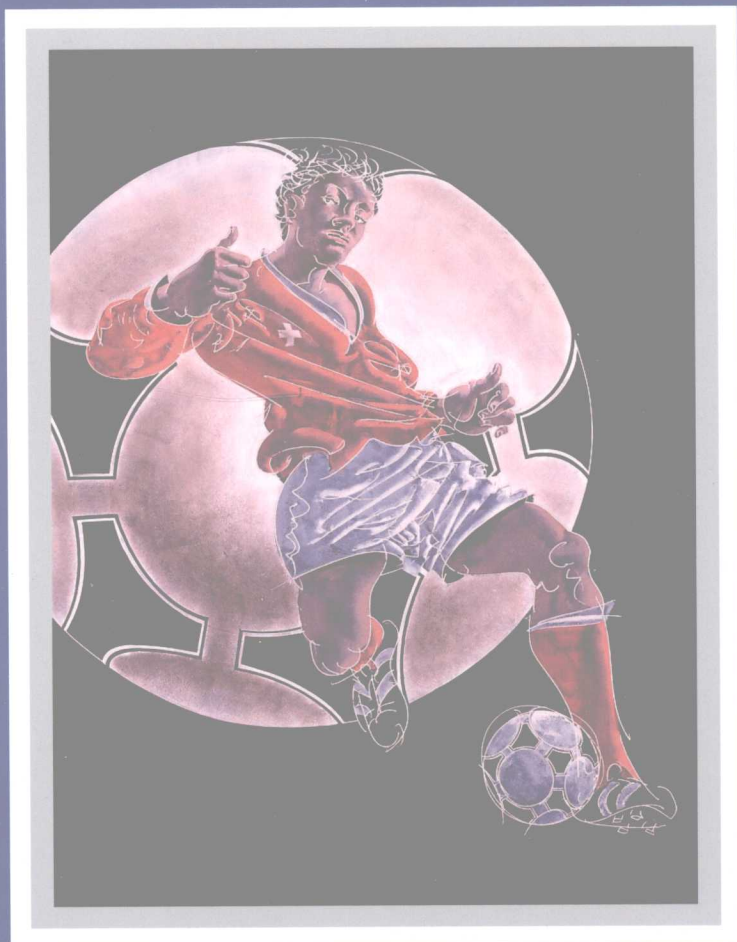


T.M.C. ASSER INSTITUUT

# THE JURISPRUDENCE OF THE FIFA DISPUTE RESOLUTION CHAMBER

Frans de Weger



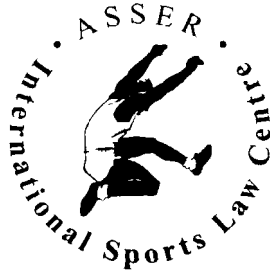
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T.M.C. ASSER INSTITUUT  
ASSER INTERNATIONAL SPORTS LAW CENTRE

# THE JURISPRUDENCE OF THE FIFA DISPUTE RESOLUTION CHAMBER

by

Frans DE WEGER



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## FOREWORD

I am very pleased and honoured to write the Foreword to this Book on a subject which has been of professional interest to me for many years. Football – or to be more precise association football to distinguish it from American football – is not only the world's favourite game, but also the world's most lucrative sport. As such, it is not surprising that, on and off the pitch, there is much to play for and disputes of various kinds and complexities, often involving substantial sums of money, are far from uncommon occurrences.

One particular area of contention relates to the international transfer of players from one club to another, in which mega sums are often at stake, particularly where high profile foreign players move to or between famous football clubs. After long discussions with the European Commission, FIFA – the world governing body of football – introduced in 2001 the revised Transfer Rules, with the aim of creating certainty and a 'level playing field'. The same year saw the establishment of the FIFA Dispute Resolution Chamber (DRC). The DRC, together with the Players' Status Committee (a body which deals with problems related to the status of players other than proper transfer or employment disputes), has developed into a major and influential alternative resolution body within FIFA, with an impressive and ever increasing caseload to boot. Sports disputes particularly lend themselves to settlement processes, which in turn give effect to the so-called 'specificity' of sport, an activity with special characteristics and dynamics which distinguish it from other businesses. The DRC also deals with disputes concerning the solidarity contribution and training compensation, which are a special feature and, in practice, also an important element of the international football transfer system.

