

Protecting underage football players in the transfer system

The recent ban imposed on Spanish club Barcelona by the FIFA Disciplinary Committee has brought to light, once more, the issue of player trafficking. The regulations that govern the transfer of underage football players, may have helped curb the illegal inflow of youngsters from Africa and South America, but they fall short of completely preventing player trafficking. Vitus Derungs, a Swiss Attorney at Law and member of French NGO Foot Solidaire, discusses the current regulatory regime and highlights existing shortcomings in the system.

Introduction

With a view to protecting young football players from trafficking, the FIFA Regulations on the Status and Transfer of Players ('RSTP') contain since their version of 2001 a set of rules to control international transfers of minors¹.

In principle, these rules prohibit the international transfer of players under the age of 18. However, subject to specific conditions, international transfers of minors are allowed. Repeated challenges to this regime with reference to mandatory national and international law promoted mainly by European clubs have, with one exception, always been rejected by the Court of Arbitration for Sport ('CAS').

Compliance with the provisions for the protection of minors is surveyed by the Sub-Committee appointed by the FIFA Players' Status Committee ('the Sub-Committee'), which is in charge of determining, in those exceptional cases, if the corresponding conditions have been met to allow for the transfer of a minor. The violation of the provisions for the

protection of minors may lead to severe disciplinary sanctions which may include a transfer ban imposed on the offending club.

Ban on the transfer of minors

The term 'minor' is defined by the RSTP as 'a player who has not yet reached the age of 18'. This is notable, as the age of maturity is not universally deemed as 18 years of age across the globe.

RSTP, Article 19, paragraph 1 establishes a general prohibition on the international transfer of minors. According to Article 19, paragraph 3 of the RSTP, this prohibition also applies to players who have never previously been registered with a club and are not a national of the country in which they wish to be registered for the first time, what is generally known as the 'first registration of foreign players'.

The CAS clarified, in the award rendered in *CAS 2008/A/1485 FC Midtjylland A/S v. FIFA*, that the ban on the international transfer and first registration of foreign minor players applied equally to amateur as well as to professional football players².

Until 2009, football academies that were not a member of a National Association offered a loophole to circumvent the transfer ban for minors. However, as of 1 October 2009, FIFA incorporated Article 19bis into the RSTP³. According to this new provision, all minor players of a football academy, regardless of whether or not the academy participates in a national championship or has a legal, financial or 'de facto' link to a club participating in a national championship, must be reported to the National Association upon whose territory the academy operates. Article 19bis provides that the ban on registering foreign minor players contained in Article 19 of the RSTP shall also

apply to the reporting of minors by football academies.

The RSTP provides a wide definition of the term 'Academy' as '[a]n organisation or an independent legal entity whose primary, long-term objective is to provide players with long-term training through the provision of the necessary training facilities and infrastructure. This shall primarily include, but not be limited to, football training centres, football camps, football schools, etc.' The purpose of such definition is to encompass as many potential scenarios, submit a wide array of academy arrangements to the scope of the RSTP and close all loopholes that may allow a circumvention of the ban on the transfer of minors through academies.

Exceptions to the ban

Pursuant to Article 19, paragraph 2, of the RSTP, international transfers and first registrations of foreign minor players are allowed if the conditions of one of the following three exceptions are met:

- a) the player's parents move to the country of the player's new club for reasons not linked to football;
- b) the transfer takes place within the territory of the European Union ('EU') or the European Economic Area ('EEA'), the player is aged between 16 and 18, and certain standards regarding training, schooling and living are fulfilled by the player's new club; or
- c) the player lives no further than 50 km from a national border, the club with which he wishes to be registered in the neighbouring association is also located within 50 km of that border, the maximum distance between the player's domicile and the club's headquarters is 100 km, and the player continues to live at home.

In addition to the criteria

provided above, further exceptions have been created by the jurisprudence of the Sub-Committee. In this respect, exceptional registration is also granted to foreign minors who have been living continuously for at least five years in the country where they wish to be registered by a club for the first time. By its nature, this exception only applies to the first registration of foreign minors and not to international transfers.

