

# Termination of employment contracts due to outstanding salaries

## Overview of FIFA jurisprudence under Article 14bis FIFA RSTP



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→ **Player contract - Breach of contract - Just cause - FIFA Regulations - FIFA Dispute Resolution Chamber (DRC) - Salaries**

In this article, the authors give an overview and analysis of the published jurisprudence of the FIFA DRC of the first three years that Article 14bis RSTP was in force, i.e. until 1 June 2021, regarding the termination of employment contracts with just cause resulting from overdue payables in accordance with Article 14bis RSTP.<sup>3</sup> The authors analysed, among others, all decisions of the FIFA DRC in which references were made to Article 14bis RSTP.<sup>4</sup> All the analysed FIFA DRC decisions are published on the official website of FIFA.<sup>5</sup>

### Introduction

On 1 June 2018, several important amendments to the FIFA Regulations on the Status and Transfer of Players (RSTP) came into force. Among others, the new Article 14bis RSTP was introduced by FIFA on 26 April 2018 by way of [FIFA Circular Letter no. 1625](#), which was introduced to address the specific circumstances of terminating a contract due to overdue salaries.<sup>6</sup> This provision is considered to be a *lex specialis* of the principle that a contract can be terminated with just cause as Article 14bis RSTP (better) defines the concept of “just cause” under the RSTP. This new provision aims at increasing legal security with respect to the most frequent reason for a premature termination of a contract by a player, and the source of the vast majority of the contractual disputes brought before the

FIFA Dispute Resolution Chamber (FIFA DRC).<sup>7</sup> Article 14bis RSTP disputes are typical employment-related disputes with an international dimension between a football player and a club. It fundamentally revolves around the question as to whether an employment contract has been prematurely terminated with just cause.

### Background

Either party to an employment contract between a professional football player and a club may terminate such contract, without consequences of any kind, when there is just cause. As per the longstanding jurisprudence of the FIFA DRC and the FIFA Players’ Status Committee, the decision whether or not there is a just cause and whether the contract should be effectively terminated is left at the full discretion of the party, intending to terminate the contract. In case of a dispute following a possible termination of the contract by one of the parties, it would be up to the competent decision-making body to establish whether a contractual breach occurred, with or without just cause, who is to be deemed responsible and what the consequences of such a breach would be.<sup>8</sup> The FIFA DRC can, in its role as decision-making body, not decide

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<sup>3</sup> At the moment of writing of this article, there is no awards of the CAS are published in relation to Article 14bis RSTP.

<sup>4</sup> In 97 decisions in total was a reference made to Article 14bis RSTP.

<sup>5</sup> In one decision, the FIFA DRC took note of the fact that the claim was lodged on 16 May 2018, i.e. when the applicable Regulations were the January 2018 edition, which did not contain Article 14bis. See [FIFA DRC, 26 June 2019, no. 06190976](#). See in this regard, also [CAS 2018/A/6029 Akhisar Belediye Gençlik ve Spor Kulübü Derneği v. Marvin Renato Emnes](#), award of 17 September 2019.

<sup>6</sup> [FIFA Circular no. 1625, 26 April 2018](#).

<sup>7</sup> [M. FLORES CHEMOR, O. ONGARO & M. KUSTER HOFFMANN, ‘FIFA’s Provisions on the Unilateral Termination of Contracts – Background and their Application’, Football Legal # 9 \(June 2018\), p. 46.](#)

<sup>8</sup> Cf. Article 17 RSTP.

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to effectively terminate a contract, as said decision should be made by either the club or the player.<sup>9</sup>

Before Article 14bis RSTP entered into force, the jurisprudence of the FIFA DRC was not clear and congruent in terms of what constituted a just cause in the case of overdue payables. In particular, it was not entirely clear whether two or three months outstanding salaries were sufficient for a player to be able to terminate the employment contract with just cause.<sup>10</sup> The FIFA DRC was of the explicit opinion that the persistent failure of a club to pay the salary of a player without just cause for at least three months could be considered a just cause for the player to unilaterally terminate his employment contract.<sup>11</sup> Under special circumstances, a period of two months would suffice,<sup>12</sup> but the jurisprudence was not entirely clear on this point.<sup>13</sup> However, the delay of one month or one and a half month was generally not considered a justification for the termination of the contract. The non-payment of one monthly salary was generally not considered a persistent and material non-fulfilment of the club's contractual obligation, justifying the early termination of the agreement by the player.<sup>14</sup> However, at the same time, the authors bring in mind that, in the past, the FIFA DRC have also decided that under very special circumstances, even a one-month outstanding salary was sufficient in combination with other breaches.<sup>15</sup>

In addition to the uncertainty in relation to the required outstanding payments for a just cause, it was also not always clear whether the player was obliged to send a written warning and, more specifically, whether this was a condition for the termination.<sup>16</sup> The jurisprudence of the Court of Arbitration for Sport (CAS) was a bit clearer, pointing out that the constitution of a just cause only applies if it is subject to two conditions. Firstly, the outstanding amount may not be “*insubstantial*” or completely secondary. Secondly, a prerequisite for terminating the contract because of outstanding payments is that the employee must have given a warning. In other words, so found the CAS, the employee was obliged

to draw the employer's attention to the fact that its conduct was not in accordance with the contract.<sup>17</sup>

**“ Article 14bis RSTP was introduced to resolve these uncertainties regarding the question what constitutes a just cause in case of outstanding payments ”**

Article 14bis RSTP defines the concept of “*just cause*” and aims at increasing legal security regarding the premature termination of an employment contract by a player.

### The scope of Article 14bis RSTP

The FIFA DRC considers that only a breach or misconduct which is of a certain severity justifies the termination of a contract without prior warning. In other words, only when there are objective criteria that do not reasonably permit to expect a continuation of the employment relationship between the parties, a contract may be terminated prematurely. Hence, if there are more lenient measures that can be taken in order for an employer to assure the employee's fulfilment of his contractual duties, such measures must be taken before terminating an employment contract. The premature termination of an employment contract can always only be an *ultima ratio*.<sup>18</sup> In light of the foregoing, Article 14bis par. 1 RSTP reads as follows:

*“In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). Alternative provisions in contracts existing at the time of this provision coming into force may be considered.”*

As follows from the wording of Article 14bis RSTP and the corresponding jurisprudence, two prerequisites must be met to establish that just cause exists in case of overdue payables and the employment can be terminated in accordance with Article 14bis RSTP.<sup>19</sup>

<sup>9</sup> See [FIFA DRC, 18 February 2021, no. 02211251](#).

<sup>10</sup> See [CAS 2009/A/1897, PAS Giannina 1966 Football Club v. Derek Décamps](#), award of 23 November 2010: “The Panel is aware of - a few - CAS awards in which the delay of two salaries was exceptionally acknowledged as sufficient foundation for the creation of just cause in conjunction with other factors pointing to the same direction (CAS 2007/A/1232).”

<sup>11</sup> [FIFA DRC, 10 June 2004, no. 64133](#).

<sup>12</sup> See for example [FIFA DRC, 5 December 2008, no. 128557](#), and [FIFA DRC, 7 September 2011, no. 911190](#).