Not all of the many hundreds of cases handled each year by the DRC are published on the FIFA official website ([www. FIFA.com](http://www.FIFA.com)), but only the ones of 'general interest'; and this book contains a selection of 172 of such cases. From these cases, a so-called *Lex Sportiva* is developing and may be discerned, which will help to guide and orientate all those in future with an interest in bringing their disputes to the DRC for resolution. This book, therefore, is not only a useful tool, but an essential resource for players and their clubs and advisers seeking fair play in a legal and sporting sense, as well as all others with a sporting and financial interest in football, including administrators, agents, managers, trainers, researchers and academics.

The author, Frans de Weger, and the publishers deserve to be warmly thanked and congratulated for producing this book, which will, I am sure, prove to be an invaluable work of reference and guidance for all concerned.

Michel ZEN RUFFINEN  
*Attorney at Law*  
*Former FIFA General Secretary and*  
*Head of the FIFA Legal Division*

## SUMMARY OF CONTENTS

<b>Foreword</b> by Michel ZEN RUFFINEN	VII
<b>Table of Contents</b>	IX
<b>List of abbreviations</b>	XIII
Chapter 1	
<b>Dispute Resolution Chamber</b>	1
1. Introduction	1
2. Regulations for the Status and Transfer of Players	2
3. Procedure DRC	10
Chapter 2	
<b>Classification of decisions</b>	43
1. Introduction	43
2. Amateurs and professionals	45
3. Negotiations	50
4. Medical examination	56
5. Visa and work permit	60
6. Employment contract	62
7. Extension option	74
8. Termination of the contract	82
9. Compensation	100
10. Sporting sanctions	109
11. Training compensation	117
12. Solidarity contribution	133
13. Final conclusions	141
<b>Annexes</b>	
• Regulations for the Status and Transfer of Players (2001)	145
• Regulations Governing the Application of the Regulations for the Status and Transfer of Players	151
• Regulations for the Status and Transfer of Players (2005)	158
• Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (DRC)	170
• Players' Agents Regulations	174
<b>Cases</b>	183
<b>Indexes</b>	
• Regulations	717
• Table of Cases	721
• Subject Index	724

## TABLE OF CONTENTS

<b>Summary of Contents</b>	V
<b>Foreword</b> by Michel ZEN RUFFINEN	VII
<b>List of abbreviations</b>	XIII
Chapter 1	
<b>Dispute Resolution Chamber</b>	1
1. Introduction	1
2. Regulations for the Status and Transfer of Players	2
2.1 Introduction	2
2.2 History	3
2.3 <i>Bosman</i> case	4
2.4 Post- <i>Bosman</i> period	5
2.5 Edition 2001	6
2.6 Edition 2005	7
2.7 FIFA Comparison	8
2.8 FIFA Commentary	9
3. Procedure DRC	10
3.1 Introduction	10
3.2 Procedural Rules	11
3.3 Composition	12
3.4 Jurisdiction	12
3.4.1 Civil court	12
3.4.2 PSC	14
3.4.3 DRC	15
3.4.3.1 ITC request	16
3.4.3.2 Employment-related disputes	17
3.4.3.2.1 International dimension	18
3.4.3.2.2 Independent arbitration tribunal	19
3.4.3.3 Training compensation and solidarity mechanism	21
3.4.4 DRC Judge	21
3.4.5 Conclusion	22
3.5 Applicable law	23
3.5.1 National law	23
3.5.2 Applicable regulations	24
3.6 Admissibility	25
3.7 Representation	27
3.8 Withdrawal and challenges	27
3.9 Petitions	28
3.10 Evidence	29
3.11 Burden of proof	30
3.12 Renouncement of rights	31

3.13	Waiver of rights	32
3.14	Non ultra petitem	32
3.15	Counterclaim	33
3.16	Intervening party	33
3.17	Procedural costs	34
3.18	Provisional measure	35
3.19	Prescription	36
3.20	Decision	37
3.20.1	General	37
3.20.2	Form and content	38
3.20.3	Service and publication	38
3.20.4	Enforcement	39
3.21	Appeal with CAS	39
Chapter 2		
	<b>Classification of decisions</b>	43
1.	Introduction	43
2.	Amateurs and professionals	45
2.1	Introduction	45
2.2	Difference between amateurs and professionals	46
2.3	Conclusion	49
3.	Negotiations	50
3.1	Introduction	50
3.2	Informing the current club	51
3.3	Approach to another club	51
3.3.1	Prior written consent	51
3.3.2	<i>Cole case</i>	52
3.4	<i>Culpa in contrahendo</i>	53
3.5	Conclusion	55
4.	Medical examination	56
4.1	Introduction	56
4.2	Information about the player	56
4.3	Medical result	57
4.4	Conclusion	59
5.	Visa and work permit	60
5.1	Introduction	60
5.2	Visa	60
5.3	Work permit	61
5.4	Conclusion	62
6.	Employment contract	62
6.1	Introduction	62
6.2	Protected period	63
6.3	Formal aspects	63
6.3.1	Form	63
6.3.2	Length	65
6.3.3	Signature	66

