

Contractual Stability in Professional Football:

Recommendations for Clubs in a Context of International Mobility

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- EXECUTIVE SUMMARY -

“Contractual stability is of paramount importance in football, from the perspective of clubs, players, and the public” FIFA Circular Letter 769.

Contemporary football is caught between two very powerful concepts: the freedom of movement of players on the one side and contractual stability on the other. As it was shown by sport historians (Lanfranchi and Taylor, 2001), international migration has been part of football from the beginning. The decisions made by the European Court of Justice in relation to the Bosman case in 1995 entailed some large-scale changes in the transfer system of professional footballers. In particular, players could now freely move within the European Union at the end of their contract as any transfer fees for out-of contract players were declared illegal. Second, the ‘3+2’ rule was abandoned for EU nationals. Certainly, these legal decisions have stimulated the freedom of movement of players. As can be observed from the profile of expatriates in the top 5 European leagues (England, Spain, Italy, Germany and Spain), cultural, historic and structural reasons continue to play a vital role in the migration patterns of players (Poli, 2008). For example, whereas African players still constitute a comparatively high percentage of expatriate players in France, South American players are overrepresented in the Italian Serie A and the Spanish Primera División. Another trend which has become visible is the decreasing average age of the first international transfer of players to the ‘big five’ leagues. To counteract this development, FIFA has decisively restricted the transfer of minors under Article 19 of the Regulations on the Status and Transfer of Players.

Professional footballers are rather ‘special employees’ as their value to clubs goes far beyond comparison to that of regular workers. Clubs must finance the acquisition and maintenance of these ‘assets’ to compete in an industry which shows a very diverging trend between big and small clubs. In the context of economic polarization, the five biggest European leagues are growing a lot faster than the rest. Currently, they alone account for 53% of the total European football market (Deloitte, 2009). Their growth is essentially fuelled by a combination of three income streams (broadcasting, commercial and matchday revenues). The same polarization could also be witnessed on individual club level where nineteen out of the top twenty most revenue producing clubs stem from the top five leagues (Deloitte, 2009). For middle sized and smaller clubs, alternative financial models include the covering of losses through donations by the owner or, ultimately, the covering of losses through transfer activity. The latter holds

particularly true for countries outside of Europe where the 'big three' income streams are not that pronounced and where many talented players are trained. It is needless to say that these clubs are keen to see their players in a stable contractual relationship.

The main findings in relation to the financial strategies of clubs are based on questionnaires distributed on European club level. According to their position in the UEFA association coefficient ranking, three peer groups of European leagues (one group each for ranks 1-10, 11-25 and 26-53) were created and tested on eventual differences. The main findings were that clubs from Eastern Europe, especially from the former Yugoslavia are particularly dependent on the income from transfer fees. The same holds true for some South American and African clubs which were punctually tested and used for reference. At the same time, clubs from the smallest European leagues are rather segregated in their transfer activity from the other leagues. The general importance of transfers for professional clubs was considered to be high as indicated by the respondent clubs. Interestingly, no significant differences between the three peer groups could be found. Some clubs include indemnity clauses in their players' contracts in order to protect their contractual relationship. In this context, there was a significant difference between the three groups indicating that clubs from the better-ranked leagues more frequently make use of such a clause. Finally, it was found that youth development was considered to be very important for all respondent clubs generally indicating that the aim to reinforce the first team or substitute players was the most crucial. The aim of making a financial profit through future transfers and the identification with the local community followed second.

The international governing body FIFA attempts to provide a universal guideline on how to deal with contractual stability and international mobility. One major challenge is the diversity of national regulations in sports which has internationalised rapidly. As was shown in the legal reference cases, there is often a fine line in setting the track for future decisions. Reference was made to three distinct legal problems: the player status, unilateral option clauses for the extension of players' contracts and the unilateral breach of contract under Article 17 of the FIFA Regulations. The greatest problem in the definition of player status referred to the use of contracts designated as 'scholarship agreement', 'apprenticeship contract', etc. In essence, many clubs exposed themselves to a possible loss of the player by offering contracts which on first sight left it unclear if the player had to be considered amateur or professional. This was supported by differences in national legislation which either oblige clubs to use certain types of contracts or, at least, protect their validity. This protection is not

given on an international level. The position of FIFA in this respect is clear: the remuneration is the only decisive criteria to determine player status.

The use of unilateral options for the extension of footballers' contracts was found to be problematic in the sense that it destabilizes the equal bargaining power between the employer and the player. An analysis of the applicable reference cases revealed that unilateral options are in general terms not recognized by FIFA and the Court of Arbitration for Sports unless they incorporate some specific elements which work for the clear and acceptable advantage of the player.

The unilateral breach of contract is a topic which received a lot of attention by associations, clubs, players and, ultimately, the media. The most recent reference cases from CAS (Webster, Soto Jaramillo, Mexès and Matuzalem) were analysed under consideration of the particularities of each case. In the famous Webster case, the Panel based the compensation to be paid by the player and his new club on the sum of the salary payments of the player's outstanding contractual period with the former club. This reasoning was later broadened in the other cases through the inclusion of various new aspects, e.g. a transfer offer prior to the breach (as in the Mexès case) or a buy-out clause in the player's new contract (as in the Diego Barreto case). Another important aspect which also leads to sporting sanctions is whether the player is under the protected period at the time of breach of contract as specified in Article 17 of the FIFA Regulations on the Status and Transfer of Players (RSTP). Yet the sentences so far have still left some of the issues unclear mainly because FIFA and CAS had to discover this rather new territory. The keyword 'specificity of sport' has been abundantly used to justify some of the decisions made. It remains to be seen what further developments in the legal regulations will bring. FIFA's attempt to defend the actual player transfer system is certainly not easy in light of interferences with public and private law.

In the meantime, clubs should attempt to defend themselves from any form of legal conflict. Following the recommendations made in the last part of the research, they should find themselves in a safer position to administer their players' contracts and focus on some particularities in the current legal environment. Some clear recommendations were made in the sense that clubs should clearly define the status of their players. Further, the use of unilateral options should be avoided by clubs. Instead, small remunerated contracts should be offered to youth players which can consequently be readjusted based on their performance. In regards to unilateral breach of contract, clubs should incorporate a variable buy-out/indemnity clause in their players' contract which will automatically adjust the compensation fee in

relation to some objective criteria with respect to the performance of the player and the club. In this way the club can circumvent the mitigation risk inherent in a fixed buy-out clause. Frequent contract renewals are another means by which the club can assure to have its players constantly under the protected period.

This project is not aimed at restricting the movement of players in general but to protect clubs financially when players decide to leave. Moreover, the strategy of many clubs is based on transfer activity, which actually implies the movement of players. Most importantly, this should be regulated in a uniform manner as not to damage certain clubs more than others. As the football industry is on its way to become increasingly professionalized, especially at the top end, smaller clubs should also have some means by which they can at least claim a financial compensation for their sporting losses.

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- *Preface* -

When Diego, Gerardo and Stefan asked me to write an introduction to their report requested by the FIFA Master I was both delighted and a bit nervous as I should give my opinion about “Contractual Stability in Football and its possible remedies”. I have been working as a lawyer in football for the last 20 years and the changes in our sport have been incredible and one of the most important one is related to contracts and their stability.

But, when I read the report I became frantic as several of the cases studied by them were “mine” in a sense that only a lawyer can use. What can it been said but that the whole recent history of legal football problems is the center of the report and that the three of them have done a damned good job, if you do not mind the expression.

When, as a professor of the FIFA Master, I gave my speech (I cannot really call it a “lesson”) on “Transfers: from Bosman to today”, I had those three asking me questions; when in lunch I felt like a striker in a match but not followed by one but three backs!

They have struggled through the history, they have dug on the legal system and regulations, they have worked throughout the FIFA and CAS decisions like miners with coal.

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Juan de Dios Crespo Pérez

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1. International mobility

1.1. The history of international migration of football players

International migration has been part of football from the beginning. After the standardization of the rules of the game in the second half of the 19th century, the British played a vital role in the diffusion of football throughout the world. At the turn of the century, clubs like FC Barcelona, AC Milan or FC Internazionale were founded on the initiative of migrant tradesmen forming a society of players from different nationalities such as British, German, Swiss, French, Italian, etc. (Mason, 2008). Fostered by the economic and imperial position of the British, the development of football was interconnected with the trading and commercial activities at that time.

Football players have, in fact, always been ‘on the move’ (Maguire and Bale, 1994). Even before the legalization of professionalism in 1885, Scottish players were recruited by English clubs. The first two Scots to leave their country in order to play for an English club as ‘professionals’ (they were given jobs but never appeared to work) were Fergus “Fergie” Suter and his old chap James Love, who signed with Darwen, in Lancashire in 1879 (Giller, 2004). Evidently, this trend of migration within Britain became more pronounced thereafter when many Scottish, Irish and Welsh players followed better financial offers from England (Lanfranchi and Taylor, 2001). Later in the 1920s and 1930s, at a time when Uruguay succeeded at the Olympics in Paris and Amsterdam and also won the first official World Cup ever played, the first remarkable intercontinental migration pattern between South America and Southern Europe emerged. Expatriate players had the chance to present themselves in international tournaments for the first time and thereby attracted the interest of European clubs (Lanfranchi et al., 2004). These early examples of international migration were enrooted in a broader social framework of migration and often based on a combination of circumstances.

Lanfranchi and Taylor (2001) indicate that the movement of players should not be isolated from general migratory trends and patterns. Furthermore, they identify three sets of determinants for migration: economic, cultural and institutional or structural. Economic pressure in the home country and high salaries abroad were, most often, the decisive ‘push and pull’ factors to initiate the movement of players. Yet the cultural and even institutional aspects may not be underestimated. As Lanfranchi and Taylor (2001, page 73) remark: “the arrival of South American players in Italy at the beginning of the 1930s (...) was seen as a

natural and inevitable repatriation of Italian citizens who happened to be born in South America.” Still today, clubs might be induced to scout players with specific nationalities as to take advantage of a favourable immigration policy.

The increase in the international movement of players is often attributed to some degree of globalization of the transfer market. According to McGovern (2002), who studied the player recruitment of English clubs from 1945-1995, the notion of a globalised labour market in football is incorrect as “the labour market behaviour is socially embedded.” Clubs like to “engage in repeated transactions with reliable or known sources” (pp. 29-30) which result from social and cultural ties and established historical and economic relationships. This is conform to Taylor (2007, page19) who states that “historical and cultural roots (...) continue to underpin many of the contemporary systems and networks of football player migration.” So instead of referring to a development towards a global market, a growing internationalization seems to be a more adequate description of the phenomenon.

In the 1990s, Intra-European mobility was further stimulated by the provisions for the free movement of labour within the European Union under Article 39 of the EC Treaty. In this context, the famous ‘Bosman case’ was of paramount importance for the right of free movement of football players. Before the case, the football transfer system had been very rigid in the sense that a transfer fee was due to be paid for a player even if the labour contract with the player’s former club had already run out. A Belgian player by the name of Jean-Marc Bosman challenged the transfer system of professional football in the European Court of Justice in 1993 (C-415/93 ECJ). At that time, the player’s contract with the Belgian club RFC Liege had recently run out and he wanted to be transferred to the French club of Dunkerque. The problem arose when the French club refused to pay a transfer fee and Liege for their part refused to transfer his certificate. In consequence, Bosman filed a claim with the ECJ insisting on his right on the freedom of movement within the EU according to Article 48 of the Treaty of Rome which later became Article 39 of the EC Treaty.

The ECJ ruled in favour of Bosman and against RFC Liege, the Belgium FA and UEFA. Most significantly, the ruling facilitated the mobility of players on two levels. First, players who were EU or EEA nationals could now freely move within the EU at the end of their contract as any transfer fees for out-of contract players were declared illegal. Second, the ‘3+2’ rule was abandoned for EU nationals thereby opening the door for the influx of more expatriate players into the squads of European clubs (Frick, 2009).

Shortly after the ECJ ruling, a complementary case came about, as the Bosman decision was only applicable for EU citizens working in the European Union. When a Croatian player, Goran Vlaovic, ended his contract with Calcio Padova on the 30th of June 1996, the Spanish club Valencia CF signed the player. Calcio Padova, according to Article 14 of the FIFA Regulations for the Status and Transfer of Players requested a payment of training compensation and was assigned an amount of 3.8 million Dollars. Valencia CF, following the ruling of Bosman, decided to file a claim against FIFA before the EU Commission based on the idea that an extra-communitarian player working within the EU and going from Italy to Spain was entitled to the same rights as players from EU member countries. After several meetings, the claim was not continued before the EU Commission as FIFA approved what seemed to be evident and changed its Regulations. Accordingly, as of the 1st of April 1999 it was admitted that any player, even a non-EU citizen, who had concluded his contract within the EU was free to move without having to pay any training compensation (Crespo Pérez, 2009b).

Other reasons for increased mobility can be found in the geographical proximity and improvements in communication and transportation (Gardiner and Welch, 2001). Besides, the expansion of television coverage of football has given the players a platform to better present themselves in an international environment.

The mobility of players has also been stipulated by international alliances of clubs and the setting up of transnational recruitment networks intermediaries such as agents. These alliances have been undertaken on the basis of different purposes. Alliances of European clubs are often forged as to give injured players of one club the opportunity to regain experience for a determined period in a lower league at another club. In other cases, immigration laws of one EU Member State might be more liberal because of historic bonds with a former colony for example. Through an alliance of collaboration a club from a different Member State might take players from these countries under contract taking advantage of them being nationalised or given a working permit in the former Member State (Gardiner & Welch, 2001). A second type of alliance is based on the search for talent. This kind of alliance has a precise effect on the migration flow between individual countries. Under such a type of partnership, priority rights on the transfer of talented players are given against a financial contribution. This explains why in some cases, migration flows between certain regions are more pronounced than for others. In the majority of cases, the developing clubs are from Africa or South America while the contracting clubs are European. However, this kind of 'partnership' has often been abused as to open the doors to player trafficking. As a response in 2001, FIFA has

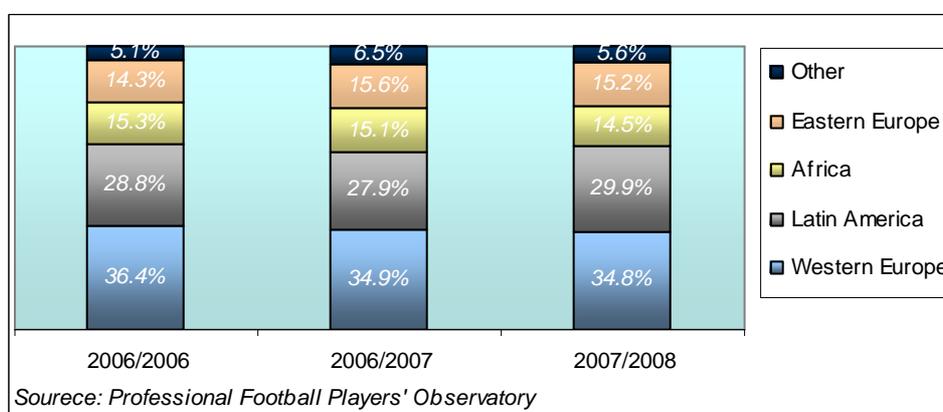
posed heavy restrictions on the transfer of minors under Article 19 of the FIFA Regulations on the Status and Transfer of Players (2007).

