



Sports Law & Taxation

Contents

2021/23 The fortress character of the force majeure clause in sports contracts – Part one

2021/24 Caster Semenya saga: collapsed by capitalism. The intersection of gender race and influence – Part one

2021/25 International football: Change of association for representative teams

2021/26 Professional football: Increased focus on mental health

2021/27 “The NCAA is not above the law”. The summer of reform for American college sport

2021/28 Tax and esports in Gibraltar

2021/29 Taxation of Formula 1. A view from the UK

2021/30 Taxation of Formula 1. A view from Germany

2021/31 The current situation of esports under the European and international tax law and jurisprudence

2021/32 Footballers and tax issues on divorce and separation



12·3

SEPTEMBER 2021

International football:

Change of association for representative teams

BY ARNE AL¹

Introduction

To be able to represent your country as a football player on the international stage is for most players the highpoint of their football career. Players who have a shared or multiple nationalities may wish to represent their country of origin. However, this may not always be possible when the player already participated in an official match representing the national association of the country in which they spent their years as a teenager.

To avoid, among others, such situations of hardship, FIFA amended its rules governing the eligibility to participate for (national) representative teams in international football.

In this article the author will discuss the relevant provisions in relation to a request for change of association based on personal experience with several successful requests for change of association and will provide some practical tips.

Background

Since (at least) 1990, the rules governing eligibility to participate for (national) representative teams in international football have been set out in the FIFA Regulations Governing the Application of the Statutes ("RGAS").² At first instance, the rules were very straightforward and provided that a player was eligible to participate for the representative teams of a football association, if they held the nationality of the territory upon which the relevant football association was domiciled. Between 2004 and 2008, rules were introduced which, *inter alia*, permitted players to change their sporting nationality (if certain objective criteria were met), to regulate players with a shared "common nationality" (to several associations),³ and to regulate

players who had acquired a new nationality.⁴

The RGAS have remained unchanged since 2008.⁵ After several member associations requested to amend and to modernise the RGAS, the FIFA Football Stakeholders Committee established a technical working group in September 2019 to examine the regulations regarding eligibility to play for various national teams.⁶ The working group analysed the existing regulatory framework, took into consideration submissions from member associations and the practices that developed over the course of more than twenty years of applicable case law from the FIFA Players' Status Committee ("FIFA PSC"). The research results of the working group indicated that there were several gaps between practice and regulations, resulting in ambiguities and undesirable restrictive possibilities.

The working group proposed several amendments to the RGAS concerning the change of national football associations. The 2020 amendments of the FIFA eligibility rules had the objective to:

- define vague phrases which associations have consistently inquired about, such as "holding a nationality" or "lived on the territory of the relevant association";
- reflect and codify the jurisprudence made, without regulatory basis, by the Players' Status Committee, to provide regulatory certainty for decisions;
- regulate the situation of stateless individuals;
- create three additional exceptions to the general prohibition on changing association team to avoid situations of excessive hardship, based on proposals from member associations; and
- permit a player, under very specific and limited circumstances, to request a reversal of a change of association decision.

4 See e.g. FIFA circular no. 901 dated 19 March 2004; FIFA circular no. 1093 dated 21 June 2007; FIFA circular no. 1147 dated 18 June 2008.

5 FIFA Circular no. 1732, dated 23 September 2020.

6 Involving delegates from several member associations ("MAS") and FIFPRO. The working group thoroughly analysed the existing regulatory framework, took into consideration submissions from MAS, and noted practices that had developed over the course of more than twenty years of jurisprudence.

1 Arne Al is Attorney-at-Law at BMDW Advocaten and Legal Content Coordinator at DRC Database. E-mail: aa@bmdw.nl.

2 FIFA Commentary On The Rules Governing Eligibility To Play For Representative Teams, p. 4.

3 The FIFA Commentary on the RSTP confirms this.

On 25 June 2020, the proposed amendments were presented by the FIFA Council, and were subsequently approved by the members at the 70th FIFA Congress on 18 September 2020. As a result of the approval, the amendments entered into force immediately.⁷ Following the amendments of the RGAS, FIFA released its first Commentary on the Rules Governing Eligibility to Play for Representative Teams ("Commentary"). The Commentary provides all stakeholders with a comprehensive explanation of this very specific and technical set of rules. Following requests from several member associations, the Commentary also contains clarifications concerning new provisions of the RGAS.⁸ The Commentary is accompanied by a complete overview of the legal procedure and documents required for any eligibility or change of association request submitted to the FIFA PSC.⁹

General principle

The general principle is that any player, who has already participated in a match (either in full or in part) in an official competition of any category or any type of football for one association, may not play an international match for a representative team of another association.¹⁰ In this regard, "*participated*" means that the player was fielded, i.e. physically played in the match, for any period of time. An "*official competition*" is defined as a competition for representative teams organised by FIFA or any confederation.¹¹ By way of derogation from this rule, a player may once request a change of association, which has to be accepted by means of a decision of the FIFA PSC.