6.3.4	Language	67
6.4	Probation period	68
6.5	Period of notice	69
6.6	Payments	70
6.6.1	Salaries	70
6.6.2	Bonuses	71
6.7	Conclusion	72
7.	Extension option	74
7.1	Introduction	74
7.2	In favour of the club	75
7.3	<i>Trabelsi</i> case	78
7.4	Criteria validity	79
7.5	Conclusion	80
8.	Termination of the contract	82
8.1	Introduction	82
8.2	Mutual agreement	83
8.3	Just cause	84
8.3.1	For the club	84
8.3.1.1	Performance	85
8.3.1.2	Played matches	86
8.3.1.3	Injury	88
8.3.1.4	Absence	89
8.3.1.5	Drug abuse	92
8.3.1.5.1	<i>Mutu</i> case	92
8.3.2	For the player	93
8.3.2.1	Outstanding salaries	94
8.4	Sporting just cause	95
8.4.1	Requirements	96
8.4.1.1	Established player	96
8.4.1.2	Appearance of the professional	97
8.4.1.3	15 days term	97
8.5	Conclusion	98
9.	Compensation	100
9.1	Introduction	100
9.2	Calculation of the amount	100
9.3	By the club	101
9.4	By the player	103
9.4.1	Penalty clause	103
9.4.2	<i>N'Zogbia</i> case	104
9.4.3	<i>Mexès</i> case	104
9.4.3.1	Several decisions	104
9.4.3.2	Condemnation of <i>Mexès</i>	105
9.4.5	<i>Webster</i> case	106
9.4.6	Buyout clause	107
9.5	Conclusion	108
10.	Sporting sanctions	109
10.1	Introduction	109



10.2	For the club	110
10.2.1	Inducing the player	110
10.3	For the player	112
10.3.1	Four months rule	113
10.3.2	Aggravating circumstances	115
10.4	Conclusion	116
11.	Training compensation	117
11.1	Introduction	117
11.2	When is training compensation due?	118
11.2.1	First professional contract	118
11.2.2	Subsequent transfer	119
11.3	Responsibility of the new club	120
11.4	Loan of the player	122
11.5	When is training compensation not due?	123
11.5.1	Outside EU/EEA	123
11.5.2	Within EU/EEA	123
11.6	Waiver of rights	125
11.7	Calculation of the amount	128
11.7.1	Outside EU/EEA	128
11.7.1.1	Edition 2001	129
11.7.1.2	Edition 2005	129
11.7.2	Within EU/EEA	130
11.7.3	Completion of the training	131
11.8	Conclusion	132
12.	Solidarity contribution	133
12.1	Introduction	133
12.2	Responsibility of the new club	134
12.2.1	Calculation	134
12.2.2	Distribution	136
12.3	Contingent payments	138
12.4	Loan	139
12.5	Conclusion	140
13.	Final conclusions	141
<b>Annexes</b>		
•	Regulations for the Status and Transfer of Players (2001)	145
•	Regulations Governing the Application of the Regulations for the Status and Transfer of Players	151
•	Regulations for the Status and Transfer of Players (2005)	158
•	Rules Governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber (DRC)	170
•	Player Agents Regulations	174
<b>Cases</b>		183
<b>Indexes</b>		
•	Regulations	717
•	Table of Cases	721
•	Subject Index	724

