COVID-19: a legal perspective on FIFA's guiding principles for national football associations

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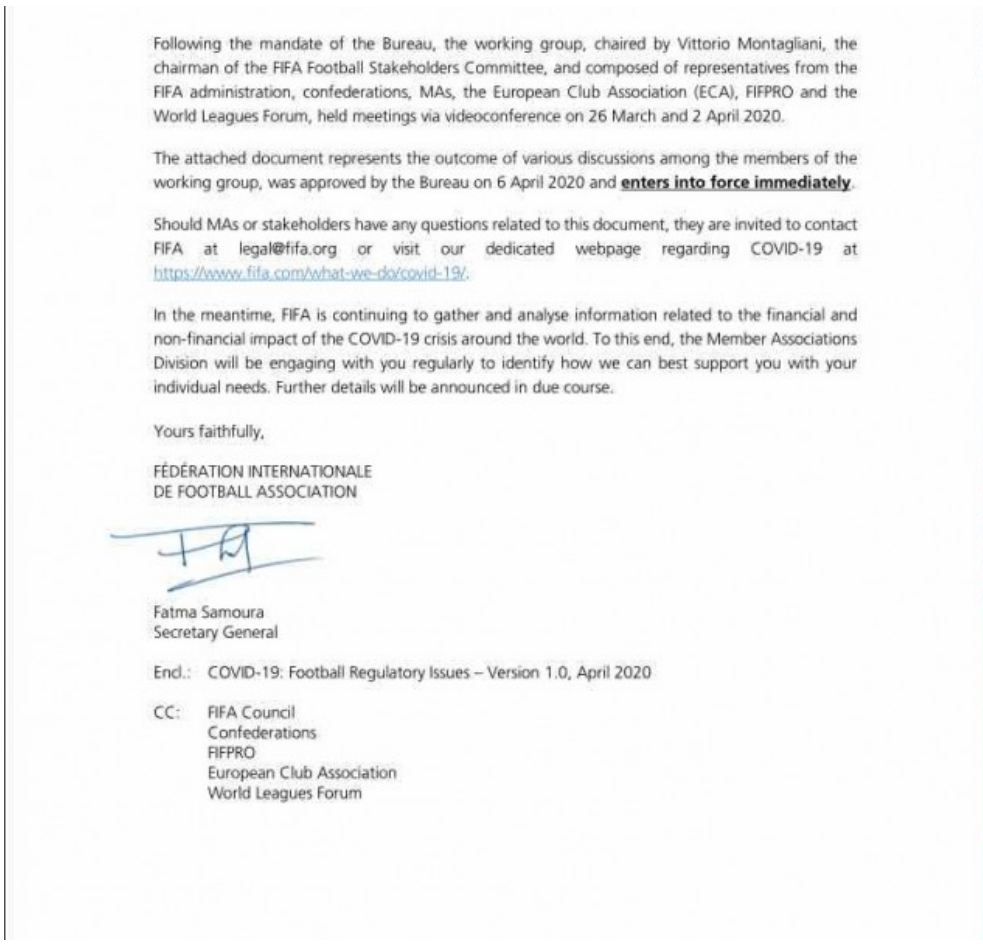

Following the mandate of the Bureau, the working group, chaired by Vittorio Montagliani, the chairman of the FIFA Football Stakeholders Committee, and composed of representatives from the FIFA administration, confederations, MAs, the European Club Association (ECA), FIFPRO and the World Leagues Forum, held meetings via videoconference on 26 March and 2 April 2020.

The attached document represents the outcome of various discussions among the members of the working group, was approved by the Bureau on 6 April 2020 and **enters into force immediately**.

Should MAs or stakeholders have any questions related to this document, they are invited to contact FIFA at legal@fifa.org or visit our dedicated webpage regarding COVID-19 at https://www.fifa.com/what-we-do/covid-19/.

In the meantime, FIFA is continuing to gather and analyse information related to the financial and non-financial impact of the COVID-19 crisis around the world. To this end, the Member Associations Division will be engaging with you regularly to identify how we can best support you with your individual needs. Further details will be announced in due course.

