

## Training Compensation in light of the Recent Jurisprudence of FIFA DRC and CAS



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→ **Training compensation - Court of Arbitration for Sport (CAS) - FIFA Dispute Resolution Chamber (FIFA DRC) - Player loan**

In this article, the author will discuss the legal framework of training compensation in an international dimension as established in the FIFA Regulations on the Status and Transfer of Players<sup>2</sup> and its recent announced amendments in relation to training compensation.<sup>3</sup> All relevant recently published jurisprudence of the FIFA Dispute Resolution Chamber and the Court of Arbitration for Sport will be discussed in light of the applicable provisions.

### Background

Already 25 years ago, the famous *BOSMAN* case led to the abolition of the actual transfer compensation between clubs at the end of a player's contract.<sup>4</sup> However in the past, there were still some legal openings to protect clubs that were involved with the training and education of players. Thus FIFA introduced a training compensation system for clubs that were involved in the training and education of players. The 2001 edition of the FIFA Regulations on the Status and Transfer of Players (RSTP) were the first rules that contained provisions which regulated the compensation for the training and education of young players. According to FIFA Circular no. 769 dated 24 August 2011, the system of training and education was designed to encourage more and better training of young players and to create solidarity among clubs, by awarding compensation to clubs that had invested in the careers

of its former players.<sup>5</sup> The *rationale* for FIFA's training compensation system is to ensure that training clubs are adequately rewarded for the efforts and costs they have invested in training young players.<sup>6</sup>

### In general

In accordance with the new Article 20 of the RSTP<sup>7</sup>, March 2020 edition, training compensation must be paid to a player's training club(s) when a player is registered for the first time as a professional and each time a professional is transferred until the end of the calendar year in which the player reaches the age of 23.<sup>8</sup> The obligation to pay training compensation arises

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2 If the transfer takes place in one national association, the national regulations of the relevant association are applicable.  
3 The amendments are introduced to ensure an efficient and consistent approach in preparation for the future introduction of the Clearing House. See [FIFA Circular no. 1743, 14 December 2020](#).  
4 [ECJ, 15 December 1995, Case C-415/93, Union Royale Belge des Sociétés de football association ASBL v. Jean-Marc Bosman Royal Club Liègeois SA v. Jean-Marc Bosman, SA d'Economic Mixte Sportive de l'Union Sportive du Littoral de Dunkerque, Union Royale Belge des Sociétés de Football Association ASBL, Union des Associations Européennes de Football Union des Association Européennes de Football v. Jean-Marc Bosman \[1995\] ECR I-4837](#).

5 [FIFA Circular, no. 769, 24 August 2001](#). See also [FIFA DRC, 10 December 2019, Strumia cases](#) and F.M. de Weger, 'The Jurisprudence of the FIFA Dispute Resolution Chamber', The Hague, T.M.C. Asser Press 2016.  
6 [CAS 2018/A/5513 Sport Club Internacional v. Hellas Verona Football Club S.p.A.](#), par. 47.  
7 Applicable as of January 2021. As from the January 2021 edition of the RSTP, the calculation of the training compensation will be based on the calendar year of the birthday of the player, as opposed to the season. See, in this regard, [FIFA Circular no. 1743, 14 December 2020](#).  
8 The nature of the player's first registration as a professional must be reflected by an international transfer of the player in TMS or by the international player passport provided by the affiliated national association; see FIFA DRC, 19 June 2020, Tompte. It is constant jurisprudence of the FIFA DRC that training compensation is calculated upon the football seasons of the old club of the player, not of the new club, in order to prevent clubs not being rewarded for their work in training players when they move to associations which have different season dates. See, in this regard, [FIFA DRC, 26 September 2019, no. 09191934](#). With the amendments of the RSTP as of January 2021, this will not be an issue any more.

whether the transfer takes place during or at the end of the player's contract.<sup>9</sup> The rules regarding training compensation are laid down in more detail in Annexe 4 of the RSTP, which will be discussed throughout the article. Furthermore, it is important to mention that the provisions concerning training compensation are not applicable to women's football.

From Article 2 par. 2 Annexe 4 to the RSTP, it follows that training compensation is not due if:

- ➔ the former club terminates the player's contract without just cause (without prejudice to the rights of the previous clubs);<sup>10</sup> or
- ➔ the player is transferred to a category 4 club; or,
- ➔ a professional reacquires amateur status on being transferred.<sup>11</sup>

When a club, with which the player was registered and trained, has ceased to participate in organised football and/or no longer exists due to, in particular, bankruptcy, liquidation, dissolution or loss of affiliation, the association of that club is entitled to receive the training compensation instead. This compensation shall then be reserved for youth football development programmes in the association(s) in question.<sup>12</sup>

### **The obligation to pay training compensation**

As established, training compensation shall be paid to a player's training club(s) when a player is registered for the first time as a professional and each time a professional is transferred until the end of the calendar year in which the player reaches the age of 23.<sup>13</sup>

### **First professional contract**

When a player signs his first contract as a professional, training compensation is payable until the end of the calendar year of his 23<sup>rd</sup> birthday. In that respect, it

is important to determine the status of the player. A player is considered a professional when he has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs.<sup>14</sup> The long-standing jurisprudence of the FIFA Dispute Resolution Chamber (FIFA DRC), which was reiterated in a decision of 2019, has established that a player's remuneration is a decisive factor in the determination of the status of the player and may well fall short of a living wage, but as long as it exceeds the expenses effectively incurred by the player, the criteria of Article 2 of the RSTP are met.<sup>15</sup> This means that, if the player signs a written contract for the first time before calendar year of his 23<sup>rd</sup> birthday and gets paid more than merely the expenses that he effectively incurs in return for his footballing activity, training compensation is due. Contrarily, this means that if the player signs a first written contract, but does not get paid more than the expenses he effectively incurs in return for his footballing activity, the player must be considered as an amateur player and as a consequence thereof, no training compensation is due.<sup>16</sup> On registering as a professional for the first time, the club with which the player is registered is responsible for paying training compensation within 30 days of registration to every club with which the player has previously been registered (in accordance with the players' career history as provided in the player passport)<sup>17</sup> and that has contributed to his training starting from the calendar year of his 12<sup>th</sup> birthday. The amount payable is calculated on a prorata basis according to the period of training that the player spent with each club.<sup>18</sup>

<sup>9</sup> The obligation to pay training compensation is without prejudice to any obligation to pay compensation for breach of contract; see Art. 1 par. 2 Annexe 4 RSTP.

