

THE INTERNATIONAL LEGAL NORMS REGARDING CHILDREN FOOTBALL TRANSFERS

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Abstract

The author of the article tries to analyze the main legal norms that have to be taken into consideration when we speak about children football transfers. During the article, the author will present the main international legislation provided by International institutions and the most important Football institutions such as FIFA, UEFA and by other organizations as CAS. Also, the author will analyze the international context in which the football transfers are happening around the world. Also, the author will try to analyze all the legal aspects regarding children involved in football transfers. Also, the author will speak about such terms such as "transfers" and "scouting" in world football. The main goal of this article is to explain the main legal norms regarding children football transfers and to offer some possible adjustments to the legislation in order to make these norms more efficient in future.

Key Words: *Football, Legal norms, Transfers, Children, Scouting*

JEL Classification: [K33]

1. Introduction

From the beginning of the research, I found clear the fact that this kind of subject is very sensible not only for those who are directly involved in sports industry but also for those whom we consider to spectators as well. The subject of this article is very interesting for many of those who are interested in studying international football from a legal, cultural, historic and market perspective. It is not a secret that football (called soccer in the United States of America) is one of the most viewed sports competition around the world¹. That is the reason why I choose football (soccer) for my analysis. It is widely watched sport and it has clearly established international rules which are followed. Also, it is important to mention the fact that football involves people of all ages in its processes that include together actions such as watching football games and participation in football as being a football player, coach or a member of a football team stuff.

During the process of documentation, I had used many sources of information for this article. First of all, I have to mention the fact that in order to obtain information on this subject I have written an email to the football club Real Madrid C.F. and another email to Court for Arbitration for Sport. I was surprised when I understood that I have received answers to the questions I have addressed to Real Madrid and to the Court of Arbitration for Sport (this institution is also called

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¹ "25 World's Most Popular Sports (Ranked by 13 factors)" [Internet]. Available from: <http://www.totalsportek.com/most-popular-sports/> [accessed on March 9, 2017].

Tribunal Arbitral du Sport in the French language). The two responders have provided to me useful responses and provided to me useful information that I will mention later during this article. For this reason, I am grateful to Mr. Rodrigo, the representative of Oficina de Atención al Público of Real Madrid C.F. and to the representatives of The CAS Court Office who gave me precious information for my research.

Also during the process of documentation for this article, I have found many official documents that will be very useful for this article. I have found a document entitled "Regulations on the Status and Transfer of Players" provided by FIFA. This document is really relevant to this article because it states many fundamental regulations in football that the clubs should follow. Moreover, it should be considered as a primary source for this article due to the fact that it is the document that provides us the basic information regarding international norms regarding children involved in international football transfers.

Also, the documents from the web page of CAS are very important because these documents provide information regarding cases when a club has violated these rules and norms. These documents and the documents provided by FIFA have the role to help us to understand the rules and to identify some gaps in these rules and to provide some adjustments to the International legal norms regarding young footballers, especially children. We can consider football as a global phenomenon in a globalized world. Due to its huge financial potential, football involves millions of people in its industry while other 4 billion are witnesses to this phenomenon every day. Some say that globalization has made the "time" and "space" distances smaller. (Carter Thomas, 2011) This compression of the world has made many effects on the international football movement including increasing of interdependencies between different parts of the world, development of informational technologies, communication ways, and a faster circulation of goods, services, and even cultural products. (Carter Thomas, 2011).

Why is globalization important to our subject? Globalization is relevant to this article because it has increased the number of sports migrants. Who are sports migrants? Sports migrants are those sportsmen who "travel" from a club to another, those who travel from one continent to another in order to perform at a professional level the sport in which they are specialists.

Football migration is a very important phenomenon in world football. Many scholars consider the fact that one of the most important causes of the migration in sport is the globalization and its effects on the modern society. Other specialists consider that it is important to study the role of the migration networks in understanding football migration. The idea of the migration networks in football is very important because it explains the fact that many footballers from African countries move to Europe using "migration patterns" that were used or created by their predecessors. (Bowman, 2011)

Regarding migration of athletes in the world, I must specify that the migration of athletes is of several types: external migration, internal migration, migration for a limited period and migration indefinitely or even final. All these forms of migration

in sport, forms that can be enjoyed not only athletes but also migration of population migration or the men of culture are determined by various factors.