Yours faithfully,

FÉDÉRATION INTERNATIONALE
DE FOOTBALL ASSOCIATION

Fatma Samoura
Secretary General

Encl.: COVID-19: Football Regulatory Issues – Version 1.0, April 2020

CC: FIFA Council
Confederations
FIFPRO
European Club Association
World Leagues Forum

This article examines the regulatory and legal issues for FIFA member associations deriving from the COVID-19 virus outbreak and provides an overview of FIFA's guiding principles[1], as detailed in FIFA Circular no. 1714. As FIFA has also declared the COVID-19 pandemic to be a force majeure event, the authors will also discuss the legal concept of force majeure in light of the published case law of the leading form in international football: the FIFA Dispute Resolution Chamber and the FIFA Players' Status Committee as well as the Court of Arbitration for Sport.

Specifically, it looks at:

- Events to date
- FIFA COVID-19 working group
- Force majeure from FIFA DRC, FIFA PSC and CAS perspective
- Contractual clauses
- The core matters
    - Expiring agreements and new agreements
    - Agreements that cannot be performed as the parties originally anticipated
    - The appropriate timing for registration periods ('transfer windows')
- Other regulatory matters
- Final remarks

Events to date

Football activities are currently suspended virtually everywhere in the world as a result of the COVID-19 virus. Each member of the World League Forum, the association of leading global football leagues, has now suspended its competition. In its statement of 17 March 2020[2], FIFA explained that particularly for football, finding appropriate and fair solutions at global level is imperative.

From FIFA's perspective, the current situation requires unity, solidarity and a shared sense of responsibility. FIFA is therefore in discussions with confederations, member associations and other stakeholders around the world to ensure the continuation of both global football development and worldwide solidarity programmes. The vast majority of FIFA's member associations depend on FIFA's solidarity programmes for their activities for both women's and men's football. FIFA has stressed that it is, therefore, essential that their interests, both from sporting and economic perspective, are protected.

In light of the COVID-19 crisis, FIFA viewed it necessary to give further directions to its members and provide appropriate guidance and recommendations to find a fair solution for both clubs and employees. FIFA has, therefore, contacted its professional football stakeholders in order to discuss necessary amendments to or temporary dispensation from FIFA's Regulations on the Status and Transfer of Players (the **FIFA RSTP**). FIFA took this approach in order to protect contracts for players and clubs.

In the form of its Circular of 7 April 2020, no. 1714, FIFA has now provided its member associations and its stakeholders with guiding principles and recommendations in its document called COVID-19 Football Regulatory Issues (the **Document**), which enters into force immediately. It must, however, be underlined that the Document only concerns proposed guiding principles. FIFA also asks for cooperation of associations and stakeholders "to both mitigate the consequences of disruptions caused by COVID-19 and ensure that any response is harmonised in the common interest".

This article will focus on the regulatory and legal issues for FIFA member associations deriving from the worldwide pandemic of the COVID-19 virus. In the Document, FIFA established the COVID-19 pandemic to be a *force majeure* event. It will also focus on the legal concept of *force majeure* in light of the relevant published case law of the leading forum in international football: *i.e.* the FIFA Dispute Resolution Chamber (**DRC**) and the FIFA Players' Status Committee (**PSC**), as well as the Court of Arbitration for Sport (**CAS**).

FIFA COVID-19 working group

On 18 March 2020, the Bureau of the FIFA Council (**Bureau**) created a working group with FIFA and the confederations in response to the COVID-19 virus outbreak. This working group examined, amongst other things, the need for amendments to or temporary dispensation from the FIFA RSTP in order to protect the contracts for both players and clubs and adjusting player registration periods. Previously, the working group proposed amendments to the existing regulations, including the FIFA RSTP. These draft proposals are now approved and further explained by FIFA in the Document.

It is FIFA's position that the situation must be avoided that its stakeholders receive differing treatment or outcomes of dispute resolution before national courts, employment tribunals, or FIFA judicial bodies. Amongst other matters, many, FIFA has given clarity on three core matters:

1. Expiring agreements (i.e. agreements terminating at the end of the current season) and new agreements (i.e. those already signed and due to commence at the start of the next season);
2. Agreements that that cannot be performed as the parties originally anticipated as a result of COVID-19; ans,
3. The appropriate timing for registration periods ('transfer windows').

In the Document, the Bureau recognised that the disruption to football by COVID-19 is a *force majeure* event.[3] However, it is worth noting that that recognition is not binding in terms of future FIFA and CAS proceedings. Therefore, before discussing the above points in more detail, we will first focus on the legal concept of *force majeure* deriving from the jurisprudence of the DRC, PSC and the CAS.

