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Frans de Weger

The Jurisprudence of the FIFA Dispute Resolution Chamber

Second Edition



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Advance Reviews

Frans de Weger's work on the jurisprudence of the DRC is a "must-have" for anybody dealing with sports law and, in particular, dealing with football issues under the *FIFA Regulations on the Status and Transfer of Players*. It is a comprehensive and well-organized book that I highly recommend.

Massimo Coccia, Professor of International Law and Attorney-at-Law in Rome (Italy), CAS Arbitrator, Author of many publications on sports law issues

Where to go when trying to understand the *FIFA Regulations on the Status and Transfer of Players*? Now Frans de Weger has the answer with his new version of the much-awaited and needed "Jurisprudence of the FIFA DRC". His first one of 2008 was and is still the only book in English which has reviewed the long and winding case law of FIFA DRC. This is not an easy task and the 2016 edition has not only improved on its predecessor but also opened a wider range of enlightenment for the football law practitioner. This is the book that we all called for and quoting Woody Allen, I would say that with it you will be aware of "Everything you wanted to know about FIFA DRC and you were afraid to ask". We must thank Frans for sparing us time with this clairvoyant and helpful book.

*Juan de Dios Crespo Pérez
Sports lawyer*

By a systematic and analytical study of the most important decisions rendered by the FIFA Dispute Resolution Chamber, Frans de Weger has traced the context, purpose and evolution on how one should read and understand the *FIFA Regulations on the Status and Transfer of Players*. The Author has managed to explain in a pure and understandable way the issues specific to the industry of football and how these should be taken into account by clubs and players in their legal relationship and within organised football. The second edition of this book, which is systematic and practical at the same time, will surely be of great interest to both specialists active in the world of "football law" and aspiring individuals.

*Wouter Lambrecht, Attorney-at-law, Head of Legal
at the European Club Association, FIFA Dispute Resolution
Chamber Member and Mediator at the Court of Arbitration for Sport*

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Abbreviations

| | |
|------------------|--|
| BGH | German Bundesgerichtshof |
| CAS | Court of Arbitration for Sport |
| CAS Code | CAS Code of Sports-related Arbitration |
| CHF | Swiss Franc |
| CJEU | Court of Justice of the European Union |
| CO | Swiss Code of Obligations |
| DRC Judge | Single Judge of the DRC |
| DRC or Chamber | Dispute Resolution Chamber |
| EC | European Commission |
| EU | European Union |
| EURO | EUR |
| FA | Football Association |
| FBO | Dutch Federation of Professional Football Clubs |
| FIFA | Fédération Internationale de Football Association |
| FIFA Commentary | Commentary on the Regulations of the Status and Transfer of Players |
| FIFA Comparison | Comparison of the FIFA regulations version July 2001 and following Circulars with the new FIFA regulations version December 2004 |
| GBP | British Pounds |
| ICAS | International Council of Arbitration for Sport |
| IRTC | International Registration Transfer Certificate |
| ITC | International Transfer Certificate |
| KNVB | Royal Netherlands Football Association |
| NDRC | National Dispute Resolution Chamber |
| NDRC Regulations | National Dispute Resolution Chamber Standard Regulations |
| PILA | Private International Law Act |
| Procedural Rules | Rules governing the Procedures of the Players' Status Committee and the Dispute Resolution Chamber |
| PSC | Players' Status Committee |
| RSTP | Regulations on the Status and Transfer of Players |

| | |
|--------------|---|
| SCC | Swiss Civil Code |
| SFT | Swiss Federal Tribunal |
| Single Judge | Single Judge of the PSC |
| TFEU | Treaty on the Functioning of the European Union |
| TMS | Transfer Matching System |
| TPO | Third-Party Ownership |
| UEFA | Union Européenne de Football Association |

Foreword

Its competence and the applicable regulations having been established, the members of the Dispute Resolution Chamber went on to deal with the substance of the matter and started by acknowledging the facts of the case and the arguments of the parties as well as the documents contained in the file.