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## LIST OF ABBREVIATIONS

CAS Statutes	Statutes of the Bodies Working for the settlement of sports-related disputes
CAS	<i>Court of Arbitration for Sport</i>
DRC	<i>Dispute Resolution Chamber</i>
EEA	European Economic Area
EU	European Union
FAPL	Football Association Premier League
FFF	French National Association
FIFA Comparison	Comparison of the FIFA regulations version July 2001 and following circular letters with the new FIFA regulations version December 2004
FIFA RSTP	FIFA Regulations for the Status and Transfer of Players
FIFA	Fédération Internationale de Football Association
FIFPro	Fédération International de Footballeurs Professionels
ICAS	<i>International Council of Arbitration for Sport</i>
IFs	International Federations
IOC	<i>International Olympic Committee</i>
IRTS	International Registration Transfer Certificate
ITC	International Transfer Certificate
KNVB	Koninklijke Nederlandse Voetbal Bond
NOC	Nationaal Olympisch Comité
PAR	Players' Agent Regulations
PSC	Players' Status Committee
RSTP	Regulations for the Status and Transfer of Players
TAF	<i>Chamber of the Arbitration Tribunal for Football</i>
UEFA	Union of European Football Associations/Union Européenne de Football Association
WADA	Wereld Anti Doping Agentschap/World Anti Doping Agency

## Chapter 1

# DISPUTE RESOLUTION CHAMBER

### 1. INTRODUCTION

Needless to say, organised football can only attain uniformity, equality and certainty on a worldwide scale if certain fundamental principles and basic rules apply to all participants in professional football. As the organiser of international football, the Fédération Internationale de Football Association (FIFA) was established in 1904 to achieve these goals. According to its own statutes, FIFA exists to improve the game of football, whereby improvement can be interpreted in the widest sense of the word. Not only improvement with regard to the rules on the field, but also with regard to the rules off the field. During the transfer of a player between national associations, for example, the same rules must apply to all participants concerned. In their quest to establish uniformity, equality and certainty, FIFA started by creating the PSC to decide on all international football disputes. This standing committee had to provide the international football world with legal certainty in relation to matters relating to players' status.<sup>1</sup>

Continuing their search for further professionalism, FIFA set up the Dispute Resolution Chamber (DRC) in 2001. This committee was established to take over certain disputes from the PSC and specifically to resolve disputes regarding the international status and transfer of players. As we will see later on, its competence extends to cases relating to labour disputes with an international dimension but also with respect to disputes concerning training compensation and solidarity contribution. In general, this committee decides on basic issues such as breach of contract, with or without just cause or sporting just cause. Today, the PSC still has a huge influence. The DRC is more or less incorporated in the PSC and one could say that the PSC can be seen as the umbrella organisation of the DRC. The PSC still has general competence on matters relating to players' status that do not lie within the sphere of the DRC.<sup>2</sup>

The DRC is very important to FIFA's aim to achieve the before-mentioned global uniformity, quality and certainty.<sup>3</sup> In that respect one should note that the DRC is not an arbitral court, such as the Court of Arbitration for Sport (CAS). The decisions of the DRC can only be enforced through the statutes and regulations of FIFA. Nevertheless, the decisions of the DRC are of crucial importance and have a huge impact on the international football world. The members of FIFA, the national associations, must fully comply with all decisions of FIFA, such as decisions of this committee.<sup>4</sup> In turn, the national associations take every precaution to ensure that their own members, the national players and clubs, also fully comply with these decisions.<sup>5</sup> FIFA could therefore have a great influence through the DRC on international football and all its participants. Due to the

<sup>1</sup> FIFA Statutes, Art. 34 under m.

<sup>2</sup> *Id.*, Art. 47 Para. 2.

<sup>3</sup> The DRC is not an official FIFA body like the PSC.

<sup>4</sup> FIFA Statutes, Arts. 10 Para. 4 sub a and 13 Para. 1 sub d.

<sup>5</sup> *Id.*, Art. 62 Para. 2.

importance and huge influence that the decisions of the DRC could have through its own channels for the football world, more public attention must be given by FIFA and the associations to these decisions.

Although the main emphasis of this book is laid down in Chapter 2, which analyses all the relevant decisions of the DRC and classifies them into different categories, we must start by looking at the most relevant judicial aspects in relation to this Chamber in order to understand these decisions more properly. When taking decisions, the DRC applies the Regulations for the Status and Transfer of Players (RSTP) whilst taking into account all relevant arrangements, laws and/or collective bargaining agreements that exist at national level, as well as the specificity of sport.<sup>6</sup> As we will see later on, the RSTP rules are the main source of law for the DRC when judging a dispute relating to the international transfers of players, their status and their eligibility to participate in organised football.<sup>7</sup> These fundamental rules are compulsory and uniformly applicable all over the world.<sup>8</sup> They aim to regulate international transfer law when judging a dispute between member associations and they also establish basic principles that guarantee uniform and equal treatment of all participants in the football world.<sup>9</sup> In the first part of this chapter, these regulations will be discussed in more detail. In that respect, the history of the RSTP will be briefly discussed followed by a clearly structured survey of the two main important editions, namely the edition of 2001 and the current edition of 2005.