Force majeure from FIFA DRC, FIFA PSC and CAS perspective

The legal concept of *force majeure* is widely and internationally accepted and, in particular, is valid and applicable under Swiss law, being the law applicable to FIFA (with its seat in Switzerland).[4] According to the jurisprudence of the Swiss Federal Tribunal (2C_579/2011) the concept of *force majeure* can be defined as follows:

> "*Force majeure takes place in the presence of extraordinary and unforeseeable events that occur beyond the sphere of activity of the person concerned and that impose themselves on him/her in an irresistible manner*".[5]

However, the concept of *force majeure* is not defined in the RSTP. Reference is only made in Article 27 FIFA RSTP (latest version), which provision reads as follows:

> *"Any matters not provided for in these regulations and cases of force majeure shall be decided by the FIFA Council whose decisions are final."*

The DRC, PSC and CAS has dealt with cases in which the concept of *force majeure* was raised.

However, these authorities indicate an extremely narrow approach to the application of that concept in practice. Indeed, and to the best knowledge of the authors, FIFA decision-making bodies have never found in favour of an argument of *force majeure*.

The jurisprudence of the DRC is informative in that, as a general rule, the concept of *force majeure* is only applicable to unpredictable situations, facts or circumstances that are extraordinary and unexpected.[6] The published case law shows that the DRC have not yet accepted arguments of *force majeure*.

For example, unexpected exchange rates[7], specific situations in a country[8] and the cancelation of a competition by the national football federation as a result of a conflict with the 'Ministry of Youth and Sport' have not been considered as *force majeure*.[9] Further, in relation to training compensation, the DRC decided the Indian Ocean tsunami in 2004 does not lead to loss of training compensation.[10] In all these cases, the DRC did not expand in detail on the rationale for its decisions, determining simply that the party relying on *force majeure* did not present documentary evidence to support of its allegations.

The PSC has followed the same approach as the DRC. A *force majeure* event will only be considered to be valid in the event that the situation a contractual party finds itself in is beyond its control.[11] Several cases show that the concept of *force majeure* will not be established easily with regard to outstanding transfer compensations.

In fact, PSC jurisprudence shows that alleging a *force majeure* event because all banks in a certain country were on r strike,[12] the illegal blocking of credit to a bank account,[13] the restriction of international bank transfers due to bankruptcy proceedings that a party was undergoing,[14] not being able to register a player due to his nationality,[15] a scandal in relation to match-fixing, and an incentive bonus resulting to non-payment of broadcaster payments to clubs,[16] were all not sufficient to establish *force majeure*.

From the jurisprudence of the CAS it can be derived that the concept of *force majeure* implies an objective rather than a personal impediment, beyond the control of the "obliged party", that is unforeseeable, which cannot be remedied and which renders the performance of the obligation impossible.[17] From a CAS perspective, it can be stated that, in some extraordinary and limited circumstances, a party that does not fulfil a contractual obligation may be excused its breach of contract if it can prove that the breach is due to the occurrence of an event or an impediment that is not only beyond its control (and that it cannot be remedied by alternative performance) but also that such the occurrence could not have been reasonably expected to have taken into account when it assumed the obligation that was breached.[18]

The burden of proof on the occurrence of *force majeure* rests on the party justifying its failure to comply with an obligation.[19] This principle is also stated in Article 8 of the Swiss Civil Code.[20] The mere reference to a general situation of difficulty in performance is not enough to justify *force majeure*. The party asking for its application must identify which specific and precise facts the circumstances which prevented it from performing a certain activity.[21]

As mentioned, *force majeure* takes place when extraordinary and unforeseeable events occur beyond the sphere of activity of the person concerned which prevents performance of the contractual obligation for the counterparty party.[22] The preconditions for the establishment of *force majeure* are narrowly interpreted, since the concept of *force majeure* is an exception to the binding nature of a contractual obligation.[23]

The CAS has also been hesitant to establish *force majeure* as a justification for the failure to comply with an obligation. For example, financial difficulties due to the economic crisis in Egypt at the end of 2016 and the consequential loss of value of the local currency were not considered valid arguments for not complying with an obligation to pay.[24] It is well known – as recognized in Swiss law and CAS jurisprudence – that financial difficulties or the lack of financial means of a club also cannot be raised as justification for non-compliance with an obligation to pay.[25]

The "*problematical social and political environment in Ukraine*" also did not establish force *majeure* in relation to making bank transfers to other clubs.[26]