<sup>10</sup> According to the FIFA Commentary, this club should not be rewarded for this behaviour. See also [CAS 2019/A/6096 FC Lugano SA v. FC Internazionale Milano S.p.A.](#), par. 67.

<sup>11</sup> If a player re-registers as a professional within 30 months of being reinstated as an amateur, his new club shall pay training compensation in accordance with Article 20 of the RSTP; see Art. 3 par. 2 RSTP. See also [FIFA DRC, 8 May 2020, Cooper](#).

<sup>12</sup> Art. 3 par. 3 Annexe 4 RSTP.

<sup>13</sup> See Art. 20 RSTP. As from the January 2021 edition of the RSTP, the calculation of the training compensation is based on the calendar year of the birthday of the player, as opposed to the season.

<sup>14</sup> See Art. 2 par. 2 RSTP. See also [FIFA DRC, 27 July 2020, Victor cases](#). See also FIFA DRC, 5 December 2019, Andrianarimanana which decision is confirmed by CAS in CAS 2020/A/6796 Andrianarimanana v. Fosa Juniors FC & FIFA, award of 27 October 2020. According to CAS jurisprudence, the status of the player as a "professional" is exclusively defined in the RSTP without any reference to national regulations. See, in this regard, [CAS 2016/A/4843 Hamzeh Salameh & Nafit Mesan FC v. SAFA Sporting Club & FIFA](#), referring to [TAS 2009/A/1895 Le Mans Union Club 72 c. Club Olympique de Bamako](#), quoted in: Dubey J.-P., 'The jurisprudence of the CAS in football matters (except Art. 17 RSTP)', CAS Bulletin, 1/2011, p. 4.

<sup>15</sup> [FIFA DRC, 18 October 2019, no. 10190097](#). The FIFA Regulations do not stipulate a minimum wage. The player can still be considered as a non-amateur, even if he agrees to perform services for a meagre salary. See in this regard [CAS 2016/A/4843 Hamzeh Salameh & Nafit Mesan FC v. SAFA Sporting Club & FIFA](#), par. 98, referring to [CAS 2006/A/1027 Blackpool F.C. v. Club Topp Oss](#), par. 18.

<sup>16</sup> See also [F.M. DE WEGER, 'The Jurisprudence of the FIFA Dispute Resolution Chamber'](#), The Hague, T.M.C. Asser Press 2016.

<sup>17</sup> The player passport plays a fundamental role in establishing the entitlement of the clubs to training compensation.

<sup>18</sup> See Art. 3 Annexe 4 RSTP. Only the precise period during which a player was effectively trained by a club must be taken into consideration. In other words, this means that to calculate training compensation, it is not only entire seasons that are to be taken into account. See FIFA Commentary explanation, Art. 3 par. 1 Annexe 4, p. 115, footnote 152.

### **Transfer between clubs of two different associations<sup>19</sup>**

Aside from the situation where the player signs his first professional contract before the end of the calendar year of his 23<sup>rd</sup> birthday, training compensation is also due if the professional is transferred between clubs of two different associations before the end of the calendar year in which he reaches the age of 23.<sup>20</sup> It is well-established in the jurisprudence of the FIFA DRC, and reiterated in a decision in 2019, that if two clubs conclude a transfer agreement providing for the respective financial obligations, *i.e.* a transfer fee, training compensation is considered as being included in the transfer fee. However, if the parties wish to stipulate the contrary to the aforementioned, *i.e.* training compensation being due in addition to the agreed transfer fee, the clubs need to explicitly mention it in the transfer agreement.<sup>21</sup> In the case of subsequent transfers of the professional, training compensation will only be owed to his former club for the time he was effectively trained by that club. In this case, the deadline for payment of training compensation is also 30 days following the registration of the professional with the new association.<sup>22</sup>

### **Training period**

It follows that 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. If the player has already terminated his training before the age of 21, then training compensation shall be payable until the end of the calendar year in which the player reaches the age of 23, but the calculation of the amount payable shall be based on the years between the age of 12 and the age when it is established that the player actually completed his training.<sup>23</sup> The burden of proof to establish that a player completed his training period before his 21<sup>st</sup> birthday lies with the club that claims it.<sup>24</sup> There are no specific criteria as to when

the training period can be considered terminated. This always has to be assessed on a case-by-case basis.<sup>25</sup> The rule is that a training period terminates when a player turns 21, the exception is where this moment occurs before a player's 21<sup>st</sup> birthday. FIFA applies a strict approach to the completion of training, so as not to jeopardise the right of training clubs to receive training compensation. Even if a player has played many matches for the first team in a first division, it was still not considered enough in certain cases.<sup>26</sup> In an award of the Court of Arbitration for Sport (CAS) of 2019, it was again confirmed that the wording of Article 1 par. 1 Annexe 4 of the RSTP makes it clear that such exception should not be accepted lightly, as it requires that it is evident that a player has terminated his training period before his 21<sup>st</sup> birthday for an exception to be made.<sup>27</sup>

**“ Both the FIFA DRC and CAS are generally still reluctant to decide a player's training period is terminated ”**

Although regular appearances in the A-team of a club have occasionally been considered sufficient reason to conclude that a player finished his training period,<sup>28</sup> the majority of CAS jurisprudence suggests that regular appearances in the A-team of a club do “*not necessarily constitute the only and decisive factor for the completion of a player's training.*”<sup>29</sup> Several other factors are to be taken into account, such as: (i) the player's value to a club, reflected in the player's salary, in the loan fee that is achieved for his services or in the value of the player's transfer; (ii) the player's public notoriety at the national and international level; (iii) his position at the club, if established as a regular or even holding the captaincy; (iv) the level of games; (v) his regular inclusion in the national team and so forth.<sup>30</sup>

So, both the FIFA DRC and CAS are generally still reluctant to decide a player's training period is terminated. Several important factors are to be taken into consideration when determining the duration of the training period, such as: (i) the player's value to

20 If the transfer takes place within one association, the national regulations are applicable. In that respect, it is important that according to Article 1 par. 2 of the RSTP, March 2020 edition, the national regulations should also provide a system to reward the clubs investing in the training and education of young players.