The ability of a player to change "*sporting nationality*" in football after they have participated (at least in part of a match) in an "*official competition*" for the representative team of an association in any age category or kind of football is regulated in art. 9 annexe 3 of the RGAS.

Before the change in September 2020

Before the change of the RGAS, a player could only change national associations if he had multiple nationalities or acquired an additional nationality and was therefore eligible to play for different national associations. If that was the case, the player could request a change of national association if the player met one of the following conditions:

- the player had not played an "A" international match for his current national association and the player already held the nationality of the new national association when playing for his current national association; or
- the player permanently lost his nationality of the national association for which he had already played matches by a decision of a public authority, without having requested it.

⁷ As also confirmed in FIFA Circular no. 1732, dated 23 September 2020.

⁸ FIFA Circular no. 1747, dated 28 January 2021.

⁹ FIFA Guide to Submitting a Request for Eligibility or Change of Association, January 2021 edition.

¹⁰ FIFA Statutes, art. 5 para. 2 annexe 3.

¹¹ FIFA Statutes, Definitions, no. 17.

After the amendment of September 2020

Following the amendments to the RGAS in September 2020, additional exceptions to the general rule have been added on changing association in specific circumstances. In adopting reforms, FIFA developed the following core principles that underpin its eligibility rules:

- "*no nationality, no eligibility*". Eligibility must be based on an objective criteria (i.e. the nationality held by the player);
- equal treatment of all MAs;
- the existence of a genuine link between the player and the member association they (intend to) represent;
- avoiding cases of excessive severity or hardship;
- prevention of abuse (i.e. "*nationality shopping*"); and
- protecting the sporting integrity of international competitions.¹²

The core principles are laid down in art. 5 annexe 3 of the RGAS. From this article it follows that any person with a permanent nationality that is not dependent on residence in a particular country can play matches for the representative national association of that country. As stated, the September 2020 reform addressed several situations deemed to be of excessive severity or hardship that had been identified by associations or in practice, and codified jurisprudence of the FIFA PSC.

In this regard, the new RGAS provide five situations where a player may change "*sporting nationality*". The five grounds are exhaustive and the conditions are cumulative unless otherwise specified. A player can change his national association if he:

- 1 has not yet played an "A" international match for his current national association and he also had the nationality of the new national association at the time he played in his first official match for his current national association;
- 2 has not yet played an "A" international match for his current national association, he did not yet hold the nationality of the new national association at the time of his first official match for his current national association but was under 21 years of age at the time of his last official match for his current national association;
- 3 has not played more than three "A" international matches and has not played at a final FIFA World Cup or Confederation final tournament, he already held the nationality of the new national association when he played the "A" international matches and was under 21 years of age in his last official match for his current national association;
- 4 is eligible to play for a national association which has been accepted as a FIFA member after having played for the first time in an official match of his current national association, after the new national association has been accepted as a FIFA member he

¹² FIFA Commentary On The Rules Governing Eligibility To Play For Representative Teams, p. 5.

- has not played for his current national association, he had the nationality of the new national association at the time of playing for his current national association and has kept this nationality;
- 5 has played for his current national team in an “A” international match but has permanently lost that nationality by decision of a public authority without his consent and holds the nationality of his new national team.

Change of association

A player may only once request a change of association decision from the FIFA PSC. The only exception to this rule is when a player was granted a change of association and was not fielded in a match in any (official or unofficial) competition in any kind of football by the new association. In this event, the Player may request a change of association back to his former association provided he continued to hold the nationality of such association.¹³ Furthermore, it must be stressed that a request for change of association is only necessary if the player is already tied to a “sporting nationality” associated with a member association.¹⁴ Consequently, a player who is eligible to participate for multiple associations,¹⁵ does not require a change of association decision if he is only fielded by an association in a match in a non-official competition. Like any other FIFA PSC decision, a decision related to a change of association may be appealed before the CAS, in accordance with art. 58 of the RGAS.¹⁶

