

# F.I.F.A. SYSTEM



**RUIZ-HUERTA & CRESPO**  
ABOGADOS

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# 1. OPEN SYSTEM

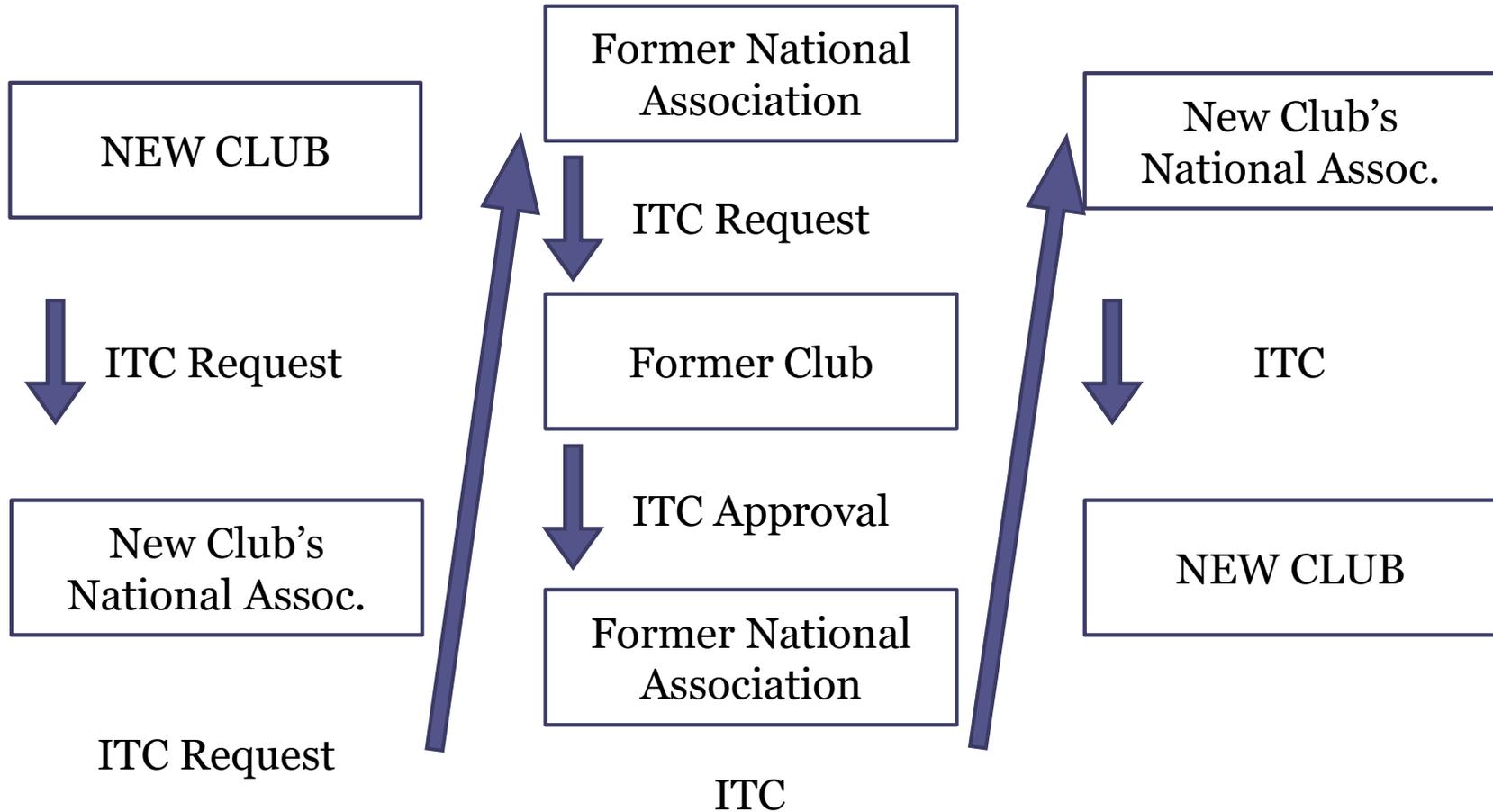
- The System is organized being Clubs and Players the centre of it.
- Clubs are registered in their respective National Associations, that are responsible of organizing the different competitions.
- National Associations may delegate to Professional Leagues their competences to organize professional competitions (Spain, England, etc.)
- At the same time, Confederations (UEFA, CONMEBOL, CONCACAF, CAD AFC) and FIFA organize their own international Competitions where the Clubs participate through their National Associations (UEFA Champions League, CONMEBOL Copa Libertadores, etc.)
- The Confederations establish who participate in those international competitions , but in certain continents the National Association has the power to decide the Club participating(CAF)

- In order to participate in those competitions there are some requisites that have to be met:
  - Financial Fair Play,
  - Stadiums premises,
  - Security,
  - Etc.

## 2. TRANSFER SYSTEM

- The Regulations on the Status and Transfer of Players is the legal Framework applicable to the Transfer System all around the world.
- These regulations have been modified several times by FIFA to adapt their content to the new circumstances; 2001, 2005, 2008, 2009, 2010, 2012, 2014 y finally in 2015.
- When a player is transferred there are some issues that have to be taken into account:

## HOW TO OBTAIN AN ITC



When engaging a relationship with a Player, we will have to take into account several issues, that may be resumed as:

- Definitive or Temporary Transfer
- Buy-out Clause
- Consequences termination
- Status of the Player: Amateur or Professional
- Disciplinary sanctions
- Ongoing disputes with former Club
- Questions directly related to the transfer agreement.
- The Age of the Player
- Participation of Intermediaries
- If a Training compensation is due
- If the Solidarity mechanism is due

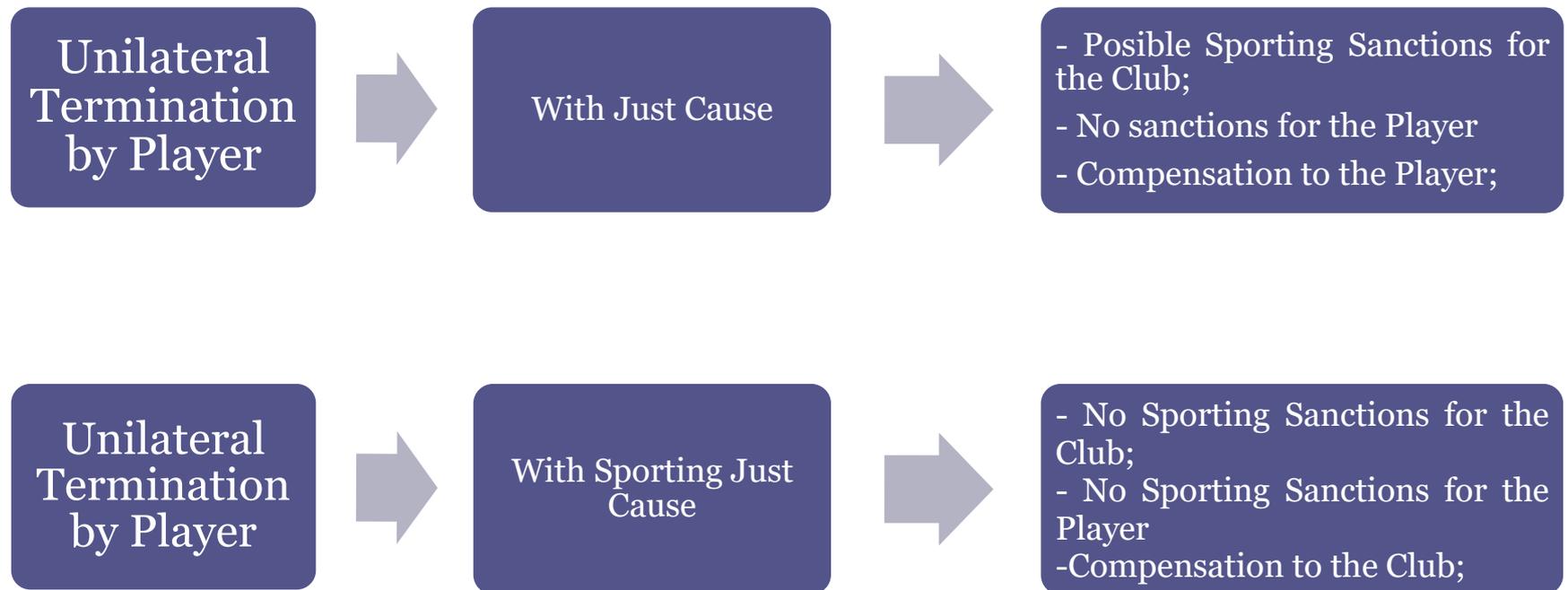
- **Definitive or Temporary Transfer**

- The transfer of a Player may be on a temporary or definitive basis, being:
  - Definitive: Within the duration of the employment contract a Player has with his club, the parties decide to terminate the relationship and transfer the player to another Club in exchange of a transfer fee ( it can be an amount of money, rights of players or both, also free).
  - Loan: Same case, but the parties of the agreement decide the length of the transfer (usually 1 season) and at the end of it, the Player returns to the Club.
- If a player reaches the end of an employment contract, there will be no transfer agreement, and the Player will be able to move freely.

