Opting-in for a domestic independent and fair tribunal under FIFA RSTP in player-club labour disputes of an international dimension. A brief analysis of the recent FIFA decisions regarding Polish and Slovak clubs. Is it a procedural trap?

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Stankiewicz, M. Opting-in for a domestic independent and fair tribunal under FIFA RSTP in player-club labour disputes of an international dimension. A brief analysis of the recent FIFA decisions regarding Polish and Slovak clubs. Is it a procedural trap? Právny obzor, *104*, 2021, special edition, pp. 60-72 **https://doi.org/10.31577/pravnyobzor.specialissue.2021.04**

Opting-in for a domestic independent and fair tribunal under FIFA RSTP in player-club labour disputes of an international dimension. A brief analysis of the recent FIFA decisions regarding Polish and Slovak clubs. Is it a procedural trap? The aim of the present paper is to analyse and examine the procedural requirements of raising an objection of the competence of FIFA in international disputes in professional football. The first part of the paper investigates the basis of FIFA jurisdiction, its requirements and the procedures that govern the proceedings in such cases. The second part of the paper is based on recent examples of cases where clubs and players from Poland and Slovakia tried to effectively raise an objection to FIFAs competence in adjudicating the cases. These examples are to illustrate what are the common problems the parties face when trying to raise such an objection and what procedural mistakes may lead to the questioning of the competence of FIFA on merit to be denied. The vital procedural issues in FIFA proceedings are presented as a chance to analyse the mistakes made in the past and avoid them in the future.

Key words: FIFA, Dispute Resolution Chamber, National Arbitral Tribunal, Sports law, Poland, Slovakia

Introduction

This paper is to briefly present the problem of opting-in for the domestic tribunal under the FIFA Regulations on Status and Transfer of Players. This main regulation regarding relations between sport clubs and professional players with an international dimension also governs the problem of jurisdiction (competence) of FIFA. Under the current, recently amended FIFA Statutes[1], the FIFA Football Tribunal is established it consists of three chambers: (a) the Dispute Resolution Chamber; (b) the Players' Status Chamber; and (c) the Agents Chamber. The first two chambers are a continuation of previously existing FIFA judicial bodies: the FIFA Dispute Resolution Chamber and

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May 2021 edition of FIFA Statutes https://digitalhub.fifa.com/m/7e791c0890282277/original/FIFA-Statutes-2021.pdf (access 25.08.2021)

FIFA Players' Status Committee respectively. The third chamber is a brand new one that is set to be established along with the upcoming reform of football agents, which is currently being prepared by FIFA. In the said reforms FIFA is to return to the idea of regulated football agents, scrapped by a deregulation made in 2015 when the concept of football intermediaries came to life. In this paper I would like to first show the legal background of the FIFA competence problem as well as the procedural framework on the basis of which FIFA adjudicates. In the second part I would like to present recent cases regarding the objection to FIFA competence and to comment on them.

1. What is an independent and fair tribunal under FIFA regulations?

The current FIFA Status in its article 58 section 3 (previously art 60 section 3) says that the associations shall insert a clause in their statutes or regulations, stipulating that *"it is prohibited to take disputes in the association or disputes affecting leagues, members of leagues, clubs, members of clubs, players, officials and other association officials to ordinary courts of law, unless the FIFA regulations or binding legal provisions specifically provide for or stipulate recourse to ordinary courts of law. Instead of recourse to ordinary courts of law, provision shall be made for arbitration. Such disputes shall be taken to an independent and fair and duly constituted arbitration tribunal recognised under the rules of the association or confederation or to CAS. The associations shall also ensure that this stipulation is implemented in the association, if necessary by imposing a binding obligation on its members. The associations shall impose sanctions on any party that fails to respect this obligation and ensure that any appeal against such sanctions shall likewise be strictly submitted to arbitration, and not to ordinary courts of law"*.

The arbitration model of resolving disputes is therefore obligatory and the national associations shall ensure that an independent fair and duly constituted arbitration tribunal is recognised at the national level. Otherwise such cases are taken to CAS.

