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Consequences of the Termination of an employment relationship: Validity of Offer and Acceptance



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→ **Player contract - Pre-contract - Essentialia negotii, pacta sunt servanda - Player registration - FIFA Dispute Resolution Chamber (DRC) - Court of Arbitration for Sport (CAS) - Swiss Federal Tribunal - Swiss Law**

Articles 13 to 18 of the FIFA Regulations on the Status and Transfer of Players, recently amended including the new Article 14bis, establish the principles of Contractual Stability. These articles provide the rules of conclusion and termination of contracts, how to calculate compensation, which situations are specifically considered "just cause" and the criteria under which a sporting sanction will be imposed, etc. However, nowhere is a different scenario established, a scenario where a football player receives an offer from a Club, irrespective of his current contractual situation, and after committing to the Club, one of the parties decides to not sign the employment contract.

Introduction

FIFA's principle of contractual stability establishes that "A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement." Article 13 RSTP is obviously a general principle that pretends to confirm the target of every employment contract between a professional and a club, but it is not what happens in reality.

Competitiveness, transfers, disciplinary sanctions, contractual breaches, etc., are some of the reasons that make this principle difficult to be enforced.

One of the most particular circumstances is the scenario described above: when a Player, after receiving an offer from a Club and having accepted it with no other condition, sees that the Club decides to not sign the contract and "dismisses" him, by saying that the Contract is not signed.

This situation can also be the opposite, with a Player accepting an offer but deciding to not sign the contract and concluding an employment contract with another Club.

This situation can also include those cases where the Player does not receive a copy of his employment contract after its signature and has to prove the existence of a labour relationship, or those cases where after a formal offer is accepted and signed, the Player decides to sign an employment contract with another Club.

FIFA bodies and CAS have had the opportunity to hear this kind of disputes several times in the past few years. I will use some of them in order to establish the principles applicable to this kind of disputes.

should comply with its decision in favor of the player's widow, recognizing the right of the widow to receive the amounts due to her deceased husband. This is a very important position adopted by FIFA, which will enable the charge of amounts that would otherwise be practically impossible to Mr MACHADO's family, due to fact that they would probably have to file a claim in Iran to pursue the overdue sums, with all the costs and difficulties involved.

FIFA Disciplinary Committee decisions regarding Article 18bis of its Regulations on the Status and Transfer of Players



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→ **FIFA Disciplinary Committee - FIFA Regulations - Third-party influence - Disciplinary litigation - Financial sanctions**

FIFA Media release, 19 April 2018

On 19 April 2018, the FIFA Disciplinary Committee issued a Media release² on the decisions adopted regarding the violations committed by the Spanish football clubs with regards to the prohibition of third-party influence on clubs.

FIFA is enforcing its Regulations on the Status and Transfer of Players' (RSTP) provisions regarding the prohibition of third-party influence on the clubs. Hence, two Spanish clubs, namely *Rayo Vallecano* and *RC Celta de Vigo*, were recently sanctioned by the governing body of football for corresponding amounts of CHF 55,000 (approx. EUR 47,500) and CHF 65,000 (approx. EUR 56,000) respectively.

Both Spanish clubs, according to FIFA, entered into agreements that enabled a third party to influence the club's independence.

It is crucial to mention that FIFA remarked the difference in two redactions of the FIFA RSTP, 2012 and 2018 respectively. The previous version of the FIFA RSTP provided with sanctions for entering into such agreements for the club that entered in such agreement and enabled for another entity (counter club or any third party) the ability to influence its independence in employment and transfer-related matters, its policies or the performance of its teams. However, it did not establish any sanctions for the club/entity that acquired such ability to influence, which was

corrected by FIFA in the following redactions of the FIFA RSTP.

Besides, the sanctions for the Spanish clubs are based on Article 18bis of the FIFA RSTP and include two separate violations not directly stated in that article. For *Rayo Vallecano*, this violation is being the failure "to record an existing third-party ownership agreement and for failing to enter correct and mandatory information in ITMS." For *RC Celta de Vigo*, another violation consists of a brief statement: "misusing ITMS as a negotiation tool."

As it could be seen, Article 18bis of the FIFA RSTP per se contains a narrow approach not defining such particular violations, however, it can be noted from the sense of the corresponding Annexe of the FIFA RSTP dedicated to the TMS and the completeness of the information that FIFA requires from the clubs at the time of the international transfers of players.

The last question that remains open is whether the financial sanction will only correspond the initial goal of FIFA to make the international transfer system transparent and free of third-party influence.

² www.fifa.com



Judgement of the Spanish Constitutional Court regarding the so called “single license” in sport



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→ National Law - National Courts - Sport License

*Spanish Constitutional Court, 12 April 2018,
no. 33/2018*

The Spanish Constitutional Court, in its Judgement of 12 April 2018, has partially overturned the modification introduced in the Sport Act by Article 23 of Law 15/2014, dated 16 September 2014, regarding the rationalization of the

public sector and other measures of administrative reform, which amended paragraph 4 of Article 32 of the Sport Act establishing a new regime regarding “single sport license”.

This Judgement concludes that the new draft of Article 32.4 of Law 10/1990 is not unconstitutional as long as it is interpreted in the sense that it is related exclusively to official competitions of state level.

Before its amendment, Article 32.4 of the Sport Act established that “for the participation in sport official competitions of state scope it shall be necessary to hold a sport license issued by the relevant Spanish sport federation” or “by the federations of autonomic level [...] when integrated in the Spanish sport federations.” After its amendment, the provision maintains the requirement of a license for participating in sport official competitions, but (i) extends this requirement “for participating in any sport official competition”, omitting the specification that it must be related to sport official competitions “of state level” which included Article 32.4 before its amendment and (ii) delegates the granting of the license to the sport

federations of autonomic level in any case, and not to the Spanish sport federations, projecting the efficacy of that autonomic license to the “state and autonomic level.”