21 See [FIFA DRC, 26 September 2019, no. 09191934](#).

22 See Art. 3 Annexe 4 RSTP.

23 See Art. 1 par. 1 Annexe 4 RSTP.

24 See [FIFA DRC, 3 October 2019, no. 10191371](#). See also [CAS 2018/A/5513 Sport Club Internacional v. Hellas Verona Football Club S.p.A.](#), par. 67 and [CAS 2014/A/3553 FC Karpaty v. FC Zestafoni](#).

25 [CAS 2018/A/5513 Sport Club Internacional v. Hellas Verona Football Club S.p.A.](#), par. 65.

26 [CAS 2018/A/5513 Sport Club Internacional v. Hellas Verona Football Club S.p.A.](#), par. 70.

27 [CAS 2019/A/6096 FC Lugano SA v. FC Internazionale Milano S.p.A.](#), par. 93.

28 [CAS 2003/O/527 Hamburger Sport-Verein e.V. v. Odense Boldklub](#); [CAS 2006/A/1029 Maccabi Haifa FC v. Real Racing Club Santander](#).

29 [CAS 2018/A/5513 Sport Club Internacional v. Hellas Verona Football Club S.p.A.](#), par. 65, referring to [CAS 2008/A/1705 Grasshopper v. Alianza Lima](#), par. 43. See also [CAS 2017/A/5090 Olympique des Alpes SA v. Genoa Cricket & Football Club](#), par. 83.

30 [CAS 2019/A/6096 FC Lugano SA v. FC Internazionale Milano S.p.A.](#), par. 94, referring to [CAS 2017/A/5090 Olympique des Alpes SA v. Genoa Cricket & Football Club](#), par. 83-84. See also [CAS 2006/A/1029 Maccabi Haifa FC v. Real Racing Club Santander](#) and [CAS 2008/A/1705 Grasshopper v. Alianza Lima](#).

a club, which is reflected in the salary, (ii) his regular inclusion in the national team; (iii) the number of games played by the player in the “A” team of the club; as well as (iv) the player’s technical skills.

### Loan

According to Article 10 par. 1 of the RSTP, professionals may be loaned to another club on the basis of a written agreement between the professional and the clubs concerned.<sup>31</sup> A club where the player plays on a loan basis is entitled to receive training compensation.<sup>32</sup> A loan transfer almost always contains an educational element, especially with young players, and thus cannot be considered in the same way as a regular, permanent transfer. The original club also usually carefully chooses the club where such a player is placed, in order to safeguard the best possible development for the player’s career. The system of training compensation and loan transfers, in fact, often rests upon the same underlying goal, the education and training of young players. Thus, ensuring that the training clubs which register players on a loan basis also benefit from the training compensation mechanism was also one of the main goals of the legislator when drafting Article 10 par. 1 of the RSTP.<sup>33</sup> Furthermore, loan transfers are often free of charge. In the end, a different approach would force the loaning club to not only receive no remuneration but to even have to pay for the loan.<sup>34</sup>

From the latest jurisprudence, it follows that it has been consistently established that, when a player registers with a club affiliated to a different member association (*i.e.* the new club) from the one where he was previously registered (*i.e.* the former club), any club(s) that may have had the player on loan from the player’s former club should be entitled to claim training compensation from the new club.<sup>35</sup> The last sentence of Article 10 par. 1 of the RSTP stipulates that any loan is subject to the same rules applying to the transfer of players, including the provisions on training compensation and the solidarity mechanism. One of the aims of the said provision is to ensure that training clubs, who register players on a loan basis also benefit from the solidarity mechanism and training compensation. This approach is also in line with the FIFA DRC’s well-established jurisprudence that all clubs

which have contributed to the training and education of a player from the age of 12 are, in principle, entitled to training compensation for the timeframe that the player was effectively trained by them.<sup>36</sup> Any loan(s) that take place during a player’s registration with a former club do not interrupt the chain of entitlement of training compensation.<sup>37</sup> In other words, the period starting from the player’s original registration with a club up until his registration with a new club constitutes one timeframe, irrespective of any loan(s) that may have taken place during that period.<sup>38</sup> The nature of a player’s registration, whether on a definite or on a temporary basis with a club claiming training compensation, is in fact not relevant with respect to the question as to whether or not such club is entitled to receive training compensation for the period of time that the player was effectively trained by it.<sup>39</sup>

**“ The analogy established in Article 10 par. 1 of the RSTP could not be extended to the case in which a player is loaned to a club and, thus, is not being definitively transferred to the latter club ”**

However, it is worth considering that the analogy established in Article 10 par. 1 of the RSTP could not be extended to the case in which a player is loaned to a club and, thus, is not being definitively transferred to the latter club. In other words, the loan transfer of a player as well as the return of the player from the club that accepted him on loan to the club of origin do not constitute a subsequent transfer in the sense of Article 3 par. 1 sent. 3 Annexe 4 to the RSTP.<sup>40</sup> Thus, the obligation to pay training compensation arises only in cases where a player is definitively transferred to another club belonging to a different association.<sup>41</sup> The FIFA DRC clarified in 2020 that it could not have been the intention of the legislator of the relevant regulatory provision (Art. 10 par. 1 of the RSTP) to trigger the

<sup>31</sup> See also [FIFA DRC, 22 September 2019, no. 09190767](#).