FIFA itself, as an international football regulator, may also govern the jurisdiction of its own judicial bodies. In interactions between clubs and players the main act governing the jurisdiction is FIFA Regulations on Status and Transfer of Players[2]. Although mainly a source of material law, it also contains very important regulations regarding jurisdiction.

Article 22 of FIFA RSTP stipulates when FIFA is competent to hear the case. Especially letter b) of this article is of importance stating: *"without prejudice to the right of any player, coach, association, or club to seek redress before a civil court for employment-related disputes, FIFA is competent to hear (...) (b) employment-related disputes between a club and a player of an international dimension; the aforementioned parties may, however, explicitly opt in writing for such disputes to be decided by an independent and fair arbitration tribunal that has been established at a national level*

[2] February 2021 edition of FIFA RSTP https://digitalhub.fifa.com/m/b749cc4c9afcbf56/original/qdj-moxn91xciw41tojii-pdf.pdf (access 25.08.2021)

within the framework of the association and/or a collective bargaining agreement. Any such arbitration clause must be included either directly in the contract or in a collective bargaining agreement applicable to the parties. The independent and fair national arbitration tribunal must guarantee fair proceedings and respect the principle of equal representation of players and clubs".

The international dimension of a dispute takes place when a player and a club belong to different national association which in practice means that a foreign player (regardless of the EU/non-EU status nor current residency) faces a dispute with a club he or she is registered[3] with which is called a "sportive nationality"[4]. In such a case FIFA can hear any labour case brought by any of the said parties. There is however an exception that can be made in order to put the dispute on a national level (being the country when football services where rendered) if the additional conditions are met.

These conditions are as follows. Firstly, the parties of a dispute should clearly and explicitly opt-in in writing for such national dispute resolution body. Normally such an arbitration clause should be put in the professional football contract, however it may also be included in a collective bargaining agreement made between the stakeholders of the football market. The reference made to the competence of the national arbitration tribunal has to be made at the moment the contract is signed[5]. Also it shall be noted that such jurisdiction of the national arbitration tribunal has to be exclusive and the particular arbitral tribunal has to be designated[6].

Secondly, and more importantly such a body needs to comply with the requirements of a fair tribunal which must guarantee both fair proceedings and respect the principle of equal representation of players and clubs.

The requirement of fair proceedings has not been defined in FIFA RSTP. However on 20 December 2005 famous circular 1010 was issued where FIFA set the criteria of a fair tribunal. The criteria are as follows:

(1) Principle of parity when constituting the arbitration tribunal

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

[3] See Arbitration CAS 2016/A/4846 Amazulu FC v. Jacob Pinehas Nambandi & FIFA & NationalSoccer League South Africa, award of 13 September 2017 and Arbitration CAS 2018/A/5659 Al Sharjah Football Club v. Leonardo Lima da Silva & Fédération Internationale de Football Association (FIFA), award of 29 March 2019

[4] For more details see DE WEGER, F. The Jurisprudence of the FIFA Dispute Resolution Chamber, Asser Press second edition 2016 ,p. 48

[5] FIFA Commentary on the regulations for the status and transfer of players, Commentary to article 22 of FIFA RSTP, footnote 101, p. 66

[6] Arbitration CAS 2015/A/4333 MKS Cracovia SSA v. Bojan Puzigaca & Féderation Internationale de Football Association (FIFA), award of 10 April 2017 thesis no. 69 http://jurisprudence.tas-cas.org/Shared%20Documents/4333.pdf

(2) Right to an independent, fair and impartial tribunal

To observe this right, arbitrators (or the arbitration tribunal) must be rejected if there is any legitimate doubt about their independence. The option to reject an arbitrator requires that the ensuing rejection and replacement procedure are regulated by agreement, rules of arbitration or state rules of procedure. As the principle of a fair hearing, each party must be granted the right to speak on all facts essential to the ruling, represent its legal points of view, file relevant motions to give evidence and participate in the proceedings . Every party has the right to be represented by a lawyer or other expert.

