



KEY PROCEDURAL ISSUES IN THE DISPUTE RESOLUTION PROCESS BETWEEN CHELSEA AND FIFA OVER SANCTIONS RELATING TO ARTICLE 19 FIFA RSTP.

Following the Barcelona, Real Madrid and Atletico Madrid cases, Chelsea Football Club ("Chelsea") are the latest high-profile club to be sanctioned by FIFA for alleged violations relating to Article 19 of the FIFA Regulations on the Status and Transfer of Players ("FIFA RSTP") and the international transfers of minor players.

While this matter is ongoing, some important procedural issues have already been raised, and which have practical applicability that goes far beyond the scope of this particular case.

In particular, this matter provides a case study for which some crucial procedural questions can be addressed, specifically

- May a party appeal a decision without grounds to the CAS?
- May a party request provisional measures from the CAS prior to filing its appeal brief?
- Does a refusal to grant provisional measures by the FIFA Appeals Committee constitute a "final decision" under the relevant regulations?

Background and FIFA Proceedings

On 22 February 2019, following a lengthy investigation, the FIFA Disciplinary Committee ("FIFA DC") announced that it had sanctioned both Chelsea Football Club ("Chelsea") and The Football Association ("The FA") for breaches



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relating to the international transfer and registration of minor players.¹

Specifically, the FIFA DC found that Chelsea had breached Article 19 of the [FIFA RSTP](#) ("FIFA RSTP") in the case of twenty-nine minor players and Article 18bis in two cases involving agreements concluded with minor players and further, that it had "*committed several other infringements relating to registration requirements for players.*"²

As a result, the FIFA DC banned Chelsea from registering new players for the next two registration periods, fined the club CHF 600,000, and mandated that the situations of the minors involved were regularised within 90 days. The ban does not apply to the women's team or futsal team, however.

The FA was also sanctioned for breaching rules in connection with the registration of minor players.

Chelsea appealed the decision before the FIFA Appeals Committee (FIFA AC) and filed a request for provisional measures.³

On 8 March, in a break from precedent established in the three most recent high-profile cases involving clubs being sanctioned for breaching Article 19, the FIFA DC denied Chelsea's request for provisional measures.⁴

On 11 April, the appeal was heard before the FIFA AC and on 8 May, the FIFA AC confirmed the FIFA DC's decision to sanction Chelsea with a registration ban and fine.

However, the FIFA AC did uphold one part of Chelsea's appeal and "*...decided that, as far as youth categories are concerned, the ban shall not cover the registration of minor players under the age of 16 who do not fall under the scope of*

¹ FIFA, "Chelsea FC, The Football Association sanctioned for international transfers of minors," 22 February 2019, available at <https://www.fifa.com/governance/news/y=2019/m=2/news=chelsea-fc-the-football-association-sanctioned-for-international-transfers-of-mi.html> (last viewed 4 April 2019)

² Id.

³ Chelsea Football Club, "Chelsea FC statement," 22 February 2019, available at <https://www.chelseafc.com/en/news/2019/2/22/chelsea-fc-statement> (last viewed 5 April 2019)

⁴ Chelsea Football Club, "Club statement," 8 March 2019, available at <https://www.chelseafc.com/en/news/2019/03/08/club-statement-> (last viewed 5 April 2019)





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art. 19 of the Regulations on the Status and Transfer of Players, which refers to international transfers and first registrations of foreign minor players.”⁵

In a subsequent statement made on 8 May, Chelsea stated its intention to appeal the CAS decision to the CAS.⁶

Relevant FIFA regulations – a brief primer

In its 22 February announcement, the FIFA DC only mentioned two specific rules in relation to Chelsea’s sanctions – Article 18bis and Article 19 of the FIFA RSTP.

Article 19 of the FIFA RSTP states that as a general matter, international transfers are not permitted when the player is under the age of eighteen. However, there are three written exceptions contained in Article 19(2), generally summarised below:

- a) Where player's parents move to the country in which the new club is located for reasons not linked to football.
- b) Where the transfer takes place within the territory of the European Union (EU) or European Economic Area (EEA) and the player is aged between 16 and 18.
- c) Where the player and club both reside within 50km of their respective country’s national border and the player and the club are no more than 100km apart.