<sup>13</sup> See [FIFA DRC, 9 May 2011, no. 5112513](#). See also *F. DE WEGER, 'The jurisprudence of the FIFA Dispute Resolution Chamber'*, The Hague: T.M.C. Asser Press, 2016, p. 251.

<sup>14</sup> See for example [FIFA DRC, 21 September 2017, no. 0917110](#); [FIFA DRC, 8 September 2016, no. 09160466](#); [FIFA DRC, 23 March 2006, no. 36460](#); [FIFA DRC, 26 October 2006, no. 1061207](#), and [FIFA DRC, 22 June 2007, no. 67620](#).

<sup>15</sup> See for example: [FIFA DRC, 26 April 2012, no. 412871](#).

<sup>16</sup> A warning with a deadline of one day did not invalidate just cause, see: [FIFA DRC, 27 February 2018, no. 02131190](#).

<sup>17</sup> The non-payment or late payment of remuneration by an employer does in principle - and particularly if repeated - constitute “*just cause*” for termination of the contract (ATF 2 February 2001, 4C.240/2000 no. 3 b aa; CAS 2003/O/540 & 541, non-public award of 6 August 2004). See also [CAS 2005/A/893](#); [CAS 2006/A/1100](#), marg. no. 8.2.5 et seq.)” ([CAS 2006/A/1180](#), par. 25-26 of the abstract published on the CAS website). See [CAS 2015/A/4042, Gabriel Fernando Atz v. PFC Chernomorets Burgas](#), award of 23 December 2015.

<sup>18</sup> [FIFA DRC, 20 May 2020, Leal Rodrigues](#) and [FIFA DRC, 10 September 2020, Zuta](#).

<sup>19</sup> It must be emphasized that, according to the principle of contractual stability, the unilateral termination of a contract must be considered as *ultima ratio*, i.e. as an absolute last resort.

Both prerequisites will be discussed in detail below.

Generally, the FIFA DRC mainly deals with contracts signed by clubs with professional players. These include employment contracts, but it is to be expected that separate agreements could also fall under the scope of Article 14bis RSTP as long as specific elements of that separate agreement suggest that it was in fact meant to be part of the actual employment relationship, as the FIFA DRC decided in many other (not 14bis) cases.<sup>20</sup> This is, for example, the FIFA DRC's position with regard to image right contracts.<sup>21</sup>

From paragraph 3 of Article 14bis RSTP, it further follows that collective bargaining agreements (CBA) validly negotiated by employers' and employees' representatives at the domestic level in accordance with national law may deviate from the principles stipulated in Article 14bis RSTP.<sup>22</sup> The terms of such an agreement shall prevail. For example, the Spanish collective bargaining agreement shall prevail over Article 14bis RSTP. With reference to the substance of the outstanding salaries required to validly start the procedure, Article 2.1.a) of the CBA, as a general rule, requires three or more monthly salaries, which independently are consecutive or not, partial or total. Furthermore, the CBA does not mention the prerequisite of a written default notice.<sup>23</sup> In Uruguay, there is the collective bargaining agreement "Estatuto del Futbolista Profesional Uruguayo" (EFPU) which also provides for a situation which is different from Article 14bis RSTP.<sup>24</sup> The FIFA DRC considers a provision in a standard employment agreement signed by the player and the club not as a document that is negotiated between employers' and employees' representatives at domestic level in accordance with national law. As such, the FIFA DRC is of the opinion that a standard employment agreement cannot deviate from the conditions laid down in Article 14bis RSTP.<sup>25</sup>

### ***Unlawfully failed to pay two monthly salaries***

The first prerequisite mentioned in Article 14bis RSTP is that the club must have unlawfully failed to pay at least two monthly salaries on their due dates. From paragraph 2 of the respective Article, it follows that any salaries of a player that are not due monthly, the *pro-rata* value corresponding to two months shall be considered. Delayed payment of an amount equal to at least two months shall also be deemed a just cause for the player to terminate his contract, subject to the player complying with the notice of termination, which we will discuss later. The authors find that it makes sense that the two months as referred to in Article 14bis par. 2 RSTP must be calculated over a 12-month period instead of the seasonal period in a specific country. In fact, if the latter would be the case, the *pro-rata* basis could vary per season whilst the annual remuneration stays the same.<sup>26</sup> This could not have been the intention of the legislator of the provision.

**” The first prerequisite mentioned in Article 14bis RSTP is that the club must have unlawfully failed to pay at least two monthly salaries on their due dates “**

A club must fulfil its obligations as per the employment contract in accordance with the general legal principle of *pacta sunt servanda*.<sup>27</sup> According to the FIFA DRC, 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 teammates in the team's official matches,<sup>28</sup> a fundamental right under employment contracts.<sup>29</sup> It is the responsibility of the club to duly proceed with the payment of the player's entitlements. The FIFA DRC considers it not enough to offer to pay the player's entitlements, since the club must assure that the player *effectively* receives the amounts he is contractually entitled to receive.<sup>30</sup> Payments should be done in due time following the due dates provided in the contract. In addition, the authors wish to point out that a constant delay in the payment of the salaries of

20 A.L. Al. 'Image rights agreements in light of the football jurisprudence', Sports Law & Taxation, 3 September 2020, Vol. 11, 2020/30, p. 29-33.

21 [FIFA DRC, 13 December 2013, no. 12131045](#) and [FIFA DRC, 17 January 2014, no. 114396](#). See also [FIFA DRC, 30 August 2013, no. 08133402](#), [FIFA DRC, 10 February 2015, no. 02151030](#); [FIFA DRC, 28 March 2014, no. 03141211](#); [FIFA DRC, 7 March 2019, no. 03191308](#) and [FIFA DRC, 20 February 2020, Sofyane](#). See also [CAS 2014/A/3579 Anorthosis Famagusta FC v. Emanuel Perrone](#), award of 11 May 2015 and [CAS 2015/A/4039 Nashat Akram v. Dalian Aerbin FC](#), par. 71-72, award of 3 February 2016.

22 Collective bargaining agreements validly negotiated by employers' and employees' representatives at domestic level in accordance with national law may also deviate from the principles stipulated in Article 17 par. 1 lit i and ii RSTP, which refer to the compensation.

23 [A. Mosca, 'The new Article 14bis of the FIFA RSTP and the Spanish collective bargaining agreement'](#), [Football Legal # 9](#) (June 2018), p. 253.

24 [H. GONZÁLEZ MULLIN, 'The termination of the professional football player's contract in Uruguay'](#), [Football Legal # 9](#) (June 2018), p. 130.

25 See [FIFA DRC, 10 December 2020, Hodzic](#) and [FIFA DRC, 10 December 2020, Markoski](#). The contract in the respective cases stipulated that the player should grant the club a deadline of 30 days instead of 15 days.

26 To avoid further discussions on this matter the definition of 'season' in the January 2021 edition of the FIFA RSTP was amended to 'a 12-month period commencing on the first day of the first registration period fixed by an association in accordance with article 6', whereas it was previously defined as 'the period starting with the first official match of the relevant national league championship and ending with the last official match of the relevant national league championship'.

