

Griezmann’s “La Decisión”: Exposing an Unsettled Debate on Rescission Clauses and Pre-Contracts

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[Opinion Article](#)

[Spain](#)

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The official statement of Atletico de Madrid crying foul on FC Barcelona’s alleged insufficient deposit of Griezmann’s buy-out clause sparked confusion and stirred debates in the World of Football. In its statement issued on 12 July 2019, the Rojiblancos claimed that the value of the buy-out clause should be EUR 200 million considering the announcement was made, and an alleged contract was in place between FC Barcelona and the player before the value decreased to EUR 120 million.

The 14 May 2019 Announcement

In a video posted in the club’s official Twitter on 14 May 2019 he stated: “After speaking with Cholo, Miguel Ángel and the office staff, I wanted to speak immediately with you, atléticos, with the supporters who always gave me a lot of affection, to say you that I’ve taken the decision of leaving, of seeing other things, of having other challenges.”

It is important to add that this video was prefaced by an Atletico’s official Twitter stating: “Griezmann has communicated that he won’t continue as rojiblanco next season”.

Should this “announcement” be the determining date in assessing the buy-out clause to be paid? The writers believe it is not.

To have an understanding of the issue at hand, it is necessary to discuss that under Spanish Law, more specifically Article 16 of the Spanish Royal Decree 1006/1985, employees have the right to terminate their contract for an agreed compensatory payment. Setting this amount is not mandatory as the parties can agree or leave it in the hands of the Spanish Courts to determine the reasonable amount.

In the present case, Griezmann and the Rojiblancos agreed on a buy-out clause of EUR 200 million for the first sporting season that decreases to EUR 120 million on 1 July 2019.

A closer look should be taken at the events that occurred after the May 2019 declaration, which clearly shows the intent of the parties as to when to make the termination effective.

It is a hornbook rule that an employee who terminates their contract must show their intent in a “clear, concrete, conscious, firm and conclusive manner, revealing their purpose.”

Despite his express declaration on 14 May 2019, the unequivocal intent of both parties was to make the termination effective on July 2019 or prior to the beginning of Atletico’s pre-season. This intent is clearly manifested not only by the statement made by the Club itself stating that the Player will not continue next season, but also by the fact that Griezmann continued to render his services to Atletico on 18 May 2019 when he was featured in the starting XI during the game against Levante; and again, on 21 May 2019, as a substitute during the game against Beitar Jerusalem.

The Club’s subsequent acts further solidified its intent. Attention must be drawn to the threat of a sanction made by the Club to Griezmann when the latter failed to show for the first day of training on 7 July 2019, i.e. 6 days after the amount of the buy-out clause was effectively decreased. This fact, in itself, is an admission that the Club still considered Griezmann as an employee and that his contract was still in force.

In this context it is interesting to quote a Judgment by the Superior Court of Justice of Galicia (Social Chamber), rendered on 3 November 2010:

“This being so, the footballer continued under the Club’s discipline (...), intervening (...) in a match of official competition with the claimant Club (...) as a consequence, it cannot be considered the existence of a terminating will - explicit nor tacit - in terms of art. 16.1 of Royal Decree 1006/85.”

The fact that Griezmann waited for the amount of his buy-out clause to decrease is irrelevant. This was his prerogative. **He cannot be punished for exercising a right granted to him by law and contract.** Atletico and Griezmann negotiated the buy-out clause fairly and the Rojiblancos are estopped from claiming otherwise.

The documentary released in 2018 should have raised red flags in the Wanda Metropolitano; that its main man was considering retiring his red and white jersey; and the possibility of him leaving in the near future was real. Decreasing Griezmann’s buy-out clause to EUR 120 million came undone and there is no one to blame but Atletico itself. The Club authored an open invitation for Griezmann to free himself on a specific date at a bargain price. For the caliber of a player that he is, Atletico should have known that no club with funds to cash out would be able to resist. Sadly for Atletico, the Catalanian giants were more than eager to accept its invitation.

A Pre-Contract Reached

Assuming *arguendo*, the parties (Barca and the Player) had previously agreed for the payment of Griezmann’s buy-out clause and commence negotiations once the Player has unequivocally decided to leave Atlético, is this tantamount to breach that would entitle Atletico to damages, in this case, the balance of EUR 80 million?

In our opinion, the signature of a pre-contract would not entail a breach of an existing employment contract if the periods of execution of both contracts do not overlap, i.e. if the effectivity of the pre-contract with Barca was conditional upon the payment of the compensation clause and formal termination of Atletico’s employment contract, there would not be breach of the latter.

Another perspective to be considered is the disciplinary issue. Paragraphs 1 and 2 Article 143 of the General Regulations of the RFEF prohibit a club from entering into negotiations with a player without notifying his current club:

- “1. The club that wishes to hire a professional footballer, must communicate in writing its intention to the club in which that one is assigned before beginning negotiations with the player.
2. Any professional footballer is free to sign a contract with another club other than the one he belongs to, if his contract is to expire within 6 months; a party will not respect said term shall incur disciplinary responsibility.”

One has to ask: Should this provision be all-encompassing?

The authors think it should not be. According to Spanish Constitution, everybody has the right to the free choice of profession or trade and to advancement through work (Section 35). In the situation where a compensation payment is agreed in a footballer’s employment contract, it is obvious that this clause is set to be triggered at any moment of the labor relationship and, as a consequence, it is implicitly admitted that prior the payment of such compensation, any club may approach the player in order to negotiate the conditions of the future contract.

In other words, it is absurd to agree a compensation clause according to Article 16 RD 1006/85 and then claim for an approach to the player before the last six months of his employment contract in order to negotiate all the terms needed for the future payment of such compensation by other club.

The payment of these compensation clauses does not grow on trees.

It is the opinion of the authors that **football players and clubs should be given some freedom to test whether or not there is even the slightest possibility of entering into an employment contract in the future.** For instance: to know whether the new club could afford his buy-out clause, if the player’s demands are exorbitant and, more importantly, if the player even wants to join the notifying club. It goes against logic for the new club to send a written notice of its intent to hire one of the current club’s players, when the player in fact, does not want to be.

Should FC Barcelona and Griezmann be slapped with disciplinary sanctions? Slapping Griezmann with a disciplinary sanction for desiring to increase his personal and professional growth would be a flagrant violation of his right to choose his place of work enshrined in the Constitution.