



Sports Law & Dispute Resolution
27th November 2019.



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BRIEF REVIEW AND COMMENTARY ON THE RECENT AMENDMENT TO THE FIFA RULES

Introduction

On 30th October 2019, the Federation Internationale de Football Association (FIFA) issued a circular² to announce fresh amendments to its Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber ("the Rules"). These amendments were approved by the FIFA Council at its meeting in Shanghai, China on 24th October 2019 and were scheduled to take effect from 1st November 2019.

Similarly, FIFA also launched its online portal for easy access to resources and legal information relating to its activities.³

The Rules: Summary

The Rules are adjectival laws setting out the adjudicatory responsibilities of two principal quasi-judicial organs of FIFA – The Players' Status Committee (PSC) and the Dispute Resolution Chamber (DRC). The main substantive laws governing these two bodies particularly their respective judicial competence or jurisdiction are The FIFA Statutes and The FIFA Regulations on the Status and Transfer of Players ("RSTP").⁴

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² https://media.licdn.com/dms/document/C561FAQEWYCNDS7vZYA/feedshare-document-pdf-analyzed/0?e=1572609600&v=beta&t=I1NW_I17qEkz8qFUeQyMDjhdtNrTT_8DU3AoJ1KNnuU accessed 3:00 pm on 19th November 2019.

³ <http://legal.fifa.com/> accessed 6:00 am on 25th November 2019.

⁴ <https://resources.fifa.com/image/upload/regulations-on-the-status-and-transfer-of-players-june-2019.pdf?cloudid=ao68trzk4bbaezlipx9u> accessed 6:05 am on 25th November 2019.

The Rules begin by introducing itself as a body of Rules issued by the FIFA Council pursuant to its powers contained in Article 34 paragraph 12 of the FIFA Statutes.⁵ It goes further by providing the fulcrum upon which the respective jurisdictions of the PSC and DRC are based.⁶ Pursuant to Article 3(1) of the Rules, both bodies shall examine their jurisdiction in light of Articles 22 to 24 of the RSTP. Where any uncertainty exists as to the jurisdiction of both bodies, the Chairman of the PSC shall decide which body has jurisdiction.

To provide a background, this jurisdictional issue came to the fore in the matter of the CAS Award of 27th July 2007 between Greek outfit, Aris FC and FIFA.⁷ The DRC and the PSC both appeared uncertain as to their respective competence to accept the invitation by the Claimant (Aris FC) to render a new decision on a matter previously decided by the Greek Sports Court. Thereafter, by a letter dated 17th March 2007 and signed by the Head of the PSC and the Director of the Legal Division of the PSC, the Head of the PSC declined jurisdiction over Aris FC's claim. This letter was held to be a decision made by virtue of Article 3(1) of the Rules. Where conflict arises with respect to the decision of the Head of the PSC, an appeal readily lies to the CAS.⁸

Another instance of conflict bordering on the jurisdiction of the DRC or PSC came to a head in the PSC decision involving, **FC Nantes v. Cardiff City FC**.⁹ The player transfer contract involving the late Emiliano Raul Sala wrongly conferred jurisdiction on the DRC instead of the PSC. The Respondent's contention was anchored on the sanctity of contracts; since the contract conferred jurisdiction on the wrong FIFA decision-making body, the clause should be declared null and void and the matter should be determined by the CAS. The PSC aligned itself with the contention of the Applicant and ruled that contract between parties cannot oust the jurisdiction of the PSC in line with the RSTP and the Rules.

The new Rules provide for expert and speedy performance or execution of the duty entrusted on the PSC and DRC.¹⁰ Members of both bodies are also to respect the

⁵ Part I: General Provisions (the Rules).

⁶ Articles 1 & 2 of the Rules.

⁷ CAS 2007/A/1251, **Aris FC v. FIFA**

https://arbitrationlaw.com/sites/default/files/free_pdfs/CAS%202007-A-1251%20AFC%20v%20FIFA%20Award.pdf> accessed 6:25 am on 25th November 2019.

⁸ Article 58, FIFA Statutes, June 2019, available here:<<https://resources.fifa.com/image/upload/fifa-statutes-5-august-2019-en.pdf?cloudid=ggymhxv8jrdfbekrrm>> accessed 6:35 am on 25th November 2019.

⁹ <https://resources.fifa.com/image/upload/player-emiliano-sala.pdf?cloudid=zz1mucunt6ydvrzqrqdw> accessed 6:55 am on 25th November 2019.

¹⁰ Article 5(5) & (6) of the Rules.