27 [FIFA DRC, 11 April 2019, no. 04191403](#).

28 For example, by refusing to register or by de-registering a player, a club is effectively barring, in an absolute manner, the potential access of a player to competition and, as such, violating one of his fundamental rights as a football player. The club effectively prevents the player from being eligible to play for the club. The sole fact of not registering a player, thus preventing him from rendering his services to the club, constitutes in itself a serious breach of contract. See in this regard: [FIFA DRC, 18 June 2020, Segbefia](#).

29 [FIFA DRC, 11 April 2019, no. 04192638](#).

30 [FIFA DRC, 4 June 2020, Malik](#).

the player will not be considered by the FIFA DRC as an acceptance of the player for that practice.<sup>31</sup>

In establishing whether the first prerequisite is met, it is important to take the due dates as stipulated in the contract into consideration. Whereas the employment contract states that the monthly salaries are payable “*no later than on the last day of the following month*”, this should be taken into consideration when establishing the due amounts and subsequently when terminating the employment contract.<sup>32</sup> If the due dates are not properly taken into consideration, this might lead to the conclusion that the conditions outlined in Article 14bis RSTP are not fulfilled and, consequently, the termination is without just cause.<sup>33</sup> From analysing the jurisprudence, it must be noted that only three claims of a player were rejected because it was established that not two monthly salaries were outstanding and, therefore, the conditions of Article 14bis RSTP were not fulfilled.<sup>34</sup> However, in one of these three decisions, the FIFA DRC came to the conclusion that the player had just cause to terminate the employment contract due to the fact that additional salaries to him became due in the meantime.<sup>35</sup>

In the situation wherein the employment contract does not stipulate the due dates for the payment of the monthly salaries, it is well-established jurisprudence of the FIFA DRC that the monthly salaries fell due at the end of the respective month.<sup>36</sup> For sign-on fees without a due date stipulated in the contract, the FIFA DRC deems that the due date is considered at the start of the contract as it is the very nature of a sign-on fee to be due for the player’s signature of the contract, and so at the start of the contract.<sup>37</sup>

Besides the fact that two monthly salaries must have fallen due, the club should also have unlawfully failed to pay the player the two monthly salaries on their due dates. It is not clear under which circumstances the failure to pay wages is “*unlawful*”. In general, the FIFA DRC does not accept any reductions of the player’s salary on a unilateral basis.<sup>38</sup> Moreover, it’s well-established jurisprudence of the FIFA DRC that a club’s or country’s financial difficulties cannot be considered a valid justification for non-compliance with its essential contractual obligations deriving from the

signature of an employment contract, that is, to pay a player’s remuneration in full and in a timely manner.<sup>39</sup> Restrictions in the service of the banking system in the country concerned can neither justify the non-fulfilment of the club’s contractual obligations towards a player.<sup>40</sup> In addition, the imposition of a fine or any other available financial sanction, in general, cannot be used to offset financial obligations.<sup>41</sup> The same goes for the alleged poor performance of a player, which cannot be used to impose fines or lower a player’s remuneration, as this is a very subjective concept.<sup>42</sup>

**” The COVID-19 outbreak cannot be used as an opportunity to escape from debts that arose from contractually agreed payments “**

Moreover, from the DRC jurisprudence, it also follows that the COVID-19 outbreak cannot be used as an opportunity to escape from debts that arose from contractually agreed payments that fell due already at an earlier stage,<sup>43</sup> nor did FIFA declare that the COVID-19 outbreak is, in general, not a valid reason not to pay outstanding remuneration,<sup>44</sup> was a *force majeure* situation in any specific country or territory.<sup>45</sup> If the club states that it had fulfilled its contractual obligations concerning the payment of the remuneration of the player, the burden of proof lies on the club in accordance with Article 12 par. 3 of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber.<sup>46</sup>

In order to address the specific circumstance of terminating a contract due to overdue salaries and to assess whether Article 14bis RSTP is applicable, Article 18 RSTP also contains a provision prohibiting so-called contractual “*grace periods*” for the payment of due payables towards players. It follows from

31 [FIFA DRC, 9 April 2020, Oueslati](#).

32 [FIFA DRC, 12 June 2020, Correia](#).

33 In case of additional circumstances, it is possible that the employment contract is considered to be terminated with just cause, for example because the player could legitimately believe that the club was no longer interested in his service (in case of de-registration). See in this regard for example [FIFA DRC, 18 June 2020, Segbefia](#).

34 [FIFA DRC, 20 May 2020, Leal Rodrigues](#) and [FIFA DRC, 12 June 2020, Correia](#).

35 [FIFA DRC, 20 May 2020, Silva](#).

36 See for example [FIFA DRC, 13 February 2020, Advic](#).

37 [FIFA DRC, 4 November 2020, Wild](#).

38 *F. DE WEGER, ‘The jurisprudence of the FIFA Dispute Resolution Chamber’, The Hague: T.M.C. Asser Press, 2016, p. 152 – 155.*

39 [FIFA DRC, 8 May 2020, Sasraku](#); [FIFA DRC, 8 May 2020, Abudu](#); [FIFA DRC, 5 December 2019, no. 12190077](#) and [FIFA DRC, 11 April 2019, no. 04191403](#). See also FIFA PSC, 21 January 2013, no. 01132563; [CAS 2012/A/3035 Parma FC SpS v. VFL Wolfsburg](#), award of 26 March 2013, and [CAS 2006/A/1008 Rayo Vallecano de Madrid SAD v. FIFA](#), award of 21 August 2006.

40 [FIFA DRC, 20 July 2020, Bodurov](#).

41 [FIFA DRC, 28 February 2020, Janicic](#); [FIFA DRC, 9 April 2020, Oueslati](#) and [FIFA DRC, 13 August 2020, Diakite](#).

42 [FIFA DRC, 12 February 2020, Regattin](#).

43 [FIFA DRC, 12 February 2020, Regattin](#); [FIFA DRC, 20 January 2021, Kitanov](#). See also [FIFA DRC, 29 July 2020, Oliveira Gois](#).

44 [FIFA DRC, 13 November 2020, Poplatnik](#). See in this regard also [FIFA DRC, 10 December 2020, Sliiti](#), in which the FIFA DRC concluded that in view of the specific circumstances a reduction of 25% of the player’s salary during the suspension of the championship was considered reasonable and proportionate.

45 See for example: [FIFA DRC, 22 October 2020, Acquah](#); [FIFA DRC, 29 September 2020, Wanderson da Silva](#) and [FIFA DRC, 29 July 2020, Oliveira Gois](#). In addition, the FIFA COVID-19 Guidelines also did not exempt an employer from paying a player’s salary, see in this regard for example: [FIFA DRC, 13 August 2020, Aleksandar Gojkovic](#) and [FIFA DRC, 20 July 2020, Karius](#).