- **Buy-out Clause**

- In order to establish the Transfer fee, the parties may stipulate in the contract the amount that the player shall pay to the club as compensation in order to unilaterally terminate the contract
- They are considered as pre-established compensation agreements that the Club and the Player accept as an amount to release the player and the latter accepts as a price to be able to leave the Club at any time.
- Therefore by paying this amount to the club, the player is entitled to unilaterally terminate the employment contract without just cause at any time (also during the protected period) and the Club has agreed with the consequences the Player will have to face, as a consequence no sporting sanctions may be imposed on the player as a result of the premature termination
- The sports legislation of certain countries (e.g. Spain, Real Decreto 1006) provides buyout clauses to be included as compulsory in contracts. Other countries cannot include such a clause in their contracts as it is not compatible with mandatory labour law.
- When a contract does not include such clause, then the Club has the right to establish the price for the Federative rights of a player.

# Contract Termination by Players (I)

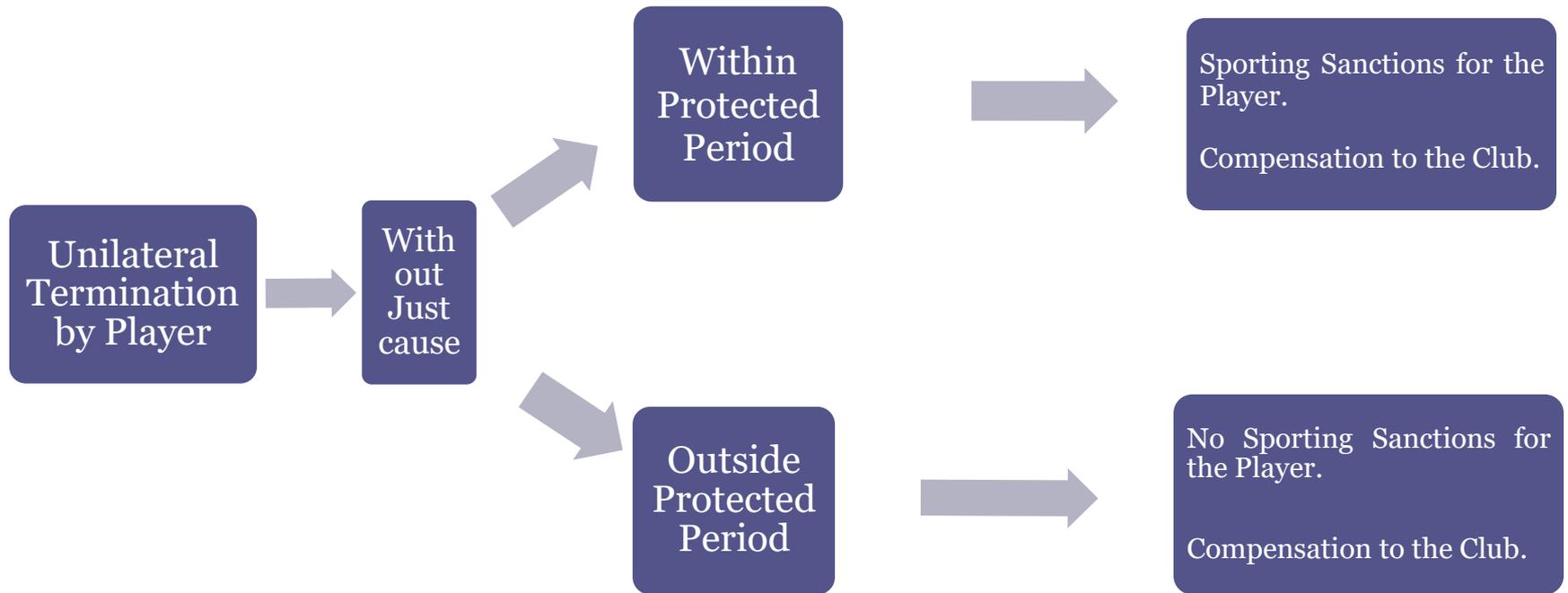


# Terminating a contract with sporting just cause

## Art. 15 del RSTP

- An established professional who has, in the course of the season, appeared in fewer than ten per cent of the official matches in which his club has been involved may terminate his contract prematurely on the ground of sporting just cause. Due consideration shall be given to the player's circumstances in the appraisal of such cases.
- The official commentary of FIFA RSTP interprets the regulations and establishes that in order to calculate the 10%, it has to be taken into account the actual minutes played by the Player and:
  - That the Player has to have ended his formation period
  - The position on the field, since a goalkeeper will be difficult to play if it is not in the starting eleven, therefore it will be difficult for him to use this just cause.
  - If the Player is injured during a long period of time.
- A professional may only terminate his contract on this basis in the 15 days following the last official match of the season of the club with which he is registered.

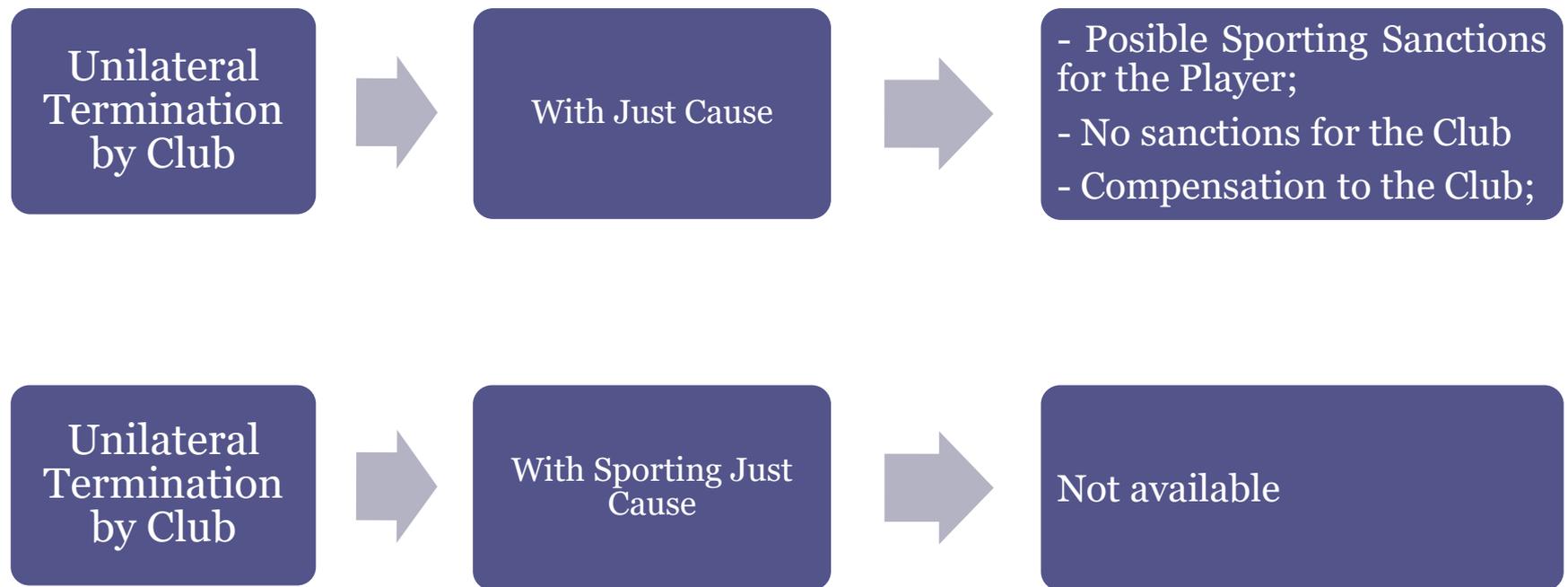
# Contract Termination by Players (II)