Moreover, CAS has also expanded the scope of the exceptions provided in the FIFA regulations. In CAS 2008/A/1485, *FC Midtjylland A/S v. FIFA*⁴, further exceptions have been drawn up by the court with regard to students. However, these exceptions never became formally established practice of the Sub-Committee. Instead, FIFA nowadays tends to admit exceptional registration for minor students only in the case of exchange students who wish to register as amateur players for a limited period of time up to 12 months. Finally, in the event of minor players staying in a foreign country as refugees, exceptional registrations are assessed on a case-by-case basis.

These exceptions are applied by the Sub-Committee and by CAS in a very strict manner. In particular, the hypothesis described in a) above is not granted if the facts suggest that it is not a minor player who follows his family to live in another country⁵, but rather the family that follows its child to play football in another country. Moreover, according to the decision rendered in CAS 2011/A/2354 *Elmir Muhic v. FIFA*, relatives such as an aunt may not normally replace the parents of a player for purposes of the aforementioned exception⁶.

However, in the case CAS 2012/A/2862 *FC Girondins de*



Vitus Derungs

Bordeaux v. FIFA ('Vada II'), CAS clarified that due to the regulations on the free movement of workers within the EU/EEA, exception b) shall not be restricted to transfers within the EU/EEA, but must also include transfers from a club outside towards a club in the EU/EEA if the player concerned is a national of a EU/EEA-Member State⁷. Therewith, CAS widely opened the door for transfers of minor players from non-EU/EEA-countries where double nationality with a EU/EEA-Member State is traditionally widespread.

Compliance with Swiss public policy and European law

The transfer rules for the protection of minors were first implemented by FIFA in the 2001 version of the RSTP. The said version of the RSTP and thus also the rules regarding minor transfers were the result of the post-*Bosman* negotiations between FIFA and the European Commission. Therefore, the understanding was that the RSTP of 2001 generally complied with European law.

Nonetheless, the rules prohibiting the transfer of minors have been repeatedly challenged before CAS under reference to mandatory national and international law, such as the Swiss public policy, the freedom of movement, assembly and association and the prohibition of discrimination based on nationality stipulated in European law.

With the exception of the decision in the aforementioned case, CAS 2012/A/2862 *FC Girondins de Bordeaux v. FIFA*, these challenges have all been rejected by CAS, particularly because the rules regarding the transfer of minors were considered to pursue a legitimate objective and to be proportionate by providing some reasonable exceptions to the ban.

The Sub-Committee and application procedures

The Sub-Committee was established on 1 October 2009⁸ to survey compliance with the provisions regarding the transfer of minors and to approve the fulfilment of the conditions of the exceptions to the transfer ban. The procedures for applying to the Sub-Committee for a first registration and an international transfer of a minor are contained in Annex 2 of the RSTP.

Every application for an international transfer of a minor and every first registration of a foreign minor is subject to the approval of the Sub-Committee. Such application must be submitted to FIFA via FIFA's Transfer Matching System ('TMS') and the applicant must be the association of the new club where the player wishes to be registered⁹.

Upon application for the registration of a minor, the player's former association is given the opportunity to submit its position within seven days (Annexe 2, Article 6, para. 1, RSTP). Finally, in the event that the application is approved by the Sub-Committee, the associations concerned are notified of the findings of the decision via TMS (Annexe 2, Article 9, RSTP) and the applying association is entitled to either register the player - in case it is a first registration - or to send a request for an International Transfer Certificate ('ITC') to the player's previous association (Article 19, para. 4, RSTP).

Within a deadline of ten days from notification of the findings, the associations can request the grounds of the decision. Failure to do so results in the decision becoming final and binding. If an association requests the grounds of the decision, the motivated decision is notified to the associations, and the time limit of

21 days to lodge an appeal to CAS begins upon the notification of the motivated decision.