These or very similar words are contained in hundreds of decisions of the FIFA judiciary bodies. What follows, in all those decisions, is the dealing with thousands of personal stories, raised claims, advanced objections, submitted allegations and, yes, also legal arguments made by the parties before FIFA.

Since their creation, the FIFA judiciary bodies and in particular the FIFA Players' Status Committee (PSC) and the FIFA Dispute Resolution Chamber (DRC), together with their Single Judges, have rendered several thousand decisions. And even though "nobody is perfect" and no adjudicatory body of this world can claim never to take a wrong decision, the work of the FIFA judiciary bodies has helped solving a huge number of disputes in quite an efficient manner, providing the parties with a judiciary, objective assistance that may still be considered to be sometimes too slow, but which is also rather inexpensive and pretty much well-fitted for an international environment like the one of international football.

It is praiseworthy that FIFA publishes a large number of decisions of the PSC and the DRC on its website on a regular basis. However, the handling and the analysis of such decisions is not easy. If one looks for instance at the more than 2000 decisions of the DRC currently available online, one will see that they are first very numerous and second divided in simply four categories: labor-related disputes, training compensation, solidarity matters and disputes relating to overdue payables.

Back in the years 529 to 534 p. Chr., the Eastern Roman Emperor Justinian ordered the collection of all sources of Roman jurisprudence, and so the admirable Corpus Iuris Civilis was put together, a fundamental work providing an overview on the quite chaotic Roman legal system existing at that time.

Today, almost identically, the present book, prepared under the wise guidance of my dear friend Frans de Weger, provides the reader—or even: the “user”—with a great access to the body of the jurisprudence of the FIFA DRC: DRC decisions are selected and commented, and a clear structure of topics is established, by attributing the DRC decisions to several classes of disputes.

The reading and the consultation of this excellent book, including the good introductory chapters, can only be strongly recommended to lawyers involved in football-related matters. Both the more unexperienced law student and the well-versed attorney will be able to draw very useful information from a rich pool of interesting materials.

The author and the editors of this book can only be thanked by all those who love football—those who have the chance to work on football-related matters.

Zurich
August 2016

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Author's Note

In the first edition of this book reference is made to the relevant decisions issued by the FIFA Dispute Resolution Chamber (“the DRC”) from the date of its existence in 2001 until 2006. Now, in 2016, in this second edition, reference is made to the relevant decisions from 2001 until 2016. More than 15 years’ worth of DRC decisions.

During the years the jurisprudence of the DRC has become increasingly “well-established”. The decisions by the DRC are more and more extensive and Single Judges are getting more involved (to reduce the workload). Further, we also note a positive development with regard to the length of the DRC procedures, sharpening deadlines and limiting the exchange of correspondence in procedures, also considering that FIFA introduced the so-called fast track procedure of Article 12bis of the FIFA Regulations on the Status and Transfer of Players (“the RSTP”). Step by step, a swifter dispute resolution process has finally been created by FIFA.

However, it shouldn’t be left unmentioned that the length of the procedures before the DRC can still be shortened. In comparison to the procedures before the Court of Arbitration for Sport (“the CAS”), the DRC could also be stricter with regard to deadlines in procedures. Considering the well-established DRC jurisprudence that has been created over the years since 2001, the DRC must also remain open to new developments in international football law and cannot be immune under all circumstances from the impact and influence of European law, leading CAS jurisprudence and Swiss law. The existence and creation of “well-established jurisprudence” bears the risk of becoming less accessible for ‘outside’ developments.

Although by no means exhaustive, this book aims to provide an overview of the “well-established jurisprudence” of the DRC. However, as always, the devil is in the details. One must be aware that relying on an individual decision by the DRC can be quite risky since it happens that the DRC (especially in the past) deviated from its standard line but in later decisions reverts to its former “well-established jurisprudence”. Nowadays and as said before, the jurisprudence has become increasingly “well-established” and these kinds of divergent decisions are more and more exceptional. Furthermore, I make exact references and stay

close to the relevant considerations made in the decisions by the DRC to gain a broad(er) and more precise knowledge of the general view of the committee. Due to the increasing internationalization of the professional football world, the DRC decisions become more and more important within the international field of professional football, which will also have its impact, directly or indirectly, at national level (certainly in the long run), such as for national arbitration tribunals. By making exact references to the general considerations of the DRC in its decisions over the years, the flipside of the coin is that it is not a 'nice romantic novel' to read. It must therefore be considered as a work of reference.