The CAS has also decided that the Ebola virus outbreak in 2014 and 2015 did not establish *force majeure*.[27] At the time, the World Health Organization (the "WHO") did not declare that the risk of spreading of the Ebola virus was imminent and that the danger was real. That situation can be contrasted with the situation of the COVID-19 virus outbreak, which has been declared to be an extraordinary event causing a public health risk.[28] In other words, the current COVID-19 virus outbreak may be considered to be '*an event that may affect adversely the health of human population, with an emphasis on one which may spread internationally or may present a serious and direct danger*'.[29]

In any event, CAS jurisprudence indicates that the concept of *force majeure* is not applicable if a party has demonstrated fault by the other party.[30] In other words, *force majeure* will most likely not be established in the event that the performance of the obligation by a party is impossible due to reasons than that used to invoke the concept of *force majeure* in the first place. As previously indicated, this leads to the conclusion that the party invoking *force majeure* must present specific particular the precise and concrete facts which allegedly prevented that party from fulfilling its obligation(s). In that context, if a party has already defaulted on its obligations, it cannot benefit from an alleged *force majeure* event that occurred after its default and successfully deploy it as a ground for its defence.[31]

However, CAS jurisprudence also shows that certain circumstances can be found to be *force majeure*. For example, the Egyptian civil war, which put an end to the 2012/2013 season and prevented the club from performing all or parts of its contractual obligations, was considered as an event of *force majeure*. The CAS stated that this event was beyond the control of the parties; they could not have reasonably contemplated and provide for when entering into the employment contract; could not reasonably have been avoided or overcome; and which was not attributable to either of the parties. The club was, accordingly, released from further performance of its obligations.[32] In other words, that *force majeure* event discharged the club of its obligations.

In light of the above and further to the jurisprudence of the CAS, it can be concluded that legal concept of *force majeure* is narrowly interpreted. Only when it is considered impossible for a party to fulfil its obligations due to the *force majeure* event and no fault of that party exists, a valid *force majeure* situation can apply.

Taking into account the jurisprudence of FIFA and CAS and now applying it to the COVID-19 pandemic, it is anticipated that the current pandemic will be seen as a *force majeure* event. However, as always, much will depend on the specific circumstances of the case. As discussed, *force majeure* must be demonstrated by the party invoking the *force majeure* defence with specific particulars that prevented this party from fulfilling its obligations and justifying an exception to the legal principle of *pacta sunt servanda ("agreements must be kept")*. In fact, the concept of *force majeure* and the impossibility to perform an obligation are directly linked. In this regard, any fault from the party invoking *force majeure* might be fatal.

Contractual clauses

Although *force majeure* clauses are not included in employment contracts in the UK or Ireland (noting that *force majeure* is a civil law concept that has no real meaning under the common law), as to other jurisdictions, we observe that *force majeure* clauses are included in employment agreements. These clauses are included to provide that the employer should not be liable for failing to fulfil any or all of its contractual obligations where such failure is due to factors beyond its control anymore, such as war, governmental measures, epidemics, pandemics, nature disasters, etc.[33] Here are examples of *force majeure* clauses which football clubs included in employment contracts with their players:

1. *"In case that the [Player] cannot participate in training and matches because of non-work-related injury and diseases as well as this Contract has not been dissolved, the salary that the [Club] shall pay the [Player] no less than 50% of the full amount, except for those resulted from breach of law, statutes and disciplines, violation of social ethics and other misconduct."*

2. *"Force majeure, as it is defined by the law, exonerates the parties, in full or in part, of their liability in the case of total or partial non-performance, or delayed or inadequate performance of the obligations committed to under the present agreement for sports activities.*

   The Party invoking force majeure has the obligation to notify the other party, within 5 days from the occurrence of the force majeure case and to take any reasonable measures to limit its consequences, otherwise it will not benefit from the effects of liability exoneration foreseen by it."

3. *"If the [league or cup tournament] is terminated or cancelled if full due to nature disaster (earthquake, volcanic, explosion, flood, etc.), infectious disease (murrain, SARS, H1N1 etc) and other reasons, this employment contract will be automatically terminated. Each party will NOT pay any compensation to the opposite Party."*

The term *force majeure* leaves room for interpretation, so it should be clearly defined, and preferably add a non-exhaustive list of relevant examples. However, even if the COVID-19 pandemic is not explicitly mentioned in the contract itself, the strict governmental measures as taken by national authorities seem to offer opportunities for parties to discharge its legal responsibility. It seems to be clear that the COVID-19 virus outbreak has made many obligations deriving from several agreements made impossible on a worldwide scale. [34]

The core matters

As mentioned in the introduction, FIFA has given guidance on three core regulatory issues which arise from the COVID-19 virus outbreak and has laid down the proposed changes in the Document.