<sup>32</sup> When granting training compensation to a club who had a player on loan from a former club before registering from said former club to a new club within the EU/EEA, the training category of the loaning club should be taken into consideration, and not the category of the loanee club.

<sup>33</sup> [CAS 2018/A/5513 Sport Club Internacional v. Hellas Verona Football Club S.p.A.](#), par. 57.

<sup>34</sup> [CAS 2018/A/5513 Sport Club Internacional v. Hellas Verona Football Club S.p.A.](#), par. 60.

<sup>35</sup> [FIFA DRC, 21 August 2020, Franchi](#).

<sup>36</sup> [FIFA DRC, 3 October 2019, no. 10193416](#); [FIFA DRC, 23 October 2019, no. 10192893](#); [FIFA DRC, 18 June 2020, Ceter](#).

<sup>37</sup> Although loans are, within the sense of the Regulations only permitted for professional players when taking place between two clubs affiliated to two different member associations (cf. Art. 10 RSTP), the DRC acknowledged that at national levels, member associations may sanction loans of amateur players between their affiliated clubs.

<sup>38</sup> [FIFA DRC, 21 August 2020, Franchi](#). See also [CAS 2018/A/5513 Sport Club Internacional v. Hellas Verona Football Club S.p.A.](#), par. 48, referring to [CAS 2013/A/3119 Dundee United FC v. Club Atlético Vélez Sarsfield](#) and [CAS 2014/A/3710 Bologna FC 1909 S.p.A. v. FC Barcelona](#).

<sup>39</sup> [FIFA DRC, 12 April 2019, no. 04191559](#); [FIFA DRC, 22 July 2019, no. 07191442](#); [FIFA DRC, 19 September 2019, no. 09192966](#); [FIFA DRC, 22 September 2019, no. 09190767](#); [FIFA DRC, 2 October 2019, no. 10191448](#); [FIFA DRC, 3 October 2019, no. 10193416](#); [FIFA DRC, 14 October 2019, no. 10194441](#); [FIFA DRC, 23 October 2019, no. 10192893](#); [FIFA DRC, 21 November 2019, no. 11194495](#); [FIFA DRC, 18 June 2020, Ceter](#).

<sup>40</sup> See also [CAS 2019/A/6096 FC Lugano SA v. FC Internazionale Milano S.p.A.](#), par. 74.

<sup>41</sup> [FIFA DRC, 3 October 2019, no. 10193416](#) and [FIFA DRC, 15 October 2019, no. 10193153](#).

consequences of Article 3 par. 1 Annexe 4 to the RSTP on the occasion of a transfer on a loan basis and, thus, potentially depriving the loan of its essential flexibility and function of providing young players with the opportunity to gain practical experience at another club in order to develop, in a positive way, personally and eventually, also for the benefit of the player's new club.<sup>42</sup>

Furthermore, the jurisprudence of CAS also established that the obligation to pay training compensation only arises in cases where a player is definitively transferred from one club to another. This approach is considered consistent with the actual *rationale* of the training compensation system, which is to encourage the recruitment and training of young players.<sup>43</sup> To hold that the loan of a player would interrupt the training period, could, in the opinion of CAS, deter training clubs from loaning players. It frequently occurs in the world of football that young players are not proficient enough to play for the first team of their club. In order to prepare these players for the first team, or to give these players a chance to train and play in order to try and reach the required level to play for the first team, a solution regularly used is to loan the player concerned to another team, in order for the player to gain experience with another club, and to prepare or give the player the chance to reach the requisite professional level for playing in the first team of the training club. However, suppose the making of such loan would entail the consequence that the training club would thereby waive its entitlement to training compensation. In that case, the training club might decide not to loan the player to another club merely in order to secure its entitlement to training compensation. In such a situation, the player would be deprived of the very training considered to be the most suitable for him. CAS regards such a situation as undesirable and, in 2019, endorsed the view of the FIFA DRC insofar that it states that any other interpretation of the FIFA Regulations would potentially deprive young players of the opportunity to gain practical experience in official matches for another club in order to develop their footballing skills in a positive way.<sup>44</sup>

Thus, the obligation to pay training compensation arises in cases where a player is definitively transferred from one club to another club belonging to a different association, but not when he is temporarily transferred to another club while still being contractually bound to his club of origin (yet, with the effects of the relevant contract being temporarily suspended), such as a loan.

Hence, the relevant entitlement can only be claimed against a new club that acquires the services of a player on a definitive and permanent basis, subject to the fulfilment of the prerequisites established in Article 20 and Annexe 4 of the RSTP. As said, within the framework of loans and for the purposes of the rules governing training compensation, the period of time that the player was registered on loan and the period of time that the player was registered with the club of origin should be considered one entire timeframe.<sup>45</sup>

### **Within the EU/EEA**

Within the European Union (EU)/European Economic Area (EEA), there are special provisions relating to training compensation. Article 6 Annexe 4 of the RSTP is a *lex specialis* to the general rule and is limited to a well-defined geographic scope.<sup>46</sup> In other words, it is an exception to the general principle of training compensation.<sup>47</sup> The title of this provision clearly suggests that its scope is narrowly circumscribed by the wording of paragraph 1<sup>48</sup> and paragraph 2.<sup>49</sup>

As discussed above, as a general rule, 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. The final year of training may occur before the calendar year of the player's 21<sup>st</sup> birthday, if it is established that the player completed his training before that time.<sup>50</sup> However, Article 6 par. 3 Annexe 4 of the RSTP contains special provisions in addition to this general rule. From this article it follows that, when players are moving from one association to another association inside the territory of the EU/EEA, and the former club does not offer the player a contract,<sup>51</sup> no training compensation is payable unless the former club can justify that it is entitled to such compensation.<sup>52</sup>

<sup>45</sup> [FIFA DRC, 22 July 2019, no. 07191442.](#)

<sup>46</sup> See for example [FIFA DRC, 3 October 2019, no. 10191371](#) and [FIFA DRC, 19 September 2019, no. 09190906.](#)

<sup>47</sup> [CAS 2018/A/5733 KRC Genk v. Manchester United FC](#), par. 67, referring to [CAS 2011/A/2682 Udinese Calcio S.p.A v. Helsingborgs IF](#) and [CAS 2006/A/1152 ADO Den Haag v. Newcastle United FC.](#)

<sup>48</sup> "For players moving from one Association to another inside the territory of the EU/EEA."