Sometimes, the mobility of players has also been a consequence of a particular coach who tends to source players he already worked with in the past and, frequently, stem from his home country or share his mother tongue.

1.2. Main migration patterns in the contemporary mobility landscape

In the five top European leagues (England, Spain, Italy, Germany and France) four geographical zones represent 95% of all expatriate players. As can be seen in diagram 1.2.1, the trend over the last three years has remained stable. In the 2007/2008 season, 34.8% of expatriates playing in the five leagues were Western Europeans, 29.9% came from Latin America, another 14.5% from Africa and 15.2% were Eastern Europeans. The three most represented nationalities by far were Brazilians (158 players), followed by Argentineans (98 players) and French (97 players).

Diagram 1.2.1 – Percentage of expatriate players by zone of origin



The differences between the top 5 leagues are quite significant. In France, the largest part of expatriate players is made up of Africans. Players from Senegal, Cameroon and Ivory Coast jointly accounted for 46 of the 183 expatriate players in the 2007/2008 season. Historic colonial ties between France and the African continent lie at the root of player migration. As described before, cultural factors embedded in a context of general migratory trends cause a distinct composition of the expatriate player profile in France as with respect to other leagues. At the same time, the increasing share of Latin Americans is more football specific. In total, 40 players alone were from Brazil in the same season.

In Italy like in Spain, the share of Latin American players is very pronounced. In particular, Argentineans and Brazilians represent the two strongest migratory groups: 70 out of 190 expatriates in the Serie A and 75 out of 193 in the Primera Division came from either Argentina or Brazil in the 2007/2008 season. It has to be mentioned that expatriate players are defined as those players who play outside the country where they grew up independently of their nationality. Therefore, South American players who possess a European passport are captured by these statistics.

In the English Premier League, astonishing 60% of expatriates are Western European. The majority of them are French. In the 2007/2008 there were 310 expatriate players in the EPL which is a lot more than in any other league (the Bundesliga is second with 223 players). Latin Americans, Africans, Eastern Europeans and others accounted for the remaining 40% in equal parts.

The German Bundesliga is the most internationally diverse league out of all five. The four major zones were equally represented in 2007/2008 apart from Africa which has risen in significance. Noticeably, the impact of Eastern European players is more pronounced than in other leagues. The proximity of Eastern German clubs to the Polish and Czech border and a high immigration from Poland, Serbia and Romania might be the main reasons (Poli and Ravenel, 2008, pp. 39-43).

1.3. Trends in the mobility of players in the recent past

Although migration in football is not a new phenomenon, an increase in the international mobility of professional footballers can be observed in the last years. A simple comparison of the amount of expatriate players in the top five European leagues between the 1995/1996 and the 2005/2006 season illustrates a considerable rise over time. In 1995/1996, there were a total of 463 expatriate players. Thereof, 16.6% were of Latin American origin (77 players) and 10.6% from Africa (49 players). Exactly ten years later, in the 2005/2006 season, the number of expatriate players had risen by 115.6% to a total of 998. The number of Latin American players almost tripled to reach 28.6% of total expatriates (285 players), while the percentage of players from Africa increased to 16.1% (162 players) (Poli, 2008).

As indicated in Table 1.3.1, the mobility rate of players from the top five leagues in Europe as defined as the ratio of the number of teams for which a footballer has played and the number of seasons played in professional clubs is slowly increasing since 2005. At the same time, the

percentage of international transfers of players shows a similar pattern over the last three years indicating that every third transfer is international.

Table 1.3.1 – Mobility of professional footballers in the top 5 European leagues

Player careers	2005-2006	2006-2007	2007-2008
Mobility rate	3.28	3.40	3.44
% of international transfers	27.41	28.04	30.22
Countries transited	1.55	1.60	1.68

Source: Professional Football Players' Observatory

Within this general trend of increased international mobility in the Top 5 European leagues, there are differences between the leagues with respect to the amount expatriate players employed and the importance of them for the clubs (Table 1.3.2). As an example, in England and Germany the percentage of expatriate players in the team is particularly pronounced (59.52% and 46.45%, respectively) in contrast to the other 3 leagues. Even more significant is the quantity of goals scored by expatriate players in the Premier League and the Bundesliga (63.10% and 61.73%, respectively) as opposed to only 38.78% in the Serie A.

Table 1.3.2 – International recruitment of clubs in the Top 5 European leagues

	France	Germany	Spain	Italy	England	All
Players by club	9,15	12,36	9,63	9,53	15,48	11,20
% of players	33,42	46,45	36,81	36,46	59,52	42,36
% of matches	33,39	53,14	40,21	34,83	59,79	43,83
% of goals	42,39	61,73	53,15	38,78	63,10	51,97
Age of first international migration	20,52	21,98	22,06	21,03	21,08	21,33
Age of arrival in the country	22,13	22,16	23,77	23,08	22,52	22,72

Source: Professional Football Player's Observatory

The trend of the last three years is in conformance with the increased mobility of players. Two observations from Table 1.3.3 are particularly interesting. First, the percentage of expatriates in the Top 5 leagues has been rising each year since 2005. Second, the age of first international migration of the players is steadily decreasing. In a highly competitive environment of sourcing the best players on an international level, clubs tend to transfer footballers at increasingly younger ages (21.33 years on average in 2007-2008). Considering the high transfer fees involved, this seems to be the preferred strategy by clubs in order to have access to talented players. Apart from the fact that FIFA restricts the movement of minors, the clubs' gamble on the development of young players from South America or Africa has certain ethical implications.

Table 1.3.3 – Trend of international recruitment in the Top 5 European leagues

	2005-2006	2006-2007	2007-2008
Players by club	10,14	10,24	11,20
% of players	38,38	38,80	42,36
% of matches	41,12	40,99	43,83
% of goals	50,02	49,94	51,97
Age of first international migration	21,49	21,47	21,33
Age of arrival in the country	23,13	22,52	22,72

Source: Professional Football Player's Observatory

1.4. Ethic implications of the international migration of players

The social costs of migration patterns principally relate to the transfer of young players from Africa or South America who are exploited because of their talent and dropped in case of failure. According to the Professional Football Players Observatory (2008), 64.3% of African football players have played at least three seasons between the age of fifteen and twenty-one outside of their original country. Although this tendency is slowly regressive in the last two years, it nonetheless shows the magnitude of this phenomenon. The trend grew in importance after the successful performance of African teams at the under-17 and under-20 World Cups in the late eighties and thereafter. Although FIFA introduced a regulation (Article 19 of the RSTP) in order to impede the trade of minors and prohibit this form of 'slavery', recent cases at the Court of Arbitration for Sport give a clear indication that it remains a problem.

In 2007, FIFPro (Fédération Internationale des Associations de Footballeurs Professionnels) filed a claim against FC Midtjylland from Denmark accusing the club of violation of Article 19 of the FIFA Regulations (2007). In essence, Midtjylland had entered into a cooperation agreement with FC Ebedei from Nigeria. This agreement guaranteed the Danish club a purchase option on the most talented African players, many of which were minors of age. The final verdict on the appeal against the decision of the FIFA Player Status Committee was issued by CAS in 2008 ruling that the underage players were moved to Denmark for football reasons and could therefore not be considered as students playing in their spare time. Therefore, FC Midtjylland was in violation of Article 19 and sanctioned conformingly. Any attempts by the club to refer to an exemption of Art.19 for amateur players or cite Art.13.3 of the Cotonou Agreement were dismissed by the panel (CAS 2008/A/1485).

Recently, FIFA has even increased the control on the international transfers of minors and created a new article, 19bis, in its Regulations for the Status and Transfer of Players (2009), which will enter into force on the 1st of October 2009. That article is clearly drawn up in

response to the Midtjylland case and tries to control the so-called ‘academies’ (places where young footballers are playing but which are not affiliated to any association) by means of the national associations.

The trade of human labour and the trade of minors are particularly pronounced in Africa, South America and Eastern Europe. The major problem thus lies with young players who do not succeed in the foreign country or continent. Many of them have problems to adapt to a new culture and different customs as they do not have a sufficient educational basis and are often left without support, ripped out of their accustomed social environment. Players’ agents frequently play a crucial role in the ‘trafficking’ of players, something which FIFA aims to control by establishing tougher requirements for obtaining the license to act as an agent.

2. Strategic analysis of football clubs

2.1. Introduction

The increasing international mobility of footballers has direct effects on the contractual situation with their employing club. In the post-Bosman era, the salaries of players have increased steadily. According to the Annual Review of Football Finance (Deloitte, 2009), salaries in the English Premier League have risen on aggregate from 322 million Euros in the 1996/1997 season to 1,511 million in 2007/2008 representing an increase of the wages/revenue ratio from 48% to 62%. In the Italian Serie A, the trend has been the same although less pronounced: aggregated salaries have increased from 317 million Euros to 972 million for the same period of time causing a rise in the wages/revenue ratio from 58% to currently 68%. Finally in the Spanish Primera División, salaries have gone up from 230 million Euros to 900 million and so did the wages/revenue ratio from 44% to 63%. At the same time, transfer fees have reached a peak with this year's transactions made by Manchester City and Real Madrid. As a third consequence, the average duration of players' contracts has increased.

Depending on the level of the club on national level and the competitiveness of the league in the international environment, clubs employ different strategies in order to generate the financial income necessary to cover their costs. For all of the clubs the contractual stability with their players is crucial as to have the necessary planning security in the sporting and the financial field.

2.2. Financial models of clubs

Over the last twenty years, the world of football has undergone quite significant transformations in economic terms. Before the formation of the Premier League in England, the collective revenues for the former Division One in the season 1991/92 were 170 million Pounds (Deloitte 2009a). In the course of sixteen years, the revenues of the twenty Premier league clubs have increased more than tenfold, reaching presently an amount of 1.9 billion. The reasons for this expansion relate principally to the growth of international broadcasting and the development of pay-TV and pay-per-view platforms, the re-conceptualization of football products such as the English Premier League or the UEFA Champions League, the transformation of stadiums into multi-functional and profit-oriented venues and the freedom of movement of players in the EU.

It seems that especially the 'big five' European leagues (England, Spain, Italy, Germany and France) have expanded exponentially, thereby arriving at a dominant position in comparison with other football leagues. For instance, these five leagues account for 53% of the total European football market, an estimated 14.6 billion Euros for 2008. By including the inferior divisions from the same five countries, even a 66% of the total market is represented (Deloitte, 2009b).

Simultaneously, the same polarization takes place when looking at the individual club level. It is a staggering fact that in the last two editions of Deloitte's ranking of the twenty most revenue producing clubs in Europe (2009a) only one club each year was not from one of the 'big five' leagues (Celtic Glasgow on rank 17 in 2007 and Fenerbahce on rank 19 in 2008). In terms of revenues, the biggest twenty clubs accounted for more than 25% of the total European football market in 2007/2008 season (Deloitte, 2009b). The main sources of income for these clubs are broadcasting, commercial and matchday revenues. In 2007/2008, broadcasting revenues accounted for 41% (1.6 billion Euros) of total revenues generated by the top 20 clubs. They remain the largest single revenue stream for twelve clubs. At the same time, many of these top clubs have been extremely successful in developing commercial revenues, which on the whole account for 33% of aggregate income. Generated from sponsorship, advertising, merchandising and licensing, they comprise the largest individual share of revenues for five of the biggest clubs. Finally, parallel to the developments of broadcasting and commercial income, matchday revenues contribute slightly over 1 billion Euros to the total, representing a 26% (Deloitte, 2009a).

In the Benchmarking Report 2009, UEFA set up a total of five peer groups based on the average reported income of clubs within the top divisions. There is a distinction made between top, large, medium, small and micro¹. While broadcasting revenues are the most important source of income for the five top leagues, contributing between 35% and 57% to the average reported income, the same source only represents an average of 13% in the following thirteen leagues. The relevance of broadcasting is even smaller for the 'medium peer group' (7%), and very insignificant for the small and micro peer groups with an average

¹ Top peer group (Average Reported Income [ARI] over €50 million): England, Germany, Spain, Italy and France.

Large peer group (ARI between €5 m. and €50 m.): Russia, Turkey, The Netherlands, Scotland, Portugal, Austria, Norway, Belgium, Greece, Switzerland, Ukraine and Sweden.

Medium peer group (ARI between €1.25 m. and €5 m.): Poland, Czech Republic, Croatia, Israel, Romania, Kazakhstan, Cyprus, Slovakia, Belarus, Bulgaria, Slovenia, Finland and Serbia.

Small peer group (ARI between €350,000 and €1.25 m.): Ireland, Lithuania, Iceland, Hungary, Liechtenstein, Bosnia-Herzegovina, Latvia, Northern Ireland, Azerbaijan and Luxembourg.

Micro peer group (ARI lower than €350,000): Estonia, Montenegro, Wales, Armenia, Moldavia, Faeroe Islands, Albania, Georgia, Malta, Macedonia, San Marino and Andorra (UEFA, 2009).

of 2% of total revenues (UEFA, 2009, page 35).

Consequently, the financial model of the big three income streams as described above only holds true for the biggest leagues and the most recognized clubs in Europe. For many others this means that they must look out for more subtle ways of financing their activities in order to at least partly compete with the best. As to look beyond this fascinating picture drawn by the industry leaders, UEFA distinguishes between four different financial models in their Benchmarking Report 2009 (page 40):

- Club owners covering losses through sponsorship or donations
- Clubs covering losses through transfer activity
- Clubs generating an operating profit or break-even by restricting player salaries
- Club owners allowing losses to build up but covering cash shortages by loans.

A different sort of income for various clubs is represented by the share of sponsorship and donations from clubs' owners. This is particularly interesting in the light of the ownership profile of European clubs. According to the same report (page 21), 54% of top division clubs in Europe have an owner with majority control of which 24% represent single full owners. Hence, in lots of cases owners play a pivotal role in providing their clubs with the necessary financing of their ongoing activities.