An unwritten exception was borne out of what is colloquially known as the “Vada case” or “Vada II” – *Girondins de Bordeaux v. FIFA* (TAS 2012/A/2862).⁷ The CAS ruling in the Vada case extended the EU/EEA provision contained in Article 19(2)(b) to apply to not only sixteen and seventeen year old players being transferred between EU/EEA clubs, but also to sixteen and seventeen year olds with citizenship from an EU/EEA country who are transferring from a non-EU/EEA club to an EU/EEA

⁵ FIFA, “FIFA Appeal Committee passes decision on appeal lodged by Chelsea FC,” 8 May 2019, available at <https://www.fifa.com/about-fifa/who-we-are/news/fifa-appeal-committee-passes-decision-on-appeal-lodged-by-chelsea-fc> (last viewed 8 May 2019)

⁶ Chelsea Football Club, “Chelsea Statement,” 8 May 2019, available at <https://www.chelseafc.com/en/news/2019/05/08/chelsea-statement> (last viewed 8 May 2019)

⁷ TAS 2012/A/2862, *FC Girondins de Bordeaux v. FIFA*, award of January 11, 2013.





club. This ruling has been adopted by FIFA in practice and has also been upheld and reaffirmed by other CAS panels.⁸

Article 19 applies not only to transfers but also to “first registrations” – that is, situations in which a player who has never previously been registered for a club and wishes to register for a club in a country where the player is not a national.

Article 18bis states that “no club shall enter into a contract which enables the counter club/counter clubs, and vice versa, or any third party to acquire the ability to influence in employment and transfer-related matters its independence, its policies or the performance of its teams.” It also allows the FIFA DC to impose disciplinary measures on clubs that do not comply with this regulation.

The principle of precedent in Article 19 cases

While the FIFA AC is not bound to precedent (and nor for that matter is the FIFA DC or the CAS), some manner of jurisprudential consistency, especially on key procedural matters, is ideal in order to ensure that all of the relevant stakeholders are being treated fairly.

It is possible, if not probable, that the decision to deny Chelsea's request for provisional measures reflects the recent shift in leadership at the FIFA AC. In May 2017, during the 67th FIFA Congress, FIFA appointed Thomas Bodstrom as the new chairman of the FIFA AC. The decision to grant or reject a request for provisional measures ultimately lies with the chairman, and each of the three cases involving the La Liga clubs predated Mr Bodstrom's appointment.

The CAS has, in fact, recognised the need for jurisprudential consistency, specifically as relates to cases involving Article 19. In *John Kenneth Hilton v. FIFA* (CAS 2015/A/4312), the CAS panel, citing CAS 2013/A/3140, CAS 2008/A/1485 and CAS 2005/A/955 and 956 reaffirmed this, stating “the Panel considers that Article 19 FIFA RSTP is a very important provision, which sets key principles designed to protect the interest of minor players. The Panel therefore agrees with the need to apply the rules on the protection of minors in a strict, rigorous and consistent manner.”⁹

⁸ See notably CAS 2016/A/4903, *Club Atlético Vélez Sarsfield v. The Football Association Ltd., Manchester City FC & FIFA*.

⁹ CAS 2015/A/4312, *John Kenneth Hilton v. FIFA*, award of August 9, 2016, para. 78.





The panel in the Barcelona case, CAS 2014/A/3793¹⁰, appeared to echo the need for the CAS to apply Article 19 in a “strict, rigorous and consistent manner,” as did the panel in the Real Madrid case, CAS 2016/A/4785.¹¹

Procedural issues

Is it possible to file a request for provisional measures before the filing of the statement of appeal?

Since 2010, under Article R37 CAS Code, a party appealing a final decision to the CAS may immediately request provisional measures, even before filing the official statement of appeal, provided that all internal legal remedies have been exhausted and the Court Office fee of CHF 1,000- has been paid to the CAS. Thereafter, the applicant has to file the statement of appeal within the applicable time limits set by Article R49 CAS Code: in case of appeal against a FIFA AC decision such time limit should be 21 days from the notification of the (full) decision. Otherwise any provisional measures granted by the CAS will be automatically annulled.

What are the substantive conditions for granting provisional measures pending the CAS proceedings?

The CAS Panel will grant provisional measures if three substantial conditions¹² are (cumulatively) met:¹³

In the first condition, it is necessary to consider whether the measure is useful to protect the applicant from irreparable harm, a criterion strongly connected to the urgency of the request. In football-related disciplinary cases, a football club that would be deprived from its right to register new players until the end of the second period of registration was found to risk irreparable harm pursuant to the definition given by the SFT.¹⁴

¹⁰ See CAS 2014/A/3793, *Fútbol Club Barcelona v. FIFA*, award of April 24, 2015, paras 4.1.2(f) and 9.34, generally.

¹¹ See CAS 2016/A/4785, *Real Madrid Club de Fútbol v. FIFA*, award of May 3, 2017, para. 56.