<sup>49</sup> "Inside the territory of the EU/EEA."

<sup>50</sup> Art. 1 par. 1 Annexe 4 RSTP foresees the potential early termination of the training period of a player prior to the age of 21 and is applicable to clubs based in countries outside of the EU/EEA. See [FIFA DRC, 3 October 2019, no. 10191371.](#)

<sup>51</sup> The CAS and the DRC decided, several times, that the obligation of a club to offer the player a contract when claiming training compensation is a requirement which only needs to be met within the EU/EEA, as also follows from the RSTP. This means that if the training club is not located within the EU/EEA, the aforementioned provision does not apply.

<sup>52</sup> [FIFA DRC, Urminsky, 14 July 2020.](#) This is without prejudice to the right to training compensation of the player's previous club(s); see Art. 6 par. 3 Annexe 4 RSTP.

<sup>42</sup> [FIFA DRC, 18 June 2020, Ceter.](#)

<sup>43</sup> [CAS 2019/A/6096 FC Lugano SA v. FC Internazionale Milano S.p.A.](#), par. 75 referring to [CAS 2011/A/2559 Genoa Cricket FC S.p.A. v. Sports Club Corinthians Paulista](#), par. 2.17 and [CAS 2013/A/3119 Dundee United FC v. Club Atlético Vélez Sarsfield](#), par. 113.

<sup>44</sup> [CAS 2019/A/6096 FC Lugano SA v. FC Internazionale Milano S.p.A.](#), par. 75 and [CAS 2013/A/3119 Dundee United FC v. Club Atlético Vélez Sarsfield](#), par. 112.

## TRAINING COMPENSATION IN LIGHT OF THE RECENT JURISPRUDENCE OF FIFA DRC AND CAS

The former club must offer the player a contract in writing, which offer must be at least of an equivalent value to the current contract, *via* registered post at least 60 days before the expiry of his current contract.<sup>53</sup> Unless, according to the FIFA DRC's well-established jurisprudence, a club can bring forward the occurrence of very exceptional circumstances, which had prevented the club from offering the player a contract.<sup>54</sup> This justification may be very difficult to prove and limited to extraordinary circumstances.<sup>55</sup> In relation to the entitlement of loaning clubs to training compensation, the argument that a loaning club did not offer the player a contract cannot be upheld when the loaning club is not in the position to offer the player a contract when he is bound by a contract with another club of the player.<sup>56</sup>

The above-mentioned is also supported by consistent CAS jurisprudence.<sup>57</sup> According to CAS jurisprudence, Article 6 par. 3 Annexe 4 to the RSTP does not require that a club offers a professional contract to all its young amateur players for fear of losing all right to training compensation. Such an obligation would have been too costly for the clubs and would have contravened “*the spirit and purpose of the FIFA transfer rules, which are set out in order to grant to clubs the necessary financial and sportive incentives to invest in training and education of young players.*”<sup>58</sup> The aims of sporting justice should not be defeated by an overly formalistic interpretation of the FIFA Regulations, which would deviate from their original purpose, appreciating that the standards informal requirements are higher in the case of professionals than amateurs.<sup>59</sup>

The purpose of the two alternative requirements set under Article 6 par. 3 Annexe 4 to the RSTP is to ensure that no player, whether amateur or professional, in whom the club has no interest is impeded to accept the offer of another club, merely because he carries some sort of “*compensation price tag*”. Indeed, if a club

is not interested in the services of one of its players and decides to write off the investment made for its training, the player should be free to move to another club with no strings attached. To put it another way, the application of an automatic compensation price tag for all amateur players should be deemed unreasonable.<sup>60</sup>

From the jurisprudence of CAS, it further follows that both alternatives serve a common purpose, *i.e.* to make the payment of training compensation subject to the condition that the club wanted to retain the services of the player. Only if the club sincerely and honestly pursued this goal shall the player's free movement be impeded by an automatic price tag calculated as a lump sum. It is in light of this common purpose that both alternatives must be interpreted and that CAS established its jurisprudence in relation to the second alternative, whereby the club must demonstrate (absent any offer) that it had a “*genuine and bona fide interest in retaining the services of the player*” in order to be entitled to claim training compensation.<sup>61</sup>

**” The application of an automatic compensation price tag for all amateur players should be deemed unreasonable “**

Moreover, the training club must prove that it desired to keep the player on the club's roster, or in its youth academy, with a view to keeping alive the option of granting him a professional contract at a later stage.<sup>62</sup> The club must take a proactive attitude *vis-à-vis* the player, so as to clearly demonstrate that it still counted on the player for future season(s).<sup>63</sup> Any such offer shall be at least of an equivalent value to the current contract. It must further be noted that Article 6 par. 3 Annexe 4 of the RSTP is without prejudice to the right to training compensation of the player's previous club(s).

In light of the above, it must be noted that, according to the well-established CAS jurisprudence, the application of Article 6 par. 3 Annexe 4 of the RSTP depends on the location of the transferring clubs and not on the nationality of the players.<sup>64</sup> Arguments for the freedom of movement of football players across the EU are

53 Art 6 par. 3 sent. 2 Annexe 4 RSTP. See also [FIFA DRC, 29 June 2020, Holland](#). A club must provide enough documentary evidence that it had offered the player a contract in accordance with Article 6 par. 3 sent. 2 and sent. 3 Annexe 4 to the RSTP (*cf.* Art. 12 par. 3 of the Procedural Rules). A temporary exception is incorporated in the January 2021 edition of the RSTP, following which the contract offer may be made by electronic mail, provided that the former club obtains confirmation from the player that he has received a copy of said offer and can provide such confirmation in case of any dispute. See Article 6 par. 3 (i) Annexe 4 RSTP.