The economic factor plays a very special in every society because it can cause radical changes in certain areas of activity and quality of life. We may see a connection dependency between sports migrants and the economic factor. The essence of the mechanism of production relations in all spheres of social reproduction are determined by property relations, but at the same time and the factors related to globalization perspective. What does in fact globalization economy? A development of capitalism internationally and interstate economic relations etc. Economic freedom, movement of goods, capital and people, free trade, competition, even corruption and organized crime, all these concepts lead to globalize economy².

2. International football norms regarding children movements (transfers)

International football is governed by many rules and laws. These rules and laws are provided both by international football organizations such as FIFA and UEFA and by organizations as the European Union and other international organizations. It is very important to mention the fact that football clubs have to follow these rules in order so not be punished by the football organizations or by state institutions.

In this part of the article, I will present the most important regulations regarding minors involved in football transfers or movements. First of all, I have to mention the fact that the most important regulations on this topic are provided by FIFA. Fédération Internationale de Football Association or most known as FIFA, is the most important football association and a provider of world laws regarding this sport³. Fédération Internationale de Football Association includes 211 member associations and its goal, enshrined in its Statutes, is the constant improvement of football⁴.

During the process of documentation for this research, I contacted the representatives of Oficina de Atención al Público of Real Madrid C.F. and to the representatives of The CAS Court Office. In the answer received from the representatives of Real Madrid C.F., I was informed with the fact that "the Laws for international transfer, provided by FIFA, allows the transfer of players, since the 16 years old only". Also in the response that came from the CAS Court Office, I received the information that "CAS is a tribunal and not the "legislator" regarding transfers of young players. We, therefore, suggest that you refer to the

² *Istoria Globalizării*, [Internet] Available from <https://romancernelea.files.wordpress.com/2012/08/globalizarea.pdf>, p. 2-3, [accessed January 11, 2016].

³ FIFA (without a date) Who we are? [Internet] <http://www.fifa.com/about-fifa/who-we-are/index.html>, [accessed on March 10, 2017].

⁴ FIFA (without a date) Who we are? [Internet] <http://www.fifa.com/about-fifa/who-we-are/index.html>, [accessed on March 10, 2017].

actual "legislator" regarding these questions, which is FIFA, and in particular to art. 19 of the FIFA Regulations on the Status and Transfer of Players".

Regarding the international regulations provided by FIFA, I should mention the fact that FIFA offers some definitions regarding minors and states that a minor is "a player who has not yet reached the age of 18"⁵. Therefore, I should mention that the players who are younger than 16 years could not be transferred to a club. That means that this kind of players is involved in clubs in other ways that include scouting and the integration of the children in some kind of educational system based on both cultural and sports education. A good example in this sense is the case of Cristiano Ronaldo or Lionel Messi who both have been involved into Sporting C.P. and F.C. Barcelona respectively. Ronaldo moved to Sporting C.P. (Clube de Portugal) when he was 12. Ronaldo is a case when the footballer is transferred within the same continent and that's why Sporting paid 22.500 euros to National Madeira. (Caioli, 2014: 21)

If Cristiano Ronaldo was transferred from the beginning to Sporting C.P., Lionel (best known as Leo) Messi couldn't do this due to the international transfer regulations provided by FIFA which we will discuss later. Messi prepared himself at Barcelona's youth academy "La Masia" for a year until he turned 16. (Caioli, 2012: 63)

FIFA provides international regulations regarding transfers. On this topic, FIFA has released a document entitled *Regulations on the Status and Transfer of Players*. This document states the most important regulations regarding the transfers of the players⁶. In this order of ideas, I have to mention the fact that the article 19 from this document refers exactly to the topic of minors involved in the sports industry. Article 19 of the *Regulations on the Status and Transfer of Players*, entitled *Protection of minors* states the most important regulations regarding children involved in football transfers.

The first and the most important rule stated in the point (1) mentions the fact that "International transfers of players are only permitted if the player is over the age of 18"⁷. Regarding the first point of the regulations, FIFA has established three exceptions to this rule that can be applied. The point (2) of the Article 19 state that:

"The following three exceptions to this rule apply:

a) The player's family move to the country in which the new club is located for reasons not linked to football.

b) The transfer takes place within the territory of the European Union (EU) or European Economic Area (EEA) and the player is aged between age 16 and 18.

⁵ FIFA. (2010) [Internet] Regulations on the Status and Transfer of Players, http://www.fifa.com/mm/document/affederation/administration/01/27/64/30/regulationsstatusandtransfer2010_e.pdf, [accessed on March 2, 2017].