Certain players, due to their nationality, are theoretically eligible to play for the national team of more than one association. In fact, certain countries do not have their own nationality, but for historical reasons have taken over the nationality of another country.¹⁷ The following associations share a nationality: American¹⁸, British¹⁹, Chinese²⁰,

Danish²¹, French²², Dutch²³, New Zealand²⁴. In addition, there are several football associations that are members of confederations, but are not member associations of FIFA, also share a nationality in the context of art. 6 of the RGAS.²⁵

Existence of a genuine link

One of the general principles underpinning the eligibility rules is that a player needs to meet the obligation of the requirement of a “*genuine link*” with the association that the player intends to represent. It is delicate to define, evaluate and prove the emotional, sentimental and cultural ties an athlete feels she/he has with a given country, because, to a large degree, these are subjective matters. Effective ties must, therefore, be sought using more objective and identifiable criteria. In addition, such criteria may in a sense have a higher chance of achieving a certain form of equality of treatment, due to them being predictable and leaving less room for appreciation.²⁶ Therefore, the eligibility is conditioned upon two threshold matters, the player “*holding*” a nationality and that nationality being a “*permanent nationality that is not dependent on residence in a certain country*”. In addition to holding the relevant nationality, another important core principle for the existence of a genuine link between the player and the member association they (intend to) represent. The genuine link between the player and the member association can be demonstrated in case the player, his biological father or biological mother or his grandmother or grandfather was born on the territory of the relevant association. Or, in the alternative, the player should demonstrate that he has lived on the territory of the relevant association for at least five years. Both principles of a genuine link will be set out in more detail below.

Nationality

The RGAS have historically referred to “*nationality*” in the context of eligibility to participate for representative teams. This has occasionally caused confusion for associations located in states where national laws differentiate between the terms “*nationality*” and “*citizenship*”. Moreover, FIFA competition regulations consistently state that proof of “*nationality*” is only provided through the holding of a

13 See art. 9 para. 5 annexe 3 of the RGAS.

14 As per art. 5 para. 3 annexe 3 of the RGAS.

15 On the basis of art. 5 annexe 3 of the RGAS and where applicable, read together with art. 6 or 7 annexe 3 of the RGAS.

16 See e.g. CAS 2010/A/2071 *Irish Football Association v. Football Association of Ireland*, Daniel Kearns and FIFA; TAS 2018/A/5634 *Munir El Haddadi & Fédération Royale Marocaine de Football v. FIFA & Real Federación Española de Fútbol*.

17 E.g. the citizens of the Cayman Islands have a British passport. See FIFA Commentary on the RSTP, annex 2, p. 97. See also CAS 2010/A/2071 *IFA v. FAI, Kearns & FIFA*, para. 36, award of 27 September 2010.

18 American Samoa; Guam; Puerto Rico; USA; US Virgin Islands.

19 Anguilla; Bermuda; British Virgin Islands; Cayman Islands; England; Gibraltar; Montserrat; Northern Ireland; Scotland; Turks and Caicos Islands; Wales.

20 China PR; Hong Kong; Macau.

21 Denmark; Faroe Islands.

22 France; Tahiti; New Caledonia.

23 Aruba; Netherlands; Curaçao.

24 New Zealand; Cook Islands.

25 These include:

1 Northern Mariana Islands, an AFC member whose players hold American nationality;
2 Guadeloupe, a Concacaf member whose players hold French nationality, and
3 French Guyana, a Concacaf member whose players hold French nationality.
See in this regard FIFA Commentary on the Rules Governing Eligibility to Play for Representative Teams, January 2021 edition, p. 21.

26 CAS 2007/A/1377 *Melanie Rinaldi v. FINA*, para. 33, award of 26 November 2007.

“permanent international passport”.²⁷ It is very important to recognise the distinction between someone who holds a nationality and being eligible to obtain a nationality. A player holds a nationality if he acquired it by operation of law (for example, at birth through the nationality of his parent(s)) or through a naturalisation process.