Let me stress that the FIFA jurisprudence is of utmost importance. First of all, taking into consideration that the CAS is the appeal committee which makes these awards at least as interesting, FIFA, however, sometimes maintains its own line even if the CAS has a different point of view. In this regard, it must be mentioned that less than 5 % of the DRC decisions is annulled by the CAS which means that most of the DRC decisions can therefore be seen as final and binding. Moreover, not all parties have the financial means to appeal to the CAS or the (low) amount at stake does not make it worthwhile (taking into account the relatively high arbitration costs before the CAS) to appeal against the DRC decision before the CAS (on the understanding that also a dispute with a low amount at stake does not necessarily mean that it is not an interesting case from a legal point of view). In other words, in many DRC cases, the DRC is the last resort. Therefore, for legal advisors to operate quickly and adequately in the dynamic world of international professional football, secure and up-to-date knowledge of the DRC jurisprudence and its continuing and rapid developments, is obviously indispensable. It must finally be noted that the DRC jurisprudence is quite consistent (more consistent than the jurisprudence of the CAS in relation to certain subjects) and with its well-established jurisprudence, contributes to more legal uniformity, equality and certainty.

This edition is more practical due to my experience and activities over the last few years as a senior legal counsel at the Dutch Federation of Professional Football Clubs ("FBO") in procedures before the DRC, as well as (previously before I was appointed as a CAS Arbitrator) the CAS, the appeal committee of the DRC. This second edition addresses many issues on the understanding that experience teaches that there are many legal pitfalls with regard to several subjects which the DRC has to deal with. This edition has a scientific as well as a practical character and is useful for both the practitioner and the scientist. It goes without saying that this book is especially a useful and practical tool for those actually acting in legal procedures before the DRC, such as international football lawyers and clubs' legal counsels.

Having said that, this edition is not only provided with references to decisions by the DRC, but also, if necessary, to relevant decisions by the FIFA Players' Status Committee ("the PSC"), which are also published since 2011 on FIFA's website, in order to better understand certain considerations of the DRC. Furthermore, in order to place the DRC decisions in the right legal perspective, reference is also made to leading awards issued by the CAS. However, since the essence of this book is "the DRC", many references to the CAS and the PSC

cases are especially made in the footnotes in order to maintain focus on the DRC decisions. The reference to the CAS jurisprudence in the footnotes, which is by no means exhaustive, is mainly meant to better find one's way in the CAS jurisprudence and so to ease finding the relevant CAS jurisprudence. Also, attention will be brought to relevant *unpublished* decisions issued by the DRC, the PSC and CAS awards. As a side-note, it must be mentioned that during the writing of this second edition, it came to my knowledge that FIFA apparently decided, for unknown reasons, to remove certain earlier published decisions from the current list of decisions on its (new) website (which means that certain DRC decisions cannot be found on FIFA's current website anymore). Having decided to make reference to these removed decisions in this second edition anyway, in order to show all relevant legal thoughts of the Chamber, however, I felt forced to share this knowledge in this Author's Note.

In my point of view, this edition is improved and is more 'mature' in comparison to the first edition. But it is also far more extensive. And not forgetting, it is obviously up-to-date. Please forgive me if I am not exhaustive with regard to all the subjects and with regard to the DRC (and especially the CAS) jurisprudence. I tried to be as complete as possible (which is also difficult due to the existence of many—not less important—unpublished decisions). As the reader will notice for several subjects, a short conclusion has been included for ease of reference, where reference is made in a nutshell to the well-established DRC jurisprudence. In a manner of speaking, merely reading this part would be enough to gain general knowledge of the vision of the DRC. I sincerely hope you find this second edition worth reading and that it helps us all with our cases in the future.