¹² See Mavromati / Reeb, *The Code of the Court of Arbitration for Sport : Commentary, Cases and Materials*, Kluwer Law International, 2015 (“Mavromati / Reeb”), ad Article R37, n. 27 ff., p. 207.

¹³ See inter alia CAS 2014/A/3703, *Legia Warszawa SA v. UEFA & Celtic Football Club*, order of September 1, 2014 (operative part of 18 August 2014), para. 6.1 and several references included therein.

¹⁴ See Mavromati / Reeb, ad Article R37, n. 41. See also CAS 2006/A/1137, *Cruzeiro Esporte Clube v. FIFA & PFC Krilja Sovetov*, order on provisional measures of August 17, 2006, para. 8.4. See also ATF 126 I 207.





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According to the second condition, the appeal must have reasonable chances of success on the merits.¹⁵ The applicant must make at least a plausible case that the facts relied on by him and the rights that he tries to enforce exist and that the material conditions for a legal action are fulfilled.¹⁶

The third condition requires that the interests of the applicant must not outweigh those of the opposite party if the interim relief is granted. In football-related cases, the interest of a sports federation to see its regulations applied and its decisions enforced is generally not as important as the interest of another party risking an irreparable harm through the immediate execution of the decision but, again, this should be examined on a case-by-case basis.¹⁷

Overall, in most cases, if the criterion of irreparable harm is not fulfilled, the Panel dismisses the application for provisional measures without examining the other criteria.¹⁸ In practice, however, the CAS has the freedom to assess the situation globally using the three criteria as a help rather than applying them strictly. When the other party does not raise any objection as to the request for a stay submitted by the applicant, the CAS will normally grant the interim measure.¹⁹

What is a “decision” appealable to the CAS?

Under Article R47 CAS Code, one of the jurisdictional conditions for the appeal to the CAS is the existence of a “decision” appealed against.²⁰

In general, a decision should contain a ruling intending to affect the legal state of the addressee of the decision.²¹

Furthermore, such decision must have become “internally final”. In Chelsea's case, this matter became “internally final” when the club exhausted all legal remedies available at FIFA. Specifically, the matter became “internally final” once the FIFA AC issued its decision.

¹⁵ See *Mavromati / Reeb*, ad Article R37, n. 45, p. 211.

¹⁶ *Idem*.

¹⁷ See *Mavromati / Reeb*, ad Article R37, n. 50, p. 213.

¹⁸ See *Mavromati / Reeb*, ad Article R37, n. 28, p. 207.

¹⁹ See *Mavromati / Reeb*, ad Article R37, n. 29, p. 207.

²⁰ On the meaning of an « appealable decision » see *Mavromati / Reeb*, ad Article R47, n. 13, p. 383 and references cited therein.

²¹ See, *inter alia*, CAS 2012/A/2750, *Shakhtar Donetsk v. FIFA & Real Zaragoza S.A.D.*, award of October 15, 2012, para. 99.





Of course, Chelsea's case is far from over, as the club have indicated that it will appeal to the CAS.²² The latter has the full power to review the appealed decision under Article R57 CAS Code.²³

Would the FIFA AC's denial to grant provisional measures be a 'final decision' appealable to the CAS?

In general, a decision to grant or deny provisional measures is, not, through a logical interpretation, considered a "final" decision which is appealable to the CAS.

This interpretation is reinforced by the fact that the orders on provisional measures rendered by the CAS specifically indicate that such orders do not constitute "final awards"²⁴ and can therefore not be appealed against as such to the Swiss Federal Tribunal, which is the only venue a CAS award may be appealed (and only in very limited circumstances).²⁵

Therefore, the decision of a tribunal (such as the FIFA AC) not to grant provisional measures should be construed, unless otherwise provided in the rules of such federation, as a mere "order" that can be revoked or amended and is not a "final" decision appealable to the CAS.²⁶

However, exceptionally, there are cases where the decision not to grant provisional measures can indeed be equated to a "final" decision.

For example, the decision not to grant a request for provisional measures may be considered "final" when a denial of provisionally suspending the decision has an effect akin to a "final", appealable decision for the claimant.²⁷

Specifically in football disciplinary cases, and in accordance with Article 129 FIFA DC (2017 Edition), in cases of urgency and where the disciplinary decision cannot be

²² Article 58 FIFA Statutes (2018 Edition) provides that "Appeals against final decisions passed by FIFA's legal bodies (...) shall be lodged with CAS within 21 days of receipt of the decision in question."