(3) Right to contentious proceedings

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

(4) Principle of equal treatment

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

In order to help national associations with compliance to these requirements FIFA also issued standard procedural regulations that can be implemented at the national level when establishing a domestic tribunal called National Dispute Resolution Chamber[7]. These regulations are issued and accepted by FIFA and shall be considered as a manual how to organise the domestic tribunal in order to have it recognised by FIFA[8]. Also FIFA run a global implementation programme of the National Dispute Resolution Chamber[9].

Meeting the above requirements caused many problems for national associations. The main one being the principle of parity. For example in Poland the statute law of civil procedure regarding arbitration is based on UNCITRAL principles which says arbitration shall be constituted in the principle of independent and fair arbitrators chosen by the parties. This principle is contrary to the requirement of parity set by FIFA. As a consequence, many arbitration tribunals based at a national level never meet the requirements of FIFA circular 1010 nor could the standard National Dispute Resolution Chamber have been implemented.

This leads to the conclusion that the international dimension of disputes regarding many national associations still can be resolved by FIFA. The main problem of such a situation is that the FIFA resolving dispute system including the FIFA Football Tribunal and CAS as a second instance may lead to the application of FIFA regulations only and Swiss Law accordingly (article 56 section 2 of FIFA Statutes). A binding regulation on the national level issued under article 1 section 3 of FIFA RSTP may never be applied,

[7] See FIFA Circular no 1129 dated 28 December 2007

[8] The models regulations are available here: https://digitalhub.fifa.com/m/406c5e5d75032e8c/original/aydypivhx68y2gq0vztg-pdf.pdf [access 26.08.2021]

[9] Currently a project in South Africa and Egypt are in their final stage, FIFA professional Footbal Journal no. 2: https://www.professionalfootballjournal.fifa.com/pfj2-8-fifa-regulatory-reforms-legal-publications-virtual-events

which leads practically to the situation that the legal status of foreign players is very different compared to domestic ones. Foreign players can directly apply the FIFA regulations instead of domestic regulations (either issued by association or state) that apply at the national level.

Also, it needs to be emphasized that it is always the claimant that choses the forum for the case. The competence objection to such a chosen forum is examined by the adjudicating body itself according to its own procedural rules.

The national associations see it as a threat that many attempts can be made to comply with FIFA independent and fair tribunal requirements[10]. The disputes themselves were hardly ever passed to national dispute resolution bodies. Why was that so? Mainly because the national tribunals are not recognised by FIFA but also because of the nature of the proceedings before FIFA bodies – the procedural trap that I mentioned in the title of this article. It also should be pointed out that FIFA itself recognises CAS awards in that matter. For example, the South African national dispute resolution chamber was declared lacking the required qualities that lead to it being refused the status of an independent tribunal[11].

1.1. The procedure before FIFA

The procedure before FIFA adjudicating bodies is governed by the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber. The said regulations provide a procedural framework for each proceeding before FIFA DRC and FIFA PSC. The procedure regarding the FIFA Football Tribunal is, at the moment of writing this article, still to be determined.

The procedure itself is based on the principles known to the civil procedures of civil law countries the main one being adjudicating on the motion or claim filed by the party initiating the procedure. As stated in article 9 sec. 1 letter c) each petition to FIFA needs to include a motion or claim. The decision issued contains findings regarding the parties motions and claims (article 14 section 4 letter h) and article 15 section 1).

It is up to the parties to construct a motion and claim and to provide relevant evidence in order to prove it (article 9 section 1 letter e) of the regulations). FIFA may consider evidence not provided by the parties (article 12 section 4 of the regulations), however such action is treated as an exception. The main principle is not to act *ex officio* in order to provide a balance between the parties of the dispute. The burden of proof lies at the party that claims certain facts.