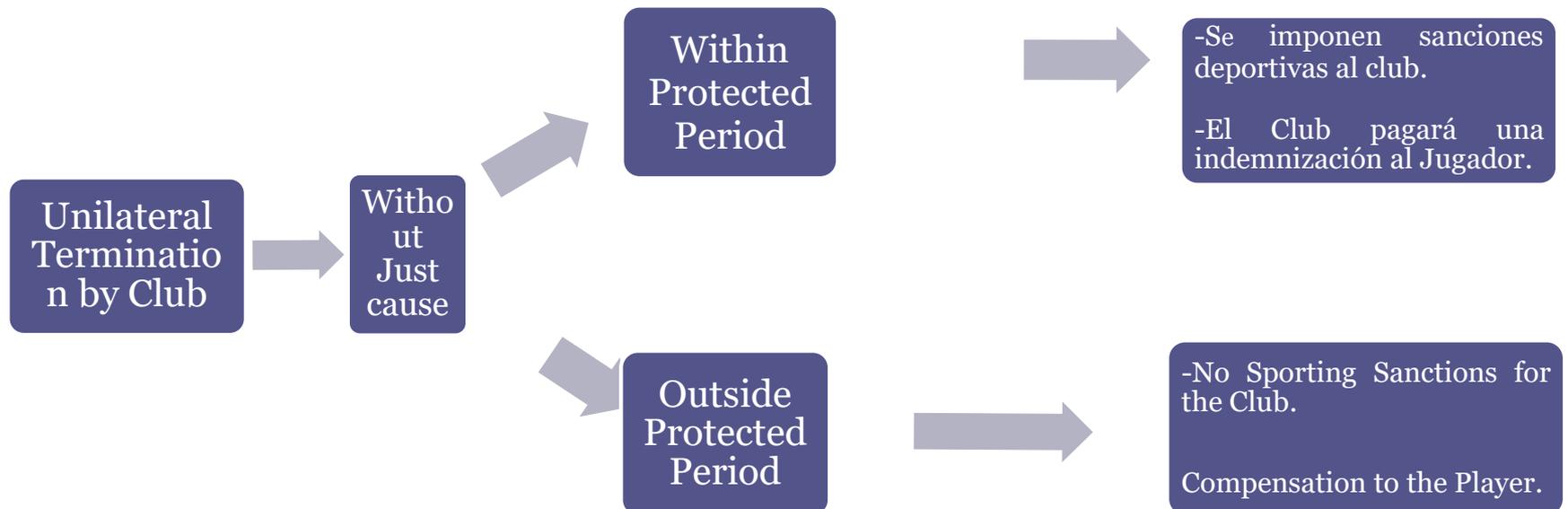
# The Protected Period

- The protected period starts when a professional signs a contract and lasts until:
  - 3 years or 3 complete seasons, whatever happens first, if the Player has not reached the age of 28.
  - 2 years or 2 complete seasons, whatever happens first, if the Player has reached the age of 28
  - The protected period starts again when, while renewing the contract, the duration of the previous contract is extended.

# Contract Termination by Clubs (I)



# Contract Termination by Clubs (II)



## **Article 14 Terminating a contract with just cause**

- 1, A contract may be terminated by either party without consequences of any kind (either payment of compensation or imposition of sporting sanctions) where there is just cause.
- 2. Any abusive conduct of a party aiming at forcing the counterparty to terminate or change the terms of the contract shall entitle the counterparty (a player or a club) to terminate the contract with just cause.

## **Article 14bis Terminating a contract with just cause for outstanding salaries**

- 1. 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)

# Article 17 Consequences of Terminating a contract without just cause

*1. In all cases, the party in breach shall pay compensation. .... unless otherwise provided for in the contract, compensation for the breach shall be calculated with due consideration for the law of the country concerned, the specificity of sport, and any other objective criteria*

*Payment of compensation to players shall be calculated as follows: the remaining salary minus the new salary, plus an amount equivalent to 3 to 6 months of salary when the termination is because non payment of salaries.*

*2. New club shall be jointly and severally liable for payment of the compensation*

*3. Sporting sanctions (4 to 6 -month restriction on playing in official matches) shall also be imposed on any player found to be in breach of contract during the protected period.*

*4. Sporting sanctions shall be imposed on any club found to be in breach of contract or found to be inducing a breach of contract during the protected period. **It shall be presumed, unless established to the contrary, that any club signing a professional who has terminated his contract without just cause has induced that professional to commit a breach.***

- **Why are articles 14 and 17 important?**

- The RSTP establishes in article 13 that “A contract between a professional and a club may only be terminated upon expiry of the term of the contract or by mutual agreement”. This is the origin of the vast majority of disputes that end up being heard by FIFA’s Jurisdictional Bodies.
- Therefore, articles 14 and 17 are important because they establish the consequences of a premature termination of a contract.
- In Spain, as in other countries, the question about how much a Player has to pay to a Club in order to terminate unilaterally his contract before the expiry of its term, has been solved through the Buy-Out Clauses.

- FIFA has established 2 categories of consequences for the termination of contracts, one for those happening within the protected period and a different one for those happening outside of it. And both of them are divided in 2 at the same time, with or without just cause.
- In this sense, we should highlight some points:
  - Article 14 foresees that a termination of a contract with just cause will have no consequences, but it is only referred to the party that terminates the contract. The party that causes that termination will have to face the established consequences.
  - Termination of a contract under art 17 del RSTP is probably the most studied, but far away from being the most easy to apply.

- The main issue when terminating a contract, with or without just cause, apart from the sporting sanctions that might be applied, is the calculation of the compensation. In this sense, FIFA establishes a series of objective criteria that shall be used to calculate it: the law of the country, the remaining contract, the payments made by the Club to acquire Player's rights, sponsorship contracts, etc...
- If a Player leaves a club, without just cause, the new Club, will be considered, unless the contrary is proven, that it induced the Player to such termination and will be considered jointly and severally liable to pay compensation and sporting sanctions might be imposed.
- There are many examples:
  - Ortega v/ Fenerbahçe & FIFA
  - Valladolid c/ Barreto Cáceres & Cerro Porteño; Termination without just cause by Player
  - Galatasaray v. Ribery & Olimpoque de Marsella; Termination with just cause by Player or.
  - AJ Auxerre c/ Mexés & AS Roma; Termination without just cause by Player
- Probably the two most reknown cases were:
  - Heart of Midlothian v/ Webster & Wigan Athletic FC, Termination without just cause by Player
  - FC SAHKSTAR DONETSK v/ Mr. Matuzalem Francelino da Silva & Real Zaragoza, SAD & FIFA Termination without just cause by Player

- **Status of the Player**

- If the Player is Amateur, art 6.4 of the RSTP, there is freedom of transfer, always provided that the National Association has not established limitations regarding the periods of transfer.
- If the Player is a Professional, he can only be transferred within the Transfer Windows established. It has to be highlighted the limitation of 2 transfers within the same season established in art. 5.3 of the RSTP.

- **Disciplinary sanctions**

- An important issue that has to be considered before deciding the transfer of a Player, whether he is or not coming from abroad, is to determine the existence of pending disciplinary, administrative or any other kind of sanctions that prevents the player to take part in trainings and/or matches with the team.
- In order to determine if there exist or not this kind of sanctions, the New Club should send request to the Former federation asking for this information.

- **Disputes with the former Club**

- In order to ensure the absolute absence of consequences when hiring a new player, the Club has to be absolutely sure that there are no disputes between the Player and his former Club, the reason is to avoid the Club to be held responsible in application of article 17.4 of the RSTP for the payment of any compensation that could be imposed either by FIFA or CAS.

- **Questions directly related to the transfer agreement.**

- Among others, there are some relevant issues that should be taken into account in order to avoid further surprises when signing a transfer agreement:
- **Visa**, when a foreigner is hired, the requisite of the VISA has to be included in the contract, as a suspensive condition, as the medical test. FIFA RSTP article 18 establishes that the employment contract cannot be subject to a successful **medical examination** or the grant of a **work permit**, but CAS already has established that the transfer agreements are not bound by such provision.
- **Exchange rate**, when the payment of the transfer fee is agreed to be done in several instalments, could be interesting, to consider the establishment of a maximum and/or minimum exchange rate to avoid unnecessary expenses.
- **Language of the contract**, if the Clubs do not have a common language, the contract should be written in both languages, establishing the prevalence of one of them in case of disputes.
- **Jurisdiction**, it is important to clearly establish the Tribunals that will have the right to hear from the disputes that could arise out of the contract. One of the main problems we have to face when dealing with international agreements is the jurisdiction.

- **Payment of the fee before or after the release of the ITC**, this is a key point to be taken into account when a transfer agreement is reached. It is absolutely normal to believe that the release of the ITC is the unique power that the seller Club has in order to enforce the payment of the transfer fee
- Notwithstanding that, article 9.1 of RSTP establishes that:
- *Players registered at one association may only be registered at a new association once the latter has received an International Transfer Certificate (hereinafter: ITC) from the former association. **The ITC shall be issued free of charge without any conditions or time limit.** Any provisions to the contrary shall be null and void. The association issuing the ITC shall lodge a copy with FIFA. The administrative procedures for issuing the ITC are contained in Annexe 3, article 8, and Annexe 3a of these regulations.*
- As can easily be understood, it means that FIFA does not want the Clubs to use the TMS to solve their disputes. It has already sanctioned several Clubs for establishing conditions regarding the payment of an installment before the release of the ITC for considering that it was a condition directly imposed for its release.