After discussing the judicial field of the RSTP, the sphere within which the DRC has to operate, it is also important to acquire broader knowledge of the relevant procedural aspects relating to this Chamber, such as the course of the proceedings. These procedural rules are outlined in more detail in the Rules Governing the Procedures of the PSC and the DRC (Procedural Rules). Relevant procedural aspects, such as the jurisdiction of the DRC, its composition, jurisdiction and applicable law, procedural aspects such as withdrawal and challenges, the entities which are entitled to lodge a claim before the DRC, the procedural costs and the manner of enforcement of the DRC decisions will be discussed extensively. Finally, the procedure before the Court of Arbitration of Sport (CAS) will be discussed, as the decisions reached by the DRC may be appealed before this panel.

## 2. REGULATIONS FOR THE STATUS AND TRANSFER OF PLAYERS

### 2.1 Introduction

The most important judicial ground for the judgement of the DRC is the Regulations for the Status and Transfer of Players, also known as the RSTP. As mentioned above, these regulations set up rules regarding the international transfer of players, the status of players, their eligibility to participate in organised football as well as the release of players for association teams and the players' eligibility to play for such teams. In other words, through these rules FIFA provides the international football world with a judicial basis regarding

<sup>6</sup> RSTP, edition 2005, Art. 25 Para. 6.

<sup>7</sup> The RSTP also set up rules regarding the release of players for association teams and the player's eligibility to play for such teams.

<sup>8</sup> FIFA Commentary, explanation Art. 1 Para. 1, p. 8.

<sup>9</sup> *Id.*, explanation Art. 1 Para. 2, p. 8.

the legal status and transfer of players. With respect to the most recent version, the edition of 2005, we must remember that these rules are based on many earlier editions and therefore have a long history. The first regulations were initially adopted in April 1991 and subsequently amended in December 1993, December 1996, May 1997, September 1997 and July 2001 by the FIFA Executive Committee.<sup>10</sup> The last and current version, the edition of 2005 of the RSTP, also known as the reviewed or revised regulations, was officially adopted by the FIFA Executive Committee on 18 December 2004 and finally came into force on 1 July 2005.<sup>11</sup>

## 2.2 History

In 1982, the first developments took place regarding international transfers for players in Europe. It was the UEFA, the Union of European Football Associations, which produced the first regulations regarding the transfer of players in September 1982, also known as the “Principles of Cooperation between Clubs of different National Associations of the ECC Countries”. According to these regulations, football players were only free to conclude a contract with another foreign club after the expiry of their current contract. Subsequently, their former club and the new club could determine transfer compensation. If the clubs were unable to agree on a reasonable transfer sum, then a committee appointed by the UEFA would be competent to determine a reasonable transfer sum. The UEFA regulations were similar to the Dutch transfer regulations at the time. However, the UEFA regulations also provided for a maximum transfer compensation for the player to the amount of CHF 5,000,000.<sup>12</sup>

FIFA followed UEFA and their first transfer regulations were initially adopted in April 1991. In 1992, FIFA subsequently modified these first international regulations and from 1 January 1994, the new FIFA regulations, which were called the “Regulations governing the Status and Transfer of Players 1994”, applied to all participants in international football. From then on, the same principle applied to amateurs and non-amateurs: compensation was compulsory in the case of a transfer of a player between clubs from different national associations. FIFA made a distinction between an amateur and a non-amateur. Pursuant to the first five Articles of the Regulations governing the Status and Transfer of Players 1994, the non-amateur was defined as a player registered with a national association who has a written contract and is paid more than the expenses he incurs in return for his football activity. Furthermore, FIFA emphasised for the first time in these regulations that a player was only free to conclude a contract with another club if the employment contract with his present club had expired or would expire within six months.

At this time, FIFA was the only international football organisation which was competent to make the rules and to give decisions in relation to the legal status and transfer of players. Until then, FIFA did not have to take any other organisations into account. It became clear that FIFA was the monopolist that made the rules and their members just had to comply with these rules. However, the European Commission felt that the Regulations

<sup>10</sup> RSTP, edition 2001, Art. 46.