46 See for example, [FIFA DRC, 10 December 2020, no. 12202091](#).

Article 18 RSTP that contractual clauses granting the club additional time to pay the professional amount that had fallen due under the terms of the contract shall not be recognised.<sup>47</sup> The authors note that grace periods in collective bargaining agreements validly negotiated by employers' and employees' representatives at the domestic level in accordance with national law shall, however, be legally binding and recognised.<sup>48</sup>

### Default in writing

The second prerequisite that must be met to invoke Article 14bis RSTP is that the player must have put the debtor club in default writing,<sup>49</sup> granting a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). In a player sends multiple notices to the club, the player has to give the debtor club a total of 15 days to remedy its default.<sup>50</sup> From the jurisprudence, it seems to follow that the prerequisite "granting a deadline of at least 15 days" does not mean that in the default notice, a 15-day deadline should be explicitly mentioned, but rather that the player *de facto* should have granted the debtor club 15 days to remedy its default, *i.e.* more than 15 days should have elapsed between the default notice and the termination of the employment contract by the player.<sup>51</sup>

For example, the FIFA DRC considered that this prerequisite was still met despite the fact that the player granted a deadline of only seven days in the default notice as "more than 15 days separated the default notice from the termination of the contract by the Player."<sup>52</sup> The authors also wish to refer to another decision in which the FIFA DRC noted that, although the final notice of the player did not fulfil the provisions set out in Article 14bis as the player only gave 10 days for the club to comply, it could not be contested that the player had just cause to terminate the contract.<sup>53</sup> In another case, the FIFA DRC concluded that the player terminated the employment contract with the club with just cause,

although the player referred in his default notice only to Article 12bis RSTP and gave the club only ten days to remedy its default.<sup>54</sup> However, in another case in which the player expressly mentioned Article 12bis RSTP in his default notice and granted the club a deadline of 11 days, the FIFA DRC concluded that "under the narrow margin which is enshrined in the cited rule and in line with its jurisprudence of the DRC, the player did not fulfil the requisites of art. 14bis of the Regulation."<sup>55</sup>

**” The player must have put the debtor club in default writing, granting a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s) “**

When sending the default notice, a player can legitimately expect that the contact details of the club as displayed within the employment contract are the official means of communication.<sup>56</sup> The same goes for the email address on the club's website.<sup>57</sup> This differs in case there are documents on file that evidence that the club informed the player that its official contact details had changed during the course of the contractual relationship, which follows from the case-law.<sup>58</sup>

### Fully comply

After the FIFA DRC established that the aforementioned prerequisites are met, the FIFA DRC commonly concluded with consideration in line with the following:

*“Consequently, on account of the above and considering that, when the player terminated the contract, three monthly salaries were due despite having the player provided the Respondent with 15 days to remedy the default, the DRC concluded that, on 6 January 2020, the player had just cause to unilaterally terminate the employment contract.”<sup>59</sup>*

47 See also: [FIFA DRC, 8 October 2020, Mieczyslaw Stachowiak](#) and [FIFA DRC, 26 March 2020, Mendes da Veiga](#). Contracts existing at the time of the provision coming into force (1 June 2018) shall not be affected by this provision.

48 Article 18, par. 6 RSTP.

49 Actions as a consequence of the non-payment by the club, such as not returning from vacation, going on strike and complaining orally are not considered an automatic default notice. To the contrary, this could lead to the conclusion of the FIFA DRC that the player terminated the employment contract without just cause. See in this regard [FIFA DRC, 17 January 2020, Ayala](#).

50 From [FIFA DRC, 6 December 2018, no. 2012181254](#), it follows that regardless of the fact that the player did not meet the formalities of the termination letter and did not grant the club a deadline of 15 days, he granted, *de facto*, the club such deadline by terminating the employment contract one month later.

51 See for example [FIFA DRC, 10 February 2020, Bubalo](#); [FIFA DRC, 21 February 2020, Brown](#); [FIFA DRC, 25 February 2020, Akaminko](#); [FIFA DRC, 27 February 2020, William](#) and [FIFA DRC, 23 April 2020, Issah](#).

52 [FIFA DRC, 5 December 2019, Id Azza](#).

53 See [FIFA DRC, 27 August 2020, Milinkovic](#). See in this regard also [FIFA DRC, 29 September 2020, Lopez Martinez](#). In the later decision, although the player granted a deadline of 12 days, the FIFA DRC decided that the validity of the default notice could not be contested as the player grounded his claim on Article 14 RSTP instead of Article 14bis RSTP.

54 [FIFA DRC, 25 February 2020, Dunga](#). See in this regard also: [FIFA DRC, 20 May 2020, Blažević](#).

55 See [FIFA DRC, 10 December 2020, Cueva Bravo](#). In this case, the club filed a claim in front of FIFA arguing that the player did not have just cause to terminate the contract.

56 See in this regard also Article 9bis par. 3 Procedural Rules. See also [FIFA DRC, 13 August 2020, Abdennour](#) and [FIFA DRC, 29 September 2020, Lopez Martinez](#).

57 [FIFA DRC, 13 November 2020, Poplatnik](#).

58 [FIFA DRC, 18 June 2020, Sankoh](#).

59 [FIFA DRC, 8 May 2020, Abudu](#). See also: [FIFA DRC, 5 December 2019, no. 12190077](#); [FIFA DRC, 8 May 2020, Sasraku](#); [FIFA DRC, 4 June 2020, Radovanovic](#); [FIFA DRC, 12 June 2020, Jelic](#); [FIFA DRC, 16 July 2020, Dabbagh](#); [FIFA DRC, 20 July 2020, Bodurov](#); [FIFA DRC, 8 October 2020, Gomes da Silva](#). See for similar considerations: [FIFA DRC, 15 January 2020, Stojicev](#); [FIFA DRC, 17 January 2020, Horey](#); [FIFA DRC, 2 July 2020, Matar Sosseh](#); [FIFA DRC, 12 August 2020, Ferreira dos Santos](#); [FIFA DRC, 29 September 2020, Antic](#); [FIFA DRC, 22 October 2020, Ruiz Torre](#) and [FIFA DRC, 4 November 2020, Wild](#); [FIFA DRC, 28 January 2021, Anangono](#) and [FIFA DRC, 8 April 2021, Rodrigues Barbosa](#).

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From this reasoning, it could be concluded that for termination with just cause in accordance with Article 14bis RSTP, at the moment of termination, at least two monthly salaries must still be outstanding.<sup>60</sup> However, the authors noted that in these cases, the debtor club did not make any payment to the player after the player sent the default notice. In cases in which clubs, after receiving the default notice, paid an amount following which just less than two monthly salaries are outstanding, the FIFA DRC, presumably in combating persistent outstanding payments, emphasised in its decisions the wording “fully comply” of paragraph 1 of Article 14bis RSTP:

*“In this context, the DRC judge reminded the parties of the wording of art. 14bis par. 1 of the Regulations, according to which “In the case of a club unlawfully failing to pay a player at least two monthly salaries on their due dates, the player will be deemed to have a just cause to terminate his contract, provided that he has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s).” (emphasis added by the FIFA DRC)”<sup>61</sup>*

In four cases in which the club only partially paid the outstanding remuneration claimed by the player, the FIFA DRC concluded that the player had just cause to terminate the employment contract.<sup>62</sup> From these decisions, it follows that in cases where the club does not fully comply with its financial obligations and does not fully pay the outstanding remuneration as rightfully claimed by the player, the player still has a just cause to terminate the employment contract. The authors strongly support this line of reasoning as this ensures that clubs fully pay the outstanding remuneration and such an approach successfully prevents that clubs only pay just enough trying to avoid the termination of the employment contract and therefore contravene persistent outstanding payments. For the sake of completeness and for the avoidance of any doubts, payments made after the termination of the employment contract do not influence the answer to the question whether or not the player terminated the contract with or without just cause.<sup>63</sup>

Consequently and in view of the above, when the two prerequisites are met and the club does not fully comply with its financial obligations, the player will have a just

cause to terminate his employment contract although two monthly salaries are no longer outstanding at the date of the termination.