Expiring agreements (i.e. agreements terminating at the end of the current season) and new agreements (i.e. those already signed and due to commence at the start of the next season)

Given the postponement or suspension of league championships, and the apparent overwhelming desire by member associations of those competitions to be completed, it is very likely that those competitions will take place after the original end date of the season if possible. This will cause the original start date of the next season to be impacted. To safeguard the sporting integrity of the

competitions, FIFA urge priority to be given to the former club to complete its season with its original squad. FIFA proposes that agreements, which are due to expire at the original end date of a season be extended until the new end date of the season. FIFA recognises that this proposal is ultimately a matter for national law.

It is also proposed that the commencement date of agreements at the original start date of a new season will also be delayed until the new start date of a new season. This would apply to transfer and loan agreements by analogy.

Agreements that cannot be performed as the parties originally anticipated

In the statement of FIFA, dated 17 March 2020,[35] FIFA explained that cooperation, mutual respect and understanding must be the guiding principles for all decisions-makers to have in mind at this crucial moment in time. The concept of contractual frustration is clear in both common law and civil law systems. Article 119(1) of the Swiss Code of Obligations provides that an *"obligation is deemed extinguished where its performance is made impossible by circumstances not attributable to the obligor".* FIFA refers in the Document that several clubs informed their employees that only a part of the monthly remuneration will be paid due to the COVID-19 virus outbreak because of the fact that its performance deriving from the employment contract is made impossible.[36] Whereas the players of Leeds United, Juventus and Barcelona voluntarily agreed to a wage reduction,[37] other clubs asked its players to accept pay cut, or contract termination and a club such as the Swiss football club FC Sion terminated contracts of nine players after they denied the request to accept an 80% salary pay cut.[38]

In terms of government intervention, in Australia professional football clubs have invoked the so-called Fair Work Act 2009, pursuant to which an employer may stand down an employee for a period of time during which the employee cannot be employed because of a cessation of work for any cause for which the employer cannot reasonably be held responsible. Employees' salaries are also reduced to zero during that period.

FIFA stressed in the Document that ultimately, national employment and/or insolvency laws (or collective bargaining agreements (**CBAs**) where in force) will answer immediate legal questions regarding the viability of a football employment agreement that can no longer be performed.

In order to guarantee some form of salary payments to players and coaches, avoid litigation, protect contractual stability, ensure clubs not to go bankrupt and considering the financial impact of COVID-19 on clubs, FIFA now strongly encourages clubs and employees to work together in order to find appropriate collective agreements on a club or league basis regarding employment conditions for any period where the competition is suspended due to the COVID-19 outbreak. Such agreements should address, without limitation: remuneration (where applicable salary deferrals and/or limitation, protection mechanisms, etc.) and other benefits, government aid programmes, conditions during contract extensions, etc. Where the relevant social partners exist, according to the Document, agreement should be reached within CBA structures or another collective agreement mechanism.

Furthermore, unilateral decisions to vary terms and conditions of contracts where clubs and employees cannot reach an agreement, and national law does not address the situation or collective agreements with a players' union are not an option or not applicable, will only be recognised by the DRC or the PSC where they were made in good faith, are reasonable and proportionate.

When assessing whether a decision is reasonable, the DRC or PSC may consider, without limitation:

1. whether the club had attempted to reach a mutual agreement with its employee(s);
2. the economic situation of the club;
3. the proportionality of any contract amendment;
4. the net income of the employee after contract amendment;
5. whether the decision applied to the entire squad or only specific employees.

Alternatively, FIFA proposes that all agreements between clubs and employees should be 'suspended' during any work stoppage (i.e. suspension of football activities), provided proper insurance coverage is maintained, and adequate alternative income support arrangements can be found for employees during the period in question.' This begs the question of what happens if alternative income cannot be found? This question is also relevant as to whether unilateral termination due to the COVID-19 outbreak will be accepted as 'just cause' by the decision-making bodies of FIFA.

The appropriate timing for registration periods ('transfer windows').

In terms of the relevant timing of registration periods, the FIFA RSTP provides a solution. It follows from Article 6 paragraph 1 of the RSTP that players may only be registered during one of the two annual registration periods fixed by the relevant association. Following Article 5.1 of Annexe 3 of the RSTP, the start and end date of the registration periods must be entered in TMS at least 12 months before they come into force. However, national associations are entitled and may amend or modify those dates in the event of exceptional circumstances up to the commence of such registration period.