“secrecy of deliberations” and observe strict confidentiality with respect to information received in the course of performing their respective official duties.¹¹

On Procedural Regulations, the Rules defines “parties” to include member associations of FIFA, (football) clubs, players, coaches or licensed match agents. Parties are empowered to appoint representatives by a duly executed Power of Attorney.¹²

The Rules do not take the right to fair hearing for granted. A member of the PSC or DRC may recuse himself on grounds of personal or direct interest and shall disclose the reason for such recusal within sufficient time.¹³ Furthermore, all parties are entitled to a right to be heard, right to present evidence, the right for evidence leading to a decision to be inspected, the right to access files and the right to a motivated decision.¹⁴

Importantly, parties are guaranteed the right of appeal against decisions made by the PSC and DRC.¹⁵ However, this right is not absolute. For example, a party aggrieved by the decision of the PSC or DRC may appeal to the CAS within a stipulated time after which the right extinguishes.¹⁶ In addition, failure, refusal and/or neglect to pay procedural costs due within 20 days of notification of the findings would be deemed a waiver of right of appeal.¹⁷

A member or members of the PSC or DRC may also be challenged by a party on grounds of legitimate doubts as to the independence or impartiality of such member. This challenge must be made by way of a Motion within 5 days of such ground coming to light. Where the PSC or DRC is unable to function due to challenges of this nature, the FIFA Council shall make a final decision on the challenges and possibly appoint an *ad-hoc* committee to deal with the merit or substance of the case.

Importantly, it is a general rule that all communications with parties in the proceedings shall be conducted by email. This includes service of processes. On the alternative, submissions may be transmitted by regular mail or courier. Notably, any transmission made by facsimile shall be deprived of any legal effect. With respect to venue, proceedings of the PSC and DRC take place at the FIFA headquarters in Zurich, Switzerland, subject to exceptions.

¹¹ Article 5(7) of the Rules.

¹² Article 6(1) & (2), Part II: Procedural Regulations of the Rules.

¹³ Article 7 of the Rules.

¹⁴ Article 5(1) – (8) of the Rules.

¹⁵ Article 58 of the FIFA Statutes.

¹⁶ Article 58(1) of the FIFA Statutes (21 days).

¹⁷ Article 15(4) of the Rules; by Article 15(1), the PSC, the DRC, the single judge and the DRC judge as a general practice, communicate only the findings of the decision (without the grounds).

The Rules also contain some provisions pertaining to taking evidence, pointing to the adjudicatory system as partly inquisitorial rather than adversarial. For instance, Article 12(4) permits the PSC or DRC to consider evidence not presented by the parties. Decisions must also be sent to parties directly, with a copy also sent to the respective associations.

Decision making by the PSC or DRC is done by a simple majority vote after secret deliberations. All members in attendance at the proceedings and the Chairman are each entitled to one vote and no member may abstain from voting. Where a tie occurs, the Chairman shall have a casting vote. The FIFA administration may also publish decisions issued by the PSC or the DRC.

HIGHLIGHTS OF THE AMENDMENTS

Proceedings More Simplified

Under Article 9(2), an incomplete or defective petition, i.e., one that fails to satisfy the procedural requirements will be returned for redress with a request that it is completed within a stipulated time frame. Where the process is not completed within such time frame, the petition is deemed withdrawn. Also, petitions containing improper or inadmissible content will be rejected *in limine*, i.e., immediately on commencement.¹⁸

Furthermore, the Rules have also been amended to mandate a party to lodge its claim or counterclaim jointly with its legal position coupled with all relevant documents.¹⁹ Parties are obliged to present all facts and legal arguments together with all the evidence upon which they intend to rely at once. Where the opposing party intends to lodge a counterclaim, it shall submit such counterclaim within the same limit applicable to the reply to its petition containing all the elements.²⁰

The amendments bring to light, the importance of presenting and regularizing information contained in the TMS (Transfer Matching System). This is because contact details of parties contained in the TMS are deemed as the default, most recent and appropriate information for purposes of service of correspondences and other relevant documents.²¹

¹⁸ Article 9(2) of the Rules.

¹⁹ Article 9(1)-(3) of the Rules.

²⁰ *Ibid.*

²¹ Article 9bis (3) of the Rules.

In addition, exchange of processes and correspondences including amendments have been streamlined to a maximum of two (2) exchanges. The second exchange is permissible only in exceptional circumstances.²²

More Flexible Time Limits

The amendments appear to favour more flexible time limits in satisfaction of the need for speedy dispensation of sports justice. Article 16(10) stipulates a floor and ceiling for time limits set by the PSC and DRC; between 5 days on the minimum and 20 days on the maximum. For urgent situations, the time limit may even be reduced. Specifically, the time frame within which an opposing party may respond to a claim is 20 days.