## 4. Minors (I)

- During the last 4 years there has been a great controversy related to the transfer of Minors.
- The RSTP establishes a **prohibition** to internationally transfer Minors under 18 years old with only 3 exceptions:
  - The player's parents move ***for reasons not linked to football.***
  - The transfer takes place **within the territory of the European Union (EU)** or European Economic Area (EEA) and the player is between 16 and 18. The new club must fulfil education minimum obligations:
  - The player lives **no further than 50km from a national border** and the club with which the player wishes to be registered in the neighboring association is also within 50km of that border. The maximum distance between the player's domicile and the club's headquarters shall be 100km. In such cases, the player must continue to live at home and the two associations concerned must give their explicit consent.

## **4. Minors (II)**

- Every international transfer of a minor and every first registration is subject to the approval of the subcommittee for minors of the Player Status Committee.
- If the Player is not playing for a Club that does not have a team competing in a professional Division, and the NA has requested a provisional exemption, then it will be the NA to approve or not the registration.
- The requisites to request the registration of a minor are included in Annexe 2 of the RSTP, where it is established that the procedure to request the registration of a minor begins with an application that must be submitted by the Club through TMS.

## 4. Minors (III)

- The registration procedure will have to be completely transparent and the Clubs and Players involved will have to present all the documents required by FIFA in order to demonstrate that the Player falls into one of the exceptions of article 19 of the RSTP.
- One of the last modifications of the FIFA RSTP regarding minors, has been the inclusion of article 19bis, establishing the obligation to register and report the presence of minors at academies.
- This obligations forces every Club that operates an academy with legal, financial or de facto links to the club to report all minors who attend the academy to the association upon whose territory the academy operates.

## **4. TRAINING COMPENSATION (I)**

- Established in art 20 and Annexe 4 of the RSTP the Training compensation is a compensation that shall be paid to a player's training club(s) in two circumstances:

(1) when a player signs his first contract as a professional, and

(2) each time a professional is transferred until the end of the season of his 23rd birthday.

- The obligation to pay training compensation arises whether the transfer takes place during or at the end of the player's contract. The provisions concerning training compensation are set out in Annexe 4 of the regulations.
- The Training compensation is paid for the technical education received by a Player between the ages of 12 to 21, and payable until the 23rd birthday of the Player.
- It has to be paid by the Club that registers him as a professional for the first time, within the 30 days following the registration.
- In case of subsequent transfers of the Professional, it will only be owed to his former club for the time he was effectively trained by that club.
- The calculation of the compensation shall be done according to the following amounts:

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

## **4. TRAINING COMPENSATION (II)**

- This compensation as it is established in the Annexe 4, is not anymore payable after the 23 birthday, for the technical education received by the Player, but there is a scenarios that has to be taken into account that modify the general regime.
- **When the Player is considered to have finished his education before his 21<sup>st</sup> birthday.**
- In this case, the training compensation is only payable until the moment when the player is considered to have finished his training, this criteria is established in a case by case basis by FIFA, as a recent example where the firm has taken part, a Ghanaian Club presented a claim against an Egyptian Club before FIFA requesting the payment of the training compensation in an amount of 83,000 USD.
- FIFA in a first decision decided to condemn the Egyptian Club to pay the amount equivalent to 33 months of training, being 83,000 USD.
- The decision was appealed before CAS on the basis that the Player had finished his training before joining the Ghanaian Club hence the latter was not entitled to receive any compensation.
- The facts used by the Egyptian Club to consider that the Player had finished his training were:
  - The Player joined the Ghanaian Club being just 18 years old, playing 28 out of 30 matches during his first season winning the league that year, meaning that he was already a well established player.
  - For the second season, he was named the Captain of the team
  - Having informed the Ghanaian team that he will not continue playing with them, in his third season the Player played 21 out of 30 matches.
- The conclusion of the Sole Arbitrator was that a Captain of a first division team cannot be considered to be still receiving training, and condemned the Egyptian Club to pay only for the first year he played with the Ghanaian team.

## **5. Solidarity mechanism**

- Established in art 21 and Annexe 5 of the RSTP the Solidarity mechanism is a compensation that shall be paid to a player's training club(s) when a professional is transferred before the expiry of his contract, to any club that has contributed to his education and training. The compensation is calculated proportionally to the time the player has been trained by each Club.
- This solidarity contribution reflects the number of years (calculated pro rata if less than one year) he was registered with the relevant club(s) between the seasons of his 12th and 23rd birthdays, as follows:
  - Season of 12th birthday: 5% (i.e. 0.25% of total compensation)
  - Season of 13th birthday: 5% (i.e. 0.25% of total compensation)
  - Season of 14th birthday: 5% (i.e. 0.25% of total compensation)
  - Season of 15th birthday: 5% (i.e. 0.25% of total compensation)
  - Season of 16th birthday: 10% (i.e. 0.5% of total compensation)
  - Season of 17th birthday: 10% (i.e. 0.5% of total compensation)
  - Season of 18th birthday: 10% (i.e. 0.5% of total compensation)
  - Season of 19th birthday: 10% (i.e. 0.5% of total compensation)
  - Season of 20th birthday: 10% (i.e. 0.5% of total compensation)
  - Season of 21th birthday: 10% (i.e. 0.5% of total compensation)
  - Season of 22th birthday: 10% (i.e. 0.5% of total compensation)
  - Season of 23th birthday: 10% (i.e. 0.5% of total compensation)

## 7. Working with Intermediaries

- FIFA decided in 2014 to entirely modify the Agents regulations, actually, what FIFA has done is to eliminate the Agents and create the new concept of the Intermediaries.
- From the 1<sup>st</sup> of April 2015 FIFA established a completely new framework to regulate the engagement of an intermediary for:
  - The Conclusion of an employment contract between a player and a club, or
  - The Conclusion of a transfer agreement between two clubs
- The legal framework of FIFA has had to be implemented at a national level by all the national associations, in order to regulate the activity of the Intermediaries within their territories.
- As an example, Qatar, Saudi Arabia or the United Arab Emirates have already rendered their own regulations on Working with Intermediaries

- **The new Framework established by FIFA is based in 9 key points:**
- **Scope**
- The scope of these new regulations, as said before is the monitoring of the Intermediaries' activities when being hired to participate in the negotiation of a Transfer Agreement or an Employment Contract.
- **Registration requirements (I)**
- FIFA as well as almost every National Association that has already published its regulations, considers that the Intermediaries have to be **mandatorily registered** to be able to participate as Intermediaries in the negotiations.
- Players and Club are held responsible of engaging registered intermediaries and the National Associations are entitled to sanction them they do not take due care.

- **Registration requirements (II)**
- In order to request the registration as intermediaries, they have to present the documents that certify, among others, that they:
  - Do not have a position as Official in any sporting body related to football
  - Do not have any financial interest or any form of ownership in a club.
  - Present the Declaration of Intermediary contained in Annex 1 or 2 of the Regulations.
- Every National Association has establishes its own Registration Fee, as of today:
  - The Qatar Football association per Intermediary QAR 5,000 (1,260 EUR) for Local and Foreign Intermediaries, QAR 10,000 (2520 EUR) for legal entities
  - Saudi Arabia: Annual fee of 10,000 SAR (2,450 euros).
  - UAE: Annual fee of 20, 000 AED (5000 euros) plus a 5% of every contract in case of Intermediaries with registered office in the country and 10% for those without registered office.

- **Representation contract**

- In order to hold the representation of a Player or a Club, the Intermediary has to have entered into a valid Representation Agreement prior to carrying out any activity on their behalf.
- The minimum requirements of the Representation Agreement are, the names of the parties, the scope of the contract, the term, the date of conclusion, the duration, the termination provisions and the signatures.
- There are some countries such as Qatar, where the maximum duration of the contract is established in 2 years plus an extension of two additional years.

- **Disclosure of information**

- All and Every intermediary has to give their consent to the publication on a yearly basis by the National Association of all the details of all the contracts signed where they had participated, Employment contracts, Representation Agreements or Transfer Agreements.
- The Publication of all the contracts where an intermediary has participated during the whole year has to be made by the National Association on a Public way before the 30th of March of the next year.

- **Impeccable Reputation**

- One of the most important requisites established by FIFA regarding the engagement of an intermediary is the latter's impeccable reputation. In order to ensure the fulfilment of this requisite, every intermediary must sign a declaration, included in the very same FIFA Regulation, which contains an statement where the Intermediary commits to comply the national and international regulations, his impeccable reputation, the absence of any contractual relationship with FIFA, the Confederation or any other Football related body, the non acceptance of payments from Clubs regarding transfers, training compensation or solidarity mechanisms, or from minors, etc...

- **Conflict of Interest**

- Theoretically, an Intermediary cannot represent a Club and a Player in an operation where he deems it could exist a conflict of interest, but, if he discloses the existence of such potential conflict and the parties accept it in writing, the Intermediary can still participate on the operation.
- It is also allowed that a Club and a Player decide to engage the same intermediary for the purpose of the same transaction, in such case, both parties have to give their express written consent prior to start the negotiations, establishing the party that will remunerate the Intermediary.