FIFA considers the COVID-19 virus outbreak to be an exceptional circumstance and therefore associations may still amend or modify the registration period dates for the upcoming season. It follows that FIFA will now permit amendments of the season dates and/or registration periods. Furthermore, as an exception to Article 6 paragraph 1 of the RSTP, a professional whose contract has expired or been terminated as a result of COVID-19 outbreak will have the right to be registered by an association outside a registration period, regardless of the date of expiry or termination.

Aside from the core matters as provided by FIFA as set out above, the FIFA Administration has also identified another set of issues which may potentially require guiding principles to be provided for member associations in relation to release of players to association teams, employment and transfer matters, anti-doping matters and issues in relation to compliance with FIFA regulations.

Other regulatory matters

In addition to the above three core matters, FIFA has also taken other regulatory measures, such as that the rules which normally oblige clubs to release players to association teams will not apply for international windows in March, April and June. Further to this, the amendments to the RSTP regarding international loans, which were supposed to enter into force on 1 July 2020, will be postponed and will not enter into force on that date. In order to avoid misunderstandings, FIFA clarified that no exceptions will be granted in relation to potential financial difficulties of clubs to comply with financial decisions rendered by the DRC, the PSC or the Disciplinary Committee.

However, specific requests related to COVID-19 should in principle be accepted and due to the very exceptional circumstances the maximum deadline will be extended to 15 days, at the prior request of either party.

With regard to the international training compensation system, more specifically with regard to the conditions for the contract offer in accordance with Article 6 paragraph 3 of Annex 4 of the RSTP, i.e. the prerequisite to send the offer per registered post, it now in cases where club representatives are unable physically to use postal services due to administrative measures adopted by the respective government, it would be sufficient for the former club to make the offer by email, provided that the former club obtains confirmation from the player – via any credible means – that he has received a copy of the offer.

Finally, FIFA decided that the deadline to publish data in relation to registered intermediaries will be extended to 30 June 2020.

Please note that the Document concerns Version 1.0. It is to be expected that FIFA will update the guidelines as contained in the Document, where appropriate, over the course of the pandemic. In this regard, FIFA can amend and add proposals in case unforeseen issues may arise in the future.

Final remarks

In conclusion, national employment and/or insolvency laws (or any collective bargaining agreements, where applicable) will answer questions regarding the viability of a football employment agreement that can no longer be performed.

This raises a very interesting legal issue: the area of tension between national laws and FIFA's interpretative guidelines. In its Document, FIFA speaks of general (non-binding) interpretative guidelines to the RSTP. It shows that FIFA must have realised it was not possible to come up with measures with a (more) binding character. Given that the measures now have a non-binding nature, clubs and players can independently consider whether they will take into account the principles to their situation, such as the prolongation of contracts until the end of the extended season. In fact, in case of transfers that have already been concluded, three parties are involved, and must all explicitly agree to such an extension: the current club, the new club and the player. It does not seem to be very likely that all these three parties wish to apply these guiding principles to their relationship.

The Document is to be warmly welcomed as FIFA provides its member associations and its stakeholders with helpful guiding principles. However, at the same time, the Document points out the limited legal power of FIFA considering the various national laws and the contractual autonomy of the parties, that would have come into play if the measures were of a (more) binding character.

It is, however, still interesting to see what will happen if disputes exist whereby FIFA's guidelines do not match with national laws. FIFA is quite clear that national laws and the contractual autonomy of the parties will prevail and be respected. This is an interesting because in cases in which FIFA regulations do not match with national laws, it is well-established jurisprudence of the DRC and the PSC that FIFA regulations will prevail over any national law invoked by any of the parties. In this context, the DRC and the PSC emphasised many times in its longstanding jurisprudence that the main objective of FIFA regulations is to create a standard set of rules to which all actors within the football community are subject to and can rely on. This objective would not be achievable if the DRC and the PSC would apply the national law of a specific party on every dispute brought to it.[39]

On the one hand, it is understandable that FIFA respects national laws and, more importantly, the contractual autonomy of the parties. However, on the other hand, as FIFA's temporary measures only have a non-binding character, it is difficult to see how FIFA can avoid different approaches taking place at the various national levels, despite the fact that FIFA expects the necessary level of cooperation and compliance with the Document from national associations and other football stakeholders. It is, therefore, to be expected that FIFA will be faced with many international disputes with totally different outcomes for the international football community. However, it is FIFA's position that its stakeholders must not receive, in similar circumstances, different treatment or resolution worldwide. It must, therefore, be questioned whether FIFA's approach will be in the favour of its objective: the creation of a standard set of rules to which all actors within the football community can rely on. It seems that it will be difficult to achieve harmonisation at international level with these guiding principles.