Meanwhile, by Article 16(11), where a substantiated (well-established) request for extension of time is submitted before the original time frame elapses, a maximum extension of 10 days may be granted. This extension may be granted only once.

No more Payment of Advance of Costs

By the operation of the fresh amendments, football clubs are no longer under any obligation to pay an advance of costs when submitting a petition requesting remittance of solidarity contribution²³ or training compensation²⁴ via the TMS. More precisely in Article 17 subsections 1 and 2, provisions for payment of advance of costs have been modified to totally exclude disputes regarding training compensation and the solidarity mechanism.

Improved Approach to Publishing Decisions on the Online Platform

To add further glamour to the exciting work currently ongoing in the legal department of FIFA, the amendments have introduced a new approach to publishing decisions on the newly launched online platform. Article 20 on the subject “publication” underwent a total overhaul.

²² Article 9(3) of the Rules.

²³ Article 21 of the RSTP is entitled “Solidarity Mechanism” and defines the term as follows: “*If a professional is transferred before the expiry of his contract, any club that has contributed to his education and training shall receive a proportion of the compensation paid to his former club (solidarity contribution)...*” Solidarity payment is payable only where a player is transferred for a fee, between clubs belonging to different national associations, prior to the expiry of the player’s contract of employment. Also accessible here: <<https://www.lawinsport.com/topics/sports/item/a-guide-to-training-compensation-and-solidarity-payments-in-football>> accessed 7:55 am on 25th November 2019.

²⁴ Article 22 of the RSTP is entitled “Training Compensation”. Training Compensation is the payment made to a player’s training club (1) when the player signs his first contract as a professional; and (2) each time a professional football player is transferred, until the end of the season of his 23rd birthday. The obligation to remit training compensation arises whether the transfer is actuated during or at the end of the player’s professional contract.

Prior to the amendment, the erstwhile Article 20 placed an uncertain duty on the PSC and DRC to exercise “due restraint” in publishing decisions. Furthermore, the Rules previously allowed the exclusion of “certain elements” of the decision from publication. Also, there was no specific time limit within which a request may be submitted by a party in this regard.

By the fresh Article 20, where a decision of the PSC or DRC contains confidential information, FIFA may, at the request of a party within 5 days of the notification of the motivated decision, publish an anonymised or redacted version of the decision.

Comments

Sports in general and Football in particular have grown to become more litigious over the past decade. The most recent statistics from FIFA reveals that at least 1,323 complaints were filed (at the PSC and DRC) alone in 2018.²⁵ Such rapid frequency of football disputes must have had severe administrative impacts on the activities of the legal and judicial sectors of FIFA. As the global regulator of football, it meant that FIFA has had to be more dynamic, organized and responsive to these complaints/disputes.

Laudably, these fresh amendments effectively address issues that sprout from this rapid proliferation of FIFA cases. With these rules, managing proceedings have become more simplified and less time-consuming.

Furthermore, for the purpose of sporting justice, time limits for effecting service of processes or performing other tasks have been made more flexible. Though a floor and a ceiling have been ‘erected’ in terms of the prescribed period for carrying out specific tasks, a party may still be able to convince the appropriate body that an extension of a stipulated time frame is necessary.

Moreover, the amendments show that FIFA has tightened its girdles with respect to feedbacks it receives from key stakeholders. There were groans and clamours (concerning claims for training compensation or solidarity contribution) for either the complete waiver of payment of advance of costs, or basing payment of advance of costs on the category of the claimant club rather than the amount claimed.²⁶ Commendably, the payment of an advance of cost in respect of claims for training compensation and solidarity contribution has been scrapped.

²⁵ <https://www.lawinsport.com/topics/item/sports-disputes-and-disciplinary-procedures-the-year-in-review-2018-19> accessed 8:05 am on 25th November 2019.

²⁶ <https://www.lawinsport.com/topics/item/fifa-s-proposed-solidarity-mechanism-reforms-an-effective-solution-or-a-lost-opportunity>> accessed 5:05 pm on 24th November 2019.

To add further gloss to the FIFA scorecard, the improved approach to publishing decisions on the newly launched FIFA legal resource platform means improved transparency and access to important legal resources including decided cases.