⁶ FIFA. (2010) [Internet] Regulations on the Status and Transfer of Players, http://www.fifa.com/mm/document/affederation/administration/01/27/64/30/regulationsstatusandtransfer2010_e.pdf, [accessed on March 2, 2017].

⁷ Article 19, point 1 from FIFA. (2010) [Internet] Regulations on the Status and Transfer of Players, http://www.fifa.com/mm/document/affederation/administration/01/27/64/30/regulationsstatusandtransfer2010_e.pdf, [accessed on March 2, 2017].

In this case, the new club must fulfill the following minimum obligations:

i. It shall provide to the player with an adequate football education and/or training in line with the highest national standards.

ii. It shall guarantee the player and academic and/or a school and/or vocational education and/or training, in addition to his football education and/or training, which will allow the player to pursue a career other than football should he cease playing professional football.

iii. It shall make all necessary arrangements to ensure that the player is looked after in the best possible way (optimum living standards with a host family or in club accommodation, the appointment of a mentor at the club, etc.).

iv. It shall, on registration of such player, provide the relevant association with proof that is complying with the aforementioned obligations.

c) The player lives no further than 50 km from a national border and the club with which the player wishes to be registered in the neighboring association is also within 50 km of that border. The maximum distance between the player's domicile and the club's headquarters shall be 100 km. In such cases, the player must continue to live at home and the two associations concerned must give their explicit consent⁸.

These three exceptions exemplify, in a very clear manner, the way should be carried out on the international transfers of players. Also, as can be seen from the contents of the texts of the regulations, the legal norms with which the organization operates are based on promoting education quality and promoting social inclusion of footballers in the afterlife after completion (or abandonment) sporting career.

Moreover, the text of the regulation shall take into account the possibility that a footballer residence is located in a distance less than or equal to 50 km of the State border, and in this case, the distance between his residence and the headquarters of the Club shall not be greater than 100 km. this sort of provision that FIFA officials had given evidence of a profound understanding of the multiple situations that may need to be involved at the time that a footballer aged between 16 and 18 years is transferred to a club in another country.

The point number (3) from the article 19 from the *Regulations on the Status and Transfer of Players* states also that “the conditions of this article shall also apply to any player who has never previously been registered with a club and is not a national of the country in which he wishes to be registered for the first time”. This article extends the applicability of those provisions on the footballers who have never participated in a club at the time of such transfer. This excludes the possibility of undesirable cases in the practice of international transfers⁹.

The point number (4) from this document states that “every international transfer according to paragraph 2 and every first registration according to paragraph

⁸ Article 19, point (2) from FIFA. (2010) [Internet] Regulations on the Status and Transfer of Players, http://www.fifa.com/mm/document/affederation/administration/01/27/64/30/regulationsstatusandtransfer2010_e.pdf, [accessed on March 2, 2017].

⁹ Article 19, point (3) from FIFA.(2010) [Internet] Regulations on the Status and Transfer of Players, http://www.fifa.com/mm/document/affederation/administration/01/27/64/30/regulationsstatusandtransfer2010_e.pdf, [accessed on March 2, 2017].

3 is subject to the approval of the subcommittee appointed by the Players' Status Committee for that purpose. The application for approval shall be submitted by the association that wishes to register the player. The former association shall be given the opportunity to submit its position. The subcommittee's approval shall be obtained prior to any request from an association for an International Transfer Certificate and/ or a first registration. Any violations of this provision will be sanctioned by the Disciplinary Committee in accordance with the FIFA Disciplinary Code. In addition to the association that failed to apply to the subcommittee, sanctions may also be imposed on the former association for issuing an International Transfer Certificate without the approval of the sub-committee, as well as on the clubs that reached an agreement for the transfer of a minor"¹⁰. As we can see from the text of this document, the main idea of this regulation is to increase the control on the international football movement and also to make sure that all rules mentioned before are followed by the clubs. Also the point (5) states that "the procedures for applying to the sub-committee for a first registration and an international transfer of a minor are contained in Annexe 2 of these regulations"¹¹.