It is also interesting to see how FIFA decision-making bodies will deal with the legal concept of *force majeure* considering this totally unique situation. As mentioned before, the existence of *force majeure* will depend on the specific circumstances of the case and any fault from the side of the party invoking the *force majeure* can be an obstacle. Think of a situation whereby a club already had serious

financial difficulties and the COVID-19 outbreak is the last straw that broke the camel's back.

References

[1]FIFA, 'COVID-19 Football Regulatory Issues', https://img.fifa.com/image/upload/utl0jdnekqeqy1kwu9qg.pdf (last accessed 10 April 2020)

[2] 'Statement from the FIFA President', fifa.com, 17 march 2020, last accessed 10 April 2020,

https://www.fifa.com/who-we-are/news/statement-from-the-fifa-president.

[3] See Footnote 1

[4] CAS 2018/A/5779, par. 59, *Zamalek Sporting Club v. Fédération Internationale de Football Association (FIFA)*, award of 31 October 2018 & CAS 2015/A/3909, par. 73, *Club Atlético Mineiro v. FC Dynamo Kyiv*, award of 9 October 2015.

[5] This is a free translation. The original text speaks as follows: *"Il y a force majeure en présence d'événements extraordinaires et imprévisibles qui surviennent en dehors de la sphère d'activité de l'intéressé et qui s'imposent à lui de façon irrésistible".* See CAS 2018/A/5779, par. 59, *Zamalek Sporting Club v. Fédération Internationale de Football Association (FIFA)*, award of 31 October 2018 & CAS 2015/A/3909, par. 73, *Club Atlético Mineiro v. FC Dynamo Kyiv*, award of 9 October 2015.

[6] DRC 17 June 2016, no. 06161391.

[7] DRC 18 May 2017, no. 05171240.

[8] DRC 31 August 2017, no. 08171586.

[9] DRC 17 June 2016, no. 06161391.

[10] DRC 8 June 2007, no. 67499.

[11] PSC 24 November 2015, no. 11151050.

[12] PSC 29 August 2017, no. 08171838. See also PSC 27 July 2016, no. 07160907.

[13] PSC 24 November 2015, no. 11151050. See also PSC 23 September 2014, no 08143368 and PSC 20 November 2014, no. 11141318 .

[14] PSC 20 November 2014, no. 1114788.

[15] PSC 22 November 2016, no. no. 11160349.

[16] PSC 2 October 2013, no 10131268.

[17] CAS 2016/A/4692, par. 7.20, *Kardemir Karabükspor Kulübü Dernegi v. Union des Associations Européennes de Football (UEFA),* award of 26 January 2017; CAS 2013/A/3471, par. 49, *FC Dnipro v. Football Federation of Ukraine (FFU)*, award of 16 June 2014; CAS 2015/A/3909, par. 74, *Club Atlético Mineiro v. FC Dynamo Kyiv*, award of 9 October 2015 & CAS 2006/A/1110, par. 17, *PAOK FC v. Union des Associations Européennes de Football (UEFA)*, award of 25 August 2006.

[18] CAS 2018/A/5779, par. 58, *Zamalek Sporting Club v. Fédération Internationale de Football Association (FIFA)*, award of 31 October 2018.

[19] CAS 2018/A/5779, par. 57, *Zamalek Sporting Club v. Fédération Internationale de Football Association (FIFA)*, award of 31 October 2018 & CAS 2015/A/3909, par. 60 - 61, *Club Atlético Mineiro v. FC Dynamo Kyiv*, award of 9 October 2015.

[20] *"Unless the law provides otherwise, each party shall prove the facts upon which it relies to claim its right"* (free translation from the French original version – "Chaque partie doit, si la loi ne prescript le contraire, prouver les faits qu'elle allègue pour en déduire son droit').

[21] CAS 2014/A/3533, par. 62, *Football Club Metallurg v. UEFA,* award of 9 September 2014, with further references to: CAS 2008/A/1621, par. 22, *Iraqi FA v. FIFA & Qatar FA,* award of 29 September 2008 & CAS 2015/A/3909, par. 72, *Club Atlético Mineiro v. FC Dynamo Kyiv*, award of 9 October 2015.