On the contrary, an extensive part of South American clubs has adopted the legal form of an association. As there is no single individual with majority control, the model of owners covering losses through donations or loans is not feasible. This provokes a different composition of the traditional income streams. In Argentinean football for example, the reported revenues are made up to 22% of commercial, to 12% of matchday and to 10% of broadcasting income while another 5% stems from membership fees. The largest single revenue stream is represented by transfer fees of football players accounting for 51% of the total (Comparada, 2007), something which will be more thoroughly analyzed in 2.4.

In their analysing report from 2004, the strategy consulting company A.T. Kearney identifies five stages of football club development: nurturing farm, national contender, national star, European contender and established international brand. Of these five stages national and European contender are only transitional. Whereas the national star and the international brand have relatively stable income from the 'big three' revenue streams, the situation for the nurturing farm differs quite a lot. Basically, transfer fees represent a key source of revenue for clubs in this stage. They normally are dependent on their football academy and regularly sell a

portion of their better players to replace them internally. The biggest problems for clubs in this stage are that they have a high dependence on the transfer market and a volatile income.

So as to get a clearer picture of the perspective of professional clubs on these issues and lay down the basis for investigating the critical legal problems related to international mobility and contractual stability, a quantitative research was conducted.

2.3. Methodology of analysis

The aim of the study was to conduct some analysis regarding the financial strategies of football clubs. In particular, the importance of transfer fees in the revenue stream of clubs, the valuation of players, the youth development system of the club and the contractual situation with the players were the main issues covered.

In order to be able to analyse the issues of interest to this project, a questionnaire with 16 questions was drawn up (Appendix I). The majority of the questions are categorical leaving the respondent with the possibility to indicate his/her answer on a Likert scale. One of the questions provided the chance to give an open answer, while another one was intended to let the respondent rank the possible answers according to the perceived importance. The questionnaire was quantitative in nature and analyzed accordingly using inferential statistics. Supplementary, a few semi-structured interviews with club representatives and other important stakeholders were conducted which were included in the analysis and labelled accordingly.

The population of interest was defined as the first division clubs of all European leagues. For convenience, cluster sampling was chosen as the preferred sampling method. As such the clubs were categorized according to the country they were representing. In a second step, a sample of respondents within those countries was selected. The opportunity to cooperate with the European Club Association (ECA) was decisive to address its 137 member clubs. The number of ordinary member clubs from each European association is continuously established on the basis of the UEFA associations' coefficient ranking². The three highest-ranking associations will have five clubs; the next three, four clubs; the associations ranked from 7th to 15th will each have three clubs; associations ranked from 16th to 26th will have two clubs;

² At the end of each season, UEFA compiles a performance table covering the five most recent UEFA Champions League and UEFA Cup/ Europa League seasons in order to determine the number of places to be allocated to each association in the UEFA Champions and Europa League (former UEFA Cup). (UEFA, 2008, Annex II)

and the remaining associations will have one club. Additionally, there are associated member clubs which were assumed based on the following criteria: having been an ordinary member during the previous two-year cycle; having won the UEFA Champions League at least once; participating in the current UEFA Champions League competition (ECA, 2009).

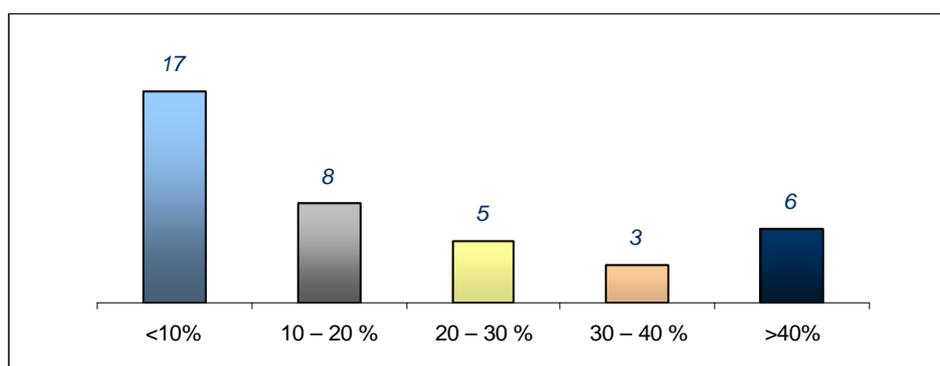
Through the chosen sampling method, a representative sample of European club football could be guaranteed. The response rate was good as 39 clubs replied with a filled-out questionnaire. Additionally, some surveys were sent out to clubs in South America and Africa as to provide more information from non-European clubs. This resulted in four additional responses which merely allowed some preliminary comparisons. The European clubs were then categorized into three groups according to the most recent 2010/2011 UEFA association coefficient ranking (Kassies, 2009). The first group includes the Top 10 European leagues (England, Spain, Italy, Germany, France, Russia, Ukraine, Netherlands, Romania and Portugal). The second group includes the leagues which rank between the 11th and 25th position (Turkey, Greece, Scotland, Belgium, Switzerland, Denmark, Bulgaria, Czech Republic, Norway, Austria, Serbia, Israel, Cyprus, Sweden and Slovakia). The third group includes all the leagues from rank 26 and below, which means 27 leagues in total led by Poland until San Marino in 53rd position. The reason for the division in three groups was to find out if there are any differences between the clubs pertaining to each category in regards to the financial model adopted, the importance of transfer fees and the approach to youth development. The division was undertaken on the basis of an equal distribution of the sample size in each group and the places each league is given in the Champions League and the Europa League. For the first group, there is at least two CL plus three or four EL places. For the second group it varies between two or one CL qualification and three EL places. For the third group, there is at least one CL qualification plus three EL qualification places.

Although the classification of European leagues made in the UEFA Benchmarking Report 2009 might lead to more accurate results on the whole, it was not feasible to apply it to the research at hand simply because the sample size obtained is too small to make any meaningful inferences about the hypotheses tested. It will however be used to complement the obtained results and provide some additional explanations.

2.4. The importance of transfer fees

The first aspect studied in this research directly links to the transfer activity of clubs. As diagram 2.4.1 reveals, 17 respondents indicated that the income from transfer fees represented less than 10% of their annual turnover for the last 5 years on average. It basically means that these clubs were able to generate sufficient income from other sources (most likely TV, sponsoring and matchday) so that their transfer activity was a comparatively minor part. On the other hand, three clubs indicated that transfers represented 30-40% of the annual turnover and six clubs even indicated that it accounts for more than 40%. Interestingly, the histogram of the observations does not follow a normal distribution but is rather skewed towards the extremes. So for most clubs, transfers represent either a comparatively small or substantial part of the overall income.

Diagram 2.4.1 – Percentage of income from transfer fees in the turnover of the clubs for the last 5 seasons on average



In order to test a possible relation between the percentage of income from transfer fees and the categorization of clubs into the three aforementioned groups (leagues 1-10, 11-25 and 26-53 of the UEFA competitions ranking), a contingency table was prepared (Appendix II). The relevant Chi-square test was performed resulting in a p value of 0.0826³. The null hypothesis that the two categories are independent could not be rejected at a 5% level of significance. Although there is some indication that the obtained deviations are not only due to chance (91.3% probability), the small sample size and the conservative approach to set the rejection level at 5% and not at 10% result in a rejection of any systematic difference of the percentage of income from transfer fees between the groups. On the basis of the doubts present, the data sample was further analyzed. Interestingly, the mode (value that occurs most frequently) of

³ Chi-square is a statistical test commonly used to compare categorical, observed data with data that would be expected to be obtained according to a specific hypothesis.

the data set considering only Eastern European countries (Ukraine, Poland, Czech Republic, Slovakia, Slovenia, Serbia, etc.) indicates that for clubs in this subset the percentage of transfer fees on the overall income represents most frequently more than 40%. Even more specifically, clubs from the former Yugoslavia, Hungary and Czech Republic all show a high dependency on transfer fees. The international mobility of players from these countries has been very pronounced throughout the history of football. According to Lanfranchi and Taylor (2001, page 111), “possibly more than any other nationality, Yugoslavs have wandered across the European continent.” Among other factors, the civil war and break-up of the nation in 1992 and the strong youth development of the clubs are responsible for the high number of players abroad. The model of clubs covering losses through transfer activity seems therefore to be more commonly adopted in that region. Simultaneously, UEFA established in the Benchmarking Report 2009 that for various Eastern European clubs “owners’ liabilities represent the majority of debts.” This indicates that for others, club owners play a pivotal role in the financing of their operating costs.

Clubs from the smallest European leagues, which among others include Luxemburg, Northern Ireland, Wales or Liechtenstein, most frequently indicate that transfer fees represent less than 10% of the overall income over the last 5 years on average. One possible explanation might be that the scope of their activity is so small, that there is relatively little transfer activity at all. The low salaries and the predominantly local character of competition could segregate these clubs in a way from the international playing field.

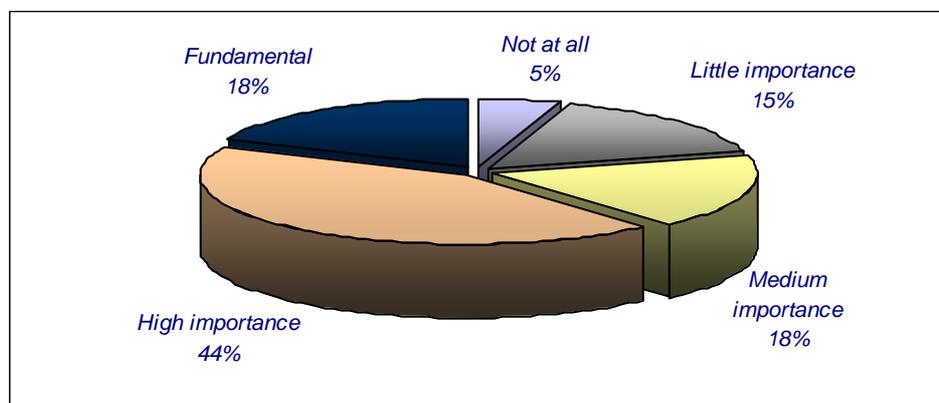
Irrespectively of the position of the league in the UEFA ranking, it sticks out that all of the clubs which have indicated to derive a high percentage of the overall from transfer fees also are considered to have an excellent youth development system. This issue will be further investigated in chapter 2.5. Correspondingly, three of the four non-European respondents (two clubs each from Africa and South America) indicated that transfer fees represent more than 40% of the annual turnover. Although the sample size is very small, it indicates that clubs from other parts of the world, especially from countries which produce a lot of talented footballers, are directed towards a financial model with a high affinity to the transfer of players.

In accordance with the UEFA Benchmarking Report (2009, page 46), “the transfer system significantly redistributes wealth from big to small.” From the top 5 leagues, 75% of clubs recorded a net cost from their transfer activity in 2007/2008. A great part of the money involved passed on to the clubs in the ‘large peer group’ from which approximately half of the

clubs recorded a positive net income. Moreover, 54% of the clubs from the ‘medium’ and 52% from the ‘small peer group’ made any income from transfers, in many cases turning losses into net profits. Finally, the impact for clubs of the ‘micro peer group’ is less relevant as for the majority of them transfer activity did not have any noticeable impact.

Independently of the exact impact of transfer fees on the turnover of clubs, there was a clear response to the more general question of whether transfer fees are considered as an important part of the club’s financial income. As can be observed from diagram 2.4.2, 62% of the respondent clubs consider the income from their transfer activity as either of ‘high importance’ or even ‘fundamental’.

Diagram 2.4.2 – Importance of transfer fees for the club’s financial income

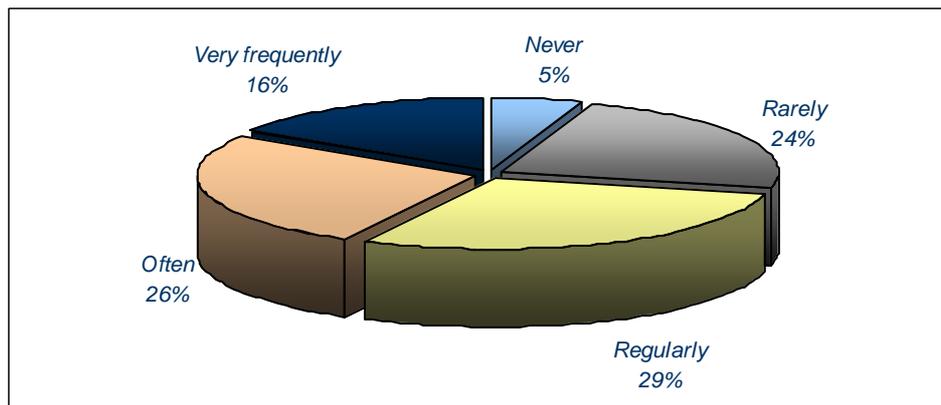


On the basis of the initial result, it was tested whether there are any significant differences between the three reference groups (leagues 1-10, 11-25 and 26-53 of the UEFA competitions ranking). The sample observations were therefore plugged into a contingency table and a Chi-square test was conducted. The results show again that there are no significant differences between the groups could not be rejected at any meaningful significance level. The p value equals 0.697 indicating that there is a 70% probability that any deviation from the expected is due to chance only. This is within the range of acceptable deviation (Appendix II). Hence, there is no indication that the financial importance of transfer fees is valued any differently between the various categories of clubs. This might be surprising at first but generally underlines the significance of transfers on any level of competition.

It is particularly interesting to observe that the majority of clubs carry out their transfer activity not only as to directly reinforce their team but also bearing in mind the likelihood of generating a future profit (diagram 2.4.3). In total, 71% of the respondent clubs indicate that

they at least ‘regularly’ consider that possibility when acquiring a player. This implies that the transfer activity actually bears a strategic element besides the sporting value. In the light of this analysis, the appearance of the acquisition value of football players as assets on the clubs’ balance sheet seems to be justified. As in contrast to regular employees, they assume another valuable function in the financial setting of their club.