<sup>11</sup> RSTP, edition 2005, Art. 29 Paras. 1 and 2.

<sup>12</sup> H.T. van Staveren, Syllabus ‘Sport en Recht’ 2003, Vrije Universiteit Amsterdam, Chapter VII, Para. 4.3, p. 226.

governing the Status and Transfer of Players 1994 could not be maintained because of crucial judicial shortcomings.

### 2.3 *Bosman case*

FIFA's exclusive position of power finally came to an end with the judgment of the European Court of Justice on 15 December 1995, the famous *Bosman* case, which had a huge impact on the international football world.<sup>13</sup> This case can be considered one of the most important sports cases to appear before the Belgian courts, and in relation to European sport law is possibly the most significant case generally.<sup>14</sup> *Bosman* is and always will be a landmark judgment in sports law.<sup>15</sup> By its decision in 1995, the European Court of Justice stressed that sport, just like any other economic activity, is subject to ordinary rules of European Law.<sup>16</sup> In other words, this European decision made it clear that FIFA's transfer system did not function well enough.

The Belgian professional football player Jean-Marc Bosman refused to sign a new contract offered by his club, the first division club RC Liège. In April 1990, the club offered him a new one-year contract at BFR 120,000 a month, the minimum permitted by Belgian rules and a quarter of his previous salary.<sup>17</sup> In turn, Bosman refused the club's proposal and was subsequently placed on the transfer list. Several other clubs were interested in the player and eventually a deal was signed between Bosman, RC Liège and the French second division club Dunkerque. However, RC Liège had some concerns about Dunkerque's financial position and suddenly cancelled the negotiations. Bosman started proceedings against his club RC Liège with the competent Belgian Court in Liege. The Court of Appeal in Liege suspended the case and asked for a preliminary decision of the European Court of Justice. Its main argument was that the transfer system breached European competition law; more specifically it breached the right of free movement of people within the European Union. Bosman claimed that the transfer rules were not suitable to ensure the balance between finances and sporting performance.<sup>18</sup> The European Court of Justice now had to determine the legal status of the transfer regulations concerned. Finally, the European Court decided that professional football, insofar as it constitutes an economic activity, is subject to community law. The football associations are obliged to comply with basic legal principles, including the right of employees within Europe to freedom of movement. It decided that transfer compensation to be paid by a club for a player who

<sup>13</sup> Case C-415/93, *Union royale belge des sociétés de football association ASBL v. Jean-Marc Bosman Royal Club liégeois SA v. Jean-Marc Bosman. SA d'Economic Mixte Sportive de l'Union Sportive du Littoral de Dunkerque, Union Royale Belge des Sociétés de Football Association ASBL, Union des Associations Européennes de Football Union des Association Européennes de Football v. Jean-Marc Bosman*, judgement of 15 December 1995, [1991] ECR I-4837.

<sup>14</sup> Aaron Wise and Bruce S. Meyer, *International Sports Law and Business*, Vol. 2, The Hague, Kluwer Law International (1997) p. 1104/1105.

<sup>15</sup> Lars Halgreen, 'The European Regulation of Sport', 3/4 *ISLJ* (2005) p. 47. According to Halgreen there was an unmistakable feeling among sports associations that they were beyond legal control.

<sup>16</sup> Roger Blanpain, 'The fight for player freedom continues, 10 years of Bosman', 1/2 *ISLJ* (2006) p. 116.

<sup>17</sup> Stephen Weatherill, *European Sports Law. Collected Papers*, T.C.M. Asser Press (The Hague, 2007), pp. 90-91.

<sup>18</sup> Roger Blanpain, *De Bosman case*, Reeks Europees Recht, Uitgeverij Peters Leuven (Leuven 1996) p. 332. Blanpain agreed with this point of view of Bosman.

had ended his contractual relationship with his former club was not permitted and was in violation with the free movement of people within the European Union.<sup>19</sup>

## 2.4 Post-Bosman period

Following the decision of the European Court, the football clubs had to respond to the new situation. The clubs wanted to prevent players reaching the end of their contract and running off for free. They therefore started negotiating contracts for longer periods, for over more than five or six years, for example. Clubs were tempted to draft appropriate clauses in the player's contract which allowed the clubs to secure compensation for their loss.<sup>20</sup> Another method invented by the clubs was to insert clauses in the players' contracts whereby the clubs unilaterally reserved the right to extend the agreement, the so-called unilateral extension option. In Chapter 2, the validity of the unilateral extension option will be discussed in view of the DRC. As a result of these important developments, it was no longer efficient to train the players themselves. The clubs now asked extremely high transfer sums if the player wanted to leave his club before his contract expired. Ultimately this created a situation whereby the biggest clubs attracted all the good players, small clubs faced financial difficulties and huge transfer sums were paid. Understandably, these new circumstances after the *Bosman* case had a very negative impact on the international football world.