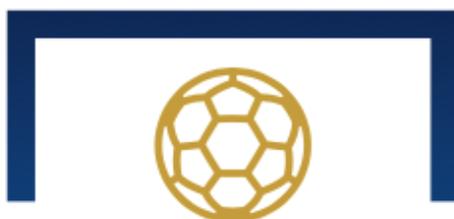
²³ On the full power of review see, generally, Mavromati / Reeb, Ad Article R57, pp. 503 ff.

²⁴ See Mavromati / Reeb, ad Article R37, n. 10-11.

²⁵ The Swiss Federal Tribunal limits its review to an exhaustively enumerated number of grounds, see generally Despina Mavromati, *The Role of the Swiss Federal Tribunal and Its Impact on CAS Arbitration*, in ABA Section of International Law, 2017, Vol. I (I), p. 17-21.

²⁶ See the Swiss Federal Tribunal Decision BGE 136 III, 200 para. 2.3.1 (available in French in <http://www.servat.unibe.ch/dfr/bge/c3136200.html>)

²⁷ See 4A_384/2017 of October 4, 2017, where the Swiss Federal Tribunal considered an Order to terminate the proceedings issued by the CAS Division President to be an appealable decision before the Swiss Federal Tribunal, see also http://sporlegis.com/2018/01/20/4a_384-2017-athlete-x-v-federation-a-iaaf/





taken early enough, the chairman of the judicial body “*may take other provisional measures at his discretion, especially to ensure compliance with a sanction already in force (...)*.”

The FIFA Disciplinary Code explicitly provides that an appeal against a decision regarding provisional measures can be lodged with the chairman of the Appeal Committee (Article 133.1 FIFA DC) and can only be admitted if “*the facts stated in the contested decision are inaccurate or if the law has been violated*”.

However, the FIFA Disciplinary Code is silent when it comes to a potential appeal against the decision regarding provisional measures rendered by the Chairman of the FIFA Appeal Committee.

In the authors' view, the same conditions (i.e. the existence of a final “decision” after exhaustion of internal remedies under Article R47 CAS Code) should apply. Accordingly, the decision on provisional measures rendered by the FIFA judicial bodies should in principle not be admissible before the CAS for lack of exhaustion of legal remedies, with possible exceptions as mentioned above.

Can a decision without grounds be appealed to the CAS?

The CAS will accept an appeal against a decision after exhaustion of legal remedies, as described above. Article R47 CAS Code refers to the specific rules of the federation in question in order to determine whether the internal remedies have been exhausted.

As relates to FIFA, Article 115 FIFA DC indicates that the FIFA judicial bodies may decide not to communicate the grounds of a decision, but instead only its operative part, i.e. the outcome and any sanctions or remedies that have been issued.

Under Article 116 FIFA DC, in cases where the parties have only received the operative part of a decision, the parties cannot appeal against the operative part. However, the parties do have ten days to request the grounds, failing which the decision will become “final and binding.” The term “final” means that the parties missed the opportunity to contest the decision which will become enforceable.²⁸

²⁸ See CAS 2015/A/3903, *Club Samsungspor v. FIFA*, award of May 4, 2015, para. 60.





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When a party does request the grounds of the decision within the ten-day time limit, Article 116 FIFA DC states that “...the motivated decision will be communicated to the parties in full, written form”.

In such a case, the time limit to lodge an appeal only begins upon receipt of the grounds / motivated decision, and it is not possible to appeal the operative part of the FIFA decision only.

Article 115 FIFA DC is considered to be *lex specialis* compared to Article 67 FIFA Statutes. In any event, and as mentioned above, there can be exceptions whereby a party requested the grounds in writing but should wait a long time for their issuance (denial of justice).²⁹

Conclusion

This matter raises key procedural questions with applicability in a range of international football disputes in addition to all manner of disputes before the CAS in which a party is considering to request provisional measures. This is especially true in cases where a party has been sanctioned by a federation and wishes to make a request, as soon as possible, that the CAS stay that sanction pending the final outcome of the appeal.

While Chelsea's dispute with FIFA is ongoing, it has already provided an excellent platform for which these complex procedural issues can be discussed and analysed in a practical manner. Depending on how it progresses, the authors may revisit this case for a follow-up article discussing the lessons learned and key procedural takeaways from this matter.

²⁹ See Mavromati / Reeb, ad Article R47, n. 21, p. 387-389, with references to CAS 2012/A/2961, *K. Adenon v. FIFA*, award of March 20, 2013, para. 110 f. See also CAS 2011/A/2439, *FA Thailand v FIFA*, award of February 17, 2011, paras. 56 ff.





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