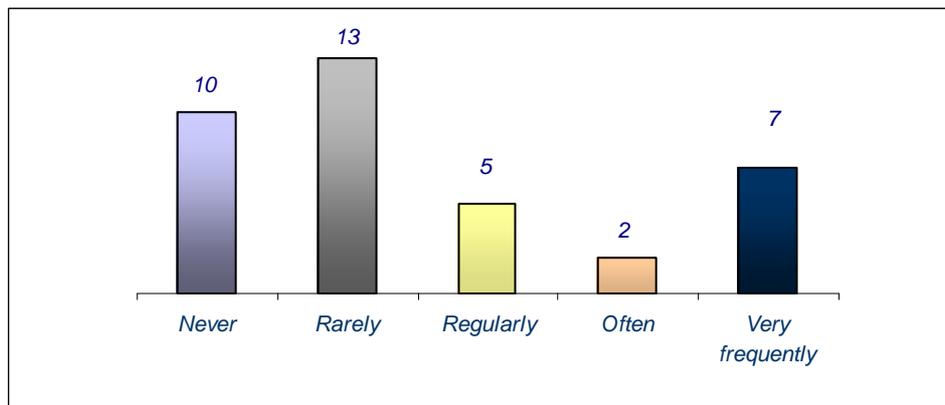
Diagram 2.4.3 – Clubs’ considerations of making a profit through further transfers when acquiring a player



In order to investigate a possible relation between clubs which consider transfer fees as an important part of the overall income and the thought of making profits through future transfers when acquiring a player, a Chi-square test of independence was performed. Crossing the information from the two questions in a contingency table resulted in a p value of 0.013 indicating a probability of 1.3% that there is no relation between the questions. Thus the null hypothesis was rejected at the 5% level of significance (Appendix II). As the responses to these questions were positively correlated, it can be said that clubs for which transfer fees are more important also consider more frequently the possibility of making future profits through transfer fees when acquiring a player.

Interestingly, despite of the high general importance of transfer fees, the majority of clubs (62% in total) answered that they would ‘never’ or only ‘rarely’ include an indemnity clause in their players’ contracts (diagram 2.4.4).

Diagram 2.4.4 – Clubs which include an indemnity clause in their player's contracts



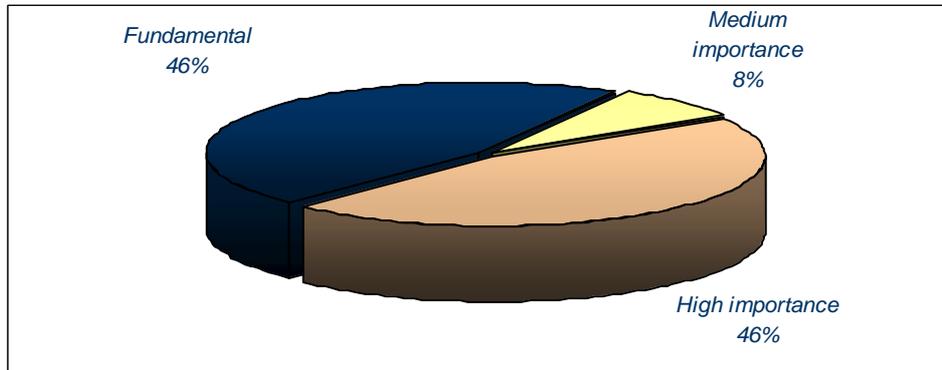
Once again, the observations were analyzed to determine whether there are any significant differences between the reference groups. A contingency table was drawn up and the Chi-square statistic was calculated. This time the test was significant indeed. The null hypothesis that the inclusion of an indemnity clause in the players' contracts is independent of the categorization according to the reference groups could be rejected at the 5% significance level. The p value equals 0.002 which means that there is only a 0.2% probability that the deviation is due to chance alone. Thus, clubs from the mid-sized and smaller European leagues are less likely to set up an indemnity clause than their counterparts from the top leagues. One explanation might be that the higher value of players in the top leagues and a better legal advice induce clubs to do so. However, it has to be said that clubs from Spain are obliged by their association to include a buy-out clause in the contracts of their players, a fact which certainly affected the results as three Spanish clubs were included in the sample.

2.5. The principal aims of youth development

Based on the classification of clubs into distinct stages, the strategic importance of the development of players within the club's youth system was analyzed. Presumably, clubs for which transfer fees represent a key source of revenue should be more dependent on their own football academy. The first observation which can be made by looking at the diagram 2.5.1 is that clubs from every European league generally attach a high value to the development of their young players. Astonishing 92% of the respondents remarked that it is either 'very important' or even 'fundamental'. Another fact which supports these findings can be found in Annual Review of the Professional Football Players Observatory (2008): Real Madrid ranks highest according to the number of players trained who play in one of the five top European

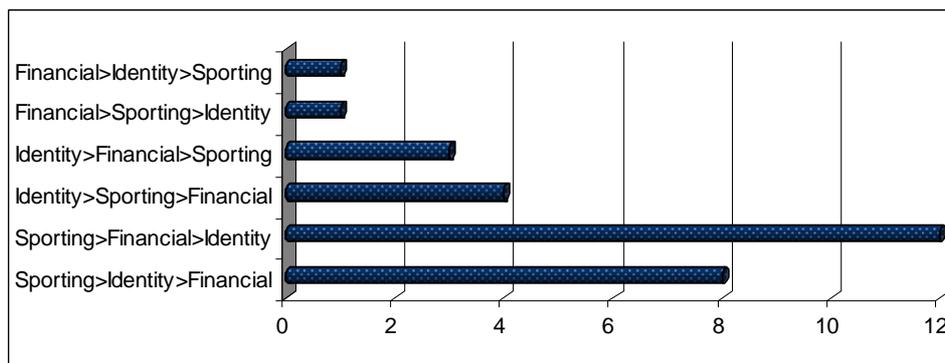
leagues, followed by AS Monaco, FC Metz, FC Barcelona and Arsenal FC.

Diagram 2.5.1 – Strategic importance of the development of players in the club’s youth system



Subsequently, the sample was analyzed in respect to the main aims of the development of players in the club’s youth academy. Three answer possibilities were given to the clubs which they were supposed to rank from one to three. The first possible answer was ‘sporting aim’ which means that the principle intention of clubs in the development of their youth players is to reinforce the first team at some point or replace players who change clubs. The second possible answer was ‘identity aim’ which refers to the raising of players from the community in order to give the first team more local appeal and identification potential for the fans. The third possible answer was ‘financial aim’ which implies that clubs basically seek to make a financial profit by further selling of their youth players. The results are displayed in diagram 2.5.2.

Diagram 2.5.2 – Ranking of the main aims of the development of players in the club’s youth academy



From the 39 respondent clubs, 29 valid answers could be retrieved. Thereof, twenty respondents indicated that the most important aim is ‘sporting’ followed by ‘identity’ with seven and ‘financial’ with two answers. However, twelve out of the twenty clubs which cite

‘sporting’ as the principal aim rank ‘financial’ as the second most important. It can be concluded that very few clubs cite a financial reason as the principal one for maintaining a youth development system whereas 24% of the clubs primarily seek to strengthen the bond with their community and develop local young players in their youth structure. By far the most important aim for clubs remains the sporting aim. The authors are very aware of the fact that ‘sporting aim’ seems to be the most ethical correct answer, something which might have stimulated the high response rate because of the anonymity of the questionnaire this risk is, however, regarded as small.

A comparison between the three chosen peer groups (leagues 1-10, 11-25 26-53 of the UEFA ranking) shows that the first two groups are very similar in their answers. Only the clubs from less competitive European leagues indicate most frequently the order ‘identity’, ‘sporting’ and ‘financial’ as the most decisive in the maintenance of a youth development structure. In conformance to what was mentioned in 2.3, the local character and low transfer activity of the smaller leagues might induce the clubs to focus on the development of local players as to strengthen the bond with their fans. Moreover, the salaries paid to ‘club-trained players’ is certainly lower than for players acquired elsewhere.

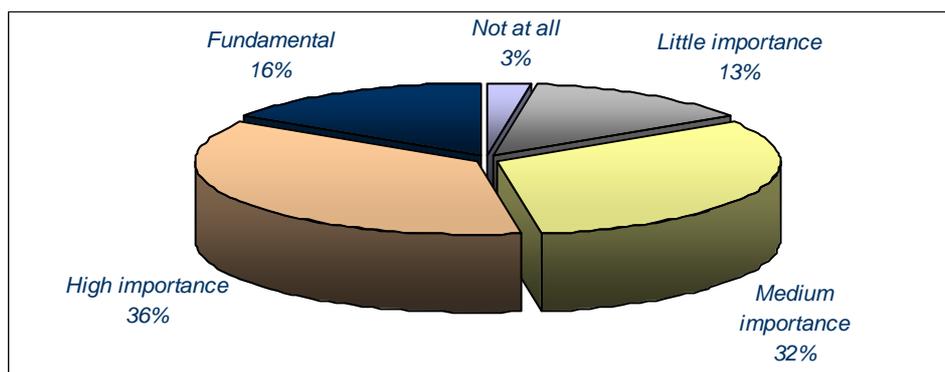
3. Legal context

3.1. Introduction

Organized football can only achieve uniformity, equality and certainty on a worldwide scale if a variety of fundamental principles and basic rules are applied to every party involved. FIFA was created in 1904 in order to achieve these goals (de Weger, 2008). According to its statutes, the international governing body of football aims to improve the game not only in relation to the rules on the field but also off the field. The national football associations, as members of FIFA, should entirely comply with the FIFA Regulations and the verdicts made by the Dispute Resolution Chamber and the Court of Arbitration for Sports. National associations should also take every possible precaution in order to ensure that their members, clubs and players also comply with these regulations.

FIFA regulates international football in order to protect the rights of players and clubs. The FIFA Regulations aim to safeguard the principle of maintenance of contractual stability between professional football players and clubs which is of fundamental importance in order to have an efficient transfer system and to maintain a competitive balance. As can be seen in diagram 3.1.1, a total of 52% of the respondent clubs also believe that contractual stability is a ‘fundamental’ or at least ‘highly important’ issue in contemporary football.

Diagram 3.1.1 – The importance of contractual stability from the viewpoint of clubs



Any dispute arising in international transfers of players will be dealt with according to the FIFA Regulations, disregarding any national laws and regulations of the involved players and clubs. If a dispute is settled at the Court of Arbitration for Sports (CAS), this independent arbitral body will as a final instance apply the these Regulations and, additionally, Swiss Law, never undermining the universal principles of law. Clubs and players must follow the aforementioned regulations to prevent any possible damage from a breach in their contractual

relationship or in order not to suffer any unexpected losses due to an agreement which runs contrary to what is established by FIFA. The relevance of the arbitrational award as rendered by CAS depends on the strategy adopted by a club. For clubs covering losses through transfer activity, identified as one of the main financial models by UEFA (Benchmarking Report, 2009), the impact can be quite considerable if they do not receive a transfer or compensation fee which they had expected.

Currently, the three most important issues in the application of FIFA Regulations and consequent disputes carried out in front of the DRC and CAS are: the definition of players' status, unilateral option clauses and unilateral breach of contract. In this research, these three issues will be further investigated by listing the applicable reference cases for each of the topics.

3.2. Definition of player status and first contract protection

Under the FIFA Regulations (2007) players are either considered as amateurs or professionals. It is clearly defined that "a professional is a player who has a written contract with a club and is paid more for his footballing activity than the expenses he effectively incurs. All other players are considered to be amateurs" (Article 2, Paragraph 2). Thus, all of the differently designated contracts such as agreements of 'apprenticeship', 'training' or 'scholarship' will be categorized as either amateur or professional. Since the introduction of new regulations in September 2001, the so-called 'federative rights' were replaced by the concept of contractual stability. Under this new concept, the link between a player and a club is principally based on a contract instead of the registration (as regulated by Article 5). Hence, a written contract is the instrument which regulates the relation with professionals but not with amateurs.

Consequently, the maintenance of contractual stability is dependent on the status of the player. For instance, only under a professional status the club in which the player is registered is entitled to receive a transfer fee. In the same way, if a professional player breaches his contract and joins another club, the former can always claim for compensation, something which is not possible in the case of an amateur who maintains his status at the new club. The issue of training compensation also depends on player status. Only under the condition that the player signs his first professional contract are the training clubs of the player entitled to ask for training compensation as stated in Article 20 and the Annexe 4 of the FIFA Regulations (2007).

First contract offers are a highly polemical subject in professional football. There have been many cases making their way to the FIFA Dispute Resolution Chamber (DRC) and eventually to the Court of Arbitration for Sports (CAS). Clubs employ different strategies to engage the most talented youth players. Some of them offer professional or pre-professional contracts by which they pay players a small salary and guarantee the contractual binding to the club. Others might be inclined to offer a special kind of amateur agreement designated as ‘apprenticeship’ or ‘scholarship’ contract. The reasons for doing so frequently originate either in the regulations of the national football association, which recognize their validity, or in the financial situation of the club, which makes the offering of professional contracts to all of its youth players impossible.

3.2.1. The case of Magnus Troest

Aston Villa FC v/ B.93 Copenhagen (CAS 2006/A/1177)

This case highlights the implications of correctly defining the status of a player and whether he is amateur or professional according to the FIFA Regulations. The issue at hand was to determine whether a training compensation was due to be paid by the new club.

In 2003, the Danish player Magnus Troest and Aston Villa signed a ‘scholarship agreement’ intended to be valid for three years. The player’s former club, B.93 Copenhagen, subsequently demanded of Aston Villa to pay a training compensation. The English club replied that a training compensation would only be payable after signing a professional contract with the player as stated by Article 20 of the FIFA Regulations on the Status and Transfer of Players (2007)⁴.

FIFA considered that the relationship between Troest and Aston Villa must be regarded as non-amateur because the player received remuneration in excess of the expenses incurred in his playing activity. The jurisprudence is clear in the sense that the relevant criterion to determine the status of a player is not the signing of a contract but the amount paid by the club to the player, as established in Article 2 of the FIFA Regulations. Any classification of a contract, such as ‘scholarship agreement’, made between a player and the club is not relevant.

⁴ Article 20 of the RSTP: “Training compensation shall be paid to a player’s training club(s): (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 following case between Girondins de Bordeaux versus Lyngby and Lundtofte adheres to the same principles. It shows that the attempt to circumvent the rules and to avoid a clear definition of the player's status is common in the international landscape.

3.2.2. The case of Cheick Tidiane Sarr

FC Girondins de Bordeaux v/ Lyngby Boldklub & Lundtofte Boldklub (CAS 2005/A/838)

The player Cheick Tidiane Sarr had trained with the Danish clubs Lundtofte and Lyngby before he turned sixteen. Then, Sarr signed an 'aspirant contract' with FC Girondins de Bordeaux in France. The club contractually agreed to pay all of his expenses plus a compensation fee of 600 Euros per month. Consequently, the Danish clubs claimed training compensation from Bordeaux.

CAS decided that the claim for training compensation was justified. In the award, it was again referred to remuneration as the relevant criterion to define the status of a player. Girondins de Bordeaux asserted that it did not owe training compensation because the player had never been offered a professional contract, a fundamental requirement according to the aforementioned Article 20 of the FIFA Regulations. Yet, CAS states in the verdict that "the legal nature or the designation of the agreement between team and player is irrelevant" (CAS 2005/A/838, page 8, par. 31). All the costs related to the practice of football were already covered by the French club, thus the fee of 600 Euros constituted a salary and not a mere compensation for the player, a fact which consequently turned the player into a professional.