54 [FIFA DRC, Urminsky, 14 July 2020](#).

55 See [CAS 2018/A/5733 KRC Genk v. Manchester United FC](#), par. 68.

56 See [FIFA DRC, 19 September 2019, no. 09192966](#).

57 See, *inter alia*, [CAS 2016/A/4721, Royal Standard de Liège v. FC Porto \(Player C.\)](#), par. 60, referring to [CAS 2014/A/3497 SK Slavia Praha v. Genoa Cricket and Football Club](#), par. 65; [CAS 2009/A/1757 MTK Budapest v. FC Internazionale Milano S.p.A.](#) and [CAS 2006/A/1152 ADO Den Haag v. Newcastle United FC](#).

58 See [CAS 2018/A/5733 KRC Genk v. Manchester United FC](#), par. 67, referring [CAS 2006/A/1152 ADO Den Haag v. Newcastle United FC](#), and *J.-P. DUBEY*, ‘The jurisprudence of the CAS in football matters (except Art. 17 RSTP)’, *CAS Bulletin*, 1/2011, p. 7 and references.

59 [CAS 2014/A/3497 SK Slavia Praha v. Genoa Cricket and Football Club](#), par. 65.

60 [CAS 2018/A/5733 KRC Genk v. Manchester United FC](#), par. 70, referring to [CAS 2006/A/1152 ADO Den Haag v. Newcastle United FC](#), par. 22.

61 [CAS 2018/A/5733 KRC Genk v. Manchester United FC](#), par. 70, referring to [CAS 2016/A/4721, Royal Standard de Liège v. FC Porto \(Player C.\)](#), par. 59 and see, *inter alia*, [CAS 2012/A/2890 FC Nitra v. FC Banik Ostrava](#), par. 69 and [CAS 2006/A/1152 ADO Den Haag v. Newcastle United FC](#), par. 23.

62 [CAS 2018/A/5733 KRC Genk v. Manchester United FC](#), par. 70, referring to [CAS 2006/A/1152 ADO Den Haag v. Newcastle United FC](#), par. 23.

63 [CAS 2018/A/5733 KRC Genk v. Manchester United FC](#), par. 70, referring to [CAS 2014/A/3497 SK Slavia Praha v. Genoa Cricket and Football Club](#), par. 63.

64 The fact that the criterion of nationality is irrelevant goes back to the *rationale* and the history of the provision itself, and has been confirmed by CAS in [CAS 2006/A/1152 ADO Den Haag v. Newcastle United FC](#).

raised by clubs. However, according to the FIFA DRC and CAS in several decisions, these arguments can only be raised by the player himself and not by the football clubs, although this is questionable. In light of the “*Wilhelmshaven-case*”, it can be questioned whether parties can rely on this argument since the Highest Regional Court emphasized that the “*free movement argument*” was also available to the club, which means that said Article 6 Annexe 4 to the RSTP is applicable when it concerns persons with EU nationality. In the *Wilhelmshaven* case of CAS of 5 October 2009, the Sole Arbitrator of CAS decided that Article 6 Annexe 4 to the RSTP on the intra EU/EEA transfer of players is narrowly circumscribed within a limited geographical area, *i.e.* the EU/EEA territory. Prior to examining if a contract had been offered by the club to the player, the case must fall within the scope of the above provision: in other words, the transfer must take place from one national association to another one within the EU/EEA.<sup>65</sup>

**Training costs and calculation of training compensation**

In order to calculate the compensation due for training and education costs, associations have been instructed to divide their clubs into a maximum of four categories in accordance with the clubs’ financial investment in training players. The training costs are set for each category and correspond to the amount needed to train one player for one year multiplied by an average “*player factor*”, which is the ratio of players who need to be trained to produce one professional player. The training costs are established on a confederation basis for each category of club. The categorization of a club at the time of the transfer of a player will be decisive. Each association must classify its clubs into different categories based on the extent of each club’s expenditure on the training of young players.<sup>66</sup> The category specified must be reviewed and updated every calendar year. Each association is also requested to insert the categorisation of its affiliated clubs concerned into the International Transfer Matching System (TMS).<sup>67</sup>

Confederation	Category I	Category II	Category III	Category IV
AFC	-	USD 40,000	USD 10,000	USD 2,000
CAF	-	USD 30,000	USD 10,000	USD 2,000
CONCACAF	-	USD 40,000	USD 10,000	USD 2,000
CONMEBOL	USD 50,000	USD 30,000	USD 10,000	USD 2,000
OFC	-	USD 30,000	USD 10,000	USD 2,000
UEFA	EUR 90,000	EUR 60,000	EUR 30,000	EUR 10,000

As a general rule, to calculate the training compensation due to a player’s former club(s), it is necessary to take the costs that would have been incurred by the new club if it had trained the player itself. Accordingly, the first time a player registers as a professional, the training compensation payable is calculated by taking the training costs of the new club multiplied by the number of years of training, in principle from the calendar year of the player’s 12<sup>th</sup> birthday to the calendar year of his 21<sup>st</sup> birthday.<sup>68</sup> In the case of subsequent transfers, training compensation is calculated based on the training costs of the new club multiplied by the number of years of training with the former club. To ensure that training compensation for very young players is not set at unreasonably high levels, the training costs for players for the seasons between their 12<sup>th</sup> and 15<sup>th</sup> birthdays (*i.e.* four seasons) shall be based on the training and education costs of category 4 clubs.<sup>69</sup>

For players moving from one association to another inside the territory of the EU/EEA, the amount of training compensation payable shall be established based on the following:

- If the player moves from a lower to a higher category club, the calculation shall be based on the average training costs of the two clubs;
- If the player moves from a higher to a lower category, the calculation shall be based on the training costs of the lower-category club.<sup>70</sup>

65 CAS 2009/A/1810 and 1811 SV *Wilhelmshaven v. Club Atlético Excursionistas & Club Atlético River Plate*. See for more details: *F.M. de WEGER*, ‘The Jurisprudence of the FIFA Dispute Resolution Chamber’, The Hague, T.M.C. Asser Press 2016.