Following the September 2020 reform, a clear distinction is made between “holding a nationality” and “being eligible to obtain a nationality”. There are two general scenarios where an individual may “hold a nationality” through the operation of a national law. The first scenario is where the nationality is obtained automatically without being required to undertake any further administrative requirements. This can be proved by a copy of the player’s passport issued by the authorities of the country of the new association, duly indicating the player’s nationality and the period of validity of the passport. The second scenario is where nationality is acquired by undertaking a naturalisation process.²⁸

An additional threshold is the fact that the nationality is permanent and not dependent on the residence in a certain country related to a particular scenario. The threshold is discussed in FIFA circular no. 1093, dated 21 June 2007 and specifically regulated by the FIFA Congress in May 2008. The aforementioned threshold is the consequence of the fact that FIFA in 2007 discovered that a particular country had granted nationality to players which was valid *“only for as long as they remain resident in the country and (sic) lose that status if they leave the country permanently”*²⁹. Following FIFA, this was a clear and obvious practice which jeopardised the integrity of representative team football. As such, FIFA moved to specifically regulate the type of “nationality” held by a player³⁰

As such, one of the key elements for a request to change association, is to establish whether the player already held the nationality of the association which he wishes to represent at the time of being fielded for his first match in an official competition in any kind of football for his current association. The player must prove this fact by either submitting a copy of the passport (issued by the authorities of the country of the new association) indicating the player’s

nationality, the validity of the passport on the day of the match and the period of validity of the passport, or by a statement from the competent government authority and/or citizenship certificate confirming since when the player holds the nationality of the country of the new association.

Lived on the territory of the relevant association

In relation to the other threshold of a genuine link, FIFA introduced the definition of *“lived on the territory of the relevant association”*. The definition was introduced in order to clarify a heavily debated provision within the RGAS. FIFA clarified that a player must be (or have been) physically present within the territory of the relevant member association to be considered to have “lived on the territory”. A player who was only formally registered or domiciled (e.g. for fiscal purposes) in a territory without being physically present cannot be considered to have *“lived on the territory”*. Furthermore, the *“period of physical presence”* shall be for a *“defined period of time (in years)”*. The minimum years that a player should have lived on the territory of the relevant association depends on the age that the player began living on the territory.³¹ Players that began living on the territory from the age of 18 must demonstrate that the move to the territory of the association was not for the purpose of participating for its representative teams.³²

Unless exceptional circumstances exist, a player must be physically present on the territory of an association for at least 183 days during a 12 month period to be considered to have *“lived on the territory”* of that association for that year.³³ A player does not need to continue to be physically present on the territory of the association concerned at the time an assessment (by FIFA or the relevant association) is made regarding the *“defined period of time (in years)”*. Rather, a player must have simply met the requirement prior to their first international match for the relevant association.³⁴

a The period of physical presence is not interrupted by:

- 1 short absences abroad for personal reasons;
- 2 holidays abroad during the football off-season;
- 3 medical treatment or rehabilitation abroad following injury or illness; or
- 4 travel abroad as a result of football employment.

b The period of physical presence is interrupted (and time requirement resets) where:

- 1 a player is transferred to a club affiliated to a different association; or
- 2 a player is absent from a territory for any reason other than those set out under a above.

27 By way of example, art. 19 para. 3 of the Regulations for the FIFA World Cup Qatar 2022 Preliminary Competition provides: *“The only document considered to be valid proof of a player’s identity and nationality shall be a permanent international passport that explicitly, and in Latin characters, states the player’s first name(s) and surname(s), as well as his day, month and year of birth. Identity cards or other local supporting official documents shall not be accepted as a valid means of identification [...]”*. See FIFA Commentary On The Rules Governing Eligibility To Play For Representative Teams, p. 10.

28 The phrase *“naturalisation process”* is interpreted broadly to mean any case aside from an automatic grant where nationality is acquired through the operation of a national law.

29 FIFA Circular no. 1093, dated 21 June 2007.

30 FIFA Commentary On The Rules Governing Eligibility To Play For Representative Teams, p. 11.

31 Before the age of 10, it is at least three years; and from the age of 10, it is at least five years.

32 Art. 7 para. 2 annexe 3 FIFA Statutes.

33 Art. 5 para. 5 annexe 3 FIFA Statutes.

34 FIFA Commentary On The Rules Governing Eligibility To Play For Representative Teams, p. 14.

Lessons learned

As the author of this article experienced that the relevant rules are not always quite understood by the relevant respective parties, he made a schedule (*see next page*) which can be consulted for a first step to an approval of the request for change of association and to further expedite the decision making process whether a player meets the requirements to request successfully a change of association.