3.2.3. The case of Gerard Piqué

FC Barcelona SAD v/ Manchester United FC (CAS 2004/A/691)

In 2002, the fifteen year-old Gerard Piqué and his parents signed a six year pre-professional contract with the Spanish club FC Barcelona. The agreement stated that the player should "devote himself to the practice of sport and receive in return compensation only for [...] expenses". In the following, Arsenal FC negotiated with the player and Barcelona in order to have the player join the English team. In the meanwhile, Manchester United also wanted to put forward an offer but Barcelona replied that there were negotiations in place with Arsenal. Without having the consent of FC Barcelona, the player signed a non-professional 'scholarship agreement' with Manchester United that was to be replaced by a professional

contract on the player's 18th birthday. Consequently, FC Barcelona filed a claim with FIFA and later appealed to CAS.

The CAS Panel found that the player should be considered as an amateur not because of a designated 'amateur contract' but rather because the player "has never received any remuneration other than reimbursement of actual expenses incurred during the course of participation in any activity connected with association football" (CAS 2004/A/691, par. 76, page 19). As a consequence, the arguments of FC Barcelona regarding the inducement of breach of contract by Manchester United had no relevance mainly because the FIFA Regulations refer to professional contracts only. The provisions made therein regarding the stability of contracts are not applicable to amateur relations.

Besides the issue of clearly defining the status of the player, another point of potential ramifications arises in the context of first contract offerings. The following case between PSV Eindhoven and Leandro do Bomfim reveals some of the problems involved.

3.2.4. The case of Leandro do Bomfim

PSV N.V. Eindhoven v/ FIFA & Federação Portuguesa de Futebol (CAS 2005/A/835) & PSV N.V. v/ Leandro do Bomfim & FIFA (CAS 2005/A/ 942)

At the age of 17, the Brazilian player Leandro do Bomfim signed a four-and-a-half year contract with the Dutch team PSV Eindhoven. The following year, Bomfim signed a new contract with the Portuguese club FC Porto. The player alleged that his contract with PSV was void because he was a minor at the moment of signing it, which consequently impedes a length of contract of more than three years. On the Dutch club's appeal to CAS, the final verdict was that the original contract between Bomfim and Eindhoven was indeed void and so the player was allowed to play for FC Porto without any compensation for PSV.

3.2.5. The case of Mohamed Lamine Sissoko

AJ Auxerre v/ Valencia FC & Mohamed Lamine Sissoko (CAS 2006/O/530)

This case is symbolic for the differences between national and international regulations, in this context the regulations of the Fédération Française de Football (FFF) and FIFA regulations.

The final verdict is very important for similar cases that deal with the determination of player status.

The French player Mohamed Sissoko and AJ Auxerre signed a so-called ‘apprenticeship contract’. The contract was intended to last for three seasons, in which the club committed to provide the player with a complete football formation. This particular system of ‘apprenticeship contracts’ is special to the French regulations. On the expiration of such a contract, players are obliged to sign a pre-professional contract (‘stagiaire professionnel’) with the same club if it decides to offer it to the player⁵. When AJ Auxerre offered Sissoko the contract of ‘stagiaire professionnel’, the player declined and signed a professional contract with the Spanish team Valencia CF.

The final decision by CAS was that the apprenticeship contract system is only valid at national level and that the FIFA Regulations are the rules to be applied regarding international transfers. Consequently, Sissoko did not breach his contract but had to be considered as a free agent for international transfers. Hence, the player was allowed to register with the Spanish club while AJ Auxerre did not receive any compensation for breach of contract.

The principal of free movement of football players is highly valued by the governing body and the Court of Arbitration for Sports. A club cannot force the player to sign a new contract once the previous has expired. CAS jurisprudence underscores that in principle a person should not be compelled to remain under employment of a particular club. An employee who breaches his contract by wrongful and premature withdrawal may be liable for damages or may even be imposed a sanction but not an injunction to remain with his employer (Article 23 of the FIFA Players' Regulations 2001; Art 17 of the FIFA RSTP 2007). This is compliant with the provisions made under Swiss law (Article 337(d) of the Swiss Civil Code). The principle relates back to the Bosman case in the sense that the conclusion of the employment contract lets the player become a free agent.

⁵ L'article 259 de la Charte (édition pour la saison 2000-2001, applicable en l'espèce): (...) à l'expiration normale des contrats apprenti ou aspirant, le club est en droit d'exiger de l'autre partie la signature d'un nouveau contrat de joueur en formation correspondant à l'âge du joueur.

3.2.6. The case of Oscar Guido Trejo

Club Atlético Boca Juniors v/ Real Club Deportivo Mallorca (CAS 2007/A/1250)

This case basically incorporates the definition of player status as specified before and the unilateral option clause of prolongation of the player's contract.

CA Boca Juniors from Argentina had a one-year agreement with the player Oscar Guido Trejo, which included a clause leaving the club with the right to unilaterally extend for two more years. At the beginning of 2007, the player signed a professional contract with RCD Mallorca from Spain.

The Spanish club claimed that the player was only playing under a simple agreement and had no employment contract with CA Boca Juniors. The Argentinean club on the other hand alleged that the player should be considered as a professional since he was paid an amount that exceeded the expenses incurred from the footballing activity in conformance with Article 2 of the FIFA Regulations on the Status and Transfer of Players. The provisional registration of the player in the Spanish Federation was allowed because of the basic principle that a player has full freedom to choose the club he wants to sign with, without prejudice of all possible financial and disciplinary consequences deriving from a potential conflict. Hence, the provisional ITC⁶ was granted also because of the "likelihood of success of the player on the merits of the claim."

3.3. Unilateral options for the extension of players' contracts

Unilateral option clauses are common practice for many clubs especially in South America but also frequently used in Europe. In its basic form, players are offered short-term contracts which include a clause granting the club the unilateral option to extend the contract for a determined number of times and years. Usually, the increase in the player's salary in case of unilateral extension is also established in the same clause. For many clubs which are financially dependent on the development of young players, the inclusion of this type of clause in the players' contracts has been common practice. The main advantage lies in the possibility to contract a high number of players at comparatively low cost in the same season without being forced to engage in longer-lasting financial obligations. As can be seen from

⁶ ITC stands for International Transfer Certificate. Players registered at one association may only be registered at another once the latter has received an ITC from the former or a provisional ITC from FIFA (FIFA RSTP, Art. 9 and Annexe 3, 2007).

the jurisprudence with regard to their international acceptance, there are certain specificities to be followed which might render such clauses valid. In the following, the most important cases pertaining to this issue are presented. The final awards established by the Arbitration Panel of the Court of Arbitration for Sports give an indication of the reasons why they are not considered valid in general terms and what could be done to enhance their universal validity.

3.3.1. The case of Carlos Bueno & Cristián Rodríguez

Club Atlético Peñarol v/ Carlos Bueno & Cristián Rodríguez & Paris Saint-Germain (CAS 2005/A/983 & 984)

This case might be considered as significant for South America as the Bosman case for Europe. It challenged the system of contracts as established by the Uruguayan Football Association and practiced for many years. The players Carlos Bueno and Cristián Rodríguez had an employment agreement with the Uruguayan team Club Atlético Peñarol for one year but the club had the right to unilaterally extend the contract for a number of years. In order to do so, the salary of the players had to be increased according to the officially reported annual increase of the cost of living in Uruguay. At the end of the season, the players signed with the French club Paris Saint-Germain not accepting the club's unilateral right of prolongation. At first, FIFA did not deliver the ITC which meant that initially Bueno and Rodríguez were not allowed to play for the French club.

This case incorporated two legal difficulties. One of them was whether the applicable law was the national law of Uruguay or Swiss law as referenced in the FIFA regulations. The other problem was how to deal with the unilateral option of prolongation in a context of the right of free movement for the players. In effect, the contract of the players had ended as they did not accept the unilateral option of their club. However, CA Peñarol expected to receive compensation.

With regards to the applicable law, since both the players and the club were Uruguayans, the club insisted that the applicable law should only be Uruguayan. This was important to define because Uruguayan law admits the possibility of the unilateral extension option clause. The club's position was disregarded by FIFA as well as by CAS. Instead, reference was made to the FIFA Regulations and the general principles of labour law as well as international treaties signed by Uruguay on labour matters.

The players were finally allowed to register for Paris Saint-Germain and Peñarol was denied any compensation. This was the first case to demonstrate the position of FIFA and CAS towards the principle of such clauses. Another important precedent left by this case is that the regulations of the International Federation (FIFA) and the applied Swiss law prevail over national law.

3.3.2. The case of Diego Barreto

Real Valladolid CF SAD v/ Diego Daniel Barreto Cáceres & Club Cerro Porteño (CAS 2006/A/1082 & 1104)

Real Valladolid CF against Diego Barreto is a rather complex case which incorporates three important issues of the contemporary legal landscape: unilateral breach of contract, mitigation of the compensation fee and unilateral option clause.

The Paraguayan goalkeeper Diego Barreto and the Spanish club Real Valladolid CF had an employment contract which, according to Spanish law, included a fixed buy-out clause of 6 million Euros. The reason for litigation was that Barreto used the argument of unilateral extension of his prior contract with the Paraguayan club Cerro Porteño to breach his valid labour contract with Real Valladolid CF which he had recently signed. The Court of Arbitration for Sports ruled in the final appeal that the unilateral option of extending the player's contract is not deemed valid under the prevailing conditions. Hence, the player was found guilty of unilateral breach of contract with Real Valladolid CF.

Further, the Panel considered that the amount of 6 million Euros was not proportional to the real value of the player to the Spanish club and mitigated the amount according to Article 44 of the Swiss Code of Obligations⁷. CAS set the new compensation fee to be paid by the player Barreto to 1.5 million Euros.

Contrary to the general jurisprudence there are certain elements such as equal bargaining power of the parties, a significant increase in the salary of the player or the concession of the right of unilateral expansion in a separate agreement which might render unilateral option clauses acceptable by CAS. The next two cases include examples in which the players did not respect the unilateral option of the club to extend their contract and signed with other clubs.

⁷ Article 44, Paragraph 1 of the Swiss Code of Obligations (French version): "Le juge peut réduire les dommages-intérêts, ou même n'en point allouer, lorsque la partie lésée a consenti à la lésion ou lorsque des faits dont elle est responsable ont contribué à créer le dommage, à l'augmenter, ou qu'ils ont aggravé la situation du débiteur."

The sentences made by the Dispute Resolution Chamber of FIFA and the Court of Arbitration for Sports follow a quite different argumentation than in the precedent cases.

3.3.3. The case of Sotirios Kyrgiakos

Panathinaikos Football Club v/ Sotirios Kyrgiakos (CAS 2005/A/973)

The case of Panathinaikos Football Club against Sotirios Kyrgiakos bears very interesting implications in regards to the validity of unilateral options. In the final award, the Arbitrational Panel from the Court of Arbitration for Sports declared the player liable for breach of contract.

In Greece, unilateral options of clubs to automatically extend the labour contract with a player are legal. Kyrgiakos and Panathinaikos FC signed a two year employment contract in 2001. The contract granted the club the right of a unilateral two-year extension, plus one additional year thereafter. The effective duration of the contract could thus reach up to five years. While Kyrgiakos was playing under a loan agreement for Glasgow Rangers FC in Scotland, Panathinaikos exercised the option to prolong the contract. The player refused to play again for the Greek club and personally considered the contract void as the legality of unilateral option contracts was not recognized internationally.

In the appeal procedure at CAS, the Panel declared that the player was responsible of unilateral breach of contract. The arbitrators relied on the principle of 'pacta sunt servanda' which translates into the obligation to respect a contract. The terms and conditions offered by the club on the close of the contract were considered as fair and reasonable by the Panel. Hence, the unilateral option clause did not create a relationship of unequal bargaining power between the parties. The very significant increase in the salary of Kyrgiakos combined with various bonus payments in the case of prolongation were paramount reasons in the decision of CAS.

It must be underlined in this respect that every case has its own particularities and is as such treated by FIFA and CAS. Hence, the Single Judge or the Panel decide case by case. Fairness and equality are highly valued concepts generally leading to a protection of the weaker party.

3.3.4. The case of Javier Alejandro Almirón

Club Atlético Lanús v/ Javier Alejandro Almirón & Polideportivo Ejido SAD (FIFA 07/00789)

This case is similar to the Bueno & Rodríguez case but with one decisive difference. The Argentinean player Javier Almirón signed a contract with the Argentinean club Atlético Lanús in 2006. The contractual agreement was for one year but granted the club the right to unilaterally extend the contract for two more years under the condition that the club would increase the salary of the player by 15% each year. Additionally to the employment contract, Almirón and Lanús also signed a private agreement which obliged the club to pay the player 18,000 Dollars as in return for having the unilateral extension right.

After one year, the player signed a new contract with the Spanish club Polideportivo Ejido SAD, not respecting the right he had conceded to Lanús. As a consequence, the Argentinean club filed a claim with FIFA. As the probability of a successful claim in the light of the actual jurisprudence regarding this issue was rather small, the Single Judge allowed the Spanish Football Association (RFEF) to provisionally register the player.

However, the DRC sentence held up the claim made by CA Lanús and condemned the player to pay 68,000 Dollars in solidarity with the Spanish Club. It was considered that the player breached his contract unilaterally. The DRC recognised the validity of both the registered contract in AFA and the additional private contract which conceded the club the right to unilaterally prolong the contract. The critical element was that the player perfectly knew and understood the right that he had given to the club (Interview with Alejandro Marón, President of CA Lanús, 2009).

3.4. Unilateral contract termination under Article 17

“Contractual stability is of paramount importance in football, from the perspective of clubs, players, and the public” (FIFA Circular Letter 769, 2001, page 10). After the Bosman ruling and the recognition of the principle of freedom of movement for football players, FIFA was compelled to modify the regulations of its transfer system⁸. The modifications should inherit a proper balance between the two principles of contractual stability and freedom of movement.

⁸ The first FIFA Regulations for the Transfer and Status of Football Players that recognise the “freedom of movement and other recommendations made by the European Commission were released in September 2001 (FIFA Circular letter 769, 2001).