### **Termination with just cause due to outstanding payments**

From analysing the decisions of the FIFA DRC, it follows that the FIFA DRC also rendered several decisions in which it concluded that the player terminated the employment contract with just cause due to outstanding payments, without referring to Article 14bis RSTP. In this regard, the FIFA DRC referred several times to its longstanding jurisprudence and established that the player had just cause to unilaterally terminate the employment contract,<sup>64</sup> stating that due to the circumstances, the player could have legitimately lost faith in the ability and will of the club to fulfil its contractual obligations in due course<sup>65</sup> or stating that the club repeatedly and for a significant period of time had been in breach of its contractual obligations towards the player and as a result, the player had a just cause to terminate the employment contract.<sup>66</sup> Furthermore, the FIFA DRC even decided in a case in which the player failed to put the club in default that it was uncontested that the club owed the player two monthly salaries and, as such, significantly neglected its financial obligations, giving the player a just cause to terminate the contract.<sup>67</sup>

**“ A player is still able to terminate the employment contract with just cause due to outstanding payments without specifically referring to Article 14bis RSTP ”**

Based on these decisions, it can be concluded that a player is still able to terminate the employment contract with just cause due to outstanding payments without specifically referring to Article 14bis RSTP. In this regard, the authors wish to refer to a decision in which the player terminated the contract due to outstanding payments based on Article 14 RSTP and not Article 14bis RSTP. As such, the FIFA DRC considered that the respective player did not have to grant the club a deadline of 15 day's to comply with its financial obligations.<sup>68</sup>

<sup>60</sup> See for example the reasoning of the player in [FIFA DRC, 4 November 2020, Kruk](#). Further to this, the player should have provided the debtor club with 15 days to remedy the default.

<sup>61</sup> [FIFA DRC, 28 February 2020, Pablo](#); [FIFA DRC, 23 April 2020, Junuzovic](#) and [FIFA DRC, 23 April 2020, Cueva Bravo](#).

<sup>62</sup> See also [FIFA DRC, 10 December 2020, Markoski](#).

<sup>63</sup> See in this regard also [FIFA DRC, 10 December 2020, Markoski](#).

<sup>64</sup> [FIFA DRC, 20 February 2020, no. 02201966](#); [FIFA DRC, 27 February 2020, no. 02201437](#); [FIFA DRC, 23 April 2020, Jevtoski](#) and [FIFA DRC, 19 November 2020, Gamboa Agudelo](#). See also [FIFA DRC, 9 April 2020, Naguez](#).

<sup>65</sup> See for example: [FIFA DRC, 9 April 2020, Domoraud](#) and [FIFA DRC, 9 April 2020, Da Costa](#).

<sup>66</sup> [FIFA DRC, 11 April 2019, no. 04190046](#); [FIFA DRC, 14 June 2019, no. 06192100](#); [FIFA DRC, 16 August 2019, no. 08190384](#) ; [FIFA DRC, 5 August 2020, Latovlevici](#) and [FIFA DRC, 14 January 2021, Novakovic](#).

<sup>67</sup> [FIFA DRC, 22 October 2020, Ngondala Fundu](#). See also [FIFA DRC, 20 May 2020, de Carvahlo](#).

<sup>68</sup> [FIFA DRC, 29 September 2020, Lopez Martinez](#).

### **Consequences of the termination of the employment contract with just cause**

The authors note that, once the employment contract is unilaterally terminated, this is considered an irreversible decision, that in principle cannot be withdrawn at a later point in time.<sup>69</sup> When it is established that the termination of the contract was with just cause, the club is to be held liable in accordance with Article 17 RSTP. Consequently, the player will be entitled to receive from the former club an amount as compensation for breach of contract, in addition to the outstanding payments on the basis of the relevant employment contract.<sup>70</sup> The legal basis is clear and provides no room for interpretation, in the sense that if a player prematurely terminates an employment contract with just cause, the deciding body will have no room for appreciation and the sporting sanction shall be applied.

Prior to establishing the consequences of the termination of the employment contract with just cause by the player, the FIFA DRC will, in general, address the issue of unpaid remuneration at the moment when the contract was terminated by the player.<sup>71</sup> The date of the termination letter addressed to the debtor club is the date on which the employment contract was unilaterally terminated by the player.<sup>72</sup> Where there has been no written notice of termination, the FIFA DRC will consider that the employment contract is to be considered terminated on the date of the player's claim for breach of contract in front of FIFA.<sup>73</sup> However, parties can novate from the initial debt and terminate the employment contract by concluding a termination agreement. In such an event, the player can only be in a position to claim any outstanding amounts under the provisions of the termination agreement.<sup>74</sup>

The FIFA DRC will always clarify whether the pertinent employment contract contained a provision by means of which the parties had beforehand agreed upon an amount of compensation payable by the contractual parties in the event of a breach of contract.<sup>75</sup> In all the decisions analysed, the FIFA DRC established that no such compensation clause was included in the employment contract.<sup>76</sup> In the event that the FIFA DRC establishes that no such compensation clause is included in the employment contract, the FIFA DRC will then determine that the amount of compensation payable by the former club to the player has to be assessed in the application of the other parameters set out in Article 17 par. 1 RSTP. Said provision provides for a non-exclusive enumeration of criteria to be taken into consideration when calculating the amount of compensation payable.<sup>77</sup> Therefore, other objective criteria may be taken into account at the discretion of the deciding body. Further to this, the amount of compensation shall be calculated, particular and unless otherwise provided for in employment contract, with due consideration for the law of the country concerned,<sup>78</sup> the specificity of sport and further objective criteria,<sup>79</sup> including, in particular, the remuneration and other benefits due to the player under the existing contract and/or the new contract, the time remaining on the existing contract up to a maximum of five years, and depending on whether the contractual breach falls within the protected period. The FIFA DRC emphasises that each request for compensation for the contractual breach has to be assessed by the FIFA DRC on a case-by-case basis taking into account all specific circumstances of the respective matter.

69 [FIFA DRC, 22 October 2020, Tignyemb.](#)

70 The deterrent effect of Article 17 RSTP shall be achieved through the impending risk for a party to incur disciplinary sanctions, if some conditions are met (*cf.* Article 17 par. 3 to 5 RSTP), and, in any event, the risk to have to pay compensation for the damage caused by the breach or the unjustified termination. In other words, both players and clubs are warned: if one does breach or terminate a contract without just cause, a financial compensation is due, and such compensation is to be calculated in accordance with all those elements of Article 17 RSTP that are applicable in the matter at stake, including all the non-exclusive criteria listed in par. 1 of said article that, based on the circumstances of the single case, the panel will consider appropriate to apply. See: [CAS 2017/A/4935, FC Shakhtar Donetsk v. Olexandr Vladimirovic Zinchenko, FC UFA & FIFA](#), award of 26 October 2017 in which is referred to: [CAS 2008/A/1519-1520](#), par. 82.