Since the famous *Bosman* case, at the end of his contract, a professional football player is free to move to any new football club of his choice his new club being obliged to pay a transfer sum to his former club.<sup>21</sup> Therefore, as a result of the imbalance which had arisen in the international football world since the famous *Bosman* case in 1995, FIFA felt obliged to find a solution. FIFA's transfer rules were severely affected by this ruling.<sup>22</sup> FIFA had to react by revising its rules on international transfers in order to align them to the European Court of Justice Rules. FIFA realised that the civil courts were not going to help the international football world. They therefore had to look for a solution through their own rules for the instability that had arisen in the professional football world. Finally, the European Commission started making objections against the transfer rules of FIFA and the UEFA. FIFA started making new regulations to replace the Regulations governing the Status and Transfer of Players 1994 and which had to maintain contractual stability for players, their transfer status and the training facilities. A start was made on the new FIFA RSTP.

In 1997 a new version of the RSTP was sent to the European Commission for judgement. At first, the European Commission did not agree with the content of these regulations, still feeling that these rules did not comply with the European rules. For example, the European Commission had great problems with the fact that the regulations allowed

<sup>19</sup> Christian Drolet, 'Extra Time: Are the new FIFA transfer rules doomed?', 1/2 *ISLJ* (2006) p. 66.

<sup>20</sup> Stephen Weatherill, *European Sports Law*, p. 67.

<sup>21</sup> See also Roger Blanpain, *The Legal Status of Sportsmen and Sportswomen under International, European and Belgian National and Regional Law* (2003), p. 98. See also Roger Blanpain, *The Legal Status of Sportsmen and Sportswomen under International, European and Belgian National and Regional Law*, Kluwer Law International (The Hague, London, New York, 2003), p. 98.

<sup>22</sup> Stephen Weatherill, 'Is the pyramid compatible with EC law?', 3/4 *ISLJ* (2005) p. 5. Weatherill is right when he says that there can be no doubt that it is fiendishly difficult to identify what really are rules that belong to the autonomy of sports federations and what are instead rules of a sufficiently commercial character to fall for inspection under the rules of the EC Treaty.

the transfers of players under the age of 18. Neither could it agree with the fact that FIFA excluded proceedings for civil courts. FIFA therefore had to initiate a new plan for RSTP that complied with European legislation.

As a result of all the objections of the European Commission, FIFA started a dialogue with the European Commission to discuss a new concept for transfer rules.<sup>23</sup> The European Commission was of the opinion that the new FIFA Regulations were free to contain provisions with respect to the transfers of players, contractual stability and training compensation for players. However it was crucial that the new regulations complied with the European regulations. The European Commission once more emphasised that the new FIFA regulations could not obstruct the way to the civil courts and that the national laws of the countries concerned had to be obeyed. Finally, as a result of the debate between FIFA and the European Commission, new regulations were drawn up by FIFA. The new regulations were not allowed to rule out civil court proceedings and these rules had to take into account the national legislation concerned.

## 2.5 Edition 2001

In October 2000 FIFA and UEFA sent a joint suggestion for new rules to the European Commission. In 2001, this led to a gentlemen's agreement between FIFA and the European Commission. This became a compromise which was in compliance with the European rules on the one hand while the new rules respected the specificity of sport on the other hand. It was a mixture of the requirements of the European Commission and the special requests of FIFA. After much bargaining and dealing, the new rules were finally adopted by the FIFA Executive Committee on 5 July 2001 and came into force on 1 September 2001. These rules are called the edition 2001. The new Rules were the subject of negotiations with the European Commission. Mario Monti, the commissioner of the European Commission at that time, was assumed to have been personally involved in drafting the transfer rules which became known in the football world as the "Monti-rules".<sup>24</sup>