In the event that a club and a player choose to enter into a contractual agreement, FIFA seeks to ensure that this contract will be honoured by both parties. By any means, it tries to discourage players or clubs from unilateral termination (FIFA, 2007, Article 13). By the introduction of a protected period⁹, unilateral contract terminations are supposed to be prevented under the threat of sporting sanctions. On the other hand, the rules also reflect the fact that players may have a 'sporting just cause' to terminate a longer-term contract unilaterally (FIFA, 2007, Art. 14). Even so, Article 17 of the FIFA Regulations also introduces the possibility of unilateral breach of contract without just cause, despite of sanctions and an obligation to pay compensation.

The present chapter will analyze different cases which revolve around the main issues regarding the application of Article 17.

3.4.1. The case of Andrew Webster

Wigan Athletic FC v/ Heart of Midlothian (CAS 2007/A/1298) & Heart of Midlothian v/ Andrew Webster and Wigan Athletic FC (CAS 2007/A/1299) & Andrew Webster v/ Heart of Midlothian (CAS 2007/A/1300)

One of the most influential cases in relation to the freedom of movement and contractual stability of football players after Bosman is the case of Andy Webster. In March 2001, shortly before the player's 19th birthday, Heart of Midlothian and Webster signed an employment contract that was due to expire in June, 2005. On the 31st of July 2003, two years before the expiry of the initial contract and following a renegotiation of its terms, the Scottish club and Andrew Webster entered into a new employment contract, which provided for a term of four years until June 2007.

In accordance with Article 17(3) of the FIFA Regulations, he unilaterally terminated his contract with Hearts and signed a three-year employment contract with Wigan Athletic FC in August 2006. Heart of Midlothian was not paid any compensation upon the departure of the player. Andrew Webster became the first player to terminate his contract unilaterally under Article 17, something which was to create considerable insecurity among clubs and players.

⁹ The FIFA Regulations on the Status and Transfer of Players (2007) define the protected period as "a period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional."

In November 2006, Hearts filed a claim with FIFA against Andrew Webster and Wigan Athletic. It claimed compensation for breach of contract in the amount of about 5 million Pounds against the player and his new club as they were deemed jointly and severally liable for having induced the breach. The key issue to be defined in this precedent case was whether the compensation fee should be based on an assessment of the loss suffered by the player's former club or whether it should be limited to the residual value of the contract which essential means the sum of the player's salary payments until the hypothetical conclusion of the contract. For Heart of Midlothian, the compensation should be measured by the cost of replacing Webster with a player of similar age, ability and experience or, alternatively, the loss of opportunity to receive a transfer fee. On the other hand, Wigan Athletic and Webster advanced the view that the compensation should be limited to the residual value of the contract. Anything else would be an unlawful restriction on right of free movement as established by the European Union Treaty.

The Panel decided that compensation should be limited to the residual value of the contract primarily because any higher compensation would impose heavy restrictions on the free movement of players similar to the pre-Bosman era. The compensation fee to be paid by Andrew Webster and Wigan Athletic FC was only 150,000 Pounds. It is important to emphasize that every case is different and, therefore, it is impossible to create a *lex sportiva* on the matter.

In this case, the Panel had surely taken into consideration the situation of the player, who even though he did not ask for just cause to terminate his contract, showed and proved to the Panel to have been treated badly by Hearts. The following cases demonstrate that argumentation for unilateral breach has developed over time and by each new case carried in front of the FIFA DRC and CAS.

3.4.2. The case of Elkin Soto Jaramillo

Elkin Soto Jaramillo & FSV Mainz 05 v/ CD Once Caldas & FIFA (CAS 2008/A/1453) & CD Once Caldas v/ FSV Mainz 05 & Elkin Soto Jaramillo (CAS 2008/A/1469)

As in the Webster case, Soto Jaramillo unilaterally terminated his contract using the right conferred by Article 17 of the FIFA Regulations (2007). The most important difference to Webster is the fact that Soto Jaramillo was still under the protected period¹⁰.

The Columbian player Soto Jaramillo unilaterally terminated his contract with CD Once Caldas at the end of 2006 while still having one more year of contract with the club. In January 2007, the player signed an employment contract with FSV Mainz 05 from Germany. As the case went on appeal to CAS, the Panel determined that the compensation amount should be fixed in 150,000 Euros. This amount was calculated taking into consideration the average of the new salary which the player received in Mainz and his old salary from the Colombian club. Due to the fact that the breach took place during the protected period, Soto Jaramillo was also sanctioned with a four months suspension to play. The criteria to calculate the compensation for unilateral breach of contract as adopted by CAS were different than in the Webster case. Instead of basing the calculation in the residual value of the contract, the Panel took also into account the value of the player for the new club. Surprisingly, there was no additional financial compensation for contractual breach within the protected period.

3.4.3. The case of Philippe Mexès

Philippe Mexès v/ FIFA (CAS 2005/A/708) & AS Roma v/ FIFA (CAS 2004/A/709) & AJ Auxerre v/ AS Roma and Philippe Mexès (CAS 2004/A/713) & Philippe Mexès and AS Roma v/ AJ Auxerre (CAS 2005/A/902) & AJ Auxerre v/ Philippe Mexès and AS Roma (CAS 2005/A/903) & AS Roma v/ FIFA (CAS 2005/A/916)

This is a case of unilateral breach of contract which has one particular element that distinguishes it from similar cases. When Philippe Mexès was under a recently renewed employment contract with the French club AJ Auxerre, the Italian club AS Roma made an offer for Mexès of 4.5 million Euros, which was eventually refused by AJ Auxerre. The player consequently breached his contract with the French club under the terms of Article 17 of the FIFA Regulations.

¹⁰ Art. 17(3) FIFA RTSP: (...) In addition to the obligation to pay compensation, sporting sanctions shall also be imposed on any player found to be in breach of contract during the protected period.

The French club AJ Auxerre postulated a compensation fee of 18 million Euros, considering the average value of transfer fees paid for players of similar characteristics in the two preceding years. As FIFA fixed the compensation fee in 8 million Euros without further explication of how it had arrived at that figure, all three of the parties filed an appeal with CAS.

CAS decided to take into account the offer of 4.5 million Euros made prior to the breach by AS Roma. The panel also considered that the 2.5 million Euros paid by the French club as engagement fee upon the renewal of Mexès' original contract was to be added since the player did not completely perform his services. Hence, the total amount was fixed in 7 million Euros.

As in contrast to other cases, CAS established its position regarding the inclusion of prior transfer offers made by clubs in the calculation of the compensation fee. In this case the offer came directly from AS Roma, thus indicating a good approximation of the value of the player for the new club. It remains to be seen in future cases whether CAS would equally consider offers made by clubs which are not involved in the transaction. One consequence of the Mexès case is that clubs which want to contract a player under any circumstance might be reluctant to make realistic offers for the transfer of a player as this offer could later be taken into consideration for the compensation fee in the case of contractual breach. It also implies the risk that clubs persuade others to make a so-called 'friendly offer' which later will be taken as reference for an eventual compensation.

3.4.4. The case of Matuzalem

FC Shakhtar Donetsk v/ Matuzalem Francelino da Silva, Real Zaragoza SAD & FIFA (CAS 2008/A/1519) & Matuzalem Francelino da Silva & Real Zaragoza SAD v/ FC Shakhtar Donetsk and FIFA (CAS 2008/A/1520)

The most recent decision regarding the compensation for breach of contract was taken in the case of Matuzalem. Some consider this case to be anti-Webster as it provides for a substantial compensation to be paid to the player's former club Shakhtar Donetsk. In any respect, it sets a new precedent for any future litigation over contractual breach und Article 17 and the criteria used to arrive at a compensation fee.

The Brazilian player Matuzalem Francelino Da Silva signed a five-year employment contract with the Ukrainian club Shakhtar Donetsk in 2004. After three years of contract the player breached his contract without just cause and signed a new agreement with the Spanish club

Real Zaragoza SAD. Matuzalem was therefore considered to be outside of the protected period.

Shakhtar Donetsk claimed that the compensation for breach of contract should be fixed in 25 million Euros as established by the buy-out clause inserted into Matuzalem's contract¹¹. However, the Arbitration Panel declared that such clause could not be considered as an indemnity clause as it made no reference to Article 17. The compensation fee was finally fixed to 12 million Euros. One of the main criteria to arrive at the compensation amount was the value of lost services for Shakhtar Donetsk by the player, subsequently deducting the salary expenses which the Ukrainian club will not have to pay to the player and adding an indemnity amount equal to six months of the player's old salary as common practice in Swiss law.

After signing, Real Zaragoza further transferred the player on a temporary loan basis to SS Lazio SpA from Italy. The loan agreement contained an option clause that provided the Italian club with the right to acquire the player for 14 million Euros. This agreement was another crucial element taken into account by the Panel.

CAS accepted that the exact extent of the damage caused by the contractual breach could not be established but believed to have included all the elements which it considered relevant. The Panel stated that the amount set was based on "the spirit of Article 17, Paragraph 1 of the FIFA Regulations and having regard to the specificity of sport and to the applicability and subsidiarily of Swiss law and in particular of Article 99, Paragraph 3 and Article 42, Paragraph 2 of the Swiss Code of Obligations, according to which if the exact amount of damages cannot be established, the judge shall assess them in his discretion, having regard to the ordinary course of events and the measures taken by the damaged party to limit the damages..." (CAS 2008/A/1520, Paragraph 176, page 41).

FIFA and CAS are of the opinion that contractual stability is crucial for the continuous functioning of the transfer system and, evidently in the case at hand, incorporate a far more complete calculation of the value of a player in the compensation fee. It remains to be seen if the Matuzalem case sets the precedent for other disputes still to come which do not provide for comparable indications of the player's value.

A general opinion is that article 17 will lead to a case-by-case jurisprudence and that the facts of each situation are going to be of maximum importance. Therefore, a similar situation like

¹¹ The clause stated that "in the case the club receives a transfer offer in an amount of 25 million Euros or more the club undertakes to arrange the transfer within the agreed period."

the one of Bosman or Bueno-Rodríguez, which were treated as *erga omnes*, cannot be expected but, instead, much more *ad-hoc* decisions.

3.5. Market implications of the provisional registration of players

Whenever there is a case of breach of contract between a professional football player and his employing club and a subsequent dispute over contractual stability, the player or his new club may request the issue of a provisional ITC from FIFA. The formal requirement to demonstrate exceptional circumstances in order to obtain such a certificate is regularly softened in practice. It seems that a mere doubt about the existence of an ongoing labour relation between the player and the former club is sufficient for the Single Judge of the FIFA Players Status Committee to grant the provisional ITC¹². Independently of the concession of a provisional registration the parties preserve their right to address the Dispute Resolution Chamber of FIFA and appeal to CAS.

The issue of a provisional ITC might entail implications on the general behaviour of players and on the transfer market as a whole. Presumably, the aforementioned procedures and facility to obtain a provisional transfer certificate can encourage players to unilaterally breach their contracts. This potential threat to the principle of contractual stability is in direct opposition to the FIFA Regulations, by which FIFA actually tries to counteract such practices (FIFA Circular Letter 769, 2001).

One major effect of the unilateral contract termination by players is a distortion of the transfer market. As a consequence of contractual breach, the ordinary process of negotiation between the parties is omitted. The new club does not need to make an acceptable offer to the former club but may provisionally register the player without negotiation and, essentially, without any financial investment for the transfer apart from the player's salary. On the other hand, the former club is deprived of its negotiation powers and needs to address FIFA and/or CAS for receiving compensation. In effect, FIFA and CAS play the role of market regulators to the extent that they set the transfer fee instead of leaving it to be regulated by the law of offer and demand. While the new club can use the player's services immediately, the former club needs to contract a replacement player, which in any case might be difficult to find.

¹² See also: provisional registration of Javier Alejandro Almirón at Polideportivo Ejido SAD FIFA (Fax to the Asociación del Fútbol Argentino (AFA) and the Real Federación Española de Fútbol (RFEF) on the 18th of September 2007) and CAS 2005/A/973 Panathinaikos FC v/ S. Kyrgiakos.

A further implication of the unilateral breach of contract is the artificial increase of players' wages. As the new club is relieved from paying a transfer fee for the time being, it is in a better position to offer a higher-than-average salary. Moreover, the club has to give an incentive to the player to breach his contract with the former club as he eventually finds himself in a delicate moral and legal situation (CAS 2005/A/916 AS Roma v/ FIFA). According to Késenne (2007), who adopted a macroeconomic perspective on the economics of football, an increase in the marginal salary of some players will destabilise the medium salary level of the labour market as a whole and consequently cause a steady adjustment of the other players' salary. This phenomenon can in essence be compared to the inflation of transfer fees caused by some irrational offers in the market.

Another significant consequence of the unilateral breach of contracts is a distortion in competition. Corresponding to the aforementioned arguments, clubs which incur this type of problem are left in a disadvantageous position with respect to other clubs from the same league which received an adequate compensation for eventual player transfers. On the other hand, as the new club can provisionally register the player without paying a transfer fee, it has an advantage over other clubs from his league because their possible transfer activities are restrained by their budgets and negotiation skills against others. Thus, the competitive basis is somehow skewed and the regulatory framework benefits some more than others resulting from a situation which should remain "exceptional" (FIFA Circular Letter 769, 2001).

It has to be mentioned that, in accordance with Article 17 of the FIFA Regulations on the Status and Transfer of Players, the player that terminates his contract unilaterally within the protected period and the new club are both subject to sporting sanctions and disciplinary measures. Still there are some drawbacks to this regulation. First, sporting sanctions are only applicable when players breach their contract within the protected period.¹³ Second, if the Single Judge of FIFA leaves the sanction to be determined with the compensation – something that commonly happens although it is not conform to the regulations (FIFA RSTP, Annexe 3, Art.2, point 6, 2007) – the uncertainty and timing of the sanction leaves the parties in a pending situation¹⁴.

¹³ A period of three entire seasons or three years, whichever comes first, following the entry into force of a contract, where such contract is concluded prior to the 28th birthday of the professional, or two entire seasons or two years, whichever comes first, following the entry into force of a contract, where such contract is concluded after the 28th birthday of the professional (FIFA RSTP, Definitions, page 5, 2007).

¹⁴ See also: CAS/2007A/1250 CA Boca v/CRD Mallorca.

The unilateral breach of contract therefore creates an inefficiency of the transfer system. As described in this chapter, some clubs have profited from the uncertainty in the legal environment and the decisions adopted by FIFA and CAS while others have remained aggrieved or have hesitated to react at all. The biggest implied risk is that the scenario offers advantages for those that act in bad faith. More explicitly, it leads to a growing contempt of the stability of contracts between the player and a club. As the transfer system is built on the concept of contractual stability, any categorical debilitation of that principle poses a problem to the system as a whole. Especially clubs, for which transfers represent a significant percentage of the annual revenues, are over-exposed to this legal uncertainty. In order to be better protected and regain some financial planning security in the context of contractual stability, various recommendations will be provided in the following chapter.