[10] As for Slovakia see: LUKÁŠEK P. Komora pre riešenie sporov naďalej nespĺňa štandardy fifa https://ufp.sk/2020/09/04/peter-lukasek-komora-pre-riesenie-sporov-nadalej-nesplna-standardy-fifa/ [access 29 August 2021] and there cited FIFA statements https://ufp.sk/wp-content/uploads/2020/09/20170622-Slovakia-NDRC-Regulations-review.pdf [access 29 August 2021], https://ufp.sk/wp-content/uploads/2020/09/24042019-Summary-NDRC-Mission-Slovakia.pdf [access 29 August 2021], https://ufp.sk/wp-content/uploads/2020/09/18.02.2020-ref.-iml-maa.pdf , [access 29 August 2021] https://ufp.sk/wp-content/uploads/2020/09/FIFA-Letter-to-SFZ-NDRC-Pilot-Project.pdf [access 29 August 2021]

[11] Arbitration CAS 2016/A/4846 Amazulu FC v. Jacob Pinehas Nambandi & FIFA & National Soccer League South Africa, award of 13 September 2017 https://jurisprudence.tas-cas.org/Shared%20Documents/4846.pdf [access 29 August 2021]

1.2. A procedural trap in adjudicating on the competence of FIFA?

Under article 22 letter b) of FIFA RSTP and article 3 section 1 of FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber FIFA examines only its *prima facie* competence assessing if the dispute is brought between the entities mentioned in RSTP and if it has an international dimension. The lack of FIFA jurisdiction can be brought and assessed solely as an objection raised by the defendant. From the wording of the RSTP provision it clearly appears that it is a defendant that carries the burden of proof when claiming FIFA non competence to hear the case due to the fact that the parties effectively opted in for the domestic independent and fair tribunal.

According to the article 12 section of FIFA Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber any party claiming a right on the basis of an alleged fact shall carry the burden of proof. During the proceedings, the parties shall submit all relevant facts and evidence of which they are aware at that time, or of which they should have been aware if they exercised due care.

Moreover, the Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber require the concentration of evidence which usually means there shall only be one exchange of parties' statements during the case. Therefore any party claiming FIFA is not competent to assess the case due to the opt-in clause for an independent and fair tribunal at the national level has to provide evidence of such a fact.

2. Recent cases of Polish and Slovak clubs presented to FIFA that included the competence objection

In this article I would like to put aside the problem of assessing if the national associations met the FIFA requirements when establishing its national football resolution chambers as this matter requires a much more complex analysis which is beyond the scope of this paper. It shall be noted however that the Polish Football Association in recent years made a few attempts to fulfil the said requirements[12]. It is still doubtful however if the Polish FA Football Tribunal can be deemed independent and fair according to FIFA regulations.

It shall be noted however that there is no formal process of recognising as independent national tribunal at the national level. The claiming party can lodge the case with FIFA even if the arbitration clause mentions only a national tribunal and any objection to its jurisdiction is assessed when an objection is lodged by the defendant, on a case by case basis[13].

[12] The Polish FA recently conducted two reforms of the Polish FA Football Tribunal, the first one took place in June 2020 but in light of the Kukic case it was a fiasco in terms of fulfilling the FIFA requirements. The second reform took place in March 2021 and its outcome is to be assessed by FIFA in the future. See the page pzpn.pl/federacja/dokumenty for details (in Polish)

[13] WAFER, S. What Is An Independent And Duly Constituted National Dispute Resolution Chamber In Football, https://www.lawinsport.com/topics/item/why-national-dispute-resolution-chambers-are-facing-recognition-problems-with-fifa#references [access 30 August 2021], footnote 12

I would like to concentrate on the procedural aspect of raising an objection to FIFA jurisdiction showing how this objection can be wrongly managed by the defendant parties.

The clubs as the parties to the dispute however tend to forget about the beforementioned rule of the burden of proof. Another problem that appears is the treatment of the procedural rules of a domestic tribunal as law (regulation) that can be applied and assessed by FIFA.

As FIFA applies in the first place its own regulations followed by the Swiss law there is no room to apply domestic regulations. It is however feasible to apply material regulations of a domestic association in the case the parties wished to do so and it is impossible to apply procedural rules of the national dispute resolution bodies. According to the conflict of laws principles, it is evident that the procedural rule can be applied solely by the body which such regulations govern.

