are selected and commented, and a clear structure of topics is established, by attributing the DRC decisions to several classes of disputes.

The reading and the consultation of this excellent book, including the good introductory chapters, can only be strongly recommended to lawyers involved in football-related matters. Both the more unexperienced law student and the well-versed attorney will be able to draw very useful information from a rich pool of interesting materials.

The author and the editors of this book can only be thanked by all those who love football—those who have the chance to work on football-related matters.

Zurich
August 2016

Michele Bernasconi
Attorney-at-law in Zurich, Switzerland
Arbitrator at CAS and President of the Swiss
Sports Law Association

Author's Note

In the first edition of this book reference is made to the relevant decisions issued by the FIFA Dispute Resolution Chamber (“the DRC”) from the date of its existence in 2001 until 2006. Now, in 2016, in this second edition, reference is made to the relevant decisions from 2001 until 2016. More than 15 years’ worth of DRC decisions.

During the years the jurisprudence of the DRC has become increasingly “well-established”. The decisions by the DRC are more and more extensive and Single Judges are getting more involved (to reduce the workload). Further, we also note a positive development with regard to the length of the DRC procedures, sharpening deadlines and limiting the exchange of correspondence in procedures, also considering that FIFA introduced the so-called fast track procedure of Article 12bis of the FIFA Regulations on the Status and Transfer of Players (“the RSTP”). Step by step, a swifter dispute resolution process has finally been created by FIFA.

However, it shouldn’t be left unmentioned that the length of the procedures before the DRC can still be shortened. In comparison to the procedures before the Court of Arbitration for Sport (“the CAS”), the DRC could also be stricter with regard to deadlines in procedures. Considering the well-established DRC jurisprudence that has been created over the years since 2001, the DRC must also remain open to new developments in international football law and cannot be immune under all circumstances from the impact and influence of European law, leading CAS jurisprudence and Swiss law. The existence and creation of “well-established jurisprudence” bears the risk of becoming less accessible for ‘outside’ developments.

Although by no means exhaustive, this book aims to provide an overview of the “well-established jurisprudence” of the DRC. However, as always, the devil is in the details. One must be aware that relying on an individual decision by the DRC can be quite risky since it happens that the DRC (especially in the past) deviated from its standard line but in later decisions reverts to its former “well-established jurisprudence”. Nowadays and as said before, the jurisprudence has become increasingly “well-established” and these kinds of divergent decisions are more and more exceptional. Furthermore, I make exact references and stay

close to the relevant considerations made in the decisions by the DRC to gain a broad(er) and more precise knowledge of the general view of the committee. Due to the increasing internationalization of the professional football world, the DRC decisions become more and more important within the international field of professional football, which will also have its impact, directly or indirectly, at national level (certainly in the long run), such as for national arbitration tribunals. By making exact references to the general considerations of the DRC in its decisions over the years, the flipside of the coin is that it is not a 'nice romantic novel' to read. It must therefore be considered as a work of reference.

Let me stress that the FIFA jurisprudence is of utmost importance. First of all, taking into consideration that the CAS is the appeal committee which makes these awards at least as interesting, FIFA, however, sometimes maintains its own line even if the CAS has a different point of view. In this regard, it must be mentioned that less than 5 % of the DRC decisions is annulled by the CAS which means that most of the DRC decisions can therefore be seen as final and binding. Moreover, not all parties have the financial means to appeal to the CAS or the (low) amount at stake does not make it worthwhile (taking into account the relatively high arbitration costs before the CAS) to appeal against the DRC decision before the CAS (on the understanding that also a dispute with a low amount at stake does not necessarily mean that it is not an interesting case from a legal point of view). In other words, in many DRC cases, the DRC is the last resort. Therefore, for legal advisors to operate quickly and adequately in the dynamic world of international professional football, secure and up-to-date knowledge of the DRC jurisprudence and its continuing and rapid developments, is obviously indispensable. It must finally be noted that the DRC jurisprudence is quite consistent (more consistent than the jurisprudence of the CAS in relation to certain subjects) and with its well-established jurisprudence, contributes to more legal uniformity, equality and certainty.

This edition is more practical due to my experience and activities over the last few years as a senior legal counsel at the Dutch Federation of Professional Football Clubs ("FBO") in procedures before the DRC, as well as (previously before I was appointed as a CAS Arbitrator) the CAS, the appeal committee of the DRC. This second edition addresses many issues on the understanding that experience teaches that there are many legal pitfalls with regard to several subjects which the DRC has to deal with. This edition has a scientific as well as a practical character and is useful for both the practitioner and the scientist. It goes without saying that this book is especially a useful and practical tool for those actually acting in legal procedures before the DRC, such as international football lawyers and clubs' legal counsels.

Having said that, this edition is not only provided with references to decisions by the DRC, but also, if necessary, to relevant decisions by the FIFA Players' Status Committee ("the PSC"), which are also published since 2011 on FIFA's website, in order to better understand certain considerations of the DRC. Furthermore, in order to place the DRC decisions in the right legal perspective, reference is also made to leading awards issued by the CAS. However, since the essence of this book is "the DRC", many references to the CAS and the PSC

cases are especially made in the footnotes in order to maintain focus on the DRC decisions. The reference to the CAS jurisprudence in the footnotes, which is by no means exhaustive, is mainly meant to better find one's way in the CAS jurisprudence and so to ease finding the relevant CAS jurisprudence. Also, attention will be brought to relevant *unpublished* decisions issued by the DRC, the PSC and CAS awards. As a side-note, it must be mentioned that during the writing of this second edition, it came to my knowledge that FIFA apparently decided, for unknown reasons, to remove certain earlier published decisions from the current list of decisions on its (new) website (which means that certain DRC decisions cannot be found on FIFA's current website anymore). Having decided to make reference to these removed decisions in this second edition anyway, in order to show all relevant legal thoughts of the Chamber, however, I felt forced to share this knowledge in this Author's Note.

In my point of view, this edition is improved and is more 'mature' in comparison to the first edition. But it is also far more extensive. And not forgetting, it is obviously up-to-date. Please forgive me if I am not exhaustive with regard to all the subjects and with regard to the DRC (and especially the CAS) jurisprudence. I tried to be as complete as possible (which is also difficult due to the existence of many—not less important—unpublished decisions). As the reader will notice for several subjects, a short conclusion has been included for ease of reference, where reference is made in a nutshell to the well-established DRC jurisprudence. In a manner of speaking, merely reading this part would be enough to gain general knowledge of the vision of the DRC. I sincerely hope you find this second edition worth reading and that it helps us all with our cases in the future.