- **Remuneration**

- In accordance with FIFA Regulations, an Intermediary should not exceed three per cent (3%) of the Player's basic gross income or the eventual transfer fee.
- Notwithstanding that and considering that "should" has to be understood as a recommendation, the NA have modified, or not, this provision, i.e. UAE and Saudi Arabia, have established a mandatory limit of a 3% that cannot be surpassed, others have maintained the level of recommendation established by FIFA.
- Apart from the amount established in the Regulations, there are other points that have to be highlighted:
  - The payment may be done in instalments.
  - The Intermediaries cannot receive any payment related to training compensation or, solidarity mechanism.
  - The Intermediary cannot have any interest in any transfer compensation or future transfer value of a player. The assignment of claims is also prohibited.
  - Any payment for the services of an intermediary shall be made exclusively by the client, if the latter is a Player and after the conclusion of the relevant transaction, the player may give his written consent for the club to pay the intermediary on his behalf.
  - **If the player concerned is a minor**, the Player itself, or the Club involved on the relevant negotiation, where an Intermediary has been engaged, are prohibited from making any payments to such intermediary

- **Disciplinary powers and Jurisdiction**

- The National Associations have powers, and have to obligation, to establish the relevant Disciplinary provisions in order to ensure the fulfilment of their Regulations.
- This provisions include the establishment of the Jurisdictional Body that will hear from the disputes that may arise from the activity of the Intermediaries within their territory.
- Such provisions shall include the publication of any disciplinary sanctions imposed on any intermediary in order to allow FIFA Disciplinary Committee to decide on the extension of the sanction, to have or not worldwide effect in accordance with the FIFA Disciplinary Code.

# F.I.F.A. JURISDICTION



**RUIZ-HUERTA & CRESPO**  
ABOGADOS

## **FIFA JURISDICTION**

Kind of disputes that can be solved through FIFA systems:

Dispute Resolution Chamber

Players' Status Committee

Disciplinary Committee

Ethic Committee

## FIFA Jurisdiction

**FIFA has 4 bodies to solve disputes:** Two of them are focused on disputes between coaches, players and clubs, and the other two on disciplinary and good governance disputes.

### 22 Competence of FIFA

Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

- a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;
- b) employment-related disputes between a club and a player of an international dimension, the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs;
- c) employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level;
- d) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to different associations;
- e) disputes relating to the solidarity mechanism (article 21) between clubs belonging to the same association provided that the transfer of a player at the basis of the dispute occurs between clubs belonging to different associations;
- f) disputes between clubs belonging to different associations that do not fall within the cases provided for in a), d) and e).

### 23 Players' Status Committee

1. The Players' Status Committee shall adjudicate on any of the cases described under article 22 c) and f) as well as on all other disputes arising from the application of these regulations, subject to article 24.
2. The Players' Status Committee has no jurisdiction to hear any contractual dispute involving intermediaries.
3. In case of uncertainty as to the jurisdiction of the Players' Status Committee or the Dispute Resolution Chamber, the chairman of the Players' Status Committee shall decide which body has jurisdiction.
4. The Players' Status Committee shall adjudicate in the presence of at least three members, including the chairman or the deputy chairman, unless the case is of such a nature that it may be settled by a single judge. In cases that are urgent or raise no difficult factual or legal issues, and for decisions on the provisional registration of a player in relation to international clearance in accordance with Annexe 3, article 8, and Annexe 3a, the chairman or a person appointed by him, who must be a member of the committee, may adjudicate as a single judge. Each party shall be heard once during the proceedings. Decisions reached by the single judge or the Players' Status Committee may be appealed before the Court of Arbitration for Sport (CAS).

### 24 Dispute Resolution Chamber

1. The Dispute Resolution Chamber (DRC) shall adjudicate on any of the cases described under article 22 a), b), d) and e) with the exception of disputes concerning the issue of an ITC.
2. The DRC shall adjudicate in the presence of at least three members, including the chairman or the deputy chairman, unless the case is of a nature that may be settled by a DRC judge. The members of the DRC shall designate a DRC judge for the clubs and one for the players from among its members. The DRC judge may adjudicate in the following cases:
  - i. all disputes up to a litigious value of CHF 100,000;
  - ii. disputes relating to training compensation without complex factual or legal issues, or in which the DRC already has a clear, established jurisprudence;
  - iii. disputes relating to solidarity contributions without complex factual or legal issues, or in which the DRC already has a clear, established jurisprudence.

Disputes as per points ii. and iii. of this paragraph may also be adjudicated by the chairman or the deputy chairman as single judges.

The DRC judge, as well as the chairman or deputy chairman of the DRC (as the case may be), is obliged to refer cases concerning fundamental issues to the chamber. The chamber shall consist of equal numbers of club and player representatives, except in those cases that may be settled by a DRC judge. Each party shall be heard once during the proceedings. Decisions reached by the DRC or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS).

3. Training compensation and solidarity mechanism claims handled through TMS (cf. Annexe 6) shall be decided by the sub-committee of the DRC.

The main dispute resolution system is formed by the Dispute Resolution Chamber and the Players' Status Committee, both of them have their jurisdiction established in articles 22 to 24 of the Regulations on the Status and Transfer of Players

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### 22 Competence of FIFA

Without prejudice to the right of any player or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear:

- a) disputes between clubs and players in relation to the maintenance of contractual stability (articles 13-18) where there has been an ITC request and a claim from an interested party in relation to said ITC request, in particular regarding the issue of the ITC, sporting sanctions or compensation for breach of contract;
- b) employment-related disputes between a club and a player of an international dimension, the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs;
- c) employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level;
- d) disputes relating to training compensation (article 20) and the solidarity mechanism (article 21) between clubs belonging to different associations;
- e) disputes relating to the solidarity mechanism (article 21) between clubs belonging to the same association provided that the transfer of a player at the basis of the dispute occurs between clubs belonging to different associations;
- f) disputes between clubs belonging to different associations that do not fall within the cases provided for in a), d) and e).

### 23 Players' Status Committee

1. The Players' Status Committee shall adjudicate on any of the cases described under article 22 c) and f) as well as on all other disputes arising from the application of these regulations, subject to article 24.
2. The Players' Status Committee has no jurisdiction to hear any contractual dispute involving intermediaries.
3. In case of uncertainty as to the jurisdiction of the Players' Status Committee or the Dispute Resolution Chamber, the chairman of the Players' Status Committee shall decide which body has jurisdiction.
4. The Players' Status Committee shall adjudicate in the presence of at least three members, including the chairman or the deputy chairman, unless the case is of such a nature that it may be settled by a single judge. In cases that are urgent or raise no difficult factual or legal issues, and for decisions on the provisional registration of a player in relation to international clearance in accordance with Annexe 3, article 8, and Annexe 3a, the chairman or a person appointed by him, who must be a member of the committee, may adjudicate as a single judge. Each party shall be heard once during the proceedings. Decisions reached by the single judge or the Players' Status Committee may be appealed before the Court of Arbitration for Sport (CAS).

### 24 Dispute Resolution Chamber

1. The Dispute Resolution Chamber (DRC) shall adjudicate on any of the cases described under article 22 a), b), d) and e) with the exception of disputes concerning the issue of an ITC.
2. The DRC shall adjudicate in the presence of at least three members, including the chairman or the deputy chairman, unless the case is of a nature that may be settled by a DRC iudex. The members of the DRC shall designate a DRC judge for the clubs and one for the players from among its members. The DRC judge may adjudicate in the following cases:
  - i. all disputes up to a litigious value of CHF 100,000;
  - ii. disputes relating to training compensation without complex factual or legal issues, or in which the DRC already has a clear, established jurisprudence;
  - iii. disputes relating to solidarity contributions without complex factual or legal issues, or in which the DRC already has a clear, established jurisprudence.

Disputes as per points ii. and iii. of this paragraph may also be adjudicated by the chairman or the deputy chairman as single judges.

The DRC judge, as well as the chairman or deputy chairman of the DRC (as the case may be), is obliged to refer cases concerning fundamental issues to the chamber. The chamber shall consist of equal numbers of club and player representatives, except in those cases that may be settled by a DRC judge. Each party shall be heard once during the proceedings. Decisions reached by the DRC or the DRC judge may be appealed before the Court of Arbitration for Sport (CAS).

3. Training compensation and solidarity mechanism claims handled through TMS (cf. Annexe 6) shall be decided by the sub-committee of the DRC.

The main dispute resolution system is formed by the Dispute Resolution Chamber and the Players' Status Committee, both of them have their jurisdiction established in articles 22 to 24 of the Regulations on the Status and Transfer of Players

## INDEPENDENT ARBITRAL TRIBUNAL

When acceptable:

b) employment-related disputes between a club and a player of an international dimension;

The aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent arbitration tribunal that has been established at national level within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable on the parties. The independent national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs;

c) employment-related disputes between a club or an association and a coach of an international dimension, unless an independent arbitration tribunal guaranteeing fair proceedings exists at national level;

## What a National DRC has to have to be considered by FIFA as an Independent Arbitration Tribunal (always provided it is explicitly established in the contract CAS 2015/A/4333):

- ***Principle of parity when constituting the arbitration tribunal***

The parties must have equal influence over the appointment of arbitrators. This means for example that every party shall have the right to appoint an arbitrator and the two appointed arbitrators appoint the chairman of the arbitration tribunal. The parties concerned may also agree to appoint jointly one single arbitrator. Where arbitrators are to be selected from a predetermined list, every interest group that is represented must be able to exercise equal influence over the compilation of the arbitrator list.