Therefore any argument made on the basis of the scope of such a regulation can be made solely in the sphere of viewing evidence which is in the hands of the parties of the dispute.

How was this competence objection managed in some recent cases of Polish and Slovak clubs before FIFA? I would like to briefly present four recent cases brought to FIFA against the clubs from our region (namely Poland and Slovakia) in order to show this evident problem.

Case 1: Luka Kukic (Croatia) vs Korona Kielce SA (Poland)

The First case that is to be considered is the recent claim of Croatian player Luka Kukic[14] brought against the Polish club Korona Kielce SA. Luka Kukic concluded a 3-year contract valid from June 2019 until June 2022. In August 2020 after being relegated from the Polish top division Ekstraklasa[15] the club exercised the right to unilaterally terminate the contract, which stems from the Polish FA. The provisions of the resolution no. III/54 of the Board of Polish FA dated 27 March 2015 (as amended)[16] allow clubs to unilaterally terminate the contract with a player when the club is relegated. The player questioned this termination and filed the claim directly with FIFA (under the above mentioned provisions of FIFA RSTP based on the fact that this dispute is a player-club labour case of an international dimension) in order to obtain compensation under breach of contract. In the matter which is interesting from the point of view of this piece the Polish club contested the jurisdiction of FIFA stating that "the Football Court of Arbitration operating at the Polish Football Association should be competent to deal with the matter at hand". There were some more problems pointed out, in particular the

[14] Decision of the Dispute Resolution Chamber passed in Zurich, Switzerland, on 25 February 2021, regarding an employment-related dispute concerning the player Luka KUKIC ref. 20-01646, legal.fifa.com [access 26.08.2021]

[15] Due to the COVID-19 pandemic the season 2019/20 in Poland was extended until 31 July 2020

[16] See the page pzpn.pl/federacja/dokumenty for details (in Polish)

discrepancies between the different language versions of the contract. The English version stated that both FIFA and the Polish FA are competent whereas the Polish version stated that only the Polish FA is competent. The club stated that due to the provision guaranteeing the predominance of the Polish version in the case of any discrepancies there is a valid opt in clause for the domestic tribunal. Moreover, the Polish club provided relevant Polish FA regulations regarding the Polish FA Football Tribunal that were meant to prove that this body fulfilled the requirement of an independent and fair tribunal set by FIFA.

FIFA in its decision denied both arguments. As for the language versions it applies a well established legal doctrine "contra stipulatorem" which is based on the principle that the party that drafted the agreement shall bear the consequences of mistakes and misunderstandings made in the text. Therefore it was stated that the parties agreed for both venues to be competent when solving the dispute. On top of that as for the matter of the independence of the Polish FA Football Tribunal FIFA examined the provided documents and stated that according to FIFA the above mentioned tribunal does not fulfil the requirements. Therefore objection to the jurisdiction was denied.

After analysing the matter of the case the player was awarded nearly the whole amount claimed.

This case is a vital example of the situation where documentary evidence provided by the party regarding the lack of FIFA jurisdiction were actually contrary to the presented statements and lead to a straight denial of the lodged objection. It needs to be noted however that the club itself has not made any procedural mistakes in the case. It was just the previous mistakes regarding the drafting of the contract as well as the questionable legislation of the Polish FA that lead to the situation that the competence of FIFA could not be denied.

Just to point out how vital the adjudication on the competence of FIFA was, it is to be well noted that if the Polish FA Football Tribunal had adjudicated on the merits of the case it would have applied the provisions of resolution no. III/54 of the Board of Polish FA dated 27 March 2015 (as amended) which should have clearly lead to denying the player's claim as the Polish club acted fully legally under the relevant rule of Polish FA regulation which is binding at the national level.