A significant development that should be pointed out is the provision of the Rules on taking of evidence which now empowers the PSC or DRC to consider the admission of evidence not presented by the parties.²⁷ This provision might appear to be an 'unruly horse' in view of the fact that evidence may be discovered and admitted by the PSC or DRC which might be against either party to the dispute. An argument that may be proffered in response is that the Rules provide parties a right of appeal and also places a non-derogable duty on the adjudicatory panel to afford the parties fair hearing.²⁸ It is submitted that this provision for fair hearing in the Rules creates a workable balance in this regard.

An important issue that indirectly arises from this brief appraisal relates to judicial review of FIFA decisions by national courts. The famous Bosman Ruling of the European Court of Justice appears to have established a precedent that a FIFA regulation, guideline, judicial ruling or decision may be properly challenged at a regular/ordinary Court and/or a continental regular (non-sports) Court.²⁹

Meanwhile, Article 59(2) of the FIFA Statutes generally prohibits recourse to regular/ordinary courts of law as a means to resolving football-related disputes. Also, Article 59(1) of the FIFA Statutes confers exclusive appellate jurisdiction on the CAS to resolve disputes (including appeals) decided by FIFA legal and judicial bodies. These provisions imply that a member-state of FIFA has an obligation to respect the exclusive appellate jurisdiction of the CAS with respect to legal and judicial decisions of FIFA.³⁰ As a matter of fact, member-states of FIFA (Nigeria inclusive) have been encouraged to conform to obligations created by the FIFA Statutes, regulations and circulars.³¹

This obligation on member-states of FIFA is reinforced by Article 59(3) of the FIFA Statutes which generally mandates all national associations (such as the Nigerian Football Federation [NFF]) to prohibit by its statutes or regulations, the submission of a dispute in the association³² to ordinary Courts of law. Despite these enshrined obligations, a 2015 decision of the *Oberlandesgericht* of Munich (German Higher

²⁷ Article 12(4) of the Rules.

²⁸ Article 5(1)-(8) of the Rules.

²⁹ Union Royale Belge des Sociétés de Football Association ASBL v. Jean-Marc Bosman [1995] ECR I-4921.

³⁰ Article 14(1)(a), (d) and (j) of the FIFA Statutes.

³¹ For instance, FIFA Circular no. 1129, dated 28 December, 2007.

³² Or dispute affecting leagues, members of leagues, clubs, members of clubs, players, officials and other association officials.

Court) appears to undermine the powers of FIFA judicial and decision-making bodies in this regard.

The German Higher Court determined that awards made by the CAS were invalid on grounds of public policy pursuant to Sections 8(7) and 8(7A) of the International Arbitration Act 1974³³ and Article V(2) of the New York Convention, 1958.³⁴ This decision was an appeal against the verdicts of the International Skaters Union (ISU), the CAS (made up of two decisions), the Swiss Federal Tribunal and the *Landesgericht* of Munich (a German civil Court inferior to the *Oberlandesgericht*).

This writer is of the firm opinion that the *Oberlandesgericht* of Munich misapplied the provisions of the New York Convention and the German International Arbitration Act. The laws relied upon by the *Oberlandesgericht* of Munich provide for either recognition or refusal of the enforcement of foreign arbitral awards; it permits German Courts to either enforce or refuse to enforce a foreign arbitral award. The laws do not appear to confer jurisdiction on the German national Courts to declare a CAS award a nullity. The FIFA Statutes even provide that such situations may attract serious sanctions.³⁵

In summary, the judicial review of FIFA decisions by national courts remains a controversy that has not been interred. It would seem that a national Court may entertain a suit challenging the decision of FIFA where it pertains to the Constitution, an applicable national or international law or, where the suit touches on the enforcement of a FIFA arbitral award within national jurisdictions.³⁶

Conclusion

The game of Football is arguably the most popular and exciting sport globally. From the passion and excitement of the game to the huge ambitions and anticipation of fans and viewers, the governing bodies have an ideal responsibility of ensuring that the sport lives up to its billing. Football is also not immune from the current storm of technological evolution. This therefore indicates that the sport must be properly and periodically regulated by way of modification of applicable rules and regulations to bring them in-step with current realities. In light of the foregoing, the fresh amendments to the Rules are largely a welcome development.

³³ A German legislation.

³⁴ Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

³⁵ Article 14(2) of the FIFA Statutes.

³⁶ http://www.africansportslawjournal.com/Bulletin_2_2014_Omuojine.pdf > accessed 8:25 am on 25th November 2019; <http://asperchairwp.bryan-schwartz.com/wp-content/uploads/images/stories/Asper/Volume%201/Articles/Vol1_Downey.pdf accessed 8:45 am on 25th November 2019.

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