[22] CAS 2018/A/5779, par. 59, *Zamalek Sporting Club v. Fédération Internationale de Football Association (FIFA)*, award of 31 October 2018.

[23] CAS 2005/A/957, *Clube Atlético Mineiro v. Fédération Internationale de Football Association (FIFA),* award of 23 March 2006 & CAS 2006/A/1110 *PAOK FC v. Union des Associations Européennes de Football (UEFA)*, award of 25 August 2006.

[24] CAS 2018/A/5779, par. 61 - 76, *Zamalek Sporting Club v. Fédération Internationale de Football Association (FIFA)*, award of 31 October 2018.

[25] CAS 2018/A/5779, par. 70, *Zamalek Sporting Club v. Fédération Internationale de Football Association (FIFA)*, award of 31 October 2018, with reference to: 2016/A/4402, par. 40, *Panthrakikos FC v. Fédération Internationale de Football Association (FIFA)*, award of 20 September 2016 & CAS 2005/A/957, par. 24, *Clube Atlético Mineiro v. Fédération Internationale de Football Association (FIFA)*, award of 23 March 2006. See also: CAS 2017/A/5496, par. 127 – 130, *FK Olimpik Sarajevo v. Fédération Internationale de Football Association (FIFA), Football Association of Bosnia and Herzegovina, NK Sesvete and Croatian Football Federation*, award of 16 May 2018; CAS 2015/A/3909, par. 75, *Club Atlético Mineiro v. FC Dynamo Kyiv*, award of 9 October 2015 & CAS 2014/A/3533, par. 59, *Football Club Metallurg v. Union des Associations Européennes de Football (UEFA)*, award of 9 September 2014.

[26] CAS 2014/A/3533, par. 61, *Football Club Metallurg v. Union des Associations Européennes de Football (UEFA)*, award of 9 September 2014.

[27] See CAS 2015/A/3920, FRMF v. CAF, award of 17 November 2015. See also '*Yearbook of International Sports Arbitration 2016*', Antoine Duval and Antonio Rigozzi (Editors), Springer and T.M.C. Asser Press, 2018; See part II, p. 115.

[28] On 30 January 2020 the Director-General of the WHO declared in a statement that the outbreak of 2019-NCoV constitutes a Public Health Emergency of International Concern (PHEIC).

[29] As defined in the International Health Regulation 2005.

[30] CAS 2015/A/3909, par. 66, *Club Atlético Mineiro v. FC Dynamo Kyiv*, award of 9 October 2015.

[31] CAS 2018/A/5779, par. 73, *Zamalek Sporting Club v. Fédération Internationale de Football Association (FIFA)*, award of 31 October 2018.

[32] CAS 2014/A/3463 & 3464, par. 80, *Alexandria Union Club v. Juan José Sánchez Maqueda & Antonio Cazorla Reche*, award of 26 August 2014.

[33] Please note that in both domestic and international commercial contracts, an 'excuse' or 'discharge' of a party's obligation to perform is mainly hinged on the occurrence of a supervening event which is also known (especially in civil law jurisdictions) as a *force majeure* event.

[34] The individual employment agreement is a contract whereby the worker has the obligation to perform work in the employer's service for either a fixed or indefinite period of time, during which the employer owes him a wage (Article 319 para. 1 CO). According to the DRC amongst a player's fundamental rights under an employment contract is not only his right to a the timely payment of the remuneration of the player is among the right to access training and to be given the possibility to compete with his fellow team mates in the team's official matches fundamental rights under an employment contract. See for example: DRC 19 January 2017, no 01171432 & DRC 11 April 2019, no. 04192638.

[35] See Footnote 2.

[36] The authors wish to stress that this is not due to frustration, which in law means the future performance of a contact is not required. On the contrary, the clubs wish players to perform their contacts in the future. The pay-cuts are due to decreased income.

[37] 'Leeds United staff volunteer for wage deferral because of coronavirus outbreak', bbc.com, 26 March 2020, last accessed 10 April 2020, https://www.bbc.com/sport/football/52048216

[38] Can Erozden, 'Swiss football club sacks 9 players', aa.com.tr,

26 March 2020, last accessed 10 April 2020, https://www.aa.com.tr/en/sports/swiss-football-club-sacks-9-players/1773352

[39] See, *inter alia*, DRC 17 June 2016, no. 06161109. See also CAS 2007/A/1370 and 1376, from which it follows that "*the national laws and the internal regulations are not the applicable law in case of a dispute with an international element. Such disputes are governed by the terms of the FIFA RSTP and its definitions*".

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