Case 2: Omar Santana Cabrera (Spain) vs Miedź Legnica SA (Poland)

The second case to be presented is the case of the Spanish player Omar Santana Cabrera against the Polish club Miedź Legnica SA[17]. In this case the player demanded the payment of a bonus that, according to him, he was entitled to. The player filed the claim directly to FIFA under the above mentioned provisions of FIFA RSTP based on the fact that this dispute is a player-club labour case of an international dimension.

In the reply to the claim the Polish club questioned the competence of FIFA by stating that in the contract there was included a clear arbitration clause referring the case to the

[17] Decision of the Dispute Resolution Chamber passed on 28 January 2021,regarding an employment-related dispute concerning the player Omar Santana Cabrera, ref 20-01458, legal.fifa.com [access 26.08.2021]

jurisdiction bodies of the Polish FA at that time being the Sporting Dispute Settlement Chamber of the Polish FA and the Football Tribunal of the Polish FA[18]. The club stressed that in this case the clause refers to the Football Tribunal of the Polish FA. No more arguments or evidence were provided.

FIFA, when adjudicating on the matter of its own competence, stated that in fact the contract contains a clear arbitration clause in favour of an arbitration tribunal base at the national level. However it was pointed out that in order to deny FIFA competence such a tribunal needs to fulfil the independent and fair tribunal requirements (article 22 letter b) of FIFA RSTP and FIFA Circular no 1010)[19]. As the Club failed to provide any evidence regarding this matter and as they failed to meet the burden of proof the objection was denied.

Clearly due to the procedural mistake the club's objection could not have been properly analysed and adjudicate as no documents regarding the national tribunal were provided. Therefore FIFA stated that the club has not proven that such an opt-in clause may lead to the denial of FIFA competence.

Case 3: Sadam Sulley (Ghana) vs FK Senica (Slovakia)

The third recent case regarding that matter that is to be analysed is the case of the Ghanaian player Sadam Sulley against the Slovak club FK Senica[20]. The player demanded the overdue payables from the contractual remuneration from November 2019 until May 2020. In response to the claim the Slovak club apart from the arguments regarding the merits of the case (the COVID-19 pandemic) pointed out that the contract concluded between the parties includes an arbitration clause in favour of the Dispute Resolution Chamber of the Slovak FA. The clause itself was in fact very clear stating that *"the contractual parties hereby agree to submit any disputes arising from this Contract to Komora SFZ for a decision in accordance with the valid rules and regulations of the SFZ"*.

FIFA in consideration of the case denied the objection to its competence. Similarly, as in the above Santana Cabrera case, FIFA pointed out that the club failed to provide any evidence or corroborating documents that may have established that the Slovak FA Dispute Resolution Chamber fulfilled the independent and fair tribunal requirements (article 22 letter b) of FIFA RSTP and FIFA Circular no 1010). Therefore, as the competence of the national body could not have been established FIFA adjudicated on the case under the relevant FIFA RSTP principles. Again the lack of the club's activity in the proceedings led to leaving the objection unproven.

[18] Under a later reform now both bodies are merged into the Football Tribunal of the Polish FA

[19] See also Arbitration CAS 2014/A/3684 Leandro da Silva v. Sport Lisboa e Benfica & CAS 2014/A/3693 Sport Lisboa e Benfica v. Leandro da Silva, award of 16 September 2015 and Arbitration CAS 2014/A/3864 AFC Astra v. Laionel da Silva Ramalho & Fédération Internationale de Football Association (FIFA), award of 31 July 2015

[20] Decision of the Dispute Resolution Chamber passed in Zurich, Switzerland, on 22 October 2020, regarding an employment-related dispute concerning the player Sadam Sulley, ref 20-01055, legal.fifa.com [access 26.08.2021]

Case 4: Besir Demiri (North Macedonia) vs MŠK Žilina (Slovakia)

The fourth and last case that is to be presented in this paper is the case of the North Macedonian player Besir Demiri against the Slovak Club MŠK Žilina[21]. The player signed the contract with the club which was set to be valid from June 2019 until June 2022. On 27 March 2020 the contract was terminated by the club due to the commencement of the liquidation procedure of the club as the COVID-19 pandemic threatened the existence of the club. The player argued the termination was made without just cause in the meaning of article 14 of FIFA RSTP and claimed compensation for the breach of contract.