A request to change the association for which the player is eligible to play to the association of another country of which he holds the nationality must be submitted, via the relevant association to the FIFA PSC.³⁵ It is advisable to draft a clear and structured request for change of association. The request must contain all the relevant documents which are extensively mentioned in the Guide to Submitting a Request for Eligibility or Change of Association. When submitting a request for change of association at the FIFA PSC, it is important to verify which documents must be provided and whether you are able to obtain such documentation, for example a copy of the player's valid passport, duly indicating the player's nationality and the period of validity of the passport; an official statement issued by the player's current association explicitly confirming that the player has never played any match (either in full or in part) in an official competition at "A" international level for their current association, and containing a list of all the matches (at any level in any kind of football) in which the player in question played for its representative teams³⁶ and a recent statement signed by the player (co-signed by their parent(s) or legal guardian if the player is a minor) indicating that he understands the consequences of the change of association, that a request can only be made once and confirming his will to be eligible to play for the new association. In addition, depending on the exception based on which the request is submitted different documentation is required, for instance in relation to the acquired nationality of the player, the player's move to the territory of the relevant association and/or birth certificate of the player, his biological parents or grandparents. All the aforementioned documents must be original versions and must be drawn up in one of the official FIFA languages (English, French, Spanish or German).

Furthermore, before submitting the request at the FIFA PSC, it is important to take the distinction of holding a nationality and being able to obtain a nationality into account and to check the list of all matches at any kind of football in which the player in question played for its representative teams. Moreover, it is also important to keep in mind that an official competition is considered a competition for representative teams organised by FIFA

or any confederation. As such, a friendly match is not considered an official competition. In addition, it must be stressed that a player is only considered as fielded in a match where he has physically played in the match. It does not matter whether the player participated as a starting eleven player or was a substitute for even a matter of seconds.

For players with shared or multiple nationalities it is important to keep in mind that the age of 21 is a decisive age. When a player is requested to play for a representative team after he turned 21, the player may no longer be eligible to play for another association.³⁷ In this regard, it must be noted that the age requirement "*he had not turned 21 years old*"³⁸ shall not apply to players who played their last match in an official competition in any kind of football for their current association prior to 18 September 2020, the date that the September 2020 amendments entered into force. Players who participated in an official competition (in any kind of football) for their current association in these circumstances could not have reasonably expected, based on the former wording of the RGAS, that such participation would prevent them from changing association in the future in the event that FIFA decided to relax its eligibility rules. As such, those players could still change of associations for which they are eligible to play.³⁹

It is not uncommon that the association for which the player is eligible to play advises the player in relation to his eligibility to play for another association. However, it must be stressed that associations cannot be considered as an objective party in this regard. It is therefore recommended to consult a legal objective specialist in relation to this matter.

For players who are able to hold dual or multi nationalities, it is advisable to make sure that the player holds the different nationalities at the first time of being fielded for their first match in an official competition in any kind of football for an association. As such, the player enables himself to invoke the exception under sub a and c of art. 9 annexe 3 of the RGAS. Associations are advised to closely follow talents who might be eligible to play for their association and make sure these talents hold the nationality of their association before being fielded in a match in an official competition at any level in any kind of football.

Concluding remarks

The rules in relation to the eligibility to play for representative teams are very specific and technical. FIFA provides all the stakeholders with a comprehensive explanation to these rules via the Commentary and the Guide.

The September 2020 reform addressed several

³⁵ Art. 9 para. 4 FIFA Statutes.

³⁶ Duly indicating:

1 the date of the match;

2 the age category;

3 the type (that is, official or unofficial) and the name of the competition; and

4 the kind of football (for example, 11-a-side, futsal or beach soccer).

³⁷ See in this regard art. 9 para. 2b and c FIFA Statutes.

³⁸ See art. 9 para. 2 sub b and c annexe 3 FIFA Statutes.

³⁹ See for example players who recently changed association based on this exception such as Munir El-Haddadi, Vurnon Anita and several players who changed association from The Netherlands to Suriname.

situations deemed to be of excessive severity or hardship that had been identified by associations or in practice, and codified jurisprudence of the FIFA PSC. Subsequently, four new exceptions to permit a change of association were introduced.

The Commentary is accompanied by a complete overview of the legal procedure and documents required for any eligibility or change of association request submitted to the FIFA PSC.

Based on the specific circumstances and particularities of these rules, it is highly recommended to consult legal experts in this regard, especially at the moment a player almost turns 21 years old.

Furthermore, associations are advised to follow talents closely, who might be eligible to play for their association, and make sure these talents hold the nationality of their association before being fielded in a match in an official competition at any level in any kind of football.

Schedule for a change of association