71 In case the employment contract is terminated on another date than by the end of the month, the days of the salary of the said month should be calculated *pro rata* as a part of the compensation due to the player. The same applies to payments related to accommodation or rent which are due in advance.

72 [FIFA DRC, 11 April 2019, no. 04191794.](#)

73 [FIFA DRC, 14 June 2019, no. 06190026](#) and [FIFA DRC, 5 December 2019, Id Azza](#). See also [FIFA DRC, 22 October 2020, Ngondala Fundu](#) and [FIFA DRC, 19 November 2020, Gamboa Agudelo](#).

74 [FIFA DRC, 17 January 2020, Abed](#). The parties can agree upon a clause within the termination agreement that sets out that should the club not comply with the terms of the termination agreement, it would be declared null and void and consequently the player would be entitled to claim the residual value of the employment contract.

75 For said clause to be taken into account at the discretion of the deciding body it should be in accordance with the general principle of proportionality and the principle of balance of rights of the parties. See for example [FIFA DRC, 11 April 2019, no. 04190658](#).

76 In the decision where the January 2018 edition of the RSTP was applicable, the parties had agreed on a compensation clause, except the matter at stake fell outside of the scope of this clause; See [FIFA DRC, 26 June 2019, no. 06190976](#).

77 Article 17 par. 1 RSTP does not require the judging authority to necessarily evaluate and give weight to any and all of the factors listed therein. Depending on the particular circumstances of each case and on the submissions of the parties, any of those factors may be relevant or irrelevant to the final decision, influencing or not the discretionary assessment of the compensation due. See [CAS 2009/A/1880, FC Sion v. FIFA & Al-Ahly Sporting Club & CAS 2009/A/1881, E. v. FIFA & Al-Ahly Sporting Club](#), award of 1 June 2010.

78 The law of the country concerned is the law governing the employment relationship between the player and his former club, that is, the law with which the dispute at stake has the closest connection. This will be under normal circumstances the law of the country of the club whose employment contract has been breached or terminated.

79 Article 17 par. 1 RSTP asks the judging body to take into due consideration the "specificity of sport", that is the specific nature and needs of sport, so as to attain a solution which takes into account not only the interests of the player and the club, but also, more broadly, those of the whole football community. Based on this criterion, the judging body should aim at reaching a solution that is legally correct, and that is also appropriate upon an analysis of the specific nature of the sporting interests at stake, the sporting circumstances and the sporting issues inherent to the single case.

### Mitigated Compensation

Essential for the FIFA DRC is the remuneration and other benefits due to the player under the pertinent contract and/or the new contract. The wording of Article 17 par. 1 RSTP allows the FIFA DRC to take into account both the existing contract and the new contract, if any, in the calculation of the amount of compensation. The FIFA DRC will calculate the monies payable to the player under the terms of the employment contract from the date of termination with just cause by the player until its natural expiration. Moreover, it is the constant practice of the FIFA DRC, that it will verify whether the player has signed an employment contract with another club during the relevant period of time, by means of which he would have been able to reduce his loss of income.<sup>80</sup> In the case that the player signed a new employment contract by the time of the decision, the remuneration during the overlapping period shall be deducted, leading to a mitigated compensation.<sup>81</sup> In this regard, the player should be able to provide the FIFA DRC with a list that stipulates which amounts he received per month following his new employment contract(s).<sup>82</sup> In one of the cases, it was established that the sums of the values of the new employment contracts concluded by the player exceeded the residual value of the employment contract with the former club for the same period of time. Therefore, even though the former club was liable for the early termination of the employment contract with just cause by the player, no amount was awarded to the player as compensation for the breach of contract for the period between the termination of the employment contract and its regular expiry. The FIFA DRC came to this conclusion since the player had been able to fully mitigate his damages for the said time period.<sup>83</sup> According to Article 337c paragraph 2 of the Swiss Code of Obligations, the duty of mitigation relates to the rule that the employee must permit a set-off against the amount of compensation for what he saved because of the termination of the employment relationship, what he earned from other work, or what he has intentionally failed to earn. Following the CAS jurisprudence, such a rule implies that, in accordance with the general principle of fairness, the injured player must act in good faith after the breach by the

club and seek other employment, showing diligence and seriousness. The principle is aimed at limiting the damages deriving from the breach and avoiding that a possible breach committed by the club could turn into an unjust enrichment for the injured party.<sup>84</sup> The authors have some doubts about this approach if the player was able to fully mitigate his damages, as a club must bear consequences once it breaches a contract without just cause and cannot escape too easily from its obligations.

As to the mitigated compensation, it happens that CAS will have more up-to-date information regarding the player's career post-termination than the information that was available to and at the disposal of FIFA. Following the jurisprudence of the CAS, the most accurate information is taken into account as part of the *de novo* process. Under such a scenario, the player's compensation will most likely be reduced.<sup>85</sup> It is also possible that the CAS can allow an increase in the basic claim for compensation. For instance, when an event happens that triggered a bonus had been satisfied by the time the appeal was heard at the CAS, whilst it had not been triggered by the time the matter was heard at FIFA level.<sup>86</sup>

### Additional Compensation

As a consequence of the fact that the termination of an employment contract in accordance with Article 14bis RSTP is a consequence of overdue payables, the player is, in addition to the mitigated compensation, also entitled to an amount corresponding to three monthly salaries.<sup>87</sup> In case of so-called "*egregious circumstances*", the additional compensation may even be increased up to a maximum of six monthly salaries. However, the overall compensation may never exceed the residual value of the prematurely

<sup>80</sup> See the first sentence of Article 17 par. 1 lit. ii RSTP. These amendments were also introduced by way of [FIFA Circular, no. 1625, 26 April 2018](#).

<sup>81</sup> FIFA refers to this amount as Mitigated Compensation, see Article 17 par. 1 lit. ii RSTP. Possible bonuses under the terminated contract will not be taken into consideration by the FIFA DRC due to their variable and uncertain character as such the FIFA DRC cannot undoubtedly establish that the club would pay these bonuses. See for example: FIFA DRC, 29 January 2020, Alidu. However, in case a bonus is considered an actual fixed payment, the 'bonus' will be taken into consideration when calculating the compensation, see in this regard: [FIFA DRC, 21 February 2020, Markovic](#). See in this regard also [FIFA DRC, 9 April 2020, Queslati](#).

<sup>82</sup> Such amount will be deducted. See [FIFA DRC, 5 December 2019, no. 12190077](#).

<sup>83</sup> [FIFA DRC, 11 April 2019, no. 04191794](#).

<sup>84</sup> See [CAS 2016/A/4678, Balikesirspor FC v. Ermin Zec](#), award of 10 March 2017.