4. Recommended strategies

4.1. Definition of player status

On the basis of what was mentioned before, the definition of player status is one of the most difficult issues in football. In general terms, the maintenance of contractual stability depends on whether the player is an amateur or professional. Being well informed about the potential implications of this topic can put a club in a better position to recognize if it is entitled to receive a transfer fee, a compensation for the breach of contract or if it can be held liable for the payment of training compensation to the former clubs of a player.

As it was seen in the cases of Aston Villa FC against B.93 Copenhagen (CAS 2006/A/1177) and Girondins de Bordeaux against Lyngby Boldklub and Lundtofte Boldklub (CAS 2005/A/838), the legal nature or designation of the agreement between the club and a player is irrelevant to determine the player's status. Those clubs who offer contracts designated as 'semi-professional', 'stagier', 'training', 'scholarship', 'educational' or 'apprenticeship' will only create confusion in relation to the status of a player, a fact which consequently exposes them to potential litigation. Even a denomination like 'contract of employment' is not enough to establish the player's status. Moreover, the classification of a player made by the national association involved is also not decisive (CAS 2006/A/1177, Aston Villa, points 7.4.6 to 7.4.8).

The only pertinent element to determine the player's status is the remuneration received by the player. The amateur status is defined by the fact that a player "has never received any remuneration other than reimbursement of his actual expenses incurred during the course of his participation in any activity connected with association football" (CAS 2004/A/691, Barcelona v/ Manchester United, paragraph 76). Any remuneration, bonus or signing-on fee that the player receives in excess of what is needed to cover his footballing expenses will constitute a salary (CAS 2005/A/838, Girondins de Bordeaux). Finally, that remuneration could be even lower than a minimum salary of the country where the player is registered and must not even permit the player to subsist. In any case, if the amounts paid are higher than the stipulated limit of incurred expenses in playing football, the player will be considered a professional¹⁵.

¹⁵ The amounts paid to the player "may well fall short of a living wage and that the player could not accordingly subsist [...] without other sources of income. But the strict test set in Article 2 of the Regulations does not engage such considerations and the Panel considers that the remuneration provided to the player exceeds the stipulated limit of expenses incurred with the footballing activity" (CAS 2006/A/1177, Aston Vila, point 7.4.11).

Another element to be aware of is the maximum length of contract. Dependent on the status, national legislation or FIFA Regulations¹⁶ may set limitations to the length of contracts between clubs and minors. Any contract longer than the maximum period allowed collides with the protection of minors, something of major interest to FIFA. As it was studied in the case of the player Bomfim (CAS 2005/A/835), any clause included in the contract that lays down a period of more than three years is void. Thus, the player will be free to move while the club cannot claim for any type of compensation. Even more, any retrospective declaration made by the player and the club after the completion of the contract about its validity will not be considered.

Regarding the transition from one type of contract to another, there sometimes are national legal frameworks to bear in mind. In the past, French clubs were legally bound to offer minors certain types of 'pre-professional contracts' before signing an employment contract. Apart from the implications for the player status, the strictly national nature of these regulations creates ramifications in the international environment. Football clubs from other countries do not have to respect the player's obligation to sign a new contract with his training club after the expiration of the previous agreement (CAS 2006/O/530, AJ Auxerre v/ Valencia FC & Mohamed Lamine Sissoko). The principle that on the expiration of a contract the football player can move freely prevails on the international level, given that he complies with the requirements of minimum age or the exceptions made thereto as cited in Article 19 of the FIFA Regulations (2007). In order to avoid the inherent risk of losing a player 'in-between' contracts, clubs should offer the player contractual renewals before the actual agreement expires.

Football clubs are well advised to set a clear strategy in respect to the status of their players and the subsequent offering of pre-employment contracts as required by national legislation. Most importantly, clubs should carefully examine how their players will be recognized according to the FIFA Regulations. On the premise that the player status will be professional, the club will be in the position to claim a transfer fee or compensation in the case of unilateral breach of contract. For the economic interests of the club this is utterly important as it guarantees stability in the sporting and financial planning.

¹⁶ Article 18 of the FIFA Regulations (2007) states that "the maximum length of a contract shall be five years. Contracts of any other length shall only be permitted if consistent with national laws. Players under the age of 18 may not sign a professional contract for a term longer than three years. Any clause referring to a longer period shall not be recognized".

4.2. Unilateral option clauses for the extension of players' contracts

The main advantage of unilateral options which allow for the extension of players' contracts is the reduced financial risk in comparison to long-term contracts. Essentially, the club limits the basic contract to a short period of time and includes a clause defining the number of options and the period of extension. Their validity is commonly recognized by national law and collective bargaining agreements, especially in South America.

However, as it was studied in 3.3, the use of unilateral options of extension implies a significant risk as their validity may not be recognized internationally and depends on the presence of a number of very specific elements. In general terms, FIFA has clearly stated its opinion in regards to this issue, something which was later held up by CAS: “[unilateral options] curtail the freedom of movement or choice of a professional player and are inconsistent with the general principles of labour law” (CAS 2005/A/973, Kyrgiakos, paragraph 19.4, page 5). Nonetheless, “CAS jurisprudence does not say that such options are invalid but only refers to the need to question the validity of such options on a case by case basis, looking at the balance of the contract” (CAS 2005/A/973, Kyrgiakos, paragraph 32, page 8). Thus, those clubs which make frequent use of unilateral options find themselves in a very uncertain situation regarding the validity thereof and the contractual stability with their players. It is interesting to reflect that an element which was designed to protect the financial interest of clubs actually jeopardizes it. In an age of increased international mobility, players bound to the club under such a clause could leave without any compensation.

In his expert report, which was requested by the FIFA Director of Legal Services and used by Peñarol in the case of Bueno-Rodríguez, Professor Wolfgang Portmann (2007) considers that unilateral options could be still valid if they are not in violation of public policy and respect the laws of the countries concerned. Further, they have to preserve an equal bargaining power between the employer and the employee. In particular, Portmann's recommendations state that the contract of employment should “appear commensurate in respect of time” (page 12). This means that it should not be extended for more than one year at a time up to a total length of three years. There should also be a proper economic indemnification to the player as the “remunerativeness of an option clause reduces the risk of it being deemed an excessive commitment.” One crucial aspect is that an option clause does “not to downgrade the terms and conditions during the contract extension compared with the original ones, but rather, on the contrary, to increase the salary by an appropriate amount” (page 12). The option should

also be exercised at least not later than one month before the expiry of the original contractual term.

Slowly, the unilateral option clause seems to be disappearing in South America. The clubs as well as the players' working unions have identified its inherent risks and apparent favouritism of the clubs in the context of international public policy. For instance, Chile completely eliminated unilateral clauses from employment contracts in sports as of June 2007 (Congreso Nacional de Chile, Ley 20.178, 2007). Also in Uruguay, there has been a first attempt of annihilating the practice using unilateral options, as discussed as part of the latest collective bargaining agreement between the Uruguayan players' union and the Uruguayan Football Association (AUF) in August 2007 (Mutual Uruguaya de Futbolistas Profesionales and Asociación Uruguaya de Fútbol, 2007). At the same time, the Argentinean football has adopted a mixed model in the new collective bargaining agreement between the players' union and the Argentinean Football Association (AFA) signed in March 2009. The agreement still allows for the free inclusion of unilateral option clauses in players' contracts but limiting it only to players of under twenty-one years of age for a maximum length of three years. In all other cases, the new agreement will only allow contracts with fixed terms (Futbolistas Argentinos Agremiados and Asociación del Fútbol Argentino, 2009). It is noteworthy, that unilateral options are still used in Argentina because the players' union is heavily in favour of them. The overall believe is that the present system provides more players with employment chances (Interview with Alejandro Marón, 2009). However, the parties recognize that in the long term, the only type of contract to be used will be that of fixed terms as it is generally safer and more stable.

In conclusion, the use of unilateral option clauses for the extension of players' contracts is not recommended for clubs. Even though they might be found valid under certain conditions, respecting the recommendations made in the Portmann Report, the clause in general is not recognized internationally as it destabilizes the equal power between the employee and his employer. In order to once more stress the importance of contractual stability and the planning security of clubs, it shall be advised against any possible reliance on this contractual clause. When signing players from the youth academy, it is recommended to rather use small remunerated contracts which can later be adjusted to pay tribute to the merits of a player. In this way, the players are at least protected under a professional status, which is of paramount importance for the claim of receiving a transfer or compensation fee as described in 4.1.

4.3. Variable indemnity clause

Article 17 of the FIFA Regulations for the Status and Transfer of Players clearly states that “ (...) 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”. Moreover, Article 1, Paragraph 3 b) reinforces the importance of a contractual clause in relation to Article 17 Paragraphs 1 and 2: “(...) in the event of termination of contract without just cause, compensation shall be payable and that such compensation may be stipulated in the contract”. Clearly, football clubs will be in a safer position if they include a clause in their players’ contracts which makes reference to the unilateral breach of contract according to the above-mentioned article.

There is a problem, however, with simple recession clauses as they are currently used in Spain. According to Article 44, Paragraph 1 of the Swiss Code of Obligations, which is decisive for international litigation after the provisions made by FIFA, an inadequate compensation postulated by the club, even if it is anchored within the contract, might be mitigated by the judge (CAS 2006/A/1082-1104 Valladolid c/ Barreto Cáceres & Cerro Porteño). The risk of mitigation arises when the fixed amount stipulated in the contract is not proportional to the salary of the player or to the original transfer value, in case the player had been transferred. In most cases, non-proportionality occurs if a potential future market value is estimated at the time of the conclusion of the contract, something which happens frequently with younger players, or if the amount is set to discourage other clubs from acquiring that player and receive some media attention. A recent example is the astonishing amount of 1 billion Euros set by Real Madrid as a buy-out fee for Cristiano Ronaldo (Marca, 2009). For clubs which are dependent on transfer fees to cover their operating costs, as described in the second chapter of this research, there might often be a considerable gap between the salary of a player and the indemnity fee stipulated. Yet, an amount based on the calculation of the player’s value according to some objective criteria as for example the valuation model described in 4.4 should be equally valid.

On the whole, FIFA recognises the validity of clauses in a player’s labour contract which are introduced under the freedom of contract and which do not infringe upon the equal treatment of either of the parties (FIFA Players Status Committee, 2009). In principle, a clause which respects both of these criteria will be valid. On the condition that the club is able to demonstrate that the criteria used were reasonable and the compensation fee represents a good approximation of the residual value of the player for the club, the Arbitration Panel will

most likely also accept the postulated amount. As recommended by Juan de Dios Crespo (2009), specialized Attorney-at-Law in the field of football disputes, the compensation amount should be a function of a fixed sum set at the beginning of the contract adjusted over time for a variety of criteria taking into account the objective performance of the player and of the club. Most importantly, such a variable indemnity clause should be drawn up avoiding any potential misinterpretation of the valuation parameters used. All the concepts should be clearly defined. If, for example, the value of a compensation fee takes into consideration the number of the player's appearances in official games, it shall be precisely defined whether it refers to games played as a starter, a substitute or even whether it depends on the amount of time played in a match. In principle, such a variable indemnity clause should incorporate a certain value at the beginning of the player's contract and then be readjusted.

Art. 17, Paragraph 1 of the FIFA Regulations (2007) states that one of the criteria that shall be included in the calculation of a compensation fee is whether the contractual breach falls under the protected period. In effect, this consideration was taken into account by CAS in the Webster case. The Arbitration Panel did not deem relevant the possible inclusion of the engagement fee paid as the player was out of the protected period (CAS 2007/A/1298, 1299 & 1300, Award, Paragraph 149, page 39). Nonetheless, there are also cases of breach of contract within the protected period in the recent jurisprudence in which the panel did not consider any additional compensation besides the applicable sporting sanction for the player (CAS 2008/A/1453 & 1469, Soto Jaramillo, Award, Paragraph 24 to 41). As a consequence of these different verdicts, the best strategy is to set up an indemnity clause which distinguishes between unilateral breach during and after the protected period. Again, it is strongly recommended to make it very explicit how to arrive at a compensation for either of the situations.

An indemnity clause which uses a variable model for the calculation of an eventual compensation thus reduces the risk of mitigation. On the condition that the club is able to demonstrate that the valuation criteria used are objective, reasonable and freely agreed between the parties, the DRC or CAS will most likely accept the validity of such a clause. The key is that it provides for a good approximation of the residual value of a player's contract at any time. It remains unclear in how far the 'specificity of sport' has an impact on that value as it recently did in the Matuzalem case.

4.4. Frequent contract renewals

The concept of the protected period applies to the unilateral breach of contract under Article 17 of the FIFA RSTP. The main ramifications of unilateral contract termination within the protected period are sporting sanctions as mentioned in Paragraphs 3 & 4. With regard to the length of contracts, Article 18, Paragraph 2 states that “the minimum length of a contract shall be from its effective date until the end of the season, while the maximum length of a contract shall be five years. Contracts of any other length shall only be permitted if consistent with national laws.” The maximum length of contract for players under the age of 18 is set to a maximum of three years.

The fact that sporting sanctions are only imposed for a contractual breach under the protected period suggests that there is a special interest of maintaining the contractual stability in the first two or three years, depending on the age of the player. After that, it becomes easier for the player to move. Likewise, a distinction is made between the length of the protected period of a player below and over the age of 28, an age which represents fairly well the peak of a footballer’s professional career. Accordingly, the contractual relationship at the start and during the development phase of a player’s career is better protected than for mature players who might be free to move after a shorter period of time.

Considering the above, it seems that the best practice to enhance contractual stability is to renew the contracts of the club’s players before the end of the protected period. The jurisprudence shows that each time a player renews his contract with the club, a new protected period begins (CAS 2005/A/902 & 903, case of P. Mexès). Likewise, being under the protected period reinforces the principle of contractual stability. In reality, it is difficult to believe from a financial point of view that every professional football club can renew the contracts of its entire squad at such a frequency. The difficulty is that players expect from a contractual renewal that it implies an improvement of the economic conditions, which essentially means a higher salary. Thus, the best strategy could be to select only those players for frequent contract renewals which represent the greatest sporting and economic value for the club.

In any case, a long-term contract does not lose its validity although it implies a certain risk in relation to its stability. As in absence of an indemnity clause, the compensation outside of the protected period as determined by the FIFA Dispute Resolution Chamber or CAS will most likely be lower than for a breach within the protected period.