- ***Right to an independent and impartial tribunal***

To observe this right, arbitrators (or the arbitration tribunal) must be rejected if there is any legitimate doubt about their independence. The option to reject an arbitrator also requires that the ensuing rejection and replacement procedure be regulated by agreement, rules of arbitration or state rules of procedure.

- ***Principle of a fair hearing***

Each party must be granted the right to speak on all facts essential to the ruling, represent its legal points of view, file relevant motions to take evidence and participate in the proceedings. Every party has the right to be represented by a lawyer or other expert.

- ***Right to contentious proceedings***

Each party must be entitled to examine and comment on the allegations filed by the other party and attempt to rebut and disprove them with its own allegations and evidence.

- ***Principle of equal treatment***

The arbitration tribunal must ensure that the parties are treated equally. Equal treatment requires that identical issues are always dealt with in the same way vis-à-vis the parties.

When does International Dimension exist?

The Commentary (2005) established: *The international dimension is represented by the fact that the player concerned is a foreigner in the country concerned.*

CAS 2014/A/3682 Established:

*“While the Appellant contended that the present dispute did not have an international dimension, but was rather a contractual dispute involving a contract concluded in South Africa, and subject to South African law, the Panel finds, consistent with the commentary referred to in the preceding paragraph, that the international dimension is represented by the fact that the First Respondent is a foreigner in the country concerned. To find otherwise would undermine the entire rationale of the FIFA PSC affording to itself jurisdiction, and affording protection to the parties, in employment contracts involving foreign nationals”*

Art. 12 Para. 3 of the Rules Governing the Procedures of the Players’ Status Committee and the Dispute Resolution Chamber according to which *“Any party claiming a right on the basis of an alleged fact shall carry the burden of proof”* (almost copy-paste art 8 SCO)

# F.I.F.A. DISCIPLINARY PROCEEDINGS



**RUIZ-HUERTA & CRESPO**  
ABOGADOS

# Index

❖ **Applicable regulations**

❖ **Jurisprudence**

- **FIFA Disciplinary Code** is divided in 2 main parts:
- **The Substantive Law**: that establishes the sanctions and their conditions
- **The Organization and Procedure**: that regulates the bodies that will decide on disciplinary matters and the procedure that such bodies and the

## **The Substantive Law:**

The First Title of the Disciplinary Code, regulates the different sanctions, the infringements, and their consequences, in this sense, the first Chapter, so-called General Part, contains the list of sanctions and their explanation, such as:

- Warning,
- Reprimand
- Fine
- Caution
- Expulsion
- Transfer Ban
- Expulsion from a Competition
- Relegation to a lower division, etc

- The Conditions for the sanctions established by FIFA are determined by culpability, but, art 7 of the Disciplinary Code, FIFA considers that **negligence and culpability** have to have the same consequences, punishing infringements regardless why they have been committed.
- The **attempt** and the **involvement** are also punishable.
- Considering that there are two different kind of subject as target of the disciplinary proceedings, FIFA divides the different sanctions into three different sections: Sanctions that may be imposed only on natural persons (art 11), to legal persons (art 12), or those that may be imposed on both (art 10).
- i.e. a warning or a fine may be imposed on natural and legal persons, but a match suspension may only be imposed on a natural person and a transfer ban or a relegation to a lower division may be imposed only on legal persons.

- Articles 8 to 31bis explain the different sanctions, from the warning (art 8) to the Replay of a match (art. 31bis)
- In this sense, and as an example:
- **Art. 16 *Return of awards***
- *The person required to return an award shall return the benefits received, in particular sums of money and symbolic objects (medal, trophy etc.).*
- **Art. 23 *Transfer ban***
- *A transfer ban prevents a club from registering any player during the period in question.*

- One of the main characteristics of the FIFA Disciplinary Regulations is that they give a lot of room for the Disciplinary Bodies to apply the sanctions however they may consider. Article 32 for example establishes, *Unless otherwise specified, the sanctions provided for in Chapter I (General Part) and Chapter II (Special Part) of this code may be combined*, this capacity permits the Disciplinary Bodies to apply whichever sanction they consider, not being bound for a concrete text or limit.
- The Rules for the Determination of the sanction are established in article 39, considering that first of all, and as abovementioned:
  - 1. *The body pronouncing the sanction **decides the scope and duration** of it.*
- Apart from that the rest of the Rules are as loose as explained:
  - 2. *Sanctions **may be limited** to a geographical area or to one or more specific categories of match or competition.*
  - 3. *Unless otherwise specified, the duration of a sanction is always defined.*
  - 4. *The body shall take account of all relevant factors in the case and the degree of the offender's guilt when imposing the sanction. d*

- The special part of the Regulations begins in article 46, with the Infringements of the Law of the Game, this section establishes the sanction, caution or sent off, that a Player will face depending on the degree of the infringement.
- The list of infringements begin on the Infringements of the Law of the Game and continue with:
  - Disorderliness at matches and competitions,
  - Offensive and discriminatory behavior,
  - Infringements of personal freedom,
  - Forgery and falsification,
  - Corruption,
  - Doping,
  - Failure to respect decisions,
  - Responsibilities of clubs and associations, and
  - Unlawfully influencing match results

- The organisation of the Disciplinary System is contained in art 70 and ss
- It is established if the match or competition where an infringement has taken place is not organised by FIFA, the Association, Confederation or Sports Organisation that organised it will be responsible for the enforcement of the sanctions imposed.
- Only if FIFA decides so, the sanctions imposed by an Association or Confederation will be extended to have a worldwide effect upon request.

- FIFA has the power (art 70.2) to sanction serious infringements of the statutory objectives of FIFA (cf. final part of art. 2) if associations, confederations and other sports organizations fail to prosecute serious infringements or fail to prosecute in compliance with the fundamental principles of law.
- This means that if FIFA considers that a National Association has not prosecuted properly a serious infringement, its disciplinary bodies may begin disciplinary proceedings to sanction the violation of the regulations
- This powers are exercised by the Disciplinary Committee, the Appeal Committee and the Ethics Committee.

- The Disciplinary Committee,
  - The Disciplinary Committee is the body authorised to sanction any breach of FIFA regulations which does not come under the jurisdiction of any other body.
  - It may rule as a collegiate body (art 77) or the Chairman alone in some specific circumstances (art 78)
- The Appeal Committee
  - is responsible for deciding appeals against any of the Disciplinary Committee's decisions that FIFA regulations do not declare as final or referable to another body.
- The Ethics Committee.

- The Judicial Bodies of FIFA must comply with the following rules:
  - The members of the DC and the AC are appointed by the Executive Committee for a period of 8 years.
  - The EC appoints the Chairman of each body.
  - The meetings are deemed valid if at least three members are present
  - The Staff of the committees is provided by the General Secretariat of FIFA

- The procedure Regulations are contained in the Disciplinary Code, beginning in article 90:
  - The procedure must comply with the right to be heard of the parties before passing any decision
  - The latter may be restricted in exceptional circumstances such as when confidential matters need to be safeguarded or the proceedings need to be conducted properly.

- About the proof:

- This is a one of the big issues when you face a procedure, irrespective of the jurisdiction you are (ordinary or ADR).

- Who has to prove the allegation:

- Laws have established that the party that alleges a fact or claims for a right, has the burden of proving it. This is established in the innocence presumption principle.

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- Article 8 of the Swiss Civil Code: *“Unless the law provides otherwise, the burden of proving the existence of an alleged fact shall rest on the person who derives rights from that fact”*.

- “How much” it has to be proven?

- 3 Standards:

- Balance of probabilities,
- Comfortable Satisfaction and
- Beyond reasonable doubt

**The balance of probabilities** presupposes that, from an objective perspective, there are serious reasons to believe in the accuracy of an allegation and there are no other possibilities which are relevant or could reasonably be considered (see ATF 133 III 81, paragraph 4.2.2, pp. 88–89, and the judgments cited; see also ATF 135 V 39, paragraph 6.1, p. 45).

In *FIFA v. STJDF & CBF & Dodo* and *WADA v. STJDF & CBF & Dodo*, the Tribunal held on that regard that “*according to the CAS jurisprudence, the balance of probability standard means that the indicted athlete bears the burden of persuading the judging body that the occurrence of the circumstances on which he relies is more probable than their non-occurrence or more probable than other possible explanations of the doping offence*”

This standard is used in order to determine for example if an athlete has or not voluntarily used a prohibited substance or how the substance entered into his body in doping procedures.