66 The category specified shall be reviewed at the beginning of the season only and be valid for the relevant season. Associations are not permitted to amend the category of a club during a season. See [FIFA Circular no. 1726, 30 July 2020](#).

67 See Art. 4 Annexe 4 RSTP and [FIFA Circular no. 769, 24 August 2001](#). The categorisation identified in TMS will prevail over any conflicting categorisation. See in this regard also [FIFA Circular no. 1726, 30 July 2020](#).

68 As previously indicated, as from 1 January 2021 the calculation method for training compensation is amended and the calculation of training compensation will be based on the calendar year of the birthday of the player, as opposed to the season. See [FIFA Circular no. 1743, 14 December 2020](#).

69 See Art. 5 Annexe 4 RSTP. The DRC may review disputes concerning the amount of training compensation payable and shall have discretion to adjust this amount if it is clearly disproportionate to the case under review.

70 See Art. 6 par. 1 Annexe 4 RSTP.

The club shall be compensated for the entire time that it trained the player, and not only for the time, it trained him as a professional. Based on the clear wording of Article 2 of Annexe 4 of the RSTP and, as already indicated, training compensation is due regardless of whether the player transfers during or at the end of his contract.<sup>71</sup> If a player is injured for a certain period of time, then training compensation can still be claimed for the period that the player is injured. This particular period has to be considered as part of the training period.<sup>72</sup> In case of discrepancy between the player passport, issued by the respective national football associations in relation to the date the player was registered, the FIFA DRC will place more emphasis on the information contained in the player passport issued by the football association to which national association the player is affiliated.<sup>73</sup>

The FIFA DRC may review disputes concerning the amount of training compensation payable and shall have the discretion to adjust this amount if it is clearly disproportionate to the case under review.<sup>74</sup> In this regard, along with the established jurisprudence, the FIFA DRC deemed it can decide to reallocate the clubs playing in the highest division of the relevant association to the highest available category.<sup>75</sup> The amount of training compensation is to be calculated in accordance with the costs established on a confederation basis for each club category.<sup>76</sup> The indicative amount provided by the club will only be altered if the circumstances of the player in question are exceptional and/or if the outcome of the calculation is clearly disproportionate.<sup>77</sup>

### **Waiver of training compensation**

A former club that is entitled to training compensation must take into account that a claim must be submitted to FIFA within two years of the event giving rise to the dispute, otherwise, the FIFA DRC shall not hear the case.<sup>78</sup> The non-payment of training compensation is considered as the event that gives rise to the dispute.<sup>79</sup>

A club may agree at any time to renounce its entitlement to training compensation, hence only the club which is officially entitled to receive training compensation may waive its right to training compensation.<sup>80</sup> Any possible settlement concluded between the former club or the new club and the player cannot, in any sense, establish that the former club(s) loses and, therefore, forfeits its right to receive training compensation from the new club.

In 2019, the FIFA DRC decided, in line with its well-established jurisprudence, that a club that waives its right to training compensation would have to express unequivocally its waiving of training compensation rights, in the sense of Article 20 and Annexe 4 to the RSTP concerning training and education provided for a specific player. This waiver should be a clear and unambiguous waiver of its training compensation rights,<sup>81</sup> which document should be uploaded in TMS.<sup>82</sup> A document which is drafted in very general terms, referring for instance to “*any type of compensation*”, does not affect the potential entitlement to training compensation nor offsets the obligation to pay the training compensation.<sup>83</sup>

### **Circumvention**

Situations exist in which a club may attempt to circumvent its payment of training compensation<sup>84</sup> by means of “*bridge transfers*”.<sup>85</sup> A bridge transfer is presumed by FIFA, unless established to the contrary, that if two consecutive transfers, national or international of the same player occur within a period of 16 weeks, the parties (clubs and player) involved in those two transfers have participated in a bridge transfer.<sup>86</sup> The aim of FIFA here is to ensure that football transfers have a legitimate purpose and are not undertaken to circumvent FIFA regulations and applicable laws.<sup>87</sup>

In relation to the circumvention of the obligation to pay training compensation, bridge transfers can be characterized as a transfer of a player to a lower category in order to avoid or limit the amount of training compensation. In these cases, a player is often

71 [FIFA DRC, 15 October 2019, no. 10193153](#).

72 Injuries are considered by the FIFA DRC as part of football; see in this regard FIFA DRC, 13 June 2008, no. 681123. When a player is still registered at the club and is doing his rehabilitation, the club is still entitled to training compensation. The burden of proof regarding the degree of training during his injury lies on the club, see CAS 2006/A/1027 Blackpool F.C. v. Club Topp Oss, par. 26-28.

73 [FIFA DRC, 27 July 2020](#), Victor cases.

74 Art. 5 par. 4 Annexe 4 RSTP.

75 [FIFA DRC, 10 December 2019, Strumia cases](#).

76 See for the latest edition [FIFA Circular no. 1726, 30 July 2020](#).

77 [FIFA DRC, 9 June 2020, Morel](#).

78 See Art. 25 par. 5 RSTP.

79 See for example, [FIFA DRC, 18 June 2020, Ceter](#) and [FIFA DRC, 25 September 2019, no. 09192370](#). The deadline for the payment of training compensation is 30 days following the registration of the player with the new association. This is also follows from [CAS 2016/A/4428 Udinese Calcio S.p.A. v. Santos Futebol Clube & FIFA](#), par. 190.

80 [FIFA DRC, 23 October 2019, no. 10192893](#).

81 [FIFA DRC, 23 October 2019, no. 10192755](#).

82 [FIFA DRC, 7 February 2020, Keller](#).

83 [FIFA DRC, 7 April 2020, Zanette](#).

84 The Swiss Federal Tribunal defines a circumvention of a rule (freely translated) as follows: “*A circumvention of a regulation is given in case someone acts according to the wording of such regulation but does not respect/comply with its purpose*” (SFT 114 Ib 15, par. 3a).