In this order of ideas, I should mention that FIFA has provided also the article 19 (bis) entitled *Registration and reporting of minors at academies* is and article that states (1) that "Clubs that operate an academy with legal, financial or de facto links to the club are obliged to report all minors who attend the academy to the association upon whose territory the academy operates". This regulation seems to be clear to everyone provides an indication strict clubs based on which any club must act. (2) Each association is obliged to ensure that all academies without legal, financial or de facto links to a club: a) run a club that participates in the relevant national championships; all players shall be reported to the association upon whose territory the academy operates, or registered with the club itself; or (b) report all minors who attend the academy for the purpose of training to the association upon whose territory the academy operates. Also, the point (3) of the mentioned 19bis article states that "each association shall keep a register comprising the names and dates of birth of the minors who have been reported to it by the clubs or academies". The point (4) exemplifies the fact that "through the act of reporting, academies and players undertake to practice football in accordance with the FIFA Statutes and to respect and promote the ethical principles of organized football". The point (5) of the 19bis article mention also that "any violations of this provision will be sanctioned by the Disciplinary Committee in accordance with the FIFA Disciplinary Code". The point (6) states that "article 19 shall also apply to the reporting of all minor players who are not

¹⁰ Article 19, point (4) from FIFA.(2010) [Internet] Regulations on the Status and Transfer of Players, http://www.fifa.com/mm/document/affederation/administration/01/27/64/30/regulationsstatusandtransfer2010_e.pdf, [accessed on March 2, 2017].

¹¹ Article 19, point (5) from FIFA.(2010) [Internet] Regulations on the Status and Transfer of Players, http://www.fifa.com/mm/document/affederation/administration/01/27/64/30/regulationsstatusandtransfer2010_e.pdf, [accessed on March 2, 2017].

nationals of the country in which they wish to be reported"¹².

3. International Legislation regarding children provided by The Charter of Fundamental Rights of the European Union

Proclaimed for the first time at Nice in 2000, the Charter was solemnly proclaimed by the European Parliament, the Council and the Commission on 12 December 2007. This document states the main rights of the child. According to this document (1) children are entitled to protection and care necessary for their well-being. They can freely express their opinion. This will be taken into consideration on matters which concern them, depending on their age and degree of maturity. (2) In all actions concerning children, whether undertaken by public authorities or private institutions, the child's best interest must be considered paramount. (3) Every child has the right to maintain regular personal relations and direct contacts with both parents, unless they are contrary to his interest¹³.

This document was created to regulate the rights of the child throughout the European Union. The document itself contains provisions are valid not only for the athletes and for the international community. The text of the Charter contains provisions relating to fundamental human rights and which must be complied with unconditionally. For discussion, this document has major relevance given that why minors are transferred to a football club, it is necessary for the best interests of the child and its right to opinion and optimal living conditions to be complied with as evidenced by both the Charter of fundamental rights of the European Union and FIFA regulation regarding *Regulations on the Status and Transfer of Players*.

4. The cases from Spanish Football league of violation of the international norms regarding children involved in football transfers

In this part of the article, I should mention the fact that Futbol Club Barcelona has received in August 2014 a ban on football transfers for a year. That decision came from international football organizations as FIFA and CAS. This case will be analyzed in this part of the article. The material available for the presentation of this case stems from the database of TAS/CAS. The material that I could find on the page of this site, e-mail represents a 56-page document in which they are passed on to all the details concerning the violations committed by FC Barcelona and other clubs in Spain by transferring some players with less than the

¹² Article 19bis from FIFA.(2010) [Internet] Regulations on the Status and Transfer of Players, http://www.fifa.com/mm/document/affederation/administration/01/27/64/30/regulationsstatusandtransfer2010_e.pdf, [accessed on March 2, 2017].

¹³ Carta Drepturilor Fundamentale a Uniunii Europene, Jurnalul Oficial al Uniunii Europene (2012), C 326/393, <http://anp.gov.ro/documents/10180/1863054/LexUriServ.pdf/3925bd4c-b834-4719-801c-0789b45dc392>, [accessed on March 10, 2017].

minimum age of 16 years who want to be transferred¹⁴.

This case about that we are discussing within the article is one of the best-known cases in which a football club (as FC Barcelona) has been forced to bear the penalty for non-compliance with article 19 of Regulation number preceding the FIFA section relating to international rules concerning transfers of minors. It should also be noted that this case has become one known in the football world owing to the international notoriety of the football club FC Barcelona.

The document mentioned above provides that members of the clubs covered by the investigations carried out by FIFA have been unsuccessful in compliance with article 19.4 of the *Regulations on the Status and Transfer of Players* provided by FIFA¹⁵.