**The “comfortable satisfaction”** defined as: Greater than a mere balance of probability but less than proof beyond a reasonable doubt. In particular, the CAS jurisprudence has clearly established that to reach this comfortable satisfaction, the Panel should have in mind “the seriousness of allegation which is made”. It follows from the latter that this standard of proof is then a kind of sliding scale, based on the allegations at stake: the more serious the allegation and its consequences, the higher certainty (level of proof) the Panel would require to be “comfortable satisfied”.

This standard is used in doping to prove the existence of an Anti-doping rule violation or in Disciplinary procedures (on the organization) and/or licensing procedures for international competitions (on the applicant).

Each Federation can establish its own Standard, in this sense: CAS 2011/A/2490: *There is no universal (minimum) standard of proof for match-fixing offences. [...] While the Panel acknowledges that consistency across different associations may be desirable, in the absence of any overarching regulation (such as the WADA Code for doping cases), each association can decide for itself which standard of proof to apply, subject to national and/or international rules of public policy. The CAS has neither the function nor the authority to harmonize regulations by imposing a uniform standard of proof, where, as in the current case, an association decides to apply a different, specific standard in its regulations.*

- Disciplinary proceedings before the DC:
  - The infringements are prosecuted ex-officio but can be reported to FIFA.
  - The investigatory phase is carried out by the Secretariat and all the members of FIFA are obliged to collaborate.
  - Once it is finished, and the DC has decided, the decision is notified to the parties, without grounds.
  - If the parties have 10 day to request the grounds, suspending the effects of the decision until the notification of the motivated decision.

- Disciplinary proceedings before the AC:
  - An appeal may be lodged with the Appeal Committee against any decision passed by the Disciplinary Committee, unless the disciplinary measure pronounced is:
    - a) a warning;
    - b) a reprimand;
    - c) a suspension for fewer than three matches or of up to two months;
    - d) a fine of up to CHF 15,000 imposed on an association or a club or of up to CHF 7,500 in other cases;
    - e) decisions passed in compliance with art. 64 of this code..
  - The time limit for the appeal begins with the notification of the grounds of the decision, then the party intending to appeal must inform within 3 days of its intention.
  - After that, the complete appeal has to be filed within a further time limit of seven days.
  - The appeal does not have suspensive effect except with regard to orders to pay a sum of money

- Provisional measures
- When Imposed by FIFA Bodies:
  - If an infringement appears to have been committed and a decision on the main issue cannot be taken early enough, the chairman of the judicial body may, in emergencies, provisionally pronounce, alter or revoke a sanction
  - The provisional measures may be imposed only up to 45 days that might be extended for 45 days more.
- When requested by Parties
  - Periculum in mora
  - Likelihood of success
  - Balance of interest

- CONFEDERATIONS DISCIPLINARY CODES
- AFC, UEFA, CONMEBOL or the CAF, follow the same path established by FIFA, with some differences that take into account the particularities of each region.
- The CONFEDERATION Disciplinary Regulations will be applied to:
  - every Match organized by the Conf;
  - every function or course organized by the Conf;
  - every friendly International Match requiring authorization from the Conf;
  - if a Match Official is harmed physically or otherwise;
  - if the statutory objectives of Conf are breached, especially with regard to forgery, corruption and doping; and
  - any breach of Conf regulations that does not fall under the jurisdiction of any other body.

## **Strict liability**

Strict liability is the legal responsibility for damages or injury, even if the person found strictly liable was not at fault. In the case of strict liability, neither good faith nor the fact that the defendant took all possible precautions are valid defenses.

The validity of strict liability under Swiss law and even under the European Convention of Human Rights has already been settled recently by the CAS in its award CAS 2013/A/3139.

The authority by which a sporting association may set its own rules and exert its disciplinary powers on its members does not rest on public or penal law, but on civil law. The Swiss Federal Tribunal (Judgment of 21 March 1999) confirmed that only civil law standards are relevant to the disciplinary sanctions imposed by sports associations.

# Strict Liability for the behaviour of spectators.

The rule states that Clubs are always responsible for incidents caused by their spectators.

Art. 83 of CAF Disciplinary Code:

- 1. National associations, **clubs** and officials **are responsible for ensuring that the game is not brought into disrepute in anyway whatsoever by the conduct of their players, officials, members, supporters, spectators** (especially using dangerous objects and/or lasers ) and any other persons exercising a function at a match at the request of the association or club.*
- 2. The host association or **club is responsible for order and security both inside and around the stadium** before, during and after the match. It is liable for incidents of any kind, and can be rendered subject to disciplinary measures*
- 3. The **visiting association or visiting club is responsible for the conduct of its own group of supporters**. Spectators occupying the away sector specifically or the demarcated sectors of a stadium are regarded as the visiting association's supporters, unless proven to the contrary.*

Prohibited behaviors are covered in Articles 130 (Article 130 Team's Misconduct), 132 (Article 132 Racism, other discriminatory conduct and propaganda) and 151 (National Association's Responsibilities).

**Article 130** establishes sanctions for Clubs in case their players act unsportsmanlike against other players, persons different from these or officials, as long as more than three players are sanctioned in the same match.

Art. 130 of CAF Disciplinary Code :

The following constitute misconduct by a team and are sanctioned by a maximum fine of fifteen thousand US Dollars (\$15.000)

- a) when four (4) players are cautioned during one match;
- b) when three (3) players are sent off during one match;
- c) when three (3) players are cautioned + one (1) player (or more) are expelled during one match;
- d) when several players together make threats or show force against a match official.

It includes sanctions to Clubs in case 3 or more players are sanctioned in the same match.

**Art. 132** of CAF Disciplinary Code :

*1. Anyone who publicly disparages, discriminates against or denigrates someone in a defamatory manner on account of race, colour, language, religion or ethnic origin, or perpetrates any other racist and/or contemptuous act, will be subject to match suspension for at least five matches at every level. Furthermore, a stadium ban and a fine of at least ten Thousand US Dollars (\$10.000) will be imposed on the perpetrator. If the perpetrator is an official, the fine will be at least twenty thousand US Dollars (\$20.000).*

*2. If spectators display banners bearing racist slogans, or are guilty of any other racist and/or contemptuous behaviour at a match, the appropriate body will impose **a sanction** of at least twenty thousand US Dollars (\$20.000) **on the association or club that the spectators concerned support** and force it to play its next official match without spectators. If the spectators **cannot be identified as supporters of one or the other** association or club, **the host association or club will be sanctioned** accordingly*

This entails the establishment of a regime of genuine strict liability for the inappropriate behaviour of its followers related to Racism, Racial Discrimination, Xenophobia and Related Intolerance.

The aforementioned article 83 establishes the responsibility of clubs with regard to their fans, as does **article 151** with regard to national associations:

1. National associations that organise matches shall:

- a) assess the degree of risk posed by matches and notify the CAF bodies of those that are especially high-risk;
- b) comply with and implement existing safety rules (FIFA and CAF Regulations, national laws, international agreements) and take every safety precaution demanded by circumstances before, during and after the match;
- c) ensure the safety of players and officials of the visiting team during their stay;
- d) keep local authorities informed and collaborate with them actively and effectively;
- e) ensure that law and order are maintained in the stadia and immediate surroundings and that matches are organized properly.
- f) Ensure that all dangerous objects and/or lasers are not allowed in the stadium or in the areas surrounding it by conducting searches of spectators.

2. **National associations are held responsible for the behaviour of their supporters** (especially with regard to throwing missiles and invading the pitch) and auxiliary staff.

In the event that national associations, when organising matches, fail to comply with any of the obligations laid down in Article 151, they may be sanctioned in accordance with Article 153:

1. Any **national association** that **fails to comply** with the obligations contained in the provisions of this section **will be sanctioned** with a fine.
2. In the case of a serious infringement as set out in article 150 para. 1 al. b) and c), the body may impose other sanctions, such as a stadium ban or ordering a team to play on neutral ground.
3. The right is reserved to pronounce certain sanctions for safety reasons, even if no infringement has been committed.

We are therefore faced with the **strict liability** of clubs and associations for the inappropriate behavior of their fans in relation to the organisation of the match. In these cases, the CAF establishes disciplinary measures, regardless of whether they can prove that there was no fault or negligence in the organization of the match.