4.5. Player valuation methods

The explicit aim of a player valuation model in respect to the variable indemnity clause cannot be to precisely measure the market value of each player. Apart from the very aspiring and practically impossible undertaking of setting up such a model, market values are frequently fluctuating constructs which only come into existence when an actual offer is made by a club. Therefore, player valuation models should be used in their simplicity in order to arrive at a reasonable compensation fee in the case of unilateral breach of contract under Article 17 of the FIFA Regulations on the Status and Transfer of Players. More than anything, it serves the clubs to gain some safety in their financial planning. If based on a variety of well-explained variables, such a model may leave the club with a satisfying compensation fee after all.

Transfer fees generally reflect the expected financial and non-financial benefits of a player's contributions to the club. However, players are transferred quite infrequently and being an intangible asset their valuation using discounted cash flow models is quite limited. Among other factors, their performance is dependant on many factors which are highly volatile and, ultimately, dependent on a whole team. Moreover, the market value of a player can suddenly change after one single outstanding performance, for instance, by scoring a crucial goal in a final, a derby or any other relevant game.

The problem of dealing with accounting figures in order to determine the value of players generally lies in the fact that depreciation is an artificial instrument used to distribute the acquisition cost of a player over multiple periods. This has no relation to the professional development of the player and could run contrary to his value. In the accounting rules for football clubs, there lies a second pitfall. Although players are registered as assets of the club with their acquisition costs as a starting book value, many players are either completely depreciated and do not appear anymore as an asset or are not even included as they have been trained within the youth system of the club.

Therefore, the proposed model has to distinguish between two types of players: a) home grown players and free agents that joined the club; and b) players transferred from other clubs by a transfer fee. In the case of the home grown players or 'free agents', which do not have any initial market value to consider, a good approximation could take as a basis the amount of money that the club will most likely spend during the length of the player's contract, including salaries, engagement fees and estimated bonuses. For the second case, the initial amount is easier to determine as the club paid a transfer fee for the player at the beginning of

the relationship. Instead of linearly depreciating this value, as postulated by International Accounting Standards, a better approach is to discount from the base amount the salaries and all other kinds of remunerations paid to the player during his contract. It is important to notice that the Regulations (FIFA, 2007, Art. 17, paragraph 1) include the initial transfer fee, the remuneration and all other economic benefits for setting up 'objective criteria' in the calculation of compensations.

Further, the base amount could be increased or decreased dependent on the performance of the player and the club or even measurable out-of-pitch events. In this way, both contractual parties can agree in a free negotiation which criteria are to be applied. Hence, the principles of freedom of contract and fair balance in the rights and obligations of the parties will be perfectly fulfilled.

Amongst others, some of the 'modifiers' could be:

– *Age and experience*

Transfer fees for young players usually rise quite quickly between the years of 18 and 23. Thereafter, the annual growth rate remains rather stable until it reaches a peak in the late twenties. At the end of the player's career his value normally declines quite rapidly. The parties could agree to augment/reduce the base amount from the beginning of the contractual relation.

– *Appearance rates*

For young players especially, the experience and number of first team appearances is a very important factor with regular starters being a lot more valuable than the supplement players. This factor could increase the base amount as long as the player completes a certain number of games per year, or in the opposite case, if he does not achieve a minimum rate of appearances, the base amount could decrease.

– *Goal-scoring records*

Transfer values reflect the scoring ability of the player. This includes both, the current and career goal-scoring records. In conformance with this reasoning, it is not surprising that strikers and attacking midfielders tend to have higher transfer values than more defensive players. By considering the position and the background of the player, goal-scoring records could be agreed to serve as a variable of the calculation.

– *International recognition*

International recognition is a very important indicator of player quality. A player who forms part of a national team should be valued at a higher price than a comparable player who does not. For instance, the first national cap could entail an increase of a certain percentage of the base amount. Further, regular appearances can cause another increase. At the same time, the loss of a regular spot on the national team could represent a decrease to a certain percentage.

– *Club achievements*

The status of the current club plays a role in the recognition of the player's achievement. Other than that, the transfer fees to be paid to prestigious selling clubs might be higher.

– *Protected period*

Considering that the Regulations (FIFA, 2007, Art. 17, Para.1) distinguish between players on the basis of whether they are outside or within the protected period, it is advisable to reduce the base of calculation when the protected period runs out.

– *Image of the player or other off-the-pitch criteria*

If measurable under reasonable methods and within normal practice, it could be interesting to introduce 'modifiers' connected to this aspect. For instance, a certain exposure time on national television per year or the number of online hits in respect to a player as suggested by Francesc Puyol (2009) could increase the base of calculation.

As mentioned before, such a model may leave the club with a satisfying compensation fee despite of the fact that the real market value of the player might differ. As such, transfer fees are determined by the market. Hence, the current market conditions play an integral role in the value of a player. These conditions can vary in different segments, e.g. the top segments in European football or a second national league. As football is not only driven by financial considerations but oftentimes by prestige, power or politics, deviations from realistic transfer values are not exceptional. Two recent examples in this context have been the inflated offers made by Manchester City and Real Madrid.

4.6. Strategic sourcing of players with a certain age

It is a widely known fact that transfer fees are highly age dependent with the highest fees paid for players aged 20 to 23. The value of young players rises rapidly as they gain more

experience. As a consequence, the annual growth rate of the transfer fee for these players is higher than for other age groups. For the kind of clubs which heavily depend on transfer fees as part of their financial income this can have important strategic implications. Clubs which train youth players in their own academy should be inclined to contractually bind their players until the age of 20 to 23 and defend their transfer as long as possible. Under this presupposition, a club might also actively contract players of 18 or 19 years in order to resell them a few years later at a disproportionably increased fee. This later argument is in line with the information obtained from the research in chapter 2.4. As shown, the majority of clubs considers the possibility of making a future profit through further transfer fees when acquiring a player. In combination with the factor age, clubs could strategically source players of 18 or 19 years and speculate on the high annual growth rate of their market values. In order to avoid being “robbed” by foreign clubs, the training ones should decide to contract young players on a professional basis (according to FIFA Regulations) and as already a small amount can be considered a professional one by FIFA and CAS, it is a matter of deciding to invest in young players on a very low economic scale in order to obtain fruitful benefits of a further transfer.

5. Conclusion

Contemporary football is caught between two very powerful concepts: the freedom of movement of players on the one side and contractual stability on the other. As it was shown in this research project, freedom of movement is the consequence of many social, cultural and, not at last, political developments which have caused an increase in international mobility of players in the recent past. Professional footballers are rather 'special' as their value to clubs goes far beyond comparison to that of regular workers. Naturally, clubs must finance the acquisition and maintenance of these 'assets' as to compete in an industry which shows a very diverging trend between big and small. Many clubs from mid- and smaller leagues see the income from transfer fees as an essential part of their overall revenues. This holds particularly true for countries outside of Europe where the 'big three' income streams (matchday, commercial and broadcasting) are not that pronounced and where many talented players are trained. It is needless to say that these clubs are keen to see their players in a stable contractual relationship.

The international governing body FIFA attempts to provide a universal guideline on how to deal with contractual stability and international mobility. One major challenge is the diversity of national regulations in sports which has internationalized rapidly. As was shown in the legal reference cases, there is often a fine line in setting the track for future decisions. The Court of Arbitration for Sports had to decide upon several cases of unilateral breach of contract under Article 17 of the FIFA Regulations on the Status and Transfer of Players. Yet the sentences so far have still left some of the issues unclear mainly because FIFA and CAS had to discover this rather new territory. The keyword 'specificity of sport' has been abundantly used to justify some of the decisions made. It remains to be seen what further developments in the legal regulations will bring. It is certainly not easy to defend the actual player transfer system in light of certain interferences with public and private law.

In the meantime, clubs should attempt to defend themselves from any form of legal conflict. Following the recommendations made in this research, they should find themselves in a safer position to administer their players' contracts and focus on some particularities in the current legal environment. This project is not aimed at restricting the movement of players in general but to protect clubs financially when players decide to leave. Moreover, the strategy of many clubs is based on transfer activity, which actually implies the movement of players. Most importantly, this should be regulated in a uniform manner as not to damage certain clubs more than others. As the football industry is on its way to become increasingly professionalized,

especially at the top end, smaller clubs should also have some means by which they can at least claim a financial compensation for their sporting losses.

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- Ariel Reck, specialized Attorney-at-Law in the field of sport disputes, Estudio Jurídico Crespo & Asociados (Buenos Aires, Argentina). 18 December 2008, Buenos Aires.
- Juan de Dios Crespo Pérez, specialized Attorney-at-Law in the field of football disputes, Estudio Jurídico Ruiz Huerta & Crespo (Valencia, Spain). 16 April 2009, Neuchâtel.
- Jean-Philippe Dubey, Dr. of Law, Counsel of the Court of Arbitration for Sport (CAS). 28 April 2009, Lausanne.
- Benoît You, Administrator and Director of Marketing & Communication of ASEC Mimosas (football club in Abidjan, Ivory Coast). 9 June 2009 [telephone interview] Neuchâtel-Abidjan.
- Maria Elisa Dominguez Rubio & Vitus Derungs, Legal Counsels of the Player' Status Committee of FIFA. 11 June 2009, Zürich.
- Alex Phillips, Head of professional football services for UEFA. 22 June 2009, Nyon.
- Alejandro Marón, President of the C.A. Lanús (football club in Buenos Aires, Argentina) & Secretary of Legal Affaires of the Argentinean Football Association (AFA). 17 June 2009 [telephone interview] Neuchâtel-Buenos Aires.

7. Appendix (I) – Sample questionnaire

1. *Please indicate below the percentage of income from transfer fees in the turnover of the club for the last 5 seasons on average.*

<10%	10 – 20 %	20 – 30%	30 – 40%	>40%
<input type="checkbox"/>				

2. *In relation to question 1), would you consider fees from the transfer of professional players' contracts an important part of the club's financial income?*

Not at all	Little importance	Medium importance	High importance	Fundamental
<input type="checkbox"/>				

3. *Does your club project income from players' transfers in its financial planning?*

Never	Rarely	Regularly	Often	Very frequently
<input type="checkbox"/>				

4. *Do you assess the financial value of the club's players?*

Never	Rarely	Regularly	Often	Very frequently
<input type="checkbox"/>				

5. *If you did not answer 'never' for question 4), please indicate below how you assess the value of the players.*

6. *Do you consider the possibility of making a financial profit through further transfer fees when you acquire a player?*

Never	Rarely	Regularly	Often	Very frequently
<input type="checkbox"/>				

7. *How do you see the possibility of selling the transfer rights of players to private investors?*

Not interesting	Little interesting	Attractive	Very attractive	Fundamental
<input type="checkbox"/>				

8. *How important is the development of players within the club’s youth system for the club’s strategy?*

Not at all	Little importance	Medium importance	High importance	Fundamental
<input type="checkbox"/>				

9. *Which is the principle aim of development in the academy/youth system (please rank from 1 to 3, 1 = most important, 3 = least important)?*

- __ Sporting aim (e.g. reinforce the first team)
- __ Identity aim (e.g. raise players from the community)
- __ Financial aim (e.g. make financial profit through further selling)

10. *Has UEFA's ‘Home Grown Players’ rule, which obliges clubs in European competitions to have a certain number of players trained at the club or in the same association, had an impact on the youth development in your club?*

Not at all	Little impact	Medium impact, no substantial changes	Big impact, some important changes in youth development	Substantial impact, complete change of development policy
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

11. *Have you lost an amateur player before you were able to offer him a professional contract?*

Never	Rarely	Regularly	Often	Very frequently
<input type="checkbox"/>				

12. *Which is the percentage of players in the club’s academy/youth system to whom you offer a pre-professional remunerated contract?*

<10%	10 – 20 %	20 – 30%	30 – 40%	>40%
<input type="checkbox"/>				

13. Have you lost a professional player without a transfer fee when you expected one?

Never	Rarely	Regularly	Often	Very frequently
<input type="checkbox"/>				

14. Do you feel it is important to improve the contracts with your players in order to reinforce their stability?

Not at all	Little importance	Medium importance	High importance	Fundamental
<input type="checkbox"/>				

15. Do you include a so called buy-out /indemnity/liquidated damages clause in your players' contracts?

Never	Rarely	Regularly	Often	Very frequently
<input type="checkbox"/>				

16. Who is in charge of the administration of contracts in your club?

- The legal department
- Another department, namely _____
- Contracted law firm
- Other, namely _____

8. Appendix (II) – Statistics

2.3.1

The results of a contingency table X^2 statistical test:

Contingency table

	A	B	C	
1	5	4	8	17
2	2	6	0	8
3	2	0	3	5
4	2	1	0	3
5	1	3	2	6
	12	14	13	39

Contingency table (expected)

	A	B	C
1	5.23	6.10	5.67
2	2.46	2.87	2.67
3	1.54	1.79	1.67
4	0.923	1.08	1.00
5	1.85	2.15	2.00

Chi-square = 13.8
Degrees of freedom = 8
p value = 0.086

2.4.1

The results of a contingency table X^2 statistical test:

Contingency table

	A	B	C	
1	0	1	1	2
2	3	1	2	6
3	1	3	3	7
4	7	5	5	17
5	1	4	2	7
	12	14	13	39

Contingency table (expected)

	A	B	C
--	---	---	---

1	0.615	0.718	0.667
2	1.85	2.15	2.00
3	2.15	2.51	2.33
4	5.23	6.10	5.67
5	2.15	2.51	2.33

Chi-square = 5.56
Degrees of freedom = 8
P value = 0.697

2.4.2

The results of a contingency table X^2 statistical test:

Contingency table

	A	B	C	D	E	
1	1	1	0	0	0	2
2	1	2	2	0	1	6
3	0	1	4	1	0	6
4	0	4	5	7	1	17
5	0	1	0	2	4	7
	2	9	11	10	6	38

Contingency table (expected)

	A	B	C	D	E
1	0.105	0.474	0.579	0.526	0.316
2	0.316	1.42	1.74	1.58	0.947
3	0.316	1.42	1.74	1.58	0.947
4	0.895	4.03	4.92	4.47	2.68
5	0.368	1.66	2.03	1.84	1.11

Chi-square = 31.1
Degrees of freedom = 16
P value = 0.013

2.4.3

The results of a contingency table X^2 statistical test:

Contingency table

	A	B	C	
1	0	3	7	10
2	4	8	1	13
3	1	2	2	5
4	1	0	1	2
5	6	1	0	7
	12	14	11	37

Contingency table (expected)

	A	B	C
1	3.24	3.78	2.97
2	4.22	4.92	3.86
3	1.62	1.89	1.49
4	0.649	0.757	0.595
5	2.27	2.65	2.08

Chi-square = 23.8
Degrees of freedom = 8
P value = 0.002