On diverse dates between 2005 and 2012, 31 underage foreign players (the “Minors”) were either de-registered from their maternal football associations and/or transferred to various Spanish clubs, a majority of them to Fútbol Club Barcelona (“Barcelona”).

The Minors were subsequently registered as players at the following Regional Associations:

- a) The Federación Catalana de Fútbol, (the “FCF”);
- b) the Federación Andaluza de Fútbol (the “FAZ”); and
- c) the Federación de Fútbol de la Comunidad Valenciana FCF (the “FCV”)¹⁶.

The Court of Arbitration for Sport (CAS) dismisses Barcelona's transfer ban appeal Lausanne, 30 December 2014 – The Court of Arbitration for Sport (CAS) has dismissed the appeal filed by FC Barcelona against the Fédération Internationale de Football Association (FIFA) regarding the decision issued by the FIFA Appeals Committee on 19 August 2014. In such decision, the Spanish football club was sanctioned with a transfer ban for two periods, a fine of CHF 450,000 and a reprimand after it was found to have infringed the FIFA regulations with respect to the registration of a number of minor players.

In appealing to the CAS, FC Barcelona sought to annul the FIFA decision. The parties agreed to an expedited procedure and a hearing was held at the CAS headquarters on 5 December 2014 where the CAS Panel in charge of the matter (Prof. Petros Mavroidis, Greece, (President), Mr. Efraim Barak, Israel, and Prof. Ulrich Haas, Germany) heard the parties, their representatives, and their witnesses.

¹⁴ Tribunal Arbitral du Sport, Court of Arbitration for Sport (2015) Arbitration CAS 2014/A/3813 Real Federación Española de Fútbol (RFEF) v. Fédération Internationale de Football Association (FIFA), [Internet] Available from: [http://jurisprudence.tas-cas.org/Shared %20Documents/ 3813.pdf#search=barcelona](http://jurisprudence.tas-cas.org/Shared%20Documents/3813.pdf#search=barcelona) [accessed on March 11, 2017].

¹⁵ Tribunal Arbitral du Sport, Court of Arbitration for Sport (2015) Arbitration CAS 2014/A/3813 Real Federación Española de Fútbol (RFEF) v. Fédération Internationale de Football Association (FIFA), [Internet] Available from: [http://jurisprudence.tas-cas.org/ Shared%20 Documents/3813.pdf#search=Barcelona](http://jurisprudence.tas-cas.org/Shared%20Documents/3813.pdf#search=Barcelona) [accessed on March 11, 2017].

¹⁶ Tribunal Arbitral du Sport, Court of Arbitration for Sport (2015) Arbitration CAS 2014/A/3813 Real Federación Española de Fútbol (RFEF) v. Fédération Internationale de Football Association (FIFA), [Internet] Available from: [http://jurisprudence .tas-cas .org /Shared %20Documents / 3813.pdf#search=barcelona](http://jurisprudence.tas-cas.org/Shared%20Documents/3813.pdf#search=barcelona) [accessed on March 11, 2017].

The Panel found in particular that FC Barcelona had breached the rules regarding the protection of minors and the registration of minors attending football academies (articles 19 and 19bis of the FIFA Regulations on the Status and Transfer of Players). Accordingly, the FIFA decision is confirmed in full and the sanction remains in force.

In view of the need to issue a decision before the opening of the next transfer window, the Panel has issued its decision without the grounds. The full Arbitral Award, with the reasons for the Panel's decision, will be issued as soon as possible¹⁷.

5. Conclusions

As can be seen from the above in the context of this approach, FIFA imposed a fairly strict regulation with regard to transfers of minors at the international level. Rules imposed by FIFA are, more often than not, very clear and precise through their force. Legislation concerning transfers of minors and their protection is made out quite well. Perhaps the only problem is the manner in which those rules are implemented. Maybe I should be that all the clubs who are minors should not be resuming to the memory of having minor into their own academies, but also to expose in the form of reports, all actions performed by them for the purpose of training and education of these young people. FIFA should strengthen control over national football federations and monitor more closely the process of selection and recruitment of minors at international level in the football industry.

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¹⁷Tribunal Arbitral du Sport, Court of Arbitration for Sport (2014) [Internet] Available from http://www.tas-cas.org/fileadmin/user_upload/CAS_Media_Release_BarcelonaFIFA.pdf [accessed on March 2, 2017].

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