A few National Associations were granted a limited exemption from applying to the Sub-Committee for approval prior to the international transfer or first registration of a foreign minor. The associations concerned assume the responsibility for the proper application of Articles 19 and 19bis of the RSTP. However, this exemption only applies to amateur players that wish to join pure amateur clubs¹⁰.

Disciplinary sanctions

Violations of the provisions regarding the protection of minors may be sanctioned by FIFA's Disciplinary Committee in accordance with the FIFA Disciplinary Code. Depending on the sanction imposed, a decision of the Disciplinary Committee may be appealed to the FIFA Appeal Committee and, in last instance, to CAS.

In this respect, FIFA recently demonstrated that circumventions of Article 19 of the RSTP by clubs are rigorously sanctioned. FC Barcelona was brought before the Disciplinary Committee for registering ten minors in violation of the applicable rules. The club was handed a ban to register any new player during two consecutive transfer windows. CAS also confirmed this sanction in the award rendered in the case *CAS 2014/A/3793 FC Barcelona v. FIFA*.

Conclusion

The rules of FIFA governing the

In spite of all the efforts to fight player trafficking, abusive transfer practices that are not covered by FIFA's transfer rules unfortunately still exist

international transfer of minors are certainly a success, as they have considerably reduced the trafficking of young football players. However, as it was shown by the *Barcelona* case, the system is not saved from attempts at circumvention. It is therefore of utmost importance that FIFA continues to meticulously survey the proper application of its provisions.

Such effort by FIFA is necessary, particularly in cases where limited exemptions were granted to National Associations. It is essential that FIFA continues to keep a close eye on transfer activity in the associations concerned, otherwise there is a high risk that these associations might apply a practice which is too lax to assure the aim targeted by the provisions for the protection of minors.

Moreover, FIFA's attentive supervision is also required for Article 19, paragraph 2, exception a) as set forth in the RSTP, the exception based on the possibility to register a minor if his parents move to the country of the new club for reasons unrelated to football. This appears to be the exception that is most often abused, in particular by clubs offering employment to a youngster's parents with the intention of hiding the real purpose behind the transfer of the player.

Finally, in spite of all the efforts to fight player trafficking, abusive transfer practices that are not covered by FIFA's transfer rules unfortunately still exist. Registered and unregistered clubs are holding trials for masses of minor players

at domestic level or agents bringing groups of players to Europe for trials shortly after they turn 18, both leaving the players unattended and without a ticket to return home if they fail. These are just a few examples of player trafficking against which a legal instrument is still to be found.

Dr. Vitus Derungs Attorney at Law,
Zurich
vd@vitusderungs.com

1. In the current version of the RSTP, these rules can be found mainly in Article 19, 19bis and Annexe 2.
2. CAS 2008/A/1485 FC Midtjylland A/S v. FIFA, consid. 7.2.4 et seq.
3. FIFA-Circular Nr. 1190, dated 20 May 2009.
4. CAS 2008/A/1485, consid. 7.3.3.
5. CAS 2005/A/955 & 956 Cadiz CF S.A.D. & Carlos Javier Acuña Caballero v. FIFA and Asociacion Paraguaya de Futbol; CAS 2011/A/2494 FC Girondins de Bordeaux v. FIFA -'Vada I'.
6. CAS 2011/A/2354 Elmir Muhic v. FIFA consid 44 et seq.
7. CAS 2012/A/2862 FC Girondins de Bordeaux v. FIFA ('Vada II') consid 98.
8. FIFA-Circular Nr. 1206 dated 13 October 2009.
9. Article 19, paragraph 4 and Annex 2, Article 5, paragraph 1 of the RSTP.
10. FIFA-Circular Nr. 1209 dated 30 October 2009.

SIGN UP FOR FREE EMAIL ALERTS

World Sports Law Report provides a free email alert service. We send out updates on breaking news, forthcoming events and each month on the day of publication we send out the headlines and a precis of all of the articles in the issue.

To receive these free email alerts, register on www.e-comlaw.com/wslr or email sara.jafari@e-comlaw.com