The new RSTP guaranteed the contractual stability of the players' contracts and regulated the international transfer for players more properly. Even more importantly, the new rules that now replaced the Regulations governing the Status and Transfer of Players 1994 complied with the demands of the European Commission. Three important pillars were inserted to guarantee the above. Contracts had to be for a minimum of one year and a maximum of five years. The main reason for this was that players were now even more inclined to stay with their clubs, particularly now that they were obliged to stay for one entire season. This combined with the main objectives of FIFA, namely to create more certainty. Furthermore, the new regulations introduced two transfer registration periods, i.e., a transfer period during the winter and a transfer period during the summer. Players were only allowed to transfer internationally during these two periods. Finally, FIFA introduced a protection system for the international transfer of minors. As mentioned earlier, minors under the age of 18 from outside the confederation of Europe were not obliged to make a transfer to another association.

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<sup>23</sup> See for the course of the negotiations: <[http://ec.europa.eu/sport/sport-and/markt/bosman/b\\_bosman\\_en.html](http://ec.europa.eu/sport/sport-and/markt/bosman/b_bosman_en.html)>.

<sup>24</sup> Christian Drolet, 'Extra Time: are the new FIFA transfer rules doomed?', 1/2 *ISLJ* (2006) p. 67.



The RSTP, edition 2001 also created and introduced the DRC, as mentioned earlier.<sup>25</sup> Besides the urgent necessity with regard to the right of any player or club to seek redress before a civil court in disputes between clubs and players, the edition 2001 enabled a dispute resolution and arbitration system to be established. In future, the basic elements, such as whether a contract was breached, with or without just cause or sporting just cause, would have to be decided by this DRC of the FIFA Players' Status Committee. The rules with respect to the procedure before the DRC were laid down in the so-called "Procedural Rules for the FIFA Players' Status Committee and the Rules Governing the Practice and Procedures of the Dispute Resolution Chamber".<sup>26</sup> Furthermore, in relation to the edition 2001 of the RSTP, the rules were provided with the "Regulations Governing the Application of the RSTP". These regulations provided more precise details relating to the legal status and transfer of players.<sup>27</sup> Last but not least, the edition 2001 of the RSTP also contained provisions that regulated the compensation for the training and education of young players.

## 2.6 Edition 2005

At its meeting held in Zurich on 18 and 19 December 2004, the FIFA Executive Committee adopted new regulations, also known as the "Reviewed Regulations for the Status and Transfer of Players". These regulations, also known as edition 2005, replaced the special regulations governing players' eligibility to play for association teams dated 4 December 2003, the RSTP of 5 July 2001, as well as all subsequent amendments, including all relevant circular letters issued before these regulations came into force. The new regulations were officially adopted by the FIFA Executive Committee on 18 December 2004 and the new regulations were finally implemented on 1 July 2005.<sup>28</sup>

The reasons for these amendments were explained by FIFA in its Circular 959. FIFA explained that the new rules had a new layout as well as a more user-friendly structure. According to FIFA, the new rules were meant to improve the old rules. New formal and material elements had been included, such as a list of the most current definitions, a title to every Article and with regard to the jurisdiction, a clear description of the competences of both the PSC and the DRC. Moreover, based on the positive experience with the Single Judge of the PSC, also at the level of the DRC, the so-called DRC Judge was introduced.

Drolet defined the edition 2001 of the RSTP rules and the Application Regulations as "not crystal clear" and "vague". In his opinion, the 2005 rules had to be seen more as an adjustment than a new set of rules. The new rules attempt to fix some of the problems discovered in the 2001 rules.<sup>29</sup> In my opinion, the new rules are certainly clearer and have more structure. However, the new rules were not only given a new layout and more user-friendly structure. As we will see later on, FIFA also implemented new material rules at certain points in the edition 2005.

<sup>25</sup> RSTP, edition 2001, Art. 42 Para. 1 under b.

<sup>26</sup> Procedural Rules for the FIFA Players' Status Committee dated 21 February 2003 and the Rules Governing the Practice and Procedures of the Dispute Resolution Chamber dated 28 February 2002.

<sup>27</sup> Regulations Governing the Application of the Regulations for the Status and Transfer of Players Edition 2001.

<sup>28</sup> RSTP, edition 2005, Art. 29 Paras. 1 and 2.

<sup>29</sup> Christian Drolet, 'Extra Time: are the new FIFA transfer rules doomed?', 1/2 *ISLJ* (2006) p. 70.