The basis of the club action was art. 40 sec. 5 let. c) of the Slovak Act on Sport which allows the club that is disestablished to terminate its professional players contract. Moreover, the club stated that the contract between the club and the player included a clear arbitration clause in favour of the Dispute Resolution Chamber of the Slovak FA. Additionally this clause was a choice-of-law clause in favour of Swiss law. The said clause stated that *"The contractual parties agree that their mutual rights and obligations shall be exercised under the regulations of the Slovak Football Association, UEFA and FIFA. The determining law shall be the law of Switzerland. The contractual parties agreed that disputes arising from the present contract shall be solved mainly by agreement. In the case it is not possible to reach the agreement the disputes shall fall under the jurisdiction of the Dispute Resolution Chamber of the Slovak Football Association, that is governed by its statutes and regulations. The contractual parties agreed to subjugate the statute and procedural rules of the Dispute Resolution Chamber of the Slovak Football Association valid at the time of the beginning of the arbitration proceedings, unless the transitive regulations state otherwise"*. Based on that the club questioned the competence of FIFA.

FIFA when deciding on the competence objection stated that the club failed to provide any documentation that might have proven that the Dispute Resolution Chamber of the Slovak Football Association is a tribunal that meets the requirements of an independent and fair tribunal at the national level. As no evidentiary initiative was seen from the clubs side FIFA decided to deny the objection of its incompetence.

As a consequence FIFA did not apply the Slovak Act on Sport also stating that the club failed to provide any documentary evidence regarding these provisions of law as well as the Slovak Commercial Code. As a result the player's claim was accepted almost in full. The understanding presented by FIFA is however much more controversial than the one presented in the Luka Kukic case as the above acts are currently laws in force in the Slovak Republic . Whereas if this problem were to be addressed in a separate paper it would need to be emphasized that in the case of the objection to FIFAs competence being accepted the Dispute Resolution Chamber of Slovak Football Association would have adjudicated on the case. It is probable it would have applied the relevant provisions

[21] Decision of the Dispute Resolution Chamber (DRC) Judge passed on 23 September 2020, regarding an employment-related dispute concerning the player Besir Demiri ref 20-00910 , legal.fifa.com [access 26.08.2021]

of Slovak state law and might have lead to the conclusion that contract was in fact lawfully terminated and that the compensation for the player for the breach of contract is not due.

Again the lack of club activity in the proceedings lead to the situation that due to the unproven statements of the defendant it was the claimant that won the case.

The presented cases show that clubs from Poland and Slovakia in recent years tend to lose cases presented to FIFA even without the chance to properly analyse the merits of the presented defences to the claims lodged by the foreign players. The main reason is either the lack of evidentiary initiative that leads to conclusions that the clubs' statements were unproven (as in the Santana Cabrera, Sulley and Demiri cases) or providing evidence that is contrary to the statements of the club (as in Kukic case). Due to these procedural reasons which, for the purpose of this paper, I named "a procedure trap", clubs from our region lose cases which they should not necessarily have lost on a prima facie basis. The problem to address at this point is the reason for such performances before FIFA. Is this due to a lack of competence regarding international football law? This question of course should remain unanswered, however the above examples show how vital professional legal advice from a skilled international sports lawyer can be.

Conclusions

The topic is a very timely one, as shown in recent cases presented in this paper. The importance of creating independent and fair domestic tribunals is beyond question and national federations should be encouraged to reform its dispute resolutions systems in order to match the criteria set by FIFA. This process and such efforts can be noticed particularly in Poland where in recent years two reforms of the dispute resolution system came to life in 2020 and 2021. Simultaneously however much remains to be done by the clubs from our region to learn how to effectively defend cases presented to FIFA and how to lodge and prove competence objections which seem often to be the greatest issues of the case that might overrule the possible outcomes.

In the globalised world of football a swift managing of the available procedures is a must for any professional organisations acting in the field of professional football.

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