The only exception where there can be **proof to the contrary**, and therefore liability would be **quasi-strict**, is given in the assumption of art. 83 (2) CAF DR:

The visiting association or visiting club is responsible for the conduct of its own group of supporters. Spectators occupying the away sector specifically or the demarcated sectors of a stadium are regarded as the visiting association's supporters, **unless proven to the contrary**

- **Justification of the Strict Liability Principle**
- Para. 123 of CAS 2017/A/5340 US Ouakam v. Federation Senegalaise de Football & Ligue Senegalaise de Football Professionel, which related to Feyenoord Rotterdam v. UEFA CAS 2007/A/1217 where strict liability clauses are validated:
- ***This rule leaves absolutely no room for manoeuvre as far as its application is concerned. UEFA member associations and football clubs are responsible, even if they are not at fault, for the improper conduct of their supporters, including racist acts, which expressly breach the Disciplinary Regulations. Clubs are automatically held responsible once such an act has been established.***
- ***The object of this rule is very clearly to ensure that clubs that host football matches shoulder the responsibility for their supporters' conduct, which must comply with UEFA's objectives. It should be noted that UEFA has no direct disciplinary authority over a club's supporters, but only over European football associations and clubs. The latter are responsible for conforming to the standards and spirit of the UEFA regulations. If clubs were able to extricate themselves from any responsibility by claiming that they had taken all measures they could reasonably be expected to take to prevent any breach of the UEFA rules, and if supporters still manage to commit such an act, there would be no way of penalising that behaviour, even though it constituted a fault in itself. UEFA's rules of conduct would therefore be nothing more than vague obligations, since they would be devoid of any sanctions. By penalising a club for the behaviour of its supporters, it is in fact the latter who are targeted and who, as supporters, will be liable to pay the penalty imposed on their club. This is the only way in which UEFA has any chance of achieving its objectives. Without such an indirect sanction, UEFA would be literally powerless to deal with supporters' misconduct if a club refused to take responsibility for such behaviour.***
- ***Article 6 para. 1 of the Disciplinary Regulations, under which clubs assume strict liability for their supporters' actions, therefore has a preventive and deterrent effect. Its objective is not to punish the clubs as such, which may have done nothing wrong, but to ensure that the club assumes responsibility for offences committed by its supporters»***

- Fenerbahçe SK v. UEFA (CAS 2013/A/3139):
- *«101. The Panel fully adheres with the considerations set out above and is of the opinion that **the strict liability principle as construed in Articles 6(1) and 17(1) of the UEFA DR is neither in violation of Swiss law, nor of Article 6(1) of the ECHR and that the application of such principle neither prevents the Club from a fair hearing, nor does it constitute a violation of Swiss procedural public policy.***
- *102. The Panel finds that a club's right to a fair hearing is, in general, not violated by the application of the strict liability principle, particularly not because **the Panel finds that the application of such principle is justified in light of the responsibility of clubs over its supporters and UEFA's lack of disciplinary authority over clubs' supporters, but also because of the membership structure of European football and the clubs' subordination to UEFA's regulatory power over its members.***
- *103. Consequently, the Panel finds that UEFA, by applying the strict liability principle enshrined in Article 6(1) of the UEFA DR, neither violated the legal principle of nulla poena sine lege, nor the ECHR or Swiss procedural public policy»*
- It is important to note that in this case the sanction came for incidents outside the stadium, confirming that the strict liability of the clubs extends to acts that occur outside the stadium:
- *«51. In continuation, the Panel turns its attention to the meaning of the expression "at a match" in Article 6(1) of the UEFA DR and finds that **this expression does not limit the Club's liability for misconduct of their supporters to the inner bounds of the stadium. The Panel finds that the notion "at a match" incorporates misconduct of supporters that could influence the smooth running of the match involved.***
- *57. In continuation, **the Panel finds that the launching of parachute flares from outside the stadium, but landing inside the stadium in any event fall within the inappropriate behaviour as covered by Article 11(2)(c) of the UEFA DR**».*

- Finally, Football Association of Albania (FAA) v. UEFA & Football Association of Serbia (FAS) (CAS 2015/A/3874:
- *«Indeed, CAS jurisprudence has already attested to the lawfulness of such rules under Swiss law (see CAS 2013/A/3094 and the awards addressed therein), taking into account **the principle that strict liability for the behaviour of supporters is a fundamental element of the current football regulatory framework. It is also one of the few legal tools available to football authorities to deter hooliganism and other improper conduct on the part of supporters**».*
- In this , the panel analyzed the argument that it was not possible to know if the amateurs were or not of the NA:
- *«the Panel notes that, as can be seen in several CAS cases related to supporters' misbehaviour (see e.g. CAS 2002/A/423, CAS 2007/A/1217, CAS 2013/A/3094, CAS 2013/A/3139), **in most instances unruly spectators are not personally identified and a presumptive approach is used to determine whether an individual is considered to be a supporter of a given team, based on the perception of a reasonable and objective observer...**».*

- CAS 2012/A/2802 Al Masry SC v. Egyptian Football Association (EFA):
- «93. Football hooliganism is a plague that states and football authorities have tried to eradicate for many years. To this end, they have adopted a wide range of sanctions and measures.
- 94. Many football associations **have in particular enshrined in their disciplinary rules the concept of strict liability in order to ensure that clubs hosting football matches shoulder the responsibility for their supporters' conduct.**
- 95. This is nowadays a large consensus among football associations and federations on the necessity to provide strict liability rule
- 96. This large consensus is reflected on Article 67(1) of the FIFA Disciplinary Code (2011 Edition), which provides as follows:
  - *The home association or home club is liable for improper conduct among spectators, regardless of the question of culpable conduct or culpable oversight, and, depending on the situation, may be fined. Further sanctions may be imposed in the case of serious disturbance.*
- 97. This **objective** of such sanction is not to penalize club for their own wrongdoings, but rather to **deter and prevent violent conduct from their supporters.**
- 98. In accordance with the principle of strict liability, a **FOOTBALL CLUB MAY THEREFORE BE SANCTIONED FOR THE CONDUCT OF ITS SUPPORTERS EVEN IF IT WAS NOT AT FAULT.** The application of such principle is an **exception to the general principle of law nulla poena sine culpa** (“no punishment without guilt”). »

- **Al Masry v Al Ahly (2012):**
- During a game played between Al Masry and Al Ahly in Egypt, 74 people were killed for the incidents during and after the game.
- Al Masry Initial Sanction:
  - Banned from participating in any EFA events for the season 2012/2013
  - Relegated to the second Egyptian league for the season 2013/2014 with fans excluded attending any games home or outside
  - Banned from holding any games at the Port Said Stadium for four calendar years
  - Obligated to play the next four matches against Al Ahly on a neutral stadium
- CAS reduced the sanction to:
  - Banned from participating with spectators to any Egyptian Football Association events for the next complete season which shall be played by Al Masry SC as host. In the event that Al Masry SC completes part of its sanction during one or several seasons which get interrupted, such partial enforcement shall be deducted from the next complete season which shall be played.

- CAS 2017/A/5340 US Ouakam v. Federation Senegalaise de Football & Ligue Senegalaise de Football Professionnel :
- «123. In accordance with Article 74 of the FSF Disciplinary Code, the **visiting club is responsible**, without being responsible for any misconduct or failure to comply, **for the improper behaviour of its supporters**. The **FSF disciplinary code thus enshrines the principle of strict responsibility for the actions of its supporters**. CAS has had the opportunity to confirm on several occasions **the validity of such clauses** as well as their compliance with Swiss law (CAS 2002/A/423; CAS 2007/A/417; CAS 2012/A/2802).
- 124. In this case, it is established that some of the supporters of the Appellant have started throwing stones at opposing supporters before loading them. The sole arbitrator therefore finds that, during the Match, a part of the appellant's supporters engaged in improper conduct within the meaning of article 74 of the FSF disciplinary code. **The appellant must therefore be held responsible for the behavior of its supporters.**
- 138. Consequently, the sole arbitrator considers that the conjunction of all these failures and problems must be taken into account in determining the liability of the events.
- 142. In conclusion and in such circumstances, the sole arbitrator considers that it is wrong for the Senegalese Commission to consider that the tragic events that occurred during the finals of the Senegalese league cup were the exclusive responsibility of L'USO.
- 143. If **L'USO undoubtedly has its share of responsibility in this tragedy**, it appears, in view of the elements noted above, that " State, in any case the organiser, the LSFP, or even the police forces, bear a preponderant part on the responsibility for the events of 15 July 2017
- 145. However, **by application of the principle of strict liability** referred to above, **THE APPELLANT REMAINS LIABLE FOR THE CONDUCT OF HIS SUPPORTERS** and the sanctions imposed on the appellant cannot therefore be purely and completely abolished»

- **US Ouakam v FSF & LSF**
- League Cup Final between Stade de Mbour and Union Sportive Oukam (USO), Demba Diop Stadium. After a fight in the stands 8 people died among the fans of Mbour.
- Initial Sanction for Union Sportive Oukam:
  - 10,000,000.00 Senegalese francs fine
  - Expulsion from all competitions for five years
  - After those five years, to start in the fourth division
  - Game declared lost
- CAS finally reduced the sanction to:
  - Matches against Stade de Mbour will be played behind closed doors
  - Restitute to the first division
  - 500,000.00 Senegalese francs fine

THANK YOU VERY MUCH FOR YOUR  
KIND ATTENTION



RUIZ-HUERTA & CRESPO  
ABOGADOS