<sup>85</sup> See [CAS 2017/A/4935, FC Shakhtar Donetsk v. Olexandr Vladimirovic Zinchenko, FC UFA & FIFA](#), award of 26 October 2017.

<sup>86</sup> See [CAS 2012/A/2874, Grzegorz Rasiak v. AEL Limassol](#), award of 31 May 2013.

<sup>87</sup> In application of the criteria outlined in Article 17 par. 1 point. ii RSTP and considering the early termination of the contract was due to overdue payables. The FIFA refers to this compensation as "*Additional Compensation*". [FIFA DRC, 14 June 2019, no. 06190026](#); [FIFA DRC, 5 December 2019, no. 12190077](#); [FIFA DRC, 5 December 2019, Id Azza](#); [FIFA DRC, 25 February 2020, Dunga](#); [FIFA DRC, 23 April 2020, Batna](#); [FIFA DRC, 8 May 2020, Sasraku](#); [FIFA DRC, 2 July 2020, Matar Sosseh](#); [FIFA DRC, 16 July 2020, Dabbagh](#); [FIFA DRC, 29 September 2020, Antic](#) and [FIFA DRC, 8 October 2020, Gomes da Silva](#). The FIFA DRC may take '*yearly primes*', '*housing allowance*' and/or '*monthly mandatory incentive*' into consideration when calculating the average monthly remuneration for three months additional compensation, see in this regard: [FIFA DRC, 16 July 2020, De Lima Tagliapietra](#); [FIFA DRC, 22 October 2020, Ruiz Torre](#) and [FIFA DRC, 1 February 2019, Samardžic](#), respectively.

terminated contract.<sup>88</sup> As such, in cases in which the player did not sign a new employment contract during the relevant time and therefore was not able to mitigate the compensation, the FIFA DRC will not award additional compensation.

The authors refer to a case in which the FIFA DRC decided to award the player with additional compensation corresponding to the amount deducted from the residual value of the employment contract that was terminated early.<sup>89</sup> In yet another case, the FIFA DRC decided to award a fixed amount corresponding to the outstanding remuneration as additional compensation.<sup>90</sup>

In a case with egregious circumstances, the FIFA DRC concluded that a club contributed to the egregious circumstances and awarded the player with four monthly salaries as additional compensation. In this case, the FIFA DRC considered that the club put the player in a strained situation, whereby he was deliberately excluded from the club's camp and was forced to remain in the country of the club. The player was only allowed to take 15 days of vacation whilst the rest of the players were awarded 30 days. In addition, the player was also evicted from his apartment due to the club's lack of payment to the player's rent in line with the contract.<sup>91</sup> In another case, the FIFA DRC decided that the player was entitled to additional compensation in the amount of six monthly salaries due to egregious circumstances, given that the player was excluded from the team and forced to train alone.<sup>92</sup> In yet another case, the FIFA DRC decided to reduce the "Mitigated Compensation" as a result of the non-registration of the player by the club.<sup>93</sup>

Additionally, and for the sake of clarity and avoidance of any doubt, the authors wish to note that depending on the specific request of the player, the FIFA DRC can also decide to award to the player interest at the rate of 5% *p.a.* on the amount as from the date of termination until the date of effective payment.

In six cases, it was the debtor club (instead of the player) that lodged a claim in front of FIFA, requesting the player and/or his new club(s) be ordered to pay

compensation for breach of contract.<sup>94</sup> In these cases, the player lodged a separate claim against the debtor club in front of FIFA, requesting outstanding remuneration and compensation for breach of contract.<sup>95</sup> In four of these decisions, the claim of the club was rejected and the counterclaim of the player was partially accepted. In only two decisions, the claim of the club was partially accepted. In one of the decisions, the FIFA DRC came to this conclusion in view of the specific circumstances surrounding the termination of the employment contract by the player: the player leaving the club without any authorization; the player not having put the club in default of payment of the alleged outstanding amounts; and, finally, the player not replying or replying late to the several default notices sent by the club. As such, in this decision, it was for this reason that it was decided by the FIFA DRC that the respective player had terminated the employment contract without having a just cause.<sup>96</sup> In the other decision, the player only granted the club a deadline of 11 days to remedy its default and as such the FIFA DRC concluded that the player did not fulfil the requisites of Article 14bis RSTP.<sup>97</sup>

### Protected Period

In view of the above, the authors wish to lay special focus on the protected period. In fact, when a club is found to be in breach of contract during the protected period, sporting sanctions shall also be imposed on the said club.<sup>98</sup> It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract with just cause has induced that professional to commit a breach. The club shall be banned from registering any new players, either nationally or internationally, for two entire and consecutive registration periods. The FIFA DRC will also take into account whether the club has in the recent past been held liable for the early termination of the employment contract of other players. Pursuant to

88 Article 17 par. 1 lit ii RSTP, see in this regard also [FIFA DRC, 29 January 2020, Lukimya](#); [FIFA DRC, 10 February 2020, Bubalo](#); [FIFA DRC, 25 February 2020, Akaminko](#); [FIFA DRC, 27 February 2020, William](#); [FIFA DRC, 28 February 2020, Janicic](#); [FIFA DRC, 26 March 2020, Mendes da Veiga](#); [FIFA DRC, 9 April 2020, William Sery](#); [FIFA DRC, 9 April 2020, Queslati](#); [FIFA DRC, 23 April 2020, Issah](#); [FIFA DRC, 23 April 2020, Junuzovic](#); [FIFA DRC, 20 May 2020, Silva](#); [FIFA DRC, 4 June 2020, Odhiambo](#) and [FIFA DRC, 12 June 2020, Jelic](#).

89 [FIFA DRC, 8 May 2020, Abudu](#)

90 [FIFA DRC, 8 May 2020, Mbombo](#)

91 [FIFA DRC, 23 April 2020, Batna](#)

92 [FIFA DRC, 4 June 2020, Malik](#)

93 [FIFA DRC, 9 May 2019, no. 05192103](#).

94 Article 17 par. 2 RSTP: If a professional is required to pay compensation, the professional and his new club shall be jointly and severally liable for its payment. For exceptions see, *inter alia*, [CAS 2017/A/4977, Smousha SC v. Ismaily SC & Aziz Abdul & Club Asante Kotoko FC & FIFA](#), award of 4 February 2019 and [CAS 2015/A/4176, Club Atlético River Plate v. AS Trencin & Iván Santiago Díaz](#), award of 4 April 2016; and [W. STERNHEIMER & M. FLORES CHEMOR, 'Limits to the joint and several liability principle in football dispute - An analysis of the latest CAS jurisprudence'](#), [Football Legal # 12 \(December 2019\)](#), p. 114.

95 [FIFA DRC, 11 April 2019, no. 04191794](#); [FIFA DRC, 17 January 2020, Avala](#); [FIFA DRC, 21 February 2020, Brown](#); [FIFA DRC, 23 April 2020, Elsner](#) and [FIFA DRC, 23 April 2020, Junuzovic](#).

96 [FIFA DRC, 17 January 2020, Avala](#).

97 [FIFA DRC, 10 December 2020, Cueva Bravo](#).