85 Since the March 2020 edition of the RSTP, bridge transfers are defined in Article 5bis.

86 See Art. 5bis RSTP.

87 [FIFA Circular no. 1709, 13 February 2020](#).

immediately transferred to a third club which, had it signed, the player directly would have had to pay a higher amount of training compensation. A very short stay with lower category clubs and when a player did not play any matches for the bridge club are relevant indications that a situation of circumvention took place.<sup>88</sup>

### Proposal

With the principle of procedural economy in mind, FIFA introduced Article 13 of the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (Procedural Rules). FIFA announced in 2019 that the FIFA Players' Status Department (PSD) began to apply, with immediate effect, Article 13.<sup>89</sup> Article 13 was introduced in order to speed up the decision-making process in training compensation and solidarity mechanism cases without any complex factual or legal issues. The relevant article grants the PSD the ability to submit written proposals to the parties involved in a dispute related to training compensation and the solidarity mechanism regarding the calculation of the amounts owed.<sup>90</sup> This proposal becomes final and binding after 15 days following its notification, if it is accepted by all parties or the parties fail to provide an answer within the deadline.<sup>91</sup>

Parties still need to submit their training compensation claims *via* TMS, pursuant to Article 1 par. 1 Annexe 6 of the RSTP. The claim must contain all the mandatory documentation and information provided for in Article 5 par. 2 and Article 6 par. 2 Annexe 6 to the RSTP, as well as Article 9 par. 1 of the Procedural Rules. Once the PSD is in possession of a complete claim, an analysis of the claim is made in order to determine: (i) that it does not entail any complex legal or factual issues; and (ii) that, *prima facie*, all the regulatory requirements for being entitled to receive training compensation or solidarity contribution have been fulfilled. If both conditions are met, the PSD will provide the parties with a written

proposal *via* TMS.<sup>92</sup> Although this is understandable from an economic procedural aspect, FIFA should not apply Article 13 too lightly. Furthermore, it is interesting to see which elements are decisive for the PSD in the decision-making process.

Once the proposal of the PSD has been notified to the parties *via* TMS, the parties will have 15 days to either accept or reject the proposal and provide the reasons which could justify the rejection. If one of the parties rejects the proposal, the proceedings will continue according to the pertinent provisions laid down in the Procedural Rules. In the case of rejection by the respondent club, the latter shall provide its position to the claim within the stipulated time frame.

If neither party rejects the proposal of the PSD within the 15 days following its notification *via* TMS, the proposal automatically becomes binding on them.<sup>93</sup>

### Final remarks

In this article, the author reviewed and analysed the recent jurisprudence of FIFA DRC and CAS in relation to the obligation to pay training compensation and shed light on the application of the relevant provisions by the decision making bodies.

FIFA DRC and CAS follow a consistent line and have well-established jurisprudence in relation to the obligation to pay training compensation

From the recent jurisprudence, it appears that the FIFA DRC and CAS follow a consistent line and have well-established jurisprudence in relation to the obligation to pay training compensation. The jurisprudence confirmed that a player is considered to be a professional when he has a written contract and receives payments exceeding expenses. In addition, it was confirmed that the nature of a players' registration, whether on a definite or on a temporary basis with a club claiming training compensation, is not relevant with regard to the question of whether or not such claimant club is entitled to receive training compensation for the period of time that the player was effectively trained by it and, as such, a club where a player plays on loan is entitled to receive training compensation. Furthermore, if the former club does not offer the player a contract within the EU/EEA, no training compensation is payable by the new club, unless the former club can justify that it is entitled to such compensation.

<sup>88</sup> [FIFA DRC, 30 October 2019, no. 10192730](#). In this case, the DRC did not find the explanation of the club convincing as to why a talented player who was attracting the attention of several clubs would opt to join a small club to stay there for less than a month before moving to a new club.

<sup>89</sup> See [FIFA Circular no. 1689, 21 August 2019](#). In [FIFA Circular no. 1743, 14 December 2020](#), FIFA confirmed the implementation of proposals by the FIFA general secretariat in training compensation disputes in non-complex contractual disputes.

<sup>90</sup> See, for example, [FIFA DRC, 21 August 2020, Franchi](#).

<sup>91</sup> Given its wording and the legal effects deriving from it, the correspondence sent by the FIFA Administration, informing the parties that the proposal of FIFA became final and binding, is to be regarded as a decision since it materially and definitively affects the legal position of the clubs, and is therefore enforceable before the competent authority. See, *inter alia*, [FIFA DC, 6 April 2020, ref. 200387](#), par. 18 and [FIFA DC, 14 March 2020, ref. 200228](#), par. 18. This is codified in the Procedural Rules January 2021 edition. See Art. 13 par. 3 Procedural Rules.

<sup>92</sup> Following Article 2, par. 1, Annexe 6 to the RSTP, all clubs and all member associations should check the "Claims" tab in TMS at regular intervals of at least every three days.

<sup>93</sup> See [FIFA Circular no. 1689, 21 August 2019](#).

With regard to the completion of the training and education period, the FIFA DRC and CAS are of the opinion that, if it is evident that the player has terminated his training period before the age of 21, the player may have completed his training. However, following the recent jurisprudence of FIFA DRC and CAS, we can conclude that both institutes are still quite reluctant to establish that the training period of a player has terminated before the age of 21. The decision must be taken on a case-by-case basis in order to establish that the training period was completed.

It is expected that the FIFA DRC and CAS will continue to follow their well-established jurisprudence in the future, as well as further create and, therefore, contribute to a clear and unambiguous regulatory framework in relation to the obligation to pay training compensation in international dimensions. The fact that FIFA elected in 2019 to apply Article 13 of the Procedural Rules is a sign that FIFA is also of the opinion that the FIFA DRC has clear established jurisprudence relating to training compensation. It is interesting to see which elements are decisive for the PSD in the decision-making process to submit a written proposal and what the impact of applying Article 13 of the Procedural Rules will be. Although this is understandable from an economic procedural aspect, FIFA should not apply Article 13 too lightly.

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