The sense of the amendment is explained by the preamble of the law (paragraph IV): “consists in the implementation of a single sport license which, once obtained, enables its holder for participating in any competition, regardless of its territorial scope.”

Due to its content, the regulation of the “single sport license” must be understood as a competence of the State for ruling the “Spanish sport as a whole” admitted in the STC 80/2012.

This competence frame determines that the analyzed provision shall be constitutionally valid only to the extent that it may concern “general interests - supra-autonomics - of the Spanish sport as a whole” (see Spanish Constitutional Court, 18 April 2012, no. 80/2012, FJ 8).

On the contrary, if the rule does not affect general sport interests, which is the same as strictly autonomic interests, the provision must be declared unconstitutional and null for not respecting the constitutional distribution of competences, because in other case it would result in the effect of revoking the competence assumed through their statutes by the Autonomic Communities over the matter on an exclusive basis.

This intervention by public powers in sport must logically respect the constitutional order of competence distribution, which takes as its point of departure a model of sport practice of strictly private base already traditional and well consolidated, which is summarized in the mentioned decision of the Spanish Constitutional Court no. 80/2012, FJ 9. This model is “based on three axes: private nature of the sport organizations (regardless the fact that they may exercise public functions by delegation); federative monopoly (i.e. one federation for each sport



modality) and organizational cascade-shaped or pyramidal structure (which entails that the base sport entities of a certain sport modality are integrated in the corresponding autonomic federation and then in the state federation, in order to participate in certain state or international competitions)."

This structure of associational and pyramidal type makes that the so called "vertical" effect of an autonomic sport license, *i.e.* the authorization which it grants to its holder to participate in official competitions at state level, may find competence coverage in the management by the State of "its" interests (Spanish Constitution, Art. 137), including amongst them the ones of the "Spanish sport as a whole" (see Spanish Constitutional Court, 18 April 2012, no. 80/2012, FJ 8), and consequently the ones of the official competitions of state level. On the contrary, with the transversal or horizontal effect of the same license, which enables its holder for participating in official competitions of "lower territorial level" (Art. 46.1, d) of the Sport Act), the State is breaking into strictly autonomic interests and, as a consequence, disrupting the exercise by the Autonomic Communities of their competences, in particular their interests and competence for organizing in an autonomous way their official competitions of autonomic level.

All the reasoning up to this point justifies the unconstitutionality exclusively of the so called "transversal" or "horizontal" effect of the single sport license, not the "vertical" one. This fact impedes to declare the nullity of the challenged provision as a whole; instead the Judgement decides to impose a compatible interpretation of Article 32.4 of Sport Act.

The new Article 14bis of the FIFA RSTP and the Spanish collective Bargaining Agreement

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→ **FIFA Regulations - Player contract
- Breach of contract - Just cause
- Salaries - National Regulations -
Collective bargaining agreement**



FIFA, by means of the Circular Letter no.1625, informed its member associations of important amendments to the FIFA Regulations on the Status and Transfer of Players (RSTP) approved by the FIFA Council on 16 March 2018. Among other modifications, FIFA introduced the new Article 14bis of the FIFA RSTP, which is dedicated to address the specific circumstance of "Terminating a contract with just cause for outstanding salaries". Article 14bis par. 3 establishes that the principles may be deviated by "Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law", which shall prevail. In this regards, the Spanish collective bargaining agreement (CBA) currently in force and signed by the Spanish association of the professional football clubs (LNFP) and the Spanish trade union of professional football players (AFE), shall prevail over Article 14bis of the FIFA RSTP.

The Circular Letter no.1625 introduced the new Article 14bis of the FIFA RSTP, which is dedicated to address the specific

circumstance of "Terminating a contract with just cause for outstanding salaries". This provision came into force on 1 June 2018. Nevertheless, alternative provisions established in contracts existing at the time of Article 14bis coming into force may be considered.

The new Article 14bis provides legal security to the different interpretations the FIFA Dispute Resolution Chamber (FIFA DRC) jurisprudence has established during the years. Indeed, the FIFA DRC jurisprudence considered, as a general rule, that "Under normal circumstances, only a few weeks' delay in paying a salary would not justify the termination of an employment contract",¹ while a period of more than three consecutive months justified the players' termination of the employment contract with just cause.² Notwithstanding, the FIFA DRC has also considered sufficient a period of two or more months,³ depending on the particular circumstances of each case.

Moreover, the FIFA DRC jurisprudence has deemed necessary for players to put debtor clubs in default by means of written notices⁴ (independently from the duration of the time limit, accepting claims which provided 1-day deadline)⁵ even in the absence of a specific clause in the contracts. Nevertheless, the specific circumstances of each case have addressed the FIFA DRC decisions, without providing uniformity in its jurisprudence.

¹ As established by Article 14 of the FIFA RSTP Commentary.

² As established by Article 14 of the FIFA RSTP Commentary and by several FIFA DRC decisions; for instance, see FIFA DRC, 9 May 2011, no. 5112513, par. 10.

³ As established by several FIFA DRC decisions; for instance, see FIFA DRC, 7 September 2011, no. 9111901, par. 24.

⁴ As established by several FIFA DRC decisions, for instance see FIFA DRC, 24 November 2011 no. 1111796 par. 15.

⁵ As established by the FIFA DRC, 27 February 2013 no. 02131190 par. 15.