98 FIFA is of the opinion that: "The ratio legis of the imposition of sporting sanctions for unjustified breaches of contract committed during the protected period, i.e. that, in order to promote the fundamental principle of maintenance of contractual stability, a breach of contract during the first two or three seasons or years (depending on the age of a player) shall be reprimanded more severely in order to provide for an important deterrent to such behaviour"; See [CAS 2017/A/5011, Eskisehirspor Kulübü v. Sebastian Andres Pinto Perurena & FIFA](#), award of 10 July 2017.

the wording of Article 17 par. 4 RSTP, in case a club is found to be in breach of contract during the protected period, sporting sanctions “shall be imposed”,<sup>99</sup> i.e. FIFA is in principle obliged to do so. However, the FIFA Commentary leaves a margin of discretion to the FIFA DRC as to whether or not to impose sporting sanctions as it determines that “a club risks being prohibited from registering new players”, i.e. such sanction is not imposed *ipso facto*. The authors note that FIFA’s policy to not necessarily impose sporting sanctions in case of a breach of contract during the protected period does not automatically mean that FIFA cannot impose sporting sanctions in such a situation. On the contrary, the legal basis to impose sporting sanctions is clearly provided for in Article 17 par. 4 RSTP.<sup>100</sup>

### Sanctions imposed

With the introduction of the June 2018 edition of the RSTP, not only Article 14bis RSTP came into force, but also Article 24bis. The latter provision aims to ensure that monetary decisions are respected by the parties involved and grants FIFA’s decision-making bodies powers to impose sanctions on players and clubs should a monetary decision not be complied with. Such sanctions are part of the decision and consist for a club of a ban from registering any new players, either nationally or internationally, until the due amounts are paid and for the maximum duration of three entire and consecutive registration periods. In addition, FIFA has a *de facto* personal obligation and interest as a sports governing body to ensure that its affiliates fully comply with its regulations and with any disciplinary sanctions imposed on its bodies.<sup>101</sup>

With the above in mind and since the existence of Article 24bis RSTP, the FIFA DRC will also rule on the consequences deriving from the failure of the concerned party to pay the relevant amounts of outstanding remuneration and/or compensation in due time.<sup>102</sup> In the decisions where Article 14bis RSTP was applicable, the FIFA DRC decided that, in the event that the former club does not pay the amount due to the player within 45 days as from the moment in which the player, following the notification of the decision, communicates the relevant bank details to the former club, a ban from registering any new players becomes

effective on the former club.<sup>103</sup> In the event that the sums (plus interest) are still not paid by the end of the ban of three entire and consecutive registration periods, the matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.

It follows from the jurisprudence of the CAS that the power to impose disciplinary sanctions on a member or affiliate because of a violation of the FIFA regulations is at the sole discretion of FIFA. In an appeal against a decision of FIFA, by means of which disciplinary sanctions have been imposed on a party, only FIFA has standing to be sued and not the (previously) opposing party in a e.g. financial disputes before the competent FIFA bodies. In other words, appeals against sporting sanctions must be directed against FIFA and one of its (indirect) members or horizontal (i.e. only between indirect FIFA members).<sup>104</sup> The authors note that in case an appeal is not filed against FIFA on matters questioning the validity of disciplinary sanctions imposed by FIFA itself, the appeal will not be upheld and dismissed.<sup>105</sup>

### In summary and final remarks

There is no doubt that Article 14bis RSTP better defines the concept of just cause and this provision is warmly welcomed by the authors. The provision aims at increasing legal security with respect to the most frequent reason for premature termination of a contract by a player and the source of the vast majority of the contractual disputes brought before the FIFA DRC. From the jurisprudence of the FIFA DRC and the CAS, prior to the entry into force of Article 14bis RSTP, it followed that the jurisprudence was not always clear and congruent what constituted a just cause in case of overdue payables. For example, it was unclear whether two or three months of outstanding salary were enough to terminate the employment contract with just cause. By the same token, it was not clear if the player was obliged to send a written warning.

The prerequisites for the termination of the employment contract with just cause in case of

<sup>103</sup> See Article 24bis par. 2 and 4 RSTP. In accordance with such provision, the sanction will be lifted immediately and prior to its complete serving upon payment of the due amounts.

<sup>104</sup> [CAS 2017/A/5359 Persepolis Football Club v. Rizespor Futbol Yatirimlari](#), award of 29 May 2018.

<sup>105</sup> More specifically, in cases where sporting sanctions are appealed against, but FIFA is not summoned as respondent in the proceedings, the parties may not remedy this failure by way of a settlement agreement in which they acknowledge that the basis of the sporting sanctions is moot. Further to this, although a football club can agree with another club to settle a certain financial dispute existing between the two clubs, it has no power to decide whether or not a disciplinary sanction shall be maintained or adjusted.

<sup>99</sup> Despite the wording “shall” in the RSTP, FIFA drew attention to a line of CAS jurisprudence which started with [CAS 2007/A/1359](#), where CAS panels interpreted “shall” as “may”.

<sup>100</sup> See [CAS 2017/A/5011, Eskisehirspor Kulübü v. Sebastian Andres Pinto Perurena & FIFA](#), award of 10 July 2017.

<sup>101</sup> [CAS 2017/A/5359 Persepolis Football Club v. Rizespor Futbol Yatirimlari](#), award of 29 May 2018.

<sup>102</sup> This is in accordance with Article 24bis RSTP.

outstanding payments are now clearer. In accordance with Article 14bis RSTP, a player would be deemed to have a just cause to terminate his contract in the case of a club unlawfully failing to pay the player at least two monthly salaries on their due dates, provided that the player has put the debtor club in default in writing and has granted a deadline of at least 15 days for the debtor club to fully comply with its financial obligation(s). After the player sent the required default notice, the club should fully comply with its financial obligations and pay total outstanding remuneration as rightfully claimed by the player. Otherwise, so the authors note, the player will still have a just cause to terminate his employment contract in accordance with Article 14bis RSTP.

In case the FIFA DRC concludes that the club is to be held liable for the termination of the employment contract with just cause, the player is in accordance with Article 17 RSTP entitled to receive from the former club, in addition to the outstanding payments on the basis of the relevant employment contract, compensation for breach of contract. In addition to the mitigated compensation, the player is also entitled to additional compensation from the club corresponding to three monthly salaries, which in case of so-called “*egregious circumstances*” may be increased up to a maximum of six-monthly salaries.

From the jurisprudence, it follows that Article 14bis RSTP is effective and responds to the uncertainties regarding what constitutes just cause in case of outstanding payments. Article 14bis RSTP increased legal security with respect to premature termination of an employment contract by a player but the jurisprudence of the FIFA DRC in this regard is unfortunately not completely consistent (yet).

One final important flip side of the coin is that the conditions (the two months and the default notice) are absolute minimum requirements as from the introduction of Article 14bis RSTP. As a matter of fact, there is not much room for FIFA (and also CAS in appeal) anymore for exceptions in case of outstanding payments. As mentioned before, the authors recall that, in the past, the FIFA DRC has decided that under very special circumstances, even a one-month outstanding salary could be sufficient in combination with other breaches. It is to be expected that such exceptions will not be easily accepted, however in some cases Article 